

Transfer of Interest in Land and Governor's Consent Under the Land Use Act: Some Emerging Issues

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Abstract

Land as one of the most invaluable resources of nature remains most-priced. It has tendency and propensity to change hands. Given that the owner of land may not use all of it at once, or can dispose it in order to acquire another property or service, it is a marketable item. The ownership of land in Nigeria has been vested on the Governor of each State to hold in trust all land in his territory for the citizens of the state and the benefit of all Nigerians. As provided in the Land Use Act 1978 sections 22 and 34 respectively, for valid transaction of land; alienation, transfer of possession, assignment, mortgage, sublease to be established in any land covered with the statutory right of occupancy, the parties must seek for and obtain the consent of the Governor as the head lessor. The central aim of this paper is to appraise the basic issues associated with the effective transfer of interest in land bearing in mind the requirement for the Governor's Consent. The objective of this paper, among others, is to establish the necessity for transfer of interest in land. Besides, to highlight measures that will aid effective drive of the process for obtaining the Governor's Consent and ascertain whether this is sacrosanct for all intents and purposes thus underscoring some emerging issue. Furthermore, the paper emphasized that Governor's Consent is not automatic for all holders of statutory right of occupancy, it must be sought for when necessary and be given in compliance with the provisions of the Land Use Act. Of course, the timing for Governor's Consent is after the

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parties have agreed, concluded and executed the instrument of the transaction. Although, the paper argued that any person who has acquired a deemed right of occupancy do not require the consent of the Governor in order to transfer interest in possession or alienation as the case may be. These are parts of the emerging issues.

Keywords: Transfer, Interest, Land, Governor, Consent.

1.0 Introduction

The concept of transferring interest in land is not alien under the Nigeria property jurisprudence. As reflected in its major provision, the Land Use Act 1978 was enacted to nationalize land ownership in Nigeria. One of the very pivotal fact derivable from its provisions is that it is intended to ensure that land use, development, management and transfer of interest is controlled by the State. Prior to the promulgation of the Land Use Act 1978, the predominant land tenure system in Nigeria during the pre-colonial period was the Customary land tenancy, where land holdings were owned by villages, towns, communities and families. Land was deemed not to be owned by individuals but by communities and families in trust for all the members of the family.¹ The legal estate under customary land tenancy is vested in the family or community as a unit. During this period, land belonged to the community or a vast family of which many are dead, few are living and countless members yet unborn.²

During the period reiterated above, no individual has such interest as the fee simple absolute in possession. The actual ownership of land or absolute interest was vested on the community itself. Personal rights and interests in community land were derivative interests. Under the colonial rule, land ownership structure in Nigeria was designed to favour the British imperialist. As a major factor of production, land was inevitably required by the colonial authorities to actualize their economic, social and political objectives.³ The British merchants who came to the country purely on economic motives required land to establish their merchandise. The National African Company and its successor, the Royal Niger Company required land to expand its business in Nigeria.⁴ The colonial governors also required land for public purposes, because land ownership in pre-colonial Nigeria was

¹ Udockanem B. and Ors. "Land Ownership in Nigeria; Historical Development, Current Issues and Future Expectation", 2014/Vol.4 (21) *Journal of Governmental and Earth Science*. < 18 November 2022.

² *Ibid*, 182.

³ *Ibid*, 183.

⁴ (n 1).

communal, the colonial authorities initiated laws and regulations governing land ownership, land use and development among others to enable them acquire and convey titles to land for the purpose of commerce and governance.⁵ Such legislation promulgated *inter alia* includes; The Treaty of Cession (1861), Land Proclamation Ordinance (1900), Land and Native Rights Act (1916), Niger Land Transfer Act (1916), Public Land Acquisition Act (1917), Native land Acquisition Act (1917), State Lands Act (1918). At independence, there were other regulatory laws and legislation on land administration and management, until the Land Use Act was promulgated in 1978 to become the principal legislation on land ownership, development, achievement and management.

Section 1 of the Act⁶ provides thus:

Subject to the provisions of this Act, all land comprised in the territory of each State in the Federation are hereby vested on the Governor of the 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. As from the commencement of this Act (a) all land in urban areas shall be under the control and management of the Governor of each State.⁷

The foregoing provision to all interest and purposes, presupposes that the Land Use Act now regulates the ownership, alienation, acquisition, administration and management of land within the Federal Republic of Nigeria. Most importantly, the Section vests all the land in the territory of each State on the Governor of that State to hold in trust for its citizenry and the benefit of other Nigerians. Furthermore, it is observed that the Act empowers the Governor of a State to grant statutory right of occupancy to any person in respect of land, whether or not it is in an urban area and issue a Certificate of Occupancy in evidence of such right of occupancy.⁸ It is worthy of note that upon the grant of such right of occupancy by the Governor under sub-section (1), all existing rights to the use and occupation of the land which is the subject of the statutory right of occupancy shall be extinguished.⁹ It has been

⁵ *Ibid*.

