The Open Grazing Prohibition and Ranches Establishment Law, Benue State 2017 and Ruga Settlement Policy of the Federal Government: Constitutional Implications

*Aondofa Aligba, Mary Omanchi, and Terzungwe Gbakighir,

Abstract

The spate of clashes between the Fulani herdsmen and farmers in Benue State, between 2013 and 2017 resulted in the destruction of many properties and killing of many innocent lives, the breakdown of law and order, and disruption of many social activities. Worried by these ceaseless attacks, the Benue State Government promulgated the 'Open Grazing Prohibition and Ranches Establishment Law, Benue State, No. 21, vol. 42 of May 2017'. The enactment of this Law generated a lot of controversy, particularly from the Fulani herdsmen who perceived the legislation as encroaching on their constitutional rights, such as freedom of movement across Nigeria and the right to own movable property in the Federation of Nigeria. The controversy reached the peak when the Federal Government came up with a proposal to establish colonies or Ruga settlements in some states of the Federation. Worried by this proposal, the Benue State Government challenged the Federal Court in Court to determine the legality and constitutionality of the Anti-Open Grazing Law and the propriety of the Federal Government proposal to set up Ruga settlements and colonies in the state. The Court after making its declarations still left some legal issues unresolved; which this paper has identified. This article has utilized the doctrinal method of research, which relies mainly on the Constitution of the Federal Republic of Nigeria, the Land Use Act, 1978, the Open Grazing Prohibition and Ranches Establishment Law, Benue State, No. 21 Vol. 42, 2017, as well as, Court decisions over the matter. It was found that the constitution, the Land Use Act, 1978 like the Anti-open Grazing Law Benue State were intandem in the areas of vesting of land in the Governor, consent in acquiring title and revocation of such title in the state. It was found that all these laws provide for 'public interest' as a yardstick for taking over any land in the state by the Government. Based on the extant laws and the constitutional provisions, the Court held that the Federal Government has no power to take over land in any State to establish colonies. And any land required by the Federal Government for whatever purpose in a State needs the consent and approval of the State Governor.

Key words: Constitutionality. Open grazing. Prohibition. Law.

* Faculty of Law, Benue State University, Makurdi, 07034298740, aaligba@gmail.com; 07035945235 gbakighirterzungwe@gmail.com; 07039014646, siimiijo@yahoo.com.

Introduction

This article considers the spate of communal conflicts or crises over land in Benue State between the Fulani herdsmen and the Benue farmers. It pointed out how the crises resulted in the destruction of properties, loss of lives and break down of law and order. This development propelled the Governor of the state to initiate a Bill in the Benue State House of Assembly which was eventually promulgated as the Open Grazing Prohibition and Ranches Establishment Law, Benue State, 2017. The promulgation of this law became a cause for concern from many segments of the public, particularly the Fulani herdsmen who argued that, the Benue Anti-Open Grazing Law is unconstitutional as it has restricted movement of Fulani cattle breeders in the state, affected their right to own moveable property in any part of the country and is discriminatory in some of its provisions. The paper explained that the criticisms would have not become a cause for concern until the Federal Government decided to initiate a policy, plan to forcefully acquire certain portions of land in the rural areas of some states as permanent settlements and reserved areas for grazing of cattle by Fulani herdsmen.

Benue State Government, worried by the Federal Government move, filed an originating summons in the Federal High Court, Makurdi seeking for the interpretation of the legality and constitutionality of the Anti-Open Grazing Law of the State as well as the constitutionality of the Federal government plan to seize or take over certain lands in some states, including Benue State to establish Ruga settlements for Fulani cattle rearers. The Court after due consideration of the issues raised before it and a comparison of the provisions of the constitution, Land Use Act, 1978 and the Anti-Open Law of Benue State, declared that the Anti Open Grazing Prohibition Law was intandem with the provisions of the constitution and Land Use Act, and therefore, valid for Benue State. The Court in conclusion, found and declared the intended proposal, plan, policy and proclamation by the Federal Government on Ruga settlements and the establishment of colonies, illegal, unconstitutional, null and void.

Conceptual Clarifications

The phrase 'Open Grazing' which surfaces in this article is defined by the Anti-Open Grazing Law as 'the act of pasturing livestock to feed on dry grass, growing grass, shrubs, herbage, farm crops etc. in open fields without any form of restriction'.[1] While the phrase 'open rearing' used in this write-up implies, the 'unfettered breeding and raising of animals'.[2] The term 'animals' used in the Anti-Open Grazing Law connotes 'any variety or specie of animal'.[3] The word 'prohibition' means the act of restricting, a practice, trade, profession, custom or a given behaviour in a society, community or country.[4] The term 'prohibition' further means, the act of stopping an action, practice or behaviour that is adjudged inimical to the interest, happiness, peaceful co-existence and well-being of the people in a given society, community or country. The word 'Ranch' on the other hand, is defined as: a secured tract of land used for animal nurturing farm, particularly for grazing and rearing of cattle, sheep, goats, pigs, horses and any other animal.[5]

The word 'lease' used in the discussion means the giving out of a piece of land for a specified period of term in return for a fee called 'rent'.[6] The word 'Federation' simply means the physical territory of the geo-political entity called 'The Federal Republic of Nigeria'[7] while 'Benue State' is one out of the 36 geo-political sub-units in the Federation of Nigeria.[8] The terms 'Ruga' and 'Colonies' imply parcels of land of the states which the Federal Government wanted to acquire and designate as settlement areas and grazing lands for the Fulani cattle breeders.

