IN THE FEDERAL HIGH COURT OF NIGERIA

IN THE MAKURDI JUDICIAL DIVISION

HOLDEN AT MAKURDI

ON MONDAY 3RD FEBRUARY, 2020

BEFORE HIS LORDSHIP

THE HONOURABLE JUSTICE M.O. OLAJUWON

(JUDGE)

SUIT NO: FHC /MKD/CS/56/19.

BETWEEN:

1. **THE ATTORNEY GENERAL OF BENUE STATE**
2. **GOVERNMENT OF BENUE STATE** .....**PLAINTIFFS**

AND

1. **THE ATTORNEY GENERAL OF THE FEDERATION**
2. **THE FEDERAL MINISTRY OF AGRICULTURE AND RURAL DEVELOPMENT**
3. **THE MINISTER OF AGRICULTURE AND RURAL DEVELOPMENT** .....**DEFENDANTS**

JUDGMENT

By an Originating Summons dated and filed on the 28th June 2019, the Plaintiffs seek the determination of the following questions:

1. Whether, on a proper interpretation and construction of section 44 (1) and (2) of the 1999 Constitution of the Federal Republic of Nigeria, and section 1 of the Land Use Act, 1978, the Federal Government's policy, plan or

proclamation to establish Ruga Settlement or Cattle colonies in all the states of the federation and in Benue State in particular constitutes a gross violation of the constitution and an infringement of the right or interest over all the Plaintiffs' land comprising in the territory known as Benue State of Nigeria.

2. Whether, having regard to sections 5, 6, 7 and 19 (1) of the Benue State Open Grazing Prohibition and Ranches Establishment Law, 2017 which provides for and regulates ranching, livestock rearing and grazing in Benue State, the Federal Government's plan, policy, decision and pronouncement to establish Ruga Settlements or cattle colonies for the purpose of regulating and controlling where herders will live, grow their cattle and produce milk in Benue State, is not ultra vires and an encroachment or usurpation of the powers of the Benue State Government in that regard.
3. Whether by the combined reading and construction of sections 4, 9(2), 315 (5)&(6) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and sections 1, 5, 6, 26, 28 and 49 of the Land Use Act, the Federal Government has power to make policy on land and administration by establishing grazing reserves, cow/cattle colonies, pillot ranches, Ruga settlement or by whatever name called, for use of private cattle breeders on lands other than lands that were owned by the Federal Government as at 29th March 1978 or 29th May 1999 (as the case may be) and on lands used for farming purposes.
4. Whether upon a calm and dispassionate construction and interpretation of sections 9 (2), 56, 58 and 315 (5) and (6) of the Constitution of the Federal Republic of Nigeria, 1999, it is competent for the Federal Government of

Nigeria to formulate any policy relating to land use, planning and administration in Benue State, particularly any policy purporting to establish cattle grazing reserves, cow/cattle colonies, pilot ranches, Ruga Settlements or by whatever name called, without recourse to the special procedure for constitutional amendment.

5. Whether the power of the National Assembly to legislate on the environment generally as conferred by section 20 of the 1999 constitution, includes the power to legislate on land use and administration in the various States of the Federation.
6. Whether by virtue of section 1 of the Land Use Act, 1978 the 2nd and 3rd defendants have the power to hold, administer, use or allocate any land belonging to the Benue State government for the establishment of Ruga settlement or cattle colonies where herdsmen will live and grow their cattle and produce milk in Benue State.
7. Whether having regard to the provisions of section 44 (1) & (3) of the 1999 Constitution of the Federal Republic of Nigeria, (as amended) and the Benue State Anti – Open Grazing Law, N0. 21, Vol. 42, 2017, the 2nd and 3rd defendants have the power to use or allocate land comprised in the territory of Benue State for purposes of rearing and grazing any livestock in Benue State contrary to the powers conferred on the Livestock Department of the Benue State Ministry of Agriculture and Natural Resources.
8. Whether Benue State Government is not entitled to an order of injunction restraining the defendants by themselves, servants, agents, privies from administering, using or allocating any land belonging to the Benue State

Government for Ruga settlements, cattle colonies or ranches without a ranching permit.

9. Whether the policy of the Federal Government to establish Ruga Settlements or Cattle Colonies in Benue State can override the provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Land Use Act and the Open Grazing prohibition Law of Benue State.

Upon the determination of the above questions, the plaintiffs seek the following reliefs:

1. A declaration that the Federal Government's policy, plan or proclamation to establish Ruga Settlements or Cattle colonies in all the states of the Federation and in Benue State in particular is unwarranted, unlawful and unconstitutional.
2. A declaration that by virtue of sections 5, 6, 7 and 19 (1) of the Benue State Open Grazing prohibition and Ranches Establishment Law 2017, coupled with the provisions of the Land Use Act the Federal Government lacks the power to regulate ranching and rearing of livestock in Benue State.
3. A declaration that by virtue of section 1 of the Land Use Act of 1978 all lands comprised in the territory of Benue State is vested in the Governor of Benue State.
4. A declaration that by virtue of section 44 (1) & (3) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), the Land Use Act 1978 and the provisions of the Open Grazing prohibition and Ranches Establishment Law 2017 the 2nd and 3rd defendants have no power to use or allocate land comprised in the territory of Benue State for purposes of rearing and

grazing any livestock in Benue State contrary to the powers conferred on the Livestock Department of the Benue State Ministry of Agriculture and Natural Resources.

5. A declaration that the 2nd and 3rd defendants' purported plan to establish Ruga Settlements or cattle colonies for herdsmen and the announcement by the 3rd defendant of the Federal Government's approval to set up Ruga settlement or cattle colonies in Benue State is unlawful, ultra vires, null and void.
6. An Order nullifying every action, steps or decisions taken to establish Ruga Settlements or cattle colonies for herdsmen in Benue State.
7. An Order of perpetual injunction restraining the defendants, their agents, privies, servants or whomsoever from making any attempt to hold, administer, use or allocate land comprised in the territory of Benue State for Ruga settlements or cattle colonies or any other purpose contrary to the powers conferred on the Livestock Department of the Benue State Ministry of Agriculture and Natural Resources.

Accompanying the Originating Summons is a 26-paragraph affidavit deposed to on the 28th June 2019 by one Col. Paul Hemba (Rtd), the Security adviser to the 2nd plaintiff. There are two exhibits attached to the affidavit and marked Exhibits A and B. There is also a written address of learned counsel dated and filed on the 28th June 2019.

In response, the 1st Defendant filed a counter affidavit of 5 paragraphs, deposed to on the 30th August, 2019, by one Yaga Benjamin a litigation officer in the chambers of the 1st Defendant. Also filed is a written address of learned counsel dated 29th August 2019.

The 2nd and 3rd Defendants, filed a 21-paragraph counter affidavit, deposed to on the 7th August 2019 by one Mba Onyema, a staff in the office of the legal department of the 2nd Defendant. There is also an undated written address of learned counsel filed on the 9th August 2019.

The Plaintiffs filed a further and better affidavit of 14 paragraphs in response to the 1st Defendant's counter affidavit on the 11th September 2019. The said further and better affidavit was deposed to by Oghenekaro Rugbere, a legal practitioner in the law firm representing the Plaintiffs and there is a reply on points of law accompanying the further and better affidavit, same is dated and filed on 11th September 2019.

Similarly, the Plaintiffs, on the 3rd October 2019, filed a further and better affidavit of 13 paragraphs in response to the 2nd and 3rd Defendants' counter affidavit. The said further and better affidavit was deposed to by one Ogbonna Victor, a legal practitioner in the same law firm representing the Plaintiff. There is also a reply on points of law accompanying same.

The 1st Defendant also filed a further and better counter affidavit of 13 paragraphs on the 17th October 2019, same was deposed to by one Jonah Ojile, a litigation officer in the civil litigation department of the Federal Ministry of Justice Abuja, with one exhibit attached and marked as exhibit FMOJ 1. There is also a written address of learned counsel dated and filed on the 15th October 2019 and

17th October 2019 respectively. According to the deponent of this further and better counter affidavit, same was filed in view of a recent briefing received from the office of the 3rd Defendant, on the facts that culminate in the filing of the Originating Summons in this suit by the Plaintiff.

As argued by learned counsel to Plaintiffs, the above referred further and better counter affidavit is a strange process in this matter and should be discountenanced. A counter affidavit is an affidavit made to contradict and oppose facts in another affidavit. A further affidavit filed after the receipt of a counter affidavit is in reply to fresh facts raised in the counter affidavit. Where no new facts are raised in the further affidavit, filing of a further and better counter affidavit would not be allowed. The 1st Defendant has not said any fresh fact has been raised in the further and better affidavit of the Plaintiffs in this suit. The further and better counter affidavit filed by the 1st Defendant is therefore of no value.

