

THE RIGHT OF A FOREIGNER TO OWN LAND IN NIGERIA*

Abstract:

The Land Use Act in section 1¹ vests in the Governor of each the power to hold and administer the lands in the state for the use and common benefit of all Nigerians. The question is, whether the phrase; 'for the use and common benefit of all Nigerians' exclude Non – Nigerians or Foreigners or aliens from owing land in Nigeria with the coming into force of the Land Use Act, 1978. This is what this paper seeks to explore. It concludes that non-Nigerians or foreigners are not entitled to own any land or landed property in Nigeria. It further concludes that if a Non – Nigerian wants to own any land in Nigeria, before the coming into force of the Land Use Act, 1978, he must seek the consent of the Governor of the state, according to the Acquisition of Land by Alien Law of the various states. However, despite the laws, the Land Use Act, being a Federal Act, has already covered the field relating to land and that it completely excludes non – Nigerians or aliens from owing land in Nigeria.

Keywords: Concept of Land, Rights in Land, Foreigner, Rights of Foreigner to own Land

1. Introduction

Ownership or acquisition of Land in Nigeria is regulated by the Land Use Act, which came into force in 1978. The Governor of each state is to hold and administer land in trust for and, on behalf of all Nigerians. Therefore, non – Nigerians or Foreigners or aliens are not entitled to own land in Nigeria, since the governor of each state is not holding and administering the land in trust, for the benefit of such foreigners, Non – Nigerians or aliens. This is what this article seeks to find out. The focus or scope of this paper shall be; the concept of right, who is a Nigerian, who is a Foreigner or Non – Nigerian, the concept of ownership as it relates to the land etc. This paper will further find out if there is any remedy or lean way if a Non – Nigerian or Alien wants to own land in Nigeria. This article will conclude that foreigners or Non – Nigerians cannot own land in Nigeria, since the Governor who is the trustee of all lands, is not holding and administering the lands on their behalf; and that if a Non-Nigerian or foreigner must own land, he must apply to the Governor of the state for consent to own such land before the coming into force of the Land Use Act. That despite the laws of the various states, which give a Non – Nigerian or Alien the right to acquire such lands, the Land Use Act, though did not abrogate such law, but has already covered the field since the Land Use Act, regulating land in Nigeria being a Federal Act the various laws of the states regulating ownership or acquisition of Land by alien, cannot stand.

2. The Meaning of Land

It is not the intention of this paper to devote the discussion of meaning of land to almost half of the articles, as it will be elementary and outside the scope of this paper. However, land means the earth surface, the sub – soil, things attached to the land² and other incorporeal hereditament enjoyed on land. According to Sir Edward Coke³ land in its restrained sense, means, soil, but in its legal sense, it is a generic term comprehending every species of ground, soil or earth, whatsoever, as meadows, pastures, woods, waters, marshes, furze and heath; it also includes houses, mills, castles and other buildings, for which the conveyance of land, the structures upon it pass also. Furthermore, land means an indefinite extent upwards; it extends downwards to the globe's centre. This definition is founded on the Latin Maxim, '*Cugus est solum ejus est usque ad coelum et ad inferos*' which means that the owner of the soil is presumed to own everything 'up to the sky and down to the centre of the earth. This was the view of the court of Appeal in *Ibrahim v Yola*⁴. According to the apex court in the case of *Salami v Gb Odoolu*⁵, the definition of land was also given Judicial meaning when it stated: 'The word land, in its ordinary meaning, means any ground, soil or earth or the solid part of the earth's surface as distinguished from sea.... The fact is that, by its very nature land ordinarily is an immovable object'. The meaning of land has also been given statutory approval in Section 18 of the Interpretation Act⁶. The section states: 'Land includes any building and anything

* By M. O. OSEGHAE, LL.M, PhD, BL, Senior Lecturer, Ambrose Alli University, Ekpoma, Edo State, Nigeria. barrymonday21@yahoo.com. barrymonday21@aauekpoma.edu.ng. 08035670088

¹ Land Use Act, Cap 15 LFN. 2004

² Things attached to the land are; structures, ie buildings, crops, trees etc.

