ABIOYE VS YAKUBU: CAPITALISM VS THE LAND USE ACT 1978.

YUSUF OLAOLU ALLI ESQ ***

Introduction:

The introduction of the Land Use Act 1978 into the corpus of legislation touching on Land Tenure System in Nigeria in March 1978, has been given different considerations by many writers on the subject of Land Law[1].

In the view of Omotola, the Land Use Act is :-

> "By far the greatest development in Nigerian Land Law and conveyancing in this century is the anactment of the Land Use Act 1979"[2].

R. W. James on the other hand views the Land Use Act as:

> "In matters of land policy it represented a shift from the colonially inspired **laisses faire** policy of 'dualism' in the Southern States to one of trusteeship'; and in the Northern States, a modification of the inherited policy of Paternalism to accord with the 'trusteeship' policy" [3].

There is one unarguable point however, and that is, the Land Use Act has changed the face of land holding system in Nigeria. This change is more noticeable in the areas of Southern Nigeria, where before the promulgation of the Act, individuals, families and communities had the English land law concept of fee simple absolute ownership in Land.

The Land Tenure Law 1963 of Northern Nigeria which was in force in the Northern States post 1978 has the occupancy concept as its basis.

This paper is however concerned with the decision of the Supreme Court in the case of **Abioye** Vs. **Yakubu**;[4] which was a decision delivered on Monday June 10th 1991 by the highest Judicial body in Nigeria.

The significance of the case lies in the fact that it has at least for now laid to rest the controversy surrounding the relative powers of a customary tenant vis a vis his overlord on all lands in the non-urban areas of Nigeria which were before the coming into force of the Land Use Act were being used for agricultural purposes.

As we shall endeavour to show, the Supreme Court in the case had virtually interpreted Section 36 (2) of the Act out of existence since the interpretation placed on the subsection by the court is almost a negation of the avowed aims of the Land Use Act which is to take away the concept of owner and tenant which was prevalent under the old land tenure system.

To the keen followers of the earlier pronouncements of the Supreme Court in the earlier decisions of that court touching on the interpretation of Section 36 of the Land Use Act, the latest decision did not come as a surprise but it was rather an anti-climax to the stand of the Court on the interpretation of certain crucial provisions of the Land Use Act.

Review of Some earlier cases:

For the purposes of this paper, two earlier decisions of the Supreme Court are worthy of being examined as the **fulcrum** for the Court's decision in the **Abioye** Vs. **Yakubu** case. Other decisions will only be referred to as and when necessary.

The first main case where the Supreme Court was called upon to make general pronouncements on the general effect of the Land Use Act vis a vis the right of the customary tenant and to specifically interprete Section 36(2) of the Land Use Act was the case of **Madam Safuratu Salami & 3 Ors**. Vs. **Sunmonu Eniola Oke**[5].

The brief facts are as follows;

The plaintiff/respondent, had in an action instituted at the High Court of Justice Ibadan in 1973, claimed a declaration of title, forfeiture of customary tenancy, arrears of Ishakole and an order of injunction. The Land, the subject matter of the action is situate at Ibadan. The plaintiff claimed that the defendants/appellants stopped payment of Ishakole like their ancestors used to do and that the defendants had set up an adverse claim of file to the land.

While the case was still pending at the High Court, the Land Use Act 1978 was promulgated. At the end of the trial, the learned trial judge rather than Order declaration of title, gave Judgement in accordance with Section 40 of the Land Use Act by awarding a Right of Occupancy to the Plaintiff, he in addition ordered forfeiture and injunction against the defendants.

The defendants unsuccessfully appealed to the Court of Appeal which affirmed all the major findings of the trial court and dismissed the appeal.

This is a further appeal by the defendants to the Supreme Court. The main contentions of the defendants are that the trial judge had no jurisdiction to award orders of forfeiture and injunction having regards to the provisions of the Land Use Act, 1978. That by virtue of Section 36(2) of the Land Use Act, they were entitled to continue in possession, notwithstanding their failure to pay Ishakole and the denial of the Plaintiff's title.

The Supreme Court, while dismissing the appeal, held among other things, that the Land Use Act had not divested a court of its power to order forfeiture and injunction in deserving cases.

