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**INTRODUCTION**

Land tenure is the system of landholding in a given society. Customary law is defined as the custom and usages traditionally observe among the indigenous African people and which form part of the culture of those people. It is the law that was handed down from time immemorial from ancestors and represents a collection of precedents and decisions of the by-gone chiefs. In *owonyin v omotosho,* customary law was described ‘a mirror of accepted usage’ and common law of Nigerian people. However, Nigeria is a society with diverse tribes, customs and cultures. This paper will cover the Benin customary land tenure system as I am an indigene of Edo state, Oredo local government area, Benin city.

**BENIN LAND TENURE SYSTEM**

**CREATION**

Nigerians operated customary land tenure system according to their custom. This varied from place to place before the advent of the British government in 1861. Prior to the promulgation of **the Land Use Act in March 1978,** the title to Benin land was vested in the Oba of Benin whom the people have very high regard for. He held Benin land as the overlord and trustee for the Benin people, therefore whatever power he exercised in the control of the land was unquestionable and when he made a grant of any parcel of land to anybody, he did so as a matter of favor in the exercise of his prerogative.

**OWNERSHIP**

The term ‘ownership’ signifies the largest claim to land under customary law and it is therefore,a recognized concept of customary law, The Benin customary land tenure system practice communal landholding. Ownership is held by the Oba of Benin.

COMMUNAL LANDHOLDING

The term ‘community’ is a political and social concept, and as such, a community cannot act as its own. It can only act through some human agents such as the headman, chief or traditional ruler of the community who exercises the power of control and management of communal land on behalf of the community. In *Arase v Arase ,* The Supreme Court, per Idigbe, JSC observed as follows; ‘it is now settled by decided cases that basically all land in Benin is Owned by the community for whom the Oba of Benin holds the same in trust, and it is the Oba who can transfer to any individual the ownership of such land.

**Management and Procedure for obtaining grants by the Oba of Benin prior to 1978**

It is an accepted custom that under Benin native law and custom, all Benin land are communal property of the entire Benin people but the legal estate in such land is vested and resides in the Oba of Benin as trustee for the Benin people. Anyone that desires for a land to build applies for it to the Oba who is the only authority competent under the Benin customary law to make allocation or grant of Benin land in or outside Benin city through the appropriate ward plot allotment committee in which the land is situated. The committee makes recommendation to the application to the Oba of Benin. The committee carries out an inspection of the site in order to ascertain its location and to recommend whether the plot desired should be granted to the applicant is free of dispute. Upon recommendation the Oba gives his approval by writing ‘Approved’ in the body of the application followed by his signature on the grantee’s written application immediately transfers to the purchaser or grantee the plot of land involved. This approval remains valid until set aside by the Oba of Benin when it is proven subsequently by evidence that a prior approval for the same land had been given by the Oba, but not when made unilaterally*. Arase v Arase, the grant c*annot be vitiated because one of the parties was granted approval earlier than the other but prior on the date of the Oba’s approval depend on whoever show better title when both parties appear before the Oba to prove their case.

By the promulgation of the land use decree in 1978 the law of priority under Benin Customary land tenure system has been overtaken by events but the court now accurately considers the evidence of parties and puts same on an imaginary scales of justice as enunciated in *Mogaji v Odofin* . Also in *Okeaya v Aguebor* the supreme court outlined the established principles governing the acquisition of land under Benin customary law. This case has become the focus classicist of Benin custom relating to land ownership.

**DETERMINATION OF COMMUNAL LANDHOLDING**

Customary tenancy is created where a land holding individual, family, community grants a right of occupation of land to another to live in or farm in return for which they acknowledge the title of their grantor by payment of customary tribute, then the grantor and grantee are referred to as customary overload and tenant respectively.

A customary tenancy may be determined in any of the following ways;

1. ***Abandonment****;* where a customary tenant vacates the land without the intention of returning to it he is said to have abandoned the land.
2. ***Accomplishment of purpose;***where the customary tenancy is granted for a specific purpose or for a period of time, the accomplishment of the purpose or the exfluxion of time terminates it.
3. ***Forfeiture;***The determination of the customary tenancy by a court order upon a proven allegation on the complaint of the overload of act(s) of misbehavior constituting denial of his title by the customary tenant eg, persistent refusal to pay customary tributes.

**CONCLUSION**

This study shows the creation, ownership, management, determination of Benin customary land tenure system and the procedure for obtaining grant by the Oba of Benin in the customary land tenure system prior to promulgation and various stages of development, colonial policy on land created a new outlook on use, control, and administration of land. The approval given by the Oba is all that is required by Benin customary law to vest title of land but does not mean that the title of grantee is indefeasible when discovered that the grant is encumbered even though the Oba had entered conveyance with the grantee, it is trite that failure to fulfill a condition precedent, especially the visit to the land which a fortiori the approval of same nullified and vitiated the Oba’s approval to the grant. **See Gold v Osaeren** (1970)1ALL N.L.R 132 and also **Okeaya v Agubor(supra)-** The visit and inspection of proposed location by committee is imperative.