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INTRODUCTION

The predominant Nigeria during the pre-colonial period was the customary land tenancy where land holdings were owned by villages, towns, communities and families. Land was deemed not owned by individuals but by communities and families in trust for all the family members¹. The legal estate under customary land tenancy is vested in the family or community as a unit. During this period, land belonged to the community or a vast family of which many are dead, few are living and countless members yet unborn. Thus individuals had no such interest as the fee simple absolute in possession as the actual ownership of land or absolute interest was vested in the community itself. Interests or rights of individuals in community land were derivative interests. According to Dosumu² and Aniyom³, the customary land tenure in the areas comprising the Southern States of Nigeria before colonial rule was held in the following ways:-

- (i) Communal Lands
- (ii) Stool or Chieftaincy lands
- (iii) Family lands
- (iv) Individual or Separate property

Land tenure system in my locality, ***Mopa, MopaMuro, Kogi State***, could be viewed from three ownership structures which are Communal lands ownership, Family lands ownership and Individual land ownership. The community lands comprised lands which the entire community has an individual or proprietary interest. Such lands were supervised and administered by the chiefs and traditional rulers. However, within each group, that is, family, village or community holding, there are usually well defined

¹ Omuojine, E.O. "The Land Use Act and the English Doctrine of Estate" (Journal of the Nigerian Institution of Estate Surveyors and Valuers. 1977 22(3): 54-56.

² Dosumu, O. A. "Land Tenure System in Nigeria and its Effects on Land Administration" The Map Maker 4(1): 1978)23-25.

³ Aniyom, D. A. "An Appraisal of the Land Use Decree and its Effects in its First Five Years" (29th March, 1978 to 29th March, 1983). The Map Maker. 9(1): 17-26

individual rights and interests in land though the group retained the radical title to the land. Each member who needed a portion was allocated the same and he had possession thereof and he could exclude strangers as well as other family, village or community members, with the qualification that he could only exclude a member of his group if that member tried to assert a right or do an act which was *ultra vires*, according to the concept of individual holding within such group. By implication, no member of a family could be deprived of a portion for any reason, including attempted alienation of his own portion.

In my locality, the family lands were lands that were vested in the members of the family as a corporate group. Individual property comprised lands whose title was vested on individuals and was obtained by partitioning of the family land to individual members of the family. However, during the pre-colonial period, such land held under customary tenure cannot be sold or alienated. Such an act was generally regarded as capable of depriving the future generations of the opportunity to acquire land. family ownership of land therefore, is sometimes derived from previous individual ownership. The land so inherited is held as family property until partitioned by the individual members of the family. Upon partition, the land ceases to be communal or family land as the ownership of each portion is vested in the individual to whom the portion was allocated.

In my locality, individual land ownership may arise in any of the following ways:

- When family land is partitioned;
- First settlers on virgin land;
- Survivorship i.e. where all but one member of a family die, the only surviving member becomes the absolute owner of the family land; and
 - a. Grant: by a community or family to an individual.

Thus to say that the notion of individual ownership of land is foreign to native ideas, without exception, as their Lordship asserted in *Amodu Tijani v. Secretary Of Southern Nigeria*⁴ case, is, with respect, not a correct and sufficient summation of customary land tenure today and then. Fortunately the Supreme Court placed the position today clearly in *Chukwueke v. Nwankwo*, where the apex court stated that the general principle

⁴ (1921) 2 A. C. 399 at 404

of communal ownership of land pronounced in would not apply where it is established by evidence that individual ownership of land is permitted in a particular area by the relevant native law and custom. The court further stated that communal ownership, where it existed previously, may be determined by partition. Thus, partition signifies an end to communal ownership. Normally once someone is allocated land either by the family or clan or village, it becomes difficult to dispossess that individual. The title becomes like an absolute title capable of excluding others from an active interference with the peaceful enjoyment of the land rights. The estate may be for a particular period of time or for an indefinite period.

Under the individual ownership, the landholder is capable of passing down the land to his heirs who may do the same. He may lease or permit another person to use the land with or without rewards. He may temporarily transfer the ownership of the land to a third party as a fulfillment of a term of a contract. He may distribute the land and transfer just a portion of the land or transfer crops or trees to a third party as part performance of contractual obligations. The landholder may pledge or mortgage his land to secure a loan to a third party. So long as the transactions in question do not result in an absolute alienation of the land from the family or clan, the landholder may deal with the land as he pleases. However, the landholder deriving title from family or clan may not readily sell family land to a stranger without the consent of the family. This is because by a sale of the land, it is alienated completely from the family or clan.

Conclusively, it is obvious from the above that it is the law of a particular society that could determine what could or could not be "owned" by the individual or groups in the society. Hence it is dangerous and unhelpful to generalize and conceptualize the term, ownership, in terms of legal systems that have no affinity with Nigerian Customary Law. Ownership covers the totality of rights and powers which are capable of being exercised over land. These rights and powers include the right to make physical use of the land, the right to generate income from the land in terms of cash or service or in kind and the power to manage the land which includes the power to alienate all rights and powers in it. In my locality, a family or community member is entitled to a share in whatever income or profit that accrues from the land, whether in the form of rents, tributes or

proceeds from acquisition of communal land. A member has a right not only to a share of the income derived from the community land but also to demand a reasonable account of it when he has a reason to suspect that there is something dubious.