---

1 See section 2 of Open-Grazing Prohibition and Ranches Establishment Law, 2017.
2 Ibid
3 Ibid
4 Ibid
5 Ibid
6 Ibid
7 See section 2 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)
8 See section 3 (1) and (3) of the Constitution of the Federal Republic of Nigeria 1999 and of the first schedule of the constitutions

Events Leading to the Enactment of Anti-Open Grazing Prohibition and Ranches Establishment Law, 2017 by the Benue State Government

From 2013 to 2017, Benue State was bedeviled with series of attacks and communal clashes over land by Fulani cattle-breeders and the Benue farmers who had been in undisturbed occupation and use of their farm lands for a long time. These attacks resulted in the killing of many people and destruction of farm products, houses and the disruption of peace and orderliness in the State.[9] The sudden influx of the Fulanis with large number of cattle led to ecological devastation, as the movement of their cattle in large numbers resulted in the removal of the top soil, introduction of strange grasses brought from distant lands to the State, as well as, the destruction or pollution of water from ponds and streams used by the locals for human consumption. Hitherto, migration of the Fulanis in the Benue Valley was done on peaceful negotiations/arrangement between the Fulani herders and the Benue farmers in the dry season when all harvests were done. From 2013 – 2017, however, the Fulani herders came to the Benue Valley with an agenda to settle permanently in the state, and to take-over the land no matter the interest of the people pre-existing and cultivating the area.[10]

To demonstrate their seriousness about their agenda, they came heavily armed with sophisticated guns like AK 47 riffles, explosives and other sophisticated armaments used in conventional wars. The attacks unleashed on the unsuspecting Benue farmers were carried out in the dead of the night when the farmers were deep asleep with their families or in the early hours of the day; when nobody expected such a magnitude of attack.[11]

Worriedly by these ugly and incessant attacks on the State, the Benue State Government initiated a Bill in the Benue House of Assembly, to enact a law that will arrest the prevalent mischief in the state. This Bill was eventually passed by the Benue State House of Assembly, as a law operating in the state, and was assented to by the

---

9 Times line of Fulani Herdsmen attacks on Benue from 2013 to 2018, Report of 9th January, 2018 access on 29th March, 2019.

10 Ibid

11 Ibid

Governor on 22nd May, 2017. Before this Bill was passed into law, it was read at different plenary sessions in the Benue State House of Assembly and public hearings were carried out. Majority of members of the public supported the passage of the bill on the ground that, it would provide lasting solution in the state regarding farmers/herder's conflicts.

The passage of this law attracted so many commentaries from member of the public concerning its constitutionality and legality. Questions raised were whether or not some of the provisions of the legislation have infracted on some of the Fulani herders fundamental rights, such as freedom to move freely across Nigeria.[12] Next was whether or not, the law is discriminatory against the Fulani herders[13] or has encroached on their freedom to own movable property in any part of the Federation of Nigeria.[14] Other opinions of concern were whether or not the Benue State House of Assembly possessed the legislative powers to make a law on the subject-matter touching on the grant of land to any farmer to establish a Ranch in Benue State?

The Open Grazing Prohibition and Ranches Establishment Law, Benue State, 2017, from its objectives, is seen as a law made with intent to guarantee peace, order and good governance in the state, but not a law calculated to discriminate and deny some of the fundamental rights, such as freedom of movement and the right to own movable property in Benue State by Fulani cattle owners or any other person.

From section 3 of the law, it is clear that, the target of this legislation was directed at:

(a) preventing the destruction of crops, settlements and property by open rearing and grazing of livestock;
(b) prevent clashes between Nomadic livestock herders and crop farmers
(c) protect the environment from degradation and pollution caused by open rearing and over grazing of livestock;

---

12 Section 41(1) Constitution of the Federal Republic of Nigeria 1999 (as amended)
13 See section 42(1) (2) Constitution of the Federal Republic of Nigeria 1999 (as amended)
14 Section 44(1) Constitution of the Federal Republic of Nigeria 1999 (as amended)

(d) optimize the use of land resources in the face of overstretched land and increasing population;
(e) prevent, control and manage the spread of diseases as well as ease the implementation of policies and enhance the production of high quality and healthy livestock for local, and international markets;
(f) create a conducive environment for large scale crop production.[15] Conditions for the revocation of leases granted for the establishment of ranches are stipulated in section 11(2) of the Anti-open Grazing Law to be:
    a) Breach of state peace;
    b) Interest of peace
    c) Breach of any term or condition of the lease hold; or
    d) Overriding public interest as stipulated in the Land Use Act.[16]

From the above, it is evident that the law was enacted for maintenance of peace and orderliness in Benue State as well safeguard the over riding public interest and not to unleash vendetta on Fulani herders or any other Nigerian wishing to acquire land for animal rearing in Benue State.

Some of the provisions of the Anti-open Grazing Law were criticised on the ground that they are discriminatory. For instance, section 10 of the law states that: Any indigene of Benue State who wishes to set up a personal ranch on his own land shall be exempted from the provisions of sections 5, 6, 7, 8 and 9 of the law. It goes further that leases and permission granted under the law shall confer a privilege and not a right.[17] By this, the law makers did not portray the law as being equitable.

