**NAME; OKON EDIDIONG JOSEPH**

**MATRIC NO; 16/LAWO1/161**

**LEVEL; 400**

**COURSE; LAND LAW (LPB 402)**

**DATE; 21ST APRIL, 2020.**

**QUESTION**; Prepare a brief paper on the customary land tenure system as practiced in your locality (state the locality, state, local government or community you are writing about). This should briefly cover the creation, ownership and determination of family or communal land in your locality.

**INTRODUCTION**

Tenure means landholding. Customary land tenure refers to the systems that most rural African communities operate to express and order ownership, possession and access, and to regulate use and transfer. Unlike introduced landholding regimes, the norms of customary tenure driven from and are sustained by the community itself rather than the state or state law (statutory land tenure). Although the rules which a particular local community follows are known as customary law, they are rarely binding beyond that community. Customary land tenure is as much a social system as a legal code and from the former obtains its enormous resilience, continuity, and flexibility.

Therefore land tenure is the system of landholding in a given society. According to Prof 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.” In *Owonyin v Omotosho*, customary law was described as “a mirror of accepted usage” and common law of Nigerian people. Under the Nigerian Customary law, ownership may be held by the community, family and the individual. Though the Nigerian customary law differs from one locality to the other and from one tribal group to the other, nevertheless, customary law shared common broad principles some of which will be discussed in relation to my local government area which is **Ibesikpo Asutan in Akwa Ibom State, Nigeria**.

**CREATION, OWNERSHIP AND DETERMINATION OF COMMUNAL LAND IN IBESIKPO ASUTAN L.G.A, AKWA IBOM STATE.**

The term community may refer to a family, clan or to a village consisting of a number of kindred or lineage group families. Communal land is regarded as the land jointly owned by a large group of people. Every member of this large group has equal rights to the use of the land. These include the right of hunting, right of collection of wild forest products and firewood and the right of fishing from the public water. All labor or manual works concerning such lands are done jointly by the community.

Land tenure in Ibesikpo Asutan as regulated by customary law has its roots in the traditional conception of land. Traditionally, land had economic, social political and religious significance. It was conceived as a sacred institution given by God for the sustenance of all members of the community and as such it belonged to the dead, living and the unborn. Since the view was that the living merely held land as a kind of ‘ancestral trust’ for the benefit of themselves and generations yet unborn, it was inconceivable for any individual to claim ownership of the land or part thereof or to sell it. The former paramount ruler of Ibesikpo Asutan HRM Bassey Ita Bassey expounded the traditional conception of land thus,’ I conceive that land belongs to a vast family of which many are dead, few are living and countless members are still unborn’.

In Ibesikpo, land belongs to the community, the village or the family, never to the individual. This group ownership under the indigenous system gives rise to some distinctive features. All members of the group, community, village or family have an equal right to the land, but in every case the ‘Etteidung’ (Chief or headman) of the group occupies a unique position in relation to land. He has charge of it and in a loose mode of speech, is sometimes called the owner. Any member of the group who needs a piece of land for farming or residential purposes would go to the Chief for permission to use the land; but the land so given still remains the property of the group. Important disposition of land, however cannot be made by the Chief without consulting the Elders of the community. For instance the Elders consent must be given before a valid grant of the land can be made to a stranger. When such a grant is made, the stranger becomes the customary tenant of the group, giving rise to a very peculiar tenure under customary law known as customary tenancy.

**Allocation to members of the Community**

One critical legal question is whether allocation of land by the head of the community to a member of the community would involve alienation of the right of occupancy for which the consent of the governor or the local government would be required under the Land Use Act. Under customary land tenure system in Ibesikpo, allocation of part or communal land to a member of the community neither divests the community of title nor vests title to the land in the member, it can be done solely by the head of the community. In actual fact, however the community does not transfer possession as such when it allocates land to its member, rather the community maintains possession of the land through its member. Where the member needs a certificate of occupancy, however in respect to the portion of land occupied by him, it seems that the best way for the community to retain its interest in the land is to grant a sublease of the right of occupancy to the member and thus retain the reversion. Where a certificate of occupancy is issued to the member, it will be necessary to insert in the certificate the interest of the community subject to which he takes the right of occupancy. This will forestall the situation where the member would want to alienate the right of occupancy to a stranger without reference to the community.

**Partition and Sale of Land**

Also members of my community with the consent of the head of the community are entitled to communal land among themselves or even to sell the land. The effect of this partition is to divest the community of title to the land and vest the title in the individuals. This being the case, it is submitted that partition of formerly group-owned land will require the consent of the Government or Local Government Chairman since it amounts to alienation of a right of occupancy to individuals under the Act.

**CONCLUSION**

It should also be noted that in my community, the Chief or headman exercises power of control and management of communal on behalf of the community, when he dies, his first son (Akpan) takes his place. In conclusion communal landholding has been described as the most remarkable principle of customary land law.