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الجامعة الإسلامية العالمية ماليزيا
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بوتنيونينتي ليل لارا ابتكارا بجنينا مليسيتا



**HARUN M. HASHIM LAW CENTRE
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA**



Foreword by the President

It is a great honour for me to address the delegates of this Joint Conference on Law & Society, Commercial Law and Islamic Finance. I am happy to hear that this is not the first Conference but a series jointly organised by the Ahmad Ibrahim Kulliyah of Laws and the Harun M. Hashim Law Centre jointly with the University of Airlangga and the University of Muhammadiyah Yogyakarta. I commend the organising committee for earnestly working on organising this series of conferences in continuation from the Surabaya and Yogyakarta Inaugural conferences to the Garden of Virtue and Knowledge in the Gombak Valley. I applaud the cooperation of these institutions of higher learning in the Nusantara which will pave way for promoting regional unity. As Leonard Andaya's posits in his book Leaves of the Same Tree, we in the Nusantara are but of the same root sharing the same history and culture.

With the lingering worries of the massacre in Syria, political unrest in Egypt that appears to be part of the Domino effect Tunisia, Yemen and Libya in the Muslim World still being felt and insurgence of the Moro conflict within the South East region in this part of the world. This is not an encouraging situation and not necessarily better phase in the global era. I believe it is timely for the conference on law and society to be organised to promote better understanding on the role of law and the need for the law to evolve to meet the changing needs of the society. As members of the legal fraternity, we have to continue questioning the effectiveness of the current national and international legal system in order to ensure we bequeath our children with a better place to live and see a better tomorrow.

In spite of the sombre mode caused by the socio-political upheaval around the world, we should continue to develop our commerce and Islamic finance that is essential to promote

economic prosperity which if managed rightly could assist in bringing us out from this social and economic doldrums. In this respect I welcome the collaboration with the International Shari'ah Research Academy for Islamic Finance (ISRA) and ask them to continue to work with IIUM in future projects and collaborate to reach out to the global needs for research and development in the Islamic finance discipline and to help promote Malaysia as an international Islamic financial hub.

I am thrilled to note that the Joint conference has attracted more than 120 paper presenters ranging from Professors, Associate Professors, Senior Lecturers and students. With 30 presenters beyond Malaysian shores, from Indonesia, Turkey, Hungary, Nigeria, India, Australia and other countries. This is indeed a reflection of the stature of the Joint Conference and the attraction of this University as the Premier Global Islamic University.

The theme set by the Joint Conference organisers are timely and importantly relevant for this millennium. Topics on legal history, natural resources management, commercial legal issues, governance and Islamic finance poses urgent issues that need to be deliberated and discussed. I trust the Conference organisers could find time to formulate Resolutions from the papers presented to be used to foster future research.

I will end my speech by congratulating the team in organising the Joint Conference and welcome the delegates to the conference.

Tan Sri Dato' Seri Utama Dr. Rais Yatim
President
International Islamic University Malaysia

COMPULSORY ACQUISITION OF COMMUNAL LAND AND COMPENSATION IN NIGERIA

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Abstract

The Nigerian land use decree no 6 of 1978 is 35 years in operation but the criticism starts almost immediately. People continue to agitate for a change in decree as a result of perceive conflict between government and land owners across the country when the need arise for government implementing a clause of the decree. Compulsory land acquisition as provided by section 28 has been debated extensively. It is said not acceptable to assume that the Land Use Act of 1978 has totally transferred ownership of land to the Governor of a state in Nigeria. It is argued that the natives could not claim any interest in any other land beyond their occupation because such interest has been lost by virtue section 1 of the Land Use Act, which provides that subject to the provisions of this act, all land comprised in the Territory of each State in the Federation are hereby vested in the Governor of that State and such land shall be held in trust and administered for the use and common benefits of all Nigerians. No doubt, the procedure for compulsory acquisition requires adequate notice to be given to the owner, compensation be paid and the acquisition must be for "public purpose". This article seeks to dwell on the valuation for compensation aspect of the three requirements for compulsory acquisition. The data for this write up is basically secondary data source. Findings show the truism that current provisions of the Act cannot guarantee adequate compensation. It therefore, recommends an amendment to the present Land Use Act of Nigeria to reflect realities as regard ownership and transparent methods of assessment for compensation.