The controversies expressed over this law would have not been a cause for concern in this study because some states in the country soon thereafter, began to emulate the Benue State position by passing the same law in their states to address the influx and destruction caused by the movement of Fulani herders over their

---

15 See section 3, Ibid
16 Ibid
17 See section 11(2) Anti-Open Grazing Law

lands.[18] What led to serious controversy over this law resulting to the approach of the court was the proposal, policy, plan or intention of the Federal Government of Nigeria, to establish 'colonies' or 'Ruga settlements' in some states in the Federation, in particular Benue State. This plan of the Federal Government was feared and suspected by the Governor and was what compelled the Attorney General of Benue State to file an originating summons against the Attorney General of the Federation, the Federal Ministry of Agriculture and Rural Development, the Minister of Agriculture and Rural Development, (as 1st, 2nd and 3rd defendants) on 28th June, 2019 seeking for the determination of the below questions revolving around the legality and constitutionality of the Federal Government proposed plan to set up 'Ruga settlements in all the states in Nigeria and the constitutionality of the Anti-Open Grazing Law enacted by the Government of Benue State on May, 2017.

Issues and Questions for Determination before the Court on the Constitutionality of the Federal Government Policy to Establish Colonies on Benue State Land

The questions and issues canvassed before the court were:

Question No. 1:

> Whether or not a proper interpretation and construction of section 44(1) and (2) of the 1999 Constitution of the Federal Republic of Nigeria, and section I of the Land Use Act, 1978, the Federal Government's Policy, Plan, or proclamation to establish Ruga settlements or cattle colonies in all the states of the Federation and in Benue State in particular, constitutes a gross violation of the constitution and an infringement of the right or interest over all the plaintiffs land, comprising land – in the territory, known as Benue State.[19]

---

[18] See The Open Grazing Prohibition and Ranches Establishment Law of Taraba State, 2018.

[19] Attorney General Benue State & 1 Or V. Attorney-General Federation & 2 Ors. Unreported Suit No. PHC/MKD/CS/56/19

Question No. 2:

> Whether, having regard to sections 5, 6, 7 and 19(1) of the Benue State Open Grazing Prohibition and Ranches Establishment Law, 2017, which provides for and regulates ranching, livestock rearing and grazing in Benue State, the Federal Government plan, policy, decision and pronouncement to establish Ruga settlements or cattle colonies for the purpose of regulating and controlling where herders will live, grow their cattle and produce milk in Benue State, is not ultra vires and an encroachment or usurpation of the Benue State Government lands in that regard.[20]

Question No. 3:

> Whether by the combined reading and construction of sections 4, 9 (2), 315 (5) and (6b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and sections 1, 5, 6, 26, 28 and 49 of the Land Use Act, the Federal Government has power to make policy on land and administration by establishing grazing reserves, cow/cattle colonies, pilot ranches, Ruga settlements or by whatever name called, for use of private cattle breeders on land other than were owned by the Federal Government as at 29th March 1978 or 29th May 1999 (as the case may be) and on lands used for farming purposes.[21]

Question No. 4:

> Whether upon a calm and dispassionate construction and interpretation of sections 9(2), 5(6) 58 and 315(5) Constitution of the Federal Republic of Nigeria, 1999, it is competent for the Federal Government of Nigeria to formulate any policy relating to land use, planning and administration in Benue State, particularly any

[20] ibid
[21] Ibid

policy purporting to establish cattle grazing reserves, cow/cattle colonies, pilot ranches, Ruga settlements or by whatever name called, without recourse to the special procedure for constitutionality.[22] (sic)

Question No. 5:

Whether the power of the National to legislate on the environment generally as conferred by section 20 of the 1999 constitution, includes the power to legislate on land use and administration in the various states of the Federation.[23]

Question No. 6:

Whether by virtue of section 1 of the Land Use Act, 1978 the 2nd and 3rd defendants have the power to hold, administer, use or allocate any land belonging to Benue State government for the establishment of Ruga settlements or cattle colonies where herdsmen will live and grow their cattle and produce animal milk in Benue State.[24]

Question/Issue No. 7:

Whether having regard to the provisions of section 44(1) & (3) of the 1999 constitution of the Federal Republic of Nigeria, (as amended) and the Benue State Anti-open Grazing Law, No. 21, vol. 42, 2017, the 2nd and 3rd defendants have the power to use or allocate land comprised in the territory of Benue State for purposes of rearing and grazing any livestock Department of the Benue State Ministry of Agriculture and natural Resources.

Question/Issue No. 8:

Whether the Benue State Government is not entitled to an order of injunction restraining the

---

22 Ibid
23 Ibid
24 Ibid

> defendants, their servants, agents from using or allocating any land belonging to the Benue State Government for Ruga settlements, cattle colonies or ranches without ranching permit.[25]

Question/Issue No. 9:

> Whether the policy of the Federal Government to establish Ruga settlements and or cattle colonies in Benue State can override the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Land Use Act and the Open Grazing Law of Benue State.[26]

Facts of the Case

The facts of the case as reproduced from the judgment of the Federal High Court, Makurdi is that arising from the incessant conflicts between farmers and Fulani herdsmen in Benue State, the Benue State Government decided to enact a law that prohibited open rearing and grazing of livestock in the state, and provided for the establishment of ranches and livestock administration, regulation and control.[27]

To the Benue State Government, the law was being complied with, by the herdsmen and started bringing peace and reduction in clashes between herdsmen and farmers in the state. The Federal Government, in disregard to the constitution, the Land Use Act, 1978 and the Open Grazing Prohibition Law, 2017 wrote a letter to the Governor of Benue State, Chief Samuel Ortom, indicating her intention to establish Ruga settlements in Benue State[28] or the creation of cattle colonies for Fulani cattle rearers to settle and rear cattle and produce milk in the state.

The contention of the Federal Government was that the Federal Ministry of Agriculture and Natural Resources, having identified open grazing of animals by herders as one of the causes for

---

25 Ibid,

26 See Attorney-General Benue State & 1 Or v. Attorney-General of the Federation & 2 Ors unreported suit No. FHC/MKD/CS.56/19

27 See section 4, 5, 6 and 11(1) of the Open Grazing Prohibition and Ranches Establishment, Law 2017, No.21, Vol.42 Benue State of Nigeria, Gazette, 2017.

