Dynamic Multidisciplinary Journal of Nigeria: Delta State University Library, Abraka, Delta State, Nigeria
Email: Dmjon2080@Gmail.Com, ISSN: 2955-0564, Articles Are Indexed in Google Scholar
Volume 6, Number 3, May, 2024

THE ROLE OF PLANNING LAW IN ENVIRONMENTAL PROTECTION IN NIGERIA

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Abstract

Nations of the world are facing a lot of new and challenging environmental problems and Nigeria is not an exception. The importance of planning law as a tool for environmental protection in Nigeria cannot be overemphasized. The paper becomes imperative because little or no attention is devoted to the versatility of planning law as a tool, not only for development control or for stimulating and promoting regional industrialization and economic growth, but also for creating amenities and environmental protection. The paper aims to examine the various problems and challenges to sustainable environmental protection in Nigeria. To achieve this aim, the researcher adopted the doctrinal research method. This method involves the retrieval of all source materials, which deal with the subject under discussion. The paper finds that despite the various laws on planning, their impact as an instrument for environmental protection has not been felt in Nigeria. The paper recommends that there is a need for a National Physical Development Plan to co-ordinate physical activities that cut across Nigeria. The contribution of this paper is in the area of sensitization of planners and environmentalists to the imperativeness of the relevant laws to the enthronement of a sustainable development that is at once progressive and developed.

Keywords: Environmental Problems, Planning Law, Protection, Economic Growth, Sustainable Development.

1. Introduction

Nigeria is one of the 7th most populous countries in the world.[1] Infact, Nigeria is the most urbanized and largest population in Africa.[2] The population according to World Bank is estimated at 223, 804, 632 in the year 2023.[3] All over the world, developing countries like Nigeria, have a lot of challenging environmental problems which must be solved. This necessitated for planning law for a positive impact on sustainable environmental protection in Nigeria. The aim of this paper therefore is to analyze the role of planning laws in environmental protection and the relationship between planning law and environmental protection, together with the extent to which the former has influenced the latter in the area of sustainable environmental development in Nigeria.

2. The Concept of Planning Law and Environment

Planning Law is the basic source of the land use control process. Planning Law may be described as a mechanism for the imposition of land use "restrictions" and use "proposals" regulating the exploitation of Land. Planning Law is, therefore, concerned with two distinct elements "Planning" and "Planning Control". Planning Control is negative and consists of being able to prevent changes on land, which are for some reason thought to be objectionable. Planning is positive and consists of formulation of projects for the improvement of land from the stand point of amenity, though not necessarily of profit. [4] Statutorily Planning Law is one branch of law where there are no English statutes of general application in force in the country. This is due to the fact that the first ever English statute on the subject, was post-1900. Thus, it could not have satisfied the reception stipulation that applicable statutes of general application in our country would have been in force in England on or before the 1st of January 1900. The Nigerian Town and Country Planning Ordinance of 1946 makes up the legislative basis for all laws and regulations governing urban and regional planning up to 1992 when the Nigerian Urban and Regional Planning Act 1992 was promulgated.[5]

Apart from the statutory provisions, we also have the common laws and judicial decisions as part of the Country's laws on Town Planning. In the context of this paper, we shall examine the word "environment" which can be described as the totality of our surroundings, because of its connection with planning law. The Black's Law Dictionary defines environment as:

> *...the totality of physical, economic, cultural, aesthetic and social circumstances and factor which surround and affect the desirability and value of property and which also affect the quality of people's lives. The surrounding condition, influence or force, which influence or modify.* [6]

The environment has also been defined as "a description of physical matter being air, the sea, the land, natural resources, flora and fauna, and the cultural heritage (being items of archaeological, historical, artistic and scientific interest").[7] According to the United States Environmental Protection Agency,[8] environment is defined as “the sum total of external conditions affecting life, development and the survival of an organism. Albert Einstein once said “the environment is everything that isn’t me.[9]

Conceptually, environmental protection does not mean completely protecting the environment from exploitation by man. Rather Environmental Protection is concerned with the careful use of natural resources without destroying them but still sustaining them for future use notwithstanding the various demands made upon them by the growing world population.

