

‘REQUIREMENT OF CONSENT IN THE ALIENATION OF INTERESTS IN LAND IN THE FEDERAL CAPITAL TERRITORY, ABUJA: THE CASE OF *UNA V ATENDA* REVISITED’*

Abstract

This is a rejoinder to the contribution of Mr. Yusuf on the above topic⁶⁵. This piece employs the doctrinal approach adopted by the jurist, Mr. Yusuf, and would use the laws cited by him and other materials to arrive at a different conclusion arrived at by him; to wit, that ‘consent’ is a sine qua non for the validity of any assignment of a right of occupancy over land in the Federal Capital Territory (FCT), Abuja as against his position that it is not.

Keywords: Consent, alienation, interests, land, Abuja.

1. Introduction

In an article on the topic above, Mr. Yusuf has argued, citing authorities to show that no consent of the President of the Federal Republic of Nigeria (FRN) or the Minister of the FCT, is required by any person for the purpose of the validity of any alienation of land allocated to him within the FCT as would have been the case in states of the Federation of Nigeria where the Land Use Act⁶⁶ applies. It is worthy of note that the entire land comprised in the FCT, Abuja is vested in the FGN⁶⁷; and that the President of Nigeria can delegate any person to administer lands within the FCT⁶⁸. Section 18 of the FCT Act has delegated the power of the President to the FCT Minister who has been responsible for land allocation in the FCT.

2. ‘Consent’ as a sine qua non for the validity of any assignment/alienation of interest in land in states of Nigeria

In the states of the Federation of Nigeria, the need for the ‘consent’ of the Governor, or that of a Local Government in appropriate cases, for any assignment or alienation of a right of occupancy has been underscored by the several provisions of the Land Use Act (LUA)⁶⁹. Section 21 of the LUA provides that:

21. It shall not be lawful for any customary right of occupancy or any part thereof to be alienated by assignment, mortgage, transfer of possession, sublease or otherwise howsoever –
- (a) without the consent of the Governor in cases where the property is to be sold by or under the order of any court under the provisions of the applicable Sheriffs and Civil Process Law; or
- (b) in other cases, without the approval of the appropriate local government.

On the same grounds that alienation or assignment of any interest in land or the right of occupancy of a person is forbidden except with the consent of the governor in section 21 of the LUA above, section 22 of the LUA prohibits any alienation, assignment etc of any interest or right of occupancy over any land that is a subject matter of the a statutory grant by the governor of a state. Section 26 of the LUA provides that any ‘transaction or instrument’ that ‘purports to confer or vests in any person any interest or right over land other than in accordance with the provisions of’ of the LUA ‘shall be null and void.’ It is a matter of ‘overriding public interest’ for the governor of a state to revoke a statutory right of occupancy if the owner alienates it by ‘assignment, mortgage, transfer of possession, sub-lease, or otherwise or any

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⁶⁵ TA Yusuf, ‘Requirement of Consent in the Alienation of Interests in Land in the Federal Capital Territory, Abuja: The Case of *Una v Atenda* Revisited’ (2019) 1 (3) IRLJ 139.

⁶⁶ Ibid.

⁶⁷ Section 1(1) of the FCT Act, Cap. F6, Laws of the Federation of Nigeria (LFN), 2004.

⁶⁸ Section 302, Constitution of the Federal Republic of Nigeria, 1999.

⁶⁹ Cap L5, Laws of the Federation of Nigeria (LFN), 2004.

right of occupancy or part thereof contrary to the provisions of the LUA or of any regulations made pursuant to it⁷⁰. On the same grounds, a customary right of occupancy could be revoked by a local government⁷¹. Section 28(4) of the LUA provides for revocation of a right of occupancy when a holder is in breach of the conditions contained in the certificate of occupancy (C of O) conveying the right. The ground of revocation provided by this subsection is a contractual ground with a statutory flavour. When the letter of offer of a Right of Occupancy (R of O) is accepted by an applicant for land and the conditions on it are met, there is a contract between him and the grantor of the land that is guided by the provisions of the LUA⁷². In *Bulet Int. Ltd. v Olaniyi*⁷³, referring to sections 22(1) and 26 of the LUA on the need for consent where an interest in a statutory right of occupancy is sought to be alienated, the Supreme Court held that:

...no alienation of the interest of the holder of a statutory right of occupancy in respect of a piece or parcel of land will be valid unless the consent of the Governor (or in the case of the FCT, the Honourable Minister) has been sought and obtained.⁷⁴

