The Constitutionality of the Open Grazing (Prohibition and Ranches Establishment) Law 2017 Of Benue State: Resolving the Conflicting Conundrums

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Abstract

The major occupation in Benue State is farming. No rational State government will therefore sit and fold its hands while crops, settlement and property of its citizens are destroyed by open grazing of livestock. It is on the heels of clashes between nomadic herdsmen and farmers in Benue State that led to the Open Grazing (Prohibition and Ranches Establishment) Law was promulgated in 2017 in Benue State. Adopting the doctrinal research method, this article found that the law has not infringed on any section of the constitution of the Federal Republic of Nigeria, thereby putting to rest arguments pertaining to its constitutionality. It is what the Courts say that is the law and the Courts have held in a plethora of cases that the anti-open grazing law is constitutional in all ramifications. It is recommended that strict adherence to the provisions of this law may eradicate the unprovoked killings of innocent farmers and law abiding citizens of Benue State by nomadic herdsmen.

Key Words: Constitutionality, Open grazing, Prohibition and Conundrums.

1. Introduction

Historically, after the Jihad of Usman Dan Fodio in 1804, Fulani conquered the entire Hausa land and established a theocratic State. Dan Fodio, in the circumstances, became the Sultan of Sokoto and Gwandu with religious and political powers.[1] After the conquest, the Fulani continued with their traditional cattle rearing. During dry seasons, when there was lack of fresh grass and water in Northern Nigeria, they drove their cattle to the middle belt region (where a specie of flies known as

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[1] W. Frinckle, Cattle Husbandry in Nigeria: A Case Study of its Ecological Conditions and Socio-geographical Differentiations, (Nigeria. Ikot-Ekpene 1993) 56

colossina morsitans –tse-tse flies) were at this season reduced. The herdsmen returned to Northern Nigeria at the onset of raining season.[2] This period witnessed peaceful interactions between the Fulani herders and the Tiv farming communities with insignificant disagreement. However, the story gradually changed in the late 1980s. There was a gradual emergence of flashes of clash of interests between Tiv farmers and Fulani herdsmen in the Tiv speaking areas from 1980 and beyond.[3] Minor skirmishes occurred in Guma and Gwer West areas in 2008. By 2016, the skirmishes had covered the whole of Guma, some districts of Gwer West, Makurdi, Ukum, Kwande, Katsina-Ala, Tarka, Buruku and Gwer East Local Government Areas,[4] leading to mass destruction of crops, properties and killings. It is against this backdrop that the Benue State Government enacted the Anti Open Grazing (Prohibition and Ranches Establishment) Law 2017. Gleaned from section 3 of the Law, the legislation's aims are:

a) Preventing the destruction of crops, settlement 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 grazing of livestock;
d) Optimize the use of land resources in the face of over stretched 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.

This article examines the constitutionality of the law against the backdrop of the powers of the Governor to manage land vis-à-vis that of the Federal Government, powers of the local Government in administration of land situate in non-urban areas, the effect of item 17 (d) and 18 of the Concurrent Legislative list to the 1999 Constitution of the

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2 Chris Orngu et al, Tiv Displacement in Benue, Nasarawa and Taraba States 2013-2019 (The BSU Press Makurdi 2019), 8.
3 Ibid p.10
4 Idyorough Alamveabee E., "Pastoralists Invasion and Occupation of Farmlands in Central Nigeria: The Attacks, Plunder and Occupation of Some Local Government Areas of Benue State" in Alloy S. Ihuah ed. Herdsmen and Farmers Conflicts in Central Nigeria: Learning from the Past (Centre for Research Management B.SU. Makurdi, 2017) 124.

Federal Republic of Nigeria (as amended), the administration of Town and Urban Planning, the validity and effect of the Grazing Reserves Law of Northern Nigeria, 1965, the Acquisition of Land for public interest, powers of the Federal Government under section 20 of the 1999 Constitution to protect and improve the environment and safe guard the water, air, and land, forest and wild life of Nigeria, and freedom of movement as a fundamental human right. In the course of these analyses, the conundrums shall be highlighted and the resolutions would be attempted.

