

COLLEGE OF LAW

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**COURSE: LAND LAW II**

**MATRIC NUMBER: 16/LAW01/096**

**COURSE CODE: LPB 402**

**STATE OF ORIGIN: ANAMBRA STATE**

**LOCAL GOVERNMENT: NNEWI LOCAL GOVERNEMENT**

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**

**INTRODUCTION:**

Land is a vital aspect of man's existence. Its significance is such that it has led to countless disputes and bloodshed, its essentiality to man cannot be ignored[[1]](#footnote-1). Land, the instrument through which man stamps his identity, finds shelter, and realizes sustenance[[2]](#footnote-2). The Land Use Act established a unified system under which control and management of land is vested in the States and Local Government for Federal and States land respectively. Prior to the adoption and enactment of the Land Use Act the control and management of land was majorly within the precincts of the customs and practices of a particular people which soon evolved into the customary land tenure system of such people within a particular community. This work gives an insight of the customary land tenure system in Anambra State within Nnewi Local Government.

**CUSTOMARY LAND TENURE SYSTEM:**

Land Tenure System has been defined as the relationship whether legally or customarily among people as individuals or groups, that define the means through which access is granted to rights to use, control, and transfer land; it determines who can use land for how long and under what conditions.[[3]](#footnote-3) Customary land system has been defined as “the system of land holding indigenous to Nigeria, relating to family and inheritance systems based on the concept of group ownership of absolute rights in lands with individuals acquiring usufractuary rights[[4]](#footnote-4). The word “Usurfruct” meaning a right to use and occupy. Customary land tenure system therefore provides the machinery through which lan can be systematically owned, managed and controlled within a given community.

**OWNERSHIP:**

This is term which over time has gain more significance within the discourse of what constitutes customary land tenure system in many communities. The term signifies the largest claim to land under customary law and is therefore a recognized concept in customary law[[5]](#footnote-5). Ownership of land is regarded as the highest claim over land. It is such that it confers on individual or community where it is reposed the absolute rights of both ownership and alongside the rights to use of land and resources deposited in the land. With regards to customary land tenure system the ownership of land is recognized to be held in different ways which include: family ownership, communal and individual ownership. The foregoing part of this work would consider the means by which this various types of ownerships are created.

**CREATION OF LAND OWNERSHIP**

Within Nnewi Local Government located in Anambra there are distinct ways which ownership is created and they are as follows:

1. Ana Onwe( Personal Land): This kind of ownership is created by the offset of a commercial transaction with respect to a particular land. An individual who utilizes personal funds in the purchase of any given land to which it is within the generally accepted types of land open to such an individual to purchase acquires the exclusive ownership of such land. Such a person can freely make use of land and its resources and in addition he/she can freely dispose of land too.
2. Anaobi: This is/are land received by a person from his father. A father can freely make available his land as he deems fit to his children according to any yardstick he may choose or decide. A father is also not bound to make this inheritance to his first son as maybe commonly obtainable as he may of his own accord decide to disinherit his first son. There is no particular reference with regards to the standing of any of his daughters as what is the practice is for the father to share his land with his sons. This however does not rule out the ability of a father to make a share of his land available to his female child.
3. Ana Oha: This is also considered to be a communal land. It is owned and held jointly by members of an extended family or community. This Land is held by the heads of social units within a particular community that is by the Obi or the heads of council and the council of elders. This land is also jointly used by the people of such community where it belongs to the community or used by members of a family where ownership is vested. During the period of harvests, the family head may make portions of land available to members of the family for farming purposes and after such use or duration of time it reverts back to the family.
4. Ana Ibe: This is an identical practice to what is often obtained in a mortgage transaction. Land is mortgaged out by the mortgagor borrower to the mortgagee lender and as a means of ensuring efficiency of the transaction and on the expiration of the duration for exercise of the right to redeem one’s property back such a property becomes the property of the lender. Under this customary land tenure system borrowers are required to pledge their piece of land as a collateral for securing loan. Ownership passes on to the lender where the borrower fails to make the amount along with any interests involved which he has borrowed from the lender within a duration of time. The children of a borrower maybe able to acquire back the land by redemption where such a land was acquired for the purpose of marriage to their mother.

The ways highlighted above explains the various means by which ownership maybe created under the customary land tenure system found and in practice within Nnewi Local Government in Anambra State. It is to be noted that with respect to outright purchase of land as a means of creating land ownership there are other customary practices which are to be completed by a bonafide purchaser of land but this work does not dissect this as this writer does not consider it a vital part of this work.

**MANAGEMENT:**

With respect to land ownership the discuss of the machinery set in place for management of land comes to the forefront with particular reference to the Anaobi and Ana Oha. Which primarily is concerned with the ownership of land by the community and also by the family. Where land is held by the community, the management of the land is vested in the elders in council who are considered to have the wisdom required to duly administer the land held in trust by them for the people. They administer the control of such land by making such lands available to individuals who require such during the farming period for cultivation and subsequent harvest.

The land ownership held by the family is also considered in this limelight. The management of family land is vested in the Obi or the Head of the Clan who is usually considered to be the eldest member of the family. In the case of an immediate family, land can be allotted to members of the family to make use of it to build their dwelling houses which is referred to as Obi and they will be allowed to live in such with their families for a considerable length of time and they may also be able to pass this on to the first son of such a family subsequently.

**DETERMINATION OF COMMUNAL/FAMILY OWNERSHIP:**

**OUTRIGHT SALE**

Ownership of a land by family or by community is generally terminated by an outright sale of such a land to a given individual and with the completion of such commercial transaction title is perfected in the bonafide purchaser for value. The ownership passes on to the purchaser and he then acquires absolute ownership over the purchased land for an indefinite period. The purchase of land with an increase in commercial activities has been on the rise.

**CONCLUSION**

Customary Land Tenure System remains relevant today regardless of the enactment of the Land Use Act. It also continues to be practiced and upheld in several local communities as a result of the familiarity of such people with such customs, recognized as a way of life of such individuals in the community.

1. Nkiriuka Chidia Madukwe, The Land Tenure System Under Customary Law [2014] <[file:///C:/Users/Acer/Downloads/SSRN-id2813056.pdf](file:///C:\Users\Acer\Downloads\SSRN-id2813056.pdf)> accessed April 22, 2020. [↑](#footnote-ref-1)
2. ibid [↑](#footnote-ref-2)
3. What is Land Tenure? Land Tenure and Development in FAO Corporate Documentary Repository. http://www.fao.org/docrep/005/y4307e/y4307e05.htm. (Last Visited April 22 2020). [↑](#footnote-ref-3)
4. Nkiriuka Chidia Madukwe, (supra) [↑](#footnote-ref-4)
5. Adewale Taiwo, The Nigerian Land Law (Princeton Publishers 2016) [↑](#footnote-ref-5)