

An Examination of the Acquisition of Land Ownership Through *Ihyau Al-Ardh Al-Mawat* Under the Nigerian Land Administration System

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Abstract

Land is a vital natural resource that underpins human existence and socio-economic development, necessitating legal frameworks for its administration. One distinctive principle of Islamic land law is Ihyā' al-Arḍ al-Mawāt (revival of barren land), which permits the acquisition of ownership through the productive utilisation of unoccupied land. This study examines the concept of Ihyā' al-Arḍ al-Mawāt and its applicability within the Nigerian land administration system. Using a doctrinal research methodology, the study analyses primary sources of Islamic law, statutory provisions, judicial decisions, and relevant literature. The findings reveal that Islamic law recognises proprietary ownership through the valid revival of barren land, whereas the Land Use Act 1978 vests all land in State Governors and grants only rights of occupancy, rendering the doctrine largely inapplicable in Nigeria. The study recommends amending the Land Use Act to recognise ownership through land revival under statutory safeguards, while strengthening the roles of traditional institutions and relevant authorities in identifying mawāt land and promoting informed implementation.

Key words: Barren land, acquisition, ownership, land administration.

1.0 INTRODUCTION

Land constitutes the foundation upon which virtually all human activities—socio-economic, cultural, and political—are carried out. Its importance to human existence and sustainable development cannot therefore be overstated.¹ In Nigeria, land occupies a

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¹R B Adeyinka, 'Smart Land Governance for Sustainable Development in Nigeria' (2024)(7)(1) *African Journal on Land Policy and Geospatial Sciences* 349 <https://revues.imist.ma/index.php/AJLP-GS/article/view/46087/24850> accessed on 20 January 2026; B N Okafor, 'Decentralised Land Tenure, Governance Frameworks, and Rural Development Outcomes: A Technical Review of the Land Use Act (1978) in Nnobi, Nigeria' *International Journal of Administration and Education* (2025) (2) (5) 129 <https://journal.ashapublishing.co.id/index.php/ijae/article/view/202/268> accessed on 20 January 2026; A Amuda-Kannike et al, 'Land Tenure, Property Rights, and Commercial Development: Examining the Tensions Between Customary Law, Statutory Law, and Investment Security in Nigeria', *Journal of Commercial and Property Law* (2025)(12)(5) 68-79 <https://journals.unizik.edu.ng/index.php/jcpl/article/view/7020/5859> accessed on the 20 January 2026

particularly central position, not only as a factor of production but also as a source of livelihood, social identity, and political authority.² Consequently, the acquisition, ownership, and control of land have historically been matters of profound legal and socio-economic significance.

From time immemorial, Nigerian societies have recognised diverse modes of acquiring land, including conquest, inheritance, first settlement or occupation, cultivation, purchase, and gift.³ These modes were largely regulated under customary land tenure systems, which varied across ethnic groups but shared common features such as communal ownership, lineage control, and the vesting of radical title in families or communities.⁴ In Northern Nigeria, Islamic law historically played a significant, and in some part of the country such as the north, a dominant role in regulating land relations prior to colonial intervention.⁵

Islamic law recognises multiple modes of land acquisition similar in form to those known under customary systems; however, it regulates them through principles grounded in justice, public interest (*maṣlaḥah*), and productive use of land. One of the distinctive modes of land acquisition under Islamic law is the doctrine of the revival of barren or dead land known as *ihyā' al-arḍ al-mawāt*.⁶ This doctrine allows an individual to acquire ownership rights over land not that had remained vacant and unused for a very long time by bringing it into productive use, subject to prescribed legal conditions and state authority.⁷

Although *ihyā' al-arḍ al-mawāt* bears a conceptual resemblance to the customary law principle of first occupation, the two differ fundamentally in their underlying philosophy and operational framework. While customary first occupation often culminates in communal or family ownership of land,⁸ Islamic law emphasises individual initiative, continuous productive use, and the prevention of land hoarding, while still recognising the regulatory role of the state.⁹ In the contemporary Nigerian legal framework, the Land Use Act 1978 has significantly altered both customary and Islamic land tenure arrangements by

²Orji K and Omenma J, 'The Nigeria's Land Tenure Policy and Poverty Among Peasant Farmers: A Case of Human Rights Violation?' *University of Nigeria Journal of Political Economy* (2022).(1) (1) 105-123 <https://unjpe.com/index.php/UNJPE/article/view/172/164> accessed on the 22 January 2026

³ O. C. Nwabueze, 'The Dynamics and Genius of Nigeria's Indigenous Land Tenure System', *Journal of African Law*. (1972) (14) (3) 119–143 https://www.researchgate.net/publication/265143018_The_Dynamics_and_Genius_of_Nigeria's_Indigenous_Legal_Order accessed on the 19 July 2026.