That there is nothing in Section 36(2) of the Land Use Act preventing a holder of Customary Right of Occupancy from granting customary tenancy and forfeiting the customary tenancy provided the provisions of the Act were complied with. Kawu J.S.C.(as he then was) delivering the leading judgment to which the other four Justices concurred, concerning the provisions of Section 36(1) and (2) said:-

> "Now, do these provisions apply to the appellants in the circumstances of this case ?. I think not, it was not the case of the appellants that at the commencement of the Act they were using the Land in dispute for agricultural purposes and no finding to this effect was made by the trial court. On the contrary, the finding of the trial court which was supported by the evidence was that it was the respondent that as in possession of the land in dispute and not the appellants[6].

In a rather poignant manner, Obaseki J.S.C. (as he them was) in his concuring contribution declared:

> "It is a mis-statement of law to say that the Land Use Act abolished the remedies of the reliefs of forfeiture and injunctions. Forfeiture is available whenever a tenant disputes the title of the overlord or land-lord or alienates without the landlord's consent the whole or part of the parcel of land let out to him by the Landlord under customary law...
> The Land Use Act was not intended to transfer the possession of the land from the owner to the tenant by whom the owner is in possession"[7].

Finally, Oputa J.S.C. (as he then was) lucidly stated:-

> "The first legal issue was the effect of the Land Use Act 1978 which came into effect during the pendency of this case. There is nothing in the Land Use Act precluding the trial judge from awarding declaration of title, forfeiture, and injunction. The only innovation introduced by the Land Use Act was to divest any claimant of "radical title" and limit his claims to "a right of Occupancy". A claimant can be entitled to a declaration of title to the right of occupancy of a piece of land. That was exactly what the trial court awarded the present Plaintiffs/Respondents.
> Even before the inception of the Land Use Act, in many areas of the Rivers State of Nigeria, where land was owned by the "polo" or "compound", all

> an individual member could claim was "a declaration of title to the right of occupancy" of the land in dispute"[8].

The Second significant decision of the Supreme Court that bears relevance and prepared the ground for the case of **Abioye** Vs **Yakubu** was the supreme Court's decision in the case of **Gilbert Onwuka & 4 Ors Vs. Micheal Ediala & Anor**. [9].

The facts of the case relevant for our purposes are:

This was a consolidated suit in which the Plaintiffs/respondents' representing the Ohaji Osile Community claimed for declaration of entitlement to customary Right of occupancy, damages for trespass and injunction to a parcel of land they called Nwaokpekwe while the defendant's/appellants representing Umyosu Osile Community asked for the same set of reliefs in their own suit but called the disputed land Okwuagboso.

After due hearing, the learned trial judge F.I.E. Ukattah J. preferred the evidence of the Plaintiffs/respondents to that of the defendants/appellants and gave judgment in favour of the plaintiffs as claimed. The defendants/appellants appealed to the Court of Appeal which dismissed the appeal, in its entirety thus the present appeal to the Supreme Court.

The defendants/appellants, attacked the judgment on diverse grounds one of which was their contention on the finding of the trial court vis-a-vis the non applicability of Section 36(1) and (2) of the Land Use Act, 1978, the case.

The Supreme Court held that Section 36(1) of the Land Use Act does not enlarge the right of a customary tenant to any piece of land in non-urban areas which was, at the commencement of the Act in his possession and occupation and that a customary tenant remains as such tenant and subject to the conditions attached to the customary tenancy.

Further, that the words 'holder' and 'occupier' in Section 36(2) of the Land Use Act mean the person entitled to a Customary Right of Occupancy that is the customary land owner other than a customary tenant and that mere possession of land by a customary tenant for a long time cannot confer the right of ownership envisaged by the Act on such tenant.

Wali J.S.C. delivering the judgment of the court gave vent to the above holdings when he declared inter alia :

> "Section 36(1) does not enlarge the right of a customary tenant to any piece of land in non-Urban Area which was at the commencement of the Act in his

possession and occupation. A customary tenant remains so and is subject to the conditions attached to the customary tenancy.... In my view the words 'holder' or 'occupier' means the person entitled to a customary right of occupancy, that is the customary land owner other than a customary tenant. The definitions of the expressions "customary right of occupancy" and 'holder' in Section 50 of the Act lend support to this view. Mere possession of a land as a customary tenant however so long, cannot mature to confer the rights envisaged in the Act ……

A person or community that had title to a parcel of land before the coming into force of the Land Use Act, 1978 is deemed to be a holder of a right of occupancy or customary right of occupancy, depending on the status of the land whether it is in urban area or in non-urban area" [10].

