

## CONSENT OF THE GOVERNOR IN LAND TRANSACTIONS: WHOSE DUTY AND WHEN

Dr. Charles I.G. Agwor and  
Dr. Nancy Amadi-Harry

### Abstract

*The Land Use Act of 1978 is the cornerstone of land regulation in Nigeria, establishing the framework for land tenure and administration. A central and controversial aspect of this legislation is the requirement for obtaining the Governor's consent before any alienation of land interests. This requirement aims to centralize land control and ensure its responsible use for national development. Critics argue that the need for the Governor's consent impedes commercial transactions and economic growth, while proponents see it as a measure to prevent land speculation and ensure equitable land distribution. The duty to seek and obtain the Governor's consent lies primarily with the party seeking to transfer land interests. The process of obtaining consent is time-consuming and often criticized for its bureaucratic inefficiencies. Transactions without the Governor's consent are deemed invalid, which can lead to disputes, loss of investment, and legal penalties. The aim of this article is to reappraise the requirement of Governor's consent under the Land Use Act 1978, hinged on the tripartite exigencies of; Whose Duty it is to Obtain Governor's Consent, Time for Obtaining Consent and Consequence for Failure to Obtain Consent. The article further highlights the need for reform in the implementation of the consent provision to streamline the process and enhance its efficiency, thus balancing the objectives of regulation with the facilitation of economic development.*

**Keywords:** Land, Interest, Alienation, Governor's consent

### Introduction

A major innovation introduced by the Land Use Act<sup>1</sup> in Nigerian property law practice is the requirement for the Governor's consent<sup>2</sup> in land transactions. The Act was established to ensure that land, a crucial asset for national development, is used efficiently and responsibly.<sup>3</sup> The Land Use Act aimed to unify the land tenure system across Nigeria, address land speculation issues, and make land acquisition for business and development easier.

Section 1 of the Land Use Act<sup>4</sup> has sparked significant debate among scholars and legal experts. Some argue that this section essentially eliminates private property rights by nationalizing all land under state government control.<sup>5</sup> Others contend that it does not extinguish individual land rights, meaning private ownership persists despite the Act.<sup>6</sup> However, it is widely accepted that since the Act's implementation, individuals can no longer claim absolute land ownership or exercise unrestricted rights, as ultimate ownership now

---

<sup>1</sup> Land Use Act 1978.

<sup>2</sup> *Ibid*, s22.

<sup>3</sup> C. I. G. Agwor, 'Transfer of interest in Land and Governor's Consent under the Land Use Act: Some Emerging Issues' [2022] *Journal of Private and Property Law* 18(1)100.

<sup>4</sup> (n 1).

<sup>5</sup> C. A. Onah, 'Justifying the Requirement of Consent under the Land Use Act: A Historical and Equitable Perspective' [2022] *NAUJILJ* 13(2)107. In C. I. G. Agwor, 'Transfer of interest in Land and Governor's Consent under the Land Use Act: Some Emerging Issues' [2022] *Journal of Private and Property Law* 18 (1) 106.

<sup>6</sup> *Ibid*.

rests with each state's Governor.<sup>7</sup> One contentious aspect of the nationalization policy under the Land Use Act is the mandatory requirement for obtaining the Governor's consent before any land interest can be transferred. This policy is crucial for the administration and enforcement of the Act because it allows different levels of government to maintain control over land access, essential for developmental projects. On the other hand, the inclination of individuals to carry out developmental activities or investments on land depends on the level of security of interest which they perceive exists over such land; especially as it relates to their right to use the land as a collateral for credit facilities in terms of mortgage or through outright sales. In a recent landmark ruling by the Supreme Court of Nigeria in the case of *Yakubu Ibrahim & Orsv Simon*<sup>8</sup> (the "Yakubu case"), the Court clarified the application of the Land Use Act regarding the necessity of the Governor's consent for transferring land interests. The Court determined that the requirement for the Governor's consent does not apply to land not governed by statutory rights of occupancy when the transfer is between private individuals and there is no significant public interest or dispute involved.