2. Perceived Causes of the Conflict

It is widely believed that the old order which enhanced peaceful co-existence between the nomadic Fulani Herdsmen and the Benue communities changed because of the following reasons:

a) There is desert encroachment in the Northern part of Nigeria that makes open grazing difficult during the dry season from November to May;
b) There is environmental pollution and degradation in the far North caused by over grazing;
c) There is global warming which affects rainfall resulting in high temperature in the North;
d) Poor maintenance culture in the provision of social services (such as water, health, clinics and schools) on the open grazing reserves that were established in the past under Grazing Reserve Act, 1965;
e) Cattle rustling by thieves and armed bandits on open grazing sites;
f) Herdsmen's cultural beliefs that crops and the Benue specie of grass, make their cattle more fertile;
g) Ethnocentric behaviour of the nomads to retain nomadic culture even though it is an absolete or archaic way of raising animals;
h) Herdsmen's constant introduction of their herds into crop farms to destroy crops thereby leading to crisis;[5]

[5] (n.4) p.126

3. Resume of the Anti-Open Grazing Law

The Anti-open grazing law has a total of 36 sections. The Livestock Department of the Ministry of Agriculture is vested with the powers to administer and control livestock in Benue State.[6] The Department shall issue or cause to be, issued permits subject to the Governor's approval to graze livestock on such ranches to Benue citizens, residents, and other livestock owners,[7] but ranching permits shall be issued to citizens of Nigeria only.[8] Permits shall be for a period not more than one year with renewal subject to the discretion of the Department.[9] The procedure for acquiring any land for ranching is simple. The rancher shall apply in writing to the owner and family head of the land he requires as ranch. In receipt of the application, by the proposed rancher, the owner, head of the family and kindred Head that owns the land after consultation with community leaders and with the endorsement of the kindred head and the Chairman of the relevant Local Government, Traditional Council, grant his consent in writing for one year lease of the land on such terms and conditions as the parties may agree upon.[10]

The rancher shall forward a written application for ranching permit to the Department alongside the consent of the owner and family head and kindred Head of the land. The Department shall then cause to be undertaken by professionals, Environmental Impact Assessment of the land applied for by the rancher.[11] If the report of the Environmental impact assessment is found satisfactory, the owner of the land, family head, kindred Head and the community shall recommend to the Department to issue ranching permit to the rancher.[12] The Commissioner for Agriculture and Natural resources upon receipt of the recommendations of the Department, approve the issuance of a ranching permit which shall be forwarded to the Governor who has the right of final approval.[13] The rancher shall pay for lease of the land to the owner of the land, family head and kindred Head and community whose interest

6 Section 4
7 Section 5
8 Section 5 (a)
9 Section 5 (b)
10 Section 6 (1) and (2)
11 Section 6 (4)
12 Section 6 (6)
13 Section 7 (1) and (2)

in the land has been affected.[14] Any indigene of Benue State who wishes to set up a personal ranch on his own land shall be exempted from the provisions of Section 5, 6, 7, 8 and 9.[15]

It is submitted that the "approval" of the Commissioner under Section 7(4) should be replaced with "recommendation" since the purported approval is subject to the Governor's approval. If the Governor subsequently declines approval, the approval of the Commissioner shall be *otiose*. Where land is owned by the community, there is need to be specific as to whom the leasehold should be paid and how it should be disbursed. It is suggested that the leasehold should be paid to the kindred head for purpose of provision of infrastructure to the community as may be determined by the community. As it is presently couched, the sharing of the money may give rise to conflict and bickering.

It is mandatory that ranches be fenced.[16] After the commencement of this law, no individual or group shall engage in open nomadic livestock herding or grazing in the State.[17] The law also prohibits movement of livestock on foot from one destination to another in the State. Such movement shall only be by rail, wagon, truck or pick-up wagon.[18] Penalties for violation of the provisions of the law range from fines to impoundment of livestock.[19]

4. The Legality of the Anti-Open Grazing Law.

4.1. Control and Management of Land within the Jurisdiction of Benue State.

By dint of the provisions of section 1, the Land Use Act, all land comprised in the territory of each State in the Federation shall be vested in the Governor of that State and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of the Act.