Furthermore, as the deponent of this further and better counter affidavit said same was filed in view of a recent briefing received from the office of the 3rd Defendant, the purported emerged facts supposedly within the knowledge of the 3rd Defendant, should have been left to the 3rd Defendant to deal with and should not have been made to constitute a further and better counter affidavit introduced into this matter, without the leave of the court. As was rightly done, the 3rd Defendant, in its counter affidavit to the Originating Summons, referred to the facts as contained in the strange further and better counter affidavit of the 1st Defendant. The said further and better counter affidavit is hereby struck out.

Also filed by the 1st Defendant is a notice of preliminary objection dated 29th August 2019 but filed on 30th August 2019. The grounds upon which the notice of preliminary objection was filed are as follows:

1. This court lacks the jurisdiction to hear and determine this suit.
2. The Federal High Court jurisdiction as provided under section 251 of the 1999 Constitution (as amended) does not include land matters.
3. The suit is incompetent and does not disclose any reasonable cause of action.
4. By the principles of Federalism, the Federal High Court cannot be called upon to interpret a law validly made by a State House of Assembly.

The notice of preliminary objection is accompanied by a written address dated and filed on the 29th August, 2019 and 30th August, 2019 respectively.

In response thereto, the plaintiffs filed a written address dated 11th September, 2019.

In the written address in support of the notice of preliminary objection, learned counsel to the 1st Defendant formulated two issues for determination to wit:

1. Whether having regard to the combined effect of section 251 (1) (r) of the 1999 constitution (as amended) and sections 39, 40, 41 and 42 of the Land Use Act 1978, the Federal High Court has jurisdiction to entertain matters revolved on dispute to land.
2. Whether the Plaintiffs disclosed any reasonable cause of action.

On issue one, learned counsel contended that the issue of jurisdiction touches on the competence of the court to entertain an action, the absence of which nullifies the decision of the court. On this, he referred to the cases of **GALADIMA VS. TAMBAI (2000) 2NSQLR 1156; LEKWOT VS JUDICIAL TRIBUNAL (1997)** 8 NWLR **Pt. 515, p.22; JOSIAH AYODELE ADETAYO & ORS VS KUNLE ADEMOLA** & 2 ORS **(2010) 42 NSCQLR 1133 @ 153; MUSACONI LTD VS ASPINAL (2013)** 54 NSCQR **363.**

Counsel argued that the jurisdiction of the Federal High Court is clearly listed in Section 251 (1)(a)-(s) of the 1999 Constitution as amended (hereinafter called The Constitution) and that the Land Use Act 1978, in sections 39, 40, 41 and 42, adumbrates the courts with jurisdiction in respect to land matters.

It was submitted that it is a misconception of the law, for the 1st Plaintiff, pursuant to the provision of section 251 (1)(r) of The Constitution, to purport to vest jurisdiction in the Federal High Court, in an action in respect of land, under the umbrella that the Federal Government and its agencies are involved. He added that such provision should not be read in isolation in matters that have to do with dispute on land and recourse must be had to Sections 39, 40, 41 and 42 of the Land Use Act 1978. To support his submission, counsel referred to the case of **JOSIAH AYODELE ADETAYO & ORS VS. KUNLE ADEMOLA & 2 ORS (Supra).**

It is the contention of learned counsel that dispute relating to the Federal Government's acquisition of lands for Ruga Settlement does not fall within the provision of section 251 of The Constitution as to vest the Federal High Court with jurisdiction. In this regard, he referred to the case of **A.G FEDERATION** VS. A.G **ANAMBRA STATE (2017) LPELR- 43491 (SC).**

On issue two, learned counsel submitted that this suit is incompetent as it failed to disclose a reasonable cause of action. It was contended that the facts and documents presented by the Plaintiffs disclosed that the 2nd Defendant sent a letter to the Governor of Benue State with the title *"RE: Intervention for resolving farmer/herders conflict in Nigeria through establishment of Ruga Model Settlement"*, whereas the questions for determination and reliefs sought are founded on the premise of establishment of Ruga. Counsel concluded that the cause of complaint of the Plaintiffs is inconsistent with their questions for determination and reliefs sought.

Learned counsel to the 1st Defendant/Applicant relied on the case of **UWAZURONYE VS. GOV. IMO STATE (2013) 8 NWLR (Pt. 1355) 28 @ 56-57** for the definition of cause of action by the Supreme Court and further argued that where a party fails to disclose a cause of action in a suit against a party, no further evidence shall be required to determine the action against such party. In this regard, he referred to the case of **TABIOWO VS. DISU (2008) 7 NWLR (pt. 1087) 533 @ 545-546 paras.A-H.**

He finally urged this court to resolve the two issues in favour of the 1st Defendant/Applicant by dismissing this suit for being incompetent.

In the Plaintiffs/Respondents' response to the 1st Defendant/Applicant's notice of preliminary objection, learned Counsel to the Plaintiffs/Respondents replied to issue one formulated for determination by the 1st Defendant/Applicant's counsel by submitting that contrary to 1st Defendant/Applicant's counsel's submission that this suit has to do with land dispute, this suit actually seeks to challenge the validity of the Federal Government's policy or decision to establish Ruga

Settlements in all States of the Federation including Benue State and it also raises the question as to whether the Federal Government can compulsorily acquire land from the 2nd Plaintiff/Respondent, through the 2nd and 3rd Defendants, contrary to section 44 (1) (a) and (b) of The Constitution.

It was added that this suit seeks the interpretation of section 44 (1) of The Constitution vis-à-vis the rights of the 2nd Plaintiff/Respondent and the validity of the action of the Defendants. Counsel submitted that the 1st Defendant/Applicant agrees with this fact in paragraph 2.02 of its Counsel's written address where it was stated that ***"The Plaintiffs are also seeking for interpretation of the Federal Government policy on Ruga Settlement with Benue State Open Grazing Prohibition and Ranches Establishment law 2017, the Land Use Act and the 1999 Constitution of the Federal Republic of Nigeria (as amended)".***

Counsel argued that this suit has sufficiently invoked the jurisdiction of this Honourable Court as contained in section 251 (q) and (r) of The Constitution and that where words used in a statute are clear and unambiguous, they should be interpreted in their ordinary meaning. He referred to the case of **IBRAHIM VS FULANI (2010) 17 NWLR (pt. 1222) 241 @ 267, paras. F**. He added that The Constitution must be interpreted to reflect the intendment of the law makers and that when the words in the constitution are clear and unambiguous, the courts are not at liberty to search for meanings beyond it. On this, he referred to **FIDELITY BANK Plc VS MONYE (2012) 10 NWLR (Pt. 1307) 1 @ 31, para. C.**

Furthermore, it was contended that Sections 39, 40, 41 and 42 of the Land Use Act 1978 referred to by the 1st Defendant/Applicant's counsel in paragraph 4.07 of his written address are not relevant to the instant suit as the sections deal with

the jurisdiction of High Courts and other courts and their powers to entertain matters bordering on declaration of title to land, payment of compensation to persons entitled to be compensated for improvement of the land and that the Plaintiffs/Respondents' case does not fall within these categories but it questions the validity of the actions of the Defendants, thereby conferring jurisdiction on the Federal High Court to interpret the relevant provisions of The Constitution.

As regards issue two raised by the 1st Defendant/Applicant's counsel in his written address, learned senior counsel to the Plaintiffs/Respondents contended that the 1st Defendant/Applicant's argument, that the Plaintiffs/Respondents, from the facts before the court as well as the documents presented by them, have not disclosed a reasonable cause of action, is misconceived as the facts in this case disclosed a reasonable cause of action. He added that the constitutionality and validity of the Federal Government's policy and action have been challenged by the Plaintiffs/Respondents whose constitutional rights have been infringed upon and that necessitated this suit. He submitted that the Plaintiffs/Respondents are entitled to reliefs from this Honourable Court. Learned senior counsel referred to the case of **CRUTECH VS OBETEN (2011) 15 NWLR (Pt. 1271) p. 588 @ 607 Paras. E—F** on the meaning of cause of action as well as the case of **H.S ENGR. LTD VS. S.A YAKUBU (NIG.) LTD (2009) NWLR (Pt. 1149) p. 416 paras. E-H,** where the apex court pronounced on the documents the court will consider in an application to strike out or dismiss a suit for non-disclosure of a reasonable cause of action.

The learned counsel urged the court to dismiss or overrule this application as this Honourable Court has the jurisdiction to entertain this suit.

I have considered the arguments of the counsel to parties for and against the preliminary objection. I shall also adopt the two issues raised by the counsel for the determination of the objection, with some modifications.

Issue one will be *"**Whether this court has jurisdiction to entertain this suit as constituted.**"*

The jurisdiction of the Federal High Court is rooted in section 251 of The Constitution and as has been well established, to resolve the jurisdiction of a court to entertain a matter, a scrupulous examination of the writ of summons, the statement of claim and the reliefs claimed and no other document are to be examined. Where the originating process is an Originating Summons, as in the instant case, the affidavit in support of the Originating Summons serves as the Plaintiff's pleadings. Jurisdiction will then be resolved by examining only the Originating Summons, the reliefs contained therein and the affidavit filed in support. See **PDP & ANOR. V. SYLVA & ORS (2012) LPELR-7814 (SC).**

It is a notorious fact that the Federal Government evolved a programme known as **"Ruga settlement"** which is geared towards building settlements for herdsmen in states across the federation for the purpose of rearing their cattle and milk production, inter alia. The suit of the Plaintiffs/Respondents in this case borders on the validity of the decision, the programme, plan, policy or action of the Federal government in respect of the settlement, particularly in Benue State, and also, it seeks the interpretation of certain provisions of the Constitution as it relates to the said action, decision or policy.