Keywords: Land, Act, Compulsory land acquisition, Compensation, Valuation

1.0 INTRODUCTION:

There is no land without owner; the ownership may be individual, corporate, communal or nation at large. Everything depends on land, houses are built on land, food comes from land, and the ultimate relationship between Man and land is that man's remains are committed to land after death. Hence, life's basic needs are expressed to be food, clothing and shelter therefore it is true to assert that there is only one fundamental need of life and that is land because food, clothing and shelter are entirely derived from land.

Statutory definitions of land in Nigeria include the following:- "Land includes land and everything attached to the earth and all chattels real." Further, "Land includes land of any tenure, buildings or parts of buildings (whether the division is horizontal, vertical, or made in any other way), and other corporeal hereditaments; also a rent and other incorporeal hereditaments, and an easement, right, privilege or benefit in, over or derived from land." Furthermore, the word "land", according to Justice Andrew Obaseki (retired Justice of the Supreme Court of Nigeria), "is a species of property. Property has been defined to mean ownership or title and sometimes the res over which ownership may be exercised. The land comprised in the territory of each state of the Federation is the res over which the governor exercised ownership in trust in accordance with section 1 of the Land Use Act of 1978. It is an immovable property"¹. The Land Use Decree was promulgated on 29 March 1978 following the recommendations of a minority report of a panel appointed by the Federal Military Government of the time to advise on future land policy. With immediate effect, it vested all land in each state of the Federation in the governor of that state (Federal Republic of Nigeria, 1978).

The Decree distinguishes throughout between urban and non-urban (hereafter 'rural') land. In urban areas (to be so designated by the Governor of a state), land was to come under the control and management of the Governor, while in rural areas it was to fall under the appropriate local government. 'Land Use and Allocation Committees', appointed for each state by the Governor, were to advise on the administration of land in urban areas while 'Land Allocation Advisory Committees' were to exercise equivalent functions with regard to rural land. This paper is concerned principally with the provisions of the ACT, section 28 and section 29 relating to compulsory acquisition and compensation. However, the following objectives are critical to achieve the aim of this paper:

- (i) what are the provisions of the ACT relating to acquisition and compensation
- (ii) what are stands of the ACT as regard valuation for compensation
- (iii) Why compensation have been a subject of litigation

2.0 CONCEPTUAL AND LITERATURE REVIEW

Compulsory acquisition or purchase is the process by which local and national governments obtain land and premises for development purposes when they consider this to be in the best interest of the community. The process of valuation for compensation in compulsory acquisition of land takes place within distinct legal; cultural; socio-economic; political and historical environments which influence the delivery of the process by key actors in it. The basic principles are perceived to be quite similar even though the practice may vary in different nations or regions, the

¹ LADAN, M.T. "Environmental Law and Land Use in Nigeria". A Paper for the Second Colloquium on Environmental Law and Land Use. Organised by The IUCN Academy Of Environmental Law, Bonn, Germany In Collaboration With The University of Nairobi, Kenya. 4-8 October, 2004, Grand Regency Hotel, Nairobi, Kenya. www.abu.edu.ng/publications/2009-07-03-154345.3901.doc accessed 9/2/2013

assessment of compensation is usually influenced by local and national statutes, enactments or laws that provide the basis upon which existing professional standards and methods may be applied (Kakulu, Byrne and Viitanen, 2009)². The main statute governing land acquisition and the assessment of compensation in Nigeria is the Land Use Decree No.6 of 1978 (hereinafter called the Act). These have been found well documented by Otubu (2012)³, section 28 and 29, provided that:

