COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW & EQUITY DIVISION
2010/PUB/jrv/0026

IN THE MATTER OF the Notice of the Intended Acquisition dated the 11th day of January, A. D., 2010 and published in the Extraordinary Gazette dated the 15th day of January, A. D., 2010

AND IN THE MATTER OF the Notice of Possession dated the 17th day of February, A.D., 2010 and published in the Gazette dated the 23rd day of February, A. D., 2010

AND IN THE MATTER OF the Declaration of Vesting dated the 26th day of February, A.D., 2010 and published in the Gazette dated the 8th day of March, A. D., 2010

BETWEEN

FREDA BAKER

LULU BAKER

VIRGINIA ELIZABETH BAKER

Applicants

AND

THE MINISTER RESPONSIBLE FOR
ACQUISITION AND DISPOSITION OF LANDS

AND

THE ATTORNEY GENERAL

Respondents

Before: The Hon. Sir Michael Barnett, Chief Justice

Appearances: Mr. Brian Moree Q.C. and Mr. Howard Thompson for Applicants
Mr. Von Turner for Respondent

Hearing Date: 27th January, 2014

JUDGMENT

Barnett, C.J.:

1. This is an application for Judicial Review.

2. The issue raised is a simple one. It is whether the failure to serve a Notice or Declaration of Intended Acquisition under the Acquisition of Lands Act on the owners of land to be acquired makes the Declaration of Vesting void.

3. The Applicants were the owners of property situated in the area of Pinewood Gardens and Bamboo Town in New Providence. In 2005, the Government constructed a park on the Applicants' property. The Applicants were not consulted about the development of the park on their land.

5. By letter dated the 13th November, 2009 the Applicants by way of their attorney wrote to the Minister of State responsible for Lands and Local Government advising them that the Government was trespassing on their land. The letter was in the following terms:

> **Dear Minister,**
>
> **RE: TEN (10) ACRES ORIGINALLY GRANTED TO SEYMOUR RAYHAW BEING LOT NUMBER THIRTY-ONE (NO. 31) IN THE PLAN OF ALLOTMENTS LAID OUT AT BAMBOO TOWN ON THE SOUTH SIDE OF THE ISLAND OF NEW PROVIDENCE BEING ONE OF THE ISLANDS OF THE COMMONWEALTH OF THE BAHAMAS ('THE PROPERTY')**
>
> **We have been retained by Ms. Freda Baker, Ms. Lulu Baker and Ms. Virginia Baker ("the Baker Sisters") who are the fee simple owners of the Property. The Baker Sisters acquired the Property on the 11th July, 1961 by way of a conveyance from Ms. Priscilla Fernander which is recorded in the Registry of Records at Volume 453 at Pates 303 to 305.**
>
> **At the insistence of our clients, the Property was recently surveyed by Mr. Roland John and appraised by Mr. Michael Lightbourne. For**

your information, we enclose herewith copies of the survey and appraisal. As is evidenced by the survey, a baseball diamond with surrounding buildings ("the Park") has been constructed on the Property. We are instructed that Kerzner International donated the funds to construct the Park under the supervision of the Government of the Bahamas. Our clients were not consulted with regard to the Park and did not give their permission for any part of the Property to be used for the Park or for any other community project. Accordingly, that part of the Park which is on the Property constitutes an unauthorized and unlawful encroachment of land owned by the Baker Sisters.

We are aware that Lot No. 32, which is located directly east of the Property was acquired by the Government under the provisions of The Acquisition of Land Act for the purpose of developing a public park. In these circumstances, it may be the case that the intention was to locate the Park on Lot 32 but that it was inadvertently constructed on the Property. In any event, it is clear that the present location of the Park, for whatever reason, amounts to an improper and unlawful use of the Property. It is axiomatic that this problem must be expeditiously resolved and hopefully we will be able to find a solution, which is fair and just to the Baker Sisters and causes minimal disruption to the residents of Pinewood Gardens.

We contacted your office in August of this year to discuss this matter as the Property is situated within your constituency and any action would directly affect your constituents and their use of the Park. In order to amicably resolve this matter without resorting to court proceedings our clients would be prepared to consider selling the Property for a net price of B$1,230,000.00. You will note that this price is consistent with the appraisal by Mr. Lightbourne. Alternatively, the Park would have to be relocated to ensure that it does not encroach onto the Property.

