

**COMPULSORY ACQUISITION OF COMMUNAL
LAND AND COMPENSATION ISSUES: THE
CASE OF MINNA METROPOLIS.**

BY

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FIG* An Estate Surveyor and Valuer



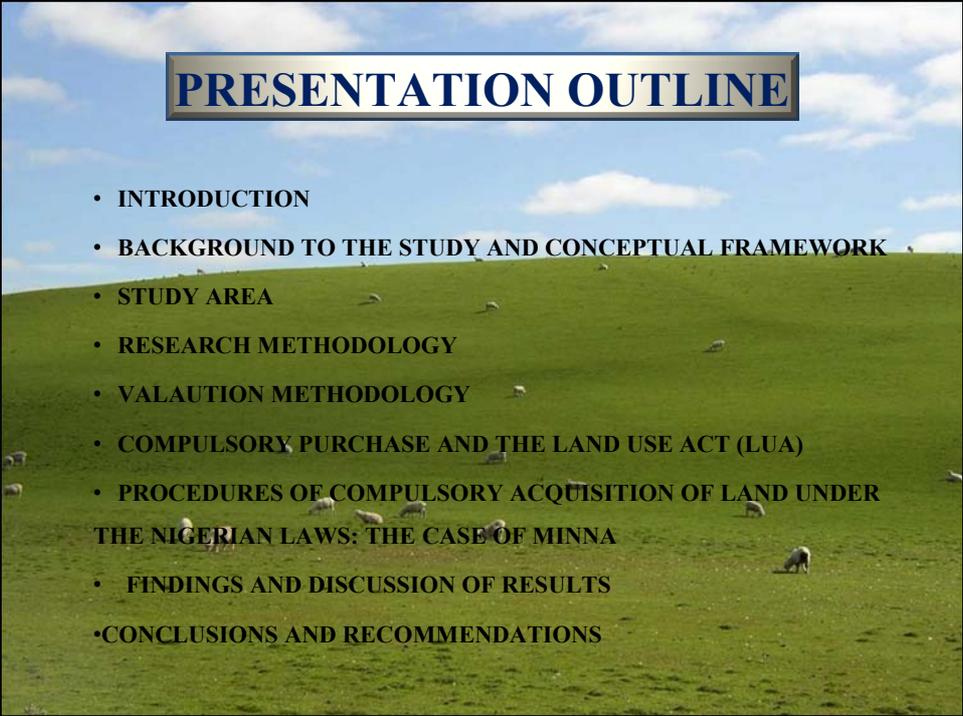
** A Barrister at Law

BEING A PAPER PRESENTATION AT THE

EILAT 2009, FIG WORKING WEEK

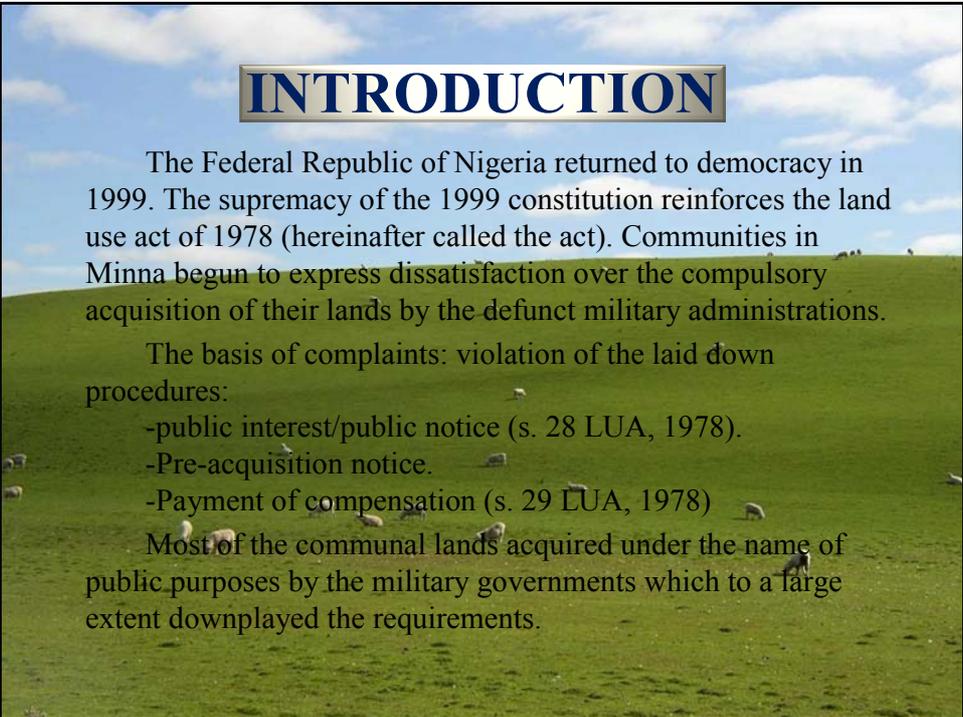
THEME:- Surveyors Key Role in Accelerated
Development

