RE- APPRAISING THE RIGHT OF FOREIGN NATIONALS UNDER THE NIGERIAN LAND USE ACT

Abstract

This paper examines the right of foreigners to own land under the Nigerian Land Use Act with a view to determining the state of the law on this subject matter. The Land Use Act did not make any express provision prohibiting foreigners from accessing land in Nigeria for industrial, commercial or residential purposes. However, the Act conferred the power to make regulation in this regard on the National Council of States. Unfortunately, the National Council of States has not yet exercised this power thereby leaving a lacuna on the position of the law in this regard. The Nigerian Supreme Court has laid down a precedent to the effect that foreigners cannot own land in Nigeria. The paper found that a closer examination of the state of statutory authorities would reveal that there is no blanket prohibition on the right of foreign nationals to own land in Nigeria The paper further found that the Land Tenure Law of Northern Nigeria merely made the right of access to land by "non-natives" subject to the approval of the Minister. The term "non-natives" as used under the Land Tenure Law of Northern Nigeria extended to people whose parents are not members of any tribe indigenous to Northern Nigeria. The acquisition of Land by Aliens Law of Lagos State and other States actually came close to a blanket prohibition. The paper also discovered that the provisions of the Land Use Act as it affects the right of foreigners to own land in Nigeria is imprecise. The paper attempted to resolve the inherent conflict between the aforementioned sub national laws and the Land Use Act which is an Act of the National Assembly entrenched in the Constitution. Recommendations were also made on how the law on this subject matter can be improved.

Key Words: "Land", "Ownership", "Foreign Nationals", "Constitution", "Non-Natives", "Aliens"

1 Introduction

The Land Use Act[1] was enacted in 1978 and entrenched the principles of state control and ownership of land in Nigerian Land Law jurisprudence. The traces

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of this principle in a statutory blend were hitherto restricted to certain provisions in the Land Tenure Law of Northern Nigeria[2]. The Land Tenure Law of Northern Nigeria was the precursor to the Land Use Act and was the first enactment to clearly amd legislatively entrench state regulation and control of Land Tenure in Nigeria by making the following provisions:

> All native lands and rights over the same are hereby declared to be under the control and subject to the disposition of the Minister and shall be held and administered for the use and common benefit of the natives; and no title to the use and occupation of any such lands by a non- native shall be valid without the consent of the Minister[3].

The Land Tenure Law did not however vest the radical title in land on the Minister or Governor. It nevertheless empowered the Minister to allocate occupied or unoccupied land for use by the natives of the region and non-native residents as the need arose. The Law made the following provisions in this regard:

> It shall be lawful for the Minister-
>
> (a) to grant rights of occupancy to natives and non-natives;[4]

Thus, the radical title remained with the original land owners but such titular rights could be interrupted by the Minister while making a grant to a native of the region or to non-native residents.

The Land Use Act on the other hand expressly vested the radical title to all lands in the territory of any state of the federation on the Governor of that state. The Act provides as follows:

> Subject to the provisions of this Act all land comprised in the territory of each state in the federation are hereby vested in the Governor of that state to be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act[5].

This vesting provision of the Act appear to be the major thing that sets it apart from the Land Tenure Law of Northern Nigeria. Many legal scholars have asserted that the Act merely nationalized the Land Tenure Law. A key factor that led to the success of the law was that land tenure had always been centralized under the Emirs in the Sokoto Caliphate. This is in contrast with the position in the Southern parts of Nigeria where land was predominantly owned either by the community or the extended family or kindred. The Law merely substituted the Emirs with the

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[1] Cap L5, Laws of the Federation of Nigeria, 2004
[2] Land Tenure Law, Cap 59, Revised Laws of Northern Nigeria, 1963
[3] Section 5 *ibid*
[4] Section (6)1 (a) *ibid*
[5] Section 1, Land Use Act, Cap L5 laws of the Federation of Nigeria, 2004

Minister. One controversial and unsettled issue that has arisen from the above provision is the question of the right of foreigners to own land by virtue of statutory or customary rights of occupancy provided for under the Act. The Land Tenure law in its interpretative section clearly defined a "native" as "a person whose father was a member of any tribe indigenous to Northern Nigeria" and a "non-native" as "a person other than a native…"[6] Conversely, there is no place in the Land Use Act where the terms "foreigner", "alien", "native or "non-native" were used or defined. This is why it could be difficult to exclude non Nigerians from the concept of "any person" contemplated by Sections 5 and 6 of the Land Use Act.

