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CUSTOMARY LAND TENURE SYSTEM IN EKITI STATE

Customary land tenure is a system of landholding indigenous to Nigeria. They are accepted rules of practice that most rural Nigerian communities operate to express ownership, possession, and access and to regulate use and transfer. It relates to family and inheritance systems based on the concept of group ownership of absolute rights in land with individuals' acquiring usufructuary (i.e. legal rights accorded to a person or party that confers temporary rights to use or derive income or benefits from someone else's property)

In this paper I would be discussing customary land tenure system practiced in Ekiti State, which is my locality, particularly Ekiti West local government.

Ekiti state is populated by the Yoruba ethnic group, which occupies the Southwestern part of Nigeria, as well as parts of Kwara, Kogi and Edo states. The land tenure-ships amongst the Yoruba people are generally the same.

Amongst the Yorubas of Ekiti State, land belongs to the village community and families with the chief or headman of the community holding the land in trust for the community. There is therefore no concept of individual land ownership. The reason for this is the belief that land is an ancestral trust, which the living shares with the dead. In the case of *Amodu Tijanni V Secretary of Southern Nigeria* (1921) AC 399, the Privy Council of the United Kingdom recognized this fact.

Arising from this in my community is that an individual could possess land as long as he uses it for his family or communities benefit and the land could be passed unto heirs. He could pledge its use to satisfy a debt, but the individual cannot sell the land.

In Ekiti State, Ekiti West local government particularly, the right of disposal belongs to the community through its traditional head in accordance with the custom of the people.

There are a number of landholding rights under the customary land tenure system that relate to the management of land in Ekiti West local government. They are Customary Tenancy and Customary Pledge.

Customary tenancy involves the transfer of an interest in land from a person who has a right from customary landlord to customary tenant, where a person who has right to possession of land grants this right to another person who is not legally entitled to use the land. The tenant pays what is called *ishakole and aroje*, a kind of royalty paid for the use of the land. The difference between the two is that *ishakole* is for an indefinite period whereas *aroje* does not exceed two years. Both royalties used to be paid in kind (with crops etc) in the olden days. In modern times cash is the medium. It entitles the customary tenant to exclusive possession of the land and which interests, subject to good behaviour, he holds in perpetuity. He holds it for a specific period of time with the intention that the land shall return back to the grantor at the termination. Any agreement, which excludes this, is not customary tenancy.

Under the land tenure system in Ekiti state, Customary Pledge is where the occupier of the land gives possession and use of his land to the creditor in order to secure a loan until he finally discharges the debt.

According to Elias "a pledge is a kind of indigenous mortgage by which the occupier of land in order to secure an advance of money or moneys worth gives possession and use of the land to the pledgee until the debt is fully discharged.

The pledgor's right to redeem his land is absolute. It cannot be fettered by agreement, it also cannot be defeated by lapse of time and may be exercised by his successor in title. This rule applies to the customary land tenure of the Ekiti people. Customary pledge has also been defined simply as a temporary occupation licence given to the pledgee who must give back the land as far as possible in the original form it was taken, unencumbered in any way. He can only put it to ordinary use of planting economic crop and improvements on the land is at the pledgee's risk for he has no right to any compensation or credit for economic crop planted, and the improvement carried out on the pledgee's land.

As stated above, customary land does not belong to individuals but to the community as a whole in Ekiti Customary Land tenure system. therefore alienation of customary

land was held to be a taboo, because the present owners held it in trust for future generation.

In the case of *Ajao V Ajani* the supreme court stated a member of the family was not permitted to introduce a stranger to the family through the back door nor was he permitted to fetter the reversionary interest due to the family in a complex commercialisation of the simple possession granted to him, however with the coming of the white man, the rule has become modified.

Consequently, two rules developed concerning the determination of customary land holding. Two simple rules govern the alienation of communal/family land in Ekiti State. Firstly the family head cannot alienate family property without the consent of the family and sale is voidable where such is committed.

Secondly a sale by a principal member of the family without the consent of the head of the family would be void. In order for the buyer to prove ownership of acquired land, he must prove that there was payment of money and delivery of possession.

In the case of *Kabiawu V Lawal (1965) 1 ALL NLR 329* the Supreme Court held that where the entirety of the landowning family's interest in land under such native law and custom is sold, it cannot be argued that they retained any further interests in such land . A valid sale or transfer of absolute interest under native law and custom completely exhausts the rights of the vendor and no questions arises of transferring only some parts or aspects of those interests there is no dispute that an owner of land under native law and custom can transfer his absolute interest and describe the entirety of such interest as conveyed by him as an estate in fee simple.

This principle also applies in Ekiti State.

REFERENCE:

- 1.The land tenure system under the customary law by Nkiruka Chidia Maduekwe.
- 3.Customary land tenure in the modern world by Liz Alden Willy.