⁶ Land use Act 1978

⁷ LUA S. 2(1).

⁸ LUA s5(1) & 9(1).

⁹ LUA s5(2).

argued that the statutory right of occupancy by the Governor of any state in his territory is presently the highest right to land in Nigeria.¹⁰

2. Conceptual Clarification

a. Transfer

The term transfer is any mode of disposing off or parting with an asset or an interest in an asset, including a gift, the payment of money, release, lease, or creation of a lien or other encumbrance. The term embraces every method, direct or indirect, absolute or conditional, voluntary or involuntary of disposing off or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the debtor's equity of redemption. It is also referred to as “to convey or remove from one place or one person to another; to pass or handover from one to another, especially to change over the control of ...”¹² A Transfer involves the movement of assets, monetary funds, and/or ownership rights from one account to another. A transfer may require an exchange of funds when it involves a change in ownership such as when an investor sells a real estate holding.¹³ In this case there is a transfer of title from the seller to the buyer and a simultaneous transfer of funds, equal to the negotiated price, from the buyer to the seller.¹⁴ Transfer 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, money transfer, lease, license, lien, gift, it may or may not involve a legal process...¹⁵ a friendly transfer of money between friends does not require due validation of law: however, a transfer of a real estate asset requires title transfer, legal documentation, and requisite registration.¹⁶

b. 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

¹⁰ (n 1) p183.

¹¹ Garner B. A. *Blacks Law Dictionary*, (8th ed. Thomson Business US, 2004) p 1535.

¹² *Ibid*, 1536.

¹³ Kagan J. “Transfer: Definition in Finance, Types and examples” 2020, *Investopedia*<<https://www.investopedia.com/terms/18/November,2022>.

¹⁴ *Ibid*.

¹⁵ West Definition team “Transfer” *Legal information institute for cornel law school*, 2021 <<https://www.connell.edu.wex>>accessed 19 November, 2022.

¹⁶ *Ibid*.

equitable claim to or right in property... Collectively, the word includes any aggregation of rights, privileges, powers, and impunities... it refers to any one's right, privilege, power, or immunity.¹⁷ It is also said to be "that which is of advantage."¹⁸ The foregoing implies that interest is the absolute right of ownership in land, which allows a person the beneficial entitlements therein. Any and all, partial or total right to property or for the use of property, including an easement to pass over a neighbouring parcel of land, the right to drill oil, possibility of acquiring title upon the happening of some event, or outright title.

c. 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 permanently affixed to it.¹⁹ A judicial definition was given by the Supreme Court of Nigeria per Adio, JSC, in the case of *Salami v. Gbodoolu*²⁰ where the learned justice observed; "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 the sea". Real property, real estate and all that grows thereon, and the right to minerals underneath and the air space over it. It may include improvements like buildings, but not necessarily.²¹ Section 78 of the Interpretation Act provides *inter alia* "Land" includes any building and any other thing attached to the earth or permanently fastened to anything so attached but does not include mineral. The combined effect of all the definitions reiterated above intends to establish the fact that land includes the earth, its surface, underneath, the space above. This is arguably pointing to the fact that minerals are inclusive.

d. Governor

A Governor is the Chief executive official of a State.²³ Governor is also said to be "one who governs, especially the chief executive of a state or colony."²⁴ "Governor" means the Governor of the state concerned. A Governor therefore, can be referred

¹⁷ Garner B. A. *Blacks Law Dictionary*, (8th ed. Thomson Business US, 2004) p 1828

¹⁸ The new International Webster's Comprehensive Dictionary of English Language (Encyclopedic edn.- Typhoon International, US, 2004).

¹⁹ Garner B. A. *Blacks Law Dictionary*, (8th ed. Thomson Business US, 2004) p 892

²⁰ (1997) 4 NWLR (pt. 499) 277.,

²¹ Gerald and Kathleen H., 'Interest' *Legal Dictionary*, 2022 < 19 November 2022.

²² Interpretation Act 1964, Cap. 123 LFN, 2004.