2 Global Perspective on Restraint of Right of Foreigners to Own Land.

Land is a vital component of the sovereign life of an independent nation state. It is the territorial aspect of a nation state's sovereignty. Investments in Housing, agriculture, natural resource utilization and national security are all anchored on the availability of land as well as access to such available land by the states' citizens and other residents of the sovereign state.

One key feature in the emergence of the modern state is the classification of non citizens as "foreigners" or "aliens". A major characteristic of this classification is that those that are so classified are considered not to be proper persons to be entitled to full rights of land ownership and use. Much as it may be true that the nations of the modern world have become interdependent and as such tend to accept the right of the citizens of other nations resident in their state to receive the same treatment as their own citizens, many states still restrict the right of foreigners to exclusively own and use land in their territories.[7]

Restrictions on the right of foreigners to own land is a widespread practice by most states of the world. This restriction is carried out by the use of diverse legal provisions as well as administrative techniques. State and national security as well as protection of their citizens against exploitation and unbridled economic competition from the nationals of other countries, are the major reasons advanced and cited for this practice. Customary International Law does not place any restriction on the right of states to restrict foreign ownership of land within their territories. This is anchored on the recognition of the sovereignty of states over their natural resources-including their lands. States are also entitled to prevent the entry of foreigners or allow them entry on the terms that they may not own or use land or restricting and regulating such use.[8]

There are however some countries of the world that do not have any restriction on the right of foreigners to own land in their territories. The countries acknowledged for this Liberal approach include Germany, France, the United Kingdom, Portugal, the Netherlands, Belgium and Luxembourg[9]. Germany is known to make no distinction between citizens and non-citizens in terms of property ownership.[10] In Belgium, right to property is considered a fundamental

[6] Section 1, Land Tenure Law, Cap 59, Revised Laws of Northern Nigeria, 1963.
[7] Principle 2 at the Rio Janero Declaration at the Earth Summit of 1992
[8] R Jennings and A Watts eds. *Oppenheim's International Law* (London, 1992) at 121
[9] Stephen Hodgson et al, *Land Ownership and Foreigners: A Comparative Analysis of Regulatory Approaches to Acquisition and Use of Title by Foreigners* (New York: Food and Agricultural Organization (FAO, 1999) at 2.
[10] Article 14(2) of the German Grundgesetz

human right of Belgians and non-Belgians alike.[11] The French Civil Code also made similar provisions.[12] Others include Argentina, Chile, Columbia, Paraguay, Uruguay and Venezuela[13]. In addition to express provisions restricting the right of foreigners to own land, limits to foreign investments by foreigners and discriminatory tax regimes as well as foreign exchange restrictions could also indirectly impact on the right of foreigners to own land in a nation state.

3 Legal Frameworks for the Restriction of Right of Foreigners' Access to Land Ownership in Nigeria.

The land use act made no express provisions restricting the right of foreigners to own land in Nigeria. Such express restrictions as regards land ownership and use by foreigners in Nigeria are to be found in pre-Land Use Act legislations made by the component states of the Nigerian Federation. It has however been contended that the Land Use Act actually restricted the grant of the right of occupancy to only Nigerian citizens when it stated in its Section 1 that 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 term "for the use and common benefit of all Nigerians" have been restrictively interpreted by the courts to exclude foreigners[14]. The contention for the exclusion of foreigners was furthered by the court when it held that the land Use Act did not abrogate the earlier legislations restricting the right of foreigners to own land in Nigeria. The most significant of these legislations are the Land Tenure Law of Northern Nigeria, the Acquisition of Land by Aliens Act of the Federal Capital Territory and the Acquisition of land by Aliens Laws of the various states.

