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**16/LAW01/026**

**400level**

**LAW**

**LAND LAW**

***Prepare a brief paper on the customary land tenure system as practiced in your locality (state the locality, local government or community you are writing about).***

**INTRODUCTION:**

Land is essential for every human activity on earth as it is the source of all material wealth. In order to regulate the ownership and development of land and land resources, the world nations have instituted land ownership systems aimed at consistent balancing of the interest of the government, the land owning class and the landless class. This paper examines the creation, ownership, management and determination of the customary land tenure of my locality. Where my locality is: **Abule-Egba, Ojokoro Local Govt, Lagos State.**

**CUSTOMARY LAND TENURE**:

The land system of a given society is the manner in which land is owned and possessed. It is also constituted by the rules and procedures which govern the right and responsibilities of both individuals and groups in the acquisition, use and control of land.

Customary law according to Prof. Mqeke, is defined as ***the custom and usages traditionally observed among the indigenous African peoples and which form part of the culture of those people.*** It was also defined as the ***mirror of accepted usage and common law of Nigerian people*** in the case of **Owonyin vs Omotosho.**

Customary land tenure system therefore refers to ***the system of the land holding governed by the customary land.*** The predominant land tenure system in 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 *family members*.[[1]](#footnote-2)

**TYPES:**

There are two types: **Communal Landholding** and **Family Land**, as their names imply, **Communal 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[[2]](#footnote-3) while **Family Land**, here means a group of persons which is entitled to succeed to the property of a deceased founder of a family, where such persons are usually the children of the deceased founder of the family. See the case of ***Lopez vs Lopez***[[3]](#footnote-4). There is also **Individual Holding**, which as the name implies is owned by an individual, who does not need to share ownership or responsibilities with either family or the community, this was not common in the olden days.

**CREATION :**

The family land tenure system in the practice used in my locality, where the land belongs to members of a family. The family is a very important unit in customary law, and land is rarely held individually but collectively. This can however be created either by ***operation of law*** or ***by acts of the parties.*** In **Abule-Egba**, creation by Will (operation of law) and Purchase (act of parties) are the most common forms of creation. Whereby if the head of a family who is also known as a testator may create a family property by specifically stating in his will that he wishes to create a family property, this is by declaring in his will that his property be held on his death by his children as family.[[4]](#footnote-5) By doing so the testator leaves the land in the care of his family, therefore they would make decisions concerning the land together and they all have equal right to the land depending on what the will states, if it is a case where its one property left for more than one person. Usually the customary law does allow for the wife of the deceased to inherit any of his property, but in **Abule-Egba,** it is not necessarily like that, a widow can inherit a property of her late husband, if she is named in his will. Creation by Purchase is such where money is used to purchase the land, family property may be created by conveyance *Inter vivus.* In the case of ***Nelson v Nelson***[[5]](#footnote-6) the family decided to use money paid by government as compensation for acquisition of family property to another parcel of land. The conveyance was done in favour of the family head in English form. The family head thereafter sold the land to a third party. In an action to set aside the sale, the court *held* that the land is a family property notwithstanding the form in which it was conveyed. Purchase is another very popular way to create family land system here in my locality, where a family can purchase a parcel of land in the name of the whole family or in the name of the family head representing the whole family, it becomes the family land.

**MANAGEMENT:**

Being the head of family, the responsibility of the management of the land falls on his/her head, as he makes decisions on behalf of the family after consulting with them. However the members of family can decide to name someone else to manage the land other than the head of family or also in the case of the death of the head of the family ***Inyang vs Ita[[6]](#footnote-7)***. This management responsibility includes regular inspection of the land, in a case of tenancy, he can receive recent on behalf of the family, repair any damages on the land and also preserve the land from unlawful interference.

**DETERMINATION:**

There are generally two types of determination of family land which includes: *Absolute transfer* and *Partition.* The common one here in **Abule-Egba** is ***Absolute transfer***, whereby the family transfers the totality of its interest in the family to another person, such that the family will have no claim to the land after it has been transferred through sale or gift to another person. Here it is usually by sale to another person, after the members of family have come to an agreement, it should be noted that the family members must all agree before a sale can happen even if one person in a family of ten does not agree there will be no sale and once there is a transfer of title the family members will have no claim or interest in the land.

**CONCLUSION**

The present land ownership system in Nigeria is enshrined in **The Land Use Act1978**. I believe in this age of civilization, the most popular forms of creation are by Purchase and by Will, also a head of family only represent the other members of family, he is not the sole owner.

**REFERENCES:**

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1. Omuojine,1999 [↑](#footnote-ref-2)
2. Adewale Taiwo [↑](#footnote-ref-3)
3. (1924) 5 NLR 50 [↑](#footnote-ref-4)
4. MOF’OLUWAWO O MOJOLAOLUWA (LLB) [↑](#footnote-ref-5)
5. (1913) 13 N.L.R 248 [↑](#footnote-ref-6)
6. (1929) 9 N.L.R 84 [↑](#footnote-ref-7)