³ Coke on Littleton 'quoted in Jowits Dictionary of English Law (1997), 2nd Ed.) Vol. 2 pp. 1058 – 1059.

⁴ (1986(4 CA (Part 1) 115. His Lordship states that; According to principle of inherited English Common Law, land includes everything up to the sky and down to the centre of the earth the presumption is therefore that a transfer or ownership of 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.

⁵ (1997) 4 NWLR (pt. 499) 277 at 287.

⁶ Cap. 123 LFN. 2004. The definition is *in pari materia* with the definition of land stated in section 318 (4) of the 1999 Constitution (as amended). Section 91 of the Nigerian Urban and Regional Planning Act, 1992 also defines land as 'land

other thing attached to the earth or permanently fastened to any so attached but does not include minerals'. The definition under section 18 of the Interpretation Act is restrictive. By the Use of the word 'includes:', it means other 'things' may be land which is not included in the definition. To continue to add anything, on one's own volition may be speculative and conjecturing. It is not certain whether the definition extends to incorporeal hereditament like easements, profits and rents.

Another statutory definition is found in section 2 of the Property and Conveyancing Law⁷, where land is defined thus: 'The earth surface, and everything attached to the earth otherwise known as fixtures and all chattels real. It also includes incorporeal rights like a right of way and other easements as well as profits enjoyed by one person over the ground and buildings belonging to another'.

From the above definitions, it will be safe to conclude that the meaning of land extends to the things affixed to the ground. This is akin with the common law principle which is expressed in the latin maxim, *quic quid plantatur solo solo cedit*. Which means: whatever is affixed to the ground belongs to the ground'. The Latin maxim was applied in Nigeria in the case of *Ude v. Nwara*⁸, where his Lordship stated that;

Argument was raised as to whether or not the well known common law *quic quid plantatur solo solo cedit* (whatever is affixed to the soil belongs thereto) has any application to state lands in view of the provision of section 10 of the State Lands Law. Putting the question another way, it postulates that whatever is affixed to the land is subject to the rights as the land itself. This concept of great antiquity which dates back to the days of the institute of Justinian in the Roman times. It had such a sanctity that if a man builds on his own land with another person's materials, the owner of the land become the owner of the building also, although by the action *ditingo Juncto*, the Owner of the materials could recover double their values as compensation. The ownership of the materials in any event remained that of the owner of the land. The concept under Roman Law was imported into the common law....

The essence of the extensive definitions is to determine whether even if a foreigner owes buildings or caravan or crops etc, whether, his right to own them also extends to them.

3. Rights in Land

There exist various interests and rights in land. These rights may be broadly categorized as follows: (a) Ownership, (b) Possession (c) Incorporeal right. However, because of the focus and limitation of this paper, the concept of ownership and possession will be discussed in details more than the other right in land, because of their relationship.

Ownership

Ownership signifies one's exclusive right of possession enjoying and disposing of a thing. In respect of land, ownership represents the most comprehensive of relation that may exist in land. In other words, it signifies the totality of rights and power that are capable of being exercised over land. These rights are the right to make physical use of the land i.e the right to possess, the right to the income from the land and the power of management and the right to exclude others from interfering with its possession without his permission. The exercise of these rights and powers must not be subject to or restricted by the superior right of another. By this, we mean that no individual or institution should have the superior proprietary right over the land. Still put differently, ownership interest is allodial. The existence of laws and regulations made by government to control the use of land in the interest of the larger society and the power of government to compulsory acquire land for public purpose do not derogate from ownership. Under Customary Law, ownership is absolute. And under English Law, ownership is represented by the fee simple estate or interest. In Nigeria, there are five ways of establishing title or ownership to land as enunciated in the case of *Idundun v. Okumagba*⁹, Fatayi Williams (as he then was) in the following immortal words, to wit:

As for the law involved, we would like to point out that it is now settled that there are five ways to which ownership of land may be proved....

First ownership of land may be proved by traditional evidence.

Ownership of land may be proved by production of documents of title which must be duly authenticated in the sense that their due execution must be proved'.

Includes any building and any other things attached to the earth or permanently fastened to anything so attached but does not include minerals.

⁷ Cap 100 Laws of Western Nigeria 1959

⁸ (1993) 2 NWLR (pt. 278) 638 at 659 - 660

⁹⁹ (1976) 9 – 10 SC 227 at 246.