- (1) It shall be lawful for the Governor to revoke a right of occupancy for overriding public interest.
 - (2) Overriding public interest in the case of a statutory right of occupancy means
 - (a) the alienation by the occupier by assignment, mortgage, transfer of possession, sublease, or otherwise of any right of occupancy or part thereof contrary to the provisions of this Act or of any regulations made there under;
 - (b) the requirement of the land by the Government of the State or by a Local Government in the State, in either case for public purposes within the State, or the requirement of the land by the Government of the Federation for public purposes of the Federation;
 - (c) the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith.
 - (3) Overriding public interest in the case of a customary right of occupancy means
 - (a) the requirement of the land by the Government of the State or by a Local Government in the State in either case for public purpose within the State, or the requirement of the land by the government of the Federation for public purposes of the Federation;
 - (b) the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith;
 - (c) the requirement of the land for the extraction of building materials;
 - (d) the alienation by the occupier by sale, assignment, mortgage, transfer of possession, sublease, bequest or otherwise of the right of occupancy without the requisite consent or approval.
 - (4) The Governor shall revoke a right of occupancy in the event of the issue of a notice by or on behalf of the (Head of the Federal Military Government) if such notice declares such land to be required by the Government for public purposes.
 - (5) The Military Government may revoke a statutory right of occupancy on the ground of (a) a breach of any of the provisions which a certificate of occupancy is by section 10 deemed to contain; (b) a breach of any term contained in the certificate of occupancy or in any special contract made under section 8; (c) a refusal or neglect to accept and pay for a certificate which was issued in evidence of a right of occupancy but has been cancelled by the Military Governor under subsection (3) of section 10.
 - (6) The revocation of a right of occupancy shall be signified under the hand of a public officer duly authorised in that behalf by the Governor and notice thereof shall be given to the holder.
 - (7) The title of the holder of a right of occupancy shall be extinguished on receipt by him or a notice given under subsection (5) or on such later date as may be stated in the notice.
- Section 29. (1) If a right of occupancy is revoked for the cause set out in paragraph (b) of subsection (2) of section 28 or (c) of subsection (3) of the same section, the holder and the occupier shall be entitled to compensation for the value at the date of revocation of their un-exhausted improvements.
- (2) If a right of occupancy is revoked for the cause set out in paragraph (c) of subsection (2) of section 28 or in paragraph (b) of subsection (3) of the same section the holder and the occupier shall be entitled to compensation under the appropriate provisions of the Mineral Act or the Mineral Oils Act or any legislation replacing the same.
- (3) If the holder or the occupier entitled to compensation under this section is a community the Governor may direct that any compensation payable to it shall be paid (a) to the community; (b) to the chief or leader of the community to be disposed of by him for the benefit of the community in accordance with the applicable customary law; (c) into some fund specified by the Governor for the purpose of being utilised or applied for the benefit of the community.
- (4) Compensation under subsection (1) of this section shall be, as respects (a) the land, for an amount equal to the rent, if any, paid by the occupier during the year in which the right of occupancy was revoked; (b) building, installation or improvements thereon, for the amount of the replacement cost of the building, installation or improvement, that is to say, such cost as may be assessed on the basis of the prescribed method of assessment as determined by the appropriate officer less any depreciation, together with interest at the bank rate for delayed payment of compensation and in respect of any improvement in the nature of reclamation works, being such cost thereof as may be

² Available at: <http://www.tkk.fi/Yksikot/Kiinteisto/FIG/pdf-files/07092007Knight> accessed 2/8/2013

³ <http://journals.univ-danubius.ro/index.php/juridica/article/view/1504> accessed 22/7/2013

substantiated by documentary evidence and proof to the satisfaction of the appropriate officer; (c) crops on land apart from any building, installation or improvement thereon, for an amount equal to the value as prescribed and determined by the appropriate officer.