In the case of *Savannah Bank v. Ajilo*[20] the Supreme Court of Nigeria held per Obaseki JSC that:

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14 Section 8
15 Section 10
16 Section 14
17 Section 19 (1)
18 Section 19 (4)
19 Sections 20 and 21
20 (1989) LLJR SC 1

> *Although Section 1 vested subject to the provisions of the Act, all lands comprised in the territory of each State in the Federation, in the Military Governor of the State and made him a trustee to hold the land in trust and to administer it for the use and common benefit of all Nigerians in accordance with the provisions of the land Use Act, and Section 2(1) (a) placed all land in Urban Areas under his control and management, the penal provisions were designed to strengthen his hand in carrying out his duties of control and management. Section 1 makes it clear, it is all land comprised in the territory of each State.*

The Court also held that any alienation of any parcel of land by a holder or deemed holder of any parcel of land within the jurisdiction of the Governor without the Governor's consent is null and void. Section 44(1) and (3) of the constitution of Federal Republic of Nigeria 1999 (as amended) provides that notwithstanding the provisions vesting land in the Governor, the entire property in and the control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.

4.2 Powers of the Local Government in Administration of Land Situate in Non-Urban Areas

By the provisions of Section 6(1), the Land Use Act, 1978, it shall be lawful for the Local Government in respect of land not situate in Urban Area 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 or for grazing purposes and such other purpose ancillary to agricultural purpose as may be customary in the Local Government Area concerned.

4.2.1 The Effect of item 17(d) and 18 of the Concurrent Legislative List contained in the second schedule to the 1999 constitution of the Federal Republic of Nigeria.

In interpreting item 17 (d) and 18 of the Concurrent Legislative list contained in the second schedule of the 1999 Constitution, the Federal High Court in the case of The *Attorney General of Benue State and 1 or v. The Attorney General of the Federation & 2 0rs*,[21] held inter alia that

> *the Local Government can grant customary right of occupancy to any person or organisation for the use of land for grazing purposes according to the Land Use Act. However, by the interpretation Section of the Land Use Act, which is Section 51 of the Act, "grazing purposes" means only such agricultural operations as are required for growing fodder for livestock on the grazing area; fodder being food for horses and farm animals, composed of entire plants or the leaves and stalks of a cereal crop. It follows, therefore, that even the land that the Local Government can grant customary right of occupancy in its respect for grazing purposes would be for growing the cereal crop for food for farm animals and not for the animals to live on. This settles the proposition that Local Governments can grant permits for ranching purposes. Since the land in the State is controlled by the Governor in a State, it means the Federal Government can only go through either the Governor or the Local Government to establish ranches/ruga if it so desires.*

On the other hand, by the provisions of item 17(d) of the concurrent Legislative List, the National Assembly can make laws for the Federation or any part thereof, with respect to the establishment of institutions and bodies for the promotion or financing of industrial, commercial or agricultural projects. This has to do with institutions and bodies to be established for promoting or financing the projects stated

[21] Suit No FHC/MKD/CS/56/19 delivered on 3/2/2020

under the list. In view of the foregoing provisions, the Government of Benue State was perfectly within its jurisdiction when it enacted the anti-open grazing law to introduce ranching of livestock and regulate same.

5. Where Land is Owned by the Federal Government Situate in a State.

Item 18 on the concurrent legislative list provides that the State House of Assembly may make laws for the State with respect to industrial, commercial or agricultural development of the State. This provision of the constitution agrees with both statutory and case laws that the State has the powers to control, by law, the use and management of its land, where the land is owned by the State government. It has been argued that regulations of physical developments in respect of land in a State are legislative matters. This is because it involves the use of land by the general public in both urban and areas rural and affects the development and control of such land for the benefit of the society. It is further argued that, in order to ensure purposeful utilisation of the community to which they relate, there must be laws, rules and regulations controlling the general right to, or the indiscriminate use of land. To persons who subscribe to this view, the Federal Government is in a better position to regulate ranches than States.