Acts of ownership extending over a sufficient length of time and are numerous and positive enough to warrant the inference that the person is the true owner.
 Acts of long possession and enjoyment of land which may be prima facie evidence of ownership of that particular piece or parcel of land or quantity of land¹⁰.
 Proof of possession of connected or adjacent land in circumstance rendering it probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute.

However, under the Nigerian Civil Jurisprudence, for a claimant to prove ownership, he does not need to prove all the five methods. It is sufficient if one of the five ways is proved. This will suffice to entitle the claimant to the declaration. If a person relies on more than one, that is merely to make assurance doubly sure¹¹. He does so, *Ex Abundanti Cautela*. It should however, be noted, that, it is from the claimant's statement of claim that the court will be able to decipher, which of the methods the claimant adopted.

Possession:

Possession is the right of dominion and control over land. For there to be possession, there must be actual physical control of the land coupled with the right to exclude others.¹² However, a person does not cease to be in possession of land merely because he is disturbed on it by another. The possession will only cease to be exclusive if others are on the land lawfully.¹³ Also in *Star Finance & Property Ltd v. NDIC*¹⁴ the court defined possession thus;

Possession is defined as having control over a thing with the intent to have and to exercise such control. The detention and control, or the manual or ideal custody of anything which may be the subject of property, for one's use and enjoyment, either as owner or as the proprietor of a qualified right in it, and either held personally or by another who exercises it in one's place and name. Possession further means the exercise of dominion over property, the right under which one may exercise control over something to the exclusion of all other¹⁵.

It should be pointed out that a land owner does not cease to be in possession by reason only that he has put a tenant on the land. A land owner may have possession through the occupation of his tenant or agent because possession includes the right to receive rent on land. Thus, both the tenant and landlord can have possession simultaneously.¹⁶ This is why the tenant or the landlord can maintain an action for trespass which is a wrong against the possessory right of another. The right to possession arises out of the ownership of land or from a grant from the owner. Possession not founded on either of these services is wrongful or adverse. Such an adverse possession is nonetheless, entitled to the protection of the law against the whole world except the man with a right to possession¹⁷. It must be noted that since possession entails physical control of the land, it may be necessary to determine the kind of control that would suffice for purpose of conferring possession. There must be visible or external sign which can be regarded as indicating control to ground possession¹⁸.

Similarities between Ownership and Possession

There is a very close relationship between the concept of ownership and possession. It is often said that possession constitutes 9 points of the law¹⁹. Possession is an incident of ownership. In other words, it arises out of ownership. Possession may even be the basis of ownership. In other words, it may give rise to ownership. Under customary law, for instance, where there are rival claimants of title to land, title belongs to the claimant who proves that he was the first to enter possession²⁰. Furthermore, adverse possession may mature into ownership by passage of

¹⁰ See *Ekpo v. Ita* 11 NLR. 68. Also Section 25 of the Evidence Act, 2011 also states; Act of possession and enjoyment of land may be evidence of ownership or of a right of occupancy not only of the particular piece or quantity of land with reference to which such acts are done, but also of other land so situated or connected with it by locality or similarity that what is true as to the one piece of land to be true and other piece of land.
¹¹ See the decision in the cases of *Awodi v. Ajagbe* (2015) 3 NWLR (pt. 1447) 578; *Addah v. Ubandawaki* (2005) 7 NWLR (pt. 1458) 325; *Onovo v. Mba* (20014) 14 NWLR (pt. 1427) 391; *Omoregie v. Idugiemwanye* (1985) 2 NWLR (pt. 5) 41.
¹² *Udeze v. Chidebe* (1990) NWLR (pt. 125) 141
¹³ *Ogbu v. Awi* (1994) 2 LRCN. 378 at 409
¹⁴ (2012) All FWLR (pt 648) 895 at 900
¹⁵ *Oke v. Oke* (2006) 17 NWLR (pt 1008) 224
¹⁶ See *Salami v. Oke* (1987) 4 NWLR (Pt 631) 1 at 13
¹⁷ See *Nzekwu v. Nzekwu* (1989) 2 NWLR (Pt 104) 373 at 391
¹⁸ See *Igiehon v. Omoregie* (1983) 2 NWLR (pt 276) 398. See Also *Adeniyi v. Ogunbiyi* (1965) NWLR 395 it was held that visiting the land and ordering out squatters were sufficient acts of possession
¹⁹ See *Ude v. Nwara* (1992) 2 NWLR (Pt 278) 638 at 661
²⁰ See *Onwomana v. Fatuade* (1986) 2 NWLR (pt

