

Constitutional Right to Land in Nigeria and Kenya: A Comparative Analysis

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Abstract

This article critically appraised constitutional right to land in Nigeria and Kenya. There is a constitutional right to land in Nigeria and Kenya respectively. Therefore, every citizen of Nigeria has the constitutional right to acquire and own land in any part of the country as guaranteed under the provision of section 43 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). A person can only be dispossessed of same through payment of compensation as provided under section 44(1)(a) of the CFRN and section 29 of the Land Use Act 1978. While there is a constitutional right to land in Kenya pursuant to article 61 of the 2010 Constitution of Kenya, an individual can be dispossessed of the land but Such acquisition must be followed by payment of compensation which must be just and full in accordance with the provision of Article 40(3)(b) of the same Constitution. The court is allowed to entertain matters relating to the amount or adequacy of any compensation payable to a landowner unlike the situation under section 47(2) of the Land Use Act 1978 of Nigeria that denies the court to entertain such matter. The article recommended amongst others that the Land Use Act in Nigeria be amended, making a just compensation in full to every person whose land is acquired.

Keywords: *Constitutional Right, Land, Human Rights, Compensation, Valuation*

1. Introduction

Land is a natural resource and is physically fixed. It could be described as the most fundamental basic resource around which the social structure revolves. Every activity requires the use of land hence; this makes land the most valuable asset of man. There is an intimate relationship between man and land. It can be submitted that the survival of man depends on the availability of land and his ability to acquire and exploit it to satisfy his seemingly endless needs. Thus, every citizen of Nigeria has the constitutional right to acquire and own land in any part of the country.¹ Land constitutes an immovable property which its acquisition is guaranteed in the Constitution of the Federal Republic of Nigeria 1999 (as amended) (CFRN).²

Land is an integral part of the culture of a people and nation hence, people are always willing and ready to defend, protect and preserve it both at national and individual level. Land is a highly sensitive resource as people depend on it for survival and high value is usually placed on it as major source for several uses as well as for different opportunity costs that they might

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¹ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 43.

² *Ibid.*

incur from their use.³ Most times, the proposed mechanism for settlement of landowners by way of payment of compensation does not purport or profess to ensure that every party involved in the process will always be completely satisfied, it does offer an important improvement on the issue of justice and fairness toward simple-rank landowners.⁴

Prior to colonialism, land in Kenya was owned communally and governed by customary law. An individual did not own the land; a whole community owned the land with each individual having a right to use it in a manner acceptable to the others. However, this changed when a formal regime was imposed to run parallel to customary tenure. The country was divided into Provinces and Districts and land categorised as Government, trust or private.⁵ Henceforth, access and transactions in land was governed through the laws and procedures enshrined in the newly enacted legislation and institutions. The institutional framework established was highly centralised and state driven, largely developed to serve the white settler community. The framework, laws and procedures were complex and confusing for indigenous Kenyans. This alienated and disempowered them in decision making.⁶

The foundation of the new Kenya Land Act 2012 relating to access to land and land rights in Kenya is the Kenyan Constitution of 2010 which provides that Parliament shall enact legislation to give effect to the provisions of the Constitution relating to land.⁷ It is on this basis that Parliament enacted the Land Act No. 6 of 2012. The Land Act provides the overarching legal framework for the governance of land in Kenya based on principle established in the Constitution. It defines the three categories of land in Kenya (public, community, and private)⁸ and establishes the framework for managing and administering public and private land. By contrast, a major development in Nigeria land law was the enactment of the Land Use Act, 1978. Prior to this Act, Nigeria operated a multiplicity of land tenure systems in the country during the 20th century when Britain made a colony and protectorate of Nigeria.⁹ This paper appraises the constitutional right to land in Nigeria and Kenya in view of the fact that this right is fundamental and ought to be well recognised. The paper advanced certain lessons that can be learnt by Nigeria, from the Kenyan example.

