

THE GUARANTEE OF THE RIGHT OF EVERY CITIZEN TO LIVE AND WORK IN ANY PART OF NIGERIA

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Adeola Olufunke KEHINDE *
ORCID ID: 0000-0002-1554-6247

Abifarin OLUFEMI **

Abstract. *The right to freedom of movement and residence is a twin right granted to Nigeria citizens in the Constitution. We are examining this right with Fulani herdsmen as the focus. Fulani herdsmen have recently become a terror group in Nigeria. The hitherto frequent minor clashes between herders and farmers have become escalated and universal in Nigeria. What was limited to the North central has been spread to every State in Nigeria. While Nigerians in the Southern part are complaining about the phenomenon and its implications on food security in Nigeria, the Fulani herdsmen and their umbrella organization Miyetti Allah Cattle Breeders Association of Nigeria and Miyetti Allah Kautal Hore are making provocative statements that they own Nigerian land and that nobody can stop them from grazing their cattle on any land throughout the length and breadth of Nigeria. It is in the light of their assertion that this paper is put together in order to confirm or debunk their assertion that they have an unrestricted or unrestrictable right to graze anywhere in Nigeria. This paper is concluded by stating contrary to their assertion, that the Fulani herdsman and indeed any Nigerian does not have the absolute right to movement or residence in Nigeria. The right to freedom of movement and residence in Nigeria is restricted by the Constitution, Common Law, and other Statues in Nigeria.*

Key words: *Right, Citizen, Residence, Nigeria, Guarantee.*

Rezumat. *Dreptul la libertatea de circulație și ședere este un drept dublu acordat cetățenilor Nigeriei în Constituție. Examinăm acest drept cu referire la păstorii Fulani. Păstorii Fulani au devenit recent un grup terorist în Nigeria. Confruntările minore frecvente între păstori și fermieri au fost escaladate, devenind universale în Nigeria. Ceea ce era limitat la nordul central a fost răspândit în fiecare stat din Nigeria. În timp ce nigerienii din partea de sud se plâng de fenomenul și implicațiile acestuia asupra securității alimentare în Nigeria, păstorii Fulani și organizația lor umbrelă Miyetti Allah Cattle Breeders Association of Nigeria și Miyetti Allah Kautal Hore fac declarații provocatoare că dețin pământ nigerian și că nimeni nu-i poate împiedica să-și pască vitele pe orice pământ de-a lungul și în latul Nigeriei. În lumina afirmației lor, această lucrare este întocmită pentru a confirma sau a dezminți afirmația lor că au un drept nerestricționat de a pășuna oriunde în Nigeria. Această lucrare se încheie prin a afirma, contrar afirmației lor, că păstorul Fulani și,*

* Lecturer, Department of Public Law, Federal University Oye Ekiti, Ekiti State, Nigeria

** Professor and Dean, Faculty of Law, Federal University Oye Ekiti, Ekiti State Nigeria

într-adevăr, orice nigerian nu are dreptul absolut de circulație sau de ședere în Nigeria. Dreptul la libertatea de circulație și de ședere în Nigeria este restricționat de Constituție, de drept comun și de alte statute din Nigeria.

Cuvinte cheie: *Drept, cetățean, rezidență, Nigeria, garanție.*

INTRODUCTION

A right is a moral or legal claim to have or get something or behave in a particular way while movement is to change position or make somebody or something change position in a way that can be seen, heard, or felt¹. The residence is the state of living in a particular place².

In legal parlance, rights are what a human has a legal claim over. From the word right, human rights evolved. Human rights are moral principles or norms that describe the way certain standards of human behavior are regularly practiced. Human rights are inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion or any other status³. So human rights are the basic rights and freedoms that belong to every person in the world from birth until death. They apply regardless of where you are from, what you have or how you choose to live your life. They are rights inherent in human nature, the intrinsic worth of human beings and they have a universal expression in a number of universal or international instruments⁴.

Civilized nations of the world have imbibed the principle of human rights and have imbibed them in their constitutions. Nigeria as a member of the United Nations Organization and as a civilized State equally entrenched the provisions of human rights in its Constitution in chapter four⁵.