## Conceptual Clarifications

### Land

Land is an immovable and indestructible three-dimensional area consisting of a portion of the earth surface, the space above and below the surface, and everything growing on or perfectly affixed to it.<sup>9</sup> In *Salami v Gbodoolu*<sup>10</sup> the Supreme Court of Nigeria per Adio, JSC, observed thus; "The word land" in its ordinary meaning, means any ground, soil or earth or the solid part of the earth's surface and distinguished from the sea". Land also includes any building and any other thing attached to the earth or permanently fastened to anything so attached but does not include mineral.<sup>11</sup>

### Interest

Interest is the object of any human desire, especially advantage or profit of a financial nature. It could also be a legal share in something; all or part of a legal or equitable claim to or right in property.... Collectively, the word includes any aggregation of rights, privileges, powers, and impunities.<sup>12</sup> It refers to anyone's right, privilege, power or immunity. It is also said to be "that which is of advantage."<sup>13</sup> The foregoing implies that interest is the absolute right of ownership in land, which allows a person the beneficial entitlement therein. Any and all, partial or total right to property or for the use of property including an easement to pass over a neighborhood parcel of land, the right to drill oil, possibility of acquiring title upon the happening of some event, or outright title<sup>14</sup>.

### Alienation

"Alienation" simply means the conveyance or transfer of property to another. It can be defined as the transfer of the property, as by conveyance or will into the ownership of another

---

<sup>7</sup> D. O. N. Agwor, 'Overriding Public Purpose and Compensation for Compulsory Acquisition of Land under the Land Use Act: A Legal Evaluation' [2022] *Journal of Private and Property Law*, RSU 18(1)100.

<sup>8</sup> (2017) LPELR - 43749 [SC].

<sup>9</sup> U. Frank-Igwe & C. I. G. Agwor, 'A Re-examination of the Jurisprudence and Sale of Family Land in Nigeria'[2023] *Journal of Private and Property Law*, RSU 19(1)54.

<sup>10</sup> (1997) 4 NWLR (pt 88)273.

<sup>11</sup> Interpretation Act 1964, Cap. 123 LFN, 2004, s78.

<sup>12</sup> B. A. Garner, *Black's Law Dictionary* (8th edn. Thomson Business US, 2004)11828.

<sup>13</sup> C. A. Felix, C. I. G. Agwor, 'Transfer of interest in Land and Governor's Consent Under the Land Use Act:Some Emerging Issues'[2022] *Journal of Private and Property Law* 18(1)103

<sup>14</sup> *Ibid.*

or the right of an owner to dispose of his property.<sup>15</sup> The term is an act by virtue of which title of a property is voluntarily conveyed from one person to another. It is a way of disposing of a property or an asset in the form of sale..., lease, license lien, gift.<sup>16</sup>

### Governor's Consent

A Governor is said to be one who governs, especially the chief executive of the state or colony.<sup>17</sup> A Governor in Nigeria is the chief executive officer of a state in the federal republic of Nigeria, vested with the executive powers which extends to the execution and maintenance of this Constitution, all laws made by the House of Assembly of the State and to all matters with respect to which the House of Assembly has for the time being power to make laws.<sup>18</sup>

Consent on the other hand simply means to give assent or approval or a voluntary agreement to another's proposition. The *Black's Law Dictionary*<sup>8th ed</sup>, defines consent as 'a voluntary yielding to what another proposes or desires; agreement, approval, or permission regarding some act or purpose, esp. given voluntarily by a competent person; legally effective assent.'<sup>19</sup>

Governor's consent is a consent obtained from the governor of a state on a land transaction, without which such transaction will be deemed illegal in the eyes of the government and the law.<sup>20</sup> Governor's consent in every state in Nigeria is absolutely necessary where the holder of a Certificate of Occupancy over land or any other title decides to alienate the land to another person. Every subsequent transaction on the land cannot be perfected until the governor's consent is gotten.