We look forward to hearing from you within the next seven (7) working days in response to the matters set out herein.

Yours sincerely

6. By letter dated the 14th December, 2009 the Minister responded to the Applicants' attorney in the following terms:

Dear Sir:

Re: Ten (10) acres originally granted to Seymour Rayhaw being lot number Thirty-One (31) In the Plan of allotments out at Bamboo Town on the South side of the Island of new Providence being one of the Islands of the Commonwealth of the Bahamas ("the Property")

Thank you for your letter of 13 November, 2009 addressed to me in respect of the above referenced matter.

I am constrained to address some of the comments made in the second paragraph for your letter particularly as it relates to the history of the development of this park.
You would be aware that park development on the land claimed by your client commenced with much publicity under the previous administration (2002 to 2007) and as you so currently stated involved Kerzner International devoting substantial funding thereto. You would ask be aware that the previous Member of Parliament of Pinewood, Senator Alison Maynard Gibson was actively involved in its development.

I would be pleased if you would be kind enough to share any previous correspondence, which may have exchanged between your client and the former Member of Parliament and/or the minister responsible for Sports under the previous Administration on the use and/or sale of the land for the park.

You may also wish to advise whether or not you were the Attorney of record for the Baker sisters when the Park development commenced during the period referred to in paragraph 3.

I also wish to advise that going forward, that it is Government's intention to ensure that the expanded park, to be developed at this location comes entirely within the public domain.

I further wish to advise of Government's intention to shortly commence acquisition of the entire Seymour Rayhaw Tract (Lot#31) for the expansion of the park and in this regard note the willingness of your client to consider sale or the property to Government and the purchase price sought.

We will revert to you on the price issue once in receipt of advice from the Office of the Attorney on the title documents, which you kindly provided

Sincerely,

7. The Applicants' attorney replied by letter 29th December, 2009:

Dear Minister

<u>Re: Ten (10) acres originally granted to Seymour Rayhaw being lot number Thirty-One (31) In the Plan of allotments out at Bamboo Town on the South side of the Island of New Providence being one of the Islands of the Commonwealth of the Bahamas</u>

I am in receipt of your letter of the 14th December, 2009. I must confess that I do not see the relevance of either of the matters set out in the fourth and fifth paragraphs of your letter. I am not aware of any previous correspondence between our clients and the former Member of Parliament for Pinewood and frankly, I see no reason to pursue that issue. Similarly, the date of my initial instructions in this matter is utterly irrelevant to any material issue. However, as a courtesy to you I

can advise you that I was not representing the Baker Sisters on this issue when the Government commenced the development of the Park.

I note your comments with regard to the property, although I make no further comment on this matter at this time.

I hope we can amicably resolve this issue and in that regard, I look forward to hearing further from you after you have received the necessary advice from the office of the Attorney General. I trust that you will be in a position to substantively respond to my earlier letter by the middle of January, 2010.

Yours sincerely,

8. A Declaration of Intended Acquisition dated the 11th January, 2010 was published in the Gazette on the 15th January, 2010. On the 26th February, 2010 a Declaration of Vesting was made and published in the Gazette on the 8th March, 2010.

9. The Applicants challenge the Declaration of Vesting on the ground that the Defendants did not comply with the provision of the Acquisition of Lands Act and in particular the requirements of section 6 (4) of that Act. In their written submissions the Respondent's concede that "pursuant to section 6 (4) of the aforementioned Act, the Department of Lands and Surveys failed to serve the Baker Sisters personally regarding the said acquisition process". There is no evidence that the Notice was even posted on any part of the land.

10. However, there is exhibited to an Affidavit by Audley Greaves, a letter dated 20th January, 2010 in the following terms:

Mckinney, Bancroft & Hughes
Counsel & Attorneys-at-Law
4 George Street
P.O. Box N-3937
Nassau, Bahamas

Attention: Atty. Brian Moree, QC

Dear Sir:

Re: Compulsory Acquisition, Ten (10) Acres

being Lot #31, Bamboo Town , New Providence

Further to your letter of 29 December, 2009 addressed to the Honourable Byran Woodside, Minister of State for Lands & Local Government, please find enclosed for information an executed copy of the Declaration of Intended Acquisition which was published in The Nassau Guardian of 18 January, 2010 and the Extraordinary Gazette of 15 January, 2010.

Please be advised that as previously communicated, we will revert with a compensation offer once in receipt of advice from Office of the Attorney General on the Title Documents.

