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QUESTION

Customary land tenure system practiced in Ilorin Kwara state

INTRODUCTION

Land was the most precious commodity of ancient Nigeria and its value to the modern Nigeria is still excessive. Our fathers lived on and by land and to them it meant everything. It is for this reason that our whole existence and activity was tied to land and its ownership¹.

Land tenure is the system of land holding and its purpose is to regulate land ownership behaviors in a given society. Customary laws have been stated to be the law that was handed down from time immemorial from ancestors and as such it represents a collection of precedents and decisions by bygone chiefs. It entails customs and usages traditionally observed among the indigenous people that formed part of their culture and religion.²

Customary land law covers both customary land law and Islamic land law as practiced throughout the federation and there will be no separate treatment of Islamic law except where a specific mention is necessary. It is therefore permissible to say that customary land tenure system is a system of landholding governed by customary law of different societies.

It is important to note that the Nigerian customary law share common broad principles or features, the Nigerian customary land tenure system varies from one locality. There is no uniform land tenure system spanning the length and breadth of Nigeria. It is the knowledge of customary land tenure of each locality that is peculiarly within the knowledge of members of that community.

CUSTOMARY LANDHOLDING SYSTEM IN ILORIN KWARA STATE

¹ Honorable justice A.G Karibi-Whyte . "Nigerian Common Law" in J,A Omotola(Ed), University of Lagos Faculty of law Silver Jubilee Lectures, 27 at p.40

² Professor Adewale Taiwo "Nigerian land law".

Ilorin Kwara state being a heterogeneous society has two types of customary landholding system and they are (a) Communal and (b) Family landholding.

(A) COMMUNAL LANDHOLDING

Communal land is the land vested in the community as a corporate whole so that each member would have a right to use it or a portion of it but no individual member of the community could claim exclusive ownership to and portion.

Land regarded as communal lands in Ilorin Kwara state was acquired by first settlement on a vacant land and also through conquest. The ownership of a land will go to the first settler in the absence of evidence of jointly settling.

In a place like Ilorin, where title to a portion of land is vested in the community, no single member of the community can lay claim to it as his until it is partitioned. Also, although the land belongs to every member of the community, it is the Emir/Mogaji who is the head of the Ilorin community of that has supervisory and administrative authority over communal land. It should be noted that the communal land vested in the Mogaji is not for his benefit but rather vested in his representative capacity (trustee for the people).

Individual members of Ilorin have rights to the communal land and these rights are discernable in two patterns and they are (i) an individual may acquire permanent rights in the communal land through allocation. (ii) an individual can acquire a permanent right to a communal land through deforestation which is equivalent to absolute ownership and when acquired such title is inheritable.

It should be noted that all rights exercisable by members of the community discussed above are not open to strangers who occupy community land as customary tenants.

(B) FAMILY LANDHOLDING

Family can be defined as the body of persons who live in one house or under one head or a group living consisting of parents and their children whether living together or not. It was also clearly stated that those who are entitled to the founder's property are his direct children who will hold the land as joint family property. Under the Yoruba customary law the property of a deceased who had children surviving goes to his children only and widows are not entitled.

Under the Ilorin customary land tenure system, there is no form of alienation of a family land can be done without consent of the family head and all members of the family and if done, such will be void ab initio.

In Ilorin, family land is created by (i) Devolution, (ii) Conveyance (iii) Will, or (iv) Gift or Allotment. However, family land by devolution is the most recognized under the Ilorin customary law.

It is the family head who is vested with the powers of management of family property. It is he who makes allocations of portions of family land to members and where the property is let out to

tenants, it is his duty to collect rents and also pay the outgoing rents. Also, family head could be appointed by the founder or by election of members of the family.

Only members of the family have the following rights to the family land and they are (i) Right of residence, (ii) Right of ingress and egress, (iii) A voice in the management of the family land.

Family land can be determined by (i) Absolute conveyance of the family land to a single individual whether or not he is a member of the family. (ii) Devolution on a sole heir. Once this happens, he or she becomes the sole owner of the land and the land ceases to be family land. (iii) by partition with consent of all members of the family.

CONCLUSION

The Nigerian customary land tenure system varies from one locality to another. There is therefore no uniform land tenure system spanning the length and breadth of Nigeria. It is the knowledge of customary land tenure of each locality that is maintained within the knowledge of members of that community. Based on personal knowledge and personal research carried out it has been observed that Ilorin, a town in Kwara state which is a diverse community practices both communal and family landholding system.

REFERENCES

1. Nigerian Land Law by professor Adewale Taiwo.
2. Principles of Nigerian customary land law by J. Finine Fekumo.
3. Online interview with few lawyers in Ilorin.