⁴See no 2; Adeogun Richard Adeniyi and Simeon Ola Oni, 'Ownership and Compulsory Acquisition under Customary Land Tenure in South-West Nigeria: A Legal and Socio-Cultural Analysis', *African Journal of Law, Political Research and Administration* (2025)(8)(1) 1-12 https://abjournals.org/ajlpra/wp-content/uploads/sites/6/journal/published_paper/volume-8/issue-1/AJLPRATF7UHHFJ.pdf accessed on the 23 January, 2026.

⁵ M B Alkali, 'Legal Framework on Land Administration in Nigeria', *ABUAD Law Journal* (2022) (10)(1). 51

⁶ Firman Husaeni, 'Ihya al-Mawat in the Study of Sharia Economic Interpretation and Hadith', *Zona Law and Public Administration Indonesia* (2024) (2) (6). 13-22.

⁷ n. 5

⁸ n. 3 (Adeogun Richard Adeniyi and Simeon Ola Oni)

⁹ Á Mestyán, 'Acquisition by Use in Islamic Law: Ihyā' al-Mawāt in Three Legal Opinions from Late Ottoman Egypt' *The Arabist: Budapest Studies in Arabic* (2024) (47). 79-93 <https://real.mtak.hu/211707/1/Adam-Mestyán-2024.pdf?utm> accessed on the 29 January 2026.

vesting radical title to land in the Governor of each state, thereby subjecting all landholding systems to statutory control.¹⁰

Against this background, this research interrogates the relevance, applicability, and potential contribution of the Islamic doctrine of *ihyā' al-arḍ al-mawāt* to Nigeria's land tenure system, particularly in the context of access to land, equitable land distribution, and sustainable development.

2.0 MEANING OF LAND

The term land is a seemingly difficult phenomenon to define, what immediately comes into the mind of a reasonable man at the mention of 'land' is the upper surface of the earth and what is beneath same.¹¹ According to Bakker, land is a delineable area of the earth's terrestrial surface, encompassing all attributes of the biosphere immediately above or below this surface including those of the near-surface, climate, the soil and terrain forms, the surface hydrology (including shallow lakes, rivers, marshes, and swamps), the near surface sedimentary layers and associated groundwater reserve, the plant and animal populations, the human settlement pattern and physical results of past and present human activity (terracing, water storage or drainage structures, roads, buildings, etc.).¹²

The Arabic term for land is *al-Arḍ*, which linguistically and conceptually refers to everything other than the heavens. It denotes the lowest realm of the universe, encompassing the earth's surface, what lies beneath it, and a limited spatial extent above it, but excluding the commencement of the heavens, which remain a distinct and superior cosmological domain in Islamic thought.¹³

3.0 MEANING OF BARREN LAND

According to Al-Qaraḥīy a Mawat (barren land) is one that has neither owner nor user.¹⁴ Al-Bahutiy defined a barren land as a land devoid of exclusive possession and protected ownership, same does not include roads and water ways, lands owned via purchase or gift cannot be subject of revival.¹⁵

¹⁰ Y S Uthman, A Legal Analysis of the Distinction Between Statutory Right of Occupancy and Customary Right of Occupancy in Nigeria, *International Journal of Law* (2026)(12)(1). 164-167 https://www.researchgate.net/publication/400080715_A_Legal_Analysis_of_the_Distinction_Between_Statutory_Right_of_Occupancy_and_Customary_Right_of_Occupancy_in_Nigeria accessed on the 15 February 2026.

¹¹ Onah & Nduka 'The Legal Conception of Land, Rights and Interests Thereon' (2023) (4) *International Journal of Law and Clinical Legal Education (IJOLACLE)*. 45-53.

¹² Bakker, M.M. and Veldkamp, A., Modelling land change: the issue of use and cover in wide-scale applications, *Journal of Land Use Science* (2008) (3)(4). 203-213.

