

NEED FOR URGENT REVIEW OF THE OUSTER CLAUSE IN SECTION 47(2) OF THE LAND USE ACT*

Abstract

Land is the most treasured commodity from the ancient time throughout the world and is still highly valued in our today's world. In fact, man's whole existence and activities seem to be tied to land and its ownership which had resulted to lots of disputes among men. The ousting of the court's jurisdiction as it pertains to prying into the adequacy of compensation upon a revocation or acquisition of land by the governor is most unfortunate. In this article, the writer is making a case for the urgent need to review the ouster clause in Section 47 (2) of the Land Use Act.

Keywords: Urgent review, Ouster Clause, Land Use Act

1. Introduction

An ouster clause is a provision of law which excludes the power of court to entertain a matter and decide it. Stated conversely, it is a clause in a provision of law which eliminates the jurisdiction of a court to decide a matter. Ouster clauses originated from Decrees made by the Military to shield their own peculiar method of governance and when they make such Decrees, they make them superior even to the Constitution. No wonder, the Land Use Act, an instrument of the Military has an ouster clause provision, and which Act is entrenched into the 1979 and 1999 Constitutions of the Federal Republic of (as amended). This ouster clause makes it difficult to amend any contentious section of the Land Use Act effortlessly. The writer makes a case for immediate review of the ouster clause in Section 47 (2) of the Land Use Act.

2. What is land?

Section 13(3)¹ defines land to include any building and any other thing attached to the earth or permanently fastened to anything so attached but does not include minerals. According to Mohammad,² apart from the frequently economic importance of land, it remains the fulcrum of life and a symbol of pride and identity to the inhabitants. Every community apart from having a common boundary also works in common to fight any intruder to the land, as the land is owned communally and no distinct person may claim ownership of any part of such land. Land has an inherent value and also creates value. A plot of land, for instance, can provide a household with physical, financial and nutritional security, and provide a labourer with a source of wages.⁴ Land basically is essential for good livelihoods. It is also a potential resource for various socio-economic and political exploits. Efficient and effective land management therefore must be of great concern to governments in different jurisdictions as land is the most important economic asset to mankind. A statutory definition of land was given in the Law of Property Act 1925 as follows: 'land of any tenure, and mines and minerals, whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other incorporeal hereditaments; also ... a rent and other incorporeal hereditament, and an easement, right, privilege, or benefit in, over or derived from land'.. The English Interpretation Act⁷⁹ also defines land to include buildings and other structures, land covered with water, and any estate, interest, easement, servitude in or over land. The definitions of land in both the Law of Property Act 1925 and that of English Interpretative Act 1978 are merely inclusive and not exclusive. The above definitions include corporeal and incorporeal hereditaments as land. Corporeal hereditaments are physical objects: physical land and its attributes; while incorporeal hereditaments are rights, (not objects) - rent, charges, easements, profits. Flowing from the above definitions of land, any claim for compensation for revocation of land cannot exclude land itself, or any other hereditament, neither could such a claim exclude interest, right, easement or a privilege.

Omotola³ described land as an element which every man requires for his support, preservation and self actualization in an ideal society, and is a foundation for shelter, food and employment.⁴ Land is part and parcel of a given society without which man cannot exist. Deprive man of his land, you have left him bereft of meaning of his existence. Wigwe's description of land aligns with that given by Omotola when he described land as the most treasured commodity from the ancient time throughout the world which value in present time is still very high of which reason our whole existence and activity is/was tied to land and its ownership.⁵ Sir Edward Coke sees land as follows:⁶

land, in its restrained sense, means soil, but in its legal acceptation, it is a generic term, comprehending every species of ground, soil or earth, whatsoever, as meadows, pastures, woods, moors, waters, marshes, furze and heath; it includes also houses, mills, castles and other buildings, for which the conveyance of land, structures upon it pass also. And besides an indefinite extent upwards, it extends downwards to the globe's centre, hence the maxim, *cujus est solum ejus est usque and coelum et ad in feros*...

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¹ Interpretation Act of 1964.