2. Conceptual Analysis

A) Constitution

A constitution is an instrument of government made by the people, establishing the structure of a country, regulating the powers and functions of Government, the rights and duties of the individual and providing remedies for unconstitutional acts.¹⁰ This is supreme law, or rules,

³ V O Ige, 'Compulsory Land Acquisition and Compensation in Nigeria: Coastal Communal Perception' [2016] (9) (5) *Ethiopian Journal of Environmental Studies & Management*;545.

⁴ K Viitanen and I Kakulu, 'Global Concerns in Compulsory Purchase and Compensation Processes' [2009] *International Federation of Surveyors*;5.

⁵ A M Mbila and E Shikoli, 'Application of the Doctrine of Eminent Domain in Kenya: Towards A Rights-Based Approach to Compensation' [2019];4 <<http://kenyalaw.org/kl/fileadmin/pdfdownloads/KLReviewJournal/Application-of-the-Doctrine-of-Eminent-Domain.pdf>> accessed 10 April 2025.

⁶ *Ibid.*

⁷ Constitution of Kenya 2010, art 68

⁸ *Ibid.*, arts 62, 63 and 64.

⁹ C U Ezech and Others, 'Land Tenure System in Nigeria and the need for Environmental Sustainability' [2022] 7 (1) *Jewel Journal of Scientific Research (JJSR)*;9 <https://www.researchgate.net/profile/Chukwudi-Emeribe-Phd/publication/360962867_Land_Tenure_System_in_Nigeria_and_the_need_for_Environmental_Sustainability/links/6295c6f36886635d5cb15491/Land-Tenure-System-in-Nigeria-and-the-need-for-Environmental-Sustainability.pdf?origin=publication_detail&_tp=eyJjb250ZXh0Ijp7ImZpcnN0UGFnZSI6InB1YmxpY2F0aW9uRG93bmxxvYWQlLCJwYXdlIjoicHVibGllYXRpb25Eb3dubG9hZCI6InByZXZpb3VzUGFnZSI6InB1YmxpY2F0aW9uIn19&__cf_chl_tk=Rnmc7eC1nVoRI1N6E.gJfsrMfLgbm1U5cb2C2bL7JEE-1744529485-1.0.1.1-iTCNtJeAP5gs7IbBaZglCJB98Jtpe7eRni_vYxjFPA> accessed 10 April 2025.

¹⁰ E Malemi, *The Nigerian Constitutional Law* (1st edn, Princeton Publishing Co. Ikeja 2006) 1.

and usually spells out the collective aspirations of the people, its desire to remain as one political entity, the System of Government, qualification to hold or vacate public offices, the rights and duties of Government, on the one hand, and the right and duties of the citizens on the other hand, and so forth. This fundamental law, or rules, whether written or unwritten, rigid or flexible, unitary, federal or confederal in character, is the constitution of such unit of people, or country.¹¹

B) Constitutional Rights

Constitutional rights are important guarantees to individuals. The CFRN 1999 (as amended) contains many rights – as well as those in the categories of fundamental rights,¹² civil and political rights, and economic and social rights¹³ which permit individuals to claim protection from Government and Society's interference. These rights also empower individuals to live with freedom and well-being. The CFRN also place limits on these rights. Rights are limited to respect the security of the country and other people in the society. During times of emergency or war, the Government can legitimately take some individual rights away from citizens, though only for a short time and on a legal basis.¹⁴ The CFRN clearly provides thus:

Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society (a) in the interest of defence, public safety, public order, public morality or public health; or (b) for the purpose of protecting the rights and freedom or other persons.¹⁵