¹³ See Ibn Manẓūr, *Lisān al-'Arab* (Dār Ṣādir, 1990, vol. 7). 30-32; Muḥammad al-Zabīdī, *Tāj al-'Arūs min Jawāhir al-Qāmūs* (Dār al-Hidāyah, 2001, vol. 9). 14-16

¹⁴ Ahmad bn Idris Al-Qaraḥīy, *Al-Dhakhīrah* (Darul Gharb Al-Islamiy, Beirut, 1994, Vol. 6) 147

¹⁵ Mansur bn Yunus Al-Bahutiy, *Ar-Rawd Al-Murbi' Sharh Zaadu Al-Mustanqi' fi Ikhtisaar Al-Muqni*, (Daru Al-Fikr Litaba'ati wa Nashri, vol. 1). 205

A barren land (*al-arḍ al-mawāt*) refers to land that is unoccupied, uninhabited, and not put to any beneficial use by any person or authority.¹⁶ Its revival (*iḥyā'*) is the act of bringing such land into productive use or effective occupation having been previously unoccupied or ownerless. Revival may occur through cultivation, construction of dwelling houses or other buildings, fencing, irrigation, or the performance of other continuous human activities that signify effective control and utilisation of the land.¹⁷

Barren lands does not include unused lands and lands not occupied nor possessed so far such land is retained for public use and benefit. Thus a barren land is that not put to use or intended to be put to use by anyone.¹⁸ It is important to note that a land may be barren *ab initio* or become barren after previous occupation.

3.1 Position of Islamic Law on Revival of Barren Lands

The scholars of Islamic law are of diverse opinion as the types of land that can be revived, and the attached conditions thereto. The crop of this subject is centered on the hadith;

مَنْ أَحْيَا أَرْضًا مَيْتَةً فَهِيَ لَهُ وَلَيْسَ لِعَرَقٍ ظَالِمٍ حَقٌّ¹⁹

Whoever revives a dead (barren) land, it belongs to him, and no unjust person has any right over it.

Ibn Qudāmah²⁰ categorised lands according to their susceptibility to revival (*iḥyā'*). He asserted that land which has no previous owner and has not been put to any use of any kind may be revived, a position that, according to him, is undisputed among scholars who permit revival. The second category comprises land that was previously owned by someone, which he further subdivides into three subtypes. The first subtype is land with an identified owner, which may itself be of two kinds: land owned through purchase or gift, which cannot be acquired via revival, and land previously revived but later abandoned, such that it returned to its original unproductive state. According to the Imām Mālikī, such abandoned land may be subject to subsequent revival,²¹ whereas Ibn Qudāmah opposed this view on the ground that the land had a known owner, and therefore, its status is analogous to land acquired via purchase.²²

¹⁶ ¹ Ibn Qudāmah, *al-Mughnī* (Dār 'Ālam al-Kutub, 1997, vol 5). 565; Yaḥyā ibn Sharaf al-Nawawī, *al-Majmū' Sharḥ al-Muḥadhdhab* (Dār al-Fikr, 1997, vol 15). 397–398; Muḥammad Amīn Ibn 'Ābidīn, *Radd al-Muḥtār 'alā al-Durr al-Mukhtār* (Dār al-Fikr, 2000, vol 6). 371–372

¹⁷ Ibn Qudāmah, *al-Mughnī* (Dār 'Ālam al-Kutub, 1997, vol 5). 565–568

¹⁸ Muḥammad bn isma'eel As-san'aaniy, *subul As-salaam* (mawqī'u maktabi Al-Madeenati Ar-Raqmiyyah, 1960, 4th edn, Vol. 3) 84.

¹⁹ Abubakir Ahmad bn Husayn bn Ali Al-Bayhaqi, *As-Sunan Al-Kubra* (Mawqī'u wizaarati Al-Awqaaf, 1st edn. Vol. 6). 142

²⁰ Abdullahi bn Ahmad bn Quddamah Al-Maqdisiy, *Al-Mughniy* (Daaru Al-Fikr, Beirut, Vol. 6). 164

²¹ Ibn 'Ābidīn, *Radd al-Muḥtār 'alā al-Durr al-Mukhtār* (Dār al-Fikr, 2000, vol 6). 373–374

²² Abdullahi bn Ahmad bn Quddamah Al-Maqdisiy, *Al-Mughniy* (Daaru Al-Fikr, Beirut, vol 5). 566–568,

The position of the Maliki school is that a land formerly possessed by revival may be subject of another revival if it had been abandoned by the former reviver for so long period that the trees and well had been destroyed and the land had reverted to a position it was before the first revival.²³ However, if such land was previously occupied by Muslims such is not to be revived except with the permission of the previous revivals²⁴.