### Whose Duty is it to Obtain Governor's Consent?

Given that the Governor holds all land in the state in trust for the benefit of Nigerians, it is logical that the Governor's consent is required for transferring land interests. This leads to the critical question: who is responsible for obtaining this consent? To shed light on this, it would be pertinent to examine the relevant legal provisions. In light of this, the land Use Act 1978 states:

It shall not be lawful for the holder of a statutory right of occupancy granted by the Governor to alienate his right of occupancy or any part thereof by assignment, mortgage, transfer of possession, sublease or otherwise howsoever without the consent of the Governor...<sup>21</sup>

As could be gleaned from the aforestated provision, the burden of securing the Governor's consent is clearly placed on the holder of the statutory right of occupancy. This provision was *ipso facto* reechoed in the dictum of Belgore JSC when he stated:

The holder of a right of occupancy, evidenced by a certificate of occupancy is the one to seek the consent of the Governor to alienate, transfer, mortgage, etc. There is no doubt the consent given in exhibit 3 was at the instance of the appellant who was in need of fund from the respondent by way of mortgages...<sup>22</sup>

---

<sup>15</sup> U. Frank-Igwe & C. I. G. Agwor, 'A Re-examination of the Jurisprudence and Sale of Family Land in Nigeria'[2023] *Journal of Private and Property Law*, RSU 19 (1)61.

<sup>16</sup> C. I. G. Agwor, 'Transfer of interest in Land and Governor's Consent Under the Land Use Act: Some Emerging Issues'[2022] *Journal of Private and Property Law* 18(1)102.

<sup>17</sup> B. A. Garner, *Black's Law Dictionary* (8th edn. Thomson Business US, 2004)717.

<sup>18</sup> Constitution of the Federal Republic of Nigeria, 1999 (as amended), s5(2) (a) & (b).

<sup>19</sup> B. A. Garner, *Black's Law Dictionary* (8th edn. Thomson Business US, 2004)323.

<sup>20</sup> LUA 1978, s22.

<sup>21</sup> (n 20).

<sup>22</sup> *Savannah Bank (Nig) Ltd. v Ajilo* [1989] N.W.LR (Pt 97) 305.

However, this requirement has sometimes led to fraudulent practices. As observed by Chianu, when he observed that the elementary principle of good sense suggests that it is unjust for a vendor to sell his land, pocket the price and get the court to rescind the sale on the ground that the sale infracts the Act. "Equity will not permit a party to use a statute as an instrument of fraud," is a universal principle that dates back many centuries.<sup>23</sup>

The above reasoning finds expression in the dictum of Akaahs JCA when he stated that there is no better way of describing the defendant's conduct in this case, other than to say that it is fraudulent and unconscionable. Either as a weapon of offence or as a shield of defence, any plea by the defendant in seeking to nullify a transaction for lack of Governor's consent is reprehensible when the responsibility of obtaining the consent rests with the defendant especially when consideration has passed. The party in delict should not be allowed to profit by his fraud...<sup>24</sup>

The aforesaid is a vehement reiteration of the rulings in the cases of *SolankevAbed*<sup>25</sup> and *Ugochukwu v Cooperative & Commerce Bank (Big) Ltd.*<sup>26</sup> In the latter case, the appellant sought to invalidate a mortgage deed on the grounds of non-compliance with the Land Use Act, citing the Supreme Court's decision in *Savannah Bank v. Ajilo.*<sup>27</sup> The Supreme Court dismissed the appeal, with Justice Belgore, JSC, noting:

It is not from him (right holder) one must hear that the consent he obtained was void... The appellant being the holder of the right of occupancy over the house i.e. No 239 Cameroun Road, Aba, was to seek consent and it is unconscionable for him to turn roundabout and maintain that the consent of the Governor he obtained was flawed having received valuable consideration i.e. the loan from the respondent.<sup>28</sup>

However, in practice, the party on whose account the consent is required often seek it themselves, as the party transferring the interest is typically more concerned with the financial aspects of the transaction and may neglect the legal requirements for consent.<sup>29</sup> This has left the party on whose account the consent is needed to be obtained with no other choice than to resort to either investigating the consent obtained or usurping the right of the holder for the purposes of obtaining the consent in order to have a perfect legal title thereof, without necessarily subverting the provisions of the LUA.

### **Necessity of a consent**

A key issue with the consent provision under the Land Use Act is determining when consent must be obtained. In Nigerian property law practice, it is well-established that the Governor's consent is required for land transactions. The core debate centers on whether consent must be secured before the parties execute the transaction documents or if it can be obtained afterward.

