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Service of Notice in Public Land Acquisition and Tenancy in Abuja, Nigeria: A Tool for National Peace

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Service of Notice in Public Land Acquisition and Tenancy in Abuja, Nigeria: A Tool for National Peace

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I. Introduction

In ordinary parlance, notice can be said to be the ability to make a person or group aware of a particular occurrence or state of affairs. Service of notice is usually an instrument employed by the law courts, registry officers, government agencies, landlords, etc. to bring either a proposed compulsory land acquisition by government repossession of private property or other things to the notice of concerned persons.

The manner a notice is served is huge when regard is hard to the fact that land is held sacred and sensitive by most people and any attempt to repossess or dispossess same is viewed with so much passion and especially in Africa is not properly handled could lead to loss of lives, properties and even riots especially where a group or community is affected.

The incessant crises being experienced today as a result of lack of proper notice or improper service there of among dispossessed persons would greatly reduce if a reappraisal is done on the service of notice while positioning it as a panacea and an instrument that can be used under the Land Laws of the state to usher in the needed peace in the nations.

Hornby (1982) defined a landlord as a person who has tenants or lodgers, one who owned an inn. Also, a person entitled to the immediate reversion of the premises or if the property is held in joint tenancy, any of the persons entitled to the immediate reversion above definition will ordinarily include the agent or attorney of any person so entitled.

The various Recovery of Premises Laws of States in Nigeria contain very similar definition of a tenant. For instance, Sec 16 (1) of the Recovery of Premises Laws of both Plateau and Bauchi States and Sec 40 (1) of the Lagos State Rent Control Law defined a tenant as "any person occupying premises whether on payment of rent occupying premises under a bonafide claim of ownership. It is pertinent to note that the Recovery of Premises Act, Chapter 544, Laws of Federation of Nigeria (Abuja), 1990 gave an exact definition of a tenant as stated above in its Section 2.

Similarly, the aforementioned Recovery of Premises Act defined *landlord* in its interpretative Section to be "the person entitled to the immediate reversion of the premises or if the properly therein is held in joint tenancy in common, any of the persons entitled to the immediate reversion, and includes the attorney or agent of the landlord, and also any person appointed to act on behalf of the State in dealing with any land, building, premises or corporeal or incorporeal hereditament vested in the state."

From this definition, the state can be said to be a landlord as Section 1 of the Land Use Act vested the land in Nigeria upon the State.

In other words, a person who occupies premises with the grantor retaining reversionary rights to such premises is a tenant. On the other hand, and as was rightly opined by Male (1995), a tenancy is an agreement between the parties whereby in consideration of rent, the performance and observance of tenants covenants, a landlord grants a term of years in a demised premises to a tenant expected to pay rent in a manner stipulated in the agreement.

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Conversely, both the Public Land Acquisition Act (cap 167) of 1917 and the Public Land Acquisition (Miscellaneous Provision Decree No. 33) of 1976 made elaborate provisions to the effect that the Government has the power to acquire privately owned land or properties compulsory with the payment of compensation. They also specified that notice of such be given to the persons whose land are sought to be acquired.

Uduehi (1987) succinctly opined that compulsory acquisition by Government as specified under Section 28 of the Land Use Act can only be done for overriding public interest, which be defined as any interest of any Government or its agency on land privately owned for the purpose of development or social services.

For Government and its agencies to effectively exercise their power as stated above to appropriate property or land for public use, service of notice ought to be properly conducted. This will serve to remove any misgiving, distrust or grievance that often times attend the exercise.

It is an arguable fact that the relationship between the Government and the citizens whose land are to be compulsory acquired are not cordial. Most often, the citizens become aggrieved with the manner in which such exercise is kick-started and eventually carried out. Chief among the complaints is one of improper or inadequate notice.

Similarly, what exists between the landlords and their tenants can best be described as mutual distrust which is characterised by failure to give notice in its prescribed form. This may be due to ignorance on the part of the parties or mischief.

This study seeks to examine the complex issues arising from improper service of notice by land lords and in some instances government or its agency. The study sought to show that proper service of notice is a panacea to these problems.