3.2 Modes of Reviving Barren Lands

There has been a debate among scholars regarding acts that amounts to revival of barren lands. They differ as to what action qualifies as revival. Ibn Abd Barr mentioned Imam Shafi'i to have opined that an act of revival is whatever is regarded as such in the prevailing custom of the people, if the barren land is to be habited, then, act of revival will be to build on the land.²⁵

Imam Nawawiy in support the Shafi'i school's argument, opined that custom is to be resorted to in determining the acts of revival, he argued that the Prophet (may peace be upon him) provided for revival but did not mention the acts that amounts to same, thus, the recourse to prevailing custom, he noted that, if a revival is intended for dwelling, the erection of a structure with bricks, and clay may suffice, if the custom regards such as revival or with planks and shafts is such is regarded as revival by the prevailing custom, however, he is to roof and make doors therein, because a house is not suitable for dwelling without these.²⁶

According to Al-Bahutiy of Hanbali school, if a person constructs a fence which prevents entry upon a barren land whether or not he intends to dwell on the land or for any other purpose, he had revived same, and he based this assertion on the hadith;

من أحاط حائطاً على أرض فهي له

“Whoever encloses a piece of land with a wall, it belongs to him.”²⁷

Al-Bahutiy further opined that the digging of productive well, creation of water ways to the land, and prevention of unsuitable for farming water from the land i.e. so that the land becomes farmable amounts to revival, this is because these acts are beneficial to the land, he however, did not regard farming on a land as revival.²⁸

²³ Ahmad bn Idris Al-Qarafiy, *Al-Dhakhīrah* (Darul Gharb Al-Islamiy, Beirut, 1994, Vol. 6). 149; Ibn Abd Barr Yusuf bn Abdullahi Al-Qurtubiy, *At-Tamheedu lima fi Al-Muwata mina-l-ma'aaniy wa-l-asaaneed*, (vol. 22, mawqi'u maktabi Al-Madeenati Ar-Raqmiyyah). 286

²⁴ no. 19

²⁵ Ibn Abd Barr Yusuf bn Abdullah, *Al-Istidhkaar Al-Jami'u limadhahibi fuqaha' Al-Amsar*, (Daru Al-Kutubi Al-Ilmiyyah, Beirut, 2000, vol. 7). 187.

²⁶ Yahya bn sharaf An-Nawawiy, *Al-Majmu' Sharhu Al-Muhadhab* (Vol. 15, mawqi' Ya'sub) 205.

²⁷ Abū Dāwūd Sulaymān ibn al-Ash'ath al-Sijistānī, *Sunan Abī Dāwūd*, Kitāb al-Kharāj wa al-Imārah wa al-Fay', Bāb fi Ihya' al-Mawāt, Hadith no 3077 (Dār al-Risālah al-'Ālamiyyah 2009); Muḥammad ibn 'Īsā al-Tirmidhī, *Jāmi' al-Tirmidhī*, Kitāb al-Aḥkām, Bāb Mā Jā'a fi Ihya' al-Mawāt, Hadith no 1378 (Dār al-Gharb al-Islāmī 1998).

²⁸ Mansur bn Yunus Al-Bahutiy, *Ar-Rawd Al-Murbi' Shar Zaadu Al-Mustanqi' fi Ikhtisaar Al-Muqni'*, (Vol. 1, Daru Al-Fikr Litaba'ati wa Nashri, Vol. 1). 205

Notwithstanding the above, some suggested act that amount to revival are briefly discussed below²⁹;

- Constructing a building/structure on the barren land; this is supported by the hadith of the prophet

“من أحاط حائطاً على أرض فهي له”

Whoever builds a wall on a land has more right to it

The linguistic meaning of a wall (*haait*) is to be reckoned with, as such any other demarcations such as surrounding of the land with stones, loads of sands, not linguistically regarded as a wall does not suffice, as such a person does not have exclusive possession to the land.

