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COURSE: LAND LAW II.

WHAT IS CUSTOMARY LAND TENURE SYSTEM?

Land tenure in Nigeria has been enumerated and carefully explained to be those systems which show the relationship of man in the society to land despite the fact that actual patterns may differ in several different communities but there are certain uniformities/similarities of type in relations involved which make it possible to apply a common scheme of analysis.

The customary land tenure system is the system of land occupancy indigenous to Nigeria. The evolution of this system and the various systems regulating it exhibit the historical credential rooted in the custom and traditions of the different ethno-cultural groupings in Nigeria over a period of time. Customary land tenure system in Portharcourt City is the land holding system practised by the indigenous people of PHALGA in Rivers State, Nigeria. The most important feature of this system is the system of land ownership is similar to communal system. All land is owned by different families, on like what is obtainable presently.

Under customary law, family means the direct offshoot of the founder i.e. the children. Children are generally held to refer to both female and male children although in certain areas such as Ibo societies, female children are not entitled to the property of their late father. Memberships of the family do not take cognizance of the extended family system in the African traditional setting. Thus, brothers, sisters, cousins or uncles of the deceased founder of the family do not qualify as members except whereby his own declaration, the deceased landowner enlarged the family to include relatives. A widow is not a member of the deceased husband's family. A grandchild is not a member of the family for purposes of succession to the family property until the death of his parent who is a member of the family.

CREATION OF FAMILY PROPERTY

There are four ways by which family property can be created. These are:

a. By way of declaration of an intention to create a family property inter vivos: This may arise where land is purchased with money belonging to the family. It may also arise where a landowner while still alive expresses an intention to make the property a family property for the benefit and enjoyment of the members of the family jointly.

a. By way of declaration in a Will:

This arises where a deceased landowner before his death declares in his last Will and Testament to make property which hitherto was held personally by him a family property on his death to be held jointly by members of the family .

b. By way of conveyance: Here, the settlor confers property on the family under a valid deed for that purpose and declares that the use and enjoyment of the property shall be for named members of named family .

c. By way of intestacy.

MANAGEMENT OF FAMILY PROPERTY

Since family property is vested in the family as a whole and ownership of the land is joint and indivisible so that is impracticable for every member to be part of the controlling nucleus of the family property, the administrative control and management of the family land is vested in the family head in conjunction with the principal members of the family.

The family head personifies the family. As such, the powers and rights of ownership of family land are vested in, and are exercisable by him on behalf of the family. The family head takes charge of the management and control of the land in a loose made of speech, he is sometimes referred to as the owner and trustee of the land.

Under most system of customary law, the family head is the eldest surviving male the founder of the family though nowadays, the claims of females has been recognized . On the death of the eldest surviving child, the headship devolves on members in turn according to seniority.

The general rule is that the head of the family once appointed or recognized assumes full control of the family land. But his control over family property is devoid of ownership, what is vested in him is only the day-to-day management of the property. It is the responsibility of the family head to preserve the property and keep it in good state of repairs. He allocates portions of family land to members or others for use and where the property is let out to tenants, it is his duty to collect rent and pay outgoings from the family funds .

The principal members of the family are formed from the branches existing in the family. In polygamous family, the eldest of the children begotten by each wife is a principal member whilst in the case of a monogamous family every child could constitute a principal member. A member has no general right to occupy or use any portion of the family property except the portion allocated to him for use . But he has exclusive possession of the portion allocated to him and can in appropriate cases maintain an action in trespass against other members of the family for interfering with possession.

DETERMINATION OF FAMILY PROPERTY

Family property may be determined in any of the following ways:

(i.) Absolute conveyance of the family land: Where the totality of the interest of the family is conveyed by way of sale or gift of family property is determined. Usually in modern times, the English method of transfer is adopted but such transfer is not valid unless the deed of transfer is executed by the family head and the principal members of the family.

(ii.) Partition: Partition as a legal concept is a method whereby joint possession is disunited so that each former co-tenant becomes a separate owner of a specific portion of land holding a share in severalty as opposed to an undivided share in the whole. Partition may be voluntary resulting from mutual agreement of members and effected by a deed of partition executed by the joint tenants (i.e. by the principal members of the family and the family head).