RETHINKING THE SUPREME COURT'S DECISION IN ENG. YAKUBU IBRAHIM V. SIMMONS OBAJE (2017) : MATTERS ARISING

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ABSTRACT

The real import of the consent provisions of the Land Use Act has been a subject of profound mystery. Just recently, the supreme court in ***Yakubu Ibrahim v. Simmons Obaje (****hereinafter* ***"Yakubu" or Yakubu's case)****[1]armed itself with "the purposive approach to the interpretation of statutes and set out on a mission to rescue "the consent provision" of the act from the realm of recondite Interestingly, the apex court in placing reliance on the preamble of the act held "that it is not the intendment of the legislature that* ***section 22 of the Land Use Act****, on consent, would limit and deny parties of their rights to use and enjoy land and the fruits thereto in a non-contentious transaction or alienation". However, upon a holistic review, it was discovered that the case left much to be desired on what is needed to serve justice and for a stronger reason, the rationales given by the apex court are not consistent with sound legal reasoning. This paper seeks to examine jurisprudentially this Supreme Court's decision, the contentious issues and possible solutions.*

Keywords: ***Property Law, Consent of the Governor under the Land Use Act, Irrevocable Power of Attorney, the Status of a Preamble, the Purposive Rule of Interpretation.***

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[1] The case was delivered On Friday, the 15th day of December, 2017. His Lordship, Hon. Clara Ogunbiyi JSC delivered the leading judgement with Hon.Rhodes-Vivour, Amiru Sanusi, Adamu Augie and Dauda Baje JJSC unanimously concurring. This judgment has been reported in (2018) All FWLR pt. 937, p. 1682.

1.0 INTRODUCTION: DEMISTIFYING THE ISSUES.

The pressing need for this critique came to the fore after a judgment was delivered by his Lordship, Hon. Justice Professor V. A. Offiong on the 25th of June 2021 in ***Daniel Kip v. The Government of Cross River State & 3 Ors.***[2]Here, the high court placed reliance on the doctrine of "implied overrule" to accept as correct that flowing from the reasoning in ***Yakubu's* case,** theGovernor's consent is no longer required for alienation of an interest in land in some cases; and that private individuals are entitled, without governor's consent, to transfer or alienate their interests in land not covered by a statutory right of occupancy.[3] Startlingly, apart from the fact that ***Yakubu's* case** has been portrayed by many as a paradigm shift from the old position in ***Savannah Bank v Ajilo***,[4] We find it very difficult to agree that **Yakubu's case** represents the true position of the law vis-a-vis the consent provisions of the LUA going by the whole import and tenor of that act. We will in the course of this discourse examine the question: Assuming but not conceding that ***Yakubu*** has overruled implied the authority of ***Savannah Bank,*** to what extent is the decision in ***Yakubu*** correct?

Secondly, Another issue which we will be concerned with is this; Was the supreme court in this case trying to establish a principle that "an Irrevocable Power of Attorney not being a registerable instrument can transfer interest in land or that it is one of the ways of proving interest in land? Assuming but not conceding that the court did establish a new principle, was the premise upon which such conclusion was reached correct in law? Now, a remark must be made about the true state of affairs before the emergence of ***Yakubu's* case.** In a well-detailed, elegant and compelling article written by **Nwatu and Nwosu,** the learned writers observed that "the power to give consent to the alienation of a right of occupancy is an incident of the new land tenure system which vests ownership of land in the governor of each

[2] Suit No: HC/401/2019.

[3] Ilegieuno.S and etals, 'The Supreme Court's Recent Decision in Yakubu v. Simon Obaje: A Coup Against Governor's Consent Under the Land Use Act? Published on the 27th of September 2021 and available at <https://www.templars-law.com/the-supreme-courts-recent-decision-to-yakubu-v-simon-obaje-a-coup-against-governors-consent-under-the-land-use-act/> accessed on 15th February 2022. Omogbalaham Sheba esq. Has reasoned on the contrary to the effect that by virtue of **section 1 of the LUA, "**the governor still has the yam and knife and can wake up one day to revoke an interest in such land. See Onnogbalaham. S, 'Governor's Consent : Dissecting the Supreme Court Decision in Ibrahim v. Obaje' [2nd January, 2022] <https://dnllegalandstyle.com/2022/governors-consent-dissecting-the-supreme-court-decision-in-ibrahim-v-obaje/> accessed on the 15th of January 2022.

[4] Supra. We will in the course of this paper examine other notable cases in this regard extensively.

state in Nigeria".[5] They continued further that "the exercise of this power is discretionary because the Land Use Act (LUA for short) does not set out any parameters to guide its exercise. In other words, the LUA conveys the impression that the governor is entitled to give, refuse or delay consent for good cause or no cause at all".[6]

This power as we shall see later in this paper, coupled with the revolutionary nature of the LUA, is only guided by the conscience of the governor who has unfettered powers to issue consent and contrary to what the supreme court in ***Yakubu's* case** wants us to believe, the LUA expressly stated those circumstances where such consent is not required. This assertion is strengthened by the fact that on a holistic perusal of the LUA, there is nowhere a penalty is stipulated if peradventure the governor refuses to give his consent.[7] This leaves us with a very important question; could it be the intendment of the draftsman that consent should not be required where private individuals alienate their interests with respect to lands not covered by a Statutory Right of Occupancy? Before we proceed, let us have a glimpse of the provisions of **Secions 22, 21 and 26 of the LUA** which stand out noticeably as being contentious here.

S**ection 21** which is hereinafter produced *verbatim* states that -"*It shall not be lawful for **any** customary right of occupancy or any part thereof to be alienated by assignment, mortgage, transfer of possession, sublease or otherwise howsoever -*
(a) Without the consent of the Governor in cases where the property is to be sold by or under the order of any court under the provisions of the applicable Sheriffs and Civil Process Law; or
(b) in other cases without the approval of the appropriate Local Government".

Section 22 further adds that with respect to "statutory right of occupancy" - "*It shall not be lawful for the holder of a statutory right of occupancy granted by the Governor to alienate his right of occupancy or any part thereof by assignment, mortgage, transfer of possession, sublease or otherwise howsoever without the consent of the Governor first had and obtained".* However, the consent is not required in relation to:

[5]Nwatu S.I and Nwosu E.I, 'Realisation of Credit Transactions: A New Vista in the Consent Problematic Under the Nigerian Land Use Act' [2015] 30 (11) *Journal of International Banking and Regulation* 598.
[6] Ibid.
[7] See for instance I.O Smith, *Practical Approach to the Law of Real Property in Nigeria* (Lagos: Ecowatch Publications Ltd, 2007) 511.