C) Land

Land is an essential factor of production though fixed in nature as it is immovable and comprises the physical terrestrial surfaces, real estate or property designated by definite geospatial boundaries.¹⁶ Land covers the entire surface of the earth such as the top soil, the sub-soil, everything attached to the land such as crops, and every other incorporeal hereditament that is enjoyed on land. This is the position at common law.¹⁷ This definition of the concept of land suggests that land includes both the surface of the earth and the subsoil, as well as all appurtenances that are permanently attached to it.¹⁸ Things attached to it in the language of Tobi include buildings, trees, ponds and streams.¹⁹ This common law conception of land has been adopted by the Court of Appeal of Nigeria, per Macauley J.C.A when it stated that:

According to the principles of inherited English Common law, land includes everything up to the sky and down to the centre of the earth. The presumption is therefore that a transfer or ownership of a particular piece of land includes not only the physical soil, but all building(s) permanently attached to the soil or permanently fastened to anything which is attached to the soil.²⁰

The inclusion of water in the description of what constitutes land in common law remains a striking feature of the concept of land. This implies that in maintaining an action for the

¹¹ *Ibid.*

¹² (n1), Chapter IV.

¹³ *Ibid*, Chapter II.

¹⁴ *Ibid*, s 45(1).

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ C C Wigwe, *Land Use and Management Law* (Mountcrest University Press 2016) 7.

¹⁸ N Tobi, *Cases and Materials on Nigerian Land Law* (Mabrochi Books Lagos 1997) 8.

¹⁹ *Ibid.*

²⁰ *Ibrahim v Yola* (1986) 4 (pt 1) 98 at 115.

recovery of possession of a pool of water a person must file the action for land and not just for land alone.²¹ Therefore, it has been held that ‘a river or other waterway is properly and literally described as ‘land covered by water’, the land being the bed of the stream, lake or pond in which the water is contained.’²²

D) Human Rights

Human rights are those rights to certain freedoms and claims to which every member of the human race is actually entitled.²³ Human rights accrue to an individual from birth and remains with him or her till death.²⁴ Human rights are treated with due regard. This is particular with those identified as fundamental rights under Chapter IV of the CFRN 1999 (as amended). Thus, these rights and matters related thereto are treated as matters or actions *sui generis* and they are governed by a special practice and procedure. Such relief may be claimed by a party under the Fundamental Rights (Enforcement Procedure) Rules.²⁵

E) Compensation

The term compensation is used in different sense in a number of other statutes and depending on the sense in which it is used. The term has a well understood meaning with regard to workers’ compensation. It equally has a different meaning from damages in the sense of law of tort and contract.²⁶ Compensation when used in the context of compulsory acquisition or deprivation of land of an individual or group of people such as a community means recompense or amends. It refers to the sum of money which the owner of land would have got had he sold the acquired land in the open market plus other losses which result from the resumption.²⁷

3) Critical Appraisal of Constitutional Right to Land in Nigeria

The CFRN 1999 (as amended) is declared supreme and the highest law in the hierarchy of laws in the Federal Republic of Nigeria.²⁸ Consequently, any law that has provisions that are inconsistent with that of the constitution shall to the extent of such inconsistency be declared null and void hence, having no force of law forthwith.²⁹ The right of Nigerians irrespective of place of birth, religion, sex or political association and so on to acquire and own immovable property including land anywhere in the country is recognised in the CFRN 1999.³⁰ Although, this is made subject to the provisions of the same Constitution. This means that the provision of section 43 of the CFRN 1999 is inferior to other provisions of the CFRN 1999 which provide for exception to the enjoyment of the right to own and enjoy immovable property including land in any part of Nigeria.

²¹ Wigwe (n17) 8.

²² *Attorney-General v Brotherton* (1992) 1 All ER 230 at 244, per Lord Oliver.

²³ N K Akani, ‘A Critical Appraisal of the Right to Human Dignity *Vis-À-Vis* the Rights of Women in Nigeria’ [2019];3 <https://www.researchgate.net/publication/341464153_A_CRITICAL_APPRAISAL_OF_THE_RIGHT_TO_HUMAN_DIGNITY_VIS-A-VIS_THE_RIGHTS_OF_WOMEN_IN_NIGERIA> accessed 11 April 2025.