II. Notices to Quit and of Intention to Recover Possession by Landlord

It is worthy to note that the various Laws regulating the recovering of premises by landlords in the Federation of Nigeria made almost identical provisions in relation to the requirement of notice and related issues. For an instance, a verbatim reproduction is observed in the length of notice to be given and the expiry thereof. The work will therefore concentrate on the provisions of the Recovery of Premises Act, Laws of the Federation, Abuja (1990) (hereinafter referred to the Recovery of Premises Act) and those of the Rent Control and Recovery of Residential Premises Law, Laws of Lagos State, 2004 (hereinafter called Rent Control and Recovery of Premises Law). The two Law Provisions will represent a fair view of the other identical provisions on the subject.

The laws are unambiguous and express with regard to the subject of notice and the service thereof. Section 7 of the Recovery of Premises Act provided that:

> "When and so soon as the term or interest of the tenant of any premises, held by him or far any term either with or without being liable to the payment of any rent, ends or is duly determined by a written notice to quit as in form B, C or D, whichever is applicable to the case, or is otherwise duly determined, and the tenant, or a person by whom the premises or any part thereof is actually occupied, neglects or refers to quit and deliver up possession of the premises or of such part thereof respectively, the landlord of the premises or his agent may cause the person so neglecting or refusing to quit and deliver up possessions to be served, in the manner hereinafter mentioned, with a written notice, as in Form E signed by the landlord or his agent, of the landlord's intention to proceed to recover possession on a date not less than seven days from the date of service of the notice."

Very similar provisions are contained in Section 13 of the Rent Control and Recovery of Premises Law, Lagos State. In other words, the landlord has a legal duty or obligation to give or serve notice on the tenant in order to quit the tenant from his property or to recover the possession of the said property.

This statutory requirement had been neglected or even misused by some unscrupulous landlords to the end that the tenants are aggrieved and sometimes refuses to deliver up possession and the duo often eventually end up in the law court where the already sour means relationship is made more bitter by the "win, myself means" attitude characterising proceedings in those courts.

Furthermore, Section 8 (1) of the Recovery of Premises Act provided for the length of notice in various circumstances when it stated that:

> "Where there is no express stipulation as to the notice to be given by either party to determine the tenancy, the following periods if time shall be given:

a) In the case of a tenancy at will or a weekly tenancy, a week's notice;
b) In the case of monthly tenancy, a month's notice;
c) In the case of a quarterly tenancy, a quarter's notice;
d) Subject to subsection (2) of this Section, in the case of a yearly tenancy, half a year's notice."

The subsection (2) referred to in 8 (1) (d) above, unambiguously provided that "in the case of a yearly tenancy, the tenancy shall not expire before the time when any crops growing on the land, the subject of the tenancy would in the ordinary course be taken, gathered, or reaped if such crops were crops, which are normally reaped within one year of planning and such

planting was done by the tenant prior to the giving of the notice.

Worthy of note is the fact that Sec 13, 14 and 15 of the Rent Control and Recovery of Premises Law is an exact replica or repetition of the provisions of Section 7, 8 and 9 of the Recovery of Premises Act and similar provisions exists in the Recovery of Premises Acts of the various other states of Nigeria.

A lot of disquiet has been experienced as is evidenced by the high volume of cases brought before the various levels of courts and tribunals in recent times. Most landlords, especially those that manage their properties without the help of designated professionals tend to give less than the prescribed notices to tenants. More so, the manner in which these notices are served leaves much to be desired.

Although, the Law relating to notice and its service had been made express, in practice however, it has been a tool in the hands of cunning landlords to exploit and inflict emotional and other hurts upon the tenants. The first part of Section 8 made the tenants very vulnerable as it did not take into cognisance the fact that most tenants pay the agreed rent and even take up possession of the land long before any so-called "express stipulations as to the notice to be given" is brought to their notice.

The tenant, having paid up rent and taken possession before being presented with a tenancy agreement makes a mockery as it were, on the assumption that there was indeed any agreement between the landlord and the tenants with regard to notice and the service there of.

The above notwithstanding, even when there seem to be no express stipulations to the contrary by any agreement existing between the parties, the statutory stipulations gets at its best a mere lip-service by the parties. In fact, most landlords ignorantly believed that the Government have no right to give him directives as to the nature of notice to give to tenants in his own property and since most tenants are also ignorant of the stipulating by statute with regard to notices and their services, they condone and sometimes tolerate discrepancies on the part of the landlords. Sometimes, this causes tension and fights between the families of landlords and tenants.

Sometimes, a month's notice is given to a yearly tenant who ordinarily requires a six-month notice, while at other times; a 4-day to 7-day notice is given to quarterly or monthly tenants. Aside from the above the service of this notices also form a subject of great concern and had been done is such a way as to illicit bitterness, quarrels and general lack of peace.