The consensus is that the combined provisions of *Sections 22 and 23* of the Land Use Act 1978 suggests that the timing of the execution of a deed is not crucial since alienation is only

---

<sup>23</sup> E. Chianu, *Law of Sale of Land* (Benin City: Oliz publishers, 2009)209.

<sup>24</sup> *Amadi v Nsirim* [2004] 17 NWLR [Pt 901] 111.

<sup>25</sup> (1962) 1 SCNLR 371.

<sup>26</sup> (1996) 6 NWLR. (Pt.456) 524.

<sup>27</sup> [1989] N.W.LR (Pt 97) 305.

<sup>28</sup> (n 21).

<sup>29</sup> E. Chianu, (n 22), 210.

deemed to have occurred once the Governor's consent is given. Essentially, transactions are considered incomplete until this consent is secured. The Supreme Court's ruling in *CCCTCS v Ekpo*<sup>30</sup>, confirms that transactions executed without prior consent are invalid.

Referring to the provision of *Section 22* of the LUA, the Supreme Court of Nigeria stated thus:

It is very clear that the said provision is by the tone and tenor mandatory; it makes the obtaining of consent a precondition for the validity of any alienation of a right of occupancy under the Land Use Act 1978. Though there is no time limit to the obtaining of the said consent by the provision, it is very clear that before the alienation can be valid or be said to confer the desired right on the party intended to benefit therefrom the consent of the governor of the state concerned must be first had and obtained. That does not, by any means, make the transaction without the requisite consent inchoate. It makes it invalid until the consent is obtained.<sup>31</sup>

In *Denning v Edwards*<sup>32</sup> while interpreting a provision similar to the consent provisions under the LUA, Lord Viscount Simmons opined that there was nothing contrary to law in entering into a written agreement before the Governor's consent was obtained. It must be observed however, that this postulation has to be received with caution for the reason, *inter alia*, that the House of Lords was not considering a provision on all fours with *Section 22* of the LUA. More so, an agreement to enter into a contract is not the contract itself, and if parties execute the document without intending to obtain the necessary consent, the transaction will be invalid.

In *Awojugbagbe Light Industries Ltd v Chinukwe*,<sup>33</sup> the Supreme Court reinforced that prior consent is essential. It stated that while the LUA does not prohibit preliminary negotiations or written agreements subject to the Governor's consent, such agreements must be forwarded to the Governor for approval to comply with *Section 22(1)*. In this regard, Igu JSC resting his decision on *Dennings v Edward*<sup>34</sup> stated as follows:

I think it ought to be stressed that the holder of a statutory right of occupancy is certainly not prohibited by *Section 22 (1)* of the Act from entering into some form of negotiation which may end with a written agreement for presentation to the governor for his necessary consent or approval. This is because the Land Use Act does not prohibit a written agreement to transfer or alienate land. So long as such written agreement is understood and entered into subject to the consent of the Governor, there will be no contravention of *Section 22(1)* of the Land Use Act by the mere fact that such a written agreement is executed before it is forwarded to the Governor for his consent.

Based on the foregoing analysis, it is argued that the phrase "first had and obtained" as used in the Act makes it imperative to secure consent before any alienation. This phrase, when applied to land alienation, unequivocally indicates that the validity of any document or deed transferring land title hinges on obtaining the Governor's consent first.<sup>35</sup> The statute does not

<sup>30</sup> (2008) 6 NWLR (pt. 1083) 362.

<sup>31</sup> *Ibid.*

<sup>32</sup> (1961) A C 245.

<sup>33</sup> [1995] 5 NWLR [Pt.390] 409.

<sup>34</sup> (n 31).