²⁴ *Oko v A.G., Ebonyi State* (2021) 14 (pt 1795) 75.

²⁵ *Mujaid v IBEDC* (2021) 12 NWLR (Pt. 1791) 543; *Ekeocha v E.F.C.C* (2008) 14 NWLR (pt 1791) 543; *Dangtoe v C.S.C. Plateau* (2001) 9 NWLR (pt 717) 132; *Egbonu v B.R.T.C.* (1997) 12 NWLR (pt 531) 132; *W.A.E.C v Adeyanju* (2008) 9 NWLR (pt 1092) 270.

²⁶ A Anuar and M N Daud, ‘Payment of Adequate Compensation for Land Acquisition in Malaysia’ [2006] 12 (3) *Pacific Rim Property Research Journal*;330 <http://prres.net/Papers/PRPRJ_No_3_2006_Alias.pdf> accessed 11 April 2025.

²⁷ *Ibid.*

²⁸ (n1), s 1(1).

²⁹ *Ibid.*, s 1 (3).

³⁰ *Ibid.*, s 43.

Land and other immovable properties of Nigerians are property even in the face of compulsory acquisition by the government. The CFRN 1999 protects the interest of everyone in an immovable property when possession of same is taken by way of compulsory acquisition as such action by the acquiring authority must be done in accordance with the provision of the law.³¹ This constitutional provision can be argued to be the enabling law as well as source of the power of acquisition in Nigeria that is enjoyed by the Governor of States. The CFRN 1999 stressed that adequate compensation must be paid to the owner of the immovable property by the acquiring authority. In the event of failure or delay for the payment of such compensation, the person whose interest in the acquired property has been taken away must be allowed access to justice by approaching the court for the determination of appropriate amount to be paid by the acquiring authority as compensation. This can be determined by a court of competent jurisdiction or a tribunal having such power.³²

The coming into force of the CFRN 1999 does not affect the application of the Land Use Act as it is one of the enactments mentioned in the CFRN 1999 which provisions continue to apply and have full effect in the country on the subject it covers.³³ Thus, the Land Use Act continue to have effect as Federal enactment in Nigeria.³⁴

The Land Use Act 1978 (LUA) is the principal legislation of land use, management and administration in Nigeria. The LUA was promulgated by the Military Government of Nigeria in 1978 (now Cap L5, Laws of the Federation of Nigeria, 2004) as a piece of legislation vesting every land in each State (except those vested in the Federal government or its agencies) in the Governor of the State concerned not for their personal use, but for same to be held in trust for the benefit of all Nigerians. Therefore, from the commencement, the Governors are responsible for the allocation of land in all urban areas to every individual resident in the State as well as the organisation for agricultural, commercial and residential and any other lawful purposes. Local Governments are vested with similar powers with respect to lands in the rural areas.³⁵

The State Governor is empowered under the provision of section 5 of the LUA to grant statutory right of occupancy to a person whether or not the land is located in the urban area or not.³⁶ A person in whom a land is vested through such grant is considered to be a holder of statutory right of occupancy.³⁷ A statutory right of occupancy once granted, all existing rights to the land in respect of which it was granted is extinguished.³⁸

A local Government is empowered to grant a customary right of occupancy in respect of land not in an urban area for residential, agricultural and other purposes under section 6(1) of the LUA. This position was affirmed by the Supreme Court of Nigeria in the case of *Dielu v Iwuno*.³⁹ This position was also reaffirmed in the case of *Awaogbo v Eze*,⁴⁰ where the apex court held that section 6 of the LUA deals with the power as well as ability of a local Government concerning land not in urban area.⁴¹ However, strict requirements are placed on the grant of customary right of occupancy with regards to the size of land to which the grant may be granted. It specifically provides against the granting of any single customary right of occupancy in respect of an area of land that is in excess of 500 hectares if such grant is for

³¹ *Ibid*, s 44(1).