²³ Garner B. A. *Blacks Law Dictionary*, (8th ed. Thomson Business US, 2004) p 717

to as an administrative leader and head a polity or political region, ranking under the head of state.

e. Consent

Consent is agreement, approval or permission as to some act or purpose, especially, given voluntarily by a competent person. Legally effective assent. It is an affirmative defense to assault, battery and related torts, as well as such torts as defamation, invasion of privacy, conversion, and trespass.²⁶ Consent is to permit, approve, or agree; comply or yield.²⁷ Consent should be clearly and freely communicated. A verbal and affirmative expression ... consent cannot be given by individuals who are underage, intoxicated or incapacitated by drugs or alcohol, or asleep or unconscious.²⁸ Consent therefore is the voluntary and willful agreement of one person in response to another's proposition. The person who consents must possess sufficient mental capacity. It also connotes the absence of coercion, fraud or error. It is a very pivotal constituent of a contract and a defense to a tort. It can also suffice as permission for something to happen. It must be emphasized that the person giving the consent or assenting to the agreement must be legally competent. That is, one who has the legal authority to do so.

3. Is the Governor's Consent Under the Act Automatic?

No doubt, the consent of the Governor is required in case of transfer of interest or alienation of land covered by the statutory right of occupancy. The law is trite on the forgoing expression. But what this segment of the paper intends to interrogate is whether or not it is automatic that a land covered by the statutory right of occupancy granted by the Governor no longer requires the consent. Section 22 of the Act²⁹ provides that:

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,

²⁴The new International Webster's Comprehensive Dictionary of English Language (Encyclopedic edn.- Typhoon International, US, 2004). P 547.

²⁵ Land Use Act 1978, s51(1).

²⁶ Garner B. A. *Black's Law Dictionary*, (8th ed. Thomson Business US, 2004) p 323.

²⁷ RAINN, 'What is consent like' 2022, *Rape abuse and Incest National Network*<<https://www.rainn.org/articles/whatisconsent>> accessed 19 November, 2022.

²⁸ Collins, "Consent" *Collins English Dictionary*, 2012 <www.dictionary.com>consent>accessed 19 November 2022.

²⁹ LUA 1978.

*transfer of possession, sublease or otherwise however without the consent of the Governor first obtained. Provided that the consent of the Governor shall not be required to the recreation of a legal mortgage over a statutory right of occupancy in favour of person in whose favour an equitable mortgage over the right of occupancy has already been created with the consent of the Governor.... The Governor, when giving this consent to an assignment mortgage or sub-lease may require the holder of a statutory right of occupancy to submit an instrument executed in evidence of the assignment, mortgage or sub-lease and the holder shall when so required deliver the said instrument to the Governor in order that the consent given by the Governor under subsection (1) may be signified by endorsement thereon.*³⁰

The implication of the foregoing provision of the Land Use Act is that consent of the Governor is sacrosanct in any dealing on land covered with a statutory right of occupancy. Whether assignment, mortgage, transfer of possession or sublease. That is to say, under the Act, for such transaction to be a legally binding alienation, the consent must be first sought and obtained. It is observed that the Governor will not grant consent in favour of a person who intends to create legal mortgage, when the same person has obtained consent under an equitable mortgage. Further consent shall not also be required from the conveyance or release mortgage to a holder of or occupier of a statutory right of occupancy which that holder or occupier has already mortgaged with the consent of the Governor.

It must be emphasized that when giving his consent, the holder of the statutory right of occupancy is required to submit an instrument executed in evidence of the assignment, mortgage or sublease as the case may be. The instrument of transaction when received by the Governor, (the governor) signifies his endorsement thereon.

In a similar vein, it is provided as follows:

...this section shall have effect in respect of land in an urban area vested in any person immediately before the commencement of this Act. Where the land is developed, the

³⁰ LUA 1978 s22(1).

*land shall continue to be held by the person in whom it was vested immediately before the commencement of this Act as if the holder of the land was the holder of a statutory right of occupancy issued by the Governor under this Act... issued by the Governor on application to him in the prescribed form a certificate of occupancy issued by the Governor under this act...*³¹

The implication of the provision above is that of a deemed right of occupancy where any person is holding and/or in possession of a developed land, he is deemed to have right of occupancy. Where he applies officially in the prescribed form, a certificate of occupancy shall be issued to him. However, where a person is a holder of any undeveloped land elsewhere in any urban area in the State in respect of that person, his holding of undeveloped land in any urban area in the State are to be considered together. One plot or portion not exceeding ½ hectare in area shall continue to be held by such person as if a right of occupancy had been granted to him by the Governor in respect of that plot or portion and the remainder of the land in excess of ½ hectare shall be taken over by the Governor ... the formerly vested in the holder in respect of such land shall be extinguished.³²