3. The Employment of Zoning in a Planning Scheme or Master Plan

A very significant policy thrust of Planning Law is to ascertain the ever-increasing pressure on the misuse of land. The pressure is compounded by the competitive and sometimes conflicting uses to which land is put, particularly in the urban socio-economic system. If this misuse of land is not reconciled and diffused, it could lead to environmental pollution and hazards which are inherent in the chaotic use of land. In the recognition of danger, the Town and Country Planning Laws have adopted among other concepts, the zoning approach. The principle of zoning is employed in every "Planning Scheme" or "Master Plan". This method however attempts a rational apportionment of land comprised of a "Planning Scheme" or "Master Plan" among the various competing private and public uses. These include social,

economic, commercial, amenity, convenience, recreational, medical, educational, transformational, housing, agricultural, regions and industrial uses. The concept of zoning is an attempt to separate non-conforming or contradictory socio-economic activities spatially from other land uses and put conforming uses together in a mixed-use zone. As provided in the Nigerian Urban and Regional Planning Law (NURPL), [10] the Delta State Urban and Regional Planning Law of 2008, is the legislation that governs planning and development in Delta State, Nigeria.[11] This law established the Delta State Planning Authority, which is responsible for developing and implementing a master plan for the state. The law also set out specific rules and regulations for planning and development, including zoning laws, building codes and land use regulations. It is worth noting that this law is just one part of the planning and development frame work in Delta State. There are also Local Government plans and other laws that play the role of planning laws in Delta State.

For example, there are in the Lagos metropolis the Commercial Business District of Marina, Broad Street, Nnamdi Azikwe Street of Lagos Island, the Residential/Low Rise Commercial Zone of Isaac John Street, Awolowo Street in the Ikeja G.R.A. The Embassy Zone of the Victoria Island and the Industrial Zones of Surulere, Iganmu, Mojoda and Ikeja, just to mention a few. The Town and Country Planning (Building Plan) Regulations, 1986, of Lagos State has further classified residential zones into low-density, medium-density and high-density residential zones.[12] By eliminating non-conforming uses, the planning function of each zone is to preserve the neighbourhood as classified. In the case of *Ademola v. Rutili & Ors.*, [13] for instance, the defendant attempted to build a school on land zoned to be an "open" space and the plaintiff successfully restrained the development on the ground that it contravened the approved Victoria Island Scheme.
It must, however, be noted that there exists a serious environmental implication in the zoning approach. A non-conforming user may not only be in contravention but may constitute an actionable environmental nuisance.

Thus in *Abiola v. Ijoma*[14] both the plaintiff and the defendant were Occupiers of two adjoining properties at No. 7 and 8 Shofidiya Close, Surulere, an area zoned for residential purposes only. The defendant kept a poultry at the back of his house which made excessive noise and issued odious smell with rats and flies escaping from the poultry to the annoyance of the plaintiff. Dosumu J, observed that the particular part of Surulere concerned is a zoned residential area only, and held that the plaintiff was not fanciful in his complaints of excessive noise and smells which an ordinary person living in that part of Surulere could be called upon to bear. From this case it could be seen that the device of zoning had not only helped to eliminate the non-conforming use, but also abated the environmental nuisance of smells.

Zoning releases the environment of pollution and disease conditions which are inherent in the unrestrained exercise of absolute right of property. As Holdsworth[15] once remarked, "at no time can the State be wholly indifferent to the use which the owners make of their property". Pointing out the danger in the theory of absolute right of private property, Morris Cohen rightly asserted that "to permit anyone to do absolutely what he likes with his property in creating noise, smells or danger of fire, would be to make property in general valueless.[16] He then warned that, "there must be limitations on the use of property not only in the interest of other property owners but also in the interest of health, safety, religion, morals and the general welfare of the whole community.[17]

Zoning has become a public doctrine, as against the Common Law private techniques of nuisance, covenants, the Rule in *Ryland v. Fletcher*, [18] and negative easements, for restraining indiscriminate development of property to create overcrowded conditions of life with their associated dangers of public nuisance. The zoning method also operates as a means to disperse human populations and activities within available spatial order. The Town and Country Planning Edict 1985 of Lagos State has for instance enacted this principle into specific rule which requires that a Master Plan must layout residential areas as well as industrial and commercial areas in relation to a projected given population and workforce respectively. This no doubt is intended to reduce the overcrowding and congestion tendencies in the Lagos Urban environment and make it more decent and convenient place to live in. Not less important is the use of zoning to minimize environmental pollution associated with use of vehicles for work, school and business trips in the urban socio-economic system. One thing that is clear is that each time a petrol-powered vehicle, is run, it discharges carbon monoxide, lead, nitrogen oxide and assorted hydro- carbons into the atmosphere; the longer the vehicle is run, the greater the volume of these emissions, the poorer, therefore, becomes the environment.[19]