³² *Ibid*, s 44(1)(b).

³³ *Ibid*, s 315(5)(d).

³⁴ *Ibid*, s 6.

³⁵ LUA 1978, preamble.

³⁶ *Ibid*, s 5; *Adeniran v Alao* (1992) 2 NWLR (pt 223) 350.

³⁷ (n35), s 34(2); *Teniola v Olohunkin* (1999) 5 NWLR (pt 602) 280.

³⁸ (n35), s 5(2); *Olagunju v Adeseye* (2009) 9 NWLR (pt 1146) 225.

³⁹ (1996) 4 NWLR (pt 445) 622.

⁴⁰ (1995) 1 NWLR (pt 372).

⁴¹ *Ibid*.

agricultural purposes, or 5,000 hectares if it is for grazing purposes, save with the consent of the Governor of the State concerned.⁴² Section 6(3) makes it legal for a local government to access or enter and use land within its area of jurisdiction for public purpose.

The constitutional right to land can be denied by way of revocation of the right of occupancy for overriding public interest.⁴³ In the acquisition of land belonging to an individual or community by the Government for overriding public purposes, the Government being the acquiring authority must show that such land is being acquired for public use and it cannot be used for individual benefit. This position was affirmed by the Court of Appeal in the case of *Olatunji v Military Governor of Oyo State*,⁴⁴ per Salami, JCA where it was held that the acquiring authority is required to clearly state one or a combination of the public purposes for which the land in question was being acquired in its notice to the holder of a right of occupancy in order to enable such holder or occupier to challenge the acquisition. The appellate court went further to state that it is not for an individual or holder to speculate or presume that his or her land is being acquired by the Government for public use, he or she must be notified as to why land is being acquired by the Government.⁴⁵

The landowner is only entitled to compensation from the Government.⁴⁶ Compensation in the case of compulsory acquisition of land is the amount of money usually paid by the State or Government responsible for the exercise of the power of such acquisition to the individual whose land has been so acquired.⁴⁷ It has been submitted that when a particular piece of land is compulsorily acquired in its entirety, it means that the landowner has lost everything in the land acquired and he must get back a compensation equivalent to the value of the land.⁴⁸ Therefore, it is commonly thought that compensation should involve a measure of the loss suffered by an individual whose interest in land has been compulsorily acquired.⁴⁹

The LUA of Nigeria contains ambiguities, legal gaps, and gives broad discretion to the Governor of States to make decisions relating to expropriation and compensation with limited oversight by the Nigerian judiciary. The LUA leaves affected Nigerians and communal landowners vulnerable to expropriation with no adequate compensation or remedies when their tenure rights are violated. Hence, it is submitted the Government need to follow clear legal procedures in the acquisition of communal lands and valuation of compensation payable that ensure transparency and participation of landholders throughout the process of expropriation, valuation for compensation payable, and resettlement processes. If sufficiently clear and strong, such procedures can enable affected landholders the right to seek legal redress in court and judges allowed to effectively scrutinize compensation decision-making, particularly as it relate to method of valuation regulated by section 29(4) of the LUA.

4) Constitutional Right to Land in Kenya and Lessons for Nigeria

The Constitution of Kenya 2010 (CK) provides that every land in the country belongs to the people of Kenya and that it is held collectively as a nation, communities and individuals.⁵⁰ All land in the country is either classified as public, community or a private land.⁵¹ It is submitted

⁴² (n35), s 6(2).

⁴³ *Ibid*, s 28.

⁴⁴ (1995) 5 NWLR (pt 397) 586 at 602.

⁴⁵ *Ibid*.

⁴⁶ (n35), s 29.

⁴⁷ *Railroad Co. Ltd. v Deninan* (2008) 10 Min 280.

⁴⁸ K Davies, *Law of Compulsory Purchase and Compensation* (2nd edn, Butter Worths, London 1975) 41; *Horn v Sunderland Corporation* (1941) 2 KB 26; (1941) 1 All ER 480.