² M. B. Nuhu and A. U. Aliyu, 'Compulsory Acquisition of Communal Land and Compensation Issues: The Case of Minna Metropolis', *South East Asia Journal of Contemporary Business, Economics and Law*, (Vol. 8, Issue 4, 2015),

³ Omotola, J. A, *Law and Land Rights: Wither Nigeria?* (University of Lagos Akoka, Inaugural Lecture Series, 1988) 6.

⁴ *Ibid*.

⁵ C. Wigwe, *Land Use and Management Law*, (Mountcrest University Press, 2016).

⁶ *Jowitt's Dictionary of English Language*, (1977, 2nd ed), vol. 2, pp1058 – 1059.

The above definition is all embracing and simply implies that the owner of the soil is presumed to own everything beginning from the sky and down to the centre of the earth. This reasoning was applied by the Court of Appeal in *Ibrahim v. Yola*⁷ that according to principles of inherited English Common Law, land includes everything up to the sky and down to the centre of the earth. This means that a particular piece of land includes not only the physical soil but all buildings permanently attached to the soil or permanently fastened to anything which is attached to the soil.

The general basic rule is that, whatever is fixed, attached or annexed to the land is land itself. This view was expressed in *Buckland v. Butterfield*⁸ where it was held that a conservatory which was attached to a house by eight cantilevers, each 9 inches long, formed part of the land. The Court went further to state that a seller who wishes to exclude such fixture has to specifically indicate it in a contract of sale of such land. The *Buckland v. Butterfield*⁹ case also buttresses the point that since the house is land, because it is fixed to the earth, anything which is fixed to the house also becomes land. However, anything merely placed upon the land but not fixed to it will not be regarded as forming part of the land no matter how heavy the object is and no matter how difficult to remove it. This principle was much illustrated in the case of *Berkley v. Poulett*¹⁰ where a large statue made of marble and weighing nearly half a ton, was not regarded as part of the land, because it was not fixed down in any way. The Court¹¹ equally held that each case is different and should be determined based on its own circumstances, and so the intention of the parties is what matters in every circumstance or the purpose of the person who put the property in place whether to permanently affix or not. The above notwithstanding, in *Elistestone Ltd v. Morris*,¹² Lord Clyde stated the fact that the purpose which the object is serving and not the intention or purpose of the person who put the object there is what matters.¹³ In *Shell Petroleum Development Co. of Nigeria Ltd v. Burutu Local Government Council*,¹⁴ caravans which are houses on wheels not permanently fastened to land were held not to be part of the land.

Both Common law and statutory definitions of land agree that land covers more than just the surface of the earth. Thus, the Property and Conveyancing Law of the Western Region¹⁵ defined land as: 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 hereditament and an easement, right, privilege, or benefit in, over, or derived from land; but not an undivided share in land.¹⁶ Under section 205 (1) (iv),¹⁷ land include minerals, top soil, subsoil, things above or below the soil, rights and privileges and other things derived from land. The general rule is that minerals are part of the soil and thus belongs to the owner of the surface.¹⁸ There are however exceptions to this rule in Nigeria. Government owns both land and minerals as the people own merely leasehold interest in the property. In England, all gold and silver in gold and silver mine belong to the Crown and such cannot be worked by an individual even on their own land without license from the Crown.¹⁹ Section 3 of the Interpretation Act²⁰ defines immovable property or land to include land and everything attached to the earth or permanently fastened to anything, which is attached to the earth or permanently fastened to anything, which is attached to the earth including minerals. While the definition offered by section 91 of the Nigerian Urban and Regional Planning Acts²¹ excludes minerals in its definition. Generally, minerals are considered part of land but usually vested solely on the government with licenses granted to individuals, corporations for exploration of minerals.

