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Land tenure can be defined as the system of landholding in any given society. Furthermore, according to Prof R.B Mqeke, customary law is defined as the “custom and usages traditionally observed among the indigenous African peoples and which form part of the culture of those peoples”. It should be noted, however, that the term “customary law” is used in a blanket form and it should not be taken to indicate that there is a single uniform set of customs throughout Nigeria. Nigeria is a society with diverse tribes, customs and cultures. For the sake of this paper however, this writer’s focus will be placed on the Esan region of Edo state in Nigeria.

Land was very important to the social, political and economic wellbeing of the Esan region of Edo state, just like other societies around the world. It was regarded as a collective property which everyone could utilize for agriculture and building of houses. Although land was regarded as a collective property, individuals owned the plots which they either inherited or acquired. In Esan, land was regarded as a collective property which is owned and utilized by all members of the community. As a collective property, it was held in trust for the people by the political authorities; in this case, the village council headed by the oldest man (odionwele) at the village level and the council of chiefs headed by the king (Onojie) at the kingdom level. As land was available in abundance in Esan, every able bodied man and woman had access to it. However, nobody had the right to alienate land either as a gift or otherwise without the permission of those at the helm of affairs in the community.

In pre-colonial Esan, land (oto) was in theory communally owned, with individuals and families. One of the principles guiding the acquisition of land in pre-colonial Esan was that for every individual to sustain himself and his family, he should have the right of direct access to the resources, land included, of the territory controlled by the political entity to which he belonged. The use of land was therefore, the inalienable right of individuals only insofar as they are members of the community. In Esan custom, the acquisition of land for farming was based on the principle of Ono ka gbe egbo yalen egho (he who first deforest a piece of land own it) or the “rights of first occupation”. This means that a man who first clears a piece of virgin forest owns it. According to Okojie *“The basic law over farm land was that HE WHO FIRST FARMED A VIRGIN FOREST, A LAND HITHERTO UNCLAIMED, OWNED IT. This means that in Esan custom the first man to clear a forest, cut down the trees for the purpose of farming, owned it OVER GENERATIONS…. The piece of land thus acquired became family property, passing from father to son”*

Every Esan had usufruct rights over land in his village or community. This meant that land was only acquired for its utility and that every man had unfettered access to it either for building, farming or other economic activities. Such a right could however not be sold or ceded as land was regarded as sacred as well as a gift of nature. Once a man took possession of a piece of land, either by direct acquisition or inheritance, it remained his own perpetually. Another principle was the recognition of an individual’s right to anything he had created, whether a homestead or farmland. The land on which a man built his house belonged to him. According to Okojie *“A man owned the piece of land on which he had his house. The land with the cleared area around it belonged to him and his children. If he left it to go and build somewhere else within or without the village, no one else had the right to build on the site…. If the house had fallen down and the place had become bush, the old building site … was still his sacred possession”.*

However, individuals had no right whatsoever to sell land. Even when a man had the intention of selling a plot of land, it was unlikely that someone would pay for what was freely available and required little effort to acquire. The King (Onojie) had the right to acquire land in any part of his kingdom for communal use such as market (eki), cemetery (egbi Itolimin), shrine (aluebo) and playground (ukpugbele), without hindrance. The assumption that “land belongs to the community, the village or the family, never to the individual” as stated by Viscount Haldane is not totally true of Esan. This is due to the fact that there were two levels of land ownership in Esan – the individual and the community.

However, with the successful conquest and establishment of colonial rule, the stage was set for the massive exploitation of the human and natural resources which abound in Esan. The introduction of plantation system by the colonial authorities altered land tenure in Esan. Individuals began to acquire plots of land beyond what they needed for the cultivation of crops. Cultivation of rubber in plantations thus led to increase in the size of land being acquired by farmers for the cultivation of food crops and thereafter rubber. Individuals began to lay permanent claims to the land on which they had permanent crops especially rubber. Although they were not laying claims to the land but they were laying claims to the rubber trees on it; there was no doubt that land tenure system in Esan was gravitating towards individual ownership. This was because individuals, in the guise of disposing of their rubber trees, were actually alienating land. These individuals began to transfer their “rubber plantations” to anyone who could afford to pay for them. As the people were conscious of the fact that individuals had no right to alienate land, they instead pretended to be disposing of their rubber trees rather than the plots of land in order to avoid traditional sanctions.

So, the coming of the British and the introduction of colonial economic system especially, rubber plantation system, led to the gradual transformation of land from communal to individual ownership in the Esan region of Edo state, Nigeria.

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