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Legal Implication of International Real Estate on Developing Economy on Restriction of Movement By Developed World Due To Omicron Variant

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ABSTRACT
This paper assesses the legal implication of international real estate on developing economies on restriction of movement by the developed world due to the Omicron variant. The paper also assesses the impact of the Omicron variant of COVID- 19 on international real estate. Real estate investment is an emerging business in many countries of the world. Many real estate investors are increasingly looking to invest internationally for reasons of portfolio diversification and the search for higher risk adjusted returns than can be achieved in their domestic markets and in doing that, the emerging economies provide them with great opportunities. However, capital markets are becoming global markets, and real estate markets are no exception, accordingly despite the difficulties posed by venturing overseas due to the outbreak of the pandemic no investor can overlook the potential international investment holds out. The emergence of the Omicron variant of COVID-19 affected international real estate even though the effect has not been felt fully. The paper recommended that the use of well fitted masks, physical distancing, ventilation of indoor space, crowd avoidance and hand hygiene to reduce transmission of new SARS-CoV-2 variant of concern Omicron variant. Developed countries should allow international real estate investors to enter into their countries to invest in international real estate provided that Omicron variant of COVID-19 measures are followed. Government should provide sound policies that regulate real estate investments.

***KEYWORDS**: Legal, International Real Estate, Developing, Economy, Omicron Variant, and Covid – 19*

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I. INTRODUCTION

Real estate is an immovable asset or property that is fixed permanently to one location. This includes land and anything that is built on the land. It also includes anything that is growing on the land or that exists under the face of the land" (Badmus, Yusuff & Alli, 2017). Real estate is important because it is a basic need for individual, family, corporate organizations and government, and demand for it will be directly correlated with increasing population, increasing production and increasing quality of living determined by increasing per capita income. Real estate can be residential, industrial, commercial, hospitality, office, recreation, shopping mall, sports, medical, educational, tourism, transportation, urban, rural etc (Oyedele, 2018).

Real estate transactions are important economic activities required for the actualization of all human activities. Repanic (2005) corroborated this assertion by emphasizing the socio-economic importance of real estate transactions. The ranges of real estate products being transacted in the property market includes; lands, residential properties, commercial properties, industrial properties, recreational properties and agricultural properties. Property market is a unique market where property rights are exchanged. Credence was given to this assertion by Dungeri (2011) that described the property market as the complex processes in which property rights of diverse forms are exchanged among owners, users, developers, and investors directly or through other media in a given society or state. A major deduction from the definition is that there are stakeholders involved in real estate transactions in the property market. Akinbogun et al. (2014) described the property market as an imperfect market with sets of constraints on information and demand and supply flow. The study posited further that property market constraints vary across countries. Property market is an imperfect market with a lot of differences from the conventional market and the stock market.

Real estate investment is a very important factor for economic growth and development of the country. It is intrinsically connected to the economic development and well-being of any nation, thereby necessitating some intervention by prudent governments. Real estate investment is seen as a gateway to meeting important needs that has grown exponentially in recent times due to a number of factors such as growth in population, increased urbanization and industrial growth among others (Marigu, 2005). Real estate investments are largely traded in private, non-centralized markets, with inaccessible private data and often poor-quality data. However, the recent developments in the global economy has necessitated that real estate investment decisions need to be properly informed (Oyewole, 2019). In Nigeria, real estate investment was seen in the past as a means to obtain security and regular income, thus decisions were often made on the basis of intuition and past experience (Ajayi and Fabiyi, 1984).

International real estate investment is necessitated by real estate investors seeking to diversify risks inherent in such investments in their domestic markets. Risks here encompass both variability in expected returns from investment (Byrne and Cadman, 1985) and expected uncertainties (unknown occurrences) inherent in such investments (Kalu, 2001). In going international investors hope to diversify their domestic market risks and tap into the benefits of going international (Solnik, 1993). Christner (2009) and Solnik (1993) and other eminent scholars advise that there exist certain factors the foreign investors must note in the destination market they intend to explore and adequate precautions taken in order to avoid pitfalls and failure. The country and continent chosen for investment matter so much as expected returns can be affected either negatively or positively (Christner, 2009). International real estate investments are made in a foreign country's property market in order to reduce the investor's portfolio risk. Such investment risk reduction is possible because real estate markets of different countries generally have low levels of correlation (Chua, 1999; Conover et al, 2002; and Baum, 1999 among others). In addition, real estate investments overseas may help investors increase returns. However, investing in real estate markets overseas means venturing into the unknown, where you meet unfamiliar political and economic environments, unstable currencies, strange cultures and languages, and so although the advantages of international diversification might appear attractive, the risks of international portfolio investment must not be overlooked (Sirmans and Worzala 2000); and Kateley (2002). Nonetheless, capital markets are becoming global markets and commercial real estate markets are no exception so despite the difficulties posed by venturing overseas, no investor can overlook the potential international real estate investment holds out. However, the recent happenings in the global and national economy require thorough investigation of all forces that influence real estate performance including the impact of Micron variant on international real estate.