These rights are the Right to life, right to dignity of human persons, right to personal liberty, right to fair hearing, right to private and family life, right to freedom of thought, conscience and religion, right to peaceful assembly and association, right to freedom of movement and right to freedom from discrimination. Others are the right to acquire and own immovable property anywhere in Nigeria and right to compensation on compulsory acquisition of property by government. These are rights referred to as civil and political rights⁶.

This paper is focusing on the right of movement and residence. For clarity sake, we shall first consider the rights to freedom of movement and its

¹ Oxford Advance Learner's Dictionary 8th edition 2010

² Ibid

³ Yinka Olomajobi, Human Rights and Civil Liberties in Nigeria (Princeton Publishers 2016); Okpara Okpara, Human Rights Law and Practice in Nigeria (Chenglo Ltd 2006)

⁴ E. J. Uko, Family Law and Human Rights in Africa: A Comparative Perspective (Livingo Company 2006)

⁵ Sections 33-44 CFRN 1999

⁶ Sections 33 -44 CFRN 1999

limitations before we shall later consider the right to residence and its limitation in Nigeria.

BACKGROUND

It is necessary to discuss this issue here because of some erroneous belief of the Fulani herdsmen and others that they have unrestricted, unlimited and absolute right of movement with their cattle throughout the length and breadth of Nigeria¹. This assertion of the Fulani herdsman that they can graze anywhere in Nigeria as citizens of Nigeria is wrong if they did not consider the fact that every land in Nigeria belongs to either a Community, Family, Individual, Local Government, State Government, Federal Government or a Company². If this proposition is correct, then it follows that the Fulani herdsmen needs permission, consent and authorization of owners of lands before traversing the land, or grazing on the land. There is no ownerless or vacant land in Nigeria and the common law doctrine of bona vacantia is not operative in Nigeria.

It is common knowledge in Nigeria that Fulani herdsmen are nomadic Fulani that move with their animals from place to place. They are also referred to as pastoral Fulani, this pastoral or nomadic nature of Fulani herdsmen has pitched the herdsmen against land owners, farmers and other land users because of their indiscriminate trespass to lands of another without permission or authorization³. The trespass per se is not the major problem here but the damages done to farm land, farm crops and farmers' lives and houses destroyed in the process, especially when land owners resist encroachment⁴.

Some Fulani leaders had earlier defended these violent herdsmen by claiming that they are not Nigerians and that they are foreign criminal elements that invaded Nigeria through our porous borders⁵. The proposal for Rural Grazing Area (RUGA) and National Livestock Transformation Plan (NLTP) has destroyed the argument that they are foreigners. Nigeria government cannot be planning RUGA or NLTP for illegal immigrants. While some other Fulani leaders are giving tacit approval to the activities of the herdsmen by their statements⁶. The leaders of the southwest¹ and southeast² condemned the

¹ 'No one can stop us from grazing in the South- Fulani herdsmen' <<https://punchng.com/no-one-can-stop>> Accessed 10/01/20

² Niki Tobi, Cases and materials on Nigerian Land Law (Mabrochi Books 1992); B. O. Nwabueze, Nigerian Land Law (Nwanife Ltd 1974)

³ Afenife 'Killer herdsmen must leave South West now or face hostility' <<https://www.pmnewsnigeria.com>> Accessed 10/01/20

⁴ Uzualu J.E 'Fulani herdsmen as Terrorist in Disguise' [2019] (2) (2) Edo University Law Journal 40

⁵ Sultan 'Herdsmen carrying gun, not Nigerians' <<https://punchng.com>> accessed 11/01/20

⁶ Sultan 'These people are criminals, not Fulani herdsmen' <<https://pulse.ng-religion>>benue> Accessed 11/01/20; Ango Abdullahi 'Nobody can intimidate

activities of the herdsmen as a threat to national security³. The spiritual leaders are not left out in the condemnation of the violence⁴.

RIGHT TO FREEDOM OF MOVEMENT

The Constitution provides thus:

“Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom”⁵.