28 Supra at p19.

herders and farmers conflicts across the country, decided to come up with the project of 'Ruga settlements' to settle animal farmers in organized places, in the rural areas, with the provision of necessary amenities such as hospitals, schools, road networks, veterinary clinics, markets.[29] The position of the plaintiffs was that, the Federal Government was merely using the establishment of 'colonies' and 'Ruga settlements' as a ploy to grab the land of the State for the settlement of Fulanis. The contention of the Federal Government and the agencies sued with it was that, the Federal Government was not planning to impose the programme of Ruga settlement on states that are not willing to participate in it and that the proposed acquisition was going to be done in national interest and that Benue State was not captured in the programme, and that arising from protest against the policy of Ruga settlement, the programme has been suspended.

Arguements for and against the Constitutionality of the Federal Government Policy to Establish Ruga Settlements/Colonies on Benue State Land

Coming to the point of address, counsel to the plaintiffs formulated a sole issue centering on the legality and constitutionality of the Open Grazing Prohibition and establishment of ranches law, Benue State, 2017. By the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and certain provisions of the Land Use Act, 1978 which are incorporated into the constitution, the issue formulated for determination to wit was:

(a) Whether by the combined reading of sections 4, 9 (2), 44(1) & (3), 315 (5) & (6) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), and section 1, 2, 5,6 and 28 (1) of the Land Use Act, 1978 and sections 4,5, 6, 7 and 19(c) of the Benue State Open Grazing Prohibition and Establishment of Ranches Law, 2017, grant or confer power on the defendants to arbitrarily or compulsorily acquire, take over land comprised in the territory of Benue State, for the purposes of establishing a Ruga model settlements or cattle colonies, contrary to the extant laws.

---

[29] See Attorney General Benue State & 1 Or v. Attorney General Federation & 2 others

> Parties appreciated the fact that the Federal Government may require land in any of the states where the programme is to operate. For Benue State, the parties contended that there was in existence the Anti-Open Grazing Law which was enacted to curb the herdsmen/farmers clashes and that the herdsmen have been complying with the law, which has engendered peace and has begun to reduce herders/farmers clashes in the state.

In their argument before the court, the plaintiffs submitted that the Federal government has no powers to compulsorily acquire and take over or allocate land within the territory of Benue State for the purpose of rearing and grazing any livestock, within the state.[30]

To the plaintiffs, the Land Use Act, which is made part of the constitution,[31] has vested land in the state in the Governors of each State, and such land is to be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of the Act.[32]

The plaintiff maintained that, the control and management of lands in the urban areas is vested or placed under the control and management of each Governor, while all other lands in non-urban areas are subject to the Act, vested under the control and management of the Local Governments within the area of jurisdiction at which the land is situate.[33] Drawing from the above, all lands within Benue State is vested in the state government and local government councils where the land is situate.[34]

To further buttress their stand or objection on the Federal Government steps, policy to establish Ruga settlements in Benue State, the plaintiffs contended that the constitution as the Grundnorm provides that no interest in any movable property shall be taken

---

30 Ibid, 22

31 Section 315(5) Constitution of the Federal Republic of Nigeria, 1999 (as amended)

32 See sections 1 and 2 Land Use Act, 1978

33 See section 2(1) (a) & (b) Land Use Act

34 See section 1(2) of Land Use Act, Cap 202 Laws of Federation Nigeria, 2004

compulsorily except, by the manner prescribed by the law.[35] Such a law must provide for prompt payment of compensation to the holder of title over such land and must give to any person making a claim over such land opportunity to claim or seek for compensation in a Court of Law or tribunal and such a person has right to determination of his interest in the property not impeded, and the amount of compensation should be determined by a Court of Law or tribunal having jurisdiction in that part of Nigeria.[36]

The plaintiffs further argued that section 44(1) has vested property in and control of minerals, mineral oil and natural gas in, under or upon any land in Nigeria or under or upon, the territorial waters and Exclusive Economic Zone of Nigeria in the Government of the Federation and which is to be managed in such manner as may be prescribed by the National Assembly.[37]

Countering this submission, the defendants denied that it is not the desire of the Federal Government to take over forcefully lands in any state for the establishment of Ruga settlements or force any state to be part of the programme. Peradventure, if the Federal Government wants to operate the programme in Benue State, by virtue of section 1 of the Land Use Act, and section 44 of the Constitution, it cannot take, compulsorily possession of any land which belongs to Benue State as well as any right over or interest in any such land, other than the land as provided in section 44(3) of the constitution.

The court, held that based on the provisions of the Land Use Act and the Constitution, the Federal Government must involve the Benue State Government by taking of appropriate steps for the acquisition of land in the state for such settlement.[38]

The 1st defendant, in his submission, contended that, the proposed Ruga settlements are to be located in the rural areas of the states. In respect of lands in the rural areas, it was stated that section 6(1) of the Land Use Act, has vested such power over land not

---

35 See section 44 (1) & (3) Constitution of the Federal Republic of Nigeria, 1999 (as amended)

36 See section 44(1) (a) Constitution of the Federal Republic of Nigeria, 1999 (as amended)

37 See section 44(3) Constitution of the Federal Republic of Nigeria, 1999

38 Ibid, 25

situate in urban areas to the Local Government Councils to grant customary rights of occupancy to any person or organisation for the use of land in the local government areas for agricultural, residential and other purposes and to grant customary right to any person or organisation for use of land for grazing purposes and such other purposes ancillary to agricultural purposes as may be customary in the local government area concerned.[39]