Further in the concuring judgment of Oputa J.S.C. the learned Justice declared ex-cathedra:-

"The plaintiffs who had been adjudge owners are the one who under the Land Use Act can be clothed with full possession and be granted under Section 36(4) a customary right of occupancy not the defendants/appellants. It was not the aim of the Land Use Act to convert a tenant into an owner merely by the fact that such tenant was in occupation of his Landlord's land before the inception of the Act"[11].

The Supreme Court had in other cases [12] held the firm view that Section 36(1) and (2) of the Land Use Act was not meant to divest the landlord of his rights and to confer sase on the customary tenant.

The above was the state of the law, concerning the interpretation of Sections 36 and 50 of the Land Use Act before the decision of the Supreme Court in **Abioye** Vs **Yakubu**.

Abioye Vs. **Yakubu**

As noted above, most observers of the Supreme Court had thought that the controversy surrounding the interpretation of Section 36 of the Land Use Act had been settled in the cases earlier referred to.[13]

However, on 10th June, 1991, the Supreme Court had to reappraise its earlier decisions and affirm them in this case that arose over a piece of land at a place in Kwara State.

Facts of the case and the claim

The claim of the Plaintiffs/Appellants as adumberated on their writ of summons was as follows :-

(a) A declaration that a piece of land, lying and situated very close to a village called Basanyin in Ifedapo Local Government Area of Kwara State on which a ground of houses known as Caa Kekere or "Gaa oke" and how inhabited by the defendants and some others was and is still the farm land of the plaintiffs from time immemorial;

(b) A declaration that defendants are tenants to the plaintiffs on the said farmland referred to in paragraph (a) above the plaintiffs having given out the said farmland to defendants for farming and grazing purposes only;

(c) A declaration that the plaintiffs never alienated the said farmland to defendants by way of sale or gifts and plaintiffs are still therefore the holder of the customary right of occupancy over the said farmland.

(d) A declaration that the act of the defendants whereby sometime in November, 1981 they errected 3 signboards bearing the inscription "Gaa Irapa Idera Ifedapo" in 3 separate places on the said farmland which signboards plaintiffs' defendants' landlord found objectionable and provocative and therefore opposed and which defendants refused and neglected to remove despite plaintiffs' repeated requests to them to do so, constitute a grave act of nuisance and provocation on the part of defendants as regards their landlords, the plaintiffs.

(e) A decree of the court ordering the defendants to remove the said offending signboards forthwith since plaintiffs, their landlords find it objectionable, provocative and unbearable;

(f) A permanent injunction restraining the defendants from ever erecting permanent structures like the said offending signboards on the said farmland of plaintiffs now

occupied by defendants and their relatives and friends without the prior written approval of the plaintiffs first sought and obtained ".

The story of the plaintiffs as narrated in their statement of claim and supported by evidence was that about 60 years ago, the plaintiffs ancestors permitted the defendants' ancestors, who were normadic Fulanis to settle on the land called by the Plaintiffs as Gaa Kekere" or "Gaa Oke" in Ifedapo Local Government Area of Kwara State.

The defendants' ancestors were allowed to settle thereon as customary tenants for farming and grazing purposes. It was alleged that the defendants ancestors paid tributes to the plaintiffs ancestors until the defendants stopped the payment of tribute ten years before the action was brought.

It was further alleged that sometime in 1981, the defendants without the consent and or authority of the plaintiffs, erected three big signboards bearing the inscription GAA IRAPA IDERA IFE-DAPO in three separate places on the said settlement. It was contended further that by this act, the defendants were purporting the land to belong to Irapa Village and not the plaintiffs.

The defendants on the other hand, contended that the land in dispute belonged to their ancestor, one Ayuba Kure who was put on the land in dispute by the people of Irapa Village about one hundred and fifty years ago.

The defendants further filed the following counter claims against the plaintiffs.

"(a) A declaratory injunction restraining the plaintiffs from removing the 3 signboards or any structures that may be erected by the defendants on their land.
(b) A declaration that the present Gaa Irapa Village and its farm and grazing land belong customarily to the defendants having been devolved into the defendants by the fore-fathers of the present Bale of Irapa.
(c) A declaration that the village of the defendants is known as "GAA IRAPA" and not other name.
(d) A permanent injunction restraining the plaintiffs from ever trespassing on the land of the defendants.
(e) A sum of N20,000.00 for the act of trespass of the plaintiffs' which was committed by attempting to remove the said signboard erected on the defendants land".

