International Journal of
Finance and Accounting
(IJFA)

CONTROL OF OPPRESSIVE INTEREST RATES AND CHARGES BY BANKS AND THE RELATIONSHIP BETWEEN LANDLORDS AND TENANTS - THE URGENT IMPERATIVE FOR STATUTORY PROTECTION

Afe Babalola (SAN), OFR, CON, SAN, LL.D and Clement C. Chigbo

Journal of Accounting
ISSSN 2520-7465 (Online)
Vol. 3, Issue No.1, pp 15 - 30, 2020

www.carijournals.org

Control of Oppressive Interest Rates and Charges by Banks and the Relationship between Landlords and Tenants - The Urgent Imperative for Statutory Protection

[1*]Afe Babalola (SAN), OFR, CON, SAN, LL.D

[1]Founder and Chancellor Afe Babalola University, Ado Ekiti.

[*]Corresponding Author's Email: president@abuad.edu.ng.

[2]Clement C. Chigbo

Barrister & Solicitor of the Supreme Court of Nigeria, Solicitor of England & Wales, Registered Associate of the Supreme Court of the Bahamas, Attorney at Law (Pro Hac Vice) of the Supreme Court of the Turks & Caicos Islands of the British West Indies & Associate Professor, College of Law, Afe Babalola University, Ado Ekiti.

[*]Corresponding Author's Email: clementchigbo@abuad.edu.ng; clementcchigbo@gmail.com.

Abstract

Purpose: The purpose of the work is to examine the ways by which the court and legislature can control critical interest rates on loan bargains and legislation can be used to exercise/impose a significant legal control over the relationship between landlords and residential/occupiers.

Methodology: The paper adopts the doctrinal research methodology/ approach of reviewing cases and statutes and international instruments in aiming at a valid conclusion. Emphasis were placed on statutes and case laws as primary sources. Relevance was as well placed on journal, articles, text books, internet materials, among others as secondary materials.

Findings*:* The paper finds that many Nigerians will be exposed to unmitigated hardship and suffering during this era of covid-19 pandemic as a result of lockdown and restrictions imposed by the government in the effort and measures to contain and curb the spread of the coronavirus. ***Unique contribution to theory, policy and practice:*** The paper urges the government to adopt as a primary political objective- the use of legislation to ameliorate the plight of Nigerians in the loan bargain sector and in the residential (housing) sector. In this regard, the paper contributes to practice and policy of government by using law as an instrument of social engineering.

Keywords: *Oppressive Interest Rates, Charges by Banks, Landlords, Tenants, Statutory Protection*

Introduction

In the era of Covid-19 global pandemic and its unbearable economic effects on the masses all over the world, progressive governments all over the world have adopted several measures aimed at ameliorating the suffering of the people in their different countries. Given that the primary responsibility of any government is the protection of their people and enhancement of their welfare, it becomes absolutely necessary if not indispensable for various governments to seek ways through the instrumentality of State policies to not only curb the spread of the dreaded corona-

virus but to innovate policies and measures to alleviate the plight of their citizens in this era (of the ravaging corona-virus) that has virtually shut down all mainstream economic activities that are pivotal to the survival of the masses.

Methodology

The paper adopts the doctrinal research methodology/ approach of reviewing cases and statutes and international instruments in aiming at a valid conclusion. Emphasis were placed on statutes and case laws as primary sources. Relevance was as well placed on journal, articles, text books, internet materials, among others as secondary materials.

Findings

The paper addressed the two sectors that are likely to impact Nigerians during and even after the covid-19 pandemic; the financial services sector and the domestic housing sector. These two sectors impact almost all Nigerians in one way or the other. These were addressed seriatim in this paper;

Harsh Interest Rates on Financial Lending/Loan Bargains

Interest rates may be defined as a payment made by a borrower for the use of money, calculated as a percentage of the principal sum borrowed and payable by reference to the time that the loan is outstanding. Interest rates may be simple, where the amount payable is calculated on the sum borrowed only or compound, where the interest is added to the principal sum borrowed and earns interest (Encyclopedia of American Law, 2008). Interest rates may be high or low, just and fair or unfair and unconscionable (Banner v Berridge, 1881). While the protection of most borrowers' rests mainly on the responsible exercise of power by the big institutional lenders, less protection is available for the individual who borrows on mortgage from another individual or from a credit company or other fringe financial institutions like micro-finance companies. Both courts and central banks have important roles to play in the regulation and control over some critical interest rates. In the past, the protection of some borrowers had depended on the declare void any mortgage term which is "oppressive or unconscionable" (IRMI (War Restrictions) Act 1915, Cityland and Property (Holdings) Ltd v Dabrah (1968) and Boote v Brake (1999). Many believe that central banks, such as the Central Bank of Nigeria (CBN), have almost total control over some critical interest rates. Serious monetary economists are more sophisticated. They realise that central bank control over interest rates is very far from complete. Nonetheless, central bank officials and economist are largely responsible for the popular misapprehension. This is because they persistently and misleading describe central bank policy as if it determined interest rates. It is not surprising that some Lawyers and economist tend to overstate the strength and significance of a central bank's limited effect on real interest rates. There is no denying that central banks have some impacts on interest rates, in both the short and long run. In the same vein, the courts and legislature do also have influence in this regard. However, this paper argues for more robust role by the courts and legislature in controlling harsh interest rates and rent in Nigeria.