The need to control the danger of vehicular carbon discharge informs Section 26(1) of the Highway Act, of 1971. It provides for the regulation of vehicles with respect, inter alia, to the emission of visible vapour, sparks, ashes, grits and excessive noise. Whilst the provision attempts a solution from the point of construction, zoning mechanisms can be relied upon to further reduce the emission during operation. Where for instance, the work place is close to the home place, such as within an industrial estate, the daily distance run is reduced; so also is the quality of hydrocarbon released into the air. As a result, if zoning is properly conceived and applied to our urban spatial order, this can reduce the distance of motor trips. Traffic congestion which is characteristic of urban towns may consequently be reduced. The quantity of carbon monoxide discharged into the urban environment will also diminish. The larger implication is that our environment will be cleaner and safer than is the case now. Also, the recent approach of the Lagos State Government in creating dedicated routes for commercial vehicles is to make it convenient and easier for private vehicle owners to patronize public transport and thereby reduce traffic congestion on our public highway.

4. Improvement of Physical Quality of the Environment

Planning Law sprang from the need to improve the physical quality of the environment. Our early planning laws, like their English counterparts, were aimed primarily at protecting the environment against wide spread abuses. From the Lagos Improvement Act, of 1866 and the Swamp Improvement Act, of 1877 to the Public Health Act, of 1917, the thrust had been to improve our towns with broad streets; "cleanse" the environment of filth; remove and reclaim swamp lands or clear bushes from our urban surroundings. Although the modern equivalent of these provisions is now to be seen in Environmental Edicts or Laws,[20] Town and Country Planning Laws have not been indifferent towards a decent environment. Every Planning Scheme or Master Plan usually has abundant provisions for roads and streets, building lines and other regulations. Although these provisions most often be seen as provisions for urban road network systems, however there is heavily implanted in these provisions, the concern and capacity to improve the aesthetic quality of the environment to which they relate. It is in them we find the beginning of a uniform row of buildings along urban roads and streets, the scenic beauty of today's "planning" environment.

Moreover, the preamble to the Town and Country Planning Law analyzes it as a Law "to make provision for the Re-Planning, Improvement and Development of different parts of the State". In pursuance of this objective, it authorizes the framing of a Planning Scheme "with respect to any land with the general object securing among other things proper sanitary conditions and of preserving a place of natural interest or beauty". Implicit in this is the concern for liveable environment. The application of the Town Planning Schemes or Master Plan can and does enhance the aesthetic qualities of our environment. The empirical proof of this abounds in the contrast of the environmental conditions of a "planned" and "unplanned" areas of most urban towns. For instance, the quality of slummed Ajegunle in Lagos contrasts sharply with the far more decent environment of Victoria Island and Ikoyi. Although the environment is supposed to be one, the differences there are attributable to the aesthetic effect of physical planning.

The Delta State Urban and Regional Planning Law[21] provides for securing coordination and cooperation among stakeholders by ensuring that the relevant Board/Authority shall, during the preparation and approval of the physical development plan, consult relevant Governments, Non-Governmental Organizations, Private Interested persons, Groups and Institutions whose contributions shall serve as in-put. The Delta State Planning Authority (DSPA) has a wide range of responsibilities when it comes to planning and development in the State. The first key role of the Delta State Planning Authority (DSPA) is to develop and implement the Delta State master plan. This plan outlines a vision for the state's development and sets out specific goals and strategies for achieving that vision. In line with part 2, section 27(5) of the (NURPL), the Delta State Planning Authority is responsible for preparing local government development plans and ensuring that they are aligned with the state master plan. In addition, the Delta State Planning Authority is responsible for developing and enforcing zoning regulations, building codes and other land use regulations. It also provides technical assistance and advice to local governments and agencies on planning and development matters

5. Promoting Sanitary Housing Conditions

Structures erected in close and unregulated proximity are a great source of environmental pollution. The slum areas are the endemic afflictions of our urban environment characterized by over-crowdedness, poor housing, largely absent drainage and waste disposal systems, unregulated building and airspace, set-backs and the non-prescription of minimum building land area. As a result of the over-crowdedness of unregulated settlements, the free flow of air and natural lighting is substantially impaired. The obstruction of air may result in environmental staleness. The general absence of drainage and waste disposal systems in these settlements may lead to the collection of wastewater and effluent in open spaces and streets. These are sources of offensive smells in most unplanned settlements, and cause of outbreak of epidemic. Another common feature of unplanned areas is that of urban floods on each torrential rain. Drains, if any, may be blocked by solid wastes and debris. Stagnant pools of water may be lodged about to create damp and humid conditions. These conditions are favourable to mite infestation in flooded areas of most of our urban areas.