The various Acts are silent on the issue of the service of these stipulated notices. Most landlords who act for themselves give notices verbally. Sometimes, they hand over written notices to infant relatives or other persons who may not be credible enough to accept the service. There have been cases as revealed from the field work and questionnaire collected for the work that visitors', children and even adverse neighbours have been served quit notices or notice of intention to proceed to court to recover possession by some landlords. The resultant effect was trouble and lack of peace between persons who ordinarily had amicably entered into a relationship through tenancy. The tenants who eventually leave the land very bitter due to the unfair treatment through the notice and its service may likely do the same, if not worse on his own tenants when he eventually becomes a landlord. Landlords testified of ill treatment by their landlords when they were tenants in the past.

Similarly, although the Recovery of Premises Act in its 9th Section stipulated that "notices given shall not be effective if the time between the giving of the notice and the time when the tenancy is to be determined is less than the respective periods set out in Section 8 of the Act." It is imperative to observe that influential landlords get away with the flouting of this law and the inadequate notices are adjudged to be effective for reasons which bother on corruption and inequality before the law. The Nigerian Constitution is clear on the fact that the rule of law is supreme and is to be respected and no discrimination or exemption should be tolerated by Government through its arms. However, the reverse is the case in practice as some landlords do not abide by the stipulations of the law with regard to notices.

a) Notice under Public Land Acquisition

For avoidance of doubt and to avoid repetition, it is pertinent to state that the Public Lands Acquisition Law Cap 105, Laws of Western Region of Nigeria 1959 is the exact replica of those of other regions in Nigeria including the Federal Capital, Abuja. Therefore, same shall be referred to exclusively to represent the rest of the laws of the federation. These laws only defer from each other in nomenclature and form whereas the substances are identical.

Section 5 and 9 (1) of the said Public Lands Acquisition Law, which directly relates to notice and services thereof reads as follows

> "5. Whenever the governor resolves that any lands are required for a public purpose, he shall give notice to the persons or to the person entitled by the law to sell or convey the same or to such of them as shall after reasonable inquiry be known to him (which notice may be as in Form A in the schedule or to the like effect)." 9 (1). Every notice under Sections 5 and 8, shall either be served personally on the persons to be served or left at their last usual place of abode or business, if any such place can after reasonable inquiry be found, and in case any such parties

shall be absent from Nigeria or if such parties or their last usual place of abode or business after reasonable inquiry cannot be found, such notice shall be left with the occupier or such lands, or if there be no such occupier shall be affixed upon some conspicuous part of such lands."

The Governor or designated person (s) acting for him and the President or Minister of Federal Capital Territory has a legal duty to give notice before acquiring land for public purposes from individuals or groups in a prescribed form (Section 5 and 8 respectively). The problem comes with the service of such notice as the law did not make personal service mandatory.

In fact, substituted and other forms of service are permitted from the provisions of Sec 9 (7) above.

A careful evaluation of what obtains in practice is a rude shock to any advocate of national peace as it is a continued source of agitations and disquiet. Government agencies often opt out for the easier way out by using substituted service to wit; affixing in conspicuous part of the land or in the last known address of the person (s). The question that arises is to find out how many people often leave a forwarding address at their last residence or periodically go back there to check for mails etcetera? More so, the lands are usually owned by several individuals who hold separate titles, while some are situated right into the woods, hindering the owners from being aware of any fixtures by the Government or their agents. Also, the phrase "be affixed upon some conspicuous part of such lands" is very precarious and makes it easy to Government to avoid liability as they often claim they had done so even when the land is quite large and the several owners were likely to be ignorant of the intention of Government as they may never see the notice. Other factors like weather conditions could remove such notices from their original place and put the land owners in a difficult position. Some of whom may adversely respond and subsequently react violently upon sighting 'intruders' in their land and a state of affairs contrary to peace and quiet may naturally resulting from this. Sometimes, the Government may deploy security personnel to the affected area especially if a group or an entire community is involved. On the other hand officials from the Lands Registry and other Government officers have faced harassments and mob-related actions upon their entry into such lands where proper notices were not served.