Land is the most treasured commodity from the ancient time throughout the world and is still highly valued in our today's world. In fact, man's whole existence and activities seem to be tied to land and its ownership which had resulted to lots of disputes among men. Apart from private use of land by man, government often requires land to build offices or social amenities for public use. Most times, individuals resist this government move to obtain private land for government projects or where they agreed the property price may be outrageously expensive. In order to obtain land therefore when and where it is required by the government, every government in every jurisdiction exercises what is called power of eminent domain, a power of compulsory requisition and acquisition of land where the owners of a particular land can be compelled by the government to sell their land for it to be used for public purpose. The problem with this power of revocation however is that most times government converts acquired land to his or her cronies who put it to other use instead of particular purpose for which it is revoked, thus breaching the main purpose of revocation. As for compensation for compulsory acquisition, compensation for compulsorily acquired land should not only be limited to land and other improvements permanently affixed to the ground but also include other inconveniences and other incidental expenses incurred by the owner. Land is God's gift to man to ensure his survival. It is on land that man lives and produces the food he eats; upon the land he builds; and when he dies, he goes back to earth. Land like air is a free gift of nature, but scarcity of land has made it an essential commodity, and a lot of controversies trail its ownership, unlike air which no individual can claim ownership of. No wonder Megarry²² stated that the study of law is tortuous and ungodly jumble.

Land before the arrival of the colonial masters to Africa was used by our forefathers as the great source of wealth. It was also regarded as a common wealth to be used for the benefit of the unborn, the living and the dead. Land comprises all naturally occurring resources as well as geographic land. Land is fundamental to the production of all goods and economic production. It is considered the most important when compared with other factors of production such as labour and capital. As such, no man ought to be deprived of his property without adequate plan to reinstate him on an equivalent land and other incidental losses covered as well.

⁷ (1986) 4 CA (Pt. 1) 98, 113.

⁸ (1820) 2 Brod and Bing 54.

⁹ *Supra*.

¹⁰ (1976) 242 EG 39.

¹¹ *Ibid*.

¹² (1997) 1 WLR 687.

¹³ *Ibid*.

¹⁴ (1998) 2 NWLR (Pt. 565) 318.

¹⁵ The Property and Conveyancing Law of the Western Region 1959.

¹⁶ *Ibid*.

¹⁷ English Law of Property Act 1925.

¹⁸ *Ibid*.

¹⁹ *A-G v. Morgan* (1891) 1 Ch. 432, CA. By virtue of the English Coal Industry Act, for instance, coal is vested in Coal Authority and license is required to mine coal.

²⁰ CAP 192 Laws of the Federation 1990.

²¹ No. 88 of 1992.

²² Megarry & Wade, *The Law of Real Property*, 5th ed (Sweet & Maxwell, London 1984) 1.

3. Land acquisition and Compulsory Acquisition

Section 44(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) is however of the view that no movable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purpose prescribed by law. These conditions include prompt payment of compensation²³ and a right of access to court to determine the interest in the property and amount of compensation.²⁴ In this regard, section 47 (2) of the Land Use Act which has to do with an ouster clause, is in sharp contrast with the provisions of section 44 (1) (b) of the 1999 Constitution that made provision for right of access to court for determination among others the amount of compensation to a court of law or tribunal.²⁵ Ordinarily, this provision ought to be invalidated upon this ground due to the supremacy of the Constitution but this provision cannot easily be amended without first amending the provision of section 315 (5) of the 1999 Constitution which provides that nothing in this Constitution shall invalidate the Land Use Act. What this simply means is that the Land Use Act is enshrined in the Constitution and this entrenchment of the Act has been described to have been due to the Military regime which heralded its birth.²⁶ The Court in *Nkwocha v. Governor of Anambra State*²⁷ however arrived at a conclusion that the Land Use Act is not an integral part of the Constitution. According to Wigwe,²⁸ compulsory acquisition, also known as eminent domain, is a power granted to the government to take private property for public use, without the willing consent of the owner, upon payment of adequate compensation. Governments of all ages have required appropriate land to provide public facilities and infrastructure that ensure safety and security, health and welfare, social and economic enhancement, as well as protection and preservation of artifacts and monuments to ensure sustainable development. In order to obtain land for such development, government reserves the right, or the power of compulsory acquisition of land.