The Learned trial judge Gbadeyan J. sitting at the High Court of Justice, Ilorin reviewed the evidence adduced by both parties and believed the plaintiffs' version and gave judgment accordingly. He therefore in consequence dismissed the counter-claim in its entirety.

The Counsel to the defendants, raised the point that by virtue even of Sections 34 and 36 of the Land Use Act 1978, the defendants if they are customary tenants, have the right to hold the land under the Sections of the Land Use Act and could not therefore be subject to the incidences of customary tenancy.

The Trial Judge did not agree with the submission and held that notwithstanding the provisions of Sections 34 and 36 of the Land Use Act, 1978 the defendants as customary tenants could not defeat the right of their overlord, the plaintiffs.

The defendants appealed against the decision to the Court of Appeal on six grounds of appeal with ground No. 5 raising the issue of Sections 34 and 36 of the Land Use Act.

The Court of Appeal upheld all the findings of facts and by implication dismissed all the ground of appeal dealing with facts but allowed the appeal on the fifth ground and therefore set aside the decision of the trial court on the issue of declaration of title given in favour of the plaintiffs.

The Plaintiffs' too, were not satisfied with the Court of Appeal's decision that reversed the declaration of title made in theer favour by the trial court thus the further appeal to the Supreme Court.

In all, the plaintiffs filed four grounds of appeal but abandoned two of these grounds leaving the following two grounds.

> "(c) The Lower court misdirected itself when it concluded that the respondents were holding the land in dispute.
>
> **Particulars**
>
> (a) Inhabiting the land in dispute does not amount to holding the land since the respondents are customary tenants of the appellants and in Yoruba customary law the land is vested in the landlord. Akinloye v. Eyiyola (1968) N.M.L.R. 92.
>
> (b) The lower court erred in law when in applying Section 36 of the Land Use Act, 1978 it held that the respondents are no more the tenants of the appellants;
>
> **Particulars**
>
> (i) By denying the title of the landlord, the respondents are liable to forfeiture the land.
>
> (ii) In refusing to pay the annual tribute to the appellant landlord about 10 years before the commencement of the action, the respondents have breached the fundamental condition of their stay on the land;
>
> (iii) By their various acts mentioned above in (1) and (11) in connection with the lands, the respondents were technically trespassers in the land on the promulgation of the Decree and cannot therefore be entitled to right of occupancy."

In his Brief of Argument, learned counsel stated the issues for determination in the appeal thus:

a) Whether the plaintiffs as the overlords are the HOLDERS of the right of occupancy of the land which they gave to the defendants as their customary tenant.
b) Whether there was sufficient evidence available to the Court of Appeal to justify its' decision that Section 36 of the Land Use Act, 1978 applies to make the defendants Occupiers of the disputed land.
c) Whether the defendants as customary tenants who have breached their customary tenure before and upon the commencement of the Lands Use Act, 1978 could be deemed to be "Occupiers" of the said land".

The Supreme Court having reviewed other decided authorities extensively, interpreted Sections 1, 34, 36 and 50 of the Land Use Act and came to the conclusion that the Act did not take away the right of the Customary owner. The court gave effect to the meanings of "HOLDER" and "OCCUPIER" as defined in Section 50 of the Act.

The importance of the case, was underscored, by the fact that the Supreme Court invited as **amici curae,** the Attorneys General of the Federation and of all the twenty one states of the Federation; In addition, five Senior Advocates of Nigeria were also invited as **amici curae** [14].

The rationale behind the decision.

The Chief Justice of Nigeria, Hon. Justice Mohammed Bello, delivered the leading judgment and the other six Justices of the Supreme Court concured with him. [15].

After enunciating the attitude of the Supreme Court to the construction and interpretation of statutes, his lordship declared:

> "Now it is clear from subsections 36(1) and (2) that the 'occupier' or 'holder' was the beneficiary of the deemed customary right of occupancy. It is also the general consensus that the occupier and the holder are the customary tenant and the customary owner respectively within the meanings of Section 50. I so hold" [16].

His Lordship, after interpreting sections 36 and 50 of the Land Use Act, posed the following question and immediately provided the answer.