(5) Where the land in respect of which a right of occupancy has been revoked forms part of a larger area the compensation payable shall be computed as in subsection (4) (a) above less a proportionate amount calculated in relation to that part of the area not affected by the revocation but of which the portion revoked forms a part and any interest payable shall be assessed and computed in like manner.

(6) Where there is any building, installation or improvement or crops on the land to which subsection (5) applies, then compensation shall be computed as specified hereunder, that is to say (a) such land, on the basis specified in that subsection; (b) any building, installation or improvement or crops thereon (or any combination or two or all of those things) on the basis specified in that subsection and subsection (4) above, or so much of those provisions as are applicable, and any interest payable under those provisions shall be computed in like manner. For the purposes of this section, "installation" means any mechanical apparatus set up or put in position for use or materials set up in or on land or other equipment, but excludes any fixture in or on any building.

In the existing body of literature it is noted there are a number of observable problems associated with compulsory acquisition and valuation for compensation in different parts of the world. Nuhu (2008)⁴ noted that the land use act is silent on the question of "disturbance and injurious affection" which implies that dispossessed land owners are not compensated for certain losses such as goodwill. However, Kortey (2003) and Larbi (2008) as cited in Famuyiwa *et al* (2011)⁵ opined that the manner by which the governments in many developing countries exercise the rights of compulsory acquisition undermines tenure security because often, little or no compensation is paid, which then have negative impacts on equity and transparency. Observations on the invocation of Public Land Acquisition and Payment of Compensation in Nigeria have resulted in controversies, lapses and disputes in the past. Such as listed; inadequate revocation notices, inadequate compensations, illiteracy of the claimants, inadequate funding of compensation exercise, non-payment of interest on delayed payments, problem of conflicting claims, use of low rate for economic trees and crops, non-enumeration for some crops/economic trees, resistance to allow surveyors to represent claimant, non-payment for undeveloped land, corruption of Government officers were among the problems reported of a study by Nuhu (*ibid*)⁶.

The laws dealing with land acquisition are not clear and there is ambiguity with regards to who is entitled to compensation, what items to be included in the compensation, and what is meant by adequate compensation. The absence of clear explanations is a hindrance to uniform and consistent interpretation and so valuers tend to flout the provisions contained therein. This is partly responsible for the existence of multiple interpretations of its contents by key actors in the process (Kakuluet *al.*, 2009)⁷. Moreover, Alias *et al.*, (2010)⁸, noted that the main issue of land expropriation is the quantum of compensation that is perceived by the

⁴<http://ojs.tsv.fi/index.php/njs/article/view/2454> accessed 1/8/2013

⁵Famuyiwa, F. and Omirin, M.M. "Infrastructure Provision and Private Lands Acquisition Grievances: Social Benefits and Private Costs". *Journal of Sustainable Development* Vol. 4, No. 6; December 2011. www.ccsenet.org/jsd p169

⁶See 4

⁷See 2

⁸Available online at <http://www.academicjournals.org/ijps/pdf/pdf2010/.../Alias%20et%20al.pdf> accessed 29/07/2013

respondents as inadequate to fulfil adequate compensation notion under the spirit of the constitution. They noted that adequate compensation is not defined in the statute of Malaysia and the determination of compensation is based solely on the discretion of the various authorities. Therefore, Omar and Ismail (2009)⁹ recommend reviews to include payment of all genuine losses, common agreement on any amount of compensation between landowners and land administrators, quick payment, value plantation separately and the payment of solatium to the affected land owners, as more detailed elements of adequate compensation. Solatium is a provision for a sum of money to be paid to an injured party by the party responsible for the injury, over and above compensation paid for damages for injury to feelings.

Nuhu and Aliyu (2009)¹⁰ studied court cases on revocation of communal land title by the governor of Niger State in Nigeria within the beam of statutory procedures for just and fair acquisition of communal land and payment of compensation. Among the disposed of cases, it was revealed that "Private convenience" does not translate to "public purposes" hence, acquisition of communal lands for "private purpose" becomes void. The research also raised the question whether the formula of valuation for compensation, if ever used, was just? But this was left in an illusory state. Therefore, this write up consider looking into the valuation scenarios for compensation.