The Constitution went further to list the restrictions on the right as follows:

Nothing in subsection (1) of this section shall invalidate any law that is reasonably justifiable in a democratic society:

a. Imposing restrictions on the residence or movement of any person who has committed or is reasonably suspected to have committed a criminal offence in order to prevent him from leaving Nigeria; or

b. Providing for the removal of any person from Nigeria to any other country:-

To be tried outside Nigeria for any criminal offence, or

To undergo imprisonment outside Nigeria in execution of the sentence of a court of law in respect of a criminal offence of which he has been found guilty;

Provided that there is reciprocal agreement between Nigeria and such other country in relation to such matter⁶.

Every Nigerian citizen is entitled to move freely throughout Nigeria and to reside in any part. Therefore, no citizen can be refused entry into or exit from Nigeria nor expelled from Nigeria. Attached to the right of exit, however, is the fact that in order to enter another country, a person must have a passport and therefore once one's passport is seized, one is deprived of the right of exit. The question must, therefore, arise as to whether the seizure of a citizen's passport violates the right to freedom of movement. In *Shugaba v. Minister for Internal Affairs*⁷ the plaintiff had been deported to Chad by the Federal Government on

Fulani' <<https://tribuneonline.com>> Accessed 11/10/20

¹ Obasanjo 'we must put an end to killing' <sahara-reporters.com> Accessed 07/01/20

² Afenifere 'Killer herdsmen must leave South West now or face hostility' <<https://www.pnewsnigeria.com>> Accessed 10/01/20

³ MASSOB 'Bokoharam/Fulani herdsmen want war' <<https://www.independent.ng>> Accessed 07/01/20

⁴ Catholic Bishops in Nigeria condemn herders/farmers clashes, 'can the church in Nigeria stop the violence between herders and farmers?' published May 29 2018

<www.americanmagazine.org> Accessed 8 October 2021

⁵ Section 41 (1) CFRN 1999

⁶ Section 41 (2) (a) and (b) CFRN 1999

⁷ *Shugaba 'v' Minister for Internal Affairs* (1982) 3 NCLR 915

the ground that he was not a Nigerian citizen. The High Court held that he was a Nigerian and that the deportation order was a violation of his freedom of movement. In the course of the trial, his passport had been seized and on application for its release, the court held that the seizure of his passport would affect his freedom of exit from the country and therefore constitutes a violation of the right to free movement. See also *Gani Fawehimi v. Federal Military Government*¹; *Chief of Sobo Sowemimo v. Federal Military Government*²; *Chief G. O. K. Ajayi v. Federal Military Government*³.

In *Adewole v. Alhaji Jakande & Ors.*⁴ The Court went even further by holding that a circular of Lagos State Government seeking to abolish private primary schools constitutes an infringement of the right to freedom of movement of the pupils.

It is instructive to state that the right to freedom of movement is not absolute. The Constitution itself gave conditions when the right can be restricted by the State⁵. In addition to these restrictions by the State, the Common Law even though not stated in the Constitution also has some restrictions on the right to movement of a citizen. These restrictions under the Common Law are: the law of trespass to person or land, the law of nuisance, mischief and the law of negligence. Criminal Law also has some restrictions against the right to freedom of movement in Nigeria⁶. We shall consider them in turn.

COMMON LAW RESTRICTIONS OF RIGHT TO MOVEMENT THE LAW OF TORT

An owner of a cattle or animal can be liable in tort to a third party who is injured personally or his property is injuriously affected in the course of animal husbandry.

Tort has been described as “the breach of a duty primarily fixed by law where the duty is one towards person generally and its breach is redressible by an action for damages”⁷ The duty of care here has to be duty laid down by law and not one based on contract or agreement of parties. This clearly differentiates tort from contract. Breaches of duty will be visited by the award of damages so as to distinguish the action from criminal wrongs. However, it must be stressed at the onset that, an action can constitute both tort and a criminal wrong and victim may initiate judicial process in the two ways. An action for tort can go

¹ *Gani Fawehimi v. Federal Military Government* (2000) 6 NWLR (Pt 600)228

² *Chief of Sobo Sowemimo v. Federal Military Government* (2001) 12 NWLR (Pt 682) 509

³ *Chief G. O. K. Ajayi v. Federal Military Government* (2000) 12 NWLR (Pt 622) 540

⁴ *Adewole v. Alhaji Jakande & Ors.* (1981) 1 NLR 262

⁵ Section 41 (2) (a) and (b) CFRN 1999

⁶ The Law of Tort has many restrictions like trespass to land, negligence and nuisance.