Most Nigerians borrow money from the banks and other institutional lenders including Micro-finance companies that carter to the majority of low-income earners. In Nigeria, established banks,

other institutional lenders and micro-finance companies do extend or advance credit facilities in the form of loans to very many Nigerians and they do impose on them harsh interest rates (CBN, 2019). The Guide to Bank Charges issued by the Central Bank of Nigeria (CBN) provides a basis for the application of charges on various products and service offered by banks and other regulated institutions under its purview. The Guide which was first released in 2004, was revised in 2013 and 2017 in the light of market developments, such as new innovations in products and/or channels and new industry participants. In the same vein, the CBN issues a revised "Guide to Charges by Banks, Other Financial & Non-Bank Financial Institutions' in response to further evolution in the financial industry over the last years.

The new Guide includes, amongst others:

- Downward review of charges for electronic banking transaction;
- Review of other bank charges to align with market development; and
- Inclusion of new sections on accountability/responsibility and a Sanction Regime to directly address instances of excess, unapproved and/or arbitrary charges.

The revised Guide to Charges by Banks, Other Financial and Non-Bank Financial Institutions took effect on January 1, 2020 (CBN, 2019). While the protection of most borrowers rest mainly on the responsible exercise of power by the big institutional lenders, less protection is available for the individual who borrows on mortgage from another individual or from a credit company or other fringe financial institution like micro-finance companies.

Ideally, the Central Bank of Nigeria (CBN) and the courts in Nigeria should exercise effective regulatory and judicial oversight over these transactions but owing to weak regulatory oversight on the part of the Central Bank and lack of progressive and non-interventionist judicial attitude of the Nigerian courts and the ignorance and high rate of illiteracy in the country, the citizens are virtually without any protection in this area of economic life.

In progressive jurisdictions like the United Kingdom, Canada, Australia and New Zealand, the protection of such borrowers depends on the residual power of the courts to declare void any mortgage or loan term which is "oppressive" or "unconscionable". A dramatic exercise of this power occurred in City Land and Property (Holdings) Ltd v Dabrah, (1968) where Goff J. held that a capitalized interest rate of 57 percent was under the circumstances "unfair" and "unconscionable", (Bannah vs Berridge, 1881) and that the mortgagee was entitled to require only a "reasonable" rate of interest (which its fixed at 7 percent per annum). The "premium" agreed between the parties was unenforceable since it conferred an unconscionable collateral advantage on the mortgagee/lender. It is crucial to note here that the jurisdiction of the court (equity) is usually based on "the inequality of the bargaining power" of the parties in the loan or mortgage transaction. Equity has always jealously supervised the mortgage relationship to prevent the lender from abusing his superior bargaining strength by imposing on the borrower, oppressive or unconscionable terms.

For instance, in Dabrah's case, there was a plain disparity of bargaining power as between mortgagor and mortgagee and there was also a strong suspicion that the mortgagor had agreed to disadvantageous terms only because, as the sitting tenant in the property, he had been threatened

with eviction on the expiry of his lease. Debrah's case serves as a forceful demonstration that the courts have an inherent equitable power to rewrite the mortgage bargain.

In Nigeria, lenders are to a large extent not properly and effectively regulated by the Central Bank, and courts are disinclined to inquire into the propriety or otherwise of what institutional lenders are doing with borrowers. Part of the reason behind this is based on the misconception about the so-called "sanctity of contract principle" which would be discussed later in this paper. Despite occasional suggestions that an unqualified and unilateral power to vary interest rates may "savour of being harsh and unconscionable", there have been few legal challenges to the right of mortgagees and other lenders to adjust interest rates at their sole discretion (Wurtzburg and John Mills, 1976).

In the United Kingdom, the country of Nigeria's legal system heritage, and even in New Zealand, another common law jurisdiction like Nigeria, courts have even been willing to rectify contracts of loan to give effect to the parties' common (but unexpressed) intention that the relevant interest rate should be the lender's current rate at any time (Westland Savings Bank v Hancock, 1987 and Barber v Barber (1987). Some of the practices of most institutional lenders in Nigeria are hardly challenged by their customers who appear to be under the misapprehension that they are at the mercy of the lending institutions or lenders.

Most institutional lenders nowadays reserve the right, on serving notice on their borrowers, to alter from time to time the rate of interest payable on mortgage loans or other financial facilities. In the light of this general lending practice, it is widely believed that "a more robust attitude" can now safely be adopted to dealing the validity of such power. It was considered to be open to doubt if an unlimited power simply to vary the interest rate at discretion would be legally valid.

It is submitted here that the lender's/mortgagee's discretion in this matter cannot be entirely unfettered. The above view is fortified by some eminent English Court of Appeal decisions. For instance, in Paragon Finance plc v Nash, (2002) the English Court of Appeal held that there is an implied term in every mortgage that the discretion to vary interest rates should not be exercised "dishonestly" for an improper purpose, capriciously or arbitrarily. In an interesting transfusion of public law principles into the supposedly private area of loan finance or money borrowing for the matter, the Court expressly imported the analogy of Wednesbury's unreasonableness, confirming that lenders are subject to an implied term that they should not exercise discretion "in a way that no reasonable lender, acting reasonably would do". The law imposes standards of reasonableness upon administrative bodies, and failure to act in a reasonable manner may cause a body to act ultra vires (Associated Provincial Picture Houses Ltd v Wednesbury Corporation, 1948). The classic case of more recent times is that of Associated Provincial Picture Houses Ltd v Wednesbury Corporation. The local authority had the power to grant licenses for the opening of cinemas subject to such conditions as the authority "thought fit" to impose. The authority, when granting a Sunday license, imposed a condition that no child under the age of 15 years should be admitted. The applicants argued that the imposition of the condition was unreasonable and ultra vires the corporation's powers. The authority argued that there were no limits on the conditions which could be imposed in the statute. Lord Greene M.R. alluded to the many grounds of attack which could be made against a decision, citing unreasonableness, bad faith, dishonesty, paying attention to irrelevant circumstances, disregard of the proper decision-making procedure and held that each of

these could be encompassed within the umbrella term "unreasonableness'. The test propounded in that case was whether an authority had acted, or reached a decision, in a manner "so unreasonable that no reasonable authority could ever have come to it", it was observed that:

> *Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretion often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably". Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority.*
>
> *The court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take into account, or, conversely, have refused to take into account and once that question is answered in favour of the local authority, it may still be possible to say that, although the local authority have kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere (Associated Provincial Picture Houses Ltd v Wednesbury Corporation, 1948). "Unreasonableness' was employed to challenge a by-law which prohibited singing "in any public place or highway within fifty yards of any dwelling house" although, on the merits of the case, the challenge failed (Kruse v Johnson, 1898). In Roberts v Hopwood (1925), the council, in adopting a policy of paying higher wages than the national average for its workers, was unreasonable, for the discretion of the council was limited by law, it was not free to pursue a socialist policy at the expense of its rate payers. The House of Lords ruled that, irrespective of the wording of the statute, the council had a duty to act "reasonably"; its discretion was limited by law (Lord Wrenbury's judgment, 1925).*

Thus, it has become clear in the light of the foregoing that a lender cannot unilaterally vary a loan transaction or even impose onerous, exorbitant and arbitrary charges on the borrowers and that borrowers can legally challenge all those charges and unilateral variations and that a proper court exercising its judicial power properly would not hesitate to strike down any or all such offending terms as null and void. Thus, for instance, in Nigeria, it should be improper if a lender's decision to raise an interest rate were motivated by other than purely commercial considerations. Legitimate discretion would even become unsustainable caprice if, a bank or any financial (lending) institution unilaterally imposes any fee or charge or cost outside their legitimate commercial considerations. But if the mortgagee or lender, in the exercise of commercial judgment, increases interest rates in response to genuine market pressures, the decision cannot be stigmatized as dishonest, whimsical, unreasonable or arbitrary.

The courts in Nigeria should strive to use their judicial power to exercise control over oppressive interest rates and charges just as their counterparts do in progressive jurisdictions like the United Kingdom, Canada, Australia and New Zealand. In these aforementioned countries, the courts have

always claimed an overriding equitable jurisdiction to strike down any mortgage or loan term which operates in an "oppressive" or "unconscionable" manner.

Although, this inherent supervisory function in these progressive jurisdictions is being steadily superseded by statutory forms of regulation, hence, this is one of the areas in which the legislature in Nigeria both at the national and state level should seek to intervene in the interest of the public. The paper now addresses the urgent imperative for legislative/statutory intervention in.

The Role of the Legislature-The Urgent Need for Legislative Intervention.

There is an urgent imperative for the control of oppressive interest rates and charges in loan and mortgage transaction in Nigeria. The same enhanced legislations are needed in real property residential sector (i.e. in the housing rent sector) especially during this era of global pandemic as a result of the Covid-19 disease. This will go a long way in alleviating the plight of the masses whose sources of livelihood have been adversely impacted by the lock down and restriction measures that have been put in place by the government, both at the national and state level, to curb and combat the spread of the highly contagious Corona-virus. Thus, the statutory regulation of credit bargains and house rent is urgently needed in all the states of the federation as a matter of national emergency and in the overriding public interest.

The federal government should adopt the above measures at this era of global pandemic as a national political objective and policy towards the protection of the masses and ensure that all states adopt and implement statutory regulation framework with respect to credit bargains and the housing rent sector. These policies and measures will stand any test of constitutionality and legality in Nigeria's democratic system due to the wide margin of appreciation which has been given to the legislatures to modify the law. The margin of appreciation accorded to states in any democratic society allows states to take measures and embark upon policies in times of national emergency which may be in derogation of the provision of the constitution (Human Right Act (UK) 1998; CFRN,1999 & Birmingham Midshires Mortgage Services Ltd v Sabherwal (2000). In progressive jurisdictions like UK, Canada, Australia and New Zealand, protection against unfair dealings is provided in several statutory forms (UK's Unfair Contract Terms Act 1977 & Cheltenham and Gloucester Building Society v Ebbage 1994). The discretionary fixing of mortgage interest rate is not a "contractual performance" nor does a finance company which lends money rank as a "public authority (Unfair Contract Terms Act 1977; Human Rights Act 1998; Birmingham Midshires Mortgage Services Ltd v Sabherwal 2000 & Paragon Finance plc v Nash, 2002).

The Central Bank of Nigeria (CBN) should also exercise enhanced supervision and monitoring of financial services and markets product in Nigeria just like the Financial Services Authority (FSA) in the United Kingdom does under the Financial Services and Market Art 2000. For instance, it is one of the principles underpinning the Financial Services and Market Act 2000 that a firm engage in mortgage lending or administration must "pay due regard to the interest of its customers and treat them fairly". The CBN should ensure that this is strictly done in Nigeria especially during this era of Covid-19 pandemic. There must be a laid down positive requirement that banks and firms dealing with "Regulated Mortgage Contracts' and other financial lending, must ensure that these contracts and loans do not impose, and cannot be used to impose, "excessive charges upon the customer" the same requirements and conditions should also be extended to the housing and domestic rent sector especially during this Covid-19 pandemic era.

