



ISSN 2278 – 0211 (Online)

Rent Control and Free Market Economy: The Nigerian Experience

Dr. Chidi J. Lloyd

Lecturer, University of Nigeria, Nsukka, Nigeria

Newman C. Enyioko

Ph.D. Research Scholar, Department of Marketing, Rivers State University, Port Harcourt, Nigeria

Abstract:

The paper examined rent control and free market economy with expositions on the Nigerian experience. Information for the paper were sourced from secondary origin. In essence the literature examination came from extant works. The findings of the paper reveal that rent is a requirement for a contractual tenancy, where it is a contractual obligation of the tenant to pay it. The paper also reveals that under the Rent Control and Recovery of Premises Laws, a statutory rent is the profit or compensation paid as a consideration for the possession of land or premises during a tenancy. It also serves as an acknowledgement of landlord and tenant relationship between the landlord and the tenant. The paper accentuates that a free market economy is the one in which prices of items -goods and services are determined by the operations of demand and supply. The paper found that government does not subsidize the supply of housing and allied materials and that makes it very difficult to implement the rent control enactments in Nigeria. The paper insists that the dearth of successful cases on rent control in Nigeria has given credence to the fact that rent control cannot smoothly exist in a free market economy. Therefore, the submission and recommendation of this paper is that rent control cannot exist in a free market economy like Nigeria.

Keywords: Rent control, free market economy, economic rent, Nigeria

1. Introduction

Rent is the consideration furnished by the tenant to the landlord for the occupation and use of his premises. Payment of rent alone is not conducive evidence of tenancy under common law except it is coupled with the grant of exclusive possession and an intention to create tenancy. Tenancy is legal relationship between a landlord and a tenant whereby the landlord who is possessed of legal estate or interest in a premise grants a term of that interest for a definite period to the tenant for consideration called rent.¹ A tenant is created under common law where -

- a) There is an intention between parties to create a tenancy
- b) There is vested in the landlord, a reversionary right to the premises
- c) The tenant has a right of exclusive possession to the premises
- d) The tenant is vested with a legal demise or estate in the premises for the term of the tenancy and
- e) There is a consideration flowing from the tenant to the landlord called rent.

Rent is a requirement for a contractual tenancy, where it is a contractual obligation of the tenant to pay rent. However, under the Rent Control and Recovery of Premises Laws, though a statutory Rent is the profit or compensation paid as a consideration for the possession of land or premises during a tenancy, it also serves as an acknowledgement of landlord and tenant relationship by the landlord and the tenant.

2. Nature of Rent

Uche J. Osimiri defines rent²

as retribution or compensation issuing out for the use of possession of the demised land and an acknowledgement made by the tenant to the landlord during his tenure.

Rent is equally seen as profit issuing at regular periods in money or money's worth reserved or issuing out of or charged upon property.

Rents are of many categories³

¹ Woodfall: Law of Landlord and Tenant, 27th ed 4th impression pages 185 – 186.

² Osimiri Uche J. (1994) Modern Law of Landlord and Tenant in Nigeria (p. 184), Port Harcourt: Pan Unique Publishers.

³ Evans & Smith Law of Landlord & Tenant 2nd ed. (1985) p. 112 (Butterworths)

- i) Rent is the amount representing the highest rent reasonably obtainable for the entire duration of the lease.
- ii) Rack/economic rent is the full value of the property comprising the land and building thereon or nearest equivalent. It is sometimes equated with the maximum market value of the property or a reasonable margin of it.
- iii) Ground rent is the small amount paid by the tenant for the occupation or use of the empty space or vacant land. This frequently exists in long building lease and represents the value of the land without building on it.

Also, tenant may pay mesne profit or nothing at all. Non-payment of rent to the landlord does not necessarily mean that a statutory tenant is not a lawful occupier of premises. This is because a tenant is defined as "... any person occupying premises whether on payment of rent or otherwise..."⁴ Unlike under common law, payment of rent is not necessarily a determinant factor of tenancy under the Rent Control and Recovery of premises laws in Nigeria.