4 Appraising the Provisions of the State Land Laws:

Before delving into the provisions of the state land laws as it affects the rights of foreigners to own land, it is apposite at this stage to point out that state land laws are applicable only to the extent that they do not conflict with the provisions of the Land Use Act. In this respect, the Land Use Act provides as follows:

> All existing laws relating to the registration of title to, or interest in land or the transfer of title to or any interest in land, shall have effect, subject to such modifications (whether by way of addition, alteration or omission) as will bring those laws into conformity with this Act or its general intendment[15].

From the above provision, it is safe to conclude that the state land laws restricting the right of foreigners to own land in Nigeria can only apply to the extent that they are not inconsistent with the provisions and general intendment of the Land Use Act. The provisions of these state laws as they affect the right of foreigners to land in Nigeria will now be considered.

4.1 The Land Tenure Law of Northern Nigeria

[11] J P Gardner, ed. *Hallmarks of Citizenship,* Green Paper, London, 1994.
[12] Article 711 of the Civil Code of France.
[13] Argentina is however said to have made some veiled restrictive provisions: Joshua Westman, *Restriction on the Acquisition of Land by Aliens* 28 Am. J. Comparative L. 39 (1980)
[14] *Heubner V. A. I. I.* (2017) 14 NWLR (pt. 1586) 397
[15] Land Use Act Cap L5 Laws of Federation of Nigeria , section 48.

As earlier stated, this law introduced the concept of state regulation of land in Nigeria by modifying the rules of communal ownership encapsulated in the customary land tenure practices of Northern Nigeria.

The law expressly prohibits the transfer of any land to a non-native except with the approval of the Minister. The law provides as follows:

> It shall not be lawful for any customary right of occupancy or any part thereof held by a native to be alienated by sale, assignment, mortgage, transfer of possession, sublease, bequest, or otherwise howsoever-
>
> a) to a non-native without the consent of the minister first heard and obtained
> b) to a native without-
> i) the consent of the minister in cases pulled by or under the order of the High Court under the provisions of the Sheriffs and Civil Process Law;
> ii) the approval of the native authority in whose area the property is situated in other cases.[16]

It is clear from the foregoing section of the Law that there was no blanket ban or prohibition on the right of foreign nationals owning land in Nigeria. The act only made such acquisitions subject to the consent of the Minister. A similar provision was made in respect of grant of right of occupancy to non-natives and foreign nationals in Section 5 of the Law. It is instructive to note that under this Law, other Nigerians who are not members of tribes that are indigenous to Northern Nigerian were described as non-natives and therefore in the same category as foreign nationals

4.2 The Acquisition of Land by Aliens Law of Lagos Stat

This law is *impari materia* with the Acquisition of Land by Aliens Act of the Federal Capital Territory as well as the Acquisition of Land by Aliens Laws of the various states. The law provides as follows:

> Except as provided by this law and any regulation or orders made under the law-
>
> a. An alien may not acquire any interest or right in or over land from a citizen of Nigeria unless the transaction under which the interest or right is acquired has been previously approved in writing by the Governor.
> b. Provided that where any such interest or right to be acquired by an alien is less than three (3) years including any option for renewal, the provisions of the law will not apply and

[16] Section 27, Land Tenure Law, Cap59, Laws of Northern Nigeria, 1963

c. Where such interest or right has been lawfully acquired by an alien, that interest or right will not be transferred, alienated, demised or otherwise disposed of to any other alien or be sold to any other alien under any process of law, without prior approval in writing by the Governor of the transaction or sale as the case may be.
d. Any agreement and any instrument in writing or under seal by or under which an alien purports to acquire any interest or right in or over any land (other than any interest or right acquired pursuant to the provisions of this law and regulations and orders made under this law) and which forms part of or gives effect to a transaction that has not been duely approved in accordance with the provisions of this law will be void and of no effect[17].