⁷ E. A. Adesina, *Learning Law Basics* (Best Century print 2006)

on concurrently with criminal action in court¹.

The available civil remedies in favor of victim/animal injury, harm or loss are trespass to land, negligence, damages to property, and liability for animals.

TRESPASS

An animal may commit trespass to the land of another person when it enters the land of that person without his permission or remains upon such land by placing things on the land. Trespass is interference with the ownership and possession rights of the owner of the land or the possessory right of the person who is a lawful possession². Trespass is actionable per se, that is trespass is a specie of tort that is actionable in court without proof of damage to the land or anything on the land by the trespasser.

A cattle rearer has a duty not to enter any land without the permission of the land owner or the person in lawful possession of the land. This tort protects possessory right and ownership rights if the person in possession is equally the owner of the land. Since he owns the land, he owns whatever is attached to the land, the tort protects food and economic crops on the land, thus any cattle that strays to the land and consumed economic or food crop on the land is liable to pay damages to the owner of the land³.

NEGLIGENCE

The tort of negligence means the breach of legal duty to take care which results in damage undesired by the defendant to the plaintiff⁴. To prove negligence, one has to prove that a duty of care exist and it is owed by the defendant to the plaintiff, and that there is a breach of that duty by the defendant and damages resulted from that breach to the plaintiff. A cattle owner or rearer has a duty of care to ensure that while grazing freely, it does not do damage to people's farm crops and while he does, he must be held accountable to the damages in monetary compensation that is commensurate to the damage done.

Damage to property or mischief. This damage can be willful damage or negligent damage as a result of entry of the property of the plaintiff. It can be an invasion of water pond, invasion of farmland and destruction of any property placed on the land⁵.

Liability for animals. There are two separate torts that can be committed by cattle under this head. One is cattle trespass while the other is liability for

¹ Ese Melami, Law of Torts (Princeton Publishing Co 2013)

² Kodilinye & Aluko, Nigerian Law of Torts (Spectrum Books Ltd. 2010)

³ Ibid

⁴ Ibid

⁵ Ibid

dangerous animals (scienter action). The essence of cattle trespass is captured thus: "If I am the owner of an animal, I am bound to take care that it does not stray on to the land of my neighbor and I am liable for any trespass it may commit and for the ordinary consequences of that trespass: whether or not the escape of the animal is due to my negligence is altogether immaterial."¹

The following principles have been established by the cases:-

–Cattle includes cow, bulls, horses, mules, goats and pigs.

–No liability where cattle are being led along the high way and escaped to the adjacent land but if the escape is due to carelessness of the rearer, there will be liability.

–Only person having interest in the land trespassed upon can sue.

–Damages are recoverable not only for harm done to the plaintiff's land and crops but to any property or chattel on the land that was damaged by the act of trespass. However there are defences that the defendant can raise, if successfully pleaded he may be exonerated or his liability mitigated.

Liability for dangerous animal arises where a person who keeps dangerous animals causes damage to another person. Dangerous animals are dogs, lions, elephants, leopards, tigers and gorillas².

RESTRICTION OF RIGHT TO FREEDOM OF MOVEMENT BY CRIMINAL LAW IN NIGERIA

CRIMINAL NEGLIGENCE

The Penal Code Law operative in the Northern part of Nigeria provides that:

*"anyone that is negligent in management of his property but causes harm and injury to person or property of any person shall be guilty of an offence and liable on conviction to six months imprisonment"*³.

The law went further to provide that:

*"whoever knowingly or negligently omits to control any animal in his possession sufficiently to guard against any probable danger to human life or any probable danger or grievous hurt from such animal shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to twenty pounds or with both"*⁴.