Without the government's power to acquire land by force, the size and capabilities of our public infrastructure would become inadequate to serve the needs of society. Stated conversely, compulsory acquisition is where a government makes claim to a piece of land compulsorily not by agreement in order to carry out a public project such as building new roads or railways or other public construction projects. It is a tool for the control of land uses as well as land acquisition for developmental projects by the public authorities usually government. In Nigeria, compulsory acquisition can be exercised by both the federal or local governments when they consider such acquisition to be in the best interest of the community. The exercise of this power of eminent domain is usually influenced by laws which provide the basis upon which such acquisition may be carried out. With no legal instrument spelling out the *modus operandi* of land acquisition and revocation, governments would depend on the willingness of landowners to sell their land in to realize their plans for the State, and this we all know would be nearly impossible as time and money would be wasted. Therefore, the power of compulsory acquisition of land is usually inserted in land laws as an exception to fully protected private property rights. Section 44(1) of the Nigerian Constitution provides that no moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law. In the same vein, Rwanda's Constitution states that private property, whether individual or collective, shall be inviolable. No infringement shall take place except for the reason of public utility, in the cases and manner established by the law, and in return for fair and prior compensation.

In the world generally, and in Nigeria in particular, negative reactions have trailed the implementation of compulsory acquisition or eminent domain - as it is generally referred to in other jurisdictions. Due to the dire need of land for different purposes, the demand for land for public purposes has increased particularly the demand on the government for provision of agricultural and industrial related projects. Hence, the need for government's provision of exercise of its enormous power of compulsory acquisition of land in the Land Use Act of 1978, to ensure sustainable development and make available different public infrastructure and facilities that guarantee the security, health and social welfare of the citizenry. Despite the laudable reasons for compulsory acquisition by the government, the act of compulsory acquisition had been described as an area usually filled with tension.²⁹ The topic does not generate such interest or excitement for most people except to those in academic settings, among law students or legal practitioners. Wigwe³⁰ summarized the effect of exercise of eminent domain on the citizens thus:

The people...feel unsecured and the fear of unknown relocation might grip them because they are threatened with dispossession. Though the compulsory acquisition of land for developmental purposes may in the long run bring unquantifiable benefits to society but it is disruptive to people whose land have been acquired. It displaces families from their ancestral homes, farmers from their fields, and businesses from their neighbourhoods. This may separate families, greatly interfere with livelihoods, deprive communities of important cultural or religious sites and cut off networks of social relations. A poorly handled compulsory acquisition process may leave people homeless and landless, with no way of earning a livelihood.³¹

The law of natural justice demands that a man deprived of his property should be given adequate compensation or alternative property-in this case land- or be put in a position to enable him feel as if he was not deprived of his property at all. It is an unjust act and a serious violation of the rights guaranteed under the Nigerian Constitution, the African Charter on Human and People's Rights (Ratification and Enforcement) Act³² to compulsorily acquire private land without adequate compensation. At times lands are revoked without being put to the purpose for which it was revoked. In situations where a particular land is compulsorily acquired for a specific purpose and it turns out that the property cannot be put to the particular use for which it was originally revoked, courts have held such revocation and

²³ Section 44 (1) (a) of the 1999) Constitution (as amended).

²⁴ Section 44 (1) (b) of the 1999) Constitution (as amended).

²⁵ *Aderonpe v. Eleran* (2019) 4 NWLR (Pt. 1661) 141 SC.

²⁶ Smith Imran Oluwale, *Sideling Orthodoxy in Quest for Reality: Towards an Efficient Legal Regime of Land Tenure in Nigeria* (University of Lagos Press: 2008), 12,

²⁷ (1984) 6 SC 62.

²⁸ C. Wigwe, *Land Use and Management Law*, (Mountcrest University Press, 2016).

²⁹ C. Wigwe, *Land Use and Management Law*, (Mountcrest University Press, 2016).

³⁰ *Ibid.*

³¹ *Ibid.*

³² Cap A9 Laws of the Federation 2004.

acquisition void³³ and returned back to the owner even when compensation had been paid for non-compliance with the rule of law or failure to meet the requirements of the law.