> "From the premises, the crucial question for the resolution of the issue is: was the grant to the tenant of the deemed customary right tantamount to the extinction and extinguishment of the customary rights of the owner, to wit the rights to tributes, to forfeiture and to reversion?.
>
> Superficially, one may be tempted to answer the question in the affirmative. On reflection however, one would observe that the Act did not expressly divest and extinguish the customary rights of the owners of agricultural land in non-urban areas as start it did in respect of undeveloped

> land in excess of half hectare in urban areas. Consequently, one would realise that to arrive at the correct answer it is necessary to examine the quantum and content of the deemed customary right of occupancy granted to the occupier in the light of the rules of interpretation of expropriatory statutes"[17]

Furthermore, on the same point, His Lordship further held :-

> "Therefore, the cardinal rule of construction and interpretation of statutes is that unless there is express provision in clear and unambiguous words within a statute expropriating the property of a person, the statute should be construed in favour of the person in whom the property has been vested and it should not be construed so as to deprive the person of his property without compensation. This rule of interpretation is in accord with the provisions of Section 31 and 40 of our 1963 and 1979 Constitutions respectively which prohibits compulsory acquisition of property without compensation …….
>
> As earlier shown in this judgement, a customary tenant had acquired the right to occupy and use land from its customary owner on terms under customary law which included the owner's right to tributes, the continued recognition by the customary tenant of the reversionary right of the owner and the right of forfeiture. Consequently, in the absence of express provision in the Act divesting the customary owner of his rights or extinguishing the same, section 36 ought to be strictly construed so as to preserve the rights of the customary owner ……..
>
> Upon the construction of Section 36 and 50 read with the other provisions of the Act, I hold that the sections were not tantamount to divesting the customary owners of their customary rights vis-a-vis their customary tenants. The customary rights of the customary owners were impliedly preserved by the sections". [18].

Obaseki J.S.C. after tracing the historical antecedent of land ownership under the law, came to the conclusion that possession by the tenant equals possession by the owner in the following words:-

> "A customary landlord entitled to receipt of rents or tribute from his customary tenant is in possession of the land. Since a landlord in law is in possession by his tenant, it is the law that if a trespasser does an act

injuriously affecting his reversion and the tenant does not sue, he can sue"[19].

Earlier on at page 114 of the report, His Lordship had categorically denied the abolition of the incidence of landlord tenant relationship under the act when his Lordship stated:-

> "This relationship of landlord and tenant was never terminated by the Land Use Act. The Act emphasized the position of occupiers as including sub-lesses and sub-under-lessee whereas a holder does not include sub-lessee or sub-under-lessee".

The above holding was made notwithstanding the later view of his lordship that the Land Use Act had revolutionised the land tenure system in Nigeria [20].

Finally, his Lordship declared:-

> "In conclusion the Land Use Act has not abolished the rights of customary land-lords and customary tenants. The vesting of the radical title to land in the Military Governor for the use and benefit of all Nigerians (see Section 1) did not abolish the relationship of customary landlord and customary tenants....."[21].

On his own part, Hon. Justice Karibi- Whyte J.8.C. stated in his concuring judgment **inter alia**:

> "The land Use Act has been credited with all kinds of achievements. The most astonishing being the view that it is self-sufficient, and in fact a code of land law. This is the fundamental and basic misconception of the effect of the Land Use Act" 22.

In the above dictum his lordship would appear to be preparing for his eventual holding at page 136 of the report wherein his Lordship stated:-

> "There seems to me no question of the competing rights of a holder and an occupier with respect to the issue of the certificate. Since a holder as a person entitiled as of right to a Certificate of Occupancy, his claim vis-avis the occupier in respect of the same land is stronger in law and is entitled to be issued with the certificate. The tenant will still hold of his landlord, the holder, and the incidents of customary tenure, applicable will follow even after the coming into force of the land Use Act".

To demonstrate beyond per adventure that the Supreme Court deliberately interpreted Section 36(2) of the Land Use Act to mean almost the opposite of what it was intended, the following words of Hon. Justice Belgore J.S.C. let the cat out of bag:

> The Land Use Act has been variously described as a revolutionary law, see Obaseki, JSC in **Savanah Bank Ltd** vs **Ajilo** (1989) 1 N.W.L.R. pt 305 or a law to change the land Management in Nigeria. These assertions, to a certain extent may be valid in some incidents of land Use. **But as a result of this decision, the volcanic erruption is no more than a slight tremor"** [23].