A cattle rearer can also commit the offence of public nuisance as they always cross the cattle from one side of the highway to another side⁵. For public nuisance, it is the Attorney General of the State where the nuisance occur that

¹ Ibid

² Ibid

³ S 196 of Penal Code Law Cap 89 Laws of Northern Nigeria 1963

⁴ S 197(ibid)

⁵ S 198(ibid)

can prosecute the culprit except a fiat is obtained by a private prosecutor from the Attorney-General¹.

MISCHIEF

The Penal Code Law further provides that:

“Whoever with the intent to cause or knowing that he is likely to cause wrongful loss or damage to the public or to any person causes the destruction of any property or any change in property or in the situation thereof as destroys or diminishes its value or utility or affects it injuriously commits mischief”².

From the above provision, it is not essential to the offence that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause or knows that he is likely to cause wrongful loss or damages to any person by injuring any property whether it belongs to that person or not.

Mischief may be committed by an act affecting property belonging to the person who commits the act or to that person and other jointly³. The punishment for this offence is two years imprisonment⁴. The use of Criminal Force and assault on owners of land or occupiers of land by herdsmen and vice versa is also proscribed in section 262-270 of the Penal Code. While kidnapping and abduction are proscribed in Sections 271-274. The only disservice that the Governors of Northern States have done to Nigeria is their inability to arrest and prosecute any Fulani herdsman under this law.

The Penal Code makes provision for monetary compensation of victims of any offence under the Code in Section 78. If the Governors have been up and doing under this law there wouldn't have been any need for any Anti Open grazing Law in Benue and Taraba States.

TRESPASS TO LAND

Another area of Criminal Code that can avail an owner of land is provision on defence of premises against trespassers which provides as follows:-

“It is lawful for a person who is in peaceable possession of any land, structure, vessel or place or who is entitled to the control or management of any land, structure, vessel or place and for any person acting by his authority to use such force as is reasonably necessary in order to prevent any person from wrongfully entering upon such land structure, vessel or place or in order to remove therefrom a person who wrongfully remains therein, provided that he

¹ S 1 of Federal High ways (Prohibition of Livestock and Hand Carts) Regulations made pursuant to Section 27 of Federal Highways Act Cap F13 LFN 2004.

² S 326 PCL

³ S.S. Richardson, Notes on Penal Code Law (Gasikiya Publisher 1972)

⁴ S 327 of Penal Code Law Cap 89 Laws of Northern Nigeria 1963

does not do harm to such person.¹ ”

The problem with this provision of the law is the tendency to allow or encourage self-help which may lead to breakdown of law and order. Because to prevent a herdsman from entering the land with his about 100 cows may be an impossible task and to remove them from the land will also be difficult if not impracticable. It is the fallout of preventing or removing from farmland that led to the killing, maiming, arson, bush burning, and violence of great magnitude.

Again the Criminal Code Act went further to provide that:

“When a person is in peaceable possession of any land, structure or vessel, with a claim of right, it is lawful for him and for him and for any person acting by his authority, to use such force as is reasonably necessary in order to defend his possession, even against a person who is entitled by law to possession of the property, provided that he does not do harm to such person². ”

This section of the law is promoting self-help which may turn out to be dangerous or lead to a breakdown of law and order.

NUISANCE

The provision of common nuisance can also be invoked against cattle rearer who crosses their herds of cattle on the highway in such a way as to disturb the public use of the highway. So any person who prevents the public from having access to any part of a highway by an excessive and unreasonable temporary use thereof, or by so dealing with the land in the immediate neighborhood of the highway as to prevent the public from using and enjoying it securely³ or does any act not warranted by law or omits to discharge any legal duty, which act or omission obstructs or causes inconvenience or damage to the public in the exercise of rights common to the public is guilty of a misdemeanor and is liable to imprisonment for two years⁴.

The law of nuisance, especially criminal nuisance is also available against cattle rearers who caused public nuisance on the highway. It is only the Attorney General of the state where it occurred or of the federation that can prosecute the culprit. The public can only lay complaints to the Police or the office of the Attorney-General. The punishment provided by this section seems to be adequate to deter cattle rearers.