It is the view of this work that the current law be reviewed with regard to the service of notice to accommodate personnel service at all times. This can be achieved in view of recent technological developments available in this 21st Century.

b) Case Law Review

It is settled law that there should be a strict adherence to the issue of service of notice on land owners or interested persons in compulsory acquisition of land in accordance with the express dictates of the law. In Bello V Diocesan Synod of Lagos (1973) All NLR 196, the court held that Section 9 of the Public Lands Acquisition Law confers extraordinary power of compulsory acquisition of the property of citizens and most therefore be construed strictly.

The above case was relied upon by the Court in Obikoya and Sons Ltd. V Governor of Lagos State (1989) 1 NWLR (Pt. 50) 385 to hold that the Government must first exhausted all other options before resorting to affixing the notice of intention to compulsorily acquire land on some conspicuous part of Land. It is worthy to note that in spite of the statutory and case law dictates to the contrary. Service of notice by Government had been done substitutionally even while the would-be dispossessed person's address is known. For an instance, in A. G. Bendel State V Aideyan (1989) 4 NWLR (Pt 118) 646 at 678 and Bello V Diocesan V Diocesan Synod, the courts were of the opinion that where owners of properties were ascertainable and could be traced, the notice should be served on them personally. This they added must be done before publication in the Government Gazette.

The Court of Appeal also lend credence to the ongoing by its judgment in Ibafan Co. Ltd. V Nigeria Ports Plc. (2000) 8 NWLR (Pt. 667) 86 where it held that personal service of the notice is mandatory especially where the property owners are ascertainable.

The above notwithstanding, the Supreme Court of Nigeria in the recent case of Okeowo V AG Ogun State (2010) 16 NWLR (Pt 1219) 327 dismissed the appeal by the appellant who was contending that personal service to him should have been made instead of the notice of acquisition being pasted or affixed in portions of the eighty (80) square kilometres acquired land which included the court relied on the evidence of his land. Government official who claimed that the land acquired is a large expanse of eighty (80) kilometres and the appellants two parcels of land was part of it. Since there was no one living on the land on which notices could have been served, the Government had to resort to pasting of notice on parts of the eighty (80) kilometres land and subsequent publications in the Gazette. The court therefore held that in this case the service done was proper service.

From the above, it is trite law that substituted services are favoured even by the highest court of the land whenever personal service is difficult or impossible. The question that comes to mind is whether the Government have been made enough effort to solve the mystery behind non-identification of property owners especially using the available information technology. The re-certification exercise being carried out in various states and in the capital seems to be no match to the enormous problems caused by the lack of personal

service or neglect of it during compulsory acquisition of land. A tremendous positive impact and dramatic change will be brought about if Government fully embrace the required technology to ease accessibility of information and property owners in the face of public acquisition which will obviously result to more National peace.

III. Research Method

Both primary and secondary data sources were used in this work and purposive sampling technique was also adopted. The sampling areas include the 6 Local Government Areas in Abuja, the Federal Capital. It is hoped that these will produce a generalised result as uniformity had already been existing and established in the Laws and case Laws from different parts of the country.

Furthermore, for convenience, questionnaires relating to service of notice by landlords to tenants were administered both in the Abuja Municipal Area Council (AMAC) and in the 5 other Area Councils. However, those dealing primarily with service of notice for public land acquisition were administered mainly at the five (5) other Area Councils. The above stemmed from the difficulty of identifying the dispossessed persons within the AMAC.

A total number of one thousand, two hundred (1200) questionnaires were administered in the area forming the number of units while a total of eight hundred (800) questionnaires were retrieved as well as was found useful. -

The data collected was subsequently analysed using simple descriptive statistics and percentages.

IV. Results and Discussion

Table 1 : Government Agencies responsible for Land Administration in Abuja Municipal Area Council (AMAC)

Number of Units	No of Questionnaire Administered	No. of Questionnaire Returned	Percentage (%)
Federal Ministry of Lands & Survey	50	45	52.90
Federal Capital Devpt. Authority	50	40	47.10
Total	*100*	*85*	*100.00*

Table1 shows government agencies responsible for land administration and public land acquisition service of notices in Abuja Municipal Area Council. The responses got constitute 52.90% and 47.10% from the federal ministry of lands and survey and federal capital development authority respectively.

