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**STATE OF ORIGIN:** EDO STATE

**LOCAL GOVERNMENT:** ETSAKO CENTRAL

**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, management and determination of family or communal land in your locality.

**LECTURER:** PROFESSOR ADEWALE TAIWO, **LLD**.

**INTRODUCTION**

Land is the source of all material wealth. From it we get everything that we use of value: food, shelter, clothing, fuel, metal, or precious stones[[1]](#footnote-1). The availability of land is therefore crucial to the human existence and so culture being the sum total of the way of life of certain individuals is also concerned about this vital human resource. In this stead the customs of a people determine the management of the land resource within such an area. The customary land tenure system of any people therefore is an embodiment of how the management and control of land within a locality is administered. This work focuses on the customary land tenure system found in the Etsako Local Government within Edo State Nigeria.

**CUSTOMARY LAND TENURE SYSTEM**

Before the enactment of the Land Use Act as the major legislation regulating the administration and control of lands across States and Local Government, customary land tenure system was in place. the scope of Customary Land Tenure System becomes very important therefore in the consideration of land ownership and management in the current Nigerian Land Law system. This is because after the enactment of the Land Use Act, the customary land tenure system as found and obtained in the different states of the country remain very relevant to the land holding system of that State. Land Tenure System has been defined as “the mirror of human relationship with land, indicating the nature, manner, and extent of landholding, including the control, use, and management of land”[[2]](#footnote-2). The customary land tenure system found in any given community is found to be a mirror of the customs primarily upheld in the day to day living of such a community. To this extent it is right to assert that such a land tenure system is greatly predicated on the customs and traditions of a people. In light of this, customary land tenure system which refers to the system of land holding within a particular community is vital to understanding ownership, control and management of land within a given community. It is for this reason that such an exposition is the focus of this work.

**THE CONCEPT OF OWNERSHIP WITHIN THE CUSTOMARY LAND TENURE SYSTEM** Land Ownership within customary land tenure system is of paramount importance owing to the effects it has on other forms of land ownership. In the case of ***Amodu Tijani v Secretary, Southern Nigeria[[3]](#footnote-3)*** where **Viscount Haldane,** while delivering the judgment of the Privy Council, opined that: Land belongs to the community, the village or the family, never to the individual. All the members of the community, the village or the family have an equal right to the land, but in every case, the Chief or Headman of the community or village or the head of the family has charge of the land and in loose mode of speech, is sometimes called the owner. There is generally therefore a predisposition within the customary land tenure system of any community of an existent framework of communal ownership as opposed to individual ownership within our native communities. This is generally not distinct from what is obtained within the Etsako Local Government Area. Land is considered to be absolutely vested in the head of the community, a traditional ruler referred to as an Oba who administers land and exercise control over such communal land on behalf for the people.

**CREATION OF COMMUNAL LAND WITHIN ETSAKO LOCAL GOVERNMENT**

Land in this area is predominantly communal held in trust for the people, it could neither be sold nor bought. Hence there is a minimal almost non-existent creation of individual ownership. However a close replication of ownership is the exclusive reservation of certain areas which are considered to generally belong to the ruler, such areas are generally understood to be for the exclusive utility of a ruler and sometimes this maybe proclaimed by naming such an area after such a ruler for example naming of a market[[4]](#footnote-4). It is recognized however with regards to dwelling houses that a piece of land cleared by an individual and used by an individual in building a house for his dwelling with his family is considered to be his possession and as such he and his children may lay claim to ownership of even the areas which surround his building[[5]](#footnote-5). Stricto Senso even where a person may have even vacated his building no one has the right to trespass upon such a land as it is still considered to be the residence of such a person and importance is attached to this. But a person may give another the right where he has vacated his residence to build upon such an area after which he would cease to be recognized as the bonafide owner of such a land.

**MANAGEMENT OF LAND**

The management of land in Etsako in terms of its allocation and allotment is vested in the ruler of the community and as such, he decides on disputes which may arise in relation to communal lands. Where a man has acquired possession of a land and subsequently abandons it, he cannot make such land available to a stranger to the community, this is explicit insight into the fact that at all times, the ownership of land will thus be vested in the community heads[[6]](#footnote-6). With respect to lands for the purpose of farming, it is the practice that where an uninhabited land is cleared by a person such a land becomes the possession of such a person. This is a practice which is in itself similar to that practiced under the Benin customary land tenure system. The basic law over farmland was that *He Who First Farmed a Virgin Forest, A Land Hitherto Unclaimed, Owned It*. Once such a land is cleared and in use by a person it would remain in his family and he can pass it to his sons.

**DETERMINATION OF A FAMILY/COMMUNAL LAND:**

A Land which has been occupied by a man for the purpose of building a house would remain his even when he has vacated it as a result of the sacred feature attached to one’s home. However, where a man makes available his land to another and permits such a person to build, he ceases to be the bonafide owner. Likewise, with respect to farmlands, a land cleared will remain in the family of the first inhabitant and this person can make such available even to another who may want to borrow it for a duration.

**CONCLUSION**

Customary land tenure system of any locality does not exist in isolation as it tends to bear features which are similar with those of communities around it, in this way the Estako people have a system similar to the Benin people and this system is an embodiment of how their land is duly controlled and administered.

1. Adewale Taiwo, The Nigerian Land Law (Princeton Publishers 2016) [↑](#footnote-ref-1)
2. Smith, I.O., Sidelining Orthodoxy in Quest for Reality: Towards an Efficient Legal Regime of Land Tenure in Nigeria. (Lagos: University of Lagos Press). [↑](#footnote-ref-2)
3. (1921) 2 AC 399 [↑](#footnote-ref-3)
4. Christopher E. Ukhun1 and Nathaniel A. Inegbedion, Ontological Validation of Land Tenureship in Esan Tradition, Stud. Tribes Tribals, 5(1): 15-20 (2007) <[http://krepublishers.com/02-Journals/T%20&%20T/T%20&%20T-05-0-000-000-2007-Web/T%20&%20T-05-1-001-2007-Abst-PDF/T%20&%20T-05-1-015-07-094-Ukhun-C/T&T-05-1-015-07-094-UkhunC-E-Tt.pdf](http://krepublishers.com/02-Journals/T%20%26%20T/T%20%26%20T-05-0-000-000-2007-Web/T%20%26%20T-05-1-001-2007-Abst-PDF/T%20%26%20T-05-1-015-07-094-Ukhun-C/T%26T-05-1-015-07-094-UkhunC-E-Tt.pdf)> accessed 22 April 2020 [↑](#footnote-ref-4)
5. ibid [↑](#footnote-ref-5)
6. Christopher E. Ukhun1 and Nathaniel A. Inegbedion, supra. [↑](#footnote-ref-6)