On his own part, Hon. Justice Nnameka-Agu J.S.C. imported equitable doctrine into his interpretation before coming to the decision that the land Use Act had not divested the customary landlords of their rights. tenant. In the illuminating words of his Lordship:

> "Admittedly, the Section provides for a grant of the right to holders or occuppiers of such lands as if they were alternatives interchangeable at will. And we have been urged to hold that this is the intendment of the Act. In my opinion, to give the Act such an interpretation will not only savour of injustice but/will also be tantamount to a serious negation of established principles. It will be injustice to the holder who was the owner of the land before the commencement of the Act and give his erstwhile customary tenant a status and a right to which he was not entitled before the Act - a typical illustration of the appropriate metaphor "to rob Peter to pay Paul". But as I have shown above, there is no express or implied provision of the act to support that course or constuction"[24]

On the other hand, Hon. Justice Olatuwura J.S.C. imported the notion of natural justice into his own interpretation to come to his conclusion that the Act did not expropriate the right of the Landlord vis-a-vis his tenant under the Land Use Act.

His Lordship at Page 155 of the report articulated the point thus:-

> "To say that the Land Use Act has abolished the contractual relationship between customary owners and customary tenants is to say that with that legislation the customary owner is deprived of his property without a hearing. It is against the tenants of natural justice. The fundamental right to own property cannot be supplanted without adequate provision for compensation"

Interpretation of the Court's Judgement

An attempt to interprete the various pronouncements of their lordships in this judgment, is a daunting exercise. The more one reads the judgment, the more perplexing are the rationes being each of their Lordship's reasoning.

One thing that is apparent from the judgment and which must be conceded, is that all the Justices agreed that non of the provisions of the Land Use Act take away the customary right of the customary landlord with respect to lands in non urban areas being used before the Promulgation Act for agricultural purposes.

However, each of the Justices provided different reasons for his conclusion.

The Chief Justice of Nigeria Hon. Justice Mohammed Bello would appear to have used the old concept of the mischief rule to come to his conclusion. His Lordship at page 94 of the report made this clear when he stated inter aliaa:

> "In the interpretation of an Act or law it is relevant to consider what was the law before the enactment of the Act or law to be construed; what was the mischief or defect for which the old law did not provide and what remedy the Act of Law intended to cure the mischief or defect".

To bring the perplexity home the better, His Lordship while agreeing with the interpretation placed by the Court on the provisions section 36 in earlier cases[25] of the Supreme Court still went to that:

> "I depart respectfully from some of the observations made, directly or impliedly in the previous cases to the effect that a customary tenant was not deemed to have been granted a customary right of occupancy under Section 36. I hold that he was granted such right but the right was subject to the terms and conditions of his customary tenancy" [26].

But a careful reading of the other Justices concurring judgments' show that unlike the Chief Justice of Nigeria, they adopted in toto their earlier pronouncements in the earlier cases in which Section 36 of the Land Use Act was inteppreted by the Supreme Court.

As pointed out earlier, Obaseki. J.S.C. imported the notion of the English land law notion of possession as between landlord and tenant, to hold that a customary tenant under Section 36 of the Land Use Act is in possession on behalf of the customary Landlord.

In the view of Hon. Justice Karibi-Whyte J.S.C. the solution to the interpretations of Section 36 of the Land Use Act lies in the bossom of customary law.

Justice Justice Nnaemaka- Agu J.S.C. the solution to the problem of To Hon. Justice interpreting Section 36 of the Act involved a question of the principles of equity and what is just.

Olatawura J.S.C. imported the notion of natural justices into the interpretation of Section 36 of the Act to get round its provisions.

From all that have been said it is undoubted that even though the conclusion of the court as to the interpretation of Section 36 of the Act was unanimous, the reasons for the conclusion varied and could confuse the unwary.

The reservation expressed by the Chief Justice of Nigeria on the ambit of Section 36 of the Act leaves one in no doubt that the final word is yet to be heard on the provision of Section 36 of the Land Use Act.

Conclusion

As noted, the Act was meant in its operation to be a complete departure from the old land tenure systems operating in Nigeria.

The provision of Section 36 (2) is quite instructive. It provides:-

> "Any occupier or holder of such land, whether under customary rights or otherwise, shall, if the land was on the commencement of this Decree being used for agricultural purposes continue to be entitled to possession of the land

> for use for agricultural purposes as if a customary right of occupancy had been granted to the occupier or holder thereof by the appropriate Local Government and reference in this sub-section to land being used for agricultural purposes includes land which is in accordance with customary law of the locality concerned, allowed to lie fallow for purposes of recuperation of the soil".