<sup>35</sup> C. A. Onah, 'Justifying the Requirement of Consent under the Land Use Act: A Historical and Equitable Perspective'[2022] *NAUJILJ* 13(2)107.



recognize any interim validity for deeds or instruments that were executed and delivered before the Governor's consent was acquired. Whether a document is considered inchoate or invalid is determined by the specifics of the transaction and the context of each case. If the deed clearly shows that it was not binding on the parties at the time the Governor's consent was obtained, the transaction is deemed valid. However, if the document was complete and binding on the parties before obtaining consent, it is considered invalid. The facts in the case of *Awojugbagbe v Chinukwe*<sup>36</sup> exemplifies this, in this case, the parties clearly stated that the contract would not be binding until the Governor's consent was obtained. Thus, *Awojugbagbe's* case cannot be cited to support the notion that parties can execute and enjoy the benefits of a land alienation contract while awaiting the Governor's consent, as such contracts are incomplete. Section 22(2) of the Act<sup>37</sup> does not provide any provisional status to deeds or instruments executed before obtaining consent. These deeds remain invalid under the Act.

In the Nigerian property law practice, the requirement for consent plays a crucial role in ensuring transparency and preventing fraudulent transactions. However, its strict enforcement under the Land Use Act (LUA) can sometimes create bureaucratic obstacles that impede economic efficiency and individual property rights. While the intention behind requiring consent is to safeguard against unlawful transfers and ensure all parties are informed, rigid adherence to these rules may not always align with practical realities. This could potentially lead to unintended consequences such as delayed transactions or missed opportunities for economic development. Striking a balance between regulatory oversight and facilitating smooth property transactions is essential to maintain the integrity of property rights while promoting economic activity..

### **Consequences of Failure to Obtain Governor's Consent**

The consequence of the unlawful act of alienating a right of occupancy without the requisite consent of the governor is what is stated under sections 22 and 26 of the LUA,<sup>38</sup> the Sections provides thus;

It shall not be lawful for the holder of a statutory right of occupancy granted by the Governor to alienate his right of occupancy or any part thereof by assignment, mortgage, transfer of possession, sublease or otherwise howsoever without the consent of the Governor first had and obtained.<sup>39</sup> Any transaction or any instrument which purports to confer on or vest in any person any interest or right over land other than in accordance with the provisions of the Act shall be null and void.<sup>40</sup>

The provisions above expressly make such a transaction unlawful, null and void. Section 26 uses the word "shall" which makes the provision mandatory, not directory or discretionary. This requirement was duly applied in the landmark case of *Savannah Bank of Nigeria Ltd. & Anor. v. Ammel O. Ajilo*.<sup>41</sup> In this celebrated case, Ammel Ajilo as first Plaintiff stood for the second Plaintiff as surety for a bank loan granted by the Savannah Bank Nig. Ltd. the 1st Defendant. The bond was secured by a mortgage deed made by the first Plaintiff in favour of the 1st Defendant the savannah bank. There was also a deposit of title deed for the

---

<sup>36</sup> [1995] 5 NWLR [Pt.390] 409.

<sup>37</sup> LUA 1978.

<sup>38</sup> I. A. Umezulike, *ABC of Contemporary Land Law in Nigeria*, (Enugu, Snaap Press Nig Ltd, 2013)182.

<sup>39</sup> LUA 1978, s22(1).

<sup>40</sup> (n 38), s26.

<sup>41</sup> (1989) 1 NWLR (PT. 97) 135

mortgage property which the 1st Plaintiff agreed in 1965. The 2nd Plaintiff defaulted in the repayment of the loan and the 1st Defendant, the bank, took steps to realize the security under the mortgage. The Plaintiff took out a Writ of Summons contending that by virtue of *Sections 22 & 26* of the Land Use Act, the entire transaction was void. The trial court found for the Plaintiff and held that the mortgage was void by virtue of *Sections 22 & 26* of the Land Use Act and therefore the Bank cannot exercise the power of sale. The Court of Appeal on appeal by the Defendants dismissed the appeal and affirmed the findings of the trial court. The Defendants then appealed to the Supreme Court. The full court of the Supreme Court dismissed the appeal and held that the consequence of the breach of *Section 22* of the Act is expressly stated to be null and void by virtue of *Section 26* of the Act. Specifically, Karibi-Whyte, JSC, stated that:

...I think the Court of Appeal was right to hold that every holder of a right of occupancy whether statutory or otherwise is regarded as having been granted the right by the Military Governor or Local Government as the case may be, for the purpose of control and management of all land comprised in the State. Accordingly, every such holder, whether under *sections 5, 34 or 36* of the Land Use Act requires the prior consent of the Military Governor before he can transfer, mortgage or otherwise dispose of his interest in the right of occupancy. This means that *section 22* is of general application to every rights holder under the Act pursuant to *sections 5, 34 or 36* thereof.<sup>42</sup>