The Omicron variant is a variant of the COVID-19 virus. A variant of a virus is a new strain that has emerged due to a mutation in the virus's genetic structure.

Even though the real estate sector was emerging out of a highly dull phase after two waves of the Coronavirus pandemic, the new variant of the virus, Omicron, is fast becoming a cause of concern for the government in general and the real estate sector in particular. If the situation were to get as adverse as it did during the first or the second outbreak, it would negatively impact the real estate sector, which has been able to make progress after undergoing dramatic changes during the two outbreaks. This study assesses the legal implication of international real estate on developing economies on restriction of movement by the developed world due to the omicron variant.

II. LITERATURE REVIEW

2.1 Omicron Variant of COVID-19

The Omicron variant (B. 1. 1. 529) is a variant of SARS-Cov-2 (the virus that causes COVID-19) that was first reported to the World Health Organization (WHO) from South Africa on 24 November 2021. A new SARS-CoV-2 variant of concern (VoC), omicron, was reported. Omicron emerged in a COVID-19-weary world in which anger and frustration with the pandemic are rife amid widespread negative impacts on social, mental, and economic well-being. The recent emergence of the Omicron variant of SARS-CoV-2 with its myriad S gene mutations has caused significant headlines around the world since it was first reported on the 24th November 2021 (WHO, Classification of Omicron (B.1.1.529) SARS-CoV-2 Variant of Concern, 2021). This new variant contains 34 mutations in the S protein gene alone; compared to the original Wuhan virus (ECDC, SARS-CoV-2 variants of concern as of 14 December, 2021). The recent dramatic increases in Omicron case numbers in the United Kingdom indicate a significantly increased transmissibility; (UK Health Security Agency, 2021) which may originate from a higher intrinsic intracellular replication rate; increased ACE receptor binding avidity (CDC, Science Brief: Omicron (B.1.1.529) Variant) as well as enhanced immune escape capability (Pulliam, et al., 2021). However, questions still remain on the real-life impact of these mutations at large-scale population levels. The current spread of the Omicron variant through the South African population is on a background of relatively low numbers of SARS-CoV-2 infection and low vaccination rates thus far. This raises considerable uncertainty when it comes to assessing the behaviour of Omicron in the more highly vaccinated populations of Western Europe and North America, where COVID-19 cases have been much higher, with recent surges of the still predominant delta variant. The frequency with which new SARS-CoV-2 variants have arisen during the

COVID-19 pandemic has led to additional questions on the mechanisms of this emergence. This may have occurred in previous pandemics but without the now relatively widespread access to viral genome sequencing, timely identification and tracking would not have been possible as it has in this pandemic. With the caveat that sequencing is not conducted on all samples, what information we do have suggests that new variants can arise with multiple novel mutations or novel combinations of mutations in a very short space of time. This may come about due to persistent infections in immunosuppressed hosts allowing the evolution of sequential mutations (Choi et al., 2020) which can optimize viral fitness, in terms of host immune escape and/or enhanced intracellular replication rates. This has been seen in previous case reports such as by Choi et al (Pulliam, et al., 2021) and we see it again in the case report in this issue from Stampfer et al, where a patient developed some of the mutations now seen in Omicron. The importance of absent/reduced immune control in virus mutation has been seen experimentally in cell culture (Chen et al., 2021). Other mechanisms such as recombination have occurred in coronaviruses in the past (Graham et al., 2010), particularly when crossing into new host species, and may yet occur in SARS-CoV-2 in the future with an unpredictable effect on the ongoing pandemic (Scientific Advisory Group for Emergencies, 2021).