Sincerely,
Audley Greaves
(for) Permanent Secretary

11. The Applicants' attorneys deny that they ever received that letter. The Respondents have not adduced any evidence that the letter was in fact delivered to the Applicants attorneys. Mr. Greaves simply says that:

> *"That a letter dated 20th January 2010 was issued from my office addressed to Mr. Brian Moree QC of Mckinney Bancroft and Hughes, Attorney for the Applicants. The same was delivered to the office of McKinney Bancroft and Hughes, the same addressed to Mr. Brain Moree, QC. Pursuant to office procedure at the time, the messenger would have either mailed the said letter via post, or hand delivered the same to the said office. The customary practice would be to deliver as indicated above. The use of a service sheet as unknown to the office, and at the time there was no contemplation of formal legal action."*

12. It is to be noted, that on the 26th February, 2010 Mr. Greaves sent another letter to the Applicants attorneys. The letter was identical to the earlier letter of the 20th January, 2010. That letter of the 26th February was in fact received by the Applicants' attorneys on the 5th March, 2010 which of course was after the date of the Vesting Deed. This is evidenced by the letter from The Applicants' attorneys of the 28th April, 2010 which said:

28th April, 2010

Mr. Audley Greaves
OFFICE OF THE PRIME MINISTER

Ministry of Lands and Local Government
Manx Building, West Bay Street
Nassau,
The Bahamas

Dear Sir,

Re: Ten (10) acres originally granted to Seymour Rayhaw being lot Number Thirty-One (No. 31) in the Plan if Allotments laid out at Bamboo Town on the South Side of the Island of New Providence being one of the Islands of the Commonwealth of The Bahamas ("the Property")

We refer to your letter dated the 26th February, 2010 together with the enclosed Declaration of Intended Acquisition ("the Declaration").

Notwithstanding the date of that letter, we did not receive it until the 5th March, 2010. It is at least interesting that on the same date which appears on your above-mentioned letter (i.e. 26th February, 2010) we wrote to the Minister of State for Lands and Local Government informing him that the Government had not complied with the provisions of the Acquisition of Land Act ("the Act") when purporting to acquire the Property.

We note for the record that a copy of the Declaration was delivered to our firm almost two (2) months after it was issued and some three (3) weeks after the Notice of Possession was issued.

We have still not been contacted by anyone in the office of the Prime Minister for the meeting, which you foreshadowed in your letter dated the 1st March, 2010. Accordingly, our clients will now commence the necessary court proceedings without further notice to you.

Yours sincerely,

13. Section 6 of the Act provides:

> **6. (1) Whenever it appears to the Minister that any particular land is needed for a public purpose a notice to that effect signed by the promoters shall be published in the *Gazette* and posted on some conspicuous part of such land, but no such notice shall be published or posted unless the compensation to be paid for such land is to be paid out of public revenue or out of the funds of some statutory corporation.**
> **(2) Such notice shall state the following particulars —**
> > **(a) the district in which the land is situate;**
> > **(b) the particular purpose for which it is required;**
> > **(c) its approximate area and all other particulars necessary for identifying it, and if a plan has been made of the land, the place where and time when such plan may be inspected;**
> > **(d) an intimation that all persons interested in the land shall, within thirty days from the publication of the notice or the posting of the same, state in writing to the promoters the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests.**

(3) Subject to a right of appeal to the Supreme Court as to the legality of the proposed acquisition which shall be filed within thirty days of the publication of the notice or the posting of the same, the notice shall be conclusive evidence that the land is needed for a public purpose, and is selected land within the meaning and for the purposes of this Act.
(4) The promoters shall also cause the notice or a copy thereof to be served upon the occupier of such land, on all mortgagees, and on all such other persons as may be known to them to be interested therein: Provided that, if such mortgagee or person so interested shall be absent from The Bahamas and his address be known, notice may be sent to him by registered airmail post.

14. On the 11th January 2010, when the Declaration of Intended Acquisition was made, the Applicants were clearly *"persons known to the Minister as being interested therein"*. The correspondence of November and December recited earlier makes this clear. Indeed, it was perhaps because of that letter that the Declaration was made.

15. The onus is on the Respondent to comply with section 6(4) and to prove that Notice of the Declaration of Intended Acquisition was served as required.