Subsection 1(a) - the creation of a legal mortgage over a statutory right of occupancy in favour of a person in whose favor an equitable mortgage over the right of occupancy has already been created with.

Subsection 1(b) - the re-conveyance or release by a mortgage to a holder or occupier of a statutory right of occupancy which that holder or occupier has mortgaged and that mortgage with the consent of the Governor:

Subsection 1(c) - to the renewal of a sub-lease shall not be presumed by reason only of his having consented to the grant of a sublease containing an option to renew the same.

Section 22(2) specifies that - The Governor when giving his consent to an assignment mortgage or sub-lease may require the holder of a statutory right of occupancy to submit an instrument executed in evidence of the assignment, mortgage or sub-lease and the holder shall when so required to deliver the said instrument to the Governor so that the consent given by the Governor under subsection (1) may be signified by endorsement thereon.

Of a truth, the consequences of not following any of the aforementioned provisions put the alienation at the risk of being declared null and void and of no effects whatsoever under **Section 26.** To this end, it can be discerned that there are incontestable truths to be noticed in **Sections 21 and 22** as a whole. It is that while **Section 21 of the LUA** speaks to the "customary right of occupancy", **Section 22** speaks to the "statutory right of occupancy" going by the phrases and marginal notes used in those sections.

Before we proceed with the main analysis, it is also expedient to point out straightaway that the authors of this paper are fully aware that in the area of real estate and property law, "Many applications for the governor's consent have been known to linger for many years owing to bureaucratic red-tape and sheer administrative lethargy,[8] and that this situation presents an insidious mortgagor with the opportunity to subsequently attempt to avoid mortgage...",[9] Yet, this should not be an excuse for the courts to sideline and consign the provisions of a statute to the legal dustbin and go into the uncanny voyage of tinkering with the words used by a legislature under the guise of 'purposive approach to Interpretation of statutes". This does not mean the courts as the temple of justice should fold their arms in the

[8] See S.I. Nwatu, "Amending the Land Use Act 1978: Matters Arising" [2010] *Nigerian Law Reform Journal* 100, 102.
[9] Ibid.

face of injustice, but in the case at hand (as we will demonstrate), such *a coup de grace* on the revered principle of separation of powers which is an integral part of the Nigerian Constitutional democracy is with due respect unwarranted.

2.0 THE NIGERIAN JURIDICAL POSITION AND THE FAFTSL

In this perspective, it is germane to first note that for the purposes of coherency, we will first of all examine the evolution of case law authorities in this aspect and the arguments in support of our stance that "the supreme court went too far in the search for justice".

2.1. The Nigerian Juridical Position and the Facts of Yakubu v Obaje.

Under the tenor of the Land Use Act, the supreme court as far back in ***Savannah Bank v. Ajilo***[10] held unanimously that transactions to alienate interest in land under **Section 22 of the Act** is not complete if the consent of the governor is not **"first had and obtained"** otherwise, the transfer is null and void. In this case, which has been represented as a *locus classicus* on this point, the facts which was succinctly presented by **Belgore, JSC** is that - The appellant bank entered into a deed of conveyance with the Respondent whereby the Respondent mortgaged his interest in a piece of developed land situate at Oyekanmi Street, Itire, Lagos, to the appellant. Prior to the Land Use Act of 1978, the Respondent held the land in fee simple, a tenure abrogated by that Act. The deed was executed and registered in the Deeds Registry. The Respondents defaulted in redeeming the mortgage and in an attempt to foreclose, the Respondents as plaintiffs went to Court and claimed a number of reliefs based on the ground that the deed of mortgage was null and void. The trial Lagos High Court, granted the reliefs by affirming that the deed of mortgage was null and void in that prior to entering into the mortgage, the consent of the Military Governor so to do, was not obtained, a failure fatal to the agreement in view of **Section 22 Land Use Act.**

The decision was upheld on appeal by the court of appeal. At the supreme court, the seven(7) Justices of the supreme court unanimously held that in so far as consent was not obtained at all, the whole transaction is null and void and of no effect. **Belgore, JSC** made it clear that:

> It is thus very clear that serious injustice will be done to the interpretation of S.22 of the Act if it is read into it words extrinsic to it. It is unlawful, says the section,

[10](1989) NWLR (Pt. 97) 305.

> for the holder of a statutory right of occupancy granted by the Military Governor to alienate such a right of occupation in any manner whatsoever whether by assignment, mortgage, transfer of possession or subleases without the consent of the Military Governor first had and obtained. Any right of occupancy granted by the Military Governor is covered. *To attempt to read into the section exceptions outside the provisos contained in (a), (b) and (c) following the section will not only do serious mischief to the Act in its entirety but will diametrically go against all known canons of construction, in that words will be imported into the section that is clear and unambiguous.*[11]

Scores of supreme court cases like ***Calabar Central Co-operative Thrift society v. Ekpo[12]; International Textile Industries (Nig) ltd v. Aderemi;[13] Rockonoh property co ltd v. NITEL;[14]Onamade v. ACB;[15] PIP ltd v Trade Bank ltd; UBN v. Ayodere[16]*** lent support for this position in ***Savannah Bank[17]*** and applauded it as the true position of the law. Even, in 2018, the Supreme Court also gave the impression that **Savannah Bank** is still a good law but noted that the decision in Savannah Bank did not lay down any precedent which authorizes the mortgagor to resile from his agreement based on the fact that consent was not obtained. However, in ***Awojugbagbe light industries v. Chinukwe,[18]*** the apex court adjusted its position to the effect that if a deed has not been executed, it amounts to an escrow because it is made subject to the consent of the governor, that deed or transaction is not invalid simply because the consent has not been obtained. However, consent must be obtained as a condition precedent to finally transfer interest in the land. This view was followed in ***Okuneye v. FB N plc;[19] Jegede v. Citicon Nig ltd[20]*** and many others.