It is not often appreciated how much-unregulated settlement is the beginning of a slum. The history of land development in Lagos metropolis, for instance, tells us that the uncontrolled split and built-up of hitherto large family compounds to accommodate the influx of immigrants in the wake of the socio-economic prosperity of the metropolis was the origin of

the insanitary environment in the metropolis. The Colonial Annual Report of 1938 noted this ugly development. Pertinent observation appears in the following passage of the Report: [22]

> The original unit of habilitation in Lagos was the compound consisting of huts disposed about a central quadrangle and occupied by the founder's descendants. In the course of time, the local system of inheritance caused these compounds, "often very large, to be split up into smaller and smaller units, each on a similar plan and encroaching upon the central space. Moreover, the rise of Lagos as a mercantile and administrative centre caused an influx of people from the interior who in accordance with their feudal ideas attached themselves to local chiefs and in return for small services rendered were given land inside the compounds on which they built their mud and wattle bamboo shacks. In time, it became evident that these defendant squatters would claim ownership of the land, and, as a safeguard against this, the original families imposed a rent. Thus the patriarchal system was broken down and gave way to that of landlord and tenant. The landowners, finding the new method highly profitable, let the open spaces of their compounds, in some districts once fairly sanitary, become slum of the most sordid type, described by a plague expert as the worst that he ever inspected.

The insanitary afflictions only began to receive remedial measures in 1909 when the Municipal Board of Lagos (later the Local Town Council) was constituted and Building and Sanitary Bye-Laws were introduced and applied to avoid further spread to areas not yet maligned. The basic approach of this regulation insisted that buildings should be totally detached and should cover not more than 50 percent of the total area of the property. An obvious deficiency in this approach was that it only gave, an opportunity to control the construction of individual buildings and not the whole land area. The passage of the Public Health Act, of 1917, did not change the isolationist building control method. However, when the Lagos Town Planning Act, of 1928, offered the opportunity for a comprehensive land use development within an area comprised of a Planning Scheme, the principle of building regulations has since then been incorporated. It has the dual role of safe guarding buildings in residential districts against the undesirable intrusion of industrial or commercial buildings as well as to ensure the removal of associated environmental problems so as to bring about a decent environment. The discussion immediately following briefly examines the tools the various Town and Country Planning Laws have applied in this exercise.

6. The Tools for Environmental Cleanliness

Some of the relevant tools applied by the various Planning Laws for environmental cleanliness include the prescription of minimum land area; building line and general set back; provision for drainage and waste disposal and provision for ventilation discussed as follows:

(i) Prescription of Minimum Land Area

The prescription of minimum plot size and the room dimensions for every type of building, whether in residential, commercial, industrial, mixed-use, educational, medical institutions or places of worship is an important device for checking overcrowded urban neighbourhoods. The plot sizes may vary with each approved Planning Scheme or Master Plan. In the case of Lagos State, for instance, the Building Bye-Laws passed in pursuance of the Public Health

Law, 1973 had stipulated in respect of dwelling houses a maximum coverage permissible with respect to land in Victoria Island, Ikoyi, the G.R.A in Apapa, Ikeja, Maroko and Ogudu, Ogba, Omole, Magodo Scheme, Lekki Peninsular and other Government Residential, including LSDPC Schemes, for instance, is 40%. In respect of other areas, the old residential coverage of not exceeding 50% of the total area is preserved by section 18(2) except where otherwise stated in the Regulations. However, in respect of commercial or industrial buildings the Regulations prescribe a maximum coverage of 70% while Petrol Filling Stations of 45 x 45 metres is 30%,[23] overcrowded built up areas and associated environmental problems are reduced.