16. I am not satisfied that the letter of the 20th January, 2010 was in fact sent by the Respondent to the Applicants' attorney. Firstly, the Respondent has been unable to adduce any evidence that it was in fact served. Secondly, if the letter of the 20th January, 2010 was in fact sent there would have been no reason to send the identical letter on the 26th February, 2010. Thirdly, the record reflects that the Applicants responded to each letter sent by the Respondent and it is more likely than not that if such a letter was sent on the 20th January, 2010, given its importance, the Applicants attorneys would have immediately responded to it. I find as a fact that neither the Applicants nor their attorneys were served with a Notice of Intended Acquisition prior to the Declaration of Vesting. The Respondent did not comply with the provision of section 6(4).

17. I now consider the effect of that non-compliance. The Applicants submit that the Acquisition of Land Act being a penal or confiscatory legislation requires strict compliance. They rely on the observation of Allen P in **Attorney General of The Bahamas v Bethel No 11 of 2010** where at paragraph 29 she said:

> *"Clearly, the interference with property rights is a threat to the fundamental right of a person not to be deprived of his property without prompt and adequate compensation. When a promoter of a public undertaking therefore has authority from parliament to interfere with private property on certain terms, he must strictly comply with the letter of enactment".*

Although the decision of the Court of Appeal was revered by the Privy Council, there is nothing in that advice which detracts from that observation.

18. A similar issue was considered by the Supreme Court of Nigeria in **Attorney General of Bendel State et al v Aideyan [1989] 9 NILR 29**. In that case, the Government sought to acquire property under that country's compulsory acquisition statute. The relevant statutory provision was in the following terms:

> *5. If the appropriate authority resolved that any lands required for a public purpose of the Bendel State shall be compulsorily acquired, the Permanent Secretary shall give notice to the persons interested or claiming to be interested in such lands or to the persons entitled by this enactment to sell or convey the same or to such of them as shall after reasonable inquiry be known to him (which notice may be as in Form A in the Schedule or to the like effect).*
>
> *9 (1) Every notice under sections 5 and 8 shall either be served personally on the persons to be served or left at their last usual place of abode or business, if any such place can after reasonable inquiry be found, and in case such parties shall be absent from Nigeria or if such parties or their last usual place of abode or business*

after reasonable inquiry cannot be found, such notice shall be left with the occupier of such lands, or if there be no such occupier shall be affixed upon some conspicuous part of such lands. ....

9 (3) All notice served under the provisions of this law be published once at least in the Bendel State Gazette, and at least two national daily newspapers circulating in the area.

19. The issue before that Court was framed as follows:

Then to the second major issue: assuming, but not agreeing, that the property in question could have been acquired compulsorily, was it acquired as provided by law? The gist of the complaint of the Respondent in this respect is the Court of trial was that no personal or any due notice as prescribed by law was served on him before the Appellants wrested the possession of his property from him. The case of the Appellants is that they sent a registered letter to him and then published notices of the acquisition in the Observer newspaper and the Government Gazette. Nothing was served before the publications. The Respondent denied receipt of the letter or seeing any notice of the acquisition. The learned trial Judge found that the registered letter was returned unclaimed and that no certificate of title was tendered. The courts below held that there was no proper notice of the acquisition according to law.

Before us, the learned Counsel for the appellants has submitted:-

(i) that formalities of service of notice should not be allowed to defeat justice and public good;

(ii) that the decisive factor should be whether the acquisition was for a public purpose;

(iii) that publication in the Gazette was notice to the whole world;

(iv) that issue be made of service of notice only where a claimant is refused compensation on the ground that his claim is statute - barred; and

(v) that service of notice is a mere technicality and that there is now, relying on English authorities, a movement

away from using such technicalities to defeat public good.

She cited the case of Munich v. Godstime R.D.C. (1966) 1 W.L.R. 427. at p.435 where Denning, L.J. stated that the courts now move away from the rigid adherence to technicalities as advocated and applied in East Riding Council V. Park Estate (Bridlington) Ltd. (1957) A.C. 223, where an insistence on compliance will cause a defeat of public good. The Respondent has not been prejudiced by the mere fact that notice of the intention to acquire his property has not been personally served on him: In re Bowman (1932)2K.B.621. She therefore sought to distinguish the case of Alhaji Bello V. Diocesan Synod of Lagos & Ors. (1973)3 S.C. 103.

