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**16/LAW01/107**

**LAND LAW**

**LPB 402**

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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.

In this light, customary land tenure system as practiced in Donga local government, Taraba State. Nigeria.

In Taraba State, communal land tenure system is practiced where the community land is vested in the king who in turn acts a trustee for the people Communal landholding has been described as the most remarkable principle of customary land law.By definition, communal land or community land 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.

**Creation:**

Communal ownership evolve from land, settled upon by the community from ancient times. This could be by conquest or first settlement.

Settlement connotes the person who first settled on a particular parcel of land free from any other adverse claim, such first settler is recognized in law as the owner thereof the settler may be a family or community or even individual the title is established as an absolute one. The first settler must prove that at the time of first settlement there was no other claimant or settler on the land. Where the first settler merely settled on land and later abandons it without laying claim to any portion of the land, he cannot later come back to claim ownership. In case where the first settler allowed others to inhabit the portions of the land, he must exert some form of rent from them to assert of his ownership, where this is not done, if may be diffident for him to do this later. Today, it may not be easy for anyone to assert that he acquired the land by settlement as no land in Nigeria is free of settlement.

Acquisition of land by conquest is possible under native law and custom, and the conqueror is then regarded as the original owner of the land.Though as a matter of fact, the person who acquired the title from the first settler, which follows that his title is derivative through conquest and not really original. But, it is still generally agreed that acquisition by conquest is still an original acquisition by conquest is still an original acquisition of title under customary law.

**Ownership**

In Jalingo, Taraba State, land is seldom owned by individuals; the custom recognized ownership in the community or family. The entire land is owned by the entire community and managed by the head of the community. The individual members of the community are allocated partions of the land. These individual allottees are not regarded as owners as all land belong to the commit, but as against other members of the community. They have superior title. The family ownership of land is similar to this structure. The land belongs to the family, and it evolves from the originator of the family first settling on a particular pertion of land and after his death the land as property is inherited by his children and thereupon becomes family property. No individual member can lay claim to it and we cannot sell, dispose, mortgage or transfer ownership of the land. In the use of Amodu Tijani v Secretary of Southern Nigeria,[[1]](#footnote-0) Lord Haldane explained as follows:

“The next fact which it is important to bear in mind in order to understand nature 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 popular native custom along the whole length of this coast, and whenever we find, as in Lagos, individual owners; this is again due to introduction of English ideas”.

**Management**

In Donga local Government, In managing the communal land, the cheif (Gara of Donga) is traditionally and under customary law the only legitimate person and authority having the power to manage and control the entire communal land. The legal position may be problematic especially if it is viewed from the English law perspective. This is so because; the only similar institution or devise is that of the trustee. However, the chief is not a Trustee as known under English Law. The most fundamental difference between the position of the chief and a Trustee is that the Trustee is the legal owner of the trust he holds, managing in trust for the beneficiaries, the chief is not the legal owner of the land, the land belongs to the community as a whole and never that of the chief. He may however be called Trustee of the communal land in a loose use of the word as simply the person in charge and control managing the land on behalf of the entire community with wide powers but accountable to the community. He cannot therefore treat the community land as his own personal property.

**Determination.**

ACCOMPLISHMENT OF THE PURPOSE OF THE TENANCY: - A customary tenancy for a specific purpose is determined at the accomplishment of the purpose for which it was granted. If it was granted for a farming season, for the cultivation of food crops, then the tenancy is determined at the end of the season and the harvest of the crop.

ABANDONMENT :Whenever the customary tenant abandons the land, the customary tenancy will terminate and the land reverts to the grantor. The important question had always been when can it be said that the tenant had abandoned the land?

FORFEITURE :As explained above, the customary tenant are not ‘Leassee’ under English law, but grantees of the land under customary tenure and hold, as such a determinable interest in the land which may be enjoyed in perpetuity subject to good behavior. The interest has in practice now been regarded by the courts as practically indefeasible, once permanent buildings or other improvements like extensive commercial farming and or occupation have been established thereon by the grantees.

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1. (1921) Al 39 [↑](#footnote-ref-0)