(ii) Building Line and General Set-Back

In order to avoid structures encroaching upon roads and streets within a planning area, the relevant Planning Scheme or Master Plan prescribes a building line setback in relation to buildings abutting streets or roads. It is however uncertain whether such a building line set-back is complementary to the one hundred feet set-back imposed by the Building Lines Regulations of 1963 which operated as a state regulation in every State of the Federation. A building air- space is also imposed, by the Scheme or Master Plan. In Lagos State, for instance, unless otherwise stated, the general air space permissible in relation to residential buildings has now been fixed at a distance not less than six metres at the front line and in case of commercial or industrial buildings at a distance not less than nine and ten metres on the sides and rear. Some form of physical environment order that is consistent with adequate circulation of air is thereby maintained in built up areas.

(iii) Drainage and Waste Disposal System

Every Scheme or Master Plan provides that a building should have a toilet, a bathroom with appropriate soakaway pits and a drainage system. This was first initiated by the various Public Health Laws as a means of preventing waste and effluent being discharged into open spaces and streets.[24] The Lagos Town and Country Planning (Building Plan) Regulations, 1986 specifically provides that approval given in respect of a building becomes null and void and of no effect whatsoever if the proposed development or part thereof blocks or obstructs an existing or proposed design channel or part of it.[25] The operation of the device eliminates the lodgment of waste matters indiscriminately in our urban communities.

(iv) Ventilation

It is the policy of Government, both at the Federal and States level that every dwelling house should be properly ventilated. Accordingly, every dwelling house must have ventilation for natural lighting through windows opening directly to the external air and doors.[26] The device discussed above imposes minimum standards for the erection of buildings which are considered to be consistent with public safety as well as to ameliorate the environmental impairment otherwise inherent in the uncontrolled right of a land owner to build in the way he likes. A situation, James R.W has rightly pointed out, has characterized our towns with "out model, often unsightly structures providing little satisfaction from the point of view of aesthetic or efficiency"[27] In order to ensure that the minimum standard is consistent with environmental safety and efficacy, is complied with from proposal to completion stages in the construction of the building, there is an elaborate scheme for monitoring of the construction activity. It is to this we will now turn.

7. Compliance with Regulations

An elaborate machinery exists for the enforcement of these planning regulations. But the central principle is that the construction of a building as a "development" within the meaning of the Town and Country Planning Law, is required to be approved by the Planning Authority before its construction can be undertaken. The Building Bylaws in each state stipulate that the application for a building permit must be complemented by the working drawings of the proposed building and the site plans. Both must also be approved by the health officer as well as the work supervisor.[28] The Lagos State Town and Country Planning (Building Plans) Regulations 1986 has listed additional requirements for block plans and floor plans. It further provides that an application in respect of the development of any land area exceeding four hectares or other institutional/commercial/industrial complexes must be complemented with an Environmental Impact Analysis Report prepared by a Town Planner registered to practice in Nigeria. The Report is required to give details of the effect of the proposed development on socio-economic environment, traffic, ecology and communication network.

The Lagos Regulation further provides that the Building Plan Permit shall for any development or structure until the land use for the general area or environment is established or be given red layout plan of the area is available. But in that State, the Town planning Authority appears to have been given the sole authority to approve or disapprove an application for a building permit to the exclusion of the health officer, Works Supervisor and the Local Government Council.[29] The Regulations, however, provides in subsection 10 of Section 24 that the planning Authority may refer the application to the relevant bodies such as the Land Use Allocation Committee, Surveyor-General or Environmental Agency, where it appears necessary to confirm other related issues. Under this provision, the Planning Authority may refer an application to the Health officer or Local Government, if it deems fit. It must be noted however that the decision to refer or not to do so is discretionary. Where the Planning Authority fails to refer, it cannot be successfully challenged. Even the Issuance of a Certificate of Completion and Fitness for Habitation is now within the sole province of the Planning Authority.[30]

Under the Health Law, the Certificate of Fitness for completion is issuable by the appropriate Council upon the recommendation of the Health Officer and the Works Supervisor, unless the responsibility to do is delegated by the Council to the Town Planning Authority. This Public Heath Law approach appears to be less autocratic but it is capable however of working long delays. Perhaps, it is for this reason that Lagos State has centralized the power in the Planning Authority.

As part of the machinery for the enforcement of building regulations, the construction of building is also supervised at different stages. Upon completion, insanitary use is further prohibited. Where there is a departure from the approved use the permitted use must be restored. Where there is work omitted to be done, the person charged to do it may be ordered to do it. The most severe sanction is that the structure may be demolished at an expense recoverable from the developer.[31] The contravener may in addition be fined or sentenced to a term of imprisonment. In Lagos State, as well as other States. "over-development" is specifically punished and attracts penal payments under the Land Use Regulations Rates for Land Charges, 1984.