WITH THE SUB-THEME: TS 7E-
*COMPULSORY PURCHASE AND COMPENSATION
VALUATION IN REAL ESTATE DEVELOPMENT AT
Dan Eilat Hotel, Eilat, Israel, 7 May, 2009*



PRESENTATION OUTLINE

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INTRODUCTION

The Federal Republic of Nigeria returned to democracy in 1999. The supremacy of the 1999 constitution reinforces the land use act of 1978 (hereinafter called the act). Communities in Minna begun to express dissatisfaction over the compulsory acquisition of their lands by the defunct military administrations.

The basis of complaints: violation of the laid down procedures:

- public interest/public notice (s. 28 LUA, 1978).
- Pre-acquisition notice.
- Payment of compensation (s. 29 LUA, 1978)

Most of the communal lands acquired under the name of public purposes by the military governments which to a large extent downplayed the requirements.

BACKGROUND TO THE STUDY AND CONCEPTUAL FRAMEWORK

Communities claim for illegally acquired land has taken toll in Minna, the Niger State metropolis since 1999. The Gwaris, hereinafter called the natives, who are the primary hosting community, have shown gesture of hospitality to the “strangers.”

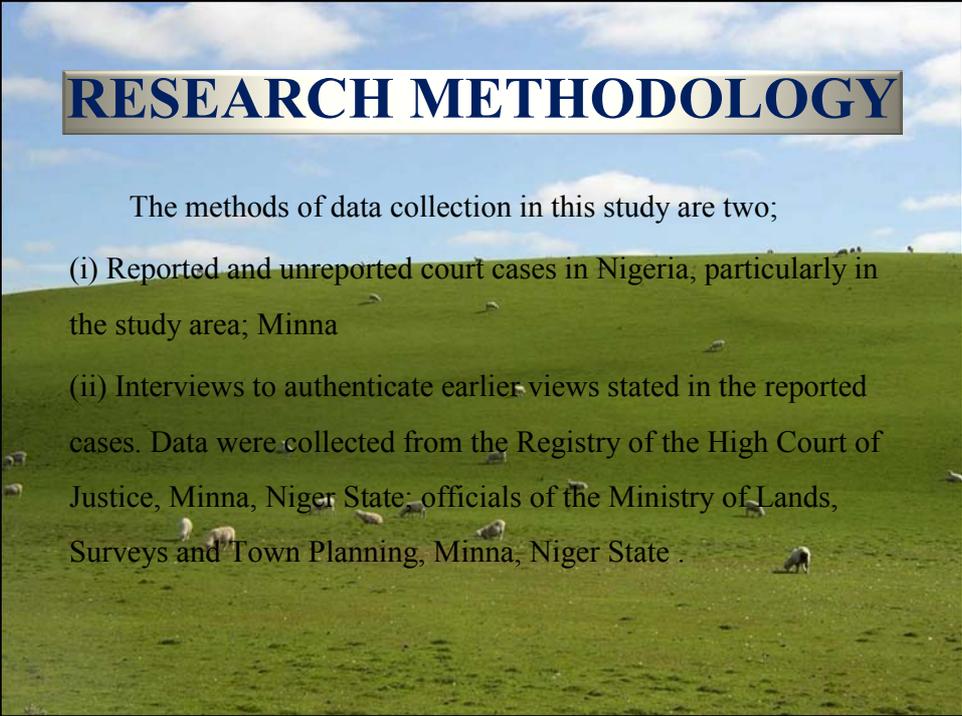
The Gwari tribes enjoyed absolute ownership over this land, absolute against any other interest, until the commencement of the Land Use Act in 1978. Act vested all land within the state in the state governor who holds and administers the land for the benefit of all. (section 1)