This strict interpretation was upheld in subsequent cases such as *Olalomi Industries Ltd v NIDB Ltd*<sup>43</sup> and *P.I.P. Ltd v Trade Bank*<sup>44</sup> etc. In the former case, the Supreme Court declared that although the 1st Plaintiff/Respondent by the tenor of the Land Use Act committed the initial wrong by alienating his statutory right of occupancy without prior consent in writing of the Governor, the express provisions of the Land Use Act makes it undesirable to invoke the maxim "*Ex turpi causa non oritur action*" and the equitable principle enshrined in the case of *Buknor Maclean v. Inlaks Ltd.* (1980) 8-11SC 1.<sup>45</sup>

Similarly, the Court of Appeal in *P.I.P. Ltd. v. Trade Bank*<sup>46</sup> applied the rule established in *Savanna Bank's* case, when Sankey, JCA, stated that; "By the principle of *stare decisis*, I find that I must agree with the submissions of Mr. Jawondo, learned counsel for the appellants, no matter how unpalatable, that, in the face of the evidence before the court vis-à-vis *section 22* of the Act, exhibits 5, 6 and 7 are void. The decision of the Supreme Court in *Savannah Bank of Nigeria Ltd v. Ajilo* Vol. 20 (1989) NSCC135; (1989) 1 NWLR (Pt. 97) 305 is the plumb line by which all courts subordinate to the Supreme Court must be guided.

Given the consistent adherence of the Supreme Court and Court of Appeal to the precedent established in *Savannah Bank's* case, it had become an unyielding legal standard under the doctrine of *stare decisis* for all involved in land transactions nationwide, encompassing assignments, sub-leases, mortgages, and more, until recently amended by the Supreme Court's ruling in *Yakubu Ibrahim & Ors v Simon Obaje*<sup>47</sup> (Yakubu's case). This oversight function of the Supreme Court portrays it as not only being cut out to adjudicate disputes and interpret laws but also serve as a custodian of public policy. Therefore, when legislative

<sup>42</sup> (n 40).

<sup>43</sup> (2002) 5 NWLR (PT 761) 532.

<sup>44</sup> (1997) 7 NWLR (Pt. 514) 639.

<sup>45</sup> (n 42).

<sup>46</sup> [2009] 13 NWLR (pt. 1159).

<sup>47</sup> 2017) LPELR - 43749 [SC].

gaps arise post-implementation, the Court assumes the duty to rectify these deficiencies for the collective benefit, even if it entails overturning prior decisions, as demonstrated in its practical approach in Yakubu's case. In the case, the Respondent sued the Appellants in the High Court of the Federal Capital Territory Abuja, claiming damages for trespass on his property during construction and seeking a declaration of ownership based on an Irrevocable Power of Attorney and a certificate of occupancy issued by the Bwari Area Council in 1995. The Appellants contested the claim but lost in the High Court. They appealed to the Court of Appeal and then to the Supreme Court, which raised the question whether the consent of the Minister of Federal Capital Territory was necessary for the property's title to validly transfer to the Respondent. Ogunbiyi JSC, delivering the judgment, addressed this issue thus:

.... I agree with the Respondent's Counsel that it is not the intendment of the legislature that *section 22* of the Land Use Act, on consent would limit and deny parties of their rights to use and enjoy land and the fruits thereto in a non-contentious transaction or alienation. The section cannot be given a literal interpretation as would be seen from the preamble. The preambles to the Land Use Act, if looked at carefully and relating it to the case at hand, would reveal that the provision for consent of the Governor must not be applied to transfer of title or alienation of rights between private individuals where there is no overriding public interest or conflict between the parties. The application of the various sections and provisions of the Land Use Act must be done with a view to the intendment of the drafters of the law, which is expressed often in the preamble.<sup>48</sup>

In its deliberation and final ruling, the Supreme Court meticulously referenced and upheld the foundational principles and objectives of the Act, as vividly articulated in its preamble. This preamble serves as a crucial guide, underscoring the legislative intent to protect and ensure the equitable use and enjoyment of land by all Nigerians.