8. Judicial Attitude to the Relationship Between Planning Law and Environmental Protection

Here we shall be examining the landmark judgment of the Supreme Court in the case of *Attorney General of Lagos State v. Attorney General of the Federation and 35 Others*[32] with a view to highlight the present judicial attitude to the relationship between Planning Law and Environmental Protection in Nigeria. We shall also examine the shortcomings of the majority judgment in preference to the minority judgment.

i. Background Facts

The issue of planning and control of physical development within state territories raises a fundamental constitutional question relating to the application of existing Laws on matters involving the Federal and State Governments. In Nigeria for example, the National Urban and Regional Planning Decree existed side by side with the State Laws on Planning.[33] The decree, now repealed, which was enacted in 1992 by the then Federal Military Government sought to create and empower new urban and regional planning authorities at the Federal, State and Local Government levels. [34] The Decree requires the State and Local governments to have various categories of plans ranging from regional, sub-regional, urban, and local. [35] It directed the creation of a National Commission, State Boards and Local Planning Authorities to initiate, prepare and implement physical development plans under the supervision of the national planning framework.[36] It set up three development control departments at the three levels of government and requires any developer to obtain approval before commencing any development.[37] It also made provision for enforcement, including issuance and service of notices, stop work and demolition orders etc. [38]

A look at the provisions of the decree would reveal that it made physical planning a Federal responsibility and assigned the States and Local Governments auxiliary roles.[39] Three points need to be highlighted relating to the provisions of this decree. First, the decree was promulgated by a Federal Military Government which had unlimited and absolute powers to make Laws for the Federation or any part thereof on any matter whatsoever.[40] Thus, the entire concept, formulation and layout of the decree reflect a strong, commanding, central lawgiver the major feature of military dictatorship. Second, the various provisions of the decree were never fully implemented. Apart from Lagos State, no other state or local government is known to have carried out its duties under the decree or set up the requisite board or authority. Thus the full impact of the decree was never felt. Third, all areas of conflict between the three levels of government were conveniently buried, for it is understood that under military rule, federal might prevails. Expectedly, upon the return to constitutional federalism with its rigorous division of legislative powers, these hushed conflicts erupted with vigour. [41] A conflict of interests and rivalry between Federal and State agencies over the exercise of development control powers intensified in Lagos State culminating in a lawsuit between the State and the Federal Government.

ii. Issues for Determination

The Lagos State Attorney General filed a suit at the Supreme Court for the determination of the following questions:

i. Whether Urban and Regional Planning (UPP) (or Town Planning) as well as the regulation of physical development are legislative matters,
ii. Whether urban and regional planning (or town planning) as well as the regulation of physical development concerning any land in Lagos State (and indeed any State of Nigeria) is within the legislative and exclusive jurisdiction of the Federal Government;

iii. Whether the National Urban and Regional Planning (Decree No. 88) of 1992 is inconsistent with the provision of Section 4 of the 1999 Constitution of the Federal Republic of Nigeria (as amended 2011) and therefore unlawful, null and void.
iv. Whether the ownership rights of the Federal Government over land in state territories include the power to control and regulate town planning and physical development; and
v. Whether all approvals, permits and licenses granted by the Federal Government agency for any construction, building or physical development or use of land in Lagos State without the consent of the latter are not illegal, null and void.

In its judgment, the Supreme Court by a majority of 4 to 3 held that Regional Planning is a residual matter in respect of which only the State Houses of Assembly can legislate. The Court therefore declared null and void the purported offensive provisions of the National Urban and Regional Planning Decree (1992) which confers authority on the Federal Government or any of its agencies to engage in, or be concerned with town planning matters, or to grant permits, licenses or approvals which ordinarily should be the responsibility of a state government or its agencies. It was also held that the Federal Government or the National Assembly is not competent to legislate on or exercise any physical planning or development control over any land vested in the Federal Government or any of its agencies either in pursuance of an Act made or deemed to have been made by the National Assembly under the 1999 Constitution, without the concurrence of the State. However, with respect to the Federal Capital Territory, Abuja, the Court held that the National Assembly has full legislative powers on Urban and Regional Planning and development control over all the land consequently by virtue of section 299 of the 1999 Constitution.[42] The Court refused to declare as invalid all approvals, permits and licenses granted or issued by the Federal Government or any of its agencies for any construction, building or physical development or use of land in the plaintiff's territory or the territory of the state in the federation before the delivery of the judgment on the principle that rights which have been acquired or became vested will not be affected by voiding the law under which they were acquired or vested.[43]