Following that order, the last straw that broke the camel's back which forms the fulcrum of this discourse is ***Yakubu Ibrahim v. Simmons Obaje,[21]*** wherein the apex court held Inter alia

[11]Emphasis supplied by the authors.
[12] (2008) 6 NWLR (Pt.1083) 362.
[13] (1999) 8 NWLR (Pt. 614) 268.
[14] (2001) FWLR (Pt. 67) 885.
[15] (1997) 1SCNJ 65.
[16] [2000] 11 NWLR (pt. 679) 644, 655.
[17] Supra.
[18] (1995) 4 NWLR (Pt. 390) 379.
[19] (1996) 6 NWLR (Pt. 457) 749.
[20] (2001) 4 NWLR (Pt. 702) 112.
[21]Supra.

that consent is not required at all in private transfers that do not touch on the public interest. Now, the facts of this case as stated *verbatim* from the law report is as follows:

The Respondent then plaintiff issued a writ of summons against the appellants, then defendants at the High Court of Justice, Abuja on the 7th day of March 2001 claiming the following reliefs:

1. Declaration of title over plot F96 in his favour.
2. An order of perpetual injunction restraining the Defendants/Appellants and their servants, agents and privies from and further trespass to the land.
3. N1,600,000 (One million, Six Hundred Thousand Naira) special damages and listed are the items of the damages and value.

Also claimed is interest on the judgment sum at the current bank rate until the judgment is delivered and thereafter at such rate and for such periods as the Court should think fit. From the statement of claim, the plaintiff/Respondent asserted that he is the owner of the landed property known and described as Plot F96, and Dutse Alhaji, Abuja and that he also had possession of the said parcel of land; that he bought the Plot from the former owner, Mr Otitoju Bonte who conveyed title to him, (Respondent) by virtue of an irrevocable Power of Attorney dated 19th October 2000 given for value. That the said Plot F96 Dutse Alhaji is covered by a Certificate of Occupancy No. FCT/M2TP/OD/276 of 15th June 1995 granted by Bwari Area Council; that a building plan for the development of the plot was applied for and approved, by the Supervisory Authority.

It was alleged further that the respondent commenced development on the plot with the initial structure totally completed; that while construction was on, the Defendants/appellants trespassed into the construction site, harassed the workers and disrupted the work. When these acts did not deter the work, the appellants got police who ordered the workers of the Respondent to stop work. In the absence of the workers, the Appellants got into the plot and destroyed the concrete structure and a report of this destruction was made by Respondent to the police and hence the suit filed before the trial Court. All the appellants as defendants in their joint statement of defense denied all the allegations levied per the plaintiffs claim. They emphasized further that the plaintiff is not entitled to his claims which should be dismissed in its entirety as it is fraudulent, vexatious and frivolous.

The learned trial judge however found for the Plaintiff/Respondent and made for reaching orders in accordance with the claim of the Respondent. The appeal was resolved against the appellants and the case was dismissed. The following are the talking points of this case.

1. The Supreme Court did not expressly overrule itself in ***Savannah Bank*** and other cases that have followed it.
2. The far-reaching decision was made in details by only one Justice of the Supreme Court. Others simply concurred.

2.2. THE PURPOSIVE APPROACH RELIED ON BY THE SUPREME COURT

In the ***Yakubu's case*** at hand, the court heavily relied on "the purposive approach". Let us look at the words of **Hon.Justice Clara Ogunbiyi, JSC**. Hear his Lordship:

> For purpose of resolving this issue, it will be pertinent to resort to the preamble to the Land se Act, 1978 (which was largely drawn from the minority report of the Land Use Panel set up in May, 1977). This report nationalized land in Nigeria and the general intendment of the Act can be deduced from the preamble which states: "Whereas it is in the public interest that the rights of all Nigerians to the land of Nigeria be asserted and preserved by law. And whereas it is also in the public interest that the right of all Nigerians to use and enjoy land in Nigeria and the natural fruits thereof in sufficient quantity to enable them to provide for the sustenance of themselves and their families should be assured protected and preserved." Following from the foregoing re-statement, it is clear that the essence of the Act is to preserve and protect the rights of Nigerians to enjoy and use land, and further enjoy the fruits from the land. Citizens should be allowed to transact on their properties without unnecessary and undue interference by the State. By the phrase the enjoyment of the land and the fruits thereof should be given a simple and ordinary interpretation. In other words, the fruits of the land can be houses, installations in minerals and plants.

His Lordship continued thus:

> The Section cannot be given a literal interpretation as would be seen from the preamble. Section 22(1) of the Land Use Act provides that:- "It shall be unlawful for a holder of a right of Occupancy to alienate same or any part thereof by assignment, mortgage, transfer of possession, sublease or otherwise without the consent of the Governor first had and obtained. The preambles to the Land Use Act, If looked at carefully and relating it to the case at hand, would reveal that the provision for consent of the Governor must not be applied to transfer of title or alienation of rights between private individuals where there is no overriding public interest or conflict between the parties. The application of the various Sections and provisions of the Land Use Act must be done with a view to the intendment of the drafters of the law, which is expressed often in the preamble.

With the greatest respect to his Lordship, we do not agree. Now, we will demonstrate why that view is not tenable in law by starting with a short analysis on the purposive approach.

Truly, this approach came to the fore in England when the erudite **Lord Denning L.J** admonished in ***Nothman v. Barnet London Borough Council*** that "*The literal method is now completely out of date. It has been replaced by the approach which Lord Diplock described as the "purposive approach"... In all cases now in the interpretation of statutes we adopt such a construction as will "promote the general legislative purpose"*.[22] Armed with this reasoning, the august Jurist in ***Packer v Packer*** declared:

> What is the argument on the other side? Only this, that no case has been found in which it had been done before. That argument does not appeal to me in the least. If we never do anything which has not been done before we shall never get anywhere. The law will stand still whilst the rest of the world goes on and that will be bad for both.[23]

It would appear that this view motivated **Lord Griffiths** to even assert in ***Pepper (Inspector of Taxes) v. Hart***[24] that *"The days have long passed when the Courts adopted a strict*

[22](1978) 1 WLR 220 at 228.
[23] Lord Denning M.R in *Packer v. Packer* (1958) p.15 @ 22.
[24] (1993) 1 ALL E.R.42.

constructionist view of interpretation which required them to adopt the literal meaning of the language. The Courts must adopt a purposive approach which seeks to give effect to the true purpose of the legislation". This modern approach to interpreting statutes has also been transported into Nigeria by judges who felt the need to do substantial justice untrammeled by legal technicalities. In some Nigerian supreme court cases like ***Amaechi v. INEC***[25] ***and Ugwu v. Ararume***[26], the supreme court under the guise of 'Purposive Rule invaded the province of the legislature by adding to the words of the legislations in the course of its interpretative functions. Thank God for the Amended Electoral Act wherein the National Assembly have to remind the judiciary of its Constitutional duties of interpreting the law.