Section 251 (1) (q) and **(r)** of The Constitution provide as follows:

"Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction, to the exclusion of any other court, in civil causes and matters –

> **(q) subject to the provisions of this Constitution, the operation and interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies;**
> **(r) any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies; ....."**

The suit of the Plaintiffs/Respondents could be safely accommodated by this court under the above provisions. They seek interpretation of the provisions of, amongst others, the Constitution, as they affect the Federal Government and they also seek declarations and injunctions affecting the decision, action or policy of the Federal Government in respect of the Ruga Settlement.

In view of the foregoing this court holds that its jurisdiction has been safely invoked by the Plaintiffs in this matter.

The second issue for determination is whether the Plaintiffs have disclosed any reasonable cause of action to sustain this suit.

As argued by the learned counsel to the Plaintiffs/Respondents, a cause of action is the factual situation stated by the Plaintiff, which, if substantiated, entitles him to a remedy against the Defendant. The law is trite that whenever the issue of

reasonable cause of action is raised, it is the Statement of claim or, as in this case, the averments in the affidavit in support of an Originating Summons, that ought to be considered. So long as the affidavit discloses some cause of action or raises some questions which can be decided by a judge, there is a reasonable cause of action. See **BARBUS & CO (NIG) LTD & ANOR. V. OKAFOR-UDEJI (2018) LPELR-44501 (SC).** See also **ATIBA IYALAMU SAVINGS & LOANS LTD v. SUBERU & ANOR (2018) LPELR-44069 (SC).**

The facts in the affidavit in support of the Originating Summons are that the Defendants have formulated a policy, programme or plan to establish Ruga Settlements in states including Benue State, which policy, programme or plan the Plaintiffs believe would infringe the rights of the 2nd Plaintiff under our laws. These facts have raised questions which are to be decided by this court. The mere fact that the 1st Defendant/Applicant sees the Plaintiffs/Respondents' case as one not likely to succeed can not be a ground for the case to be struck out or dismissed. See **BARBUS & CO (NIG) LTD & ANOR. V. OKAFOR-UDEJI (supra).**

I find and hold therefore that Plaintiffs/Respondents have put facts before this court which are worthy of consideration. The Plaintiffs/Respondents have therefore disclosed reasonable cause of action in this suit.

From the foregoing, the Preliminary Objection of the 1st Defendant/Applicant fails in its entirety and same is dismissed by this court.

This court also called on parties to address it on the implication of the provision of Section 232 of The Constitution in view of the nature of this case. The section has to do with the original jurisdiction of the Supreme Court and it provides thus:

"232. (1) The Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute between the Federation and a State or between States if and in so far as that dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends.

(2) In addition to the jurisdiction conferred upon it by subsection (1) of this section, the Supreme Court shall have such original jurisdiction as may be conferred upon it by any Act of the National Assembly. Provided that no original jurisdiction shall be conferred upon the Supreme Court with respect to any criminal matter."

In his address, the learned counsel to the Plaintiff formulated an issue for determination which is "**Whether this case, as constituted, is a dispute between the federation of Nigeria and Benue State**" and he submitted that from the facts of and reliefs sought in this case, this case does not come within the contemplation of Section 232 of the Constitution. Counsel stated that this case involves the administration of the Federal Government of Nigeria, it seeks the interpretation of the Constitution and other enactments and seeks declarations and injunctions against the Federal Government and two of its agencies.

Counsel defined a "Federation" as the entity comprising of all the units, all the states, as an indissoluble and indivisible unit and said the Federal Government, which this suit is against, is the federal arm of government. Counsel's argument is that the Government of Benue State has a case against the Federal Government and not the federation and that takes this case out of cases on which the Supreme Court has original jurisdiction.

The position of the Defendants on the issue raised by this court is that as this matter deals with the establishment of Ruga Model Settlement which falls under item 17 (d) and 18 of the Concurrent Legislative list, contained in the 2nd Schedule of The Constitution, jurisdiction is vested not on the Federal High Court but on the Supreme Court. They posited that the dispute is between Benue State and the Federation as it relates to areas of legislation available to the States and the Federation on Grazing Law.

I have carefully considered the addresses of counsel.

Section 318 of The Constitution defines "Federation" as the Federal Republic of Nigeria. See **AG ADAMAWA STATE & ORS v. AG FEDERATION & ORS (2005) LPELR-602(SC).** There is a difference between Federation (or the Federal Republic of Nigeria) and the Federal Government. The word "Federation" in Section 232 of the 1999 Constitution means 'Federal Republic of Nigeria'. By this meaning, all the complaints of the Plaintiffs in their Originating Summons in this case, must be viewed as being against the Federal Republic of Nigeria in order to bring the case within the purview of Section 232 of the Constitution. In other words, any complaint against the **Government** of the Federation or any person who exercises power or authority on its behalf, like the Defendants in this case, are completely outside the original jurisdiction of the Supreme Court. See **AG LAGOS STATE v. AG FEDERATION & ORS (2014) LPELR-22701(SC).**

The provisions of Section 232(1) of the 1999 Constitution of the Federal Republic of Nigeria under consideration are in pari-materia with the provisions of Section 212 of the 1979 Constitution of Nigeria which has been dealt with by the Supreme Court in many cases dealing with the invocation of the Original Jurisdiction of the Court. The criteria as stated in those cases before the Original Jurisdiction of the

Court is invoked are that - (a) There must be a justiciable dispute involving any question of law or fact. (b) The dispute must be - (i) Between the Federation and a State in its capacity as one of the Federating Constituent Units of the Federation; or (ii) between the Federation and more States that are in their capacity as members of the Constituent Units of the Federation; or (iii) between the States in their capacities as members of the Constituent Units of the Federation. See AG **Bendel State v. AG Federation &Ors. (1981) 10 S.C. 1 at 32 – 33**.

The words used in Section 232(1) of the Constitution describing the parties are "the Federation", "a State", and "States." In otherwords, the dispute must be between the Federation and a State or between the Federation and more than one State or between a State or States in their capacities as members of the Federating Units of the Federation of Nigeria. The Section is not expected to provide avenue for the resolution of disputes between the Federal Government of Nigeria and a State Government of Nigeria or between a State Government and another State Government all of which are said to be only products of elections. In other words, the Section does not empower the apex Court to hear and determine disputes between the Government of the Federation and a State or the Governments of the States inter-se. It equally does not allow for disputes between agencies of the Federal Government and a State or agencies of the State Governments inter-se. See **AG LAGOS STATE v. AG FEDERATION & ORS (2014) LPELR-22701(SC).**

As the questions raised and the reliefs claimed by the Plaintiffs in the instant suit, particularly the injunctive reliefs, are against the Federal Government of Nigeria, its servant and its agency, the reliefs not being against the Federation of Nigeria or any State or States of the Federation as constituent units of the Federation,

this suit is not within the purview of Section 232(1) of the 1999 Constitution to confer Original Jurisdiction on the Supreme Court.

I therefore hold that it is this court that has jurisdiction to hear this case as constituted.

Now to the substantive suit. The case of the Plaintiffs is that due to the incessant crises between farmers and herdsmen, the 2nd Plaintiff enacted a law prohibiting open rearing and grazing of livestock in Benue State and provided for the establishment of ranches and livestock administration, regulation and control. According to the Plaintiffs, the law is being complied with by the herdsmen in the State and thus has engendered peace and reduced clashes between the herdsmen and farmers. The Federal Government of Nigeria has now proposed to establish Ruga Settlements in the country, including Benue State, to enable herdsmen graze their livestock, in disregard of the Land Use Act and the Open Grazing Prohibition Law of the 2nd Plaintiff and on the Federal Government's behalf, the 2nd Defendant wrote a letter to the Executive Governor of Benue State indicating the intention of the Federal Government to establish the Ruga Settlement in Benue State.

The position of the 1st Defendant is that the Federal Government identified open grazing of animals by herders as one of the causes of herders and farmers' conflict across the country, hence it came up with the project called **"Ruga Settlements"** to settle animal farmers in an organized place, in rural areas, with provision of necessary amenities such as hospital, schools, road networks, vet clinics, markets etc. That contrary to the position of the Plaintiffs, the Federal Government is not planning to grab lands in States for the programme or impose the programme on

States that are not willing to participate and that it is within the power of the Federal Government to acquire land for National Interest.

The case of the 2nd and 3rd Defendants is that the Federal Government established the Ruga Settlement but Benue State was not captured in the programme and the programmme has now been suspended. They contend that the 3rd Defendant is empowered by a Regional Law to constitute reserved grazing land and the law of Benue State cannot override the said regional law.