⁴⁹ *Ibid*.

⁵⁰ CK 2010, art 61(1).

⁵¹ *Ibid*, art 61(2).

that the import of the provision of the CK is to encourage and ensure the involvement of the people of Kenya in every dealing concerning their land in the State. The CK allows the regulation of the use of land in any part of Kenya, or any right over it or interest if doing so will be in the interest of defence, public order, public safety, public health, public morality or for land use planning.⁵²

The land right of every person including community in Kenya forms an integral part of the Bill of Rights with special protection in the CK and the State can only deprive a person or community of the enjoyment of this right as a result of an acquisition of land or an interest in land, title to land or a conversion of an interest in land, or where such deprivation of interest in land is in the public interest or for public purpose and carried out in line with the provision of the Constitution.⁵³ The CK specifies that any acquisition of land can only be effective when followed by prompt payment of compensation and that compensation must be just and full, and paid to any person who has a right over or an interest in the acquired land, and such person must be allowed access to a court of law for the determination of a just and full compensation.⁵⁴ The National Labour Commission Act (NLCA) was enacted in 2012 for the establishment of the National Land Commission (NLC) and for other matters connected thereto.⁵⁵ The functions as well as powers of the NLC are set out in Part II of the NLCA. Some of the functions of the NLC is management of public land on behalf of both the national as well as County Governments of Kenya, alienation of public land on behalf and with the consent of both the national as well as county government, management and administration of land pursuant to the principles of land policy as provided under article 60 of the CK as well as the National Land Policy of Kenya and to have oversight responsibilities over and monitor land use planning in the entire country.⁵⁶

The NLC is empowered to take every necessary action for the execution of all its mandate as provided under the CK, its enabling law and any other law in force.⁵⁷ This gives unlimited powers to the NLC with respect to land administration in Kenya. The NLC is empowered to make necessary rules governing the acquisition of land as well as payment of just and adequate compensation.⁵⁸ The NLC also has the power to hold necessary inquiry, award and ensure prompt payment of a just compensation before any acquired land is taken possession of by the State.⁵⁹

Accordingly, the NLC has been severally sued with respect to compulsory acquisition of land in Kenya. The Court was faced with similar facts in the case of *Hamisi Tsuma Mwero v National Land Commission & 4 others*,⁶⁰ where the petitioners maintained an action arguing that their land which was approximately 246.86 hectares or 610 acres had been acquired by the NLC for the construction of a Standard gauge Railway without payment of compensation to their owners. It was submitted that such acquisition was fraudulent, unlawful, and unconstitutional and was in breach of the provisions of Articles 40, 47(1)(2), 60(1) (a)(d), 62(2), 67(2) and 201 of the CK 2010. The respondents in its response, argued that the ownership of the land was in dispute and that the petitioners had not been able to prove that the

⁵² *Ibid*, art 66(1).

⁵³ *Ibid*, art 40(3).

⁵⁴ *Ibid*, art 40(3)(b).

⁵⁵ NLCA 2012, s 3.

⁵⁶ *Ibid*, s 5(1).

⁵⁷ *Ibid*, s 6.

⁵⁸ Land Act, 2012, s 111(2).

⁵⁹ *Ibid*, s 113.

⁶⁰ (2017) eKLR 48.

land actually belonged to them. The argument of the respondents was upheld by the court holding that the petitioners never presented an arguable case.⁶¹

Constitutional right to land is given special treatment in Kenya, hence, the Environment and Land Court Act, 2011 of Kenya (ELCA) established the Environment and Land Court of Kenya (ELC) with the status of a High Court.⁶² The ELC has the jurisdiction to hear and determine disputes pertaining to compulsory acquisition of land.⁶³ Thus, in the case of *Maisha Nishike Limited v The Permanent Secretary, Ministry of Lands & 5 others*,⁶⁴ the suit was at first filed at the High Court. However, the court was of the view that there was established for Kenya, a National Land Commission (NLC) and the ELC with the jurisdiction to hear and determine such matter. The petition was accordingly dismissed for lack of jurisdiction.⁶⁵