In sum, learned Senior Advocate for the Respondent submitted that on the facts summarized by me above, the Respondent was not served with any notice of acquisition. This made the alleged acquisition invalid, null and void.

20. The Court then said:

The first question I must ask myself on this issue is this: was a proper notice of intention to acquire the Respondent's developed property served on him. The answer to the question turns on the intention of the provisions in sections 5 and 9 of the Public Lands Acquisition Law (Cap. 136) Laws of the Bendel State, 1976 as applied to the facts of this case.

21. After setting out the statutory provisions set out above the Court said:

It appears to me that those two sections provide:

(i) that before the Respondent's property could be acquired compulsorily for public purpose, notice of intention so to do must have been served upon him or the occupier or a person interested or upon such persons as were entitled to sell or convey the land, failing both affixed conspicuously on the property;

(ii) that the notice must be by personal service or by being left at his last known place of abode or business;

(iii) *the notices served on him must be published once in the Bendel State Gazette, and at least two national daily newspapers circulating in Bendel State.*

It is therefore the clear intention of the law that publication of the notice served on him in the Gazette shall after personal service of that or in the manner stated. Much as in certain other situations publication in the Gazette constitutes notice to the whole world, the combined effect of sections 5 and 9 of the Bendel State Public Lands Acquisition Law set out above is that constructive notice is not enough. The law insists upon actual notice of intention to acquire. So, anything short of that amounts to non-compliance with the express provisions of the law. I therefore, find no difficulty in agreeing with the lower courts that, even if I assume that the property in dispute could have been validly acquired compulsorily by the appellants, it was, in any event, not acquired according to law.

The other submissions of learned Counsel for the appellants raise issues of fundamental nature. She has submitted that no issue should be made of the mode of service in so far as the acquisition was for public purposes because that would cause a defeat of justice and public good. In any event, it is a mere technicality and there is a movement away therefrom in Britain, she submitted.

In my judgment, these submissions, particularly the last, seem to lose sight of the fundamental intention and reason for the service of the notice as well as the historical and systemic differences between the concepts of fair hearing in Nigeria and in Britain. In the first place, it is an important canon of construction that provisions in any stature which were designed to protect a section of the public must be constructed with that purpose in view. Sections 5 and 9 of the Public Lands Acquisition Law of Bendel State were designed to protect owners of land to be compulsorily acquired by Government, and not the other way round. Such owners, not the Government, deserve protection. It must also be borne in mind that acquiring a person's property compulsorily is prima facie a breach of his entrenched fundamental right to his property. (See section 31 of the 1963 Constitution and section 40 of the 1979 Constitution). As his right to his property is therefore, his fundamental right, he is entitled to make representations against such a compulsory acquisition, or claim compensation therefore, or appeal or petition against it. So he is entitled to a protection of that right to his property by exercising his right to fair hearing. It is only by exercising it that justice can be assured in the matter: this clearly implies that he can correct or controvert any ground put forward for the acquisition or raise any

irregularities in the acquisition procedure. See on this De Verteuli v. Knaggs (1918) A.C. 557, at p.560; Jones V. The Commonwealth (1963)109 C.L.R. 475, at 483; Obikoya & Sons Ltd. v. Governor of Lagos State (1987)1 N.W.L.R. (Pt. 50) 385, at pp 403-404. As no one can defend the unknown, it is only by service of a true and proper notice in the manner prescribed by law that the expectations of the owner's entrenchment constitutional rights in the matter could be guaranteed and satisfied. Our law reports are replete with cases in which some of such compulsory acquisitions for public purposes" turned out to be mere bogus smokescreens for malefaction. Reference may be made to the following cases, namely:

1. ***Chief Commissioner, Eastern Provinces V. S.N. Ononye Chief Commissioner, Eastern Provinces V. S.N. Ononye (1944)17 N.L.R.142.***

2. ***Chief D.O. Ereka V. Military Governor of Mid-Western State of Nigeria & Ors. (1974)1 ALL N.L.R. (Pt.2) 163.***

3. ***Akande v. Kelere(1966) Akande v. Kelere(1966) N.N.L.R. 113.***

4. ***Kodilnye v. Anatogu (1955)1 Kodilnye v. Anatogu (1955)1 W.L.R. 231 and***

5. ***Ajao & Anor. V. Sole Administrator for Ibadan City Council (1971)1 N.M.L.R. 74***