2.2 Omicron Variant of Covid-19 and the Nigerian Economy

According to reports, the province of Ontario, Canada has confirmed two cases of COVID-19 omicron variant from persons who had recently traveled from Nigeria. However, the federal government through the Nigeria Center for Disease Control (NCDC) has said that the deadly omicron variant of the coronavirus was yet to be detected in the country. On 26 November 2021, the World Health Organization (WHO) designated variant B.1.1.529 a variant of concern, named Omicron, on the advice of its Technical Advisory Group on Virus Evolution (TAG-VE). This decision was based on the evidence presented that Omicron has several mutations with tendencies to impact human behaviour. The 2020 lockdown had a severe impact on many Nigerian households and small businesses given that a very high percentage of the population are daily wage earners. Following the easing of the movement restrictions, many Nigerians have gone about their daily businesses and covid-19 precautions are generally going into oblivion. Wearing of nose masks, washing of hands and social distancing are only adhered to in a few places. Commercial buses are full, and many churches and social gatherings no longer adhere to social distancing principles. As of Monday, 29 November 2021, 3,580,510 tests have been reported in Nigeria with 214,092 confirmed cases and 2,976 deaths. Worldwide, there have been 260,867,011 confirmed COVID-19 cases with 5,200,267 deaths resulting in a case fatality rate of 2.0% According to the WHO, a lot remains unclear about the new omicron variant. For example, it is still not clear whether Omicron is more transmissible compared with other variants such as the Delta variant. Also, it is not clear whether infection with Omicron causes more severe disease compared with infections with other variants. What is clear though, is that we do not expect any movement restrictions in Nigeria. The movement restrictions associated with the advent of the virus in March 2020 caused untold hardships for many households and small businesses. The current state of the economy characterized by increasing food and utility costs amidst muted growth in income also means it will be difficult for the government to adopt movement restrictions to curb the spread of the infection. That said, we expect the global impact, if not nipped in the bud, to adversely affect the country's fragile economy. The United States, United Kingdom, Israel, Saudi Arabia, South Korea have all issued travel limits from passengers from southern Africa where the virus is thought to have originated. Israel has also closed its borders to foreigners after it discovered the case. Many markets are already pricing in its possible risks and consequences. Already, the forecast for the international price of crude oil going into 2022 appears biased towards a decline, which becomes a major concern for Nigeria given the concentration of crude oil proceeds in its export earnings, the impact on reserves, and the management of FX supply towards exchange rate stability. Though many issues around the new variant remain unclear, we believe a fourth wave, if not nipped in the bud, might be a serious concern for the overall economic outlook in 2022. Gondwe (2020) estimates a regional average of about 5% in public revenue losses in Africa, with total merchandise exports contracting by about 17%. There was a shrink in the Nigerian economy in the second quarter of 2020 by 6.1% compared to 1.9% growth in the first quarter period (Trading Economics, 2020). This has been the first recorded contraction of the Nigerian economy since the first quarter of 2017 and the steepest in sixteen years, acknowledged to be induced by global crude oil price fall and nationwide lockdown to contain COVID-19 pandemic. There is a decline of 6.6% in the oil sector of Nigeria in the second quarter of 2020 after rising in the first quarter by 5.1% (Ozili, 2020). Furthermore, non-oil sectors also declined since the third quarter of 2017 (-6.1% vs 1.6%), and -49% vs 2.8% in first quarter, in transportation and storage; -40.2% vs -3% in accommodation and hospitality; -31.8% vs 1.7% in construction; -16.6% vs -2.8%. Also, the GDP of Nigeria shrank by 5% after a 14.27% increase in the previous year (Trading Economics, 2020). Millions of Nigerians observing the COVID-19 lockdown lack the food and income that their families need to survive. Although people providing essential services such as food, medical supplies and the media were exempted from total lockdown to operate for four hours daily, other formal and informal sector workers were in total lockdown. Naira now fluctuates between ₦420/$1 and ₦570/$1, petroleum pump price have been adjusted more than once during the pandemic (from ₦145 to ₦125 and ₦125 to ₦500) and electricity tariff increased from ₦25 to ₦66/megawatt. At present, the inflation rate is more than 14% and the number of unemployed and those that lost their jobs as a result of COVID-19 has increased drastically. The Nigerian central bank adopted some economic policies that can be accommodative by offering ₦3.5trillion loan support to some sectors, but the effort did not prevent economic crisis as fear of contracting COVID-19 disease that was spreading very fast at the time did not allow people to engage in their economic activities (Ozili, 2020).

2.3 The Impact of Omicron Variant of COVID- 19 on International Real Estate

Real estate buyers are likely to postpone their property purchase decisions as they wait for clarity on job security. The Omicron variant has resulted in the closure of malls, retail outlets and entertainment venues in some countries. This could put future commercial real estate deals on hold. Delays in supply of construction materials and shortage of labour, could further push delivery timelines of ongoing projects. Companies worldwide have announced remote working for employees, to curtail the spread of the omicron variant. Consequently, office utilization rates may fall, as remote working increases. It has not been clear as to whether the Omicron variant has affected international real estate negatively.