There is no doubt that the procedure for compulsory acquisition requires adequate notice to be given to the owner³⁴ and compensation paid for acquiring the property. There is also a legal requirement that the acquisition must be for public purpose. For any revocation of private property to be considered valid therefore, the following conditions must be met:

- i) A notice of acquisition of such property must be specific and precise as to the particular property to be acquired;
- ii) The particulars of the public purpose for which such property is acquired must be given; and
- iii) The acquiring authority must give notice of intention to acquire the property before publishing same in the gazette.³⁵

The laws governing compulsory acquisition of property are partly property law and part administrative law which dictates governance procedures. Principles of administrative justice and good governance often require that such powers are bound by legal rules which allow for hearing and appeals and even judicial review. In Nigeria, the Land Use Act of 1978 is the law governing land revocation and acquisition. Sections 28 and 29 thereof provide that:

- (1) It shall be lawful for the governor to revoke a right of occupancy for overriding public interest.
- (2) Section 28 of the Land Use Act empowers the governor to revoke for overriding public interest any right of occupancy he had earlier granted. Overriding public interest includes when the government requires the land for public purposes, projects or infrastructural developments. Subsections of section 28 make provisions to guide the governor of a State in the exercise of his vast powers of control of land within his territory. One of the pre-conditions for the exercise of this power of revocation is that it must be shown clearly to be for overriding public interest. In other words, any compulsory acquisition must be within the confine of the provisions of section 28 of the Act otherwise the exercise of such power may be declared invalid.³⁶

Of great importance is the ousting of court's jurisdiction under section 47(2) of the Land Use Act and its attendant implications.³⁷ There is a tendency for the power of compulsory acquisition bestowed on the government to be abused. For instance, an unfair procedure for compulsory acquisition of land and inequitable compensation for its revocation or loss may lead to feeling of insecurity by the aggrieved party and loss of confidence in the rule of law. This therefore calls for clear cut policies that define specific purposes for which land may be acquired by the Nigerian Government. There is need for transparency, use of fair procedures in land acquisition and provision of equitable compensation. And also, need for the amendment of section 49 of the Act to ensure transparency in land revocation transactions.

4. Ouster Clause in Section 47(2) of the Land Use Act

By virtue of section 47 (1) of the Land Use Act, jurisdiction of courts is ousted generally from inquiring into: (a) any question concerning or pertaining to the vesting of all land in the Governor in accordance with the provision of this Act; or (b) any question concerning or pertaining to the right of the Governor to grant a statutory right of occupancy in accordance with the provisions of this Act; or right of occupancy in accordance with the provisions of this Act; or (c) any question concerning or pertaining to the right of a local government to grant a statutory right of occupancy under this Act. However, section 47 (2) of the Act touches specifically on the issue of ousting the jurisdiction of the court as it pertains to prying into the adequacy of compensation upon a revocation or acquisition of land by the governor. The section thus provides that no court shall have jurisdiction 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 provision therefore precludes an aggrieved party whose land has been revoked from approaching a court of competent jurisdiction to ascertain the adequacy or otherwise of the quantum of compensation due to him in the event of revocation or acquisition of his property. The question that begs for an answer is what the attitude of courts is to ouster provisions in a statute. A court always has jurisdiction to determine whether or not it has jurisdiction to determine any matter.³⁸ Ordinarily, the courts usually attempt to do substantial justice, and to avoid technicalities, judges ordinarily are bound by the Statute law, and where the statute law says there shall be no jurisdiction in a certain event such as the Land Use Act³⁹ and that event happened, then it is impossible for their Lordships or for any other Court to have jurisdiction. In *Osadebay v. The Attorney-General of Bendel State*⁴⁰ the Supreme Court, per Belgore, JSC made the following pronouncements in respect of basis of jurisdiction of Courts thus:

As from the 1st of October, 1979 all Courts in the Federation derive their jurisdictions from the Constitution. Where the Constitution expressly and in clear and unambiguous terms ousts the jurisdiction of any Court of law from determining a particular issue or question, then the Court is duty bound to give effect to the ouster.⁴¹ In spite of the position of the military authorities on the issue, the Courts have held on to the position that a Decree or Edict, with an ouster clause, was not a 'deus ex machina the waving of which, should put the Court to flight.'