From the result of these cases it appears to me that the submission of the learned Counsel for the Appellants that personal service of notice upon the owner or occupier of land to be acquired compulsorily is a mere technicality must be rejected as a misconception. Rather, it is a rule of substance, a breach of which is capable of rendering nugatory both a person's inviolable fundamental right to his property and his cherished fundamental right to fair hearing, each of which was guaranteed by the 1963 Constitution under which the purported acquisition was done. A situation in which an owner of property, such as the Respondent, is expected to leaf through the pages of every news-paper and the official Gazette to know when his plot of land on which he had invested several hundreds of thousands of Naira to develop has been compulsorily acquired by the same Government which had granted the least of the plot to him must be seen as alien to the letters and spirit of the system of rule of law which we have opted to operate.

It is interesting to note that before the opinion of Denning L.J. in Munich v. Godstime R.D. C. (supra) which the learned Counsel for the appellants is relying upon was expressed. several cases

decided in that same jurisdiction were in accord with the view I have expressed above. Reference may be made to the following among others:

1. *Cooper v. Wandersworth Board of Works (1863) 14 C.B.N.S. 180*

2. *Hopkins v. Smethwick Local Board of Health (1890) 24 Q.L.B. 712, at pp.714 -715.*

3. *Smith v. The Queen (1878) L.R. 3 App. Cas. 614 (P.C.) Queen (1878) L.R. 3 App. Cas. 614 (P.C.)*

4. *East Riding Country v. Park Estate (Bridlington)Ltd. (1957) A.C. 223. Park Estate (Bridlington)Ltd. (1957) A.C. 223.*

This brings me to the contention of the learned Counsel for the Appellants that the law has now changed (in England); that the Courts no longer act on technicalities; and that we should adopt that trend and pronounce the notice served on the Respondent in this case as valid in the interest of public good.

My first observation is that the opinion of Denning. L.J., in Munich's case (supra) does not go as far as learned Counsel for the Appellants has put it. As explained in two subsequent cases namely:

1. *Stevens v. London Borough of Bromley (1972)1 All E.R. 712. at pp. 720,721. and 723; and*
2. *Stevens v. London Borough of Bromley (1971) 2 All L . R. 331. at pp. 338 -340,*

Those statements of Denning L .J. , were merely obiter. Even the other eminent Justices who participated in the case, namely Danckwerts and Salmon, L.J.J did not go so far. Moreover. the decision in question, even as far as it goes, relates to whether or not caravan dwellers were occupiers who must be served with notices. It never decided as the submission of the learned Counsel for the appellants postulates that there can be a valid compulsory acquisition of land or interest in land without proper service of a notice on the owner or occupier.

The opinion of Denning, L.J. in Munick's Case (supra) has strikingly not, as far as I can find, been followed in any subsequent case.

Assuming, but not agreeing, that there has been a change of the law in England, that is no authority for saying that the law on the point in Nigeria must change. The two systems are different. Fair hearing and right to property in Britain are developments of the common law. They are, therefore, like any common law rule, more amenable to mutation and change by court decisions. In Nigeria, they are entrenched, secured, and guaranteed by the Constitution. Subject only to the interpretative jurisdictions of the courts, ultimately the Supreme Court, they cannot be changed unless the Constitution is amended. In other words, they cannot be blown away. As it were, by a side wind. I therefore, reject the submission that the law as to service of notice on an owner or occupier of land in Britain before its acquisition has changed; and that, assuming that there has been such a change it can affect the law in Nigeria. I believe that the law is still as stated in the case of Bello v. Diocesan Synod of Lagos & Ors. (1973)1 All N.L.R. (Pt.1) 247, at p.268; and reiterated in Peenok Investments Ltd. v. Hotel Presidential Limited (1983)4 N.C.L.R. 122. at p.165. It is that such expropriatory statutes which encroach on a person's proprietary rights must be construed fortissime contra preferences. that is strictly against the acquiring authority but sympathetically in favour of the citizen whose property rights are being deprived. As against the acquiring authority there must be strict adherence to formalities prescribed for the acquisition. See on this: Obikoya & Sons Ltd. v. Governor Of Lagos State (1987) 1 N.W.L.R. (Pt.50) 385. at p. 398. Lagos State Development & Property Corporation & Ors v. Foreign Finance Corp. (1987)1 N.W.L.R. (Pt.50) 413; also Bello's Case (supra). In the instant case. I am of the view that failure to serve the notice of intention to acquire the Respondent's property upon him personally as contemplated by law before the notice so served was published in the Gazette and the Observer newspaper amounts to a substantial non-compliance with the law. This renders the purported acquisition a nullity, and the appellants' occupation of the land a trespass. (my emphasis)

22. With respect, I agree with the analysis of the Supreme Court of Nigeria. That analysis is equally applicable to the provisions of the Acquisition of Lands Act.