THE RIGHT TO RESIDENCE IN NIGERIA

The Constitution of the Federal Republic of Nigeria provide that every citizen is entitled to move freely throughout Nigeria and reside in any part

¹ Section (ibid)

² Section (ibid)

³ Section 234 (b) CFRN 1999

⁴ Section 234 (f) CFRN 1999

thereof and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom¹. The right to residence is also restricted by the following provisions of the Constitution.

Nothing in subsection (1) of this section shall invalidate any law that is reasonably justifiable in a democratic society.

a. Imposing restrictions on the residence or movement of any person who has committed a criminal offence in order to prevent him from leaving Nigeria; or

b. Providing for the removal of any person from Nigeria to any other country

I. To be tried outside Nigeria for any criminal offence; or

II. To undergo imprisonment outside Nigeria in execution of the sentence of a court of law in respect of a criminal offence of what he has been found guilty provided there is a reciprocal agreement between Nigeria and such other country in relation to such matter.

Thus by this constitutional provisions, every Nigerian citizen is entitled to move freely throughout Nigeria and to reside in any part, it went further to say that no citizen can be refused entry into or exit from Nigeria nor expelled from Nigeria especially any citizen to Nigeria of birth. Attached to his right to exit however, is the fact that in order to enter another country, a person must have an international passport and therefore once a person passport is seized by the government that person is deprived of this right of exit².

Without doubt this provision of the Constitution has adequately guaranteed the right of any Nigeria to move freely within Nigeria and the right to reside in any part of the federation irrespective of state of origin or birth. When this constitution provides for right to peaceful assembly and association,³ right to freedom from discrimination, and right to own movable and immovable property by citizens of Nigeria irrespective of where they reside, the constitution has tried all it could to promote national integration. On electoral matters, the right to contest for any elective position in Nigeria is based on residence in an area or state and not origin or indigeneity. These provisions in the constitution can only be meaningful if our elites and political actors change their attitude and orientation to national issues and think more as a Nigerian than as a Yoruba, Hausa, and Ibo or from Northeast, North central, North west, South south, South east or South west. Tribalism, ethnicity, geo-political Zonal cleavage are the divisive factors in Nigeria, Nigerians are more loyal to their tribes, States, Geo-political zones than the nation as an entity⁴.

¹ *Agbakoba 'v' The director, State Security Services* (1994) 6 NWLR (Pt. 351) 475

² *Agbakoba 'v' The director, State Security Services* (1994) 6 NWLR (Pt. 351) 475

³ Section 40 CFRN 1999

⁴ Goerge Crothers *American History*, (Holt Rinchart and Winston Inc. 1964), Rossey R. B,

Any resident of any State, town or community in Nigeria who has assimilated himself unto the way of life of his host community should not have any disability whatsoever. He should be entitled to what the indigenes are entitled to since we have only one citizenship which is the citizenship of Nigeria as a sovereign state and not citizenship of our various components states in Nigeria. We do not have citizenship of our village, town or city but Nigeria citizenship. Citizenship refers to membership in a state and not a lesser political unit which does not have sovereignty. A citizen is a member of a sovereign state, thus citizenship is synonymous with nationality. The only difference being that citizenship is used internally while nationality is used externally or in international law.

Does a Nigerian living outside his state or ethnic homeland need to naturalize or culturize? This situation arose in *Olowu v. Olowu*,¹ the issue before the court was the personal law of the deceased. What was his personal law? He was born a Yoruba man of Ijesha extraction but lived in Benin where he married Benin women. During his lifetime he applied to the Oba of Benin to be naturalized as a Bini, that is to be conferred with Bini status under Benin native law and custom. The Oba of Benin gave his assent to his request and the deceased became a Benin subject. The court held in that case that the deceased had voluntarily extinguished his Yoruba cultural heritage for Benin by naturalization and by so doing his personal law is Benin native law and custom. The supreme court in the same case expressed the view that change of status under native law and custom could not be naturalization but culturalization which may take place by assimilation or by choice and have the resultant effect of change of personal law.