3.0 VALUATION FOR COMPENSATION

The valuation of payable compensation is usually a function of the provisions of the Acts, Decrees and other relevant statutory enactments guiding the process. This framework usually specifies the basis and methods of assessment, as well as the

procedures, heads of claim and roles of respective parties. It is influenced by the level of socio-economic development of particular nations; their development needs, cultural norms and land-use patterns. Also influential is the level of development of the appropriate national professional body (Viitanen & Kakulu, 2009)¹¹. It should be noted however that valuation for compensation is not only expected to satisfy professional standards of valuation but in addition, constitutional provisions and international requirements for just, fair, adequate and equitable value must be met. In what Nuhu and Aliyu (ibid)¹² refers to as faulty assumption of replacement cost method of valuation is not based on the requirement of the valuation method thus; the Depreciated Replacement Cost (DRC) method is accepted as a legitimate approach for the valuation of properties for which there is

⁹Omar, I. & Ismail, M. "Kotaka's Model in land acquisition for infrastructure provision in Malaysia". *Journal of Financial Management of Property and Construction*. 14 (3), 194-207(2009). <http://dx.doi.org/10.1108/13664380911000431> accessed 10/8/2013

¹⁰Nuhu, M.B. and Aliyu, A.U. "Compulsory Acquisition of Communal Land and Compensation Issues: The Case of Minna Metropolis". *FIG Working Week 2009, Surveyors Key Role in Accelerated Development Eilat, Israel, 3-8 May 2009*. www.fig.net/pub/fig2009/papers/ts07e/ts07e_nuhu_aliyu_3383.pdf accessed 1/8/2013

¹¹http://www.fig.net/pub/monthly_articles/february_2009/february_2009_viitanen_kakulu.pdf accessed 5/5/2013

¹² See 10

no ready market due to their specialised nature. On this, all valuation standards agreed. Three elements are required for the performance of DRC calculation

- (a) The value of the land in its existing uses;
- (b) The gross replacement of the building; and
- (c) The appropriate deductions from gross replacement cost for all types of obsolescence.

The calculation of DRC lies within the realm of the valuer (Aluko, 2012)¹³. Therefore, it is not the DRC that exclude value of the land from the calculation as noted in Nuhu and Aliyu(ibid) rather, section 29(4a) of LUA no 6 of 1978 required.

Apart from the requirement of the LUA no6 of 1978, that recommend DRC approach for valuing buildings, installations and other improvement on land these kind of scenarios could be obvious;