The combined effect of Subsections 5 and 6 of the Section 34 is that undeveloped land holding by a person as a deemed right of occupancy based on the fact that the holder has held it before the commencement of the Land Use Act 1978, shall then hold only one plot or portion of the land not exceeding half hectare, the surplus shall extinguish and revert back or taken over by the Governor and administered as provided under the Land Use Act 1978. It is also observed that any transaction or instrument which purports to confer on or vest in any person's interest or right over land other than in accordance with the provisions of this Act shall be null and void.³³ The forgoing presupposes that every transaction in land must be in compliance with the provision of the Land Use Act 1978.

In the celebrated case of *Savannah Bank of Nigeria Limited v. Ammel O. Ijilo*³⁴ the Supreme Court of Nigeria unanimously ruled that a deemed right of occupancy under Section 34(2) of the Land Use Act is the same as a right of occupancy actually granted by the Governor of the state with all the attendant consequences. Thus, the controversy as to

³¹ LUA 1978 s 34.

³² LUA 1978 s 34(6).

³³ LUA 1978 s26.

³⁴ (1989) 1 NWLR (pt. 97) 254.

whether a person who is deemed to be a holder of right of occupancy pursuant to Section 34(2) of the Act requires the prior consent of the Governor before he can transfer, mortgage, or otherwise dispose off his interest in the right of occupancy, would appear to have been finally laid to rest.³⁵ The case law reviewed above presupposes that such a person with a deemed right of occupancy must seek for and obtain the consent of the Governor for a valid alienation of his interest.

4. Time for Obtaining Governor's Consent Under the Land Use Act

One critical issue that usually arise in the consent provision is the stage at which the consent must be sought by the parties to the transaction or the holder of the statutory right of occupancy. This is quite pivotal for a person to have a smooth and legally binding transaction. As we have seen, it is settled on authorities, especially the recent ones that the consent of the Governor is inevitable in transactions relating to land in Nigeria. The question essentially raised with regard to the issue at hand is whether the consent must be sought and obtained before the parties execute the document evidencing the transaction or if it can be done after they have executed the document and perfected the transaction.³⁶

Section 22 provides to the effect that the Governor when giving his consent to an assignment, mortgage or sublease may require parties to submit an instrument executed in that behalf as mortgage or sublease and the holder shall when so required deliver the said instrument to the Governor with endorsement in it.³⁷

The effect of the foregoing provision is that an instrument already executed by the holder of the statutory right of occupancy or the parties evidencing the transaction shall be presented to the governor upon request before consent can be given. It is further observed from the above provision that the governor's consent is usually signified by an endorsement on the instrument executed and produced by the parties. However, Onah insists that, the combined effect of the sub-provisions of Sections 22 and 23 of the Act is that it did not matter when a Deed was executed by the parties, as alienation could only be said to have taken place after the Governor had given his consent. He emphasized that the implication of this is that prior to the governor's consent, the transaction was merely inchoate.³⁸

³⁵ (n 34).

³⁶ Onah C. A 'Justifying the requirement of consent under the Land Use Act: A Historical and Equitable Perspective'. *NAUJILJ* 13 (2) 2022, p107.

³⁷ LUA 1978 s22(2).

³⁸ (n 23).

In *Denning v. Edwards*,³⁹ while interpreting a provision similar to the Consent Provision under the Land Use Act 1978, it was opined, Per Lord Viscount Simmons that there was nothing contrary to law in entering into a written agreement before Governor's consent was obtained. In the same vein, in *Awojugbage Light Industries Ltd. v. Chinukwe*,⁴⁰ the Court reiterated that *inter alia*;

*... the position taken by the Supreme Court is interesting and illuminating of the principles that prior consent must be obtained It is stressed that the holder of 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 approval ...*⁴¹