For emphasis, it is worthwhile to have a glimpse of what 'the purposive approach to Interpretation of statutes' actually means. As captured by **Professor Oshio Ehi** in his article "*The Changeless Change in Constitutional Interpretation: The Purposive Approach and the Case of The Five Governors",* "The purposive approach is the modern approach to the mischief rule, but it is wider in scope than the mischief rule. It has a somewhat chequered history in England". Instructively, **Lord Denning,** the strongest and the most persistent advocate and exponent of this approach during his time at the Court of Appeal, seized every opportunity to advance the approach. From his "homely metaphor of ironing out the creases." in ***Seaford Court Estates Ltd v. Asher***[27]to "filling in the gaps and making sense of the enactment" in ***Magor and St Mellons Rural District Council v. Newport Corporation***[28] until the Law Lord declared the literal method to be completely out of date in ***Nothman v. Barnet Council.***[29]

The quintessential jurist, **C. Oputa, JSC,** of blessed memory, deprecated lawyers worshipping at the altar of precedents and insisted that they must "not allow our conservatism and our failure to discern the reality of change to make the law the government of the living by the dead".[30] Additionally, Lordship, **Obande Festus, JCA** in his book *"Guidelines to Interpretation of Statutes",*[31] quoted **Kayode Eso JSC**, who in ***Trans Bridge Co. Ltd. v.***

[25] (2008) 5 NWLR (Pt. 1080).
[26] (2007) 12 NWLR (Pt. 1048) 376.
[27] (1949) 2 K.B.481.
[28] (1952) 2All E.R.839.
[29] Supra.
[30] "Towards Justice with human face" delivered on 18/02/1983 during the law week of the NBA, quoted by Obande Festus (infra) at 88.
[31] Ibid.

Survey Intl. Ltd[32]bemoaned at the tragic idea of reducing "judges to a sterile role" instead of their possessing "aggressive stance in interpreting the law".

Now, the purposive approach connotes that in construing an enactment, regard should be made to the purpose for which the statute was formulated. In doing this, the interpreters of the law are permitted to use extraneous materials that fall outside the enactment itself. The above view it is submitted with due respect is not a matter of course and the courts have in the other side of the argument admonished that this rule must not be pushed too far **but be applied with caution in the absence of other indications disclosing the explicit intention of the legislature.** Even, in the recent case of ***Dr Joseph Nwobike v. FRN,*** his Lordship, **Tijani, JSC** reasoned that the cardinal principle is that "where the ordinary and plain meaning of words used are clear and unambiguous, an effect must be given to those words in their natural and ordinary meaning or literal sense without resorting to any intrinsic aid".[33] Under this rule, the courts are only permitted to expound on the meanings of legislative provisions but refrained from expanding them.[34] This approach is rooted in the ageless principle of law that the primary function of the courts, *qua* judges, is *jus dicere, not jus dare, Id est,* to declare the law and not to make one.[35]

In ***Maunsell v. Olins***,[36] the House of Lords had to determine whether a farm cottage attached to a farmhouse constituted 'premises' for the purposes of the Rent Act. Consequently, **Lord Simo**ns set out the two-tier test to be taken under the purposive approach, vis: "The first task of a court in construction is to put itself in the shoes of the draftsman – to consider what knowledge he had and, importantly, what statutory objective he had…being, then the court proceeds to ascertain the meaning of the statutory language."

In ***Stock v. Frank Jones (Tipton) Ltd,***[37]**Lord Simmons** advocated departure from the literal rule only when:

1. There is a clear and gross anomaly;
2. The parliament could not have envisaged the anomaly and would not have accepted its presence;
3. The anomaly can be obviated without detriment to the legislative intent and

[32] (1986) 1 NWLR (Pt. 37) 576.
[33] (2019) LCN/12992.
[34]*Dickson v. Sylva* (2017) 8 NWLR (Pt. 1567) 167.
[35] *Ojokolobo v. Alamu* (1987) 3 NWLR (Pt. 1155) 255.
[36] (1975) AC 373.
[37] (1978) 1 ALL ER 948.

4. The Language of such statute allows for such modifications.

This was made in keeping with the tenor of the statements made by judges in the 19th century, particularly **Lord Wensleydale in *Grey v. Pearson*[38]** who linked the idea of absurdity with the situation where the literal meaning would prove repugnant or inconsistent with the rest of the sections or act. What should be picked here is that the purposive approach does not exist independently of the literal rule but comes into play only as a backup when the literal rule has failed. Then recourse is now made to secondary meanings of the word or phrase in question. In a similar vein, **AllenJames and Webb** in their book titled "Learning Legal Rules" noted that *"The primary meaning cannot be abandoned simply because it produces a result which the judge believes is contrary to the purpose of the act. No judge can decline to apply a statutory provision because if seems to him to lead to absurd results".*[39]

In ***John Ochigbo & Ors v. Everest Nwebonyi,***[40] the Nigerian Court of Appeal in a bid to establish the parameters for the application of the purposive rule succinctly stated that:

> Reading a statute with interpolations, twists and additions cannot by any stretch of imagination be a purposive interpretation of the statute. A purposive interpretation of a statute...arrives at a meaning which the words of the statute can fairly bear and which yields a practicable result with due regard to the object of the statute. It is not enough to assert that the adopted meaning of a provision is its purposive meaning without showing how the words of the statute can fairly bear that meaning, how it is in pursuance of the object of the provision, the impracticality, absurdity and injustice that would result from adopting a literal meaning of the provision and how the adoption of the purposive meaning would avoid the impracticality, absurdity or injustice that a literal interpretation would create." Adherence to the aforementioned stipulation will occasion a reasonable application of the purposive approach.[41]

Likewise, the general limitation surrounding the application of the purposive rule is the constitutional authority of the legislators to make law. The improper utilization of judicial

[38] (1857) 6 HL Cas 61.
[39] Allen James and Webb**,** *Learning Legal Rules* (Oxford: Oxford University Press ltd 2009) 145.
[40] (2016) LPELR 40949 CA.
[41] Emphasis supplied by the authors.

activism is a clear encroachment on the powers of the Nigerian lawmakers. Hence, the purposive approach to the interpretation of statutes is not absolute or all-knowing and can occasion rascality if applied wrongly.