Counsel to the parties adopted their written addresses in respect of their parties' positions. The said written addresses, which run to a great length, would not be reproduced here. They are however incorporated herein and reference would be made to them in this judgment as the need arises.

The learned counsel to the Plaintiffs in his written address formulated a sole issue for determination to wit:

"Whether by the combined reading of sections 4, 9(2), 44 (1) & (3), 315 (5) & (6) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), sections 1, 2, 5, 6,& 28(1), (2) & (3) of the Land Use Act, 1978 and Sections 4, 5, 6, 7 & 19 (1) of the Benue State Open Grazing prohibition and Establishment of Ranches Law, No. 21, Vol. 42, 2017 the Defendants have the power to arbitrarily or compulsorily acquire, takeover land comprised in the territory of Benue State for the purposes of establishing a Ruga Model Settlements or cattle colonies, contrary to the extant laws."

The 1st Defendant's counsel, in his written address formulated a lone issue for determination to wit:

"Whether in view of the applicable laws, the facts and circumstances of this case, this Honorable Court can validly make declarations and the reliefs sought by the Plaintiffs in the suit."

The 2nd and 3rd Defendants' counsel also raised a sole issue for determination in his written address to wit:

"Whether or not the Applicant is entitled to the reliefs sought in this suit."

I have carefully considered the Originating Summons and the argument for and against same. I shall adopt the issue raised by the learned counsel to the 1st Defendant as the issue for determination, as the issue covers all issues raised by counsel in this case. The issue for determination is therefore:

"Whether in view of the applicable laws, the facts and circumstances of this case, this Honorable Court can validly make declarations and grant the reliefs sought by the Plaintiffs in the suit."

There is no dispute as to the fact that the Federal Government of Nigeria came out with a programme called **"Ruga Settlement"** which, according to the Defendants, is to settle animal farmers in an organized place, in rural areas, with provision of necessary amenities hospital, schools, road networks, vet clinics, markets etc. Although the programme is presently suspended, same has not been cancelled.

The position of the Defendants is that the Federal Government is not planning to grab lands in States for the programme or impose the programme on States that are not willing to participate and that it is within the powers of the Federal Government to acquire land for National Interest.

To come to a rational decision, the provisions of the laws referred to by counsel to parties shall be produced in this judgment and duly considered.

For the Ruga Settlement, the parties appreciate the fact that the Federal Government would require land in any of the States where the programme is to operate. The position of the Plaintiffs is that they have in place in Benue State, the Grazing Law, known as Open Grazing Prohibition and Ranches Establishment Law 2017 (hereinafter called Open Grazing Law), which has been enacted to curb the herdsmen/farmers' clashes and which the herdsmen have been complying with and has engendered peace and reduction in herders and farmers clashes in Benue State. As contended by the Plaintiffs' counsel in his written address, the Defendants have no power to compulsorily acquire or forcefully take over or allocate land within the territory of Benue State for the purpose of rearing and grazing any livestock within the State contrary to the extant laws.

The counsel referred to section 1 of the Land Use Act 1978 and submitted that the Governor of each State is the legal trustee of all lands comprised in the State.

Sections 1 and 2 of the Land Use Act (hereinafter referred to as LUA), provides thus:

(1) Vesting of land in the State

Subject to the provisions of this Act all land comprised in the territory of each State in the federation is 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.

(2) Control and management of land ; advisory bodies

(1)As from the commencement of this Act-

(a)all land in Urban Area shall be under the control and management of the Governor of each State; and

(b)all other land shall, subject to this Act, be under the control and management of the Local Government within the area of jurisdiction of which the land is situated.

By the above provision, other than the land vested in the Federal Government or its agencies, all the land within Benue State is vested in the State Governor and Local Government.

As contended by the counsel to the Plaintiff, the provision of the Constitution is that no interest in any moveable property shall be taken compulsorily except by the manner prescribed by the law.

Section 44 (1) & (3) of the 1999 Constitution of the Federal Republic of Nigeria as amended provide that:

44. (1) No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things -

(a) requires the prompt payment of compensation therefor; and

(b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.

(3) Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.

According to the Defendants, the Federal Government is not interested in forcefully taking over the land of any State for the Ruga Settlement and is not going to force any State to be part of the programme.

Peradventure, the Federal Government wants to operate the programme in Benue State, by the above provisions of Section 1 of the LUA and Section 44 of The Constitution, the Federal Government can not take possession of any land which belongs to Benue State compulsorily and no right over or interest in any such land, other than the land as stated under Section 44(3) of The Constitution,

shall be acquired compulsorily in the State except in the manner and for the purposes prescribed by a law.

Based on the provisions of the Land Use Act and the Constitution stated above, it would be unlawful for the Federal Government to establish Ruga Settlement in Benue State, without involving the 2nd Plaintiff and taking the appropriate steps for the acquisition of land for such settlement.

The 1st Defendant mentioned in particular in paragraph 4(e) of its counter affidavit that the Ruga Settlements are to be located at the rural areas of States. In respect of lands in the rural area, Section 6 (1) of the Land Use Act provides as follows:

Section 6 (1) of the L.U.A—

It shall be lawful for a Local Government in respect of land not in urban area

(a) **To grant customary rights of occupancy to any person or organization** for **the use of land in the local government areas for agricultural,** residential **and other purposes**

(b) **To grant customary right of occupancy to any person or organization** for **the use of land for grazing purposes and such other purposes** ancillary to **agricultural purposes as may be customary in the local government** area **concerned.**

Pursuant to the above, it necessarily follows that a Local Government in a State can grant customary right of occupancy to any person on lands in rural areas for agricultural, residential and other purposes. Sub-section (b) goes further to state

that such customary rights of occupancy can be granted for grazing purposes and other purposes ancillary to agriculture as may be customary in the local government concerned.

Learned counsel to the Plaintiffs, in trying to interpret the above provision of Section 6 of the **LUA,** submitted that the Local Government may only grant rights of Occupancy for grazing purposes where grazing is customary in the Local Government Area concerned and that grazing is not customary in any Local Government in Benue State. The interpretation is incorrect. Due to the use of the word "and" in ***"to grant customary right of occupancy to any person or organization for the use of land for grazing purposes and such other purposes ancillary to agricultural purposes as may be customary in the local government area concerned,"*** grazing purpose must be separated from *"such other purposes ancillary to agricultural purposes"*. The words *"customary in the local government concerned"* would apply to *"such other purposes ancillary to agricultural purpose"* and not to *"grazing purposes"*.

It follows therefore, that the Local Government can grant customary right of occupancy to any person or organization for the use of land for grazing purposes according to the LUA. However, by the Interpretation Section of the LUA, which is Section 51 of the Act, "grazing purposes" means only such agricultural operations as are required for growing fodder for livestock on the grazing area; fodder being food for horses and farm animals, composed of entire plants or the leaves and stalks of a cereal crop. It follows therefore that even the land that the Local Government can grant customary right of occupancy in its respect for grazing

purposes would only be for growing the cereal crop or food for the farm animals and not for the animals to live on.

Since the land in a State is controlled and managed by the Governor and the Local Government in a State who/which grant the statutory right of occupancy and customary right of occupancy respectively, it means the Federal Government would have to go through either of them for land for the Ruga Settlement, if they want to set same up.

The Defendants have argued that the Federal Government can acquire land for national interest and that there is a Regional Law that empowers the Minister to constitute reserved grazing land irrespective of the Open Grazing Law of Benue State.

Counsel to the 1st Defendant contended in his written address that the Constitution is supreme notwithstanding the inclusion of the Land Use Act in section 315 (5) therein. The Learned Counsel referred to item 17 (d) and 18 of the Concurrent Legislative List contained in the 2nd Schedule of The Constitution where item 17 (d) empowers the National Assembly to establish institution for the promotion or financing of Agricultural projects. He also submitted that both the National Assembly and the States Houses of Assembly can make laws in promoting or financing agricultural project to be enforced in their respective territories.

In furtherance of his argument, learned counsel submitted that the powers of the National Assembly as submitted above includes enacting laws in establishing of animal husbandry, nomadic livestock commission etc as it established the various River Basin Development projects across the country as well as the National

Commission for Nomadic Education which is mandated in managing Nomadic herdsmen across the country for the purpose of livestock development or animal husbandry.

It was also submitted that as regards compulsory acquisition of land for use as Ruga Settlements in any State of the Federation, the National Assembly can act under section 10 (2) of the Interpretation Act to empower such a Commission to own and manage land for the purpose of the Act.

Learned counsel argued that a community reading of items 17 (d) and 18 of the Concurrent Legislative List, in the second schedule of The Constitution, with section 10 (2) of the Interpretation Act, 2004, would show that the Federal Government can act independently of State or Local Governments in dealing with the issue of land acquisition for the purpose of resolving the Ruga controversy and any other subsequent initiatives of the Federal Government.

I shall now look at the provisions of law referred to by counsel to the 1st Defendant.