- Digging a well; if a person dig a well that produces water on a barren land, such act confers exclusive possession of the said land on him, on the other hand, if the well does not produce water, then, revival has not occasioned and there exist no exclusive possession to the one who dug the well.
- Creation of waterway upon the land from a stream or river i.e. if the person creates a path from a stream of river through which water can get to a barren land, he had by that revived the land. This is because the existence of water on the land is more impactful than that of a wall expressly mentioned in the above hadith.
- The blocking of a stagnant unsuitable for farming water from getting to the land; if by this the barren land becomes farmable, such an act amounts to a revival of the land.

The list of the acts of revival is however, not exhaustive, the Hanbalis makes recourse to the prevailing custom of the people in determining acts of revival, they opine that whatever the people regards as revival is indeed a revival, they argue that, the law only provides for revival of barren lands but does not stipulate the methods of doing same, as such, same should be left to the custom prevailing among the people.³⁰ The digging of holes, clearing for farming, and other activities may customarily qualify as revival.

Imam Shafi'i is of the opinion that a barren land is not revived as such the exclusive possession is not gotten only after the reviver had planted on same and the plant germinated, the house constructed and roofed³¹.

3.3 Requirement for Executive of Judicial Consent in Reviving Barren Land

There is a divergence of opinion among Islamic scholars regarding whether the approval of the authorized leader (*imām*) or a court is required for a valid revival (*iḥyā'*) of barren land. This difference of opinion primarily occurs between the majority of scholars, who maintain that revival is valid without prior approval, and the Ḥanafī school, which contends that the consent of the ruler or judicial authority is necessary to establish legitimate ownership.³²

²⁹ See Muhammad Abdur-rabihi Muhammad As-Sabhiy, *Ihyaahu Al-Ardhi Al-Mawaat fi Ash-Shar'iiyyati Al-Islamiyyah* (paper presented at 2nd World Conference of Faculty of Rights, University of Tonto, 29th-30th April, 2015)

³⁰ No. 29. 7

³¹ Muhammad bn Ahmad Al-Hanbaliy, *Tanqeehu tahqeeq ahaadith At-Ta'leeq* (Daaru kutui Al-Ilmiyyah, vol. 3) 84

³² Ibn Qudāmah, *al-Mughnī* (Dār 'Ālam al-Kutub 1997, vol 5). 565–567; Ibn 'Ābidīn, *Radd al-Muḥtār 'alā al-Durr al-Mukhtār* (Dār al-Fikr, 2000, vol 6). 372–373.

The majority - consisting of the Maliki, Shafi'i and Hambali schools - are of the opinion that there is no requirement for governmental approval³³ while the Hanafis makes such approval a condition precedent for a valid revival.³⁴ The divergence of opinion regarding the need for the approval of the authorised leader or court in the revival of barren land is occasioned by two factors. First, there is a possible contradiction in the interpretation of the evidences pertaining to the subject. Second, there is a difference in the objectives of *Shari'ah* relevant to the issue: one concerning the empowerment of government to allocate rights and settle disputes among citizens, and the other concerning the revival of barren lands.³⁵

The *Shari'ah* objective in the establishment of government is to ensure peace, stability, and orderliness in human society, while the objective in the revival of land is to ensure the effective utilisation, management, and equitable distribution of land and landed resources among the citizens.

Scholars who maintain that the textual evidences on the revival of barren land were pronounced by the Prophet in his capacity as a prophet see no need for governmental approval or consent for a valid revival. In contrast, those who hold that these evidences were pronounced in his capacity as a government leader contend that the approval of the ruler or authorised authority is a condition precedent for establishing legitimate ownership. The majority of the scholars do not see any contradiction in the *shari'ah* objectives in the establishment of government and the revival of barren land, thus they do not make governmental approval a condition to revival³⁶.

The Hanafis are of the opinion that governmental approval is required regardless of the location of the barren land, Imam Maliki however opined that there exist a distinction between a barren land close to the town and that far away, he made approval a requirement for reviving a barren land close to the town while there is no need for same regarding lands far from the town³⁷. In *Al-Mudawanah Al-Kubra*³⁸, Imam Maliki was reported to have opined that revival of a barren land does not need governmental approval; he however conditioned the revival of a barren land close to town and of general benefit to the people on the allocation of the government.

