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MATRICULATION NUMBER :16/law01/081

LAND LAW (LPB402)

23rd April 2020

According to Prof Mqeke, customary law is defined as the “custom and usages traditionally observed among the indigenous African peoples and which form part of the culture of those peoples.

In our context here, customary land tenure system refers to the system of land holding governed by the customary law. Customary law in Nigeria includes both native laws and Islamic laws.

Land tenure is the system of landholding in a given society. In Owonyin v Omotosho, customary law was described as ‘a mirror of accepted usage’ and common law of Nigerian people. It should be noted, however, that the term ‘customary law’ is used in a blanket form and it should not be taken to indicate that there is a single uniform set of customs throughout Nigeria. Nigeria is a society with diverse tribes, customs and cultures. First of all, I am indigene of Delta State, Urhobo, Ughelli north Agbarho town

URHOBO LAND TENURE SYSTEM CREATION, OWNERSHIP, MANAGEMENT AND DETERMINATION OF LAND

LAND ADMINISTRATION. THE EVE OF COLONIAL RULE

Land has a deep socio-political and cultural value. It was the home of those ancestors, who more that realized played an active and important in the clan, family and village. So, land could not be sold, as selling would remain short changing the ancestor and those unborn. Those who attempted to sell the land belonging to the community could suffer the consequences of death or may be disfigured in parts of their bodies. In pre-colonial era there were three types of lands, they were family owned land, individual owned land and community owned land.

FAMILY OWNED LAND

Family land was a land held in common by members of the family and their heirs through inheritance. By virtue of being a male member of the family, one is entitled to the use of land. Women (Aye) could not acquire land even when they were a member of the family, because if they do the family would lose this land to another family when they marry. Women rights to land was derived through their membership in the compound and attained through marriage. Land could not be given out except with the consent of the family. One way in which family land could be given out to a non-member (orharha­) of the family was through exchange for credit. So, family members could decide to give out a portion of their land in exchange for money. This phenomenon was called Iviewa. Land acquired would be held temporarily and be used for farming by the creditor until the family that owes the debt has finished paying. Family land could also be rented to strangers, all they had to do was reach an agreement with members of the family duly represented by the eldest person known as Okpako. Agreements were made with commodities that were planted by the farmer. Family land was subjected to overuse which led to infertility. These factors and problems led to the development of individual land. At this stage, individuals who are capable can enter into the forest and clear for themselves a portion of land.

The king, Ovie owned the people and their properties within his kingdom, including land. But that does not mean he owned them by right but by traditional respect accorded to him by the people as their Head of state. Simply put, the king is the overlord over his people and their land. However, traditional courtesy for the king does not confer on him the right of the ownership over any particular land in the State, except the land which belongs to his family or acquired by him. Urhobo land tenure system is not feudal as Benin Kingdom.

The natural ruler or traditional Head of the clan does not own land. Nevertheless, the Ovie may hold communal land in trust for the people. But in all matters of alienation the people have to be consulted through their representatives and their consent duly obtained by the king. Individuals could also acquire a piece of land from the Ovie. The Ovie has no power to allot community land to anybody but could give out ‘open’ land belonging to the community to anybody who needed land to build his house. Thus, when the land given out has been built upon, it becomes the property of the individual and could be inherited  by his heir.

COLONIAL RULE AND CHANGING PATTERN OF LAND ADMINISTRATION IN URHOBO DIVISION

The industrial revolution created an inherent contradiction in the economy of Europe. England became a capitalist country before any other, and by the middle of the 19th century, having adopting free trade, claimed to be the workshop of the world. The use of machines leads to production of organic composition which is rise in the variable, resulting to the tendency of the fall in profit. The need to expand this spectre made the Europeans extend their sphere of influence to other parts of the world. When they came into the Urhobo terrain they took advantage of the dispute between two prominent coastal traders who were Nana Olomu of Itsekiri and Dore Numewho were in constant disagreement over trade. After the fall of Nana they turned to the Urhobo people. The British worked with Dore and a number of collaborators who helped them with the conquest and signing of treaties with the Urhobo clans. Treaties were signed in Okpare, Odokpo, Ughelli and Ovwo between 14th and 24th September 1894 by the Royal Niger Company led by their chief officer Mr John MC Taggart and the Niger Coast Protectorate led by Ralph Moor between 28th September and June 1895. These two British groups could not reach any understanding on how the area should be divided, each one of them tried to outdo the other by trying to sign treaties with a town the other had already signed with, this continued until the Royal Niger Company lost its charter. Other treaties were signed with Kokori, Eku, Allagigun, and Uria. They were the Divisions, Districts and Provinces. A Division is an administrative unit accepted to be a smaller unit of a Province. There were the Urhobo Division, Kwale Division and Western Ijaw Division etc. Districts were administrative units, more or less like a local government, created to bring government closer to the people examples were Ughelli, Sapele, Warri Districts etc. A Province was an administrative organ comprising of Divisions and Districts, there was the Warri Province which was later changed to the Delta Province it housed the above districts and divisions.

Urhobo Division was created in 1935 and named Sobo division. It was created together with Jekri-Sobo Disivion- a division comprising of both Itsekiriand Urhobo people. The Soho Division (Urhobo Division) had only a few towns when compared to Jekri-Sobo Division which consists of Urhobo andItsekiri groups. Due to the problem between the Urhobo and Itsekiri people, the Urhobo called for the inclusion all Urhobo in one division. The British responded positively to their request. The Division consists of numerous districts, towns and villages which include Sapelle District, Ughelli District, Eku, and so on. The new government introduced new policies in the land and they were Land Proclamation Ordinance of 1900, Native Land Acquisition Ordinance of 1908, Public Proclamation Ordinance, State Land Act of 1918, Town and Country Planning Act etc. In 1900, the Land Proclamation Ordinance was enacted by Lord Lugard. The legislation disregarded the principle of native law and custom and provided that titled land can be acquired through the high commissioner. This proclamation was enacted to put an end to the institution of family and communal land ownership. Native Land Acquisition Act was enacted in 1908 to vest in the hand of the colonial governor all rights over native land. Section 3 and 4 of this act demonstrated how land was retrieved from the community and handed over to the governor who held and administered land. The governor could grant right of occupancy to natives and non-natives. He could demand and revise such grants. He could render any occupier’s rights of occupancy null and void.