As we will demonstrate now, the courts are wont to strike down decisions that are tainted with judicial legislation. In ***Okumagba v. Egbe,***[42]The learned trial magistrate, to enable him convict the appellant, changed the words "another candidate", contained in Regulation 60(B) of the Parliamentary Electoral Regulations, to "any candidate". The Supreme Court in allowing the appellant's appeal and setting aside the conviction held as follows *"....But amendment is the function of the legislature, and the courts cannot fill a gap which comes to light by altering the words of a regulation to make it read in the way they think it should have been enacted".* In ***Ladoja v. INEC,***[43]**Aderemi JSC** added that *"To accede to the prayer of the plaintiff/appellant and read the word 'uninterrupted' into the provision of the constitution, now under consideration will be for the judicial arm of the government to engage in an unwelcome trespass into the territory of the legislative arm of government".* In ***Olowu v. Abolore,*** [44]The apex court per **Karibi-Whyte JSC** warned that *"It is not the function of the court when construing statutes to supply omission therein...and making nonsense of the statute in order not to defeat the manifest intention of the legislation…."*. Our little analysis here has disclosed that the purposive interpretation is applied with caution especially when it will be unwarranted to do so and when it will encroach on the powers of the legislature.

2.3 THE PREAMBLE OF A STATUTE: CONNECTING THE DOTS

At this juncture, it is necessary to also examine the true position of the law in relation to the preamble of statute since this is the second part that the court used to justify its reasons. Indeed, a preamble is the introductory part of a statute or enactment. It succinctly expresses the objectives, aims, reasons and motives of the draftsman to uphold the law in a united way. It is interesting to know that the salient features of any given statute evolve directly or indirectly from the objectives which flow from the preamble. With reference to the Constitution of India, a learned author unequivocally explained that though a statute begins

[42](1965) ALL NLR 62 at 65.
[43](2007) 12 NWLR (Pt. 1047) 119 at 189.
[44](1993) 6 SCNJ (Pt. 1) at 19-20.

with a preamble, it is always "the last piece of Drafting" adopted by the constituting legislative authority at the final stage of enacting the law.[45] Some authors have tried to classify the preamble into formal and substantive terms in light of having a specific location in the statute. While the latter is always found at the introductory stage, the former has a nonspecific location but can be identified through its specific content.[46] Regardless of the distinction as explained above, it is trite that a preamble remains a preamble if it demonstrates the objective of the drafters of such statute in a precise manner.

Having laid this foundation, it is apparent that a preamble forms part of the statute incorporating it. However, the prevalent question that arises is: **Can a preamble override the express provisions of a statute?** In other words, what is the legal status of a preamble in relation to the provisions of the statute? On various occasions, foreign and Nigerian courts have emphasized the principle of law that, generally, a preamble has no legal bearing to the interpretation of statutes in a given law. The purpose of a preamble is to serve as a blueprint or guide to give credence to the intentions of the legislators. In the British Columbia case of ***R v. Sharpe,***[47]the Court of Appeal referred to the preamble as a "dead letter" of which the Court "has no authority to breathe life into". By implication, the preamble of any statute will not affect the interpretation of the words of such statute, whether expressly or impliedly. It should be emphatically noted that a preamble must not be utilized to create any power or function not established by the statute, or inflate any power or function expressly given, or to import any power or function which has been expressly excluded from the statute; as the true function of a preamble is to expound the nature and application of the powers actually conferred by the given statute.[48]

[45]Abhinav Gaur: "Is Preamble a Part of the Constitution of India" [April 2012] Available at SSRN <https://dx.doi.org/10.2139/ssrn.2043496> Accessed on February 26 2022.

[46] Liav Orgad: "The Preamble in Constitutional Interpretation" [October 2010] International Journal of Constitutional Law, Volume 8, Issue 4, Pages 714–738, Available at <https://doi.org/10.1093/icon/mor010> Accessed on February 25 2022; For instance, the Charter of the United Nations has a formal preamble and a substantive preamble; the latter appears in chapter I of the Charter. See Hans Kelsen: "The Preamble of the Charter—a Critical Analysis" [1946] 8(2) J. POL. 134.

[47] The lead judgement was given by the Honourable Madam Justice Southin of the Court of Appeal for British Columbia. This case has been reported as (1999) BCCA 416 (CanLII).

[48]Chanduilnu: "Role of Preamble Interpretation with Indian Constitution" [2021] Legalservicesindia.com Available at <http://www.legalservicesindia.com/article/1390/Role-of-Preamble-Interpretation-with-Indian-Constitution.html> Accessed on February 26 2022.

Again, In the Supreme Court case of ***Ogbonna v. The Attorney General of Imo State & Ors,***[49] reiterated that a preamble is:

> A clause at the beginning of a Constitution or Statute explanatory of the reasons for its enactment and the objects sought to be accomplished. Generally, a preamble is a declaration by the legislature of the reasons for the passage of the Statute and is helpful in the interpretation of any ambiguities within the Statute to which it is prefixed. It has been held, however, to not be an essential part of an Act, and neither enlarges nor confers powers.

The Supreme Court further stated that "[t]he purpose of the preamble in a statute or written document is to clarify any ambiguity in the words used in the enacting part…As was stated by the Federal Supreme Court in ***Habib v. LEBD,***[50]*"It is a cardinal rule of interpretation of statutes that the heading cannot control the plain words of the statutes; headings are only to be regarded where there is an ambiguity in the words of the Ordinance."*

In simple terms, the above statements mean that reference can be made to the preamble for the purpose of interpreting the statute when the words of the statute are ambiguous or vague. In such circumstances, the preamble can be used to shed light on obscure provisions of the statute. It is pertinent to note that when the words of the statute are not depleted by inconsistency, ambiguity or obscurity, it will amount to a square peg in a round hole to invoke the preamble for the purpose of interpreting the statute. It is noteworthy that In ***Ogbonna v. AG of Imo State & Ors***[51] as mentioned earlier, the appellant contended that there was an existence of ambiguity in the statute because "reading the document as a whole, that is reading the enacting part together with the preamble, it will be seen that the enacting part conflicts with the preamble". The court respectfully submitted that this is the wrong way to find ambiguity in an enactment or a document. Affirmatively, the word "ambiguity" means inconsistency, equivocation and vagueness in meaning, however, it is in itself inconsistent to aver that there subsists an ambiguity by comparing the applicable enactment to the preamble. Ambiguity, "whether latent or patent, is discernible from the enacting or operative part of the

[49](1992) LPELR-SC.22/1990.
[50](1958) 3 FSC 109; (1958) SCNLR 434.
[51]Supra.

enactment alone without reference to the preamble." This simply means that if in reading the operative part of the enactment itself, there exist irregularities or misunderstandings with the wordings of the enactment itself, then one can rightly say that there is an ambiguity of which the preamble will resolve.