Okafor and Keke (2020) stated that marketing and prices of real estate have remained stable despite the emergence of the coronavirus, however demand for some specific classes of property, such as recreational may drop, while demand for some others such as medical and agricultural are on the increase. Nevertheless, investors as well as all individuals are likely to put their scarce resources only to necessities due to the uncertainties of the global economic situation and this can affect the real estate sector activities indirectly in the long run. Marketing of real estate for sale or rental is going virtual in order to reduce personal contact and observe the required social and physical distancing rules. The agricultural real estate sector is predicted to remain stable as the demand for agricultural products both for food and export will always be on the rise. This makes the agricultural sector relatively inelastic, thereby giving it the potential of growing, particularly in the manufacturing of medical and herbal products which are believed to help fight against the virus. Overall, investing in real estate remains a safe investment.

According to Udobi, Otty and Nwosu (2021) COVID-19 pandemic have an impact on real estate supply, demand, sale value and rental value in Nigeria. From the discussion so far, it is correct to state that the real estate sector of the Nigerian economy has been greatly affected by the outbreak of COVID-19 so much so that investors are very scared to invest in the sector. However, some developed countries restricted other countries from coming into their countries since the emergence of the Omicron variant of Covid- 19 especially those countries that have been affected by the virus to curb the spread of the virus and this have somehow affected the international real estate sector negatively.

The pandemic has disrupted life and performance in most sectors. Some have been lucky to have the capacity to withstand the shocks. The telecommunications sector, for instance, has been the bright spot during the pandemic as business owners and individuals rely on technology for meetings and milestone celebrations. Other sectors, such as aviation, education, and trade, have crashed under the weight of the pandemic. Social distancing guidelines have affected their ability to conduct business and resulted in a significant loss of revenue. Unfortunately, the real estate sector is among the significant losers of the current crisis. The impact of the pandemic on the real estate sector is unique in that it is not felt immediately by key stakeholders. The sector is a lagging indicator, which means that it can confirm long term trends but not predict them. The fragmentation of the sector means that different sub-sectors will feel the pinch of the virus differently than others. However, one common factor is that all sub-sectors will be negatively affected.

2.4 Legal Implication of International Real Estate on Developing Economy on Restriction of Movement by Developed World

a. Existing Legal Framework

Sound legal structures and the protection of property rights influence the attractiveness of countries for any kind of investment activity. Chin, Dent and Roberts (2006) and Lim, McGreal and Webb (2006) find via surveys that particular aspects of the legal framework and legal regulation are very sensitive for real estate investors' market perceptions. They relate this finding to the immobility of real estate property and to the complexity of real estate transactions. La Porta et al (1997) confirms that the legal environment strongly determines the size and extent of a country's capital market and local companies ability to receive outside financing. They emphasize the difference between law on books and the quality of law enforcement. Knack and Keefer (1995), Mauro (1995), and Svensson (1998), demonstrate that property rights significantly affect investments and economic growth, conditioned, amongst other things, by landlord and tenant law, planning law and urban policy. Therefore, the burden of doing real estate business and taxation is considered to directly affect the operational efficiencies of any transaction. Webb (1984), Worzala (1994) and Adair et al (1999) note that this significantly affects foreign investors at three times: when investing, operating or exiting a market. McGreal, Parsa and Keivani (2001) argue that regulatory limitations, exchange controls and the repatriation of capital restrain international capital flows and hence, are a major source of concern for investors. Host governments have been observed to impose penalties on overseas investors when market conditions deteriorated, creating adverse effects on investment returns.

It follows therefore that the quality of extant laws and government regulations governing real estate investments together with implementation and enforcement machinery impact international real estate investment. As argued by La Porta et al (1997) of the four world legal systems (English, French, German and Scandinavian), the English common law system is the most suitable for enhancing capital market development. Nigeria, being a former colony of Britain, practices a common law system. However, the common law principles are applied in areas where there is no local legislation or judicial authority that governs the area or particular transaction.