These situations should not have arisen if we have a definition of citizen that reflects the plurality of Nigeria state. In 21st century Nigeria, citizenship should be defined to accommodate our pluralism, heterogeneity and ethnicity. Change of personal law do not have to be effected by such complex procedure but residence or domicile and the way and manner a person lives his life, should be sufficient evidence of his personal law.

CITIZENS RESIDENCY RIGHT BILL 2004

In response to the problem of citizenship, indigeneship and settlers right in Nigeria, the National Assembly promoted a bill called Citizens Residency Right Bill 2004. This bill was sponsored by the deputy senate president (Senator Ibrahim Nasir Mantu) along with five others. This bill seeks to provide for residency rights for every citizen of the Federal Republic of Nigeria who has lived or resided consecutively and paid taxes to the relevant local

American Government (Little Field Adams and Co. 1975)

¹ *Olowu 'v' Olowu* (1985) 12 Sec. 84.

government of the area where such person has lived or resided for a period of not less than five consecutive years and for any child of such person who is less than 18 years of age and who has lived with such citizen for the same period of time and for other related purposes¹.

The bill further provides that no Nigerian citizen shall suffer from any discrimination on the ground of place of origin, sex, religion, status, ethnic or linguistic association or ties and the bill seeks to abolish settler/indigene status hitherto attached to Nigerians residing in various part of the country².

According to Chief U. M. Enwerre³ the provisions of this bill if passed into law will to a great extent reduce the many suffering of Nigerians who on a daily basis suffer some forms of discrimination or the other. He contended that there are cases of refusal to grant Nigerians land for settlement because of their state or tribe of birth and others because of their religious affiliations. In Northern Nigeria there are specific instructions by Emirs and district hands that their subjects should not sell or lease land to churches or to any person or group for purposes of building churches.

However, he condemned some provisions in the bill that tends to promote discrimination between the settlers and indigenes in relation to what the bill called traditional right.

The bill inserted a clause or section which provides that this right, as provided under the Act shall not include the traditional rights of the host community, especially the right to traditional heritage and practices.

The purpose and meaning of this provision seem to contradict the intendment of the Bill itself. If what the Bill seems to achieve is national integration and harmonious living of Nigerians then there should be no limitation or no go area in terms of assimilation and full integration. Assimilation and integration should include, religions, social, cultural, traditional and educational. It should also include the right to traditional chieftaincy titles where a person is found to be worthy in terms of credibility and integrity.

A critical look at this Bill shows that except for the offending section, the provision is a replica of sections 40, 41, and 42 of the 1999 Constitution. These sections of the constitution are adequate on residency rights in Nigeria. We only need to claim these rights through due process whenever any Nigerian is denied the right. Discrimination on any ground in Nigeria is prohibited by the constitution. Therefore, the citizens' Residency Bill 2004 is unnecessary in Nigeria.

¹ Preamble to Citizen Residency Rights Bills 2004

² S 3 of the Bill

³ Enwere U. M. Citizens' Residency Rights Bill 2004: An Appraisal, *Isiba Law and Legislative Magazine* Vol. vii No. 14 Part 17 2005 p. 8

CITIZENSHIP AND THE RIGHT TO MOVEMENT AND RESIDENCE

A citizen is a member of a political community. By virtue of that membership, he possesses certain privileges and carries certain obligations. Ordinarily, the term citizen refers to membership in a state and not a lesser political unit which does not have sovereignty. A citizen in summary, is a member of a sovereign state. Thus citizenship and nationality is synonymous¹.

The significance of citizenship will be appreciated when considered with that of an alien. An alien may be defined as a person either visiting or living in a state, who is a citizen of some other country or citizen of no country at all. (a stateless person, who owes no allegiance to any state)².