It is trite to observe that the Land Use Act does not prohibit parties to land transaction from having a written agreement to transfer or alienate land. Provided that such written agreement is understood and entered into, subject to the consent of the Governor. The written instrument evidencing the transaction provided in Subsection 2 of Section 22, cannot be said to be a contravention of Section 22(1) of Land Use Act 1978, by the mere reason that the written agreement required is executed before it is forwarded to the Governor for his consent. Of course, it is trite law, that an unsigned, or unexecuted document is both useless and worthless. Onah submitted therefore, that the phrase "First had and obtained" as used under the Act makes the obtaining of consent a condition precedent to alienation.⁴² The most reasonable and escapable meaning of that phrase in relation to alienation of land is that the validity of an instrument or Deed or any other document evidencing the transfer of title in land is dependent on the consent of the Governor first had and obtained.⁴³ The Section does not accord any provisional status to 'completed' Deeds or instrument already executed and delivered before the consent of the governor was sought and obtained.⁴⁴ It is therefore, suggested that consent is inevitable in such transactions dealing on land in the urban area. So parties cannot rely on the instrument executed before the consent and proceed to enjoy their rights under the contract as that contract remains inchoate. In the case of *Haruna v. Bank of*

³⁹ (1961) A. C. 245.

⁴⁰ (1995) 4 NWLR (pt. 390) 379 at 406, (1995) LPLER – 650 (CA).

⁴¹ *Ibid.*

⁴² (n 35).

⁴³ *Ibid.*

⁴⁴ (n 35).

Agriculture Ltd. & Ors⁴⁵ the Court concluded and held that there is nothing in the Land Use Act preventing the execution of an instrument before consent of the Governor is obtained. It simply means that the agreement entered into is inchoate (incomplete) until the governor's consent is sought and obtained.⁴⁶ In ***Yoro v. Arewa construction Ltd. & Ors***,⁴⁷ it was held that:

*the 3rd Respondent has raised the question of section 22 of Land Use Act, concisely, the Section required that Governor's Consent to the mortgage deal has to be first had and obtained otherwise the contract is void. I think with respect that 3rd Respondent's objection is lame in that as decided in Awojugbage B. Chinukwe & Anor (Supra), it is after the mortgage has been executed that obtaining of the Governor' Consent falls due. It is normally after the parties have agreed that the Deed of Assignment is prepared and sent for Governor's Consent.*⁴⁸

The combined effect of the judicial authorities reiterated above is that parties to the transaction must comply with the provision of Section 22(2) of the Land Use Act or the transaction will be void. It is, therefore, understood and remarked that the above provision of the Section of the Law negates the principle of Contract Law, which includes certainty, agreements of the mind, and intention to create legal relation.

In a most recent case of ***Yakubu Ibrahim & Ors v. Simon Osaje***,⁴⁹ the Supreme Court held that “the provision of Governor's Consent for the alienation of interest in land under the Land Use Act does not apply to land not covered by a statutory right of occupancy, where the alienation is between private individuals and there is no overriding public interest or conflicts between the parties.”⁵⁰ The foregoing presupposes that private individual owners of land can actually conclude a legally acceptable transaction of transfer or alienation without necessarily seeking for or obtaining the Consent of the Governor, provided the land has not been acquired for overriding public interest.

⁴⁵ (2016) LPELR – 40467 (CA).

⁴⁶ (2016) LPELR – 40467 (CA).

⁴⁷ (2002) LPELR – 3516 (SC)

⁴⁸ (2002) LPELR – 3516 (SC).

⁴⁹ (2017) LPELR – 43749(SC).

⁵⁰ *Ibid.*

5. Novelties introduced by the Land Use Act into Land Transcation in Nigeria

The practice of transferring interest in land is not entirely new under the Nigerian jurisprudence on land administration and management. It is an undisputable fact that interest in land can be transferred from one person to another, either as sublease or mortgage or outright assignment of one's interest to another. What is new and contemporary is the introduction of the conditional procedure that must be complied with, before a legal transfer can be successfully concluded. Thus, this condition referred to as Governor's Consent was introduced under the Land Use Act 1978. This paper further reveals the following;

1. The Land Use Act 1978 has abrogated the system of fee simple interest ownership of land. All interest in land in the territory of each State has been vested on the Governor of that State to hold in trust for the use and benefit all Nigerians. The Act gave the Governor power and authority to administer all lands in the State, to the extent that, the Governor grants statutory right of occupancy to individuals and corporations.
2. Where a holder of this Statutory Right of Occupancy intends to reassign his unexpired interest in land, especially land situate in an urban area, he or she must have obtained the consent of the Governor first. Failure to obtain the consent will amount to violation of Section 22 of the Land Use Act and the transaction will be null and void. The reassignment referred to, includes mortgage, transfer of possession, sublease or any form of alienation of interest in land.
3. That the consent of the Governor is not automatic. Where consent has been given in a particular transaction, the beneficial assignee or whosoever that to alienate or relinquish his unexpired interest or mortgage or sublease to another third party notwithstanding, the Governor's Consent must be first had and obtained. The implication of the foregoing is that, in every transaction relating to land in the urban area and covered with the Statutory Right of Occupancy, Governor's Consent is inevitably required.
4. Flowing from this paper, it was further observed that the persons who requires the consent of the Governor includes, those with statutory right of occupancy and those with deemed right of occupancy. In other words, all parties to a land transaction in the urban area who intends to alienate or take interest in such land, must first obtain Governor's consent.