Section 315 (5)& (6) of The Constitution provides as follows:

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

(a) The National Youth Service Corp Decree 1993;

(b) The public Complaints Commission;

(c) The National Security Agencies Act;

(d) The Land Use Act

and the provisions of those enactments shall continue to apply and have full effect in accordance with their tenor and to the like extent as any other provisions forming part of this constitution and shall not be altered or repealed except in accordance with the provisions of section 9 (2) of this constitution."

(6) "Without prejudice to subsection 5 of this section, the enactments mentioned in the said sub-section shall hereafter continue to have effect as Federal enactments and as if they relate to matters included in the exclusive legislative list set out in part 1 of the second schedule to this Constitution."

Section 17(d) and 18 of Concurrent Legislative List under the 2nd Schedule of the Constitution provide as follows:

17. The National Assembly may make laws for the Federation or any part thereof with respect to-

(d) the establishment of institutions and bodies for the promotion or financing of industrial, commercial or agricultural projects.

18. Subject to the provisions of this Constitution, a House of Assembly may make Laws for that State with respect to industrial, commercial or agricultural development of the State.

Section 10(2) of the Interpretation Act provides thus:—

An enactment which confers power to do any act shall be construed as also conferring all such other powers as are reasonably necessary to enable that act to be done or are incidental to the doing of it.

The Plaintiffs' counsel argued in the reply on points of law that the provisions of items 17(d) and 18 of the Concurrent Legislative List of the 2nd Schedule to The Constitution has to do with the powers of the National Assembly to make laws on agricultural projects and stated that this case is not against the National Assembly and has not questioned the powers of the National Assembly and so the provisions of the items do not apply in this case.

While the provision of the Land Use Act has been given the breath of life in section 315 (5) and (6) of the 1999 Constitution, I agree with the submission of the Plaintiffs' counsel that the provisions of items 17(d) and 18 of the Concurrent Legislative List of the 2nd Schedule to the Constitution do not apply in this case. The Defendants in this case are not members of the National Assembly or the State House of Assembly empowered to make laws by the items and this suit is not against the National Assembly or State House of Assembly. No law has been made, by the bodies, which the Defendants can rely upon to establish the Ruga Settlement.

Even if this suit were to be against the National Assembly, the provision of item 17(d) of Concurrent Legislative List relied upon is that the National Assembly may make laws for the Federation or any part thereof with respect to the ***establishment of institutions and bodies*** for the promotion or financing of industrial, commercial or agricultural projects. This has to do with institutions and bodies to be established for promoting or financing the projects stated under the list. By no stretch of the imagination does Ruga Settlement mean an institution or body that would come together to promote or finance agricultural projects. The

Ruga settlement is the project itself that could be promoted or financed by institutions or bodies to be created by laws to be made by the National Assembly.

By the provision of Section 10(2) of the Interpretation Act, the powers of the National Assembly, as contained under item 17(d) of the Concurrent Legislative List, cannot be stretched to the Federal Government having powers to act independently of State or Local Governments in dealing with the issue of land acquisition for Ruga Settlements, as the 1st Defendant would want this court to hold. At best Section 10(2) of the Interpretation Act would stretch the power of the National Assembly under item 17(d) not only to establish bodies or institutions to promote and finance the projects of Federal Government as stated, but also for the bodies or institutions, to be established by the law, to look into how best the project of the Federal Government could work within the State, thereby promoting the project.

Item 18 on the other hand, provides that the State House of Assembly may make Laws for that State with respect to industrial, commercial or agricultural development of the State. This provision of the Constitution is in tandem with the position of both substantive and case laws that the State has the powers to control, by law or any other valid means, the use and management of its land, even where the land is owned by the Federal Government. In this regard, I shall place heavy reliance on the decision of the Supreme Court in the case of A. G. **LAGOS STATE V. A.G. FEDERATION (2003) 12 NWLR, (PT. 833) PAGE 1** and would gratefully feel guided by the inimitable decisions of my lords in the case.

It was held in the case that regulation(s) of physical developments in respect of land in a State are legislative matters. This is because it involves the use of the

land by the general public in both urban and rural regions and affects the development and control of such land for the benefit of the society. Therefore, in order to ensure purposeful utilization of the community to which they relate, there must be laws, rules and regulations controlling the general right to or the indiscriminate use of the land. Who then makes these laws, rules and regulations?

My lord, Honourable Justice SAMSON ODEMWINGIE UWAIFO, JSC had the following to say:

"...I do not need to repeat that Nigeria operates a federal system of government. Section 2(2) of the 1999 Constitution re-enacts the doctrine of federalism. This ensures the autonomy of each government. None of the governments is subordinate to the other. This is particularly of relevance between the State Governments and the Federal Government, each being, as said by Nwabueze in his book, The Presidential Constitution of Nigeria, pages 39-42, an autonomous entity in the sense of being able to exercise its own will in the conduct of its affairs within the Constitution, free from direction by another government. I think it is significant that shortly before and since the independence of Nigeria in 1960, all the Constitutions that have been enacted have taken the pattern of federalism. Under this system each tier of government has its legislative competence or functions conferred on it as the case may be. The National Assembly which legislates for the Federal Republic of Nigeria or any part thereof has power to do so in respect of matters in the Exclusive Legislative List set out in Part I of the Second Schedule to the 1999 Constitution: see Section 4 subsections (1), (2) and (3). In addition, it has power to make laws with respect to (a) matters in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to the Constitution and (b) any other matter with respect to which it is

empowered to make laws: see Section 4 subsection (4) paragraphs (a) and (b). The House of Assembly of a State has power to make laws for the State or any part thereof in respect of (a) any matter not included in the Exclusive Legislative List, (b) any matter included in the Concurrent Legislative List and (c) any other matter with respect to which it is empowered to make laws: see Section 4 subsection (7) paragraphs (a), (b) and (c). Each of these legislative bodies exercise their power to make laws for the peace, order and good government of their respective territories. The functions of a Local Government Council are governed by Section 7 of the Constitution and as enumerated in the Fourth Schedule thereto; and such other functions as may be conferred on the council by the House of Assembly of a State. By this Constitutional arrangement which allocates legislative jurisdiction between the National Assembly and the House of Assembly of a State, it is recognised that any matter not mentioned either in the Exclusive or Concurrent Legislative List becomes a residual matter exclusively for the State House of Assembly by virtue of Section 4 subsection 7(a); and similarly it is a residual matter exclusively for the National Assembly in regard to the Federal Capital Territory, as if it were a State, by virtue of Section 299 of the Constitution: see Attorney General Ogun State v. Aberuagba (1985) 1 NWLR (Pt.3) 395; Emelogu v. The State (1988) 2 NWLR (Pt. 78) 524, (1988) 19 NSCC (Pt.1) 869; Attorney General Abia State v. Attorney General of the Federation (2002) 6 NWLR (Pt. 763) 264; Fawehinmi v. Babangida (2003) 3 NWLR (Pt. 808) 604. In Aberuagba's case at page 405, Bello, JSC (later CJN) observed thus: "A careful perusal and proper construction of Section 4 [of the 1979 Constitution] would reveal that the residual legislative powers of government were vested in the States. By residual legislative powers within the context of Section 4, is meant

what was left after the matters in the Exclusive and Concurrent Legislative Lists and those matters which the Constitution expressly empowered the Federation and the States to legislate upon had been subtracted from the totality of the inherent and unlimited powers of a sovereign legislature. The Federation had no power to make laws on residual matters." (Note: The parenthesis in square brackets supplied by me. The Federation also has residual powers as provided in S. 299 of the 1999 Constitution, formerly Section 263 of the 1979 Constitution. This observation by Bello, JSC was made at the time that Section 4 of the 1979 Constitution had been suspended by the Federal Military Government when the case came on at the Supreme Court)."

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

My lord, Honourable Justice Uwaifo J.S.C. further stated that no argument can defeat or reduce from the general planning legislative power of the House of Assembly of a State, which is a residual constitutional power. It gives the state the

exclusive function for the planning, layout and development of their respective areas. Any Act which tends or is implemented in a way to tend to undermine or take away this function of any State, or allows the Federal Government to exercise or assume such function is unconstitutional and in appropriate circumstances will be declared so.

For whatever project the Federal Government may have, even when it comes to using its own land in a State, the Federal Government must respect the planning laws and regulations in a State or at least act in consultation with the appropriate authorities or agencies with a view to achieving mutual accommodation for the project intended.

The gist of all of the above as it supports item 18 on the Concurrent Legislative List referred to by the 1st Plaintiff is that when it comes to the use any land is put into, the control and management of the land within a State, even a land belonging to the Federal Government, it is the State House of Assembly that has the powers to make the Laws.

The argument of the 2nd and 3rd Defendants on their parts is that any land in Northern Nigeria, including Benue State, can be designated for grazing reserves as the Minister (3rd Defendant) deems it fit. Counsel to the parties argued that the Grazing Reserves Law 1965, which covers all northern States in Nigeria and which is a regional law, overrides the Open Grazing Law enacted by the Benue State House of Assembly. On this score, learned counsel referred to section 4 (5) of The Constitution of the Federal Republic of Nigeria 1999 as amended which provides that If any Law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National

Assembly shall prevail, and that other Law shall, to the extent of the inconsistency be void.