3.1 Scenario 1:

3.1.1 Acquiring Communal Land with this type of House and Grains Storage Structures (see below);

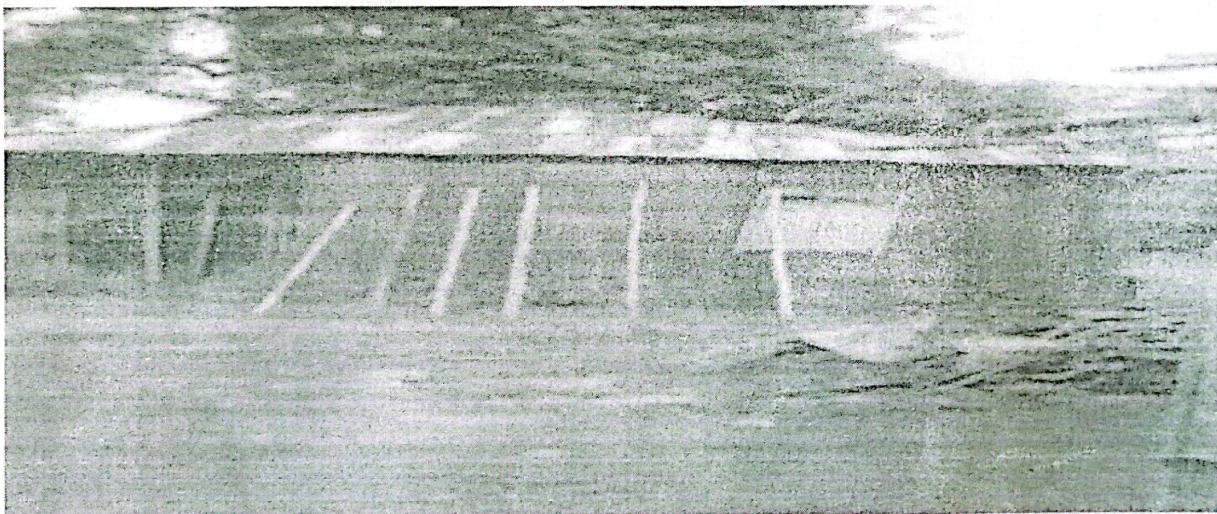


Plate 1: mud house in the village
Source: adapted from (Saheed, 2012)¹⁴

¹³Aluko, B.T., "Asset Valuation for Financial Reporting – Issues And Challenges". *Being a Paper Presented at The NIESV MCPD, Held At Abuja, F.C.T. Nigeria November, 2012*

¹⁴Saheed, Z.S. "Externalities of Urban Redevelopment: Eviction, Relocation and Compensation in Nigeria" *International Journal of Business and Social Science Vol. 3 No. 5; March 2012. www.ijbssnet.com accessed on 5/8/2013*



Plate 2; mud house



Plate 3: Mud Rhombus with stone grillage foundation floor assembly and thatched roof
Source: adapted from (Adejumo&Raji, 2007)¹⁵

¹⁵B. A. Adejumo and A. O Raji. "Technical Appraisal of Grain Storage Systems in the Nigerian Sudan Savannah". Agricultural Engineering International: the CIGR Ejournal. Invited Overview No. 11. Vol. IX. September, 2007. http://www.staff.uni-mainz.de/gronenbo/Adejumo_Raji_2007.pdf Accessed 2/8/2013



Plate 4: Thatched Rhombus with tree stem columns, showing tree stem external support
Source: adapted from (Adejumo&Raji, ibid)

The question is how do you justify using investment method of valuation for this house and other improvements on the farm land? Where is the comparables? Where is the rent? Even, undeveloped land here, how do you use market value here? Where is the data? Where is the market survey?

Plate 3 category: The cost of construction ranges between N6000 –N10, 000, and it basically depends on the capacity, location and availability of materials. However, **Plate 4 categories:** Construction cost is between N2, 000 and N 8,000. They usually have external support ranging from 6 – 16 units depending on the size of the rhombus. (Adejumo&Raji, ibid)

3.2 Scenario 2

Nuhu and Aliyu (ibid) observed that the valuation methodology for the valuation of crops and economic Trees for compensation under the Act is not spelt out at all. However current practice is based on the arbitrary fixing of prices for Crops and Economic Trees compulsorily acquired⁷ by the so-called Land Officer. Though evidences were not given but it suffices that, it is professionally suicidal to be fixing arbitrary prices for such. Kwache, (2007)¹⁶ listed such tree crops as mango; citrus, (orange) cashew; cocoa; kola nuts, gum Arabic, guava, ogbono, coconuts, rubber, coffee, sheanuts.

¹⁶ Kwache, E. Y. "Sourcing for a Stable Tree Crops Economy". Online article 2007, Jimeta Yola, Adamawa State, Nigeria. www.gamji.com/article6000/NEWS6896.htm accessed 10/8/2013



Plate 5: Coconut tree



Plate 6: Mango Tree

The price of these economic trees should not be fixed arbitrarily because this is an investment compulsorily acquired by government and it should be treated as such.