time. This will happen where the owner of land sleeps on his right, in other words, where he is found guilty of acquiescence or laches. This possibility is recognised under both customary law and the received English Law²¹.

Incorporeal Right

The concept of land also includes incorporeal hereditament, which are intangible. They are creatures of the mind and exist only in contemplation. Servitude presents about the clearest illustration of these categories of land. E. g a land owner's right of way over another's land.

4. The Foreigner and the Right to own Land in Nigeria

A Foreign national is a person who is not a national of the country in which he is residing or temporarily sojourning. For example, a foreign national in Canada is someone who is neither a Canadian Citizen nor a permanent resident. A foreign person includes a non-resident, alien individual, foreign corporation, foreign partnership, and foreign trust. A foreign national is any person who is not a national. In our legal jurisprudence, an alien is a person who is not a citizen or national of the country. Foreign person means non-national person who is not a lawful permanent resident or who is not a protected individual. It also means any foreign corporation, business association, partnership, trust society etc²². A foreigner is a person who is an origin of a foreign country. A person generally means, a being that has certain capacities or attributes such as reason, morality, consciousness or self – consciousness and being a part of a culturally established form of social relations such as kinship, ownership of property, or legal responsibility²³. A legal person is a person whether human or non – human that is recognized as having certain privilege and obligation such as the legal capacity to enter, sued and own property. The court has also defined a person in the case of *Amuchienwa v. Unity Bank Plc*²⁴. When it stated thus;

A person is any being whom the law regards as capable of rights and duties. Any being that is so capable is a person, whether human being or not, and no being that is not so capable is a person, even though he be a man. Persons are the substances of which rights and duties are the attributes. It is only in this respect that persons possess juridical significance, and this is the exclusive point of view from which personality receives legal recognition, in other words, a person includes anybody of person corporate or unincorporated.

Prior to the enactment of the Land Use Act on 29th March, 1978, there were regional laws that restricted the acquisition of native lands by foreigners. Amongst such laws were the Land Tenure Law of Northern Nigeria²⁵, Acquisition of Lands by Alien Law 1971 of Lagos State and the acquisition of lands by Alien Laws of various states of Nigeria. Although that of Lagos state has provisions as to the acquisition of lands by aliens; one of them is the written approval before instrument of transfer can be lawfully executed, Section 1 (1) states: 'No alien shall acquire any interest or right in or over land from a native of Nigeria unless the transaction under which the interest or right is acquired has been previously approved in writing by the Governor'²⁶. However, with the coming into force of the Land Use Act²⁷ which vests all lands within each state in the Federation in the Governor of that state to be held in trust and administered for the use and common benefit of all Nigerians, the position has completely changed. Section 1 of the Land Use Act states: 'Subject to the provisions of this Act, all land comprised in the territory of each state in the Federation is hereby vested in the Governor of that state and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act.

The above provision vests the radical title on land in every state on the Governor of the state subject to the provision of the Act. The previous owners, individuals, families and communities by virtue of section 1 of the Act are divested of the ownership of their land whether occupied or unoccupied'. By virtue of section 1 of the Land Use Act, a Nigerian in this instance is anybody who by virtue of the provision of the 1999 constitution is of natural

²¹ See the case of *Oshodi v. Umoru* 3 WACA 93. See also *Kaiyaoja v. Egunle* (1974) NSCC. Under customary law there is no particular time frame for adverse possession to mature into ownership. However, under statute, namely the limitation Laws of various states, a 12-year period is stated under section 6 (2) Limitation Law cap. 89 Laws of former Bendel State (1976) now applicable in Edo State.