The Act also gives the governor power to compulsorily acquire any land for public interest. (s. 28).

Most cases in court instituted by the communities call for regularization of the state land acquisition.

STUDY AREA

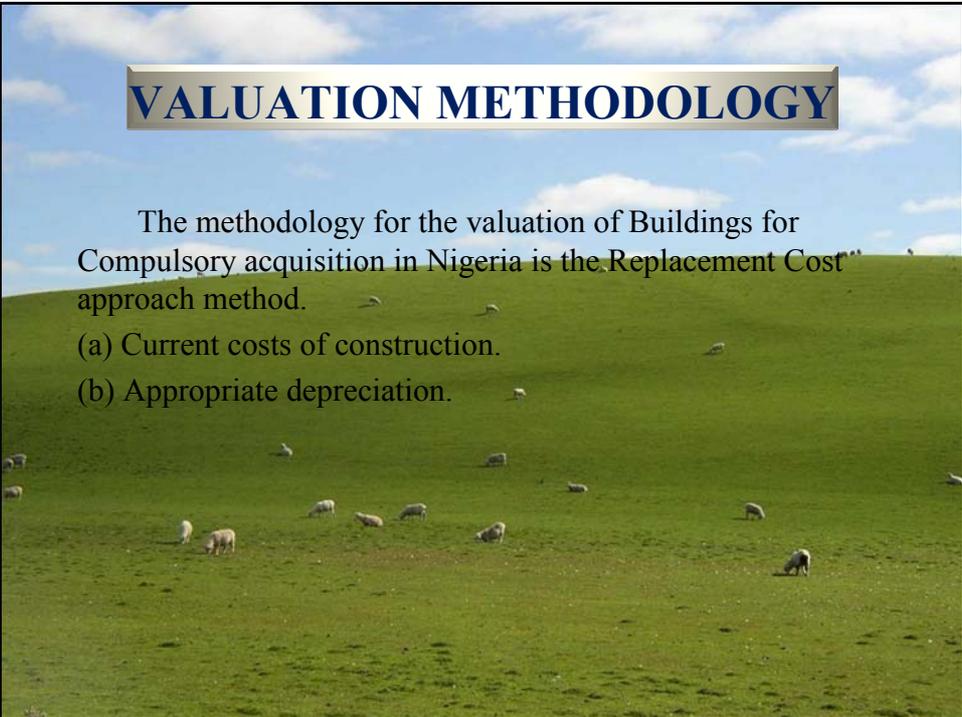
- Area:** Minna.
- State/Country:** Niger, Nigeria.
- Indigenous Tribe:** Gwari.
- Settlement:** Lies in the middle belt region of Nigeria, at latitude $9^{\circ} 37'$ North of the equator and longitude $6^{\circ} 33'$ East of the Green which meridian. The town is the north-west of the Federal Capital Territory, Abuja.
- Political:** February 1976, Minna became the state capital of Niger State.
- Population:** The total population of Minna in 2006 census was 201,429 (105,803 males and 95,626 females).