In his response, the counsel to the Plaintiffs contended that the reliance on Regional Grazing Law by the 2nd and 3rd Defendants is misconceived as Nigeria is an entity with 36 States and Federal Capital Territory and that the 1999 Constitution of the Federal Republic of Nigeria has no place for regions and Regional laws. He added that all we have now are State and Federal Laws. Therefore, the issue of conflict between the Benue State Law and Regional law does not arise. He added that the Nothern Region Grazing Law is obsolete and non-existent.

As stated by the Plaintiffs' counsel, Nigeria no longer have regions but States. Furthermore, as at 1965 when the Regional laws, referred to by the Defendants, were promulgated, same was assented to by the Governor of the Nothern Nigeria and not the President at the centre. This regional law is therefore an equivalent of State Laws and same cannot override the Open Grazing Law enacted by the Benue State House of Assembly.

In addition, the purported regional law being relied upon has become obsolete as could be seen in its provisions. Before the Minister could constitute a land as a government grazing reserve under the Law, the Minister shall publish a notice in the Northern Nigeria Gazette of the intention to create reserves. There is nothing like Northern Nigeria Gazette presently.

Also, the Grazing Reserves Law of 1965 (Nothern Nigeria No. 4) was incorporated into the Grazing Reserves Law of Benue State of 1976 and was further incorporated into CAP 72, Laws of Benue State 2004. See the Section on

Modification of Laws (Benue State) Order 1990 and the conversion tables as contained in Laws of Benue State of Nigeria 2004. Presently, pursuant to Section 36 of the Open Grazing Law of 2017 the Grazing Reserves Law CAP 72, Laws of Benue State 2004 has been repealed. All the Laws made under the repealed law, affecting grazing of livestock, have been modified in the provisions of the Open Grazing Law of 2017.

Even if the Grazing Reserves Law of 1965 were to still be operative, it was in existence before the 1999 Constitution and would come under existing Law as defined under Section 315(4) of the Constitution. By Section 315(1) of the Constitution existing laws are to be modified to be in conformity with the provisions of The Constitution. So the Grazing Reserves Law of 1965 must conform with Section 44 of The Constitution and Section 1 of the LUA duly recognized and confirmed by Section 315(5) of the 1999 Constitution.

Section 315 provides as follows:

(1) Subject to the provisions of this Constitution, an existing law shall have effect with such modifications as may be necessary to bring it into conformity with the provisions of this Constitution and shall be deemed to be –

(a) an Act of the National Assembly to the extent that it is a law with respect to any matter on which the National Assembly is empowered by this Constitution to make laws; and

(b) a Law made by a House of Assembly to the extent that it is a law with respect to any matter on which a House of Assembly is empowered by this Constitution to make laws.

By the above provision of the Constitution, the Grazing Reserves Law of 1965 shall have effect with such modifications as may be necessary to bring it into conformity with the provisions of this Constitution particularly provisions of Section 44 of this Constitution and Section 1 of the LUA which has been given life by this Constitution. Whatever power the minister might have had over the State lands under the Grazing Reserves Law, would have been deemed modified to conform with the provisions of the Constitution that no moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law and the position of the law that the Land in the State is vested in the Governor of the State, who holds it in trust for his people.

What about the position of the Land Use Act 1978 vis-a-vis the Grazing Reserves Law of the Northern Nigeria? Not only is the Land Use Act later in time, it also covers the whole of Nigeria and has vested all lands comprised in the territory of each State in the Federation in the Governor of that State. I do not see how a Minister, an agent of the Federal government, could take over the land belonging to the State and designate same as a grazing reserve without the consent of the Government of the State. As stated above, even where the land originally belongs to the Federal Government, the use to put the land to, the control and management of the land has to be managed by the State Government. The LUA has therefore annulled the power of the Minister of Agriculture to allocate lands within the federation for grazing purpose.

I find and hold in the circumstance that Benue State Open Grazing Law is not and cannot be inferior to the Grazing Reserves Law of 1965 which is an obsolete law.

As held in the case of **A. G. Lagos V. A. G. Federation (Supra)** the states have the power of legislation over the use, the planning and development of their land and such power does not reside with the Federal Government, save for the Federal Capital Territory, it follows therefore that the enactment of the Open Grazing Prohibition and Ranches Establishment Law 2017, by the Benue State House of Assembly, is within the powers conferred upon the State by The Constitution as same has legal force.

From all of the foregoing, this Honourable Court finds and holds that the Grazing Reserves Law of Northern Nigeria No. 1965 is not only inapplicable to the facts and circumstances of this suit, but also obsolete and non-existent and the 2nd and 3rd Defendants' reliance on same, in support of their submission, is akin to living in the past.

Assuming, arguendo, that any provision of any Section of The Constitution, which is the ground norm, empowers the Federal Government to acquire any interest in land in any State of the federation, without the approval of the Government of that State, such provisions would stand contrary to the provision of Section 315 (5) of the Constitution which provides thus:

5) Nothing in this Constitution shall invalidate the following enactments, that is to say -

> (d) the Land Use Act, and the provisions of those enactments shall continue to apply and have full effect in accordance with their tenor and to

the like extent as any other provisions forming part of this Constitution and shall not be altered or repealed except in accordance with the provisions of section 9 (2) of this Constitution.

The Land Use Act 1978, which is the law applicable in respect of the usage of lands in States, can only be altered by Section 9(2) of the Constitution which is yet to be done. I therefore agree with the Plaintiffs' counsel's submission that even if the Federal Government has power to formulate policies and make laws establishing grazing reserves in various States, such laws can only be enacted upon amendment of the Land Use Act in accordance with the procedure under Section 9(2) of the Constitution as prescribed under Section 315(5) of the Constitution.

Section 9(2) provides as follows:

9. (1) The National Assembly may, subject to the provisions of this section, alter any of the provisions of this Constitution.
(2) An Act of the National Assembly for the alteration of this Constitution, not being an Act to which section 8 of this Constitution applies, shall not be passed in either House of the National Assembly unless the proposal is supported by the votes of not less than two-thirds majority of all the members of that House and approved by resolution of the Houses of Assembly of not less than two-thirds of all the States.

Further stated by the Defendants is that the Federal Government, in actualizing the policy of Ruga Settlement, is not planning to grab land in states. The contention of the Plaintiffs' counsel is that by virtue of Section 28(1) of the Land

Use Act, the Governor can only revoke a right of occupancy for overriding public interest and sub-section 2 (b) goes ahead to define public interest as:

"The requirement of the land by the Government of the State in either case for public purposes within the state, or the requirement of the land by the government of the federation for public purposes of the federation."

On the part of the Local Government in the State, Section 6 of LUA provides that it could enter upon, use and occupy land within the area of its jurisdiction for public purpose.

If the Federal Government requires land, the Governor, by the provision of Section 28 (4) of the LUA can revoke a right of occupancy in the event of the issue of a notice by or on behalf of the President, if such notice declares such land to be required by the Government for public purposes.

Ruga settlement programme is not one to be accommodated under the words "public purpose" or "overriding public interest" as herding is a private business embarked upon by private people and the federal government cannot under Sections 28(4) or 6 of LUA acquire the land of people for the benefit of private individuals. Any individual wishing to establish a ranch may do so after acquiring land in the manner prescribed by the LUA. By Section 5(1) of the LUA, it is the responsibility of the Governor to grant rights of occupancy on land for whatever purpose including grazing and as Benue State has promulgated a Law to cover grazing within the State, that law has to be followed.

Therefore the 1st Defendant's contention that the Federal Government can independently acquire land from states for public purposes is not tenable.

Other than the land which belongs to the Federal Government, which the government has to develop or use in accordance with the control and managing powers of the State, the Federal Government can only acquire the land that belongs to the people of Benue State, held in trust for them by the Governor, for public purposes and overriding public interest only. Acquiring the land for the use of private individuals who rear animals would amount to the Federal Government robbing Peter to pay Paul which is not allowed by our laws. See **ALHAJI WAHABI LAYIWOLA OLATUNJI VS THE MILITARY GOVERNOR OF OYO STATE & 3 ORS (1995) 5 NWLR (Pt. 397) pg. 602.** See also **OSHO VS FOREIGN FINANCE CORPORATION (1991) 4 NWLR (Pt.184) p.157 @ p.200-201, paras H-B** where the Supreme Court per Bello CJN held thus:

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

In view of the above authority, the courts frown at compulsorily acquiring individuals' property outside the purview of public purposes or interest.

Also submitted by the Plaintiffs' counsel is that it could be argued that the Federal Government has the power to legislate or make policies on environment under Section 20 of The Constitution but that the creation of grazing reserves is hardly within the environmental objectives of government.

Section 20 of The Constitution provides thus:

"The State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria."