5. Most worrisome is the fact that, for parties to seek and obtain Governor's Consent, they must fulfill the condition precedent as provided for in Section 22 (2). The provision requires the parties to submit an already executed instrument evidencing the transaction. The implication here is that, parties must have concluded the transaction by reducing it in writing and execute same as requirement for an application for governor's consent. In essence, the Governor's consent is required after parties have produced and executed the instrument evidencing the transaction. Finally, mere preparation and execution of instrument makes the transaction inchoate.
6. Most recently, there is a paradigm shift from what was obtainable in relation to first seeking for and obtaining Governor's Consent. Thus, in *Obaje's Case*, the Supreme Court in its wisdom has held that Governor's Consent does not apply to alienation of interest in land not covered by a statutory right of occupancy. Especially where the alienation is between private individual and there is no overriding public interest or conflict between the parties. The effect of the decision reiterated above is that, those deemed to have acquired right of occupancy can legally alienate interest in their land without necessarily first seeking for and obtaining Governor's consent.

It should be borne in mind that the rationale for the vesting of the land comprised in a state on the Governor is for the effective control and management of same. It is not intended to constitute a debilitating sore or obstacle to effective land transaction by private individuals. The case of *Yakubu vs. Simon Ogbaje* is instructive.

6. Conclusion and Recommendations

The concept of Governor's Consent being first obtained is no longer new for any party seeking to alienate his interest in a property. Whether the alienation is in part or in whole as in the case with Assignment, Leases or Mortgage. Although from the provisions of Section 22(2) of Land Use Act 1978, a condition must be fulfilled to obtain the consent, which is the submission of executed instrument evidencing the transaction. It follows the mere fact that there exists an already executed instrument in evidence of the transaction without the consent which makes the process inchoate. It must, therefore, be underlined that failure to seek for and obtain the Governor's Consent, notwithstanding the execution of a document of

conveyance, such transfer or alienation remains void. Consent is to be sought by those categories of people with the deemed right of occupancy based on the provision of the Act. However, the law Lords in the Nigerian apex court in interpreting the intentions of the draftsman, as held in *Obaje's Case*, separating land covered by a statutory right of occupancy and those referred to as deemed right of occupancy, wherein in their wisdom, they opined that such category do not require the consent of the Governor for a valid alienation between private individuals. In order to introduce flexibility into land transactions in Nigeria, this paper makes the following recommendations:

1. The revisions of Sections 21 and 22 of the Land Use Act 1978, to allow for the Governor's right to grant consent before alienation or transfer of interest in land to be delegable, whether, it is outright assignment, mortgage, lease or sublease. This is because the Governor as a person with so much responsibility will not have the time to attend to many of such issues within the period provided in the constitution as to tenure in office.
2. Similarly, the above section should be amended to reflect that Governor's consent be first obtained before parties can execute the instrument evidencing the transaction. However, the said instrument may be prepared and submitted to Governor as part of the application for the consent.
3. The Section referred to above should be amended to reflect that Governor's consent should not be a compulsory requirement for the alienation or transfer of interest in lands declared to be having deemed rights of occupancy, especially, since there is no statutory right of occupancy granted them by the Governor. In reality, this is not practicable, as interest in so many properties in the urban areas, which are perceived as to have deemed right of occupancy have been successfully transferred by Deed of Conveyance.
4. The urgent need for amendment of the Land Use Act Section 22 above and all other Sections dealing with the grant of Governor's consent, including Sections 21 and 34, to reflect the decision of the Supreme Court of Nigeria as opined in the celebrated case of *Yakubu v. Simon Obaje*, where it held that consent provision under the Land Use Act does not apply to transfer/alienation of right between private individuals in the absence of overriding public interest or conflicts between the parties.

5. The subjugation of conveyances between individuals devoid of the consent of Governor for purposes of second lending transactions should be discouraged as lender can get the borrower to execute documents including Power of Attorney that can guarantee his interest in the land and secured at all times material to the loan transaction.