The attitude of the Court was stated clearly in *Nee & Anor v. Nzeribe*⁴² where the Court of Appeal stated that while it could not challenge the legal capacity or power of a military regime to make a Decree or Edict, it reserves the power to inquire into whether or not such Decree or Edict was consistent with the provisions of the Constitution.⁴³

³³ *Doggo v. Ashdene Association (Nig) Ltd & Ors* (2022) LPELR – 56910 CA.

³⁴ *Santos Estate v. Associated Properties & Trust PLC* (2022) LPELR -56937 (CA).

³⁵ *Provost v. Edu* (2004) MJSC.

³⁶ *G..C M Ltd v. Travellers Palace Hotel* (2019) 6 NWLR (Pt. 1669) 507 SC.

³⁷ *Benue State Urban Development Board & Ors v. Asuakor* (2019) LPELR - 47233 (CA).

³⁸ *Ese Oghene Otejiri Malemi, Administrative Law*, (3rd ed.), (2008) 376.

³⁹ Section 47(2) thereof.

⁴⁰ (1999) 3 NWLR (Pt. 169) 525.

⁴¹ *Ibid*, p. 571.

⁴² 91991) LPELR – 12782.

⁴³ *Uwaifo v. Attorney General of Bendel State* (1992) 7 SC 124.

An ouster clause goes to the root of jurisdiction of a Court, and the issue of jurisdiction is so fundamental in a suit that the Court must have jurisdiction before it can exercise any form of judicial power in it.⁴⁴ Where there is no jurisdiction therefore, the Court is said to act *ultra vires* when it ventures to assume jurisdiction.⁴⁵ The people saddled with the responsibility of ascertaining compensation due to an aggrieved person under the Land Use Act is the Land Use and Allocation Committee established under section 2 (2) of the Act. This committee is to be presided over by one of its members as designated by the Governor who also has the responsibility of regulating the proceedings of the committee.⁴⁶ Where there arises any dispute as to the amount of compensation calculated in accordance with the provisions of section 29 of the Land Use Act which is the compensation section, such dispute shall be referred to the appropriate Land Use and Allocation Committee.⁴⁷ In *Benue State Urban Development Board & Ors. v. Asuakor & Anor*⁴⁸ the issue that came up for determination was whether the State High Court has jurisdiction over a claim of trespass and wrongful demolition of property without payment of compensation. The Court held that it had jurisdiction but only ousted to the extent of determining the quantum of compensation due to an aggrieved land owner whose land has been demolished or revoked. The Court further emphasized that the case has nothing to do with sections 2 (2) (c) and 30 of the Land Use Act in relation to sections 29 (1) and 28 (1) thereof.

Generally, the High Court of every State exercises unlimited jurisdiction over proceedings in respect of land by virtue of section 272 (1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended). Section 2 (1) of the Constitution (as amended) confers jurisdiction upon the State High Court. Hence in the case of *Garba v. Faan*⁴⁹ the Court of Appeal pointed out that the High Court of a State has exclusive jurisdiction over proceedings in respect of land covered by statutory right of occupancy issued by government and proceedings to determine any question of entitlement of persons to compensation under the Act. Area, Customary courts and the State High Court exercise concurrent jurisdiction over matters covered by customary certificate of occupancy issued by local Governments under section 41 of the Land Use Act.⁵⁰ Section 47 (2) is also in clear violation of section 4 (8) of the Constitution which prohibits the enactment of any law that ousts or purports to oust the jurisdiction of a court of law or tribunal established by law. The above notwithstanding, there are good number of cases which now firmly establish that the provisions of section 47 of the Land Use Act are inconsistent with the provision of section 272 (1) of the 1999 Constitution (as amended), which section confers unlimited jurisdiction on the State High Court, and section 4 (8) of the Constitution and therefore *void* to the extent of the inconsistency.⁵¹ The validity of the above conclusion was made manifest by the Court of Appeal, per Ebiowei Tobi, JCA in *Sacoil 281 (Nig) Ltd & Anor v. Transnational Corporation of (Nig) Plc*⁵² thus:

The point which is trite and in line with the legal principle is that no agreement which ousts the jurisdiction of a Court will be enforceable as such an agreement will be contrary to public policy and indeed cannot be acceptable in law as the Court always strive to guard its jurisdiction jealously. Such an agreement will not be enforced by any Court in Nigeria as the law is trite that parties by agreement cannot waive a constitutional right.

