2018

Understanding the Lagos State Properties Protection Law, 2016

Okanga Ogbu Okanga

Understanding the Lagos State Properties Protection Law, 2016 – Okanga O. Okanga[*]

Abstract

Land is a crucial component of development. This is more so in a place like Lagos State, Nigeria's economic capital, where there is a far greater demand for the asset than nature bestows. The State has for decades endured a damaging form of criminality widely known as land grabbing. This menace manifests itself in various ways, some of which are outlined in this article. The Lagos State Properties Development Law 2016 ("the Law' or 'PPL") aims to curtail unwholesome and unscrupulous land transactions and practices in the State by prescribing strong criminal sanctions against violators. This paper examines the essence of the Law with a view to highlighting its scope, significance, strengths and areas of improvement.

The Lagos State Properties Protection Bill was signed into law by the Executive Governor of Lagos State in September 2016. Going by its long title, the Law seeks, amongst other connected purposes, to prohibit forceful entry and illegal occupation of landed properties, violent and fraudulent conducts in relation to landed properties in Lagos State.

The Law, a piece of criminal legislation, prescribes a range of punitive measures aimed at protecting ownership of property in the State. "Property" is used only in the context of landed property.

Section 1 of the Law broadly defines "landed property" as "a parcel of land, an improvement on a land, a building, any land ancillary to a building, a site comprising of any building(s) with any land ancillary to it."

The Law prohibits various forms of infringement on the property rights of another. Acts prohibited by the Law include trespass or encroachment, forceful eviction of another from their property, forceful or violent entry/occupation of another's property, sale by person not having valid title to landed property, sale of the same property to multiple purchasers (even where the vendor did have valid title).

Section 2(1) of the Law proscribes the use of force or self-help for the purpose of taking over any property or infringement on the right of the owner of such property. A maximum imprisonment term of ten (10) years is prescribed for an offender. This is without an option of fine.

By section 2(2), the foregoing proscription, with the penalty, is extended to a person who before the coming into force of the Law had unlawfully taken possession of another's property AND remains in such unlawful possession three months after the take-off of the Law.

[*] LLB (Nig.); BL (Abuja). He may be contacted at okangaokanga2@gmail.com

Prima facie, this provision may appear to conflict with the provision of section 4(9) of the 1999 Constitution which prohibits retrospective criminal legislation. This may be deduced from the fact that a major element of the offence "forcefully taking possession" predates the Law and thus gives it that retrospective texture. However, it is instructive that this law only punishes an offender who "remains in or maintains his unlawful possession" three months after the coming into force of the Law." Thus, the Law does not punish the offender for what has been done in the past but for the continuous infraction. Perhaps, a way to make it clearer is to delete the seemingly retrospective aspect from the text of the subsection and make the act of "remaining or being in unlawful possession of another's property" the sole physical element of the offence.

Under section 4 of the Law, a person who is occupying a property as an encroacher and fails to leave after being required to do so, whether by the owner or his agent, commits an offence punishable with five (5) years imprisonment or fine not exceeding N5, 000,000 (Five Million Naira) or both such fine and imprisonment. In addition, section 7 prescribes a term of 10 (ten) years imprisonment for an encroacher who brings with him on the property any firearms or other explosive/dangerous weapons.

The term "encroacher" includes a person whose title derives from an encroacher. It appears from the text of these sections that the offence of encroachment is not punishable *ab initio* but only becomes punishable if the encroacher fails to vacate the property after being asked to do so. A vacuum exists in the sense that the section does not provide a timeline within which the encroacher shall vacate the property after being asked to. Perhaps, the reasonable time test would apply here.

Further, it is unlikely that a person can be liable as an encroacher over a period in which such a person contends title to the property or the allegedly encroached portion in a civil suit. Even if the civil court eventually finds that the alleged encroacher never had valid title to the property (perhaps because his title derives from another encroacher), he may nevertheless escape liability on the ground that he had a bona fide claim to the property.

It is observed that while the PPL protects a landowner from losing his property through forceful dispossession or adverse occupation by land grabbers, there is no express prohibition of a landowner retaking possession by force. However, this apparent silence must not be taken to convey the impression that a landowner can take the law into his own hands. The general tenor of the Law is to discourage self-help. Thus, this law does not provide a carte blanche to aggrieved landowners to forcefully retake possession from persons in unlawful occupation of their property. An aggrieved landowner has two inclusive options: report to the law enforcement authorities under this Law and/or institute a trespass suit against the adverse party.

Furthermore, this Law does not appear to be intended to govern tenancy relationships even where a tenant fails to deliver up possession at the determination of the tenancy. Such situations remain governed by the extant Tenancy Law (of Lagos State 2012) which itself prohibits forceful

repossession of premises by a landlord. In fact, to put it more directly, this law has no play in the sphere of landlord/tenant relationships.

Another very significant contribution of the PPL is that it prohibits law enforcement agents, however designated, from executing a court judgment in respect of land in a manner other than as prescribed in the Sheriffs and Civil Process Act or any other law. Mutatis mutandis, law enforcement agents are not to allow themselves to be used as instruments in land grabbing operations as it sometimes appears to be the case. However, the Law does not prescribe any sanctions for a law enforcement agent who participates in such unlawful activities in his official capacity or uses his uniform to aid such practices.

Very much in the firing line of this Law are persons who indulge in the unauthorized sale of other persons' landed properties or persons who sell the same property to multiple buyers. For this category of offenders, section 8(1) of the Law prescribes varying sanctions of imprisonment and fine. In addition, in the case of an unauthorized sale of another's property, the property shall revert to the actual owner. No remedy in this statute is prescribed for an innocent purchaser for value. Perhaps, this is a situation that requires some touch.

Section 8(2) criminalises the sale of family property without the legally required consent of the family head and other accredited members of the family. It is also an offence to sell government land without the authority or consent of the State.

Section 8(3) prohibits a person or group of persons from selling or offering for sale any property that has previously been sold, without a judgment of court repudiating the previous sale. This provision is interesting in two senses. The first is that it not only criminalizes the resale of property but also an attempted resale of property. Secondly, the language of this provision implies its applicability to a vendor who resells or attempts to resell property which should ordinarily be within his right to sell (even if the property was earlier sold by a person who had no authority to do so). For instance, if a family member sells family property without the requisite consent of the family head and principal members, the family head and principal members cannot subsequently resell that property without first obtaining a court judgment invalidating the earlier sale.

In terms of the mental element of the offence, it is submitted that the subsequent seller of the property has to be aware that the property had previously been sold at the time he was attempting to make the subsequent sale. Otherwise, it would be rather incongruous for the law to impose such sanctions on a vendor who genuinely sells his own property without prior knowledge that another person had previously (wrongfully) sold the same property. A contravention of the provisions of section 8(2) and (3) carries the heaviest sanction of twenty-one (21) years imprisonment.

It seems the framers of the PPL were not oblivious of the fact that "professionals" (including solicitors) often play complicit roles in land grabbing and other unwholesome property practices.

This explains why section 9 of the Law prohibits a professional facilitating such prohibited practices, including by way of preparing agreements or executing a court judgment in an unlawful manner.

A professional who is "found guilty" of contravening these provisions of the PPL shall be reported to the appropriate professional body (e.g. NBA) for misconduct and necessary actions.

The use of the phrase "found guilty" in section 9(3) of the Law poses some ambiguity. Does it mean that the professional in question will first have to be found guilty by a court of law before his offence is referred to the professional body for sanctions? If the answer is in the affirmative, is the court entitled to impose its own penalty before referring the said professional to his professional body? There is need for some clarity here.

Perhaps the provision would have been more aptly drafted along the lines of "whenever in the course of (or after) an investigation into a complaint under this Law it is evident (or "it appears") that a professional has contravened a provision of this Law, he shall be referred to the relevant professional body for misconduct and necessary actions." If the intendment is to convey an impression in the above manner, then the phrase, as it stands, would be more appropriately used in an administrative rather than judicial sense. Thus, it is posited that "found guilty" as used here simply entails that there is sufficient evidence before the law enforcement agents to convey the impression that a particular professional has acted illegally.

Furthermore, it should be noted that this section is only applicable where a person is acting in their professional capacity. Thus, where, for instance, a solicitor is not merely acting in his professional capacity but is personally invested in the land dispute, such a solicitor, without prejudice to whatever sanctions that may flow from his professional body, would be liable to the same criminal proceedings and sanctions that any ordinary person may face under the Law.

In order to guard against persons who may seek to use the instrumentality of the PPL to unjustly set the law in motion against others, section 10 prohibits the writing of frivolous and unwarranted petitions to Law Enforcement Agents. To this end, a petition in respect of a landed property shall be accompanied by a sworn declaration by the petitioner.

For purposes of enforcement, section 12 of the PPL establishes a Task Force Unit ("the TFU' or 'the Unit"). However, no provisions are made as to the legal capacity of the Unit as a body exercising administrative powers. Section 13 confers on the TFU the power of arrest. Beyond this, no other powers are expressly vested in the Unit. It is thus unclear whether the TFU has powers of detention and investigation/interrogation. There is no conferment of prosecutorial powers on the TFU or any other special prosecutor. Thus, by default the task of prosecution of offenders of the Law falls on the desk of the Attorney-General's office.

To make matters more uncertain, even the composition of the Unit is not specified in the Law. It is arguable that if the TFU is composed of police officers then by necessary implication they would be empowered to exercise the powers of the Nigerian Police Force, as prescribed in the Police Act, in the discharge of their responsibilities. Conversely, the situation becomes rather complicated if the TFU is composed of civilians. In the circumstances, it will be best to make the necessary amendments, particularly with regard to the powers of the TFU, in order to delineate the boundaries and forestall potentially chaotic and arbitrary exercise of power by its personnel.

Pursuant to its section 14, offences under the PPL are triable before the Special Offences Court or "any other court". The express mention of the Special Offences Court implies that the Court is the first port of call and is likely to receive the bulk of cases. In accordance with section 1(2) of the Special Offences Court Law (SOCL), the Court is presided by a Magistrate. A Magistrate presiding over the Court is empowered by section 1(3) SOCL to impose any penalty stipulated in a law under which a person is tried before it even if that penalty exceeds what a Magistrate may ordinarily impose. Thus, a Magistrate can impose the huge penalties in the PPL.

It is hoped that courts tasked with interpreting and adjudicating on this law, as well as those tasked with enforcement, would stay conscious of the fact that the mischief this law has come to suppress is the devious activities of land grabbers and other persons indulgent in unwholesome land practices in the State. That is to say, the Law is not here to target persons with genuine, even if contentious, claims of title to landed property.

It is also hoped that the courts will explore the full sanctions prescribed in the law whenever necessary as invaluable tools for curbing the identified mischief. Too many innocent persons have been victims of some of the acts prohibited in the Law. The courtrooms are pervaded by such cases, many of which seem to have no end in sight. Perhaps the huge prescribed penalties, if well enforced, will deter offenders, some of whom indulge in such activities as their daily bread.

There is little doubt that the Lagos State Properties Protection Law is a welcome piece of legislation. The only surprise is that it took this long to take this potentially decisive step. Of course, there is room for improvement, especially having regard to the shortcomings highlighted in this review; but even in its present state, it is expected that the Law will help stem the tide of these forms of deleterious criminality while promoting stability and confidence in the property market. Lagos State is yet again a leading example in law reform. Other States of the Federation who do not have a Law on this subject matter would do well to follow suit.