An alien must keep the government informed of what he is doing to earn a living or his address. In peace time, the status of an alien is not much different from that of a citizen but he cannot vote, hold public office, become a justice of peace (juror in European countries) he may be excluded from practicing a profession which he is licensed e.g. some foreign legal practitioners are not licensed to practice law in Nigeria while in some other states an alien may not become a physician. In some other states the right of an alien to own real estate may be restricted but he pays taxes just like a citizen. He must obey the laws of the State³. The civil liberties of the Bill of Rights are available to the alien equally with citizens. He may enter suit in court on a plane of equality with citizens. In wartime, the status of an alien from a friendly country is not changed. But the status of an alien from a country that is in war or in alliance with the enemy of the host country is an alien enemy. Such alien enemy has his rights restricted, he may be arrested, investigated and interned for the duration of the war. The property of an alien enemy may be seized while he may be deported to his home country.⁴ The Fulani herdsmen that came into Nigeria from neighboring countries of Niger, Chad, Mali, Cameroon etc. to perpetrate violence against farmers and other Nigerians are criminals who should face the due process of law in Nigeria. They could be deported, extradited or jailed. Those who came into Nigeria without documentation should be apprehended and deported. The right to residence means that the resident has a place to stay as a tenant and he has his rent to pay. If he has enough money, he can buy land and build his house or buy a house to stay. He cannot be a usurper of Landlord's right and he cannot be a trespasser of land or house of another.

¹ Michael Akehurst, *A Modern Introduction to International Law* (George Allen & Unwin Ltd 1978)

² U. O. Umzorike, *Introduction to International Law* (Spectrum Books Series 2007)

³ R. M. M. Wall *International Law Journal* (Sweet & Maxwell 2005)

⁴ M. N. Shaw, *International Law* (8th edn Cambridge University Press 2016)

INTERNATIONAL LAW ON RIGHT TO FREEDOM OF MOVEMENT & RESIDENCE

Freedom of movement of citizens within his country is recognized in international law. There is a provision that every citizen has the right to freedom of movement and residence within the borders of each state in the Universal Declaration of Human Rights¹. While the International Covenant on Civil and Political Rights also provide that everyone lawfully within the territory of a state shall, within the territory have the right to liberty of movement and freedom to choose his residence².

The African Charter on Human and People's Right is more specific on legal limitation to the right to freedom of movement by providing that every individual shall have the right to freedom of movement and residence within the borders of a state provided he abides by the law³. International law provision recognizes the presence of municipal law that restricts movement of citizens such as those provided by the Constitution, the law of Tort and Criminal law. The caveat in this provision is that the right to movement and residence is subject to abiding by the law of the place of residence. It must be pointed out here that the concept of Fulani as global or African citizen as espoused by Mallam Bala Mohammed is a fallacy. Every Fulani man or woman belongs to a country or is a citizen of a country.⁴

RECOMMENDATION AND CONCLUSION

We have shown in this paper that the Constitution of Nigeria guarantees the freedom of movement of Nigerians within and outside Nigeria and that Nigerian citizens have the right to reside in any part of Nigeria. It means therefore that the right to freedom of movement and residence is not absolute, the rights are subject to the restrictions imposed by the Constitution and other laws of Nigeria.

Therefore, it is not the law for any Nigerian or the Fulani herdsmen to claim that they have unrestricted right to traverse or graze openly anywhere in Nigeria. The Fulani herdsmen whether Nigerian or foreigner are subject to the law of Nigeria and the State wherein they reside or move to from time to time to graze. For example, the Northern Nigeria that consists of 19 States has Penal Code Law applicable in all the 19 States. The Penal Code Law forbids open grazing in Sections 196-198 and section 1 of the Federal Highways (Prohibition of Livestock and Handcarts) Regulation also prohibits cattle from

¹ Article 12 (1) of Universal Declaration of Human Rights 1948

² Article 12 (1) of the International Covenant on Civil and Political Right 1966

³ Article 12 (1) of the African Charter on Human and Peoples Rights 1981

⁴ Nigeria: Bauchi governor on the 'stateless' of Fulani. Nigeria Tribune published 26 September 2019 <<http://citizenshiprightsafrika.org>> Accessed 8 October 2021

crossing highways. It has been observed however that there is a major impediment to the enforcement of these laws, the law enforcement agencies are all federal agencies and are controlled directly by the Federal Government and not under the direct control of the State governments. The Northern Leaders who are giving tacit approval to the activities of these herdsmen should desist from their inflammatory and provocative statements. The Federal government should realize that it is its duty to ensure peace, orderliness and good government across Nigeria and this can only be achieved in a secured atmosphere.