The commercial legal framework as it relates to ability to enforce property rights, contracts and have an accessible and impartial venue for dispute resolution are key elements of the enabling environment for international real estate investment in the country.

b. Rental market restrictions

Rental market restrictions, ranging from eviction moratoria to rent deferrals and freezes, have helped to keep vulnerable households in their homes and provided a degree of income protection for many renters. However, a tightening of rental market regulations entails longer-term adverse side-effects, which need to be considered in the design of recovery policy packages. In particular, a tightening of rent controls makes it more difficult for people who don't already rent a dwelling to rent one. Such a tightening reduces the rates of return on real estate investment and creates uncertainty for developers and lenders, which discourages investment in real estate, making housing supply considerably less responsive to changes in demand. By potentially resulting in supply shortages, a tightening of rental market regulations may also exacerbate speculative housing bubbles and increases in household debt, undermining economic resilience. Indeed, tight rental market regulation is associated with a higher probability of incidence of financial crises and more severe cyclical downturns in economic activity (Cournède, Sakha and Ziemann, 2019). Tighter landlord-tenant restrictions tend to reduce residential mobility. Quantitatively, opting for tight versus flexible settings in landlord-tenant regulation can have significant consequences for labour mobility. Indeed, excessive protection of tenants often implies that people with uncertain labour market prospects, such as low-wage or non-standard workers, find it difficult to sign a lease, because landlords, who anticipate a difficult eviction in case of non-payment, require evidence about the stability of tenants' income. Obstacles to residential and consequently labour mobility will be particularly unwelcome given the need to adjust and facilitate the reallocation of labour and capital towards sectors and activities with promising economic prospects. In light of the adverse long-term consequences of overly tight rental market regulations, public authorities would do well to adopt a calendar for the phasing-out of the Omicron variant of COVID-19 related restrictions. Doing so would avoid letting emergency measures become new bottlenecks to the long-term efficiency of housing markets that would ultimately undermine affordability, inclusiveness and sustainability objectives.

c. Easing land-use restrictions

Easing land-use restrictions is a way of facilitating the recovery of homebuilding and better aligning the supply of housing with evolving demand and the needs of society, while also paving the way for enhancing the efficiency of housing markets in the future. Streamlining the permit process would also help in the short-to-medium term, including by lowering prices. Fostering residential construction could also accelerate the transition to a low carbon economy provided that the new buildings are required to comply with sufficiently ambitious environmental standards. In addition, reforms that make it easier to redevelop brownfield into residential areas offer a way of expanding housing supply without encroaching on agricultural land. Facilitating construction and redevelopment would also allow accommodating the possible long-term change in housing demand that the Omicron variant of COVID-19 crisis may prompt. There is a possibility that the Omicron variant of COVID-19 crisis may lead to lasting mutually linked changes in housing demand and work organisation. Preferences could shift in favour of living in lower-density areas and working remotely. This could slow or even reverse urban-rural divergences. First, such a shift would relieve demand pressures in overly-dense areas. Second, a flexible workplace amid more teleworking would free office space for conversion to residential units in city centers, provided land use can accommodate the change. The combination of such demand and supply effects could reduce regional home price differentials and contribute to reducing residential segregation. Reforms to ease land-use restrictions deliver greater benefits if conducted within an integrated spatial planning framework across government sectors and hierarchies. This approach avoids that different sectors and levels of government enact policies that may conflict with one another. The goal should be to encourage housing construction and improve affordability while enhancing neighbourhood liveability and avoid excessive spatial divergence in the access to public services, transportation systems and social infrastructure. In particular, many national governments would do well to play a more active role in land use governance through coherent national strategies that clearly specify the boundaries and specific conditions for development that can be utilized by local governments. In addition, strategic spatial plans that span functional territories help to encourage inter-municipal collaboration and internalize the negative externalities that municipal competition may entail.

III. CONCLUSION AND RECOMMENDATIONS

Real estate investors are slowly but surely moving overseas. The removal of barriers to entry, the adoption of global real estate standards, and developments in the legal and professional infrastructure mean that countries are in a better position than ever before to attract such investment capital. There are some legal frameworks and legal regulations that are very sensitive to real estate investments. The impact of the pandemic on the real estate sector is unique in that it is not felt immediately by key stakeholders. Some developed countries restricted other countries from coming into their countries since the emergence of the Omicron variant of Covid- 19 especially those countries that have been affected by the virus to curb the spread of the virus and this have somehow affected the international real estate sector negatively.

This paper recommended the use of well fitted masks, physical distancing, ventilation of indoor space, crowd avoidance and hand hygiene to reduce transmission of new SARS-CoV-2 variant of concern Omicron variant. Countries should continue to apply an evidence-informed and risk-based approach when implementing international travel measures in accordance with the WHO's interim guidance published in July 2021 to curb the spread of the virus. All travellers should remain vigilant for signs and symptoms of the Omicron variant of COVID-19, get vaccinated when it is their turn and adhere to public health and social measures at all times. Developed countries should allow international investors to enter into their countries to invest in international real estate provided that Omicron variant of COVID-19 measures are followed. Government should provide and implement sound policies that regulate real estate investment.

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