The above was interpreted by the court that, from the language of the law above, local governments in the state are warranted by the provisions of Land Use Act to grant customary right of occupancy to any person on lands in rural areas for agriculture, residential and other purposes. Section 6(1) (b) of Land Use Act goes further to state that such customary rights of occupancy can be granted for grazing purposes and other purposes ancillary to agriculture as may be customary in the local government concerned.[40]

On interpretation of section 6, of Land Use Act, the plaintiffs submitted that local governments can, by that provision, grant rights of occupancy for grazing purposes, where grazing is found to be customary in the local government area concern, and that grazing is not customary in any part of Benue State. The above interpretation was declared unacceptable to the Federal High Court, Makurdi, on the ground that, the use of the word 'and' in section 6(2) of Land Use Act meant that local government councils can grant title to any person, organisation for purposes of using the land for agricultural purposes and grazing purposes and such other purposes ancillary to agricultured purposes.[41]

The confusion that arose in the interpretation of section 6 of Land Use Act is the meaning conferred by the law on the expression 'grazing purposes' which the Land Use Act defined as: 'such agricultural operations as required for growing fodder to livestock on the grazing area; fodder being feed for horses and farm animals, composed of entire plants or the leaves and stalks of a cereal crop'.[42]

---

39 See section 6(1) Land Use Act 1978
40 N38, 25 - 26
41 Ibid
42 See section 51 Land Use Act, 1978

The Court found that since land in every state is controlled and managed by the Governor and the Local Governments in the state, which are authorized by law to issue statutory right of occupancy and customary right of occupancy, it means any time the Federal Government needs land in a state, it would have to go through either the Governor or Local Government, if the state or such a local government embraced that policy or plan.[43]

The defendants also advanced the argument that, the Federal Government can acquire land for national interest but there is a Regional Law that empowers the minister to constitute reserved grazing land, irrespective of the Open Grazing Prohibition and Ranches Law of Benue State, 2017. They maintained that, the Constitution though the supreme law in Nigeria[44] notwithstanding the inclusion of the Land Use Act[45] has empowered the National Assembly under items 17 (d) and 18 of the concurrent legislative list of the constitution contained in the second schedule to 'establish institutions for the promotion or financing of Agricultural Projects'. The defendants submitted by the above constitutional provision, that both the National Assembly and State Houses Assembly can make laws in promoting or financing agricultural projects to be enforced in their respective territories. The defendants submitted that the powers of National Assembly in the above statutes include, the enactment of laws for the establishment of animal husbandry, nomadic livestock commission etc, just like it has established the River Basins Development Projects in the country as well as nomadic commission for nomadic education which is mandated to manage the education of herdsmen across the country for the purpose of livestock development or animal husbandry.[46] Regarding the compulsorily acquisition of land for use for Ruga settlements, in any state of the Federation, only the National Assembly can invoke its powers under section 19(2) of the Interpretation Act[47] to empower such a commission to own and manage any land for the purpose of the Act.

---

43 Ibid
44 See section 1(1) Constitution of the Federal Republic of Nigeria, 1999
45 See section 315(5) Constitution of the Federal Republic of Nigeria, 1999
46 Ibid, 28
47 Cap 123 Laws of the Federation of Nigeria, 2004

The defendants concluded argument by stating that a combined reading of items 17 and 18 of the concurrent legislative list and section 10 (2) of the Interpretation Act shows that the Federal Government has sufficient legal backing to act independently of the states and local government councils in dealing with the issue of land acquisition for the purpose of resolving the Ruga controversy.

The court examined the provisions of section 315(5) and (6), section 9(2) of the Constitution of the Federal Republic of Nigeria, 1999, section 10 (2) of the interpretation Act, and items 17 and 18 of the concurrent list of the constitution and accepted the contention by plaintiffs that, items 17 (d) and 18 of the concurrent list deals with the powers of the National Assembly to make laws on agricultural projects and stated that, the case before the court did not question the power of the National Assembly in that regard, neither is the National Assembly made a party before the court, so the items did not apply. Even if item 17 (d) were to be relied upon, it conferred on the National Assembly authority to make laws for the Federation or any part thereof with respect to the establishment of institutions and bodies for the promotion and financing of industrial, commercial and agricultural projects.[48] This power is restricted by the Constitution to the establishment of institutions for the promotion and financing of projects stated under the list.

According to the court, Ruga settlements are not contained as one of the recognized institutions or body that would come together to promote or finance agricultural projects as such cannot be held to fall in the ambit of that law.[49] On item 18, it was discovered that the constitution as the supreme law of Nigeria, clearly vested the power to make laws in the states with respect to industrial, commercial or agricultural development. This provision is discovered to be intandem with extant law in Benue State such as Open Grazing Prohibition and Ranches Establishment Law, 2017 that the states solely have the powers to control the use and

---

48 Ibid

49 Ibid,30 and section 17 (d) of the concurrent list of the Constitution of the Federal Republic of Nigeria, 1999

management of its land, even where the land is owned by the Federal Government.[50]

The court further held that the regulation of physical developments concerning land in a state, are legislative matters within the power of the States. The Court went on that the issue pertaining to land in urban and rural regions, affects the development and control of such land for the benefit of the society, and in order to ensure the purposeful utilization by the community to which any land relate, there must be laws, rules and regulations controlling the general rights, so as to prevent indiscriminate use of the land. Who then is authorised by the Constitution to make these laws, rules and regulations?