²² See generally, <https://www.Law.Cornell.edu>. last accessed on 12/11/2019. These are all defined by 8 U. S. C. 1101 (a) (20) and 8 U. S. C. 1324 b(a) (3). it also means a person who lives in a country where he is not a citizen, a resident alien, a person from a foreign nation. These definitions are not coterminous with *jus sanguinis* and *jus soli*.

²³ <https://en.wikipedia.org/wiki>. Last accessed on 12/11/2019. A person is someone who matters in his or her own right and who thereafter deserves our highest moral consideration. Some non – human things could be persons and some humans are not person. In jurisprudence a natural person is a person who has its own legal personality, that is, an individual human being, as opposed to a legal person which may be a private, business entity or public.

²⁴ (2012) All FWLR (Pt. 657) 673 at 693

²⁵ Acquisition of Lands by Aliens Laws Cap. A2 Laws of Lagos State 1971

²⁶ *ibid*

²⁷ Cap 15. LFN. 2004

born of Nigeria either an individual, company or association or by naturalization or registration. The land held in trust by the Governor, shall be administered by the governor for the use and common benefit of all Nigerians only. This means that a non – Nigerian cannot apply for a statutory or customary right of occupancy and the words ‘any person’ wherever used in the Act does not include Non – Nigerians but have been interpreted to refer to and means any Nigerian, see the case of *Ogunola v. Eiyekole*²⁸. According to His Lordship Olatuwura JSC;

It is my firm view that the words ‘Any Person’ under section 36 (1) of the Act refers to and means ‘Any Nigerian’. The Act has not abrogated any law which limits the rights of aliens to own property. I will however share the views of Omololu Thomas JCA, that any foreigner who has validly owned or occupied any land before the Act is deemed to be an occupier under the Act. This however must be in conformity with the definition of occupier under section 50 of the Land Use Act.

The position of the law as provided in the above case was up held in the case of *Huebenea v. Aeronautical Engineering and Project Management Co. Ltd.*²⁹ where the apex court held that the appellant being an alien has no legal capacity to hold interest in land in Kajuru Local Government Area, of Kaduna State. The 1999 Constitution provided for the right to acquire and own immoveable property anywhere in Nigeria. The section provides: ‘Subject to the provisions of this constitution, every citizen of Nigeria shall have the right to acquire and own immoveable property anywhere in Nigeria’.

The above provision refers to ‘Citizen’ and not Foreigners or alien. The acquisition and ownership of immoveable property anywhere in Nigeria, is squarely by citizens, and by the interpretation Act³⁰, immovable property means; ‘Land’ and land means; ‘includes any building and any other thing attached to the earth or permanently fastened to anything so attached, but does not include minerals’. The above provisions re-enforce that ownership of land or immovable property in Nigeria, is by citizen, and a foreigner or alien has no right to acquire or own land or immovable property in Nigeria. The Supreme Court of Nigeria in giving effect to section 1 of the Land Use Act, in the case of *Savanna Bank of Nigeria Ltd v. Ajilo*³¹Belgore Jsc. has this to say;

There has been no statute like this before. It took away the land from every ‘landed gentry’ and vested it for administration in the Military Governor of the state in which the land is situated for management and control for the benefit of Nigerian. The Military Governor has not got the land vested in him as beneficial owner, far from it. The vesting in this instance is for administrative and management purpose, in trust, for all Nigerians... The whole land in each state is thus vested in trust in the Military Governor to be administered for the benefit of all Nigerians irrespective of where they may be. The management and control is in the Governor for land in urban areas and other land (in rural areas to be so designated in accordance with the Act) shall be under the management of the Local Government within which the lands are situated. It is in this wise that the Act should be constructed in its peculiar circumstance and by giving each word, each phrase, each expression it’s natural, ordinary and grammatical meaning... The meaning of ‘vested’ in Section 1 of the Act, in its context does not imply personal interest to the Military Governor, but merely gives the Governor power of superintendence in the sense of management and control, as provided in Section (2) (1) thereof, in trust for all Nigerians. The Military Governor by the intendment of the Act is not made a beneficial owner but a manger or controller of the use of the land within the state he administers, for the benefit of all Nigerians?