Therefore, arriving at its decisions, the Supreme Court considered and rendered opinion on various topical issues relating to or incidental to the exercise of legislative powers in planning matters. Some of the issues raised and determined related to the relationship between title to land and power to make Planning Laws; whether Planning is an aspect of the environment for purposes of vesting concurrent legislative powers in the National Assembly and State Houses of Assembly under Section 20 of the 1999 Constitution; and whether the concept of federalism portends a bifurcation between the Federal and State Governments in terms of mutual co-operation and assistance flowing from the Federal Government to the State. For the purpose of our discourse, we shall, however, limit ourselves to the consideration of the implication of this judgment on the relationship between Planning Law and Environmental Protection in Nigeria. Before doing this, it may be apposite to touch briefly on the shortcomings of this judgment.

iii. Inadequate Attention to the Regional Planning Aspect of the Act

One major drawback of the majority judgment of the Supreme Court is insufficient appreciation of the regional planning feature of the legislative powers of the Federal Government with respect to the construction, alteration and maintenance of Trunk A roads,[44] railways [45] and airport [46] as listed in the Exclusive Legislative List which the plaintiff in the

said case sought to subject to the power of physical development control within its territorial jurisdiction. These matters can only be rationally executed by the Federal government by means of a regional master plan as an interventionist strategy to solve an area-wide problem or provide an area-wide service for the purpose of stimulating regional economics and industrial growth, or for the purpose of population dispersal. [47] It has been argued that it is only the Federal Government (or its agencies) that have constitutional multi-jurisdictional powers in respect of such regional planning matters across the thirty six States of the Federation. It is therefore erroneous for the majority judgment to hold that:

> ...Any Act, be it the Federal Highways Act, the Civil Aviation Act, the Nigerian Railway Corporation 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…

iv. Narrow Interpretation of Environmental Objectives

Another shortcoming running through the judgment is the narrow interpretation given to Section 20 of the Constitution which embodies the environmental objectives of the State. The Section reads thus:

> ...the State shall protect and improve their environment and safeguard water, air and land, forest and wildlife of Nigeria...

The majority judgment was persuaded by the argument that the Section is meant to support such Laws as the Federal Environmental Protection Agency Act,[48] the Harmful Wastes (Special Criminal Provisions) Act, [49] the Environmental Impact Assessment Act, [50] the National Protection (Pollution Abatement in Industries and Facilities Generating Waste) Regulations, [52] etc. According to the Court:

> …these Laws and regulations are more in tune with Section 20 of the 1999 Constitution (and indeed show that the section is meant only for that purpose) than the said section bears on physical town and regional planning...

According to A. A. Utuama.,[52] the narrow interpretation loses sight of the environmental problems that Planning Law has been called upon to deal with in our country. To him, Planning Law is "concerned with the protection and enhancement of the aesthetic quality of the environment". [53]

9. Conclusion

This paper has introduced the role of planning laws in environmental protection in Nigeria. It defined planning law and environmental protection and stated that, all over the world, developing countries like Nigeria, have a lot of challenging environmental problems which must be solved and which necessitated planning law for a positive impact on sustainable environmental protection in Nigeria. The paper has shown the relationship between planning law and environmental protection law. The paper has also shown that planning is positive and consists of the formulation of projects for the improvement of land from the standpoint of amenity, though not necessarily of profit. It has also been revealed in this paper that, the principle of zoning is employed in every ''Planning Scheme or Master Plan''. The paper therefore recommends that both urban and regional planning laws should operate at different spatial scales.