In the case of *Lagos State v. A.G Federation*[22] the Supreme Court of Nigeria held that:

> *The House of Assembly of a State has power to make laws for the State or any part thereof in respect of (a) any matter not included in the Exclusive Legislative list (b) any matter included in the concurrent Legislative list and (c) any other matter with respect to which it is empowered to make laws: see Section 4 Subsection (7) paragraphs (a)(b) and (c). Each of these legislative bodies exercise their power to make laws for the peace, order and good government of their respective territories. The functions of a Local Government Council are governed by Section 7 of the constitution and as*

[22] (2003) 12 NWLR (Pt. 883)

> *enumerated in the Fourth schedule thereto, and such other functions as may be conferred on the Council by the House of Assembly of or a State. By this constitutional arrangement which allocates legislative jurisdiction between the National Assembly and the House of Assembly of a State, it is recognized that any matter not mentioned either in the Exclusive or Concurrent Legislative List becomes a residual matter exclusively for the State House of Assembly in regard to the Federal capital territory, as if it were a State by virtue of Section 299 of the Constitution: See Attorney General Ogun State v. Aberuagba (1985) 1 NWLR (pt.3) 395 Emelogu v. The State (1988) 2NWLR (pt.78) 524, (1988) 19 NSCC (pt.1) 869, Attorney General Abia State v. Attorney General of the Federation (2002) 6 NWLR (pt.763) 264; Fawehinmi v. Babangida (2003) NWLR (pt.808) 604.*

The apex Court went ahead in the case to say that since the subject matter of town and regional planning is not in the Exclusive and concurrent legislative lists of the 1999 constitution, it is a residual matter and only States can legislate on it. The Court added that even with respect to land vested in the Federal Government or any of its prescribed agencies either in pursuance of an Act made or deemed to have been made by the National Assembly under the 1999 Constitution, the Federal Government or the National Assembly will still not be competent to legislate or exercise any physical planning or development control over such land without the concurrence of the State Government concerned.

For whatever project, the Federal Government may have, even when it comes to using its own land in a State, the Federal Government must respect the planning laws and regulations in a State or at least act in consultation with the appropriate authorities or agencies with a view to achieving mutual accommodation for the project intended. The Federal Government, therefore, has no constitutional powers to challenge the Anti-open grazing law under the auspices that it has the prerogative to planning for the benefit of the generality of the citizens of Nigeria.

6. Grazing Reserves Law Northern Nigeria, 1965

It has been submitted that there is a law which permits cattle to move along designated routes and these routes pass through Benue State. The enactment of the Benue State law in the face of the Northern Nigerian Law, being a Federal Law, is null and void to the extent of its inconsistency with the purported Federal Law. In other words, it has been argued that the Grazing Reserves Law of Northern Nigeria, 1965 which covers all Northern States in Nigeria and which is a regional law, overrides the Anti-open grazing law enacted by the Benue State House of Assembly. On this score, reference is made to Section 4(5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which provides that if any law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the Federal Law shall prevail, and that other law, shall, to the extent of the inconsistency be null and void and of no effect.

In the case of Attorney General of *Benue State and Anor v. Attorney General of the Federation and 2 ors.*,[23] It was held that, Nigeria no longer has regions but States and that as at 1965 when the regional law, referred to by the defendants was promulgated, same was assented to by the Governor of the Northern region and not the President at the centre. This regional Law is, therefore, an equivalent of State law and same cannot override the open grazing law enacted by the Benue State House of Assembly. In addition, the regional law being relied upon has become obsolete as could be seen in its provisions. Before the Minister, under that law, could constitute land as a government grazing reserve under the law, the Minister "shall publish a notice in the Northern Nigeria gazette of the intention to create reserves".

There is nothing like Northern Nigeria Gazette presently. On the other hand, it was further held by the Court that, the Grazing Reserve Law of Benue State of 1976 was further incorporated into Cap72, Laws of Benue State, 2004. Presently, pursuant to Section 36 of the Anti-Open Grazing Law 2017, the Grazing Reserves Law Cap72, Laws of Benue State, 2004 has been repealed. All the provisions made under the repealed law affecting grazing of livestock have been modified in the provisions of the open grazing law of 2017.

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[23] (n 21)

The Court held further that assuming without conceding that Grazing Reserves Law 1965 were still operative, it was in existence before the 1999 Constitution and would come under existing law as defined under Section 315(4) of the 1999 Constitution. By the provisions of Section 315(1) of the Constitution, existing laws are to be modified to be in inconformity with provisions of the Constitution. Invariably, the Grazing Reserves Law of 1965 must conform with Section 44 of the 1999 Constitution and Section 1 of the Land Use Act duly recognized and confirmed by Section 315 (5) of the 1999 Constitution. Whatever the power the Minister might have had over the State lands under the Grazing Reserves Law, would have been deemed modified to conform with the provisions of the Constitution that no movable property or any interest in any immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by law and the position of the law that the land in the State is vested in the Governor of the State, who holds it in trust for his people.

Not only is the Land Use Act later in time, it also covers the whole of Nigeria and has vested all lands comprised in the territory of each State in the Federation of Nigeria in the Governor of the State. It is, therefore, legally impossible for a Minister, being an agent of the Federal Government, to take over land belonging to the State and designate same as grazing reserve without the consent of the Governor of the State. As earlier stated, even where land originally belongs to the Federal Government, the use to put the land to, the control and management of the land has to be permitted by the State Governor.

The Court concluded that; "in the circumstances … the Benue State Open Grazing Law is not and cannot be inferior to the Grazing Reserves Law of 1965 which is an obsolete law." It follows, therefore, that the enactment of the Open Grazing (Prohibition and Ranches Establishment) Law 2017 enacted by the Benue State House of Assembly, is within the powers conferred upon the States by the Constitution and same has legal force.

7. Acquisition of Land for Public Purpose

It has been argued that the Federal Government has overriding powers to acquire land in any State for public purpose; therefore, the State cannot make any law that would appear to fetter that discretion of the Federal Government. The Federal Government coming from that premise can acquire land belonging to the State for purpose of ranching in any State of its choice. Reliance in this regard is placed on section 28(1) of the Land Use Act, 1978 which provides that "it shall be lawful for the Governor to revoke a right of occupancy for overriding public interest". Section 28(2) (b) provides that "overriding public interest in the case of a statutory right of occupancy means (b) the requirement of the land by the Government of the State or by a Local Government in the State or either case for public purposes within the State, or the requirement of land by the Government of the Federation for public purposes of the Federation.

In other words, if the Federal Government requires land, the Governor, by the provision of Section 28(4) of the Land Use Act, can revoke a right of occupancy in the event of the issue of a notice by or on behalf of the President, if such notice declares such land to be required by the Government for public purposes. In the case of *The Attorney General of Benue State & 1 or v. The Attorney General of the Federation & 2 ors.*,[24] the Federal High Court sitting in Makurdi held that;

> *…herding is a private business embarked upon by private people and The Federal Government cannot under Section 28(4) or 6 of the Land Use Act acquire the land of people for the benefit of private individuals. Any individual wishing to establish a ranch may do so after acquiring land in the manner prescribed by the Land Use Act, it is the responsibility of the Governor to grant rights of occupancy on the land for whatever purpose including grazing and as Benue State has promulgated a law to cover grazing within the State, the law has to be followed. Therefore, the 1st defendant's contention that the Federal*

[24] (n21) P.41-42

> *Government can independently acquire land from States for public purposes is not tenable.*

The court further held that:

> *Other than land which belongs to the Federal Government which the government has to develop or use in accordance with the control and managing powers of the State, the Federal Government can only acquire the land that belongs to the people of Benue State, held in trust for them by the Government for public purposes and overriding public interest only. Acquiring the land for the use of private individuals who rear animals would amount to the Federal Government robbing Peter to pay Paul which is not allowed by our Laws. See Alhaji Wahabi Layiwola Olatunji v. The Military Government of Oyo State & 3 ors (1995) NWLR (pt.397) 602. See Also Osho v. Foreign Finance Corporation (1991) 4 NWLR (pt.184) 157 @ 200-201 Para H-P where the Supreme Court Per Bello CJN held thus… the evidence shows that the right of the Plaintiff was revoked on the pretext 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 ground of alienation under section 28(2) as for the requirement of the land for mining purposes or oil pipeline under section 28(2)(c), the Governor has no right to revoke the statutory right of an occupier and grant same to a private person for any purpose than those specified by section 28(2) of the Act.*

8. Power of the Federal Government Under Section 20 of the 1999 Constitution

It has been argued that the Federal Government has the power to legislate or make policies on environment under Section 20 of the Constitution and this includes creation of grazing reserves and this

power of the Federal Government overrides the power of the states. Section 20 of the constitution provides thus. "The State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria." Accordingly the Supreme Court in *A.G Lagos State v. A.G Federation*[25] held that section 20 of the Constitution is essentially about how to protect and improve the environment and to safeguard the water, air and land, forest and wildlife in Nigeria and this can by no means include or involve, in respect of land, the physical town and regional planning as a means to safeguard land. It was stated by the Court that the main object of the section is to protect the external surroundings of the people and ensure that they live in a safe and secure atmosphere free from any danger to their health or other convenience and it does not involve the way people plan their buildings or develop the land they occupy.

9. Freedom of Movement

The Constitution of Nigeria[26] provides that:

> *Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereby or exit therefrom.*

Freedom of movement is conferred on human beings and it is not without limitations. Section 45(1) of the constitution provides that:

> *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 of other persons.*

By the provisions of section 45(1) of the Constitution, where the movement of persons could result to public unrest or disorder, or

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25 (n.22)

26 Section 41, The Constitution of the Federal Republic of Nigeria 1999 (as amended)

the infringement of the rights of other persons, the law will not hesitate in obstructing the freedom of movement of the person in question. The scope of this right is also reinforced by the provisions of section 15(3) and (4) of the constitution which provide

> *15(3) for the purpose of providing national integration, it shall be the duty of the State to:*
>
> *a) provide adequate facilities for and encourage free mobility of people, goods and service throughout the federation;*
>
> *b) secure full resident rights for every citizen in all parts of the federation;*
>
> *c) encourage inter marriage between persons from different places of origin, or of different religions, ethnic or linguistic association or ties and;*
>
> *d) promote or encourage the formation of associations that cut across ethnic, linguistic, religious and/or for other sectional barriers.*
>
> *15(4) The State shall foster a sense of belonging and involvement among the various people of the Federation, to the end that loyalty to the Nation shall override sectional loyalties.*

The freedom to reside anywhere necessarily carries with it, the right to be entitled to all the rights and privileges guaranteed by the Federal Government to every citizen. The State may however, in consideration of the multi-ethnic nature of the nation reserve the rights and privilege to prescribe a minimum period of residency after which a citizen can take advantage of certain privileges accorded to the citizens of that state as long as such prescriptions are not excessive and do not extend to fundamental human rights.

It is significant to note that it is the Courts that determine whether or not a law is reasonably justifiable in placing limitations on the right to freedom of movement. In the *Attorney General of Benue State 1 or v. The Attorney General of the Federation & 2 ors*.,[27] it was held that the Anti-open grazing law is Constitutional.

[27] (n. 21)

Freedom of movement does not guarantee infringement on the fundamental rights of others. To hold otherwise is to promote anarchy.

10. Conclusion

The seeming conundrums exhibited by the interpretation of the Constitution and the anti-open grazing law have been properly resolved by the courts. The legislature usually delivers on its assignment adopting the usual oracular style leaving the courts with the mystical interpretations. It is what the Courts say that is the law. The Courts have held unequivocally that the anti-open grazing law is constitutional in all ramifications. So be it and no more.