RESEARCH METHODOLOGY

The methods of data collection in this study are two;

- (i) Reported and unreported court cases in Nigeria, particularly in the study area; Minna
- (ii) Interviews to authenticate earlier views stated in the reported cases. Data were collected from the Registry of the High Court of Justice, Minna, Niger State; officials of the Ministry of Lands, Surveys and Town Planning, Minna, Niger State .



VALUATION METHODOLOGY

The methodology for the valuation of Buildings for Compulsory acquisition in Nigeria is the Replacement Cost approach method.

- (a) Current costs of construction.
- (b) Appropriate depreciation.

COMPULSORY PURCHASE AND THE LAND USE ACT (LUA)

It is wrong to assume that the Land Use Act of 1978 has totally transferred ownership of land to the governor.

Despite the Land Use Act, the native holding over the land remains intact. According to Belgore JSC, "...the Act which appeared like a volcanic eruption is no more than a slight tremor." *Abioye v. Yakubu* (1991) 5 N.W.L.R. (Pt. 190) p. 130 @ 240.

Status of communal ownership of land under the Act.

S.50 (1) "Customary Right of Occupancy" means land holding right enjoyed by a person or community according to customary law.

"The Act is not a draconian document it is thought to be. Land whether developed or undeveloped even in a rural area held by a person under a recognized customary tenure before the commencement of the Act will continue with such rights and privileges on the land, subject to the provisions of the Act..." per Ogbuaju, J.S.C. in Adole v. Gwar (2008) 4 SCNJ 1 at 6.

The purport of the above decision is that communal land rights enjoyed by the natives on lands within the metropolis remain unfettered and such can only be ripped in accordance with Sec.44 (1) of the 1999 Constitution (the Constitution).

PROCEDURES OF COMPULSORY ACQUISITION OF LAND UNDER THE NIGERIAN LAWS: THE CASE OF MINNA

The fundamental elements required to affect the procedure for compulsory acquisition include:

- i. Adequate notice to be given to the owner.
- ii. Compensation be paid and.
- iii. The acquisition must be for “public interest”.

Under the Nigerian laws, the above procedures are not just statutory, they are constitutional.

Section 44(1) of the Constitution provides, “*No moveable or any interest in an immoveable property shall be taken possession of compulsory and no right over or interest in any such property shall be acquired compulsory in any part of Nigeria except in the manner and for the purpose prescribed by a law that among other things – requires the prompt payment of compensation therefore, gives to*

any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court or tribunal or body having jurisdiction in that part of Nigeria.”

The unreported case of ***Hassan Doma Bosso v. Commissioner of Lands and Anor.*** NSHC/MN/101/2002.

In this case, the court was called upon to declare the compulsory acquisition of the plaintiff’s land as null and void, the ground being that the above procedures were not followed.

- The state government failed to present any evidence to show that any compensation was paid at all to the plaintiff.
- The court resolved that the claims were true.

See ***Adekanye v. Comptroller of Prisons*** (2000) FWLR part 8 page 1258 ratio 2.

Any subsequent transaction on the said land by the state is void.