There should be efficacious and result–oriented consumer protection legislation in Nigeria along the line of the UK's Consumer Credit Act 1974, which confers on the court an important power to reopen "extortionate" credit bargains. A similar legislature in the area of housing/rent sector will also be desirable especially in urban cities and towns e.g. Lagos, Abuja, Port-Harcourt, Kaduna, Ibadan, Kano, Onisha, Jos, Ilorin, Aba etc. and failure to comply with such statutory regime by landlords will be severely sanctioned as a crime of economy sabotage.

Lastly, there has to be some statutory regulatory framework in the area of credit bargain and rent sector which will deem a credit bargain or rent as "extortionate", if it requires the debtor or a tenant or a relative of his to make payment which are grossly exorbitant, or otherwise grossly contravenes ordinary principle of fair dealings and such a statutory language in the proposed statutory framework will be subject to judicial amplification (Davies v Direct Loans Ltd 1986). In determining whether a credit bargain is "extortionate", the court must have regard to such evidence as is adduced concerning "interest rate" prevailing at the time it was made and to "any other relevant consideration (UK's Consumer Credit Act 1974). It is suggested here that the proposed statutory jurisdiction contemplates at least a substantial imbalance in bargaining power of which one party has the real potential to take advantage (Matthew v Bobbins, 1981). It is worth noting that the term "extortionate" is now acknowledge as demarcating much the same kind of conduct as is envisaged under the traditional equitable rubric of "Harsh and Unconscionable" dealing (Castle Philips Finance Co Ltd v Khan, 1980). In the application of statutory consumer credit regimes in other jurisdictions, increasing recourse is now had to North American concepts of unconscionability (Prudential Building and Investment Society of Canterbury v Hankins (1997).

Control over the Relationship between Landlords and Tenants/Residential Occupiers.

There have been far-reaching effects of the lockdown on landlords and tenants in Nigeria. One of the consequences of it is the adverse effect on tenancies, affecting both landlords and tenants. As the lockdown brought about the suspension of all economic activities other than essential services, the reciprocal promise of the lessor to give possession for the use of the lessee, who in turn, promises to pay the rent for that use has been adversely impacted by the lockdown. Most tenants/residential occupiers are unable to pay their rents because they have not been working or doing their business as a result of the lockdown.

On the other hand, some landlords/lessors complain that they have suffered loss of regular receipt of rent and that is equally damaging to them as they might have mortgaged the property and the rent may be servicing the loan; and that they might have a liability to pay which was linked to the rent; they may be a widow with the house as the sole assets, part of which was given on lease to earn a living and loss of rent may have even become lack of daily bread. In the present context, all/any of these things are due to Covid-19 or the lockdown. The unprecedented crisis of corona-virus leaves Landlords and tenants with similar concerns and the common need to ensure that their business arrangement/tenancies survive the lockdown period and beyond.

Although there is extant law governing the relationship of landlords and tenants in Nigeria, however, in this period of Global Covid-19 pandemic, one can liken the current lockdown as one that has created a state of emergency especially in the economic aspect of the lives of urban and city dwellers in various parts of Nigeria. Although, Government did not create this condition but the measures being put in place are acts or policies of the State or federal government in trying to

curb the spread of the dreaded Corona-virus. Thus, it is incumbent on the government to take urgent steps and measures to ameliorate the plight of masses in this largely unregulated real estate sector in Nigeria in the overall interest of the masses.

It is being suggested here that Nigeria should have recourse to what obtains in progressive jurisdictions as mentioned in this paper. In the United Kingdom, for instance, during the First World War (1914-1919), the British government adopted robust and proactive measures to protect their citizens from the effect of the hardship engendered by the war. In this regard, Emergency War Time Legislation was enacted in 1915 (Increase of Rent and Mortgage Interest (War Restrictions), Act, 1915; Watchman, 1980 & Cadegan Estates Ltd v McMahon 2001). This Rent Act and Successive Rent Acts in the U.K came to provide the mainstay of the statutory protection enjoyed by residential tenants in the private rented sector during the larger part of the 20th century. The government both at the federal and state levels should consider taking serious steps in protecting the citizens especially in all urban cities in towns like Lagos, Kaduna, Abuja and Port Harcourt. The aforementioned emergency war time legislation in the U.K in 1915 imposed a significant legal control over the relationship between landlords and residential occupiers. The same can be done in Nigeria, in the overall public interest.

Various legislatures, the federal government and state governors in Nigeria are solemnly urged to show some genuine concern and solicitude for their people during this era of global pandemic and lockdown by using their good offices to initiate legislations/laws that will impose a significant and effective legal control over the relationship between landlords and residential occupiers in the various cities and towns in Nigeria especially in Lagos, Abuja, Kaduna and Port Harcourt. Such Rent Laws should be broadly directed at preventing exploitation of the latter by the former.