3. Free Market Economy

A free market economy is the one in which prices of items -goods and services are determined by the operations of demand and supply. It is more or less a capitalist economy that recognizes entrepreneurial wizardry in investment activities. A free market economy has the characteristics of having many buyers and sellers. Each seller (because of the largeness in number) has no feeling of dependence on others. No one firm controls a significant part of the total market output, and none by extending or reducing its output within considerable limits, can affect the sales of any other firm to such an extent as to induce a direct reaction. In a free market economy, sellers offer differentiated products, which are close but imperfect substitutes. Truett and Truett⁵ define differentiated products as goods and services whose perceived or actual attributes vary enough so that consumers can distinguish the products from each other. Examples of differentiated products/services include canoe, key, truck soaps; Macleans, close-up, aqua fresh, maxam, holdent toothpastes; one room, 1-bedroom, 2-bedroom, 3-bedroom, duplex, bungalow houses.

In some cases, the major element in the differentiation is the branding even though consumers may perceive other elements of differentiation.

Equally, in a free market economy consumer has definite preferences for the particular varieties offered. The implication of this is that the suppliers can increase their prices if the demand becomes intense. Every seller in a capitalist economy acts independently assuming other sellers to be unaffected by his/her policies. The individual seller or service provider bases his price and output policies upon his/her own estimates of demand curve for his/her products/services given the prices of other products/services.

Another key characteristic of free market economy is relativity of free entry and exit. In fact, there is relatively free entry into and free exit out of the market in a capitalist economy. The only challenge to entry by new entrants is that of having to attract customers away from the old established firms/businesses⁶.

4. Economic Rent (and Quasi Rent)

The concept of economic rent was traditionally associated with land. The word 'rent' in this context is in fact still used to describe the income on or the payment made on the use of land. 'Land' in the classical sense, was used to describe agricultural land, that is the physical (dry) and fertile land.

Richardo⁷ for example defined land as the original and indestructible powers of the soil. Land in this sense 'is a gift nature', an asset to which man had contributed nothing. The concept of land was later extended to include all-natural resources that is, productive gifts of nature.

Since land is a free gift of nature, its use should not command any price. However, because land was viewed as being absolutely fixed in supply, the continuous increase in the demand for land for both agricultural and building purposes creates scarcity. This scarcity in turn empowers landowners and landlords to receive income from letting them out for use. Thus, all payment on land and landed properties are called economic rent in this context.

Marshal⁸ defined economic rent as "an income derived from the free gift of nature". Based on this premise, a notable American, reformer, Henry George in his book, "Progress and Poverty" argued for the introduction of a single tax in the society designed to take away all the income accruing to land. In his opinion, apart from the proposition that such incomes were unearned the supply of land is fixed (perfectly inelastic) such that the payment of income on it cannot bring more of it into existence. There are obvious weaknesses in the above arguments.

First land could be put to many uses, not only for agricultural purposes. Also, the supply of land could be increased quantitatively through the reclamation of land from sea (as were the cases with Maroko, Borikiri and Sandfield - Eastern Bye-

⁴ Emeka Chianu (1990) Nigerian Law of Landlord and Tenant: Cases and Commentaries.

⁵ Truett, L.J. and Truett D.B. (1987). Economics Missouri: Tune Mirrow/Mosby College Publishing.

⁶ Umo, J.U. (1994) Practical Microeconomics Analysis in Africa Context. Ibadan: Netlink: Research Consult Ltd/Sibon Book Ltd.

⁷ Lipsey R.G.; Steiner, P.O. and Puris, D.D. (1987) Economics Eighth edition, New York: Harper & Row Publishers.

⁸ Marshal, A. (1920). Principles of Economics. London: Macmillan.

Pass etc. The quality of land could equally be improved through irrigation, use of fertilizer etc. In fact, land in the general sense could be improved to meet any use. Hence if there is no income on land, or if all the income were to be taxed away, there will be no incentive to increase the supply of land either quantitatively or qualitatively.

The concept of economic rent is used in modern times to conceptualize any surplus earned by any factor of production above the minimum payment that is necessary to induce the factor to work. In practice, the scarcity of a factor (whether land, capital or a particular type of labour) and competition for that resource is what generates economic rent.