Endnotes

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2 Ibid
3 Ibid
4 A. A, Utuama, Statutory Control of Land Use: A case study of the Lagos Metropolis [1990] (unpublished PhD Work).
5 Town and Country Planning Law of Western Nigeria applicable to Oyo and Ogun States; Town and Country Planning Law of Ondo State, 1978; Town and Country Planning Law of Bendel State, 1976; Town and Country Planning Law of Easter Nigeria, 1963" applicable to Anambra, Imo, Cross River; Akwa Ibom and Rivers State, Town and Country Planning Law applicable to all the Northern States including Federal Capital, Abuja and Town and Country Planning Edict of Lagos State, [1985].
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11 The Delta State Urban and Regional Planning Law is the Delta state Legislation that governs and regulates Town Planning and indiscriminate use of land 2008
12 Section 8 of the Delta State Urban and Regional Planning Law 2005
13 Unreported High Court of Lagos State, 1995
14 [1970], 2 All NLR 268
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16 Morris Coben; "Property and Sovereignty in Cornell Law Quarterly (xiii) P. 21.
17 Ibid Pg 4
18 [1886] L.R. 1 Ex 265; affirmed (1868) 23 H.L. 330
19 Demmond Heap; An outline of Ping Law (London; Sweet & Maxwell, 1973) Pg 3.
20 Eg. Environmental Sanitation Edict 1985 of Lagos State
21 Part (6) Section 14 (1) of Delta State Urban and Regional Planning Law 2005
22 Nigeria: Colonial Annual Report on the Socio-Economic Progress of the Peoples of Nigeria No. 1904, London, [1938] P. 29 and 30.
23 Town and Country (Building Plan) Regulations 1986, Schedule (1), Table 3.
24 Town and Country Planning (Building Plan) Regulations 1986, paragraph (a) and (b) of Sections 15 and 19 respectively.
25 Paragraph F of Section 26.
26 e.g. The Public Health Law Cap (i) Laws of Lagos State, 1973 Section 21 Town and Country Planning (Building Plan) Regulations 1986, Section 2 (1) (K) 27 (1) 9.
27 James R.W.; Nigerian Land Use Act: Policy and Principles (Ile Ife; O.A press Limited, 1987) Page 18.
28 E.g Building Adoptive Bye-Laws Cap (iii) Laws of Lagos State 1973, Section 4 (1). The need for approval from different authorities have led to over lapping of duties and administrative bottle neck.

29 This is the combined effect of Sections 29 and 38 (16) of Town and Country Planning (Building Plan) Regulations, 1986.
30 Ibid Section 29.
31 E.g Town and Planning Law of Western Nigeria, Section 29; Town and Country Planning (Building Plan) Regulations [1986] of Lagos State, Section 38 (16)
32 [2003] 12 NWLR (pt. 833) 1.
33 Apart from the Lagos State Urban and Regional Planning Board Edict 1997 and Delta State Urban and Regional Planning Law, 2005, many other States applied their own Local Legislation on Planning based on the 1946 Law.
34 Nigerian Urban and Regional Planning Decree No, 88, 1992. Section 5.
35 Ibid, Section, 1.
36 Ibid, Sections 9-11.
37 Ibid Sections 27-28.
38 Ibid, Sections 47-63.
39 Ibid, Sections 3-4.
40 e.g Section 2 of the Constitution (Suspension and Modification) Decree No. 1984
41 e.g, Attorney General of Ondo State v Attorney General of the Federation [2002] 9 NWLR (PL 772) 222 at 308; Attorney General of Abia State v Attorney General of the Federation [2003] 4 NWLR (Pt. 809) 124 at 179-
42 The Provision of this Section inter alia, gives, with respect to the Federal Capital Territory, legislative powers, vested in a State House of Assembly in the National Assembly to be exercised in accordance with the provisions of the Constitution.
43 Afolabi v Governor of Oyo State [1985] 2 NWLR (Pt. 9) 734.
44 Item 11
45 Item 55
46 Items 3
47 A. A Utuama, 'The Future of Planning Law in Nigeria in, Niki Tobi (ed) A Living Judicial Legend Essays in Honour of Hon. A.G Karibi Whyte (CON) (Bartan; Florence & Lambard 2006) 123.
48 Cap F 10 Vol. 6 Laws of the Federation of Nigeria, 2004.
49 Cap H1 Vol. 7 Laws of the Federation of Nigeria, 2004.
50 Cap E12 Vol. 6 Laws of the Federation of Nigeria, 2004.
51 National Environmental Protection (Pollution Abatement in Industries and Facilities Generating Waste). Regulations, 1991.
52 A. A Utuama., 'The Future of Planning Law in Nigeria in, Niki Tobi (ed) A Living Judicial Legend-Essays in Honour of Hon. Justice A.G. Karibi Whyle (CON) (Ibadan; Florence & Lambard: 2006) Pg. 1
53 Ibid Page 133