From the above judicial opinion, it is clear that the Nigerians are the intended beneficiaries under the Land Use, which the Governor is only to hold it as a trustee. Even the learned legal jurist, Kayode Eso JSC in the case of *Nkwocha v. Governor of Anambra State*³² he stated that:

The Military Governor held the land in trust and admistered it for the use and common benefit of all Nigerians. I am clear in my mind that all Nigerians. It would not matter the state origin of that Nigerian. Once he is a Nigerian that Military Governor held the land in trust and for his benefit.

The above cases did not refer to non – Nigerian, Alien or Foreigner. As a result of that, whatever right an alien had in any land in Nigeria, had been completely taken away by the Land Use Act. Even though the Land Use Act says it does not repeal any piece of legislation regarding the right of alien to own property in Nigeria, Section 1

²⁸ (1990) 4 NWLR (pt 146) 632.

²⁹(2017) All FWLR (pt 903) 1000 at 10244.

³⁰ Section 18, interpretation Act, cap 123 L. F. N. 2004

³¹ (1989) 1 NWLR (pt 97) 305 at pp. 352 - 353

³²(1984) 6 SC.362

of the Land Use Act, has completely taken away the right of alien or foreigner to own land in Nigeria. This is because, the Governor is to manage and administer the Lands for the benefit of all Nigerians and not for the benefit of any Foreigner or Alien.

5. Status of the Land Use Act³³ under the Nigeria Constitution

The Land Use Act³⁴ by virtue of Section 315 (5) (d) is an existing law under the 1999 constitution of Nigeria (As Amended). The provision reads'

Nothing in this constitution shall invalidate the following enactments, that is to say..... the Land Use Act 1978 and the provisions of those enactment shall continue to apply and have full effect in accordance with their tenor and to the like extent as any other provision forming part of this constitution and shall not be altered or repealed except in accordance with the provisions of section 9 (2) of the constitution.

The law maker from the above provision, did not intend to make the Land Use Act a part of the constitution but to make an ordinary statute extra – ordinary by incorporating it in constitution and making its amendment or respect impossible by a singular act of the legislature, except in accordance with the procedure laid down by the constitution for the amendment of its provisions³⁵. In *Nkwocha v. Governor of Anambra State*³⁶, His Lordship stated thus;

It is an ordinary statute which became extra – ordinary by virtue of its entrenchment (S. 274 (5) (now Section 315 (5) in the constitution, or the Act has been made a part of the constitution it would not have been necessary to insert it in subsection (5) of Section 274 the words – ‘Nothing in this constitution shall invalidate’ as draftman of the constitution cannot make the constitution to invalidate part of itself, nor would be necessary to have in subsection (6) of Section 274 (now subsection (6) of Section 3 (5) that the Act shall continue to have effect as a ‘Federal Enactment’ that is, a law made by the National Assembly, the constitution itself not being a ‘Federal Enactment’.

Since the Land Use Act does not form an integral part of the constitution but only an existing law of the National Assembly, where its provisions are in conflict with that of the constitution, those provisions shall be void to the extent of the inconsistency. That was the decision of the court in *Osungwu v. Onyeikigbo*³⁷. Even though the Land Use Act cannot be altered, except by the constitution but it has the status of an ordinary statute, the Land Use Act remains subject to the provision of the constitution.

6. Proper order to make by the court where an alien acquires Land

The Acquisition of Lands by Aliens Law prohibits an alien from acquiring land in Nigeria. However, where an alien has acquired interest in or over any land in Nigeria and he wants to sell or dispose of such land, the alien cannot re – sell or dispose it to another alien. The Acquisition of Lands by Alien Law³⁸ provides;

Where any such interest or right has been lawfully acquired by an alien, that interest or right shall not be transferred, alienated, demised or otherwise disposed of to any other alien where an alien has lawfully acquired a free hold interest or right of ownership in or over any land from a native of Nigeria and such interest or right shall become liable to be sold under any process of law, then such sale shall be ordered to be made to the Lagos State Government in the first instance and if the Government declines, then to a native of Nigeria³⁹.

From the above provision, it is clear that even where the alien purports to have acquired interest or right over the land lawfully, the alien shall not dispose of such land to another alien. Rather such land can only be disposed of to the state government in the first instance, however, if the government declines but to a native of Nigeria.