The answer to the question above helped in resolving the conflict between Benue State Government and the Federal Government over the establishment of Ruga settlements in the state as well as the issue of the constitutionality and legality of the law making power exercised by the Benue State House of Assembly by enacting the Open Grazing Prohibition and Ranches Establishment Law, 2017. Here, the court relied on the views of Justice Samson O. Uwaifo JSC[51] that 'Nigeria operates a federal system of government'.[52]

By Federalism, each tier of Government is guaranteed autonomy. None of the tiers of Government is subordinate to the other, this in particular involves, the State Government and Federal Government. Both are autonomous, in that each tier is free to exercise its own will in conduct of its affairs. Under the Constitution, they are free from control by the other tiers of Government. Under federalism, each tier of Government has its legislative powers or functions conferred on it as the case may be. In Nigeria, National Assembly legislates for the Federal Republic of Nigeria or any part thereof,[53] while the States Houses of Assemblies are allowed to legislate for each state in respect of the subject matters assigned to

---

50 See Attorney-General Lagos State v Attorney-General Federation (2003) 12 NWLR (PT833) 31

51 See Attorney-General Benue State & 1 Or v. Attorney-General Federation & 2 Ors, Supra

52 See section 2(2) Constitution of the Federal Republic of Nigeria, 1999

53 Supra

them by the constitution in the concurrent list.[54] Each tier is to make laws for peace, order and good government in their respective territories. Matters not defined in the Exclusive legislative list and concurrent legislative list, becomes residual matters exclusively reserved for the State Houses of Assembly to make laws.[55]

In *Aberuagba's case*, Justice Bedo was quoted as drawing the conclusion that 'the Federation had no power to make laws on residual matters'. The Federal Government is vested with residual power as provided in section 299 of the Constitution only.[56] The Court went ahead to explain that the function of planning, layout and development of respective lands is the exclusive legislative dormain of the states. Therefore, any act which tends or is implemented in a way, to undermine or take away this function of any state or allows the Federal Government to exercise or assume such function, is unconstitutional.[57]

The court added that even where it comes to the Federal Government using its own land in a state, the Federal Government must respect the planning, laws, regulations of such a state or act in consultation with the appropriate authorities or agencies of the state, with the view to achieving mutual accommodation for the project intended.[58] The court concluded that this is on all fours with item 18 on the concurrent legislative list that, even when it comes to the use of any land or the control and management of land within the state, even when such land belongs to the Federal Government, it is the State House of Assembly that has power to make the laws; regarding such a land.[59]

The defendants in order to defeat the argument on the legality of Open Grazing Law of Benue State, submitted that they are

---

54 See exclusive legislative list set out in part 1 of the second schedule to the Constitution of the Federal Republic of Nigeria 1999 and section 4(1) and (2) (3) Constitution of the Federal Republic of Nigeria 1999 (as amended)

55 See section 4(4) (a) & (b) Constitution of the Federal Republic of Nigeria, 1999 (as amended) Attorney-General Ogun State Vs. Aberuagba (1985) 1 NWLR (Pt 3) 395; Emoluga v. The State (1988) 2 NWLR (Pt. 78) 524

56 Ibid

57 Ibid

58 Ibid

59 ibid

empowered by the Grazing Reserve Law of Northern Nigeria, 1965[60] which covers all Northern States in Nigeria and which is a regional law that overrides the Open Grazing Law enacted by the Benue State House of Assembly in 2017. On this, the defence counsel cited section 4(5) of the Constitution which deals with inconsistency of a state House of Assembly Law, found to be conflict with any law validly made by the National Assembly. The National Assembly law is to prevail, and that the law of the state shall, to the extent of its inconsistency be rendered void.[61]

In response, the plaintiff's counsel argued that placing any reliance on the Regional Grazing Law will be a misconception, as regional laws have become extinct and the Constitution of Federal Republic of Nigeria 1999 has embraced the idea of states and there are now 36 states in the Federation recognised by the constitution.[62] He added that under the 1999 Constitution, there is no place for Regions and Regional laws. Therefore, the issue of conflicts between the Open Grazing Law of Benue State 2017 and a Regional Law does not arise; that the Northern Region Grazing Law is long obsolete and non-existent.

The court accepted the plaintiff's argument and resolved that Regional laws are no longer operative in Nigeria, but states laws. And since 1965, Regional laws referred to by the defendants when promulgated; those laws were assented to by the Governor of Northern Nigeria and not the president at the centre. The regional law cited was confirmed to be equivalent of a state law and it can not override the Open Grazing Law enacted by the Benue State House of Assembly.

In addition, the court declared that the purported regional law relied upon had become obsolete as could be discerned from its provisions. Under the law, before the minister could constitute a land as government grazing reserve, he shall first publish a notice in a Northern Nigeria Gazette of his intention to create such reserves. As

---

60 No. 4 of 1965

61 Section 4(5) Constitution of the Federal Republic of Nigeria, 1999, Ibid

62 See sections 2(1) & 3 (1) Constitution of the Federal Republic of Nigeria, 1999 (as amended)

at today, there is nothing in existence like Northern Nigeria Gazette.[63]

It was held by the Court that, the Grazing Reserves Law of Northern Nigeria, 1965 was later incorporated into the Grazing Reserves Law of Benue State, 1976 and was further incorporated into another law, under Cap 72 Laws of Benue State, 2004, that the provisions of the Grazing Reserve Law of Northern Nigeria, 1965 are incorporated in section 36 of Open Grazing Prohibition and Ranches Establishment Law, 2017. As a result, all the laws or provisions of the Grazing Reserves Law, Cap 72 laws of Benue State, 2004, have been repealed and made part of the provisions of the Anti-Open Grazing Law of 2017, as an existing law in the State.[64]