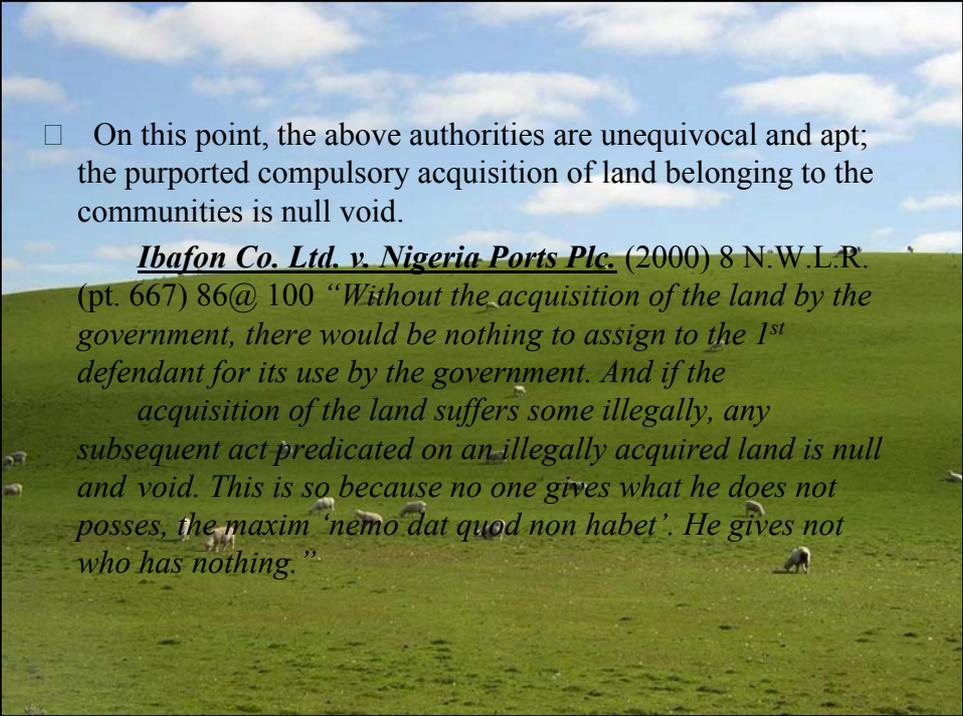
FINDINGS AND DISCUSSION OF RESULTS

- The combined effect of the above is that the natives are indeed right in their claim for regularization and compensation.
- A review of some of the disposed cases shows that not all the lands were actually acquired without payment of compensation.
- Whether the land is used for “public purpose” as claimed upon acquisition.
 - The purpose has been illustrated by the Act under section 28(1) that it shall be lawful for the governor to revoke a right of occupancy for overriding public interest. Any compulsory acquisition not exercised for public interest and by extension public purposes is null and void.
 - Public purposes as used in section 28 of the Act means that the premises are required for the exclusive use of the government, or for use of the general public or in connection with sanitary improvement of any kind. (Section 50(1) of the Act).

- The public purpose must be specifically mentioned in the notice of acquisition.

The court of Appeal Lawson v. Ajibulu (1991) 6 N.W.L.R. (pt. 195) 1 @ 59. states that, “For indeed if at the time of acquisition the notice had stated the “public purposes” for which any or all the land acquired had been made, much of the furore or heat that has been generated in this case would not have arisen at all. For, it would then have been easy to say whether the use, of which the land was subsequently put, was or not in conformity with the stated purposes.”

Olatunji v. Military Governor Oyo State, (1995) 5 N.W.L.R. (pt. 397) 586 @ 602. “... if a property is ostensibly acquired for public purposes and it is subsequently discovered that it has directly or indirectly been diverted to serve private need, the acquisition can be vitiated. The acquiring authority cannot rob Peter to pay Paul by diverting one citizen of his interest in a property by vesting same in another.”

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- On this point, the above authorities are unequivocal and apt; the purported compulsory acquisition of land belonging to the communities is null void.

Idafon Co. Ltd. v. Nigeria Ports Plc. (2000) 8 N.W.L.R. (pt. 667) 86@ 100 “Without the acquisition of the land by the government, there would be nothing to assign to the 1st defendant for its use by the government. And if the acquisition of the land suffers some illegally, any subsequent act predicated on an illegally acquired land is null and void. This is so because no one gives what he does not possess, the maxim ‘nemo dat quod non habet’. He gives not who has nothing.”

CONCLUSION AND RECOMMENDATIONS

- Radical harmonization of all conflicting laws on compulsory purchase and Compensation as this will enhance the building of logical and sound valuation basis that would ensure that a person deprived of his property through compulsory purchase is entitled to no more and no less than what he is being deprived of.
- Compensation code should be reviewed to include possible claim for disturbance.
- The displaced persons should be resettled as of right and where Claimants are willing to acquire alternative houses; government should advance loans or provide enabling environment for the Claimant to achieve their desire.