³³ Section 18

³⁴ Cap 15 LFN. 2004. The Land Use Act is an existing law under the 1999 constitution.

³⁵ Chris C. Wigwe, *Land Use and Management Law*, Moutcrest University Press, P. 36

³⁶ *supra*

³⁷ (2005) 16 NWLR (pt. 950) 80. This is the doctrine of covering the field the doctrine is where the constitution has already made provision or set out conditions over a subject matter, no other law should compete with those constitutional provisions or conditions because the constitution is said to have already covered the field on the subject matter. It is a situation where another law seeks to compete with the provision of the constitution in an area already covered by the constitution. See *A. G. Federation v. A. G. Lagos State* (2013) All FWLR (Pt 704) 1 at 62. *A. G. Abia State v. A. G. Federation* (2002) 6 NWLR (pt. 763) 264 at 369. The doctrine derives its Origin from the decision in *Ex parte Mc Lean* (1930) CLR. 472 at 483.

³⁸ Section 2 (2) of the ALAL, cap. A2 Laws of Lagos State. Section 3 also provides for the proper procedure or person such land can be disposed of or alienated to.

³⁹ Section 3 of ALAL.

Assuming where such interest or right over such land has been wrongfully disposed of, and it becomes subject of litigation, the proper order to make by the court is that, such interest or right in or over such land will be reversed to the vendor or the person who initially sold to such alien. See the opinion of his Lordship D. I. Okungbowa in *Ahmed Fawaz v Nigeria Export Promotion Council & 2 ors*⁴⁰. He states;

It is only when the claimant succeeds in his claim that the issue of whether a foreigner can own land will be considered. This is so because, the consequence of a foreigner's inability to own land will not warrant the court to declare title in favour of the defendant but at best a reversion to his vendor for consideration that has wholly failed.

7. Conclusion and Recommendations

The 1999 constitution, the Land Use Act and judicial authorities, no doubt have re-emphasized the long standing principle guiding the acquisition of land by foreigners in Nigeria. Even, the Alien Land Acquisition Law of various states, are in tandem with the aforementioned statutes. The right of a foreigner to acquire land is fore closed by the aforementioned statutes, laws and judicial decisions. In Nigeria, the provision of the extant laws, with respect to an alien's capacity to acquire and own land is well settled. However, a close look at the Land Use Act may not totally foreclose a foreigner from acquiring Land in Nigeria by virtue of a probate will. Section 51 of the Land Use Act defines a right of occupancy as;

In relation to a right of occupancy means a person entitled to a right of occupancy and includes any person to whom a right of occupancy has been validly assigned or has validly passed on the death of a holder but does not include any person to whom a right of occupancy has been sold or transferred without a valid assignment, nor a mortgagee, sub-lessee or sub-under lessee.

The gravamen of the provision is the mode of transfer upon which the land is passed to a foreigner upon the death of a testator. The determinant is the validity of passing the land to a foreigner on death, ie the element of a valid will must be established and probate must have been obtained. However, once the conditions for the acquisition by a foreigner are satisfied under the Alien Land Acquisition Law, the foreigner can acquire land. The conditions are that, granting of the Governor's written approval shall be of paramount importance. But where alien's acquisition of interest in land is less than 3 years, the government written consent or approval is not required. Furthermore, upon the procurement of governor written approval, the acquired interest on land by such foreigner shall not be greater than 25 years with an option to renew. All these, however, were before the coming into force the Land Use Act. It is hereby recommended that our attitude towards attracting foreign investment must be seen to be accommodating. Access to title to land is a major factor in every developing economy and the drafting and passage of our laws must be economically driven. The facts that the Land Use Act, provided that land must be administered for the use and common benefit of all Nigerians in accordance with the provision of the Act, does not totally proscribe the governors from granting right of occupancy to foreigners who are interested in acquiring land, the use of which would enhance the economy for the benefit of Nigerians. Therefore, I hereby recommend that the Land Use Act and the Constitution should be amended to reflect demands of time to attract foreign investors, to Nigeria for the benefit of all Nigerians.

⁴⁰ Unreported Suit No: B/238/2013 delivered by a high court judge of the Edo State Judiciary, Benin Judicial Division, in Nigeria.