The law went further to state that where an alien has lawfully acquired an interest or right of ownership in or over any land from a citizen of Nigeria and such interest or right becomes liable to be sold under any process of law, then such sale will be ordered to be made to the State Government in the first instance, and if the Government declines, then to a citizen of Nigeria[18].

The law also made it a crime punishable by fine of N180,000.00 or imprisonment for twelve months for any alien or a person claiming through such an alien to unlawfully occupy any land belonging to a citizen of Nigeria[19]. It is therefore beyond a civil infraction remediable by declaration and order for damages. Such an alien will only be exempt from punishment where such occupation was as a result of a transaction which had received the prior consent of the Governor in accordance with Section 1 of the law, or was acquired in accordance with any regulation or order made in pursuance of the law; was acquired by the evidence of an instrument which had been approved by the Governor under any statute; was acquired before the commencement of the law or that such acquisition was authorized by any other enactment[20]. The implication of these wide restrictive provisions is that there cannot be a private valid land transaction between a Nigerian citizen and an alien that is for a period exceeding three (3) years without the prior beaming of the security searchlight of the Governor upon such a transaction.

The law confers on the Governor a very wide discretion to exempt any alien or body corporate from the application of the restrictive provisions of the law and to determine by order, the terms and conditions to be included in any agreement submitted to him for his approval[21].

One interesting feature of the law is that it not only defines an "alien" as any person other than a citizen of Nigeria, Unlike the land tenure Law of Northern Nigeria the term aliens was used under the acquisition of land by Aliens Law of Lagos State to mean persons that are not Nigerian citizens. It does not extend the meaning of the word alien to other Nigerians who are not from Lagos State. This definition of Alien under the Lagos Law is tandem with the meaning of "Alien" under the immigration act and other national legislation. The Law extends the context of the term "Alien" to include corporate bodies which all the shareholders or a majority of them are not Nigerians. The only corporate bodies excluded from this Nigerian content provisions of

[17] Section 1(1) – 1(2), Acquisition of land by Aliens Law, Cap AI Laws of Lagos State, 1974
[18] Section 2(3) *Ibid.*
[19] Section 3(2) *Ibid*
[20] Section 3(1) *a-e*
[21] Section 6 *Ibid.*

the Law are those established under any law of a state relating to local government or education and empowered by the enabling law to own land, and other corporate or unincorporated bodies or associations which the Governor may by Order declare to be exempt from the application of section 1 of the Acquisition of Land by Aliens Laws of Lagos State[22].

The acquisition of land by Aliens Regulation made under the Law provides for a maximum period of twenty five (25) years for all acquisitions of land by Aliens[23]. This Law is more extensive on its restriction on the right of foreign nationals to own land than the Land Tenure Law of Northern Nigeria. While the Land Tenure Law of Northern Nigeria does not limit the term of years of right to Land that could be granted to an alien with the relevant consent of the minister, the Acquisition of Land by Aliens Law of Lagos State has by regulations made pursuant to the Law, limited the right of occupancy that could be granted to an alien or foreign national to a maximum of twenty-five (25) years.

4.3 The Land Use Act.

The Land Use Act made no express provisions restricting the right of foreigners or aliens to own land in Nigeria except to the extent of the interpretation of the terms "for the common benefit of all Nigerians", to exclude non-Nigerians.

Sections 5 and 6 of the Land Use Act have also made the following interesting provisions:

> 5. (I) It shall be lawful for the Governor in respect of land whether or not in an urban area.
> (a) To grant statutory rights of occupancy to **any person** for all purposes;
>
> 6. (I) It shall be lawful for a local Government in respect of land not in an urban area.
> (a) to grant customary right of occupancy to any person or organization for the use of land in the local Government area for agricultural, residential and other purposes.