According to the Apex Court in **A.G. LAGOS v. A. G. FEDERATION (SUPRA)** Section 20 of The Constitution is essentially about how to protect and improve the environment and to safeguard the water, air and land, forest and wildlife in Nigeria and this can by no means include or involve, in respect of land, the physical town and regional planning as a means to safeguard land. It was stated by the court that the main object of the section is to protect the external surroundings of the people and ensure that they live in a safe and secure atmosphere free from any danger to their health or other conveniences and it does not involve the way people plan their buildings or develop the land they occupy.

Some other issues were raised in the written addresses of learned counsel to the Defendants which require the attention of this Court. The counsel to the 1st Defendant, in his written address, submitted that a claim for declaratory reliefs is an invitation to the court to make a pronouncement as to the legal position of a

state of affairs and the law requires a high degree of proof in order to succeed. He stated that the duty rests on the Plaintiffs in the instant case to establish their being entitled to the declarations they seek. In this regard, he relied on the cases of **AG RIVERS STATE VS. AG BAYELSA STATE (2013) 3 NWLR (Pt. 1340) @ 123 pp 160-161, paras G-B; NEXT INT. LTD VS. OBATOYINBO (2013) ALL FWLR (Pt. 701) @ p. 1549 (p. 1570, paras. A-B, p. 1574, paras C-D); NWAOGU VS ATUMA (2013) VOL.221 LRCN (Pt. 2); INEC VS ATUMA (2013) 11 NWLR (Pt. 1366) @ p. 494.**

He submitted that, by the above authorities, the Plaintiffs in this case have not placed sufficient and required evidence before this honourable court to entitle them to the reliefs claimed. He added that the allegations of the Plaintiffs, which form the basis of this suit, are speculative in nature and speculation has no place in our laws. Counsel referred to the following cases on the definition of speculation by the courts: **ISAH VS STATE (2007) NWLR (Pt. 1049) 582 @ 614, paras. A-B; IKENTA BEST (NIG) LTD VS.AG RIVERS STATE (2008) 6 NWLR (Pt. 1084) 612.** Learned counsel further referred to Exhibits A and B attached to the affidavit in support of the Plaintiffs' application in support of his submission, on the speculative nature of the plaintiffs' suit.

The learned counsel contended that the legality of the alleged Ruga Settlement policy cannot be determined at this stage because it has not occurred. Hence any judicial pronouncement on the issues at this stage will be an exercise in futility and that the courts can only grant declaratory reliefs on live issues, where there is a breach and establishment of right to suit.

Learned counsel placed reliance on the case of **CENTRAL BANK OF NIGERIA VS JACOB OLADELE AMAO & 2 ORS (2011) VOL. 201 LRCN** and submitted that the Plaintiffs in this case have failed to pass the laid down test by the Supreme Court to entitle them to the declaratory reliefs sought, hence the instant suit is frivolous and lacking in merit.

Furthermore, it was submitted that pursuant to section 6 (6)(b) of the 1999 Constitution of the Federal Republic of Nigeria as amended, a person is only allowed to approach a court of law for the determination of his civil rights and obligations. He added that, based on the argument of the Plaintiffs, their suit is meant to prevent the Defendants from establishing Ruga settlement, but that it is only fundamental rights enforcement procedure that allows a litigant to approach the court to prevent such violations and not matters bordering on establishment of government policy.

It is the contention of learned counsel that there is nothing before this court showing that there is an alleged breach or anticipated breach of the Plaintiffs' rights. Counsel referred to section 131 of the Evidence Act 2011 and the case of **NEXT INT. LTD VS. OBATOYINBO (2013) (Supra)** in urging the court to dismiss the Plaintiffs' suit.

In his reply on points of law to the 1st Defendant's Counsel's arguments, the Plaintiffs' counsel submitted that the claimants have placed before this court relevant facts bordering on establishment of Ruga settlement which have not been denied. Learned counsel submitted that where a party discharges the burden placed on him, the burden shifts to the other party to prove his case,

failing which judgment would be entered against him. In this regard, he referred to Section 133 (1) & (2) of the Evidence Act 2011.

It was contended that the Plaintiffs have discharged the burden of prove placed on them by proving that the Defendants had imposed the implementation of Ruga settlement or cattle colony on Benue State, without involving the State Government in the program and that the 1st Defendant has the duty to rebut or controvert such proof but having failed to do so, the Plaintiffs are entitled to the declaration sought. He referred to the case of **IGBEKE VS EMORDI (2010) 11 NWLR (Pt. 1204) 1 @ 49, paras C-D.**

On whether the Plaintiffs' case is based on speculation, learned counsel submitted that such argument is false and misleading. He stated that the Plaintiffs have adduced credible evidence before the court and the Defendants have the onus to adduce cogent evidence in rebuttal of the Plaintiffs' claim.

Learned senior counsel contended that it not correct that the issue of Ruga settlement cannot be determined at this stage because it has not occurred. He added that in so far as the constitutionality of the Ruga settlement policy is questioned, the court can inquire into the legality or otherwise of the policy in line with the rights of the Plaintiffs as vested by the Constitution, the Land Use Act and the Open Grazing Law of Benue State.

Furthermore, it was submitted that the case of **CENTRAL BANK OF NIGERIA VS AMAO (Supra)** is inapplicable to this suit as the claimants have shown that their rights, as guaranteed by the Constitution, the LAND USE ACT and the Open Grazing Laws of Benue State have been breached or stand in danger of being breached by the Defendants' Ruga settlement policy and proclamation which

reason necessitated the Plaintiffs being in court and that the 1st Defendant acknowledged same at paragraph 2.02 of his written address.

It is well settled that before a court can grant a declaratory reliefs sought by a Plaintiff, the party must plead and lead evidence to entitle him to the declaration sought as declaratory reliefs are not granted as a matter of course and on a platter of gold. They are only granted when credible evidence has been led by the person seeking the declaratory relief. A declaratory relief will be granted where the plaintiff is entitled to the relief in the fullest meaning of the word. Such declaratory relief is not granted even on admission by the defendant. However, there is nothing wrong in a plaintiff taking advantage of any evidence adduced by the defence which tends to establish the plaintiff's title. See **Anyanru vs. Mandilas Ltd (2007) 4 SCNJ 288, Chukwumah vs. S.P.D.C (Nig) Ltd (1993) LPELR-864 SC page 64 - 65, Matanmi&Ors vs. Dada &Anor (2013) LPELR-19929, Oguanuhu vs. Chiegboka (2013) 2 SCNJ 693 and Akinboni&Ors vs. Akintope&Ors (2016) LPELR-40184. SEE PAUL MBODAN V. SILAS N. DABAI (2019) LPELR-46739 (CA).**

A Plaintiff who seeks a declaratory relief relating to the Constitution, as in the instant case, must establish a constitutional right or interest in relation to which the declaration can be made, as courts will not decide hypothetical questions. The right or interest must be substantial, tangible and not vague or intangible. See **NJOKU V. JONATHAN & ORS. (2015) LPELR-24496 (CA).**

The Plaintiffs in this case have been able to show and the Defendants have admitted in their counter affidavits, that the Federal Government came out with a programme tagged **"Ruga Settlement"** to be established in states of the

Federation, although the programme is presently suspended. Although Exhibit A attached to the affidavit in support of the Originating Summons is a newspaper report and newspaper reports are not generally admissible as evidence of facts contained therein, see **NJOKU V. JONATHAN & ORS (supra)**, Exhibit B, is a letter asking the Executive Governor of the 2nd Plaintiff to reconsider the issue of the Ruga Settlement which had been on front burner since December 2018 at the office of the 2nd Defendant. This letter was written by a director in the office of the 2nd Defendant. The letter clearly shows that the Federal Government is still interested in having the Ruga Settlement in Benue State and would want the Governor to consider same. In the said letter, the State Director stated how he had discussed the issue of Ruga Settlement with a State Commissioner who told him that Benue State has Open Grazing law which suffices and that he was unsatisfied and still approached a permanent secretary and some other directors in a ministry in respect of the same programme. Still being unsatisfied, the State Director again approached the State Governor on the same issue. With all of these steps, one can say there is reasonable apprehension to warrant the seeking of the Court's coercive powers in respect of the rights of the 2nd Plaintiff as per the Ruga Settlement. More importantly, the 1st Defendant in Paragraph 4(j) of its counter affidavit is unequivocal in confirming the apprehension of the Plaintiffs by stating that it is within the powers of the Federal Government to acquire land for national interest. Furthermore, the 2nd and 3rd Defendants also confirmed the purported belief that the 3rd Defendant can take over land in Benue state and constitute same as reserved grazing, without recourse to the Benue State Government. See paragraph 14 and 17 of the counter affidavit of the 2nd and 3rd

Defendants. The apprehensions of the Plaintiffs are thus palpable and confirmed by the Defendants.

In the case of **CBN V. AMAO & ORS.**, referred to by the 1st Defendant's counsel in his written address, on the principles governing the grant of declaratory reliefs, one of the principles stated is that the Plaintiff must establish a right in relation to which the declaration can be made.

The Plaintiffs have been able to show their rights as contained in the provisions of the Constitution and the Land Use Act, which are likely to be breached, by the running of the Ruga Settlement in their State, without the consent of the 2nd Plaintiff. They have put before this court the evidence to support the reliefs they claim.