What appears most correct position is that there is no rigid rule regarding the requirement for governmental approval in the revival (*iḥyā*) of barren land. The writer contends that none of the textual evidences explicitly stipulates the need for approval, rendering the matter a subject of intellectual and scholarly debate. What is clear from the positions of the Ḥanafī and Mālikī schools is that the requirement for approval is motivated primarily by the need to prevent disputes and chaotic situations arising from competing claims to land. This concern is particularly evident in the distinctions made by Imām Mālikī, who emphasises the governance and orderliness aspect in revival. Accordingly, the writer holds

³³ Muhammad bn Habeeb Al-Mawardhiy, *Al-Hawiy Al-Kabir* (Darul Kubub Al-Ilmiyyah, Beirut, Lebanon, Vol. 7). 478-479.

³⁴ Al-Kāsānī, *Badā'i' al-Ṣanā'i' fī Tartīb al-Sharā'i'*, (Dār al-Kutub al-Ilmiyyah, Beirut, Vol. 6, Kitāb Iḥyā' al-Mawāt); Al-Maydani, *Al-Lubb fi Sharh Al-Kitab* (Daru Siraj, Madinah, Saudi Arabia, 1982, 2nd eds, vol. 3) 542-543.

³⁵ al-Shātībī, *al-Muwāfaqāt fī Uṣūl al-Sharī'ah* (Dār al-Kutub al-Ilmiyyah 2001, vol. 2). 85-88

³⁶ Ibid, abdur-rabihi Muhammad As-Sabhiy

³⁷ Ahmad bn Idris Al-Qarafiyy, *Al-Dhakhīrah* (Darul Gharb Al-Islamiy, Beirut, 1994, Vol. 6) 156; Ibid, Yusuf bn Abdullahi Al-Qurtubiy

³⁸ Imam Malik bn Anas, *Al-Mudawanah Al-Kubra* (Daaru sadir, Beirut vol. 15). 195

that a distinction should be made among different types of lands when determining the necessity of seeking governmental or judicial approval for revival.

Lands previously occupied by Muslims or Muslim Community, and lands close to town should require government approval in order to forestall possible breakdown of public peace and order that may emanate from land disputes, lands not previously occupied and that far away from town may not require approval. Approval may as well be required if there is a possibility of the barren land being used by the government for public benefit.

The government also has the power to allocate lands to individual for revival, it may as well require a citizen to revive a land he had occupied by *Tahjeer* within a stipulated period, if such demand is not complied with, and the government may allocate such land to any other person who will revive it.

3.4 Conditions For Revival of Barren Land

Apart from the question of governmental approval, which remains a subject of divergence among scholars, there are two fundamental conditions for the valid revival (*ihyā'*) of barren land. They are:

- The land should not be subject of ownership or exclusive possession by anyone; if the land had been abandoned by a Muslim or Muslim Community such land may require the approval of the owner to be revived by another.
- The land should not have been reserved for public use as such; lands reserved for grazing, farming, waterways, game reserves and so on cannot be subject of revival.

4.0 ACQUISITION OF OWNERSHIP OF LAND VIA *IHYAU AL-ARDH AL-MAWAT* UNDER THE NIGERIAN LAND ADMINISTRATION

Traditionally, land ownership can be acquired through a number of modes, these modes include conquest, cultivation, first occupation and alienation and so on, however, various legal regimes had overtime provided for unique means of acquiring land ownership. The instant law that regulates administration of lands in Nigeria is the Land Use Act of 1978, the Act, by virtue of its section 1 vests all the lands in the states of the Federation in the State Governors, same is however held in trust and for the benefit of Nigerians, the section provides;

”Subject to the provisions of this Act, all land comprised in the territory of each State in the Federation are hereby vested in the Governor of that State and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act”.

Notwithstanding the debate among scholars and authors as to the import of the above provision regarding whether or not the Governor is the Legal owner of all lands in the state or that he is only a trustee holding in trust for all Nigerians³⁹, the section renders the existence of private ownership of land in Nigeria ambiguous and challenging. This assertion is further fortified by the provision of section 22⁴⁰ that subjects the alienation of

³⁹ See A. K Otubu, The Land Use Act and Land Ownership debate in Nigeria: Resolving the impasse' (2015) SSRN *Electronic Journal*, www.researchgate.net/publication/272173374_the_land_use_Act_and_Land_Ownership_Debate_in_Nigeria_Resolving_the_impasse, assessed on the 17 February, 2026.