It may also be necessary to examine Section 46 of the Land Use Act which states as follows:

> The National Council of States shall make provisions for the purpose of carrying this Act into effect and particularly with regard to the following matters:
> a. the transfer by assignment or otherwise howsoever of any rights of occupancy whether statutory or customary including the conditions applicable to the transfer of such rights to persons who are not Nigerians.

[22] Section 8 *Ibid*
[23] Regulation 4(9), Acquisition of Land by Aliens Regulations.

The above provision undoubtedly reveals that the Act envisaged that "right of occupancy" which is the highest form of title under the Land Use Act, could be granted or made transferable to non-Nigerians. Unlike the partially restrictive provisions of the Land Tenure Law of Northern Nigeria and the expressly prohibitive provisions of the Acquisition of Land by Aliens Law of Lagos State, the Act had laid the foundation for transferability of right of occupancy to non-Nigerians in this section. What remains however is for the National Council of States (NCS) to do the needful by providing the necessary legal framework for actuating such transfers.

5. Appraising the Decisions of the Nigerian Courts on the Right of Foreigners to own Land in Nigeria.

In *Chief S. O. Ogunola & Ors V Hoda Eiyekole & Ors* [24] it was held unanimously by a majority of the supreme Court, that the words "any person" as used in Section 36(1) of the Land Use Act refers exclusively to "any Nigerian". According to their Lordships, the Land Use Act did not abrogate any pre-existing law which limits the rights of Aliens to own land in Nigeria. The court was firmly of the opinion that a foreigner cannot apply for a statutory or customary right of occupancy because the construction of the words "any person" as used in the section simply meant "any Nigerian" and excludes persons who are not Nigerians.

The ratio in the above decision was re-echoed and strengthened by the supreme court in the more recent case of *Heubner v A. I. E. & P Company Ltd*[25]. In that case, a German National occupied a large area of Land on the Kajuru Hills in Kaduna State through the assistance of the Emir of Zaria. He later sought for right of Occupancy over the said land but was informed that it was not possible under the extant laws since he was a foreign national. He paid the purchase price of the land but obtained the necessary right of occupancy in the name of the respondent company who was also the defendant at the High Court. At the time of obtaining the right of occupancy, he was the chief executive officer of the defendant company. Upon his resignation from the defendant company, he wrote to the company demanding that the property should be re-conveyed to him. The Company declined insisting that title was in the company. The appellant as plaintiff at the lower court sued the defendant company claiming entitlement to the right of occupancy over the said land. Plaintiff's suit was dismissed at the High Court and his appeal to the Court of Appeal was also dismissed. On further appeal to the Supreme Court, the Court held that foreigners cannot own land in Nigeria under the Land Use Act. The import of this decision is that a foreigner can neither apply for a statutory or customary right of occupancy or have came assigned or transferred to him in Nigeria.

There are recondite issues of law arising from these decisions. First, it is beyond contention that both the Land Tenure Law of Northern Nigeria and the Acquisition of Land by Alien Laws of the various state partially and expressly restricted the right of Aliens to own land in Nigeria. respectively The Land Tenure Law of Northern Nigeria allows limited rights to land in favour of Aliens subject to the approval of the Minister. In the case of the Acquisition of Land by Aliens Law of Lagos State, a maximum of twenty five (25) years lease may be granted to individual or corporate Aliens subject to the approval of the Governor[26]. The Lagos law even went further to include corporate bodies majority of whose shareholders are not Nigerians in its

[24] (1990) 4 NWLR (pt 146) 632 @ 642
[25] (2017) 14 NWLR (pt. 1586) 397
[26] Regulation 4 made pursuant to the Lagos Law

definition of the word "Alien". This implication of this definition is that for corporate bodies registered under the Companies and Allied Matters Act (CAMA) with majority of its shareholders as foreigners, incorporation will not avail such a body of any exemption to the provisions of Section 1 of the Acquisition of Land by Aliens Law.