2.4 COMMENTS AND OBSERVATIONS

Now, **Sections 22 and 21 of the LUA** are clear on what the intendment of the lawmakers are. In both cases, consent must be obtained before any form of alienation is done on the land except where it falls under the exceptions expressly provided by the act itself. It is noteworthy that the act did not also divide private transactions and public transactions in relation to consent provisions of the LUA because the word used in those sections is "**Any".** The irresistible question then is; where exactly did the Supreme Court get the interpretation from? It is interesting to note that "Except where the land has been acquired by the Federal Government under **Section 49 of the LUA".** The drafters of the LUA drafted the act in such a way that the governor is made the Trustee of all lands in his state in Nigeria. **Section 1 of the LUA** states that - "Subject to the provisions of this Act, all land comprised in the territory of each State in the Federation are hereby 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 this Act".

Section 2 even speaks to "the control and management" of such lands by the governor. It states under **Section 2(1)(a) that** "As from the commencement of this act, all land in urban areas shall be under the control and management of the Governor of each State." **Section 5 of the LUA** also gives the governor the right to make express grants in respect of lands whether or not in an urban area. Under **Section 14 of the LUA,** a holder of a statutory right of occupancy has exclusive rights to the land against all persons except the governor himself. By **Section 15** of the same act, "The holder, during the term of a statutory right of occupancy, shall have the sole right to and absolute possession of all the improvements in land and **may** under **section 15(b)** subject to the prior consent of the governor, transfer, assign or mortgage any improvements on the land which have been effected pursuant to the terms and conditions of the certificate of occupancy relating to the land. Coming to **Sections 21 and 22 of the LUA,** the "marginal notes" of both Sections states thus "Prohibition of alienation of customary/statutory right of occupancy except with the consent of the governor". We will

draw the attention of the readers to the point that these marginal notes do not make a distinction of alienation which the Apex Court called "public or private" transactions. Where is that distinction coming from?

Even, the revolutionary nature of the LUA is such that the governor can under **Section 28** revoke such interest after following the procedures required by The LUA. Now, apart from the fact that the plaintiff's case is not an issue of deemed grants under **Sections 34 and 36 of the LUA,** it would have been better if what the court is relying on is a section or provision of the LUA. Regrettably, it is a preamble which we have demonstrated can never override the express provisions of a statute and these provisions are not ambiguous. No parameters were also set as to why this rule of Interpretation was relied on. The above foregoing shows that the view expressed by the court in **Yakubu** is untenable and has no basis in law.

3.0 THE NATURE OF AN IRREVOCABLE POWER OF ATTORNEY VIS-A-VIS ALIENATION OR TRANSFER OF INTERESTS IN LAND

Admittedly, the Supreme Court's decision in ***Yakubu***must have also given the impression that an Irrevocable Power of attorney can be used to alienate and transfer an interest in land in Nigeria. Indeed, The legal practitioners and solicitors who have been involved in this uncanny practice must have breathed a sigh of relief after this case surfaced in our law reports. but then, the snag is that for the bewildered lawyer who still accepts this impression with a pinch of salt, the irresistible question is: As can be discerned from the case-law authorities[52]on this knotty issue, what is the status of "A power of attorney"? Put lucidly, Can it transfer or alienate interest in land in Nigeria? At this juncture, there is a clarion call to examine the arguments presented by counsel from both sides in ***Yakubu's case.***

The learned respondent's counsel in response to the appellant's contended that there is no law that states that parties cannot enter into various contractual positions in ways and manner most suitable to them. Counsel cited the case of ***Cardoso v. Daniel,***[53] And further distinguished the case of ***Ude v. Nwara***[54] under reference from the appeal herein; that from

[52]Which we will dissect soon.
[53](1986) 2 NWLR (Pt. 20) 1 at 45.
[54]*Supra.*

the facts on the record, the power of Attorney gives to the Respondent by Mr. Otitoju Bonte transferred the interest on Plot F.96. The learned counsel then urged that the Court should uphold the concurrent findings and decisions of the lower Courts. The supreme court relying on ***United Nigeria Company Ltd v. Nahman*** [55]Held:

> The Power of Attorney may, where so authorized by the donor of the Power, execute any instrument with his own signature and, where sealing is required with his own seal and act in his own name...Contrary to the contention held by the counsel for the appellants, the lower Court gave reasons for stating that the proposition that a donee of Power of Attorney must sue in donor's name as an "indulgence infancy."

This decision gives the impression that a Power of Attorney can transfer interest in land to a donee and that the consent of the Governor is not needed for transfer of title or alienation of rights between private individuals because no deed or any act of possession was tendered or proved.[56] Again, we disagree. it would appear that such a sweeping statement overlooked the very nature of a power of attorney vis-a-vis the Nigerian juridical position. Undoubtedly, before this decision, the law on the status of a power of attorney in Nigeria was fairly settled in ***Udeh v Nwara***[57]wherein **Nnaemeka-Agu JSC** (as he then was) confirmed that:

> A power of attorney merely warrants and authorizes the donee to do certain acts in the stead of the donor and so is not an instrument which confers, transfers limits, charges or alienates any title to the donee: rather it could be a vehicle whereby these acts could be done by the donee for and in the name of the donor to a third party. So even if it authorizes the donee to do any of these acts to any person including himself, the mere issuance of such

[55] (2012) 6 NWLR (Pt. 56) 349.

[56]Some learned writers have toed this same line of reasoning. See Numa, M.J, 'The propriety or Otherwise of Alienation of a Title Vide a Power of Attorney - Is the Decision in Udeh v. Nwara Still a Good Law' <https://canvasslegal.com/propriety-or-otherwise-of-alienation-of-title-vide-a-power-of-attorney-is-the-decision-in-ude-vs-uwara-still-good-law> accessed on 22nd February 2022 ;Oghogho.M and etals..,'Can a Power of Attorney Transfer Interest in Land to a Donee? A Review of the Decision in Ibrahim & Ors v. Obaje' [October 2019] <https://www.aluko-oyebode.com/insights/can-a-power-of-attorney-transfer-interest-in-land-to-a-donee-a-review-of-the-decision-in-ibrahim-ors-v-obaje/> accessed on 22nd February 2022; Odionu IO and Oraegbunam IK, 'Registration of Irrevocable Power of Attorney : The Supreme Courts Decision in Ibrahim v Obaje as a Welcome Development' [2021] (3) (1) *International Review of Law and Jurisprudence.* Also available for download at <https://www.nigerianjournalsonline.com/index.php/IRLJ/article/view/1500> accessed on 22nd of February 2022.

[57]*Ude v. Nwara* (1993) 2 NWLR (Pt. 278) 638 or (1993) 2 SCNJ 47. See also *Nwachukwu v. Awka MFB Ltd* (2016) LPELR-41053 (CA).