With respect to their Lordships of the Supreme Court, although this case originated from the FCT, their conclusion that the consent of the Minister of the FCT is required for any alienation of an R of O or any interest in it is right; but the law pursuant to which the consent is a requirement is, however, not the LUA as suggested by them⁷⁵. In *Oredola v AG of Kwara State*⁷⁶ section 27 of the Land Tenure Law of the defunct Northern Region of Nigeria that was applicable to Kwara State that provided for the consent of the Commissioner as a precondition for the alienation of a customary right of occupancy; section 32 of that law provided that 'any transaction or instrument which purported to confer on or vest in a non-native any interest or right in or over any native lands' not in accordance with the provisions of the law 'shall be null and void...'; The Supreme Court held that: 'As the Commissioner's consent was not obtained to the transaction leading to the document and the document itself, I must hold that Exhibit 1 is null and void and the appropriate sale by the Galadima family to the plaintiff is equally null and void'. The above is the position of the Supreme Court on the need for consent for the purpose of the validity of an instrument transferring or alienating a right of occupancy or any interest thereof.

3. The need for the consent of the Minister of FCT in the alienation of a right of occupancy or any interest over land

Just before submissions on the above, it is the position here that the decision of the Court of Appeal in *Ona v Atenda*⁷⁷ that the LUA does not apply in the FCT is salutary. It is also the submission that the decision of the Supreme Court in *Bulet Int. Ltd v Olaniyi*⁷⁸ on the application of the LUA to the FCT be treated as a decision delivered per curiam being a position taken not on the strength of an issue raised and short of explicitly saying that the LUA is the applicable law in the FCT. Be that as it may, the conclusion of the Apex Court in this case that the consent of the President or Minister of the FCT is needed for a valid alienation of an R of O or any interest thereof is the right position of the law. The Apex Court's decision on the needfulness of the consent of the Minister of the FCT for the validity of an alienation of interest in land had been held sacrosanct in its earlier decision in the case of *Associated Discount v Hon. Minister of FCT*⁷⁹ involving an application for the consent of the Hon. Minister of the FCT to a mortgage of land situated in the FCT where the Court held that: 'This does not detract from the fact that the power to grant or refuse consent to the mortgage rests with the Governor (in this case the minister of the Federal Capital Territory)'. In this case too it was never the issue whether the consent needed was pursuant to the application

⁷⁰ Section 28 (2)(a) of the LUA.

⁷¹ Section 28 (3)(d) of the LUA.

⁷² *Atiku Aderonpe v Eleran* [2018] 76 NSCQR (Part 1)255.

⁷³ [2017] 70 NSCQR (Part 3) 949.

⁷⁴ *Ibid* at 978, paragraph A.

⁷⁵ This position shall be examined in greater details below.

⁷⁶[1992] 23 NSCC (Part 3) 1 at 8, line 30-35.

⁷⁷ (*supra*) at 978, paragraph A-B. See also TA Yusuf, 'REQUIREMENT OF CONSENT IN THE ALIENATION OF INTERESTS IN LAND IN THE FEDERAL CAPITAL TERRITORY, ABUJA: *UNA V ATENDA REVISITED*', (2019) 1(3) IRLJ p. 139.

⁷⁸ (*Supra*).

⁷⁹ [2013] 53 NSCQR (Part 2) 201 at 222, paragraph B-C per his Lordship, Akaahs JSC in the lead judgment.

of the LUA or not and the Court never pronounced on that. In any case, the conclusion of the Court remains valid on the basis of the contractual relationship that exists between an owner of an R of O and grantor of the R of O who is the Hon. Minister of the FCT as shall be seen presently.

This is a rejoinder to an article written by Yusuf; it is important that the gravamen of his argument that ‘consent’ is not required for the purpose of the validity of alienation of land or any interest thereof in the FCT be presented in his own words. According to Yusuf:

The sum total of the judgment of the Court of Appeal in this case is that the whole of the provisions of the Land Use Act (which goes without saying, includes its consent provisions) do not apply in the Federal Capital Territory. So the question is: ‘From where does the President or the Minister in charge of the Federal Capital Territory derive its power to grant consent to alienation of interest in land? The principal and enabling legislation in our opinion which regulates the administration of land in the Federal Capital Territory is the Federal Capital Territory Act. Fortification is found for this assertion in the Constitution which provides that the Federal Capital Territory, Abuja shall be the capital of the Federation and seat of the Government of the Federation⁸⁰ and it shall comprise six area councils and the administrative and political structure thereof shall be provided by an Act of the National Assembly⁸¹. This, the National Assembly is deemed to have done by the enactment of the Federal Capital Territory Act. Hence it would be apt to examine some of its provisions we consider relevant to this article. Section 13(1), (3)(b) of the Act provides that in addition to any law having effect, or made applicable throughout the Federation, the laws set out in the Second Schedule to the Act shall as from 9 May, 1984 apply in the Federal Capital Territory. It goes further to state that the laws set out in the Second Schedule to the Act and applying in the Federal Capital Territory by virtue of subsection (1) of the section shall have effect with such modifications as may be necessary to bring them into conformity with the Constitution of the Federal Republic of Nigeria and, in particular - *functions conferred by any such law on the governor, premier, military governor or administrator, minister or any commissioner in the government of a state shall, without prejudice to the exercise of those functions by the President and until other provisions in respect of any such function is made by the authority having power to do so, vest in the Minister charged with responsibility for the Federal Capital Territory.*⁸² (Emphasis supplied).

It is the contention that the law applicable in this regard and which provides for the consent for the purpose of the validity of any alienation of the right of occupancy over land in the FCT is not statutory but the law of contract. The decision of the Supreme Court over a land matter that originated from Kwara State in *Atiku Aderonpe v Eleran*⁸³ illustrates the point sought to be made here where the relationship between a grantee of an R of O and the grantor was held to be a contractual relationship.

The R of O as a contract

Whether in the FCT where the LUA does not apply or in any state of the Federation of Nigeria where the LUA applies, the procedure for the allocation of a right of occupancy is that the land registry is open to all seekers of lands. An applicant who obtains, fills and submits the application forms to the land office does so without anything binding on the Governor, Local Government in the states or the Minister in the FCT to grant the application for just the fact that it has been made. When an application meets the requirements of the grant of an R of O and there is land available, it is within the discretion of the Governor, Local Government (save in cases of deemed R of Os) in the states or the Minister of the FCT to approve the grant. A grant of an application is always by means of a letter of offer of the R of O which

⁸⁰ CFRN, 1999 s298.

⁸¹ CFRN, 1999 s303.

⁸² TA Yusuf, ‘REQUIREMENT OF CONSENT IN THE ALIENATION OF INTERESTS IN LAND IN THE FEDERAL CAPITAL TERRITORY, ABUJA: *UNA V ATENDA* REVISITED’, (2019) 1(3) IRLJ p. 139 at 141. Note that the footnote marks in this quotation are maintained but not in the order they are found in the primary source of the passage quoted.

⁸³ *Atiku Aderonpe v Eleran* [2018] 76 NSCQR (Part 1)255.

spells out the conditions of the grant including the fees to be paid for processing a C of O, the annual ground rent and the duration of the R of O. The letter is a contractual offer of an R of O; it behoves on the 'grantee' to accept or not to accept. A grantee accepts the offer by first writing an acceptance letter or filling an acceptance form in the format made by the land office but more importantly, when he meets the conditions (especially the financial conditions) spelt out on the allocation letter within the prescribed period. The process is captured by the Supreme Court in *Atiku Aderonpe v Eleran*⁸⁴ where his Lordship Galumje JSC held the view that:

By prompt payment of these fees within the prescribed period, the Appellant had accepted the offer. There was no more acceptance of offer in the transaction as the agreement had been crystallized into a binding contract. The right of occupancy, in my view is the approval of the Appellant's application which was duly conveyed to him. What was left for the governor of Kwara State, (first Respondent) to do was to issue a certificate of occupancy.

The letter conveying the R of O is the offer to an applicant who accepts same by meeting the conditions on it. Once the conditions are met, there is *vinculum juris*⁸⁵. 'Once the...[applicant] fulfils all the conditions in the letter..., he acquires an equitable interest...that upon fulfilling all the conditions demanded by the Land Use and Allocation Committee the ...[applicant] acquired an equitable interest.'⁸⁶ The right over such a land in equity is as good as a legal right as 'equity takes as done that which ought to be done.'⁸⁷ His Lordship Eko JSC summarised the contractual build up from the offer of an R of O thus:

A grant or allocation in equity is...a grant subject to payment of the necessary consideration that would entitle the grantor to subsequently grant the Statutory Right of Occupancy. It vests an interest, which though not fully legal is equitable in nature pending the formal grant of the Statutory Right of Occupancy for which the requisite fees has been paid by the grantee.⁸⁸