Notwithstanding the above position, Section 315(6) of the constitution of the federal Republic of Nigeria, 1999 has adopted the Land Use Act as an existing enactment of the National Assembly. This provision by the Constitution has cured a defect that would have rendered the Land Use Act unconstitutional. The defect arises from the fact that the subject matter of acquisition and tenure of land being ordinarily an issue for the residuary legislative list in the 1999 Constitution has been legislated upon by the National Assembly.[27] Section 315(6) of the 1999 Nigerian Constitution has however elevated the subject matter of "Acquisition and Tenure of Land" from a supplemental item (part III)[28] which is within the legislative competence of the states to the Concurrent List (Part 11)[29] which falls within the legislative jurisdiction of both the National Assembly and the State Houses of Assembly.

As a consequence, the Land Tenure Law of Northern Nigeria and the Acquisition of Land by Aliens Law of Lagos State can only operate to restrict the right of foreigners to access to land in Nigeria to the extent of where the Land Use Act does not make other provisions in that regards. This is the position under the doctrine of covering the field. For example, Section 48 of the Land Use Act provides that all such previous enactments shall have effect subject to such modifications (whether by way of addition, alteration, or omission) as will bring them into conformity with the Act or its general intendments.

Furthermore, section 46 of the Land Use Act earlier reproduced empowers the National Council of States (NCS) to make regulations for the purpose of carrying the Act into effect with regards to the transfer by assignment or otherwise however of any rights of occupancy, whether statutory or customary including the procedure applicable to the transfer of such rights to persons who are not Nigerians. It is submitted that the provisions of the Land Tenure Law of Northern Nigeria and the Acquisition of Land by Aliens Law of the various States which the Supreme Court relied on in pronouncing that the Land Use Act did not abrogate pre-existing statutory restrictions on the right of Aliens to own and access land in Nigeria cannot override or supplant the provisions of section 46 of the Land Use Act under the doctrine of covering the field.

We also find common ground in the contention of counsel to the appellant in Heubner's case that the term "any person" as used in sections 5 and 36 of the Land use Act may not actually preclude persons that are not Nigerians. A combined reading of sections 1 and 5 or 1 and 36 of the Land Use Act could portend the terms "for the common benefit of all Nigerians" to include purposes which are beneficial to all Nigerians such as economic, scientific, technological, etc purposes that could benefit all Nigerians irrespective of "any person" to whom statutory or customary rights of occupancy to such lands are granted to by the Governor. A liberal approach to the interpretation of the term "any person" in the context of "common benefit of all Nigerians" may include Foreigners who are granted land in a way that such grants will benefit all Nigerians.

[27] I O Smith; *Practical Approach to Real Property In Nigeria* (Lagos: Ecowatch Publications, 2013) p.473
[28] 2nd schedule to the 1999 contd. As amended
[29] *Ibid*

6 Conclusion

The current judicial stance is that foreigners cannot be granted a statutory or customary right of occupancy under the Land Use Act on Nigeria. This position is anchored on the opinion that the Land Use Act did not abrogate pre-existing restrictive enactment that limit the right of foreigners to own land in Nigeria. However, the land use act did not make any express provision restricting the right of foreigners to own land in Nigeria. It only postponed the actualization of such rights to time when the National Council of States would have made regulations in respect of same. Section 44(1) of the 1999 Nigerian Constitution clearly provides that:

> No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law…

The above provision in Chapter iv of the Nigerian Constitution entrenched fundamental human rights in favor of Nigerian citizens. The benefit of this constitutional provision appear not to extend to persons that are not Nigerian citizens unlike the Belgian Constitution which provides that right to property is a fundamental right for both Belgians and non-Belgians alike. It is not however very clear whether the Land Use Act has not consequentially modified the restrictive provisions on the right of foreigners to own land contained in existing state land laws as opined by the Court in *Ogunola's* case. This is because the Land Use Act, as a federal enactment, under the doctrine of covering the field, is a superior legislation to the State Land Laws. The Land Use Act is therefore a relevant enactment to consider in order to determine the rights of foreign nationals to own land in Nigeria