The Court went further that even if the Grazing Reserve Law of 1965 was still operative, it was in existence before the 1999 constitution and ought to have been saved as an existing law as provided by section 315(4) of the Constitution. So for the Grazing Reserve Law of 1965 to be recongnised as an 'existing law' it ought to be modified to be in conformity with the provisions of the Constitution in section 44 and section 1 of the Land Use Act, and saved by section 315 (5) of the 1999 constitution.[65]

On the issue of the legality and constitutionality of the Land Use Act, 1978 vis-à-vis the Grazing Reserves Law of Northern Nigeria, it was found by the Court that, not only is the Land Use Act later in time, it also covered the whole of Nigeria and vested lands comprised in the territory of each state in the Federation in the Governor of the state. The Court wondered how a minister, an agent of the Federal Government, could take over land belonging to the state and designate same as grazing reserve without the consent of the Governor of the State. The Court reiterated that, by the existence of the Land Use Act, 1978 the power of the Minister of Agriculture to allocate lands within the Federation for grazing purpose has been annulled.[66]

---

63 Ibid, 36
64 Ibid
65 Ibid, 37
66 Ibid, 38

The Court concluded on the issue that, bearing the facts and circumstances of the case in mind, the Benue State Open Grazing Law is not and cannot be inferior to the Grazing Reserve Law of Northern Nigeria, 1965, which is obsolete and the enactment of the law by the Benue State House of Assembly is within the powers conferred upon the state by the constitution and same has legal force.[67]

On the issue whether the constitution which is the ground norm empowers the Federal Government to acquire interest in any land in any state without approval of the Government of that state, the Court held that such provisions would only stand contrary to the provisions of section 315 (5) of the constitution which provides thus:

Nothing in this constitution shall invalidate the following enactments, that is to say:

> (a) The Land Use Act, and the provisions of these enactments shall continue to apply and have full effect in accordance with their tenor and to the like extent as any other provisions forming part of this constitution and shall not be altered or repealed, except in accordance with the provisions of section 9(2) of the constitution.

The contention of the defendants on the issue was that, the Federal Government was only trying to actualise the policy of Ruga settlements, but is not planning to grab land from the states. The reply of the plaintiffs on the issue was that by virtue of section 28 (1) of the Land Use Act, 1978 the Governor of a state can only revoke a right of occupancy for overriding public interest. Section 28 (2) of LUA defines public interest as: 'The requirement of land by the Government of the State in either case for public purposes within the state or requirement of the land by the government of the Federation for public purposes of the federation'.[68]

The Court reached conclusion on the issue that, since the Land Use Act, 1978 is the current law applicable in respect of the

---

67 Ibid, 39

68 See section 28 (2) Land Use Act, Ibid

usage of lands in the states, it can only be altered by complying with section 9(2) of the Constitution, which is yet to be so done. The Court was again of the view that, even if the Federal Government has power to formulate policies and make laws establishing grazing reserves in various states, such laws can only be enacted upon amendment of the Land Use Act in accordance with the procedure provided under section 9(2) of the constitution and as prescribed under section 315(5) of the constitution.[69] On the part of Local Government in a State, the Land Use Act permits such councils to enter upon, use and occupy land within their area of jurisdiction for public purpose.[70]

Where the Federal Government requires land in the state, the State Governor may invoke its powers and grant such land to it for public purposes. Ruga settlements programme… the court observed, is one that is not accommodated under the words 'public purposes' or 'overriding public interest' as 'herding' is a private business embarked upon by private people and the Federal Government cannot under section 28 (4) and (6) of Land Use Act acquire land of the people for the benefit of private individuals. For any individual desiring land for such purpose has ample right to do so under section 5(1) of Land Use Act which authorised the Governor to grant rights of occupancy of land for whatever purpose including grazing. The Court emphasized that as Benue State has promulgated a law to cover grazing within the state, the law has to be followed.[71]

The Court also rejected the 1st defendant's contention that the Federal Government can independently acquire land from the States for public purposes is not tenable. The court came to the conclusion that the Federal Government can only acquire land that belongs to the people of Benue State, held in the trust for them by the Governor, for "public purposes"[72] and "overriding public interest"[73] only. Acquiring the land for the use of private individuals who rear

---

69 Ibid
70 See section 6 Land Use Act, 1978
71 Supra at p 41
72 Ibid
73 Ibid

animals would amount to robbing Peter to pay Paul, which the laws of this country does not allow.[74]

The Federal High court relying on the statement of law from the Supreme Court per Bello CJN held that: …

> the evidence shows that the right of the plaintiff was revoked on the pretest of overriding public interest but in reality the land was thereafter granted to the 3rd defendant, a private person for its private business. With the exception of revocation on the ground of alienation under section 28 (2) for the requirement of the land for mining purposes or oil pipe lines under section 28 (2) (c), the Governor has no right to revoke the statutory right of an occupier and grant same to private person for any purpose than those specified by section 28 (2) of the Act.[75]

In view of the authorities above, the court frowned at the attitude or plan of the Federal Government to compulsorily acquire individual's property outside the dictates of the law and the requirement of public purposes or interest.[76]

The plaintiffs also argued based on issues/questions No. 5 which was raised concerning the power of the Federal Government to legislate or make policies on environment under section 20 of the constitution, in reply the plaintiffs submission was upheld by the Court that the creation of grazing reserves hardly fall within the Environmental Objectives of the Constitution. Section 20 of the Constitution provides that: 'The state shall protect and improve the environment and safeguard the water, air and land, forest and wildlife in Nigeria'.[77]

