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| LAND LAW II |
| LPB 402 |
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| EGBEJI VICTORIA OLOR-OCHUWE  16/LAW01/066 |
| 4/16/2020 |

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| ASSIGNMENT TITLE: CUSTOMARY LAND TENURE SYSTEM  QUESTION: Prepare a brief paper on the customary land tenure system as practiced in your locality. This should briefly cover the creation, ownership, management and determination of family or communal land in your locality. |

**INTRODUCTION**

**Land tenure** is the system of landholding in a given society. According to **Prof Maeke**, **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 is the law that was handed down from time immemorial from ancestors and as such, it represents a collection of precedents and decisions of the by-gone chiefs. It entails the customs and usages traditionally observed among the indigenous people that formed part of their culture and religions. In *Owonyin v Omotosho[[1]](#footnote-2)*, customary law was described as “a mirror of accepted usage” and common law of Nigerian people. However, take note 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.

In relation to this work, **customary land tenure system** refers to the system of land holding governed by the customary law. Since 1978, the Nigerian customary land tenure has been modified to a large extent, by the provisions of the **Land Use Act, 1978**. The Act provides for a new uniform land tenure system in Nigeria. In *Otunba Hakeem Sobande v Barrister Andy Igbowkwe[[2]](#footnote-3)*, the ***Supreme Court*** held that the object of the **Land Use Act** is not intended to destroy incidence of customary law, but it modified its application.

**OWNERSHIP OF LAND**

**AREA OF STUDY:**

**STATE –** Cross River State

**LOCAL GOVERNMENT –** Ogoja

**COMMUNITY –** Egbe Mbube

Within my locality (Mbube), we practice the family land tenure system, that is, land is owned by the family in my community. In *Okulade v Awosanya[[3]](#footnote-4)*, ***Uwaifo, JSC*** defined **family** as ***“the body of persons who live in one house or under one head, including parents, children, servants…The group consisting of parents and their children, whether living together or not; in wider sense all those who are nearly connected by blood or affinity…Those descendants claiming descent from a common ancestor; a house; kindred lineage”.***  **Woodman** defines **family** as **“a group of persons lineally descended from a common ancestor exclusively through males (in communities called patrilineal for the reason) or exclusively through females starting from the mother of such ancestor (in communities called matrilineal for this reason) and which group succession to office and property is based on this relationship”**. The term **“family”** in relation to a family property means a group of persons who are entitled to succeed to the property of a deceased founder of a family. Such persons are usually the children of the deceased founder of the family.

**CREATION OF FAMILY LAND**

Creation of family land in my community – Mbube in Ogoja Local Government of Cross River State, is by acts of the parties, more specifically by first settlement (that is, traditionally acquired). This goes by the sense that our forefathers were the first to settle in my community land, a virgin landmark and have been settled there for a long period of time running into thousands of years, thereby exercising ownership over the land.

**MANAGEMENT OF FAMILY LAND**

Family land in my community is managed by the family head (the most senior elder in the family). My family head personifies our 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. He takes charge of the management and control of the land. In my family, it is the responsibility of our family head to preserve family property from any unlawful interference and to keep it in a good state of repair; to allocate portions to the needing members, (for instance, where a family member needs land for building, for farming, etc); where the property is rented out, to collect the rent; and take part in the transfer or alienation of family property to give a valid title to the transferee.

The purpose of our family property is to provide for the needs of members of the family; as such members have certain rights in respect of the property. These rights include right to have a portion to reside, right to surplus income and to have a voice in the management of family property.

**DETERMINATION OF FAMILY LAND**

Determination of family land in my community is done in two ways – **absolute transfer** and **partition**. With regards to the absolute transfer of family property in my community, it is the family head and other principal members of our family that are charged with such responsibilities. For instance, outright sales where the family is in need of urgent money to carry out or execute a project or duty. The same principle applies if the land is to be given out as a gift.

In the case of partitioning, family land in our community is usually shared mutually to individual members of the family who wish to have their own landed properties (for example, sharing of properties after the death of the family head), for building purposes, for farming, etc.

Furthermore, any disagreement arising within the families in my community with regards to family properties (for example, land) is usually settled by the various family heads. (It is a rule within my community that any disagreement or conflict arising within the family is not to be reported to the law enforcement agencies, but rather to the village head who in turn gathers the various family heads and other principal members of the family or the elders to settle the matter). This is just to buttress the point stated above.

1. (1961) All NLR 304 at 309 [↑](#footnote-ref-2)
2. (2016) 11 NWLR (pt 1523) 335 at 355 [↑](#footnote-ref-3)
3. (2002) FWLR (pt 25) 1666 [↑](#footnote-ref-4)