

NAME: NWACHUKWU ONONYE ABIYE

MATRICULATION NUMBER: 16/LAW01/134

ASSIGNMENT: PREPARE A PAPER ON THE CUSTOMARY LAND LAW TENURE SYSTEM AS PRACTISED IN YOUR LOCALITY STATING KEY THINGS SUCH AS THE LOCALITY, STATE AND THE LOCAL GOVERNMENT OR COMMUNITY BEING DISCUSSED. THE PAPER SHOULD ALSO COVER THE CREATION, OWNERSHIP, MANAGEMENT AND DETERMINATION OF FAMILY/COMMUNAL LAND.

DATE DUE: 24TH APRIL 2020.

ANSWER:

The essence of this paper is an attempt to answer the questions stated above with the focus on the practices regarding customary land law tenure system being placed on the village Umuenyi formally known as Umunkwo which resides in the Local Government Area Isiala Mbano in Imo State, Nigeria. It is paramount that in order to understand the customary land tenure system as practised in Umuenyi Village, there is need for various terms to be explained to give insight of how the proceedings regarding land were carried out in those days. What is the meaning of the term Land Tenure System? The term may simply be referred to as the system of landholding in a given society. The Customary tenure system has been largely altered with the help of the Land Use Act 1978¹ for most of the laws used in the administration of land in these localities stem from the act.

Customary Law does not have a definite definition but it can be said to be the long-established customs/standards of the community of a particular place or locale that the general law regards as lawful practice. It may also be defined as the ‘custom and usages traditionally observed among the indigenous African people’s and which form part of the culture of those people’² It was described in *Owonyin V Omotosho*³ as ‘a mirror of accepted usage’. It is crucial to note that the term is used as some sort of blanket form and should not be mistaken to indicate that there is in fact a uniform set of customs predominant in the country because that cannot be the case due to the diverse nature of the country. It has been said that there are over 250 ethnic groups in Nigeria, the top three being Igbo, Hausa and Yoruba and each ethnic group has customs pertain to them which differ from each other. It is essential to point out the customary law in Nigeria embraces both the ethnic and the tribal laws as well as Muslim law. The Land Use Act serves as a guide. It was further stated in the case of *Otunba Akeem Sobande V Barrister Andy Igbokwe*⁴, where the court held that the Land Use Act is not intended to destroy Customary Law but modify its application.

There are concepts or features that are commonly shared across all ethnic groups and these features will be focused on the Umuenyi community. One of the features is that of ownership. The term ‘ownership’ signifies the largest claim to land under Customary law which is why is recognised as one of the customs under Customary law. There have been arguments regarding this