> a power is not per se an alienation or parting with possession. So far, it is categorized as a document of delegation: it is only after, by virtue of the power of attorney, the donee leases or conveys the property, the subject of the power, to any person including himself then there is an alienation. There is no evidence in this case that that stage had been reached. Until that stage is reached and as long as the donee acts within the scope of the power of attorney, he incurs no personal liability: any liability is that of the donor.

In 2001, The supreme court in ***Augusta Chime v. Moses Chime***[58]Had towed that same line of reasoning. Scores of court of appeal cases have provided some answers to this thorny issue and have followed the position represented in ***Udeh v Nwara***[59]even after the decision in ***Yakubu.***Starting from ***Farmers Supply Company (KDS) Ltd v Alhaji Taofic Mohammed***[60]**,** The court made it clear that:

> A Power of Attorney is not an instrument that transfers or alienates any title. It is merely an instrument that delegates powers to the donee to stand in the position of the donor and do the things he can do....***It is erroneously believed in not very enlightened circles particularly amongst the generality of Nigerians that a Power of Attorney is as good as a lease or an assignment. It is not whether or not it is coupled with interest. It may eventually lead to execution of an instrument for the complete alienation of land after the consent of the requisite authority has been obtained".*** Thus, the issuance of a Power of Attorney does not by itself transfer the title or rights over the land to the donee, it is only after the donee may have utilized the Power of Attorney to convey the land to any person including himself that there will be alienation.

Interestingly,His Lordship, **Pats-Acholonu, JCA (as he then was)** pointed out in ***Ndukauba v. Kalama*** "that the Power of Attorney may lead to the execution of the required instrument "after the consent of the requisite authority has been obtained".[61]

By a similar token, the court In ***Bala and ors v. Hassan***, held thus :

[58] (2001) 3 NWLR (Pt. 701) 527.
[59]*Supra.*
[60](2009) LPELR-CA/K/10/2002.
[61](1998) 3 NWLR (Pt. 1125) 560.

> It must be stated that a power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorizes the grantee to do certain acts specified therein, on behalf of the grantor, which when executed will be binding on the grantor as if done by him. It is revocable or terminable at any time unless made irrevocable in a manner known to law. Even an irrevocable power of attorney does not have the effect of transferring title to the grantee. **So, power of attorney does not convey ownership. An attorney holder may however execute a deed of conveyance in exercise of the power granted under the power of attorney**[62]and convey title on behalf of the grantor.[63]

Again, in ***Chief Irene Thomas & Ors. v. Olufosoye***, The court per **Orji-Abadua J.C.A** noted that[64]The power of attorney here is not a deed of ownership, after the head lease ceases to exist automatically the tenure of the power of attorney ends.[65] Lastly, in 2019, in ***Murphis Burger Ltd and anor v. Akin Peter Thomas and ors,***[66]The court of appeal in placing relaince on the authorities of ***Farmers Supply Company (KDS) Ltd v. Alhaji Taofic Mohammed***[67] ***; Udeh v. Nwara***[68]***; Ndukauba v Kalama and Okpe v. Umukoro***[69] Came to the same conclusion.

Now, in the *Locus classicus* of ***Idundu v. Okumagba,***[70]His Lordship, **Fatayi Williams JSC** (as he then was) laid down the five(5) ways of proving title or ownership in land. For the avoidance of doubts, they are as follows:

1. Traditional Evidence
2. Ownership of land may be proved by production of documents of title which must, of course be duly authenticated in the sense that their due execution must be proved, unless they are produced from proper custody in circumstances giving rise to the presumption in favour of due execution in the case of documents twenty years old or more at the date of the contract.

[62]Emphasis supplied.
[63] (2014) LPELR-2399 (CA), see also *Obiora Nwankwo v. Comfort Agwuna* (2007) LPELR-8445 (Ca);
[64](PP. 54-59, PARAS. B-A).
[65](1986) 1 N.W.L.R. Part 18 page 669.
[66](2019)LCN/13117(CA).
[67]*Supra.*
[68]*Supra.*
[69](2013) LPELR-21999 (CA).
[70](1976) 9-10 SC 227.

3. Acts of the person (or persons) claiming the land such as selling, leasing or renting out all or part of the land, or farming on it or on a portion of it, are also evidence of ownership, provided the acts extend over a sufficient length of time and are numerous and positive enough as to warrant the inference that the person is the true owner.
4. Acts of long possession and enjoyment of the land may also be prima facie evidence of ownership of the particular piece or quantity of land with reference to which such acts are done.
5. Proof of possession of connected or adjacent land, in circumstances rendering it probable that the owner of such connected or adjacent land would, in addition, be the owner of the land in dispute, may also rank as a means of proving ownership of the land in dispute.

The plantiff in this **Yakubu's** case only tendered three documents in proof of his title to plot F96 of Dutse Alhaji in Abuja, that is: A certificate of occupancy which can never confer title on him[71], A building plan and the Irrevocable Power of Attorney. In ***Ezeigwe v. Awudu,*** the Supreme Court made it clear that "***the only document that can prove any passing of title would be Conveyance or Deed of Assignment".***[72]And moreover, it is settled law that in an action for declaration of title to land a plaintiff must succeed on the strength of his case and not on the weakness of the defence.[73]

With due respect to the Supreme Court in ***Yakubu's*** **case,** did the Supreme Court shut its eyes to the principle that you cannot put something on nothing and expect it stand?[74] Let us ask; which documents proved the plaintiff's title in this case? At this juncture, we cannot but call

[71]See *the Locus classicus* of *Ogunleye v. Oni*(1990) 2 NWLR (Pt.135) 745 where the supreme court held that "It should be clear from the provisions of that Section that any person without title to a parcel of land in respect of which the certificate of occupancy was issued acquired no right or interest which he did not acquire before. Furthermore, the Certificate of Occupancy cannot stop the Court from enquiring into the validity and existence of the title the person claimed to possess before the issue of the Certificate of Occupancy". see also *Adesoye v.Olowolagba*(1996) 12 SCNJ 95 and *Auta v. Ibe*(2003) 7 SCNJ 159 at 169. A rule of Interpretation we shall invoke here is "*The expressio unis est exclusio ulteries'* which means -The express mention of one thing excludes another thing not mentioned. The express mention of a deed excludes an Irrevocable Power of Attorney not mentioned. See generally, *Ogunyiya v. Okudo* (1979) 6-9 SC 32, *PDP v. INEC* (1999) 11 NWLR (Pt.626) 200; *Buhari v. DikkoYusuf* (2003) (Pt.841) 446, *Udoh v. Orthopaedic Hospital Management Boar**d*** (1993) 7 NWLR (Pt.304)139 and The Halsbury's Law of England 4th Edition, paragraph 876.