The 1st Defendant has said the case of the Plaintiffs is speculative in nature and that the Plaintiffs have not shown any right which has been breached for any remedy to be provided by this court. I disagree with the 1st Defendant in this regard. The Plaintiffs do not need to wait until their rights, as contained in the Constitution and Land Use Act, are breached before they come to court to seek appropriate redress. As earlier stated, in the case of **CBN V. Amao**, one of principles governing the grant of declaratory relief, as stated in the case, is the establishment of a right where there is a right in relation to which the declaration can be made. There are rights which the Plaintiffs have put before this court and which they are seeking to protect. I hold therefore that the case of the Plaintiffs is not speculative and they have rights which they are seeking to protect.

Furthermore, the same party who said the Plaintiff's case is speculative deposed to facts of the Ruga Settlement having being commenced in some states. Does

that not show some form of intention on the part of the Federal Government to further RUGA settlement?

On the part of the 2nd and 3rd Defendants, their counsel submitted that the plaintiffs are not entitled to any of the reliefs sought because they have failed to establish any wrong against the 2nd and 3rd Defendants.

It was further submitted that judicial review is purely at the discretion of the Court which would be exercised judiciously and judicially. That the Plaintiffs are not entitled to the reliefs sought by them as they are discretionary in nature and cannot be granted lightly. In this regard, counsel relied on the cases of **NATIONAL ASSEMBLY VS PRESIDENT FEDERAL REPUBLIC OF NIGERIA (2002-2003) 2 LLRN, p. 109; AGBAJE VS AGBOLUAJE (1970) 1 AAL & NLR 21 pg. 917 para. 30-40.**

Exhibit B attached to the Plaintiffs' affidavit is a letter from the office of the 2nd and 3rd Defendants. I have earlier referred to this exhibit and the resultant effect. I need not go over it again but just to hold that a case has been established against the Defendants.

In the overall analysis, I find and hold that the case of the Plaintiffs is meritorious

In respect of relief one which mentioned all the states of the federation, this court needed to confirm that this is not a case against the Federation, hence the call for an address. The interest of other States will be affected if the relief is granted as prayed. It is well settled that where the grant of a relief will affect the interest of other persons not parties to a suit, those persons are necessary parties and they must be heard or given the opportunity to be heard; otherwise, if they are not before the court, the court cannot grant the claim. In the instant case, a grant of

relief 1 of the Plaintiffs, as constituted, which mentioned other States of the federation, who were not made parties in this suit, particularly the states said to have embraced the Ruga Settlement and which have not been heard or given the opportunity of being heard in this case, would be against the law as we know it. The position of this court in respect of the reliefs sought by the Plaintiff would therefore be limited to Benue State.

In view of all stated above, I find and hold that by the combined reading of sections 4, 9(2), 44 (1) & (3), 315 (5) & (6) of The Constitution, sections 1, 2, 5, 6,& 28(1), (2) & (3) of the LUA and Sections 4, 5, 6, 7 & 19 (1) of the Benue State Open Grazing Prohibition and Establishment of Ranches Law, No. 21, Vol. 42, 2017 the Defendants have no power to arbitrarily or compulsorily acquire or takeover land comprised in the territory of Benue State for the purposes of establishing a Ruga Settlements or cattle colonies, contrary to the extant laws. It follows therefore, that this Honorable Court can validly make and do hereby make declarations and can validly grant and do hereby grant the reliefs sought by the Plaintiffs in the suit as follows:

1. On a proper interpretation and construction of section 44 (1) and (2) of the 1999 Constitution of the Federal Republic of Nigeria, and section 1 of the Land Use Act, 1978, the Federal Government's policy, plan or proclamation to establish Ruga Settlement or Cattle colonies in Benue State, without going through the appropriate steps as stated in this judgment, constitutes a gross violation of the constitution and an infringement of the right or interest over all the Plaintiffs' land comprising in the territory known as Benue State of Nigeria.

2. Having regard to sections 5, 6, 7 and 19 (1) of the Benue State Open Grazing Prohibition and Ranches Establishment Law, 2017 which provides for and regulates ranching, livestock rearing and grazing in Benue State, the Federal Government's plan, policy, decision and pronouncement to establish Ruga Settlements or cattle colonies for the purpose of regulating and controlling where herders will live, grow their cattle and produce milk in Benue State, is ultra vires and an encroachment or usurpation of the powers of the Benue State Government in that regard.
3. By the combined reading and construction of sections 4, 9(2), 315 (5)&(6) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and sections 1, 5, 6, 26, 28 and 49 of the Land Use Act, the Federal Government does not have power to make policy on land and administration by establishing grazing reserves, cow/cattle colonies, pilot ranches, Ruga settlement or by whatever name called, for use of private cattle breeders on lands in Benue State.
4. Upon a calm and dispassionate construction and interpretation of sections 9 (2), 56, 58 and 315 (5) and (6) of the Constitution of the Federal Republic of Nigeria, 1999, it is not competent for the Federal Government of Nigeria to formulate any policy relating to land use, planning and administration in Benue State, particularly any policy purporting to establish cattle grazing reserves, cow/cattle colonies, pilot ranches, Ruga Settlements or by whatever name called, without recourse to the special procedure for constitutional amendment.

5. The power of the National Assembly to legislate on the environment generally as conferred by Section 20 of the 1999 constitution, does not include the power to legislate on land use and administration in the various States of the Federation.
6. By virtue of section 1 of the Land Use Act, 1978 the 2nd and 3rd Defendants do not have the power to hold, administer, use or allocate any land belonging to the Benue State Government for the establishment of Ruga settlement or cattle colonies where herdsmen will live and grow their cattle and produce milk in Benue State.
7. Having regard to the provisions of section 44 (1) & (3) of the 1999 Constitution of the Federal Republic of Nigeria, (as amended) and the Benue State Anti – Open Grazing Law, N0. 21, Vol. 42, 2017, the 2nd and 3rd Defendants do not have the power to use or allocate land comprised in the territory of Benue State for purposes of rearing and grazing any livestock in Benue State contrary to the powers conferred on the Livestock Department of the Benue State Ministry of Agriculture and Natural Resources.
8. Benue State Government is entitled to an order of injunction restraining the Defendants by themselves, servants, agents, privies from administering, using or allocating any land belonging to the Benue State Government for Ruga settlements, cattle colonies or ranches without a ranching permit.
9. The policy of the Federal Government to establish Ruga Settlements or Cattle Colonies in Benue State cannot override the provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Land Use Act and the Open Grazing Prohibition Law of Benue State.

This Court therefore makes the following declarations:

1.A declaration that the Federal Government's policy, plan or proclamation to establish Ruga Settlements or Cattle colonies in Benue State is unwarranted, unlawful and unconstitutional.

2.A declaration that by virtue of Sections 5, 6, 7 and 19 (1) of the Benue State Open Grazing prohibition and Ranches Establishment Law 2017, coupled with the provisions of the Land Use Act, the Federal Government lacks the power to regulate ranching and rearing of livestock in Benue State.

3.A declaration that by virtue of Section 1 of the Land Use Act of 1978 all lands comprised in the territory of Benue State is vested in the Governor of Benue State.

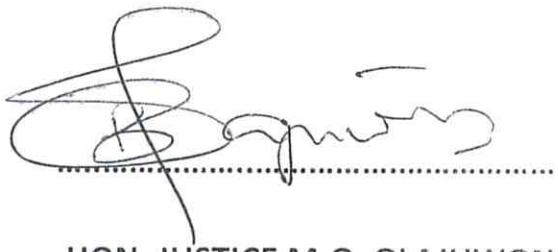
4.A declaration that by virtue of Section 44 (1) & (3) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), the Land Use Act 1978 and the provisions of the Open Grazing prohibition and Ranches Establishment Law 2017, the 2nd and 3rd Defendants have no power to use or allocate land comprised in the territory of Benue State for purposes of rearing and grazing any livestock in Benue State contrary to the powers conferred on the Livestock Department of the Benue State Ministry of Agriculture and Natural Resources.

5.A declaration that the 2nd and 3rd Defendants' purported plan to establish Ruga Settlements or cattle colonies for herdsmen in Benue State is unlawful, ultra vires, null and void.

This Honourable Court makes the following Orders:

1.An Order nullifying every action, steps or decisions taken to establish Ruga Settlements or cattle colonies for herdsmen in Benue State.

2.An Order of perpetual injunction restraining the Defendants, their agents, privies, servants or whomsoever from making any attempt to hold, administer, use or allocate land comprised in the territory of Benue State for Ruga settlements or cattle colonies or any other purpose contrary to the Laws as considered in this judgment.



HON. JUSTICE M.O. OLAJUWON

JUDGE

3RD DAY OF FEBRUARY, 2020

PARTIES

Parties absent

APPEARANCES

Okon N. Efut (SAN) with O. K Rugbere for the Plaintiffs

No legal representation for the 1st Defendant

H. B. Shettima for 2nd and 3rd Defendants