The ELC has since its establishment under the ELCA heard and determined a plethora of cases bordering on compensation and its valuation. One of such instances is the case of *Isabel Waithira Njoroge v Permanent Secretary Ministry of State for Provincial Administration & Internal Security & 4 others*,⁶⁶ where the land of the petitioner had been acquired for the construction of a Chief's Camp and a Police Station through the exercise of the power of compulsory acquisition. The petitioner was not compensated. The ELC held per Gacheru J, that the petitioner was entitled to compensation, noting that monetary compensation payable for an acquired land must be seen to be reasonable and fair with due consideration of the circumstances of each case. It awarded Kshs 2,000,000/- as compensation to the petitioner and continued that the right of the petitioner to property as expressly protected by the provision of article 40 of the CK 2010 was violated. The ELC held further that failure to award compensation to the petitioner was an obvious breach of the right to fair administrative action as safeguarded under the provision of Article 47 of the CK.⁶⁷

The Land Act 2012 of Kenya enacted pursuant to the provision of Article 68(1) of the CK as a way of revising, consolidating and rationalising existing laws on land further promotes constitutional right to land in Kenya.⁶⁸ The Land Act recognises the power of the Government of Kenya to acquire land for public purpose by way of compulsory acquisition and prompt payment of compensation.⁶⁹ In a nutshell, while the LUA of Nigeria only provides for adequate compensation in the event of compulsory acquisition of land, the Kenyan Land Act 2012 recognises the prompt payment of a just compensation in full to every person whose interests in the acquired land has been determined.

5) Conclusion and Recommendations

It is established in this paper that there is a constitutional right to land in Nigeria and Kenya. Therefore, every citizen of Nigeria has the constitutional right to acquire and own land in any part of the country as guaranteed under the provision of section 43 of the CFRN 1999 (as amended). Land constitutes an immovable property which its acquisition is guaranteed in the Constitution of the Federal Republic of Nigeria 1999 (as amended) and one can only be dispossessed of same through payment of compensation. In the case of Kenya, the land right of every person including community forms an integral part of the Bill of Rights with special protection in the CK and the State can only deprive a person or community of the enjoyment

⁶¹ *Ibid.*

⁶² Environment and Land Court Act 2011, s 4(1).

⁶³ *Ibid.*, s 13(2)(b).

⁶⁴ (2013) eKLR 55.

⁶⁵ *Ibid.*

⁶⁶ (2014) eKLR 56.

⁶⁷ *Ibid.*

⁶⁸ (n58), s 161.

⁶⁹ *Ibid.*, s 2.

of this right as a result of an acquisition of land or an interest in land, title to land where such deprivation of interest in land is in the public interest or for public purpose and carried out in line with the provision of Article 40(3) of the CK 2010. Such acquisition must be followed by payment of compensation which must be just and full in accordance with the provision of Article 40(3)(b) of the same Constitution. Unfortunately, fairness is not considered as a basis for payment of compensation for compulsorily acquired land in Nigeria. This article therefore recommends as follows.

1. Section 1 of the Land Use Act 1978 of Nigeria vesting all land in a State in the Governor of that State should be amended and be replaced with a Commission to control, manage and administer land as to ensure proper land development.
2. Section 47(2) of the Land Use Act 1978 preventing the court from inquiring into any question relating to the amount or adequacy of any compensation payable to a landowner whose land has been compulsorily acquired should be amended to give the court the jurisdiction to entertain such matter. This is the position under Article 40(3)(b) of the CK 2010.
3. The Land Use Act 1978 should be amended making a just compensation in full to every person who has interests in the acquired land. A clue ought to be taken from Kenya where compensation payable must be just and full in accordance with the provision of Article 40(3)(b) of the CK 2010.