The essence of the preamble is twofold. Firstly, it emphasizes the public interest in affirming and preserving the legal rights of Nigerians to the land of Nigeria. This establishes a legal framework that recognizes land as a fundamental asset to which all Nigerians are entitled. Secondly, it underscores the importance of safeguarding the right of every Nigerian to not only access but also derive benefits from their land. This includes the natural produce of the land, which is vital for their sustenance and that of their families. By ensuring these rights, the Act aims to provide a stable and secure means for Nigerians to support themselves, reflecting a broader commitment to social and economic welfare.

Thus, the Supreme Court's decision in Yakubu's case is deeply rooted in these principles, reflecting a broader commitment to uphold the rights of Nigerians in a manner that aligns with the spirit and purpose of the legislation. This approach ensures that the law is interpreted and applied in a way that genuinely benefits the people it is meant to serve, fostering equity and sustainability in land use and ownership.

## Conclusion

The requirement of Governor's consent cannot *ipso facto* be seen to have occasioned a culture shock on Nigerians as the historical justification for the consent provision may be found in the requirement for consent of family head under customary law and that of the lessor under lease. The requirement of consent may also be justified by the need to monitor and regulate

---

<sup>48</sup> (n 46).



land transaction by the legal owner. The requirement of consent is applicable to every alienation envisaged in *sections 22 and 23* of the Land Use Act subject only to the need to obtain consent. It is a platform through which the Governor can conveniently manage and stay in control of the land vested in him by *Section 1* of the Land Use Act. In this perspective, any interpretation of the Act which seeks to validate or enforce any transaction involving alienation of right of occupancy without the consent of the appropriate authority would have no justification under the Land Use Act unless such alienation is one of those expressly exempted under the Act, or by the ruling of the Supreme Court. With respect to the latter, the Supreme Court's decision in Yakubu's case has introduced a regime in Nigeria's land tenure system which will remove the huge cost of procuring Governor's consent in the affected land, delays from unwieldy bureaucratic bottlenecks at the various land registries across the country, which have rendered the lofty objectives of the Act, almost irrelevant, and promote the ease of doing business in the real estate and banking sectors. As such, States and private parties alike, should embrace the new order of the day, as it relates to the requirement for Governors' consent in Land. More so, the decision of the Supreme Court in the Yakubu's case will lead to more land transactions in States, which will invariably lead to an increase in the applicable capital gains tax and stamp duties to be received by the States as it pertains to the disposal of chargeable assets by private individuals, business names and partnerships within a state.

Consequent upon this research it is seen that the Supreme Court's initiative and ingenuity in interpreting the provisions of the Land Use Act and resolving controversies that abound thereof has had tremendous impact on conveyancing practices in Nigeria in view of whose duty it is to seek and obtain consent, at what time consent is necessary to be obtained and consequences for the failure to obtain consent.

### **Recommendations**

After exploring the relevant principles and subsequent court attitudes, the following recommendations are hereby pertinently proposed:

- Legislative amendments to *sections 21, 22, and 34* of the Land Use Act are necessary. These changes should aim to make the Governor's decision to grant or withhold consent objective rather than subjective, allowing for easier appeals against unfair decisions of the Governor in giving such consent. Additionally, transactions that do not involve outright transfer of interests in land should be exempt from the consent requirement. The law should also establish a deadline for processing consent applications to mitigate delays that hinder land developers, landlords, and other stakeholders, thus simplifying land transactions.
- The Supreme Court must deliver precise and deliberate rulings, especially concerning land issues. Although recent decisions have clarified the Governor's consent requirements, earlier rulings have been controversial. Future decisions should continue to provide clear guidance to prevent conflicting interpretations of *sections 21 and 22* of the Land Use Act.
- There should be a standardized procedure for obtaining the Governor's consent across all 36 states of Nigeria and the Federal Capital Territory. A uniform process would reduce bureaucratic obstacles created by unscrupulous Governors and their representatives. Until legislative changes are enacted, it is recommended that all states develop a geographic information system (GIS) to facilitate the consent process.