It is the contention here that the decision of the Court in the case of *Atiku Aderonpe v Eleran*⁸⁹ projects the contractual relationship between a grantor and a grantee of an R of O in a LUA jurisdiction. This contractual relationship has a statutory flavour because it is governed by the LUA. In the FCT land administration jurisdiction, the procedure for the acquisition of an R of O is the same with that of states where the LUA applies. The conveyance of the offer of an R of O and its legal implication, to wit, the acceptance of the offer creates in favour of a grantee a right in equity which inures to an R of O when the Minister issues a C of O as has been discussed above in respect of states in the Supreme Court decision above considered⁹⁰. The difference between the contractual relationship between a holder of an R of O in the LUA jurisdiction and the FCT is that in the former it is a contract with statutory flavour but in the latter where the LUA does not apply it is a contract that is governed by the principles of the law of contract.

To depict the picture of a contractual relationship between a grantor and grantee of land in the FCT, the 'OFFER OF TERMS OF GRANT/CONVEYANCE OF APPROVAL' signed by the 'Director Land ADMN. & RESETTLEMENT' 'for: HONOURABLE MINISTER' of the FCT includes *inter alia* terms such as:

- i. the amount of ground rent per hectare per annum;
- ii. the term of years which is almost normally 99 years;
- iii. ground rent revision period;
- iv. the purpose of the land (residential, commercial etc.);
- v. the premium to be paid;

⁸⁴ Supra) at 295, paragraph E-F.

⁸⁵ A legally binding contractual relationship.

⁸⁶ Ibid at 285, paragraph D-F, per his Lordship Rhodes-Vivour JSC.

⁸⁷ Ibid at 278, per his Lordship Eko JSC in the lead judgment of the Court.

⁸⁸ Ibid, paragraph C-D.

⁸⁹ Ibid.

⁹⁰ Ibid.

- vi. the condition of the development to be made on the land;
- vii. the condition of not erecting any building except such as is provided in the C of O or approved by FCDA or any officer appointed in that behalf by the president;
- viii. 'Not to alienate the Right of Occupancy hereby granted or any part thereof by sale, assignment, mortgage, transfer or possession, sublease or bequest or otherwise however without the consent of the President first, had and obtained.' (Sic).
- ix. the description of the land (the plot number and layout where it is located).
- x. the date of the commencement of the R of O being the date of acceptance⁹¹ of the offer which must be with two months from the date of the letter of offer.

On the strength of the decision of the Supreme Court in *Atiku Aderonpe v Eleran*⁹², an applicant for land in the FCT who receives an offer of an R of O and accepts same within time has a contractual relationship with the grantor, the Minister of the FCT; first, in equity at the point of meeting the conditions of offer spelt out on the letter of offer and later a legal title when a C of O is issued. It is the contention that the terms of the contract here (which is without a statutory flavour) between the grantor (the Minister) of a right and a grantee (the applicant) of the right are binding. This goes without saying that the requirement of consent for the alienation of a right of occupancy or an interest in it in the FCT is a *sine qua non* by virtue of this contract and not by the provisions of any statute. This renders the submissions of the jurist, Yusuf⁹³, on the needlessness of the 'consent' of the President or the Minister for the purpose of a valid alienation of an R of O or any interest thereof, in the FCT not founded on a rocky premise.

4. Conclusion

The wrongful exclusion of the law of contract from the FCT land administration legal regime will necessarily lead to the wrong conclusion that no law provides for the consent of the President or that of the Minister of the FCT for the purpose of the alienation of an R of O over land or any interest thereof in the FCT. Although the land administration statutory laws applicable to the FCT⁹⁴ do not provide for consent, the law of contract is part of the law of the FCT and consequently governs the contractual relationship that arises from the application and grant of any R of O. When an offer of an R of O is accepted by an applicant (by meeting the conditions spelt out on it) the terms of the contract between the Minister (the grantor) and the applicant for land (the grantee) become the terms offered and accepted. Some of the terms (including 'consent before alienation of the right) have been noted above and hardly need reiteration here.

⁹¹ Drawn from a copy of an R of O granted an applicant for land whose identity and details of the land are kept for security reasons.

⁹² (supra).

⁹³ Quoted above.

⁹⁴ The FCT Act, section 297 of the CFN, Land Registration Act, Cap. 515, LFN (Applicable to Abuja) Registration of Titles Act, Cap 546, LFN (Applicable to Abuja), 2007.