23. Section 6(4) clearly imposes an obligation on the promoter to serve the Notice of Intended Acquisition on occupiers and any person known to be interested in the property proposed to be acquired. This is an obligation

imposed by Parliament in addition to the requirement contained in section 6(1) that Notice of Declaration must be published in the Gazette and posted on some conspicuous part of the land.

24. The provision of section 6(4) is mandatory and in my judgment, if it is not complied with, any Declaration of Vesting is void and of no effect.

25. The Respondents assert that section 6(4) does not apply to owners of vacant land. As attractive as the argument is that the word "occupiers" in section 6(4) means persons in actual occupation as opposed to owners of vacant land who may or may not be known to the promoter, the Applicants clearly fall within the rubric of "persons known to be interested" in the property and fall within section 6(4).

26. Counsel for the Respondent then asserted that the Court should find that section 6(4) was complied with because the Applicants' attorney had actual knowledge of the Respondents intention to compulsorily acquire the property. With respect, there is nothing in the evidence to suggest that the Applicants' attorney had any actual knowledge of the Notice of Intended Acquisition prior to the Declaration of Vesting dated 26th February, 2010. The Applicants and their Counsel had actual knowledge that the Minister was intending to start the process of compulsory acquisition by virtue of the letter of 14th December, 2009. That however, is a far cry from having actual knowledge of the Notice of Intended Acquisition.

27. Moreover, even if they had had actual knowledge of the Notice I am not persuaded that it would have relieved the promoter of its obligation under section 6(4) to "cause the notice or a copy thereof to be served" on the Applicants. This point was made by Edoo J in **Ramlogan v The Mayor, Aldermen and Burgesses of San Fernando [1986] LRC (Const) 377**. In that case, the property belonging to the Applicant was demolished

pursuant to a Public Health Ordinance. The ordinance required that before such demolition could take place, the owner had to be served a Notice. Notice was in fact served on the owner's husband and not her on the mistaken belief that it was the husband and not the wife that was the owner of the property. The Court held that the demolition was improper because (inter alia) the provision requiring service of the Notice on the owner was not complied with even though the owner clearly knew of its existence because it was served on her husband.

28. Finally, the Respondent submits that this application is barred by section 6(3) of the Act. That section provides:

> **(3) Subject to a right of appeal to the Supreme Court as to the legality of the proposed acquisition which shall be filed within thirty days of the publication of the notice or the posting of the same, the notice shall be conclusive evidence that the land is needed for a public purpose, and is selected land within the meaning and for the purposes of this Act.**

29. That subsection is not relevant. It simply limits the time upon which a person may challenge a proposed acquisition on the ground that it is not being done for a public purpose. The failure to exercise that right within 30 days simply confirms that the property is being acquired for a public purpose within the meaning of the statute. It has nothing to do with a challenge to the validity of a Declaration on the grounds that the requirements of the Act have not been complied with by the promoter. This is made clear by the decision of the Privy Council in **Bethel et al v Attorney General of The Commonwealth of The Bahamas [2013] UKPC 31** where the Privy Council considered the scope of section 6(3) of the Act. In its Advice to Her Majesty it said at paragraph 19:

> **"On the other hand such clauses are to be construed strictly. The Board would therefore reject Mr. Stevens' submission for the government that the bar extends to any challenge to the legality of the acquisition, not simply to a challenge to the purpose. It is true that the first part of section 6(3) provides for a right of appeal to the Supreme Court as to the "legality of the proposed acquisition" within 30 days, but that in the Board's view is to be treated as of no more than procedural significance. It is only in respect of the issue of public purpose that the notice becomes conclusive after 30 days."**

30. In my judgment, the Applicants are entitled to a Declaration that the Vesting Deed dated the 26th February, 2010 is null and void.

31. The Applicants have asked for an inquiry as to damages. I will hear submissions on the question of damages.

Dated this 12th day of March, A. D., 2014

Michael L. Barnett
Chief Justice