⁴⁰ Land Use Act 1978

a land subject of statutory right of occupancy to the consent of the Governor, any such transfer or mortgage devoid of the Governor's consent is null and void.⁴¹

Consequently, the possessory right issued under a Certificate of Occupancy pursuant to section 9⁴² is the only unambiguous mode of acquiring a land under the Land Use Act, the certificate only vest the possession of land in respect of which it was issued to the holder, it however, does not grant ownership strict sensu. At this point, it should be noted that ownership differs from possession in that the former is the total and absolute rights and control a person has over a subject matter including lands while the latter is the act of merely putting a thing into custody, as such, ownership is more encompassing than possession and an owner is superior to a possession in law even if he/she is not in actual possession of the property.

The right acquired by reviving a barren land under Islamic system of land administration is absolute ownership and not possession, this is due to the prophetic tradition *مَنْ أَحْيَا أَرْضًا مَيْتَةً فَهِيَ لَهُ وَلَيْسَ لِعِرْقٍ ظَالِمٍ حَقٌّ*⁴³, upon revival the reviver becomes the legal owner of the land and such right can be exercised absolutely and to the exclusion of all others, unlike possession that may be subject to the overriding interest of the absolute owner.

It is therefore evident from the foregoing that the concept of acquisition of land ownership through revival of barren land as available under the Islamic Law is not visible under the Nigerian Land regime as the Land Use Act 1978 which is the principal law of land administration in Nigeria vests all land in the Governors of the States of the Federation, as such, private ownership which serves as the basis of revival has been eroded, also, the right acquirable by citizens under the Act is as well in contrast with that under revival (*ihyaau*), only possessory right evidenced by a certificate of occupancy is acquirable under the former, while a reviver acquires absolute and legal ownership upon a valid revival.

Thus, the right of an owner of land via revival is not subject to the overriding right and control of any person while a possessory right under the certificate of occupancy is subject to the right of the Governor, an owner under the former is at liberty to deal with the land by alienation at will, while the latter is statutorily mandated to seek Governor's consent before a valid alienation.

5.0 CONCLUSION AND RECOMMENDATION

This paper has shown that revival of barren land is one of the modes of acquisition of ownership to land, for a valid revival, a land must be barren i.e. not occupied or put to use by anyone and should not have been reserved for public benefit. It is the opinion of this writer that governmental consent will be required in cases where such will forestall disputes

⁴¹ Union Bank of Nig Plc & Anor v. Ayodire & sons Ltd (2007) 12 NWLR (Pt. 1052).56; Phametic Industrial Project Ltd v. Trade Bank Nig Plc & Ors (2009) 13 NWLR (Pt. 1159) 577, See Bala Hassan, An Appraisal of Alienation of Right of Occupancy under Nigerian Law: Issues and Challenges (Master Dissertation, Department of Private Law, Faculty of Law, Ahmadu Bello University, Zaria)

⁴² Land Use Act, 1978

⁴³ Abubakir Ahmad bn Husayn bn Ali Al-Bayhaqi, *As-Sunan Al-Kubr*, (mawqi'u wizaarati Al-Awqaaf, 1st edn, vol. 6). 142

and ensure peace, same may not be necessary where there is likely to be no dispute regarding the land which is subject of revival. A leader/government may as well allocate lands to individual for revival and may stipulate time for such, or else, such allocation may be revoked. The concept of revival is however not visible under the Land Use Act which is the primary Law on land Administration in Nigeria, this is majorly accredited to the vesting of all lands in the State in the Governor thereby forestalling the possibility of private legal ownership of Land in Nigeria, the granting of only possessory right to citizens under the Act is as well in contrast with the effect of revival as available under the Islamic Land Administration system.

It is thus recommended that the land Use Act be amended to give room for private legal ownership of land by Nigerian citizens and the specific provision for land ownership acquisition through revival under the Nigerian Laws.

It is also recommended that the community leaders and traditional institution should be actively engaged in the process of indentifying *mawat* land. This will help prevent disputes and promote social acceptance of land revived under Islamic principles.

Lastly, relevant officials in land registries, local governments, and judicial institutions should be trained on Islamic land doctrine and their interaction with Nigerian land law. This will promote informed decision making and reduce conflicts arising from ignorance or misinterpretation of *Ihya al-ard al-manat* principles.