Table 2 : Distribution of Number of Units in the Area Councils

Number of Units	No of Questionnaire Administered	No. of Questionnaire Returned	Percentage (%)
Abuja Municipal Area Council	100	90	11.25
Abaji Area Council	200	150	18.75
Kwali Area Council	200	130	16.25
Kuje Area Council	200	150	18.75
Bwari Area Council	200	120	15.00
Gwagwalada Area Council	200	160	20.00
Total	*1100*	*800*	*100.00*

Table 3 : Staff Member involved in the Service of Notice for Public Land Acquisition

Option	No. of Respondent	Percentage (%)
Participated	65	76.50
Not Participated	20	23.50
Total	*85*	*100.00*

Table3 shows that most of the respondents have been involved in the service of notice and are therefore competent to proffer opinion on the subject. 76.50% have taken active part while 23.50% are aware of the process but had not participated in the service of process although they had participated in other aspects of public land acquisition.

Table 4 : Form of Service of Notice that is widely used in the Exercise of Public Land Acquisition

Option	No. of Respondent	Percentage (%)
Personal Service	15	17.70
Substituted Service e.g. affixing notice on trees etc.	70	82.30
Total	*85*	*100.00*

Table4 shows that substituted service takes precedence over personal service, which most land owners prefer but Government agents believe it is impossible most times to identify the persons and their addresses.

Table 5 : Level of Peacefulness after Substituted Service to the community

Option	No. of Respondent	Percentage (%)
Peaceful	20	23.50
Not Peaceful	60	70.60
Indifferent	5	5.90
Total	*85*	*100.00*

Table5 shows vividly that there is usually disquiet, unrest and ill-feelings after the land owners are served by substituted methods. Therefore, a more peaceful response will attend a personal service as the people will believe that the Government acknowledges and respects their claim over such land.

Table 6 : Level of Noticed Served to Tenants by Landlords for repossession

Option	No. of Respondent	Percentage (%)
Served Notice	650	81.20
Not Served Notice	150	18.80
Total	*800*	*100.00*

Table6 shows the extent to which tenants were served with notices in their respective neighbourhoods. It shows 81.20% were served with notice while 18.80% were surreptitiously dispossessed of their accommodation without serving them notice.

Table 7 : Level of Respondents satisfaction with the method of Service of Notice

Option	No. of Respondent	Percentage (%)
Satisfied	200	25.00
Unsatisfied	600	75.00
Total	*800*	*100.00*

From table7, it is obvious that several persons are dissatisfied and unhappy with method being used in the notices both by the Government and the landlords in dispossessing them of their land possession and enjoyment of right to use residential space.

V. Conclusion

Displacement of persons as a result of Government need for land and compulsory acquisition for an overriding public purpose has come to stay as a feature of modern governance. However, no stone should be left unturned in the bid to foster national peace. There is no doubting the fact that the exercise of public land acquisition illicit feelings of dissatisfaction and frustration on the land owners. Yet, a successful exercise is achievable with little or no rancour or disquiet if Government can adopt a more sensitive and humane method of service of notice and other processes.

Furthermore, the recent technological breakthrough in science can be adequately utilised thereby avoiding the unnecessary disquiet that usually follows such an exercise.

Similarly, if the landlords would embrace and adhere strictly to the dictates of the various laws relating to service of notice and not pay up-service to them, a new lease of life will be evident and more peace enjoyed.

VI. Recommendations

The following recommendations are made in the light of the discussion aimed at reducing and easing the current friction between the landlord and tenants on the one-hand and the Government and land owners on the other with regard to service of notices:

1. That the Government should periodically carry out public orientation and enlightenment programme on

matters relating to her need for land and the necessity of public land acquisition.
2. That the law relating to the service of notice be reviewed forthwith to provide for personal service as the main form of service after which other methods like going to traditional rulers and publication in Government Gazettes could be resorted to.
3. That the Government at various levels should embark on re-certification and re-record processes, which will involve updating personal data of land owners including their house addresses, phone numbers, e-mail and other addresses.
4. That software and other programmes emanating from recent technologies are used for effective documentation, storage and retrieval of land-related issues. This will avoid the necessity of the current method of substituted services.
5. That Government should prioritise and invest in manpower and capacity building especially in the parastatals and ministries that deal with land.
6. That before exercising his right of re-entry for breach of covenant, the landlord should be made to abide by the express dictates of appropriate laws or Act and that actual personal notice be given to the tenant(s). Similarly, the landlord must first give personal notice to tenant(s) requiring remedy to any breach or seeking compensation before resorting to the law court.
7. That the landlord be made to adhere strictly to the prescribed length of notice in all cases.

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