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**Abstract**

This assignment analyses the essential aspect of landholding system. It examine the intricacies of customary land tenure system practised in the Epe Local Government Area, Lagos State. Despite, the confusion caused by the Land Use Act on the customary land tenure system such that there was uncertainty as to the existence or abolishment, but It has been modified to a large extent, by the Land Use Act, 1978.

**Introduction**

Land is an indispensable aspect of man’s existence. It is pertinent to understand the term customary law. In *Oyewumi v Ogunsesan*,[[1]](#footnote-1) Obaseki J.S.C (as he then was) defined customary law as the organic or living law of the indigenous people of Nigeria regulating their lives and transactions. It is organic in that it is not static . It is regulatory in that it controls the lives and transaction of the community subject to it.

**Background of Study**

Customary land tenure system has been defined as the system of landholding indigenous to Nigeria, relating to family inheritance systems based on the concept of group ownership of about Rights in land, with individuals acquiring usufructuary rights. In the Nigerian customary law, ownership may be held by the community, family and individuals.

I will focus on the family land. Family can be defined as a group of persons lineally descended from a common ancestor exclusively through males ( in communities called patrilineal for the reason) or exclusively through females starting from the mother of such ancestor ( in communities called matrilineal for this reason) and which group succession to office and property is based on this relationship.

In *Frank Coker v George Coker[[2]](#footnote-2),* the court stated as follows: “a family house in this connection is a residence which the father of a family sets apart for his wives and children to occupy jointly after his death. However, the deceased may by his declaration, in a Will, enlarge the family to include such relatives.

Family land is 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.

* Family property may arise by operation of law or by acts of the parties.

In *olowosago v Alh. Adebanjo,*[[3]](#footnote-3) it was held as follows:

i) where a land owner whose estate is governed by customary law dies intestate, such land devolves on his heirs in perpetuity as a family land

ii) family land can be created by a conveyance *inter vivos*, where land is purchased with money belonging to the family.

iii) family land can also be created by use of the appropriate expression in the Will of the owner of such land;

iv) family land ceases to be such land on partition.

* **Creation by acts of the parties**

Parties by their own acts create family property, by way of first settlement, purchase, conquest or absolute gift of land.

i) **first settlement**

It means that the family were the first to settle on a virgin land. In *Ajala v Awodele & Ora*, the Supreme Court held that settlement is one of the traditional modes of acquisition and that where the plaintiff’s case is that the land was acquired by settlement, it should not be open to question as to who made the grant.

ii) **conquest**

Where a family conquers a people, it may appropriate the land of the conquered. In *Mora v Nwalusi,* it was legitimate for a family to base its ownership of land to act of conquest in the distant past.

iii) **Purchase**

Family property may arise where family money is used to purchase land.

iv) **Gift**

Where a family is a donee of unconditional gift of land, family property is created.

* **Management of Family Land**

The family head personifies the family. It is the duty of the family head to preserve family property from unlawful interference and to keep it in a good state of repair; to allocate portions to the needing members; where the property is rented out, to collect the rent; and take part in the transfer or alienation of family property to give a valid title to the transferee.

In *Lewis v Bankole[[4]](#footnote-4)*, it was held that the death of a founder of a family, the Dawodu or eldest surviving son is the proper person by native law of Lagos to succeed to the headship of the family. But on the death of the Dawodu, the eldest surviving child of the founder male or female is next in succession. It should be noted that this is not the position in most communities in Yoruba land as only the male descendant of the founder can become family head.

The purpose of family property is to provide for the needs of members of the family; as such, members have certain rights in respect of the property. These rights include, right to have portion to reside, to have reasonable ingress and egress, right to surplus income and to have a voice in the management of family property.

* Family property can be determined or terminated by absolute transfer and partition.
  + **Absolute Transfer**

It occurs where the family transfers the totality of its interest in the family land to another person. This may be by way of sale or gift. The transferee becomes the absolute owner. A conveyance purporting to transfer family property without the consent of the family head and principal members is *void ab initio*. Where the family head transfers family property on behalf of the family, the sale is voidable and may be set aside at the instance of the aggrieved non- consenting member. While voidable transfer can be ratified, however, a void transaction cannot be ratified.

* + **partition**

Partition is the act of sharing of family property among the members of the family. It means the permanent division of land fir purposes, not of user only, but of ownership as well. It may be voluntary if it is as a result of mutual agreement amongst members of the family to partition the family property. Partition may also be ordered by the court where interest of justice and peace demands it.

**Conclusion**

It can be deduced from the above, that there are 3 types of customary land tenure system. The most applicable customary land tenure in the Epe Local Government Area, Lagos State is the family land. Even though, there is a gradual decrease in family landholding system in Nigeria. It includes state powers of compulsory acquisition under the various laws which transform land under customary law into state lands. Therefore, the customary land tenure system still exists under present national land tenure system, albeit modified. The Act transformed land from customary land tenure regime to that of statutory tenure, converting the rights held under customary tenure into right of occupancy. It has been established that there are two simple rules that govern the alienation of family land. The family head can not alienate family property without consent of the family and sale is voidable where such act is committed; second, a sale by principal members of the family in which the head of the family does not occur is void. However, the buyer in order to prove ownership of acquired land under customary law. He would need to prove that not only was there payment for the land but that delivery of possession was done in the presence of witnesses.

1. (1990) 3 N.W.L.R (pt.137)182 at 207 [↑](#footnote-ref-1)
2. (1938) 14 NLR 83,at 86 [↑](#footnote-ref-2)
3. (1988) 4 NWLR (pt 88) 275. [↑](#footnote-ref-3)
4. (1909) 1 NLR 81. [↑](#footnote-ref-4)