Farmers that have these economic trees are secure for life because these trees produce forever. Therefore, the valuer should categorise them as investment and prepare the valuation on that basis.

3.2.1 Experiment:

THE INCOME CAPITALISATION (INVESTMENT) APPROACH: This is based on the principle of anticipation. The principle states that the value of any property (interest) may be defined as the present worth of future benefits. Formula is;

Capital Value = Net Income × Year Purchase

Category A; Economic Trees (Mango, Orange, Coconut, Palm Tree etc)

Net Income of the farmer on economic trees will be; how many number of these economic trees available on land multiply by price of each per annual (local market retailers buys each economic trees and harvest it themselves or hire somebody) then appropriate yield applied.

Category B; Economic Crops (Maize, Cassava, Yam, Pepper etc.)

Net Income of the farmer on economic Crops will be; Local retailers buy these in hectares, acres or per number of heaps at a harvest time, then appropriate yield applied.

4.0 FINDINGS AND DISCUSSION

Findings reveal among others the followings;

- That all land in Nigeria belongs to the government Section 1 of the Land Use Act No 6 of 1978 of Nigeria (LUA), therefore bareland compulsorily acquired by the government is not compensated Section 29(4a) of the LUA. This is widely reported in the literature, but observations from the unreported disposed cases from Niger State High Court (NSHC) cited by Nuhu and Aliyu (Ibid) shows that bareland is being compensated. See: ***SuleAhmaduDogo and 7 Others v. Hon. Commissioner Ministry for Lands, Survey and Town Planning and 2 Others*** The plaintiff claimed that no compensation was paid at all and this was defeated because the defendants provided evidence which convinced the court that compensation was actually paid. Contrary to this was the case of ***Hassan DomaBosso v. Commissioner of Lands and Anor.***, failure by the defendants to challenge the claims advanced by the plaintiff left the court with no option than to hold that no compensation was paid at all to the plaintiff and the subsequent grant was void *ab initio*.
- The method of valuation provided by the LUA may be useful in some cases (special properties such that does not change hand in the property market e.g shrine, religious houses) but it is inappropriate to be mandated for all kinds of

- valuation for all building improvements or installations as contained by section 29(4b).
- Arbitrary fixing of value for economic crops or trees is being practised because the LUA did not provide for methods of assessment rather left it in the hands of appropriate officer, while appropriate officer is not defined in the Act. Section 29 (4c), apparently appropriate officer should be an Estate Surveyors and Valuers and anything contrary is a misplacement of professionalism.

5.0 CONCLUSION AND RECOMMENDATIONS

The provisions of the Land Use Act no 6 of 1978 of Nigeria on compensation is completely faulty and it requires total reform as many have called for the same. Of important note, the de facto of communal land cannot be denied so section 29(4a) of the Act cannot stand by virtue of recommending compensation of an amount equal to the rent paid if any during the year the right of occupancy is revoked. Government need to have aerial survey or rural land use Map for the government to know where there is virgin land rather than create injury or disturbance to their subjects except in the case of urban area (built environment).

However, what is advocated for world over is an adequate, just and fair compensation whenever land is appropriated by government of any Nation. A review of compensation aspect of Nigeria land use act seems not adequate by the provision of section 29(4b) which left no option to the assessor than Depreciated Replacement Cost. To be fair, this should be expunged and the method of valuation should be determined by the assessor (Estate Surveyors and Valuers) who had been licensed to carryout valuation for all purposes in Nigeria by the Estate Surveyors and Valuers Decree No 24 of 1975. Furthermore, this suggest that for compensation litigation the court is not to determined the value and in lieu of this court can have Land Arbitration Panel where a neutral Estate Surveyors and Valuers will be a member to inspect and evaluate the process of value claim if there is no ambiguity regarding ownership which is determined by the lawyers.

Also, professionalism and value ethics is necessary. All professionals involve in land administration must contribute their expertise professionally and this can only be improved and achieved through training, retraining, workshops and conferences where new techniques are discussed.

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