The Rent Acts have throughout their history in various progressive jurisdictions constituted an interference with contract and property rights (CFRN, 1999). However, on a purposive interpretation of such rent statutes and the provision of various Constitutions, something can be done within the ambit of law to address the problems people are facing as a result of the global lockdown and economic recession caused by the covid-19 pandemic. The advantage enjoyed by landlords over those who have to rent their homes and their apparent superiority of bargaining power calls for an urgent imperative for state intervention especially during this era of global pandemic and ensuing economic meltdown worldwide. State intervention through legislative measure and policy will no doubt be reasonably justifiable in democratic societies in the circumstances (Horford Investments Ltd v Lambert, 1976). Furthermore, it is conceded in this paper that the operation of the Rent Acts clearly restricted freedom of contract in the housing market and rent sector and had the effect of inhibiting the exercise by private owners of formerly sacrosanct rights of property and contract rights as well. But every law has its purposive and teleological rationale and justification (Davies v Johnson, 1979).

Rent legislation, by assuring tenants long-term security of tenure at a “fair rent”, stripped the Landlord’s rights back to a bare reversion and caused “an almost permanent alienation from the landlord of the right to get possession of the premises (Blake v Attorney-General, 1982). Although in the short-term interests of residential tenants, the Rent Acts led ultimately to a reduction in the supply of privately rented accommodation (Gray & Gray, 2005). It has been observed that there is no simple equation between security of tenure and the public interest (Sommerset CC v Isaacs,

2002) However, the government can use law as an instrument of social engineering to protect the masses during this era of freezing of economic activities. Such legislation/law will serve a useful purpose and will be immune from judicial review. Even in the progressive jurisdictions, social legislation as being advocated in this paper aimed at the protection of residential security in the rented sector has almost always survived constitutional (or other human rights) challenges (CFRN 1999). Thus, the landlords in Nigeria cannot vitiate their validity on the grounds that it violates the property, contract or constitutional rights. Authorities in support of this proposition are legion (Blake v Attorney-General, 1982; Kilbourne v United Kingdom, 1986; & Mellacher v Austria, 1989).

The Nigeria government both at the federal and state level, including the courts/judiciary should note in particular that even the jurisprudence of the European Court of Human Rights has long (since) incorporated the premise that legislation/law in the area of housing and social welfare falls within the "political sphere". This falls within the area of the subject matter in respect of which the state/government has latitude to take measures or adopt policies in respect of which are not amenable or susceptible to judicial review (CFRN, 1999 & Anufri Jeva v Southwark London Borough Council, 2004) The court therefore usually accords a wide "margin of appreciation". It is worth noting that in respect of all the provisions of the constitution relating to fundamental rights, there is an area of discretion left to the states/governments as to the means by which they protect the substantive rights. This margin of appreciation is necessary in other that the fundamental rights provisions of the constitution can apply in a workable fashion in democratic societies. It also means, however, that states may be able to deviate from the protection given pursuant to fundamental rights. Whether the state has a margin of appreciation and the scope of it is a matter to be determined by the court in strict adherence to the overriding public interest. The doctrine is unpredictable in operation and has become, over the years, applicable to all fundamental rights. Accordingly, it is a concept which is capable of significantly undermining the protection given by the Constitution, and has been criticized for so doing (Barnett, 2001). to the national legislature's assessment of the general domestic interest unless this judgment is "manifestly without reasonable foundation". In the same vein, Nigerian courts should ensure that any legislation dealing with housing and social welfare is construed purposively and teleologically. This approach to legislative construction is exceedingly needed so as to alleviate the hardship and sufferings of the masses during this Covid-19 pandemic. At the end of March 2020, General Muhamadu Buhari, President of Federal Republic of Nigeria declared a national lockdown, barring Nigeria from coming out of their homes and declaring "no movement" for cars (actually pedestrian and vehicular) except those on essential duties and inter-state travels.

> *The Constitution of the Federal Republic Of Nigeria 1999 provides that: (1) 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 defense, public safety, public order, public morality or public health; or (b) for the purpose of protecting the rights and freedom of other persons.(2) An Act of the National Assembly shall not be invalidated by reason only that it provides for the talking, during periods of emergency, of measures that derogate from the provision of section 33 or 35 of this constitution: but no such measure shall be taken in pursuance of any such Act during any period of emergency*

save to the extent that those measures are reasonably justifiable for the purpose of dealing with the situation that exits during that period of emergency.

In terms of the literal interpretation of the extant provision of the aforesaid constitution, it would appear that it is possible for the State/Government to derogate from the fundamental right provisions of the constitution in the overriding public interest, and in this regard, it is crystal clear that the prevailing situation in Nigeria today does amount to a public emergency and it does fall within the terms of section 45 of CFRN 1999.

In the same vein, the European Convention on Human Right (ECHR) provides that no deprivation of property can be justified unless at the very least, it serves the "public interest" (Aston C. and Wilcote with Billesley PCC v Wallbank 2004). The convention proclaims that every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principle of international law. The above seems to encapsulate the Human Right to protection from arbitrary dispossession. The preceding provision shall not, however, in anyway 'impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest' or to secure the payment of taxes or other contribution or penalties (ECHR, 1950). Inferentially, the above, opinion, sits well with the aforementioned provision of section 45 of the Nigeria Constitution which deals with restriction and derogation from fundamental rights (CFRN, 1999) As the country engages in war with Covid-19, millions of Nigerians find themselves unemployed and without means of livelihood. Large numbers of employed workers from the private sector/informal sector are left unemployed until further notice. Who would pay them if the crises last for 6 months? How are they going to pay their rents and meet their other socio-economic obligations and responsibilities remains a question very difficult to answer with any degree of certainty.