5. Rent Control: Whether It Exists in A Free Market Economy

Rent control relates to the power to direct or regulate the amount of money paid for landed properties, houses, flats and rooms by relevant authorities. It includes devices or systems for operating, regulating or guiding house occupation as may be charged by the landlord. Rent control in Nigeria started with the creation of statutes for regulating tenancy and the enactment of the Recovery of Premises Ordinance Cap 193 of 1948. With the creation of regions each region enacted the said statute⁹. Progressively, as the states were created the states started adopting the Rent control laws that operated from the regions they were created from.

From the afore-going, it is obvious that the Rent Control Laws which try to regulate rents and recovery of premises had their origin from the Rent (Restriction) Ordinance Cap.93 of 1948. These laws have previously been applied by some states in number of towns in the concerned states.¹⁰ Presently, all the states of Nigeria have adopted these statutes at one time or the other, but the success of the application of the laws has left much to be desired. In any case, there have been slight variation of the title to the law in a few states but the contents are basically the same. In Anambra State for instance, the law is called the Landlords and Tenants Law Cap. 76 Revised laws of Anambra State, 1991.¹¹ The Lagos State Rent Control and Recovery of Residential Premises Law No. 9 of 1976 was also enacted for this purpose. The Lagos State version of the law is mostly quoted because it is widely interpreted by the Supreme Court and other courts. Also, its provisions are basically the same with the law applicable in other states.¹²

In Rivers State, Edict No. 3 (1984) established the Rent Control. In almost all the States of the Federation the Rent Control Laws and the Recovery of Premises Laws have been merged and called Rent Control and Recovery Premises Law.¹³ The Rent Control aspect of the law has been ineffectively operated, because what subsists is the Recovery of Premises. In order to regulate the relationship between the landlords and tenants, eradicate illegal ejection of tenants prevent arbitrary inflation of rents and unlawful holding over of the demised premises by the tenants, the Rent Control and Recovery of Premises Laws have to be updated from time to time¹⁴. In Landlord and Tenants relationship the tenant is in a much weak position and exploitative landlords capitalize on this hence the need for this law. In *Oduye vs. Nigerian Airways Ltd, Oputa JSC* summed up the social policy behind Rent Acts thus:

...the general principle of the Rent Act has always been to guard against the social and economic evils generated by shortage of housing, agreed and rapacity of some landlords who increase rents and try to evict tenants who refuse or are unable to pay higher rent demanded¹⁵.

The striking thing about Landlord/Tenant relationship is that the tenant is always at the receiving end. Some landlords make amorous overtures to the wives of tenants, if the tenants protect they are given quit notices. In some cases, children of landlord/landladies continually try to have home affairs with the wives/children of tenants, if the problem comes to lime light the resultant effect would be quit. Even quarrels between tenant's wife and landlord wife have the tendency of leading to the tenant been brandished with quit notice. Governments (State and Federal) have promulgated various laws to curtail, the excesses of these landlords. These laws include the Recovery of Premises laws, the Rent Control and Recovery of Premises Laws, etc. One of the latest of these laws have been enacted by Rivers State and Plateau State.¹⁶ The control and regulation of the increase of rent is one main purpose of the Rent Control of Recovery of Premises Laws in Nigeria. This control is usually with respect to the residential premises. The restriction makes it harder for the landlord to be at liberty to demand and receive rents of any amount at any time he chooses.

In as much as there is variation in rent charges depending on the quality of accommodation, nature of landlord and area of the place of the house, the Rent Control and Recovery of Premises Laws have intervened to restrict the right of the landlord in the areas of the maximum rent he can receive as rent for his premises, how much of the rent he can collect in advance, and how and when he can increase his rent. In fact the statutes applicable to various states of the federation have made express provisions regarding the control and regulation of rent and with the necessary sanctions against a landlord who

⁹ Emeka Chianu (1990). Nigerian Law of Landlord and Tenant: Cases and Commentaries.

¹⁰ Onwuamaegbu, M.O. (1966). The Nigerian Law of Landlord and Tenant (pages 270 – 271).

¹¹ Nwoye, K.N. (2003). Rent Control and Recover of Premises Laws in Nigeria, Onitsha, Goodway Printing Press Ltd.

¹² Op. cit.

¹³ Osimiri Uche J. (1994) Modern Law of Landlord and Tenant in Nigeria (p. 184), Port Harcourt: Pan Unique Publishers.

