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**LAND TENURE SYSTEM AS PRACTISED IN MBUTU MBAISE.**

Land tenure system is the system of landholding in a society. It can also be defined as a system of management of land in a given society. Landholding differs from one locality to another, that is from one custom to another, depending on the customary laws of a particular locality. Holding of land is determined by the customary laws of a given society.

Customary law is defined as the custom and usages observed traditionally amongst a people and those said customs and usages form part of their culture.[[1]](#footnote-1) Customary law can also be said to consist of the customs of a community which they have applied over the years too the extent that it has become an abomination or even an offence to behave contrary to them. Failure to adhere to or obey these customs maybe punishable by some set of sanctions. It may also be defined as those rules or conducts which the person's living in a particular locality have come to recognize as governing them in their relationships.[[2]](#footnote-2) In *Owonyin v Omotosho[[3]](#footnote-3),* it was said that native law and custom is a mirror of accepted usage. Customary law though a body of rules and regulations governing a particular society, has no uniformity as each society has its own set of rules and regulations which form their customary laws.

It should be pointed out that customary law in Nigeria embraces both the ethnic laws and Muslims laws. Ethnic laws are known as the native law while Muslim law is referred to as shari’ah or Islamic law.[[4]](#footnote-4) In *Lewis v Bankole[[5]](#footnote-5),* customary law has been started to be the unwritten customs recognized as law by the members of an ethnic group. Going by the definition of customary law in this case, Islamic law may not be considered a customary law because they are codified/written down in the Holy Qur’an. However, by virtue of *Section 2 of the High Court Law[[6]](#footnote-6),* native law and custom includes Muslim law reason being that Muslim law is recognized as the body of rules and regulations which the northern part of Nigeria has come to recognize as governing them.

Nigerian customary law differs from one locality to the other and from one tribal group to another, nevertheless, customary law shares common principles or features which includes ownership of land. Ownership signifies the largest claim to land and is therefore recognised as a concept of customary law. Under the Nigerian customary law, ownership may be held by community, family or the next day individuals. Communal land also known as community land is defined as land vested in a community as a corporate whole and in which no individual member of the community could claim exclusive ownership to any portion of the land.[[7]](#footnote-7) In other words, it is a land which belongs to the community as a whole with individual claims to any part of the land.

In relation to family property, the term family refers to a group of persons who are entitled to succeed to the property of the deceased founder of a family. Such persons are usually the children of the founder of the family.[[8]](#footnote-8) Generally speaking, the word “children” refers to both sexes of the offspring but in some societies female children have been held not entitled to inherit the property of their late father. This is the case in my community not withstanding the Supreme Court decision in *Ukeje v Ukeje[[9]](#footnote-9),* which gave credence to the inheritance of property by the female children. Generally under the customary rules of inheritance, a widow is not a member of the family and therefore has no right to inherit the property of her late husband infact the widow is said to be a heritable property. In the strict sense of it, the extended relatives of the deceased founder of the family do not come within the meaning of the term “members of the family”. However, the deceased may by his declaration, for instance, in a will enlarge the family to include such relatives or he may give to such relatives inter vivos.

I am from Mbutu Mbaise in Aboh Mbaise local government area, Imo State. My community is made up of eight villages with about twenty-four (24) kindreds, each village having a village head known as the Igwe meaning King. The land tenure system as practised in my community is mostly that of family landholding which is that land is partitioned unto the families of the community, held by a corporate family body and managed by the family head which could be the eldest member (son) of the family known as Opara/Diokpa.

When a man dies, his property including his land devolves on his eldest son (the Opara) who holds the land in trust for his siblings. This happens when the deceased did not leave any will. The eldest son, now the family head oversees to the smooth running of the family. He can allot land to family members especially during farming seasons and each of his siblings have somewhere to farm but this does not give outright ownership of that land to that person. While the land is under the management of the family head, anyone who wants to build on the land has to perform certain rites before such can be done after which the family head together with other members of the family will show him a portion to build on.

When the need arises for the family land to be permanently partitioned, a group of people called the Opara Age Grade are consulted. What is paramount to these group of people is the type of marriage contacted by the deceased, whether monogamous or polygamous. If it is a monogamous marriage, the land is partitioned amongst the sons, this is known as partitioning per capita. But in the case of a polygamous marriage, it is partitioned amongst kitchens usoekwu) otherwise known as partitioning per stripes. Before the land is partitioned, the family head who is the eldest son is usually given a particular portion which is his entitlement as the Opara. This is known as the primogeniture rule in law and as ikpu-ulo-aku in my community. In all these, the female children do not have any right of inheritance to land. They can only have access to a portion of land for mere farming especially female children without a mother.

Once a family land is partitioned, each person has the right to do with his land as he so wishes and this is known as the individual landholding system which is also practised in my community. In this system, the individual can farm or build on the land after it has been partitioned, for instance, when land was divided amongst members of my father’s family, my father got a portion of land which he uses for farming. He may even alienate the land to another without recourse to the family head. However, in the case of alienation, the family head may be made witness for the purpose of authentication. Where the deceased gave land to any person inter vivos, no one has the right to reverse it.

In conclusion, community landholding system was the land tenure system practised in my community in the olden days but now there is no such thing as communal landholding in Mbutu Mbaise. Land has long been divided amongst families in the community and each family holds its own land under the management of the family head until it is divided amongst family members. The family landholding system and the individual landholding system are the two land tenure systems prevalent in my community.

1. Professor Mgeke. [↑](#footnote-ref-1)
2. Customary Law In Nigeria Through The Cases, A.A Kolajo. [↑](#footnote-ref-2)
3. (1961) 2 SCNLR 57. [↑](#footnote-ref-3)
4. The Nigerian Land Law, page 172. Adewale Taiwo. [↑](#footnote-ref-4)
5. (1908) 1 NLR 81 at 100. [↑](#footnote-ref-5)
6. Cap 49 Laws of Northern Nigeria 1963. [↑](#footnote-ref-6)
7. The Nigerian Land Law, page 173. Adewale Taiwo. [↑](#footnote-ref-7)
8. The Nigerian Land Law, page 175. Adewale Taiwo. [↑](#footnote-ref-8)
9. (2014) 11 NWLR (pt. 1418) 384. [↑](#footnote-ref-9)