A closer look at the state of the statutory law however clearly reveals that the Land Use Act under the doctrine of covering the field has through its saving provisions modified the application of such sub-national enactments so as to bring them into conformity with its own general intendments. The general internment of the Land Use Act is to make land easily available for the use of Nigerians for industrial, commercial and residential purposes subject to the interpretation of the terms, "any person" as it relates to the "common benefits of all Nigerians".

While a liberal interpretation of the terms "common benefit of all Nigerian" and "any person" could be extended to include non-Nigerians, the Land Use Act went further ahead to empower the National Council of States (NCS) to make regulations for the assignment and transfer of rights and interest in land to persons who are not Nigerians. This implies that foreign nationals could continue to hold title to the land in their possession pending the making of regulations by the national council of states Nigeria

Reducing restrictions on the right of foreigners who are bringing in investments into the country could be a way of encouraging the much needed Foreign Direct Investment (FDI) into the Nigerian Economy. Conversely, fostering the restrictions through restrictive judicial interpretations of the Land Use Act could have the effect of bolstering unnecessary land agency and touting by Nigerians which will in the long run be a clog to the flow of Foreign Direct Investment (FDI). Rather than a blanket prohibition, the appropriate approach should be to balance the common benefits of all Nigerians within the context of every grant of land made to a

foreign national or foreign corporate body. The Land Tenure Law of Nigerian made a more wholesome provision in this regard in respect of "non-natives". It did not proscribe the grant of right of occupancy to "non-natives". It only made the grant and transfer of land to "non-natives" subject to the consent and approval of the minister. The terms "non-natives" extended to foreign nationals. It would have been expected that the Land Use Act should have incorporated a similar provision with respect to the right of foreign nationals to own land in Nigeria.

7 Recommendations

The National Council of States should as a matter of urgency exercise the power conferred on it by section 46 of the Land Use Act by coming out with patriotic and balanced regulations that will clearly define the rules regulating the right of foreigners to own and access land in Nigeria. This will eliminate the confusion arising from the Supreme Court's decision in *Heubner's* case. The present state of the law is that neither an individual foreign national or a corporate foreign national can enjoy land ownership in Nigeria in expense of twenty-five (25) years lease. By a strict interpretation of Section of the Acquisition of Land by Alien's Law of Lagos State, a foreign company cannot own land in Nigeria in excess of a twenty (25) years lease.

The Supreme Court should at the earliest opportunity reverse its pronouncements on this matter in its decision in *Heubner's* case so as to remove the blanket prohibition on the right of foreigners to own land in Nigeria. For example, can the German national acquire the right to the Kajuru land with the consent and approval of the governor of Kaduna State under the Land Tenure Law of Northern Nigeria? In the dissenting judgement of Agbaje JSC (as it then was) in Ogunola's case, the learned jurist held that a foreigner who was in valid acquisition of land before the commencement of the Land Use Act qualified as a holder/occupier who is entitled to deemed customary right of Occupancy under Section 36 of the Land Use Act where such land is being used for agricultural purposes. The act by implication is favorably disposed to grsnting rights of occupancy over land in rural areas for agricultural purposes to even foreign nationals who may be interested in contributing to the Nigerian economy through large scale mechanized agriculture. Such a foreign national need not be a corporate body incorporated under the Companies and Allied Matters Acts(CAMA) as a limited liability company.

The National Assembly should upon any proposed amendment of the Land Use Act clearly define what the terms "for the benefit of all Nigerians" and "any person" means within the context of the general intendment of the Land Use Act. This will largely eliminate the confusion created by the notion that a foreigner cannot own land in Nigeria.