¹⁴ Nwoye K.W. (1999) The Landlord and the Tenant: Basic Principle of Tenancy Law in Nigeria (Legal Awareness Series Vol. 1, Onitsha: Roberts Printers Nigeria Ltd.

¹⁵ Osimiri Uche J. (1994) p. 386.

¹⁶ Section 3 (2) of Plateau State Edict, No. 1 of 1998; Section 110 of Anambra State Law Cap. 76 of 1991.

violates the provisions.¹⁷ The statutory restrictions begin with the fixing by law of what is called "the standard rent" for certain areas or types of accommodation as classified by the law with powers vested in the Governors of a State to vary this.¹⁸ The Rent Tribunals also have powers on the application of the landlord or the tenant, to determine, the standard rent payable for the particular premises taking all necessary factors into consideration.

With this, a landlord is statutorily restricted from deciding what rent to charge, except he charges a rent lower than the standard rent fixed by law or has an order of the court increasing the rent payable for his premises¹⁹. A landlord is equally restricted by law as to how much of the standard rent, or the less of it, he can demand or collect in advance. In most of these laws, the landlord can only receive rent in advance of three months in the case of individual tenants, and twelve months in the case of the commercial or institutional tenants. It is unlawful and an offence for any landlord to demand rent in advance beyond the limits prescribed by law such a landlord will on summary conviction be liable to a term of imprisonment or fine or both. It is also an offence punishable on summary conviction with a term of imprisonment or fine or both for a tenant to pay rent in advance, in excess of that prescribed by the landlord²⁰. In some states the legal interest in the premises of a landlord who violates the provisions of the law, with regards to his premises, may be acquired compulsorily by the government on payment to him of a sum being the value of the premises at the time²¹.

In *Sule vs. Nigerian Cocoa Board*²² Oputa JSC then observed;

The whole scheme of the Rent Edict 1976 (Lagos) particularly Ss. 15 and 18 are to give security of tenure and protection to tenant and to restrict the recovery of premises from the tenant unless the landlord complied with the necessary formalities of notices... followed by issuance of writ. Unless a tenant voluntarily delivers up possession he has to be ordered to do so by the judgment of a tribunal.

The Rent Control and Recovery of Premises Laws relating to actual rent control have been ineffective in almost all the States of the Federation because Nigeria operates a free market economy. In essence rent control hardly exists in a capitalist or free market economy. Some of these laws have been made and re-enacted from time to time but they have no teeth of operation as no landlord can presently be convicted for charging rent beyond the stipulated or standard house rent.

6. Summary and Conclusion

From the afore-going submissions on nature of rent, free market economy, economic rent and rent control, it is obvious that Nigeria operates a free market economy. A free market economy allows market mechanisms to determine the prices of goods and services offered to the public. Suppliers of goods and services offer their items at the prices arrived at based on cost of production, level of demand, rate of taxation, cost of capital and other prevailing economic ingredients in the environment/society. It is equally important to note that so far, the demand outweighs the supply of any given service, its price must stringently be determined by the producers/suppliers more so in a free market economy. Also since government does not subsidize the supply of housing and allied materials for such purpose the urge to implement the rent control enactments becomes less functional. With the increasing need for profitability and privatization in Nigeria as presently envisioned it is not likely that rent control can exist through statute implementation. The dearth of successful cases on rent control in Nigeria has given credence to the fact that rent control cannot smoothly exist in a free market economy. Therefore, the submission of this paper is that rent control cannot exist in a free market economy.

¹⁷ Section 3 (2) of Plateau State Edict, No. 1 of 1998; Section 110 of Anambra State Law Cap. 76 of 1991.

¹⁸ Section 113 of Anambra State Law Cap. 76 of 1991.

¹⁹ Section 113 of Anambra State Law Cap. 76 of 1991.

²⁰ Section 6 of Plateau State, Edict No. 1 of 1998.

²¹ Section 25 of Plateau State, Edict No. 1 of 1998; Section 49(1) of Kano State Edict No. 1 of 1977.

²² Osimiri Uche J, (1994) *Modern Law of Landlord and Tenant in Nigeria* (p. 184), Port Harcourt. Pan Unique Publishers.

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