The Court held on the issue that, section 20 of the constitution is essentially about how to protect and improve the

---

74 See Alhaji Wahabi v Olatunji v Military Governor of Oyo & 3 Ors (1995) 5 NWLR, 397, 602; in Osho v Foreign Finance Corporation (1991) 4 NWLR (Pt 184), p 157 at 200 – 201 paras H - B

75 See Osho & case supra at p 200 – 201, paras H – B.

76 Ibid, 200 - 201

77 See Attorney General Lagos v. Attorney General Federation Supra.

environment and to safeguard, the water, air, land, forest and wildlife in Nigeria and this cannot, by any stretch of imagination be taken to include or involve, or apply in respect of land, the physical town and regional planning as a means to safeguard land. The court maintained that, the object of section 20 is to protect he external surroundings of the people and ensure that they live in safe and secure atmosphere, free from any danger to their health or other inconveniences and it does not involve the way people plan their buildings or develop the land the occupy.[78]

In view of all the questions raised for determination before the court on the constitutionality and legality of the Federal Government policy to establish Ruga settlements under the Land Use Act and the Open Grazing Prohibition and Ranches Establishment Law of Benue State considered and compared, the court concluded that by the combined reading of many provisions of the constitution,[79] and the Land Use Act[80] and other sections of the Benue State Open Grazing Prohibition and Establishment of Ranches Law,[81] the Federal Government through its agencies, had no power to arbitrarily or compulsorily acquire or take over land comprised in the territory of Benue State for the purposes of establishing Ruga settlements or cattle colonies contrary to the extant laws.

On the whole, the Court found the action of the Benue State Government by enacting the Open Grazing Prohibition and Ranches Establishment Law, constitutional and legal, because it was made within the legislative power of the Benue State House of Assembly and the actions, efforts, powers and plan of the Federal Government to impose Ruga settlements on Benue State lands contrary to the constitution and all the extant laws.

---

78 Ibid
79 Sections 4, 9 (2), 44 (1) & (3) section 315 (5) and (6) LFRN, 1999
80 See sections 1, 2, 5, 6 & 28 (1), (2) & (3) of Land Use Act, 1978
81 See section 4, 5, 6, 7 and 19 (1) of Ranches Law, No. 21, vol.42, 2017

Observations

The Court having reached its conclusion, there are still legal issues hanging from the Anti-Open Grazing Law which in future, needs to be revisited by the Benue State House of Assembly. The law in section 10 has created a distinction between indigenes of Benue State who may wish to set up a personal ranch on his own land and the citizens of other parts of Nigeria that may want to set up ranches on any land in the State. To many, this section constitutes a derogation on section 42 of the Constitution which demands that citizens of Nigeria should not be discriminated against on the grounds specified in the Constitution, such as place of origin, sex, ethnic origin, religion and on such basis they should not be conferred with or denied such rights, opportunities and privileges which are accorded to citizens of other communities, religion, race or ethnicity. The section of the Law, as it currently stands, is faulted as not being equitable in its posture but discriminatory.

Next, section 5 (b) of Anti-Open Grazing Law also calls for concern and revisiting. For instance, the duration of one year provided for the renewal of any ranch permit appears too short, judging from the tedious or cumbersome procedure laid down under the law for obtaining permission for establishing any ranch in the state. This duration, it is suggested, should be revisited by the State, when next it is carrying out an amendment of this enactment.

Furthermore, section 19 (1) of the Law which provides that: 'No individual or group shall, after the commencement of this law, engaged in open nomadic livestock herding or grazing in the State outside the permitted ranches'. This provision has been criticised by herders as constituting a serious restriction on their freedom of movement guaranteed in the constitution, which also warrants them to move freely across the Federation of Nigeria and to reside in any parts of the country. While this argument may appear plausible, it

can still be argued that the freedom of the Fulani herders to move freely with their livestock across Nigeria is a freedom that the Constitution permits can be restricted or checked by any state legislation or executive action where such a movement has resulted into continuous break down of law and order as well as the violation of other people's rights such as was the case, in Benue State between 2013 – 2017. Besides, the rights guaranteed in chapter IV of the Constitution, are generally curtailed in public interest, public peace and for the protection of the rights of others.[82] So the rights claimed by the Fulani herders are not made absolute by the Constitution but subject to restrictions on specified grounds that are considered as reasonably justifiable in a democratic society.

Recommendations

Having identified legal issues still outstanding with the administration of the Anti-Open Grazing Law of Benue State, 2017, this article makes the following recommendations:

1. The Benue State House of Assembly in future, while reviewing the Anti-Open Grazing Law, should eliminate the distinction or a discriminatory expression found in some of the sections of the Law. For instance, section 10 of the Law introduces the picture of Benue State 'indigene' and 'non-indigene' in the application and acquisition of land for the establishment of ranches or the issuance of ranches permit by the State. The use of such expression paints a picture of discrimination in the application of the Law within the State against those who are not considered as citizens of the State.
2. The state, irrespective of the fact that, the Court has accorded legitimacy to its Anti-Open Grazing Law, must in future review

[82] See section 45 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

the stiff procedure provided under the legal framework of Anti-Grazing Law for obtaining leases and permit to establish ranches. It must also endeavour to extend its one-year duration provided as tenure to establish a ranch. So far, the duration provided in the Law to set up a ranch is too short and is likely to spell hardship and much financial difficulties to animal breeders who would need land to establish ranches in the State. These points taken into account will render the constitutionality and legality of the Anti-Open Grazing Law of Benue State, more plausible and justiciable and will help in balancing the interest and rights of the principal contenders, in the State, that is, the Benue farmers and the Fulani cattle breeders.