A careful reading of the above sub-section leaves no one in doubt that the intention of the law makers is to vest possession in the customary tenant irrespective of the prevailing customary law if before the coming into operation of the Act, he was using the land for agricultural purposes.

It is submitted that if their Lordships had given literal meaning to the words of the sub-section, the case could have been differently decided Rather, their lordships scrupulously avoided to look into the intention of the law maker but went round to import the rules of equity and natural justice to interprete the subsection to mean the opposite of its intendment.

The acknowledgement by some of their lordships, that the Act was meant as a revolutionary piece of legislation on the land tenure system underscores the point that they fully understood the purport of the Act but only decided to side with land owners in preference to the tenants.

The observation of Hon. Justice Kawu J.S.C. that:-

> "If the legislature had intended to extinguish the rights of customary owners of land, it would have clearly said ao in the Act" [27];

Was merely begging the question. The Act had unequivocally stated this position in subsection (2) of Section 36 of the Act.

It is our submission therefore, that this decision has thrown over board the manifest socialist outlook of the Act but had instead enthroned the customary landlord as the **de jure** owner of land, under the Land Use Act., notwithstanding the provisions of Section 1 of the Act.

The holding of their Lordships following **Salami** Vs **Oke** that a customary landlord could still ask for forfeiture against an erring customary tenant bring this point out more clearly.

Nnaemaka- Agu J.S.C. forcefully stated the position at Page 147 of the report when he held "The Landlord still retains his rights to forfeiture for misbehaviour".

The case of **Abioye** Vs **Yakubu** would appear for now, to have over-thrown the socialist pretentions of the Land Use Act 1978. Hopefully, the last words have not been spoken, in that regard.

FOOTNOTES

****LL.M. (Ife) (NOTARY PUBLIC) Principal Partner: Yusuf O. ALLI &CO 98, IBRAHIM TAIWO ROAD, ILORIN.

1. See: (a) J.A. Omotola

The Land Use Act 1978 And Customary system of Tenure. Published in: The Land Use Act: **Report of a National** Workshop PP. 3541.

(b) J.A. Omotola - **Essay on the Land Use Act 1978 PP. 1-3.**

2. **Land Use Act 1978 and Customary systems of Tenure Op. Cit.P. 35**

3. **R.W. James: Nigerian Land Use Act: Policy and Principles: P.1**

4. (1991) 6 S.C.N.J. 69

5. (1987) 4 N.W.LR. (Pt. 63) 1

6. Op Cit P. 8.

7. Op. Cit PP. 12-13

8. op-cit. p. 16

9. (1989) 1 NWLR (pt 96) 182.

10. Op. Cit. 199

11. Op. Cit Pp.207-208

12. See:

Dzungwe Vs Gbishe (1985) 2 NWLR (pt 8) 528

Ogunleye Vs Oni (1990) 2 NWLR (Pt 135) 745.

Ogunmola Vs Eiyekole (1990) 4 NWLR (p 146) 632.

13. See Footnote Nos 5, 9 and 12 above.

14. (a) Chief F.R.A. Williams CFR S.A.N.

(b) Chief Kehinde Sofola S.A.N.

(c) Dr. Mudiaga Odije O.F.R., S.A.N.

(d) Alhaji Abdulahi Ibrahim .S.A.N. and,

(e) Mr. P.0. Balonwu S.A.N.

15. The other Justicesare:
    (a) A.O. Obaseki JSC.
    (b) A. G. Karibi-Whyte JSC.
    (c) Saidu Kawu JSC
    (d) S.M.A, Belgore JSC.
    (e) P. Nnemeka Agu JSC and,
    (f) O. Olatawura JSC.

16. Yakubu Vs Ajiboye Supra P. 97

17. Op. Cit P. 98

18. OP. CIt pp. 100 and 101

19. Op. Cit p. 115

20. Op. Cit p. 118

21. Op. Cit p.121

22. Op. Cit. p. 133.

23. Op. Cit pp. 138 - 139, Underline by me to Emphasis the point being made.

24. Op./ Cit 150

25. Salami Vs Oke (Supra)
    Dzungwe vs Gbishe (Supra)
    Onwuka vs Ediala (1989) 1 NWLR (Pt 96) 182.
    Ogunleye vs Oni (Supra) and,
    Ogunmola vs Eiyekole (Supra).

26. Abioye vs Yakubu (Supra) p. 102

27. Op. Cit. p. 138