[72](2008) 11 N.W.L.R. (PART 1097) 158 at 176 .

[73]*Ezeigwe v. Awudu*(Supra). See also *Otanma v. Youdubagha* (2006) 2 NWLR pt.964 pg.337, *Onisaodu v. Elewuju* (2006) 13 NWLR pt.998 pg. 517, *Dike v. Okoloede* (1999) 10 NWLR pt.623 pg.339 and *Eze v. Afasie* (2000) 6 SC pt.1 pg.214.

[74]In *Macfoy v. United African Company*(1961) 3 All ER 1169 (PC) at 1172,The erudite Lord Denning M.R ofblessed memorycontributed that "If an act is void, then it is in law a nullity. It is not only bad, but incurably bad".

to the resemblance the ever green words of **Walter Onnoghen JSC (as he then was) in*Ezeigwe v. Awudu*,** where His Lordship, equally contributed that:

> I agree with the conclusion of the lower court on the issue that in view of the fundamental defects on exhibit A – non compliance with the strict provisions of section 3 – the said exhibit A cannot be used against the interest of the respondent although it was attested to before a magistrate. That apart, ***exhibit A is simply an irrevocable power of Attorney donated by the respondent to the appellant. It is not a document of title conferring any title to the property in issue on the appellant. So even if it complied with the relevant law, it would still have been necessary for appellant to prove title to the land.***[75]

Even, the mere tendering of a deed to prove title does not end the matter, it does not automatically vest title. Thus, before the production of documents of title is admitted as sufficient proof of ownership, the Court must satisfy itself that: (a) the document is genuine or valid; (b) it has been duly executed; stamped and registered; (c) the grantor has the authority and capacity to make the grant; and (d) that the grantor has in fact what he propose to grant; (e) that the grant has the effect claimed by the holder of the instrument.[76]

In the case at hand, the plaintiff's case is even worst because not only did he rely on a document which we have demonstrated cannot prove title in a land, the necessary consent as required by the **Land Use Act** was not obtained. We cannot end this part without discussing a very important principle which has been firmly established in our jurisprudence. It is that where any enactment, inclusive of the constitution, unavoidably, provides for a method, procedure or condition for performing or doing any act or thing, that mode or pre-condition must be satisfied and followed strictly. If otherwise, the purportedly performed act or thing runs the serious risk of being nullified by the courts.[77]

This hallowed principle which has been firmly established in our jurisprudence like the rock of Gibraltar admits of only two exceptions which are not present and operative in this case.

[75]Underlining ours for emphasis.
[76]See *Romaine v. Romaine* (1992) 4 NWLR pt.238 pg. 650; *Kyani v. Alkali* (2001) FWLR pt.60 pg.1481; *Dabo v.Abdullahi* (2005) 29 WRN 11 SC,(2005) 2 SCNJ pg 76, (2005) 7 NWLR pt.923 pg.181
[77]Obande F.O, *Guidelines to Interpretation of Nigerian Statutes* (Ibid).pp 150-153.

Firstly, it applies only when a party to any proceedings has not acquiesced in an irregular procedure or waived his rights under a legislation. The apex Court has in fact given insight guide and had also explicated and expounded this wisdom in ***Baalo v FRN*** based on where the defendant in a criminal trial has expressly waived his right of presumption of innocent by entering a guilty plea.[78] Secondly, the provision of the law, housing the step or procedure to be followed, must be mandatory, nor directory.[79] On the knotty issue of the litmus test to he used to gauge which provision is mandatory or directory, His Lordship, **Ogundare, JSC,** crafted the answer this way:[80]

> The difficulty has always been to determine what is mandatory or obligatory…A statutory provision may be mandatory in one part and directory in another part, Example of this is **section 258(1) of** our **1979 constitution**….It is the law here in Nigeria as well as in England that if an object of a statute is not one of general policy, or if the thing which is being done will benefit only a particular person then the provisions of the statute are directory and not mandatory.

So, it flows that if the rights or benefits in a legislation accrue to an individual or group of persons, such a provision is permissive making its compliance not compulsory. Conversely, where the rights or benefits in a law *inure* to the general public, the provision is absolute and mandatory thereby making its obedience compulsive.[81] In ***Oloruntoba-Oju v. Abdul-Raheem,***[82]The appellants were employed as the academic staff of the third responendent, University of Illorin. The third respondent wrote letters of cessation of appointments of the appellants thereby terminating their permanent and pensionable employment without due recourse to **section 15 of the University of Illorin Act**. The supreme court held while setting aside the termination for non-compliance with the aforementioned provision.

At the risk of repetition, if a law has prescribed a method or procedure by which an act or thing is to be accomplished in law, except it comes within the aforestated exceptions, must be, willy-nilly, complied with by parties to any proceedings. In this case, not only that the

[78](2016) 13 NWLR (Pt. 1530) 400.
[79]*Ibid*.
[80]*Odu'a Investment Co. Ltd v. Talabi*(1997) 7 SCNJ 600 at 652.
[81]Ibid.
[82](200) 13 NWLR (Pt. 1157) 83.

plaintiff did not comply with the provisions of the LUA on consent of the governor, but went on to tender a document which does not prove title in land. Again, it submitted that the exception provided by the Supreme Court in this case that "the consent of the Governor is not needed for transfer of title or alienation of rights between private individuals where there is no overriding public interest or conflict between the parties" is not tenable and does not hold any water in law. This is because, if the lawmaker had wanted it to be an exception to the general principles, it would have made himself clear by expressly providing for exceptions as it did in **Section 22 paragraphs a, b and c** of the LUA.

CONCLUSION

What we have done in this paper so far is to show how the court unfortunately trespassed into the functions not meant for it simply because it was looking for ways to ameliorate the harshness occasioned by the consent provisions of the LUA. This unfortunate position also led to many other grave errors which created confusion in the already settled principles in relation to an Irrevocable Power of Attorney. For the sake emphasis, it is a manifest absurdity for the courts to go outside the exceptions already provided in **Section 22 of the LUA** to allow individuals who did not obtain consent from the governor to benefit from their statutory breach. If justice should be for the private individuals who entered a contract in clear breach of the provisions of the law, how about the governor on whom the Act vests trusteeship of all lands in his territory? It is our humble opinion that the Supreme Court when given the opportunity should depart from this decision based on the reasons and arguments we have canvassed.