Invariably, the Land Use Act cannot oust the jurisdiction of courts to entertain any matter pertaining to adequacy or otherwise of quantum of compensation due to an aggrieved party whose land has been revoked as that will be tantamount to injustice and a denial of fair hearing.⁵³ In *Inakoku & Ors v. Adeleke & Ors*⁵⁴ the Supreme Court had the opportunity of interpreting a statute with *ouster clause* thus:

Thus when interpreting the provision of an ouster clause in a statute, including that of the Constitution, the courts usually scrutinize every aspect of such provision with a view to ensuring that everything done under such statute is done strictly in compliance with the provisions of the statute. This is because where the court finds that there is a failure to strictly comply with what the statute provides for, such act purported to be done under the statute would be *ultra vires*, and would be declared *null* and *void* as such action would be regarded not to have been carried out under the said provisions of the statute or Constitution.

Again in *Ekpo v. Calabar Local Government*⁵⁵ the court clearly stated that in interpreting any ouster provision in a statute, the whole section of the statute must be taken into account as doing so would assist in understanding the circumstances in which the ouster clause comes into play and ouster clause in a statute does not prevent a court from investigating if the conditions prescribed are fulfilled and that if there is a failure to comply with any of the conditions, the court would intervene.⁵⁶ One wonders why provision of the Land Use Act would exclude High Court from considering the adequacy of compensation due to an aggrieved party. It is obvious from the above sections that the drafters of the Land Use Act never wanted equity in calculation of compensation for land revocation or acquisition for public interest. This is evident in firstly, ousting the jurisdiction of courts and saddling people appointed by the Governor with the duty to determine adequacy of compensation to be paid for land acquisition or revocation as the case may be. The Land Use and Allocation Committee is a puppet of the Governor and cannot give an unbiased decision in determining quantum of compensation due to an aggrieved party, it is most likely, that their decision will tilt towards the protection of the Governor rather than a displaced individual. Secondly, ousting the jurisdiction of the Court to determine such issues is in all its ramifications clearly inconsistent with the Constitutional provision.

5. Conclusion

This article suggests utter removal of section 47(2) and section 30 of the Land Use Act and saddle the responsibilities on the High Court make room for unbiased resolution of issues that arise as a result of adequacy or otherwise of quantum of compensation due to an aggrieved

⁴⁴ *A.G Lagos State v. Dosunmu* (1989) 3 NWLR (Pt. 111) 552.

⁴⁵ *Barclays Bank of Nigeria Ltd v. Central Bank of Nigeria* (1978) 6 SC 175.

⁴⁶ Section 2(4) of the Land Use Act.

⁴⁷ Section 30 of the Land Use Act.

⁴⁸ (2019) LPELR – 47233 (CA).

⁴⁹ (2015) LPELR – 2561.

⁵⁰ *Adisa v. Oyinwola* (2000) 10 NWLR (Pt. 674) 110.

⁵¹ *Nkwocha v. Governor of Anambra State & Ors* (1984) 6 SC 362, *Lemboye v. Ogunsiji* (1990) 6 NWLR (Pt. 155) 20.

⁵² (2020) LPELR 49761.

⁵³ *Jelili Romani v. State* (2017) LPELR – 42712.

⁵⁴ (2007) LPELR – 1510.

⁵⁵ (1993) 3 NWLR (Pt. 281) 324.

⁵⁶ *Ibid.*

occupier or land owner whose interest in a property has been revoked. The Act does not support any form of challenge by the displaced land owner as regards compensation. The Act should be amended to include enforceable legal rights as it pertains to payment of fair and adequate compensation, to enable affected persons seek redress in court in cases where governments fail to provide fair and adequate.