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**MATRIC NO: 16/LAW01/050**

**COURSE: LAND LAW II**

**LECTURER: MRS OLUBIYI**

**ASSIGNMENT**

**My locality: Kagoma tribe**

**State: Kaduna state**

**Local government: Jema’a local government**

This is located in southern parts of Kaduna, popularly known for agriculture and has rocks and plateaus. Before going into my locality and its features, we need to know what customary land tenure system is and it is as follows:

Firstly, customary law according to Prof Mqeke, customary law as the “custom and usage traditionally observed among the indigenous African people and which form part of the culture of those people.” It was also defined in Owoyin v Omotosho as “a mirror of accepted usage” and common law of the Nigerian people. However, the term customary law is used in a blanket form and should not be taken to indicate that there is a uniform set of customs throughout Nigeria. Nigeria is a society with diverse tribes, customs and cultures. Customary law in Nigeria embraces both ethnic and tribal laws as well as Muslim laws.

Therefore, Customary land tenure system can be defined as the systems that most rural African communities operate to express and order ownership, possession, and access, and to regulate transfer. It also refers to the system of landholding governed by customary law. The Nigerian customary land tenure system has been largely modified by the Land use act of 1978.

The Nigerian customary land tenure system differs in different ethnic groups and locality nevertheless, they share similar principles or features some of which are examined below:

Ownership signifies a large claim to land under customary law and it is, therefore, a recognized concept of customary law. Under Nigerian customary law, ownership may be held by :

1. The community
2. Family
3. The individuals.

**THE COMMUNITY**

Communal landholding is the land vested in the community as a corporate whole and in which no individual member of the community could claim exclusive ownership to any portion of such land. Communal land belongs to a community past, present, or future. In Amodu Tijani v secretary Southern Nigeria, the court held that land belonged to the community as a whole and not an individual. A community is a political and social concept and as such a community cannot act on its own, it can only act through some human agents, for example the chief, headman or traditional ruler of the community who exercises the power of control and management of communal land on behalf of the community. Such communal head may act or exercise his power of control and management in consultation with other senior chiefs or elders of the community.

Generally, the members of the community have definite rights to a portion of the communal land upon which can be used to farm on or build on.

**FAMILY**

In Okulade v Awosanya, Owaifo, 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 children whether living together or not in a wider sense all connected through blood or affinity.

Generally, the word children refers to both sexes of the offspring but in some societies, female children have been held not entitled to the to inherit the property of their late father. In the strict sense, the brothers, sisters, cousins or uncles of the deceased founder of a family do not come within the meaning of the term “members of a family,” unless declared in the will of the deceased. Family land is land vested on family as a corporate entity. The individual member of the family, therefore, has no separate claim of ownership to any part or whole of it. However, a member of a family can sue to protect or defend the interest of the family in respect of any family property. But, if he does not have the authority of the family to bring the action, the family will not be bound by the result, unless the family, by the principle of estoppel, is prevented from denying that action. A member has no disposable interest in family property either during his life time or under his will. It is only the family that can transfer its title to any person. A purported transfer of family land by a member of the family is void and of no effect. Thus, in Solomon & Ors v Mogaji, where a family head sold family land as his personal property, the Supreme Court held that the purported sale was void ab initio because he had no separate individual interest to transfer to the appellants. It should be noted that it is the consent of a majority of principal members of the family that is required and not that of every member for the alienation of un-partitioned family land.

**THE INDIVIDUAL**

Although not unknown, individual ownership was rare in the olden days. However, today it has gained tremendously in prevalence, owing to modern conditions. So prevalent is it indeed that it appears to predominate over communal ownership in the more sophisticated urban centers. It is submitted that the basic factor responsible for this development was the economic emancipation of the individual as a result of new patterns of economic activity.

However, in Amodu Tijani v Secretary of Southern Nigeria, Lord Haldane said:

“The next fact which it is important to bear in mind in order to understand native land law is that the notion of individual ownership is quite foreign to native ideas. Land belongs to the community, the village or the family, never to the individual. This is a pure native custom along the whole length of this coast, and whenever we find, as in Lagos, individual owners, this is again due to the introduction of English ideas.

The above statement of Lord Haldane has been criticized by Niki Tobi as he commented as follows:

“It is submitted that the statement is too much of a generalization and therefore not true of certain indigenous systems of land tenure, and particularly in Lagos where the case arose. The question of individual ownership of land was known to customary law in the country before the arrival of the British. It is therefore not correct, as claimed by His Lordship, that even if such a system existed, it was as a result of contact with English ideas.

Given the following features of customary law in Nigeria relating to land, in my locality the system of ownership practiced was mainly the family system and individual system.

Land is created by ancestral lineage, and there is a belief that land was given to them by Num (God) for farming and shelter, because my locality is very well known for agriculture. In kagoma locality, the land is always passed down through the male child.

Ownership

Land was owned and managed by the families which were present at that time, and families meant people connected by blood especially parents and children and the land would pass down to the children, females were not recognized as heirs or children will the land would pass to and it was only passed down to the male children. A practical example is when My mother’s father willed his land to his children and when he was late, he had no male child and four daughters and getting claiming the land became so difficult due to the gender complications but as the law has changed now, they have successfully claimed the land . The laws have been modified of recent due to foreign laws and the intervention of the Land Use Act.

Where the situation of individual ownership comes up is when the land is passed down, most times the rights to land is portioned to the various heirs and they can do as they wish with the land apportioned to them.

Management

In the case of Family ownership, the head of the family is mainly in charge of the management of land. It is cannot sold to an individual member but can be portioned to those who want to farm or build on the land.

Principal members call meeting and agree on whether the land would be sold to an outsider with consent and accreditation.

In case of individual ownership, the sole owner manages the land and does whatever he wishes with it.

Determination

When it is sold, it is done in cash or kind.

Measurement

Due to the absence of rulers, they throw stones (particular one) where it lands is used as measurements to portion or measure the land. A palm wine tree is also used to demarcate the land in most cases. Cow horns are also used as symbols to show the beginning and end of a land.