Any legislation on housing and social welfare during this Covid-19 pandemic will fall within the political sphere. Such statute will survive the test of constitutionality or other human rights challenges. It is only where such legislative palliatives/measures by the government are manifestly without reasonable foundation that the measures will not pass the test of constitutionality under the Nigeria Law. But experience from progressive jurisdictions strongly suggests that housing/social welfare is paramount in terms of the general public domestic interest in any nation. For example, Lord Scott of Foscote indicated in Harrow LBC v Qazi, (2004) that social housing legislation is "well justifiable" on public interest grounds, even though its operation diminishes the property rights of landlords. Therefore, it is strongly suggested that the federal and state governments in Nigeria should take urgent palliative measures in the housing/rent sector during this "time of war" with Covid-19 to alleviate the plight of Nigerians and such measures can be justified if it (robustly) serves the public interest. The human right to protection from arbitrary dispossession is nowadays encapsulated in protocol No.1, Article 1 of the European Convention on Human Rights. (UHRA 1998 & CEU, 2011).

It should be noted that in the U.K under Administration of Justice Acts (AJA) 1970 and 1973, the tenant/mortgagor enjoy some level of statutory protection. With respect to social/domestic housing sector, section 36 of the above legislations plays a pivotal social function. This statutory discretion under s.36 provides valuable assistance for many mortgagors and tenants who run into temporary

financial difficulties, whether by reason of unemployment, short time working, redundancy or domestic difficulties (Smith, 1979). Although clearly not all judges agree on the point, it has been said that the Administration of Justice Acts 1970 and 1973 together represent a form of "social legislation" in which "Parliament as attempted to give legislative shelter" to a wide classic or owner occupiers. Nigeria's National Assembly and the States' Houses of Assembly can in the light of the Global Pandemic which has caused massive economic dislocations among many Nigerians, enact a social legislation, specifically targeted are the domestic housing (rent sector in urban cities) aimed at mitigating the plight of tenants and other low income homes owners/mortgagors who might have run into temporary financial hardship and difficulties as a result of the lockdown and economic recession.

It is consistent with the nature of such social legislation that the court's discretion to give relief to domestic mortgagors should be construed liberally. It was recognized Target Home Loans Ltd v Clothier, (1992) case that the mortgagor's difficulties were in no way caused by dishonesty, but rather by the fact that his business had suffered badly as a result of the recession. This will be of huge importance in relieving the financial crises/recession and business lockdown presently engulfing millions of innocent mortgagors and tenants in Nigeria. Indeed, it is fair to opine here that the country needs a real social approach to legislation and even a more generous judicial approach to loan bargains (mortgage lending) and residential housing (rent matter).

Conclusion

The Nigerian Courts should treat any infringement of essential social protection legislation/law or any rule relating to its application as an important law capable of undermining the social fabric of the nation just like any breaches of general principles of human rights such as non-discrimination, proportionality, legitimate expectation and the right to fair hearing.

As mortgages and other forms of financial borrowing (loan services) are crucial in the life of the middle class families and other low income earners like market women and traders in Nigeria, the government at the Federal and State level have the responsibility to ensure that there is enhanced regulation of mortgages and the financial services (loan) sector in the overall interest of the people. In the midst of the present national lockdown as a result of the global pandemic, it is incumbent on both the federal and states government to take necessary and appropriate measures to address the basic needs of Nigerians who are barred from coming out of their homes to pursue their daily livelihood.

Government, either at the state and federal levels cannot declare "no movement" or impose other restrictions on movement of people as a result of the efforts in curbing and controlling the spread of the deadly virus, without reciprocally providing for some palliative measures to alleviate the economic effects of the restrictions and lockdown on the people's livelihood. In no area is this needed more than in mortgage and financial services (loan) sector. For instance, looking at the historical dynamics of the modern mortgage relationship, two truisms about human experience have influenced the development of the law of mortgage in particular, and the business of money lending in every society in general. Firstly, it should be appreciated that those who lend money commercially are more powerfully motivated by the hope of personal gain than by any desire to render useful service to their community. Thus, this is even enough justification for enhanced

government intervention in this vital sector. Secondly, borrowers of money have tended to be pictured (at least in the frozen frame of the historic stereotypes) as necessitous persons who lack bargaining power and who are therefore especially vulnerable to harsh or unconscionable dealing. As Lord Henley LC declared in the case of Vernon v Bethell, (1762) "necessitous men are not, truly speaking, free men, but, to answer a present exigency, will submit to any terms that the crafty may impose on them", this again, will in the view of these writers, justify government intervention especially during this period of "exigency" and unusual economic hardship owing to the national lockdown and restriction of people's movement and economic activities as a result of the prevailing global Covid-19 pandemic.

The same argument is being maintained here in this paper for social housing and the rent sector in Nigeria. The force of the foregoing argument is convincingly underscored by the prevailing economic hardship facing Nigerians as a result of government's legitimate efforts in combating the spread of the corona-virus in Nigeria i.e. to the effect that these efforts and measures are in the public interest.

The Nigerian government should establish special courts to handle cases relating to these suggested social-protection legislations for at least two years until the Covid-19 pandemic and current economic recession abate. These special courts should be conferred with jurisdiction/power to dispose of cases relating to loan bargains and residential renting with an expeditious jurisdiction so that individual litigants will not face lengthening delays to justice which presently, litigants face. Furthermore, these courts must avoid excessive formalism, tabulated legalism and dogmatic rigidity in their approach to matters in these vital sectors. This should be a period of judicial activism and creativeness on the part of the Nigerian courts of justice, particularly given the present economic meltdown in the country.

Recommendations

Government must ensure that any firm or lender who is engaged in mortgage lending and loan services or administration like banks, insurance companies, micro-finance companies must pay due regard to the interests of its customers and treat them fairly and equitably.

The Central Bank of Nigeria (CBN) in their financial regulation framework should direct part of its regulatory and supervisory concern to the imposition on mortgage customers and other financial borrowers of any charges (including rates of interest) which are excessive and contrary to the customer/borrower's interest.

The CBN should lay down a more positive and rigorous/stringent requirement that mandates banks and other institutional lenders and microfinance companies dealing with regulated mortgage contracts and other financial-lending services to exercise maximum restraint in enforcing the repayment of this loans especially those loan transactions entered immediately prior to the onset of the Covid-19 pandemic or six months thereafter. Furthermore, the CBN must ensure in this regard that these contracts do not impose and cannot be used to impose, excessive charges upon a customer. Though, little guidance can be given here as to the meaning of the term "excessive"; however, it is suggested here that in determining whether a charge is "excessive", regard should be had to the "charges' for similar products or services on the market, the degree to which the

imposed charges are "an abuse of the trust" that the customer has placed in the firm, and the nature and extent of the disclosure of the charges to the customers.

There should be tighter and more robust consumer protection-oriented statutory regulation of credit bargains and housing/rent sector in Nigeria for the next one or two years owing to the impact of the Covid-19 pandemic and the looming economic recession as a result of the drop in the global oil demand. The global average price of oil dropped to US$43.73 per barrel in 2016. By April 2020, the price dropped by 80 percent, down to a low of about $5, due to the covid-19 pandemic and the 2020 Russia-Saudi Arabia oil price war (OPEC, (2020). Government must adequately respond to this current situation in the global oil market and the prevailing Covid-19 pandemic taking into consideration the overall interests of Nigerians in their day-to-day lives.

In the United Kingdom for instance, pursuant to the Administration of Justice Act 1970 and 1973, there is the social function of what has come to be referred to as section 36 Jurisdiction-(the statutory discretion under section 36 as amended). This important section provides for valuable assistance for many mortgagors who run into temporary financial difficulties, whether by reason of unemployment, short-time working redundancy or domestic difficulties (Smith, 1979). With respect to social housing and domestic rent sector, the UK AJA 1970 and 1975 (are) consistent with the nature of such legislation that the court's discretion to give relief to domestic mortgagors (enters or tenants impliedly) should be construed liberally. It is strongly recommended in this paper that this is the time when courts in Nigeria should construe landlord–tenants' relationship with particular emphasis on "evictions or actions for repossession" liberally.

Courts in Nigeria ought to borrow a leaf from the UK, the country where Nigeria derived her common law legal system, where, during the last 37 years of the AJA the statutory discretion has assumed a pivotal importance in relieving the financial crisis otherwise engulfing thousands of innocent mortgagors. Indeed, in this regard, it has been observed that it is fair to say that the scale of the economic recession affecting homeowners and renters/tenants impliedly during the early 1990s in the UK generated a rather more generous judicial approach to section 36 in context. It was recognized in Housing Law Report 48 at 54 that the mortgagor's difficulties were in no way caused by dishonesty, but rather by the fact that his business had suffered badly as a result of the recession (Target Home Loans Ltd v Clothier, 1992). Suffice it to say that Nigeria is already in a recession.

It is to be seen whether the Nigerian courts will live up to expectation in the matters relating to these two vital sectors as the country engages in efforts towards combating Covid-19 pandemic and as millions of Nigerians find themselves unemployed and as a large number of employed workers and daily income earners are left unemployed and without earning until further notice. "Who will pay them if the crises last for 6 months?" and "how are they going to survive?" remain questions which the State i.e. the various governments both at the federal and state level will need to urgently address with political will and genuine solicitude in the public interest.

Finally, there should be a statutory regime of protection of tenants during this era of Covid-19 pandemic and post Covid-19 era. Part of the extraordinary complexity of the modern law of landlord and tenants in Nigeria is attributable to the absence of any statutory superimposition of special regimes of protection for designated categories of tenants. There is urgent need to provide

enhanced statutory regime of protection for designated categories of tenants during and after the Covid-19 pandemic.

As Part Of The Fundamental Objectives And Directive Principles Of State Policy under section 13 of the Constitution of Federal Republic of Nigeria 1999 with respect to Fundamental Obligation of the Government, the Federal Government should issue a directive to all the states governments of the federation and such directive should provide that all states must introduce into their own legal system such measures as are necessary to enable all persons who consider themselves adversely affected by the pandemic with respect to loan bargains/credit facilities and residential/housing rent matters to pursue their claim by effective judicial process or complaint procedure and that full implementation of such a directive should entail that sanctions must be such as to guarantee real and effective judicial protection and must therefore have a real deterrent effect on the states or their governors, who may be unwilling to effectuate the federal government directive in the light of the foregoing.

References

A & L Investment Ltd v Ontario (Minister of Housing) (1997) 152 DLR (4th) 692 at 701-702;

Anufri Jeva v Southwark London Borough Council (2004) 2 Weekly Law Report 603 at (41) (51).

Associated Provincial Picture Houses Ltd v Wednesbury Corporation (1948) 1 Kings Bench 223.

Associated Provincial Picture Houses Ltd v Wednesbury Corporation (1948) 1 Kings Bench 229.

Aston C. and Wilcote with Billesley PCC v Wallbank (2004) 1 Appeal Cases 546 at (134) per Lord Scott of Fiscote.

Banner v Berridge (1881). Chancery Division 254 at 279 per Kay J.

Barber v Barber (1987) 1 New Zealand Law Report 426 at 428, 439, 436.

Barnett, H. (2001) Constitutional & Administrative Law (3rdedn., Cavendish Publishing Limited,), 924-925.

Birmingham Midshires Mortgage Services Ltd v Sabherwal (2000) 80 P &CR 256 at 264 per Robert Walker L.J.

Blake v Attorney-General (1982) Irish Law Report 117 at 140 per O'Higgins C.J.

Blake v Attorney-General (1982) Irish Report 117 at 126, 140. Supreme Court of Ireland.

Boote vs Brake (1992) New Zealand Law Report 3:136 at 143.

Cadegan Estates Ltd v McMahon (2001) Appeal Cases. Lord Hoffman's Reference.378 at 383 F

Castle Philips Finance Co Ltd v Khan (1980) Consumer Credit Law Reports 1 at 3;

Central Bank of Nigeria, (2019). Guide to Charges by Banks, Other Financial and Non-Bank Financial Institutions in the CBN's Circular to all Banks, Other Financial and None-Financial Institutions, FPR/DIR/GEN/CIR/07/042, December 20, 2019.

Cheltenham and Gloucester Building Society v Ebbage (1994) Current Law Yearbook/Law Report 3292.

Cityland and Property (Holdings) Ltd v Dabrah (1968). Chancery166 at 180 D.

Constitution of the Federal Republic of Nigeria (CFRN) (1999) Section 45 Restriction on and Derogation from Fundamental Rights.

Constitution of the Federal Republic of Nigeria (CFRN) (1999), Section 43 & 44 "Right to Acquire and Own Immovable Property Anywhere in Nigeria and Compulsory Acquisition of Property Respectively.

Constitution of the Federal Republic of Nigeria (CFRN), (1999) Derogation Provisions on Fundamental Rights and Freedoms.

Convention of the European Union, (2011) part 11 (Charter of Fundamental Rights), Title 11, Art 11-17 (approved 18 June 2004).

Davies v Direct Loans Ltd (1986) 1 Weekly Law Report 823 at 836 G – 837B.

Davies v Johnson (1979) Appeal Cases 317 at 348E-G per Lord Scarman.

Encyclopedia of American Law (2008). Interest Rate. (N.D) West Encyclopedia of American Law, edition 2. Retrieved July 17, 2020 from https://legal-dictonary.thefreedictionary.com/interest+rate.

European Convention on Human Right (ECHR), (1950) Protocol No 1, Art 1. 4th November, 1950.

Gray, K. & Gray, S.F. (2005) Elements of Land Law. Fourth edition, Oxford University Press, Oxford, pp.1590-1594, para 14. 312-14-317.

Harrow LBC v Qazi (2004) 1 Appeal Cases 983 at (125).

Horford Investments Ltd v Lambert (1976) at 52D Scarman L.J.

Human Right Act (UK) (1998) section 6 (1).

Increase of Rent and Mortgage Interest (War Restrictions) Act (1915).

Kilbourne v United Kingdom (1986) 8 European Human Right Report 81 at 84;

Kilbourne v United Kingdom (1986) Mellacher v Austria, (1989) series A, 169 at (45) (57);

Kruse v Johnson (1898) 2 Queens Bench 91.

Lord Wrenbury's judgment (1925) Appeal Cases 578, P 613.

Matthew v Bobbins (1981) 41 Property & Conveyancing Reports 1 at 7.

Organization of Petroleum Exporting Countries (OPEC), (2020). Oil Price Statistical Analyses 1960-2020. July 15th, 2020.

Paragon Finance plc v Nash (2002) 1 Weekly Law Report 685 at (75)."

Paragon Finance plc v Nash (2002) 1 Weekly Law Report. 685 at (36) Dyson L. J (Astill and Thorpe LJJ concurring).

Prudential Building and Investment Society of Canterbury v Hankins (1997) 1 New Zealand Law Reports 114 at 124-125).

Roberts v Hopwood (1925) Appeal Cases 578.

Smith, R.J. (1979) Conveyancing 266 at 279-280.

Sommerset C.C v Isaacs, (2002) English Weekly High Court 1014 (Admin) at (33) per Stanley Burnton J.

Target Home Loans Ltd v Clothier (1992) 25 Housing Law Report 48 at 54.

UK‘s Unfair Contract Terms Act (1977), Schedule 1, para 1 (b).

UK’s Consumer Credit Act (1974) section 138 (2) (a) and (c).

UK's Human Rights Act (1998). section 1 (1), Schedule 1, part 11.

Unfair Contract Terms Act (1977) section 3 (2) (b)

Vernon v Bethell, (1762) 2 Eden 110 at 113, 28 English Report 838 at 839

Watchman, P.Q. (1980) “The Origin of the 1915 Rent Act”, Law and State (no 5) 20.

Westland Savings Bank v Hancock (1987) 2 New Zealand Law Report 21 at 29;

Wills v Wood (1984) Consumer Credit Law Reports 7 at 15.

Wurtzburg and John Mills, (1976). Building Society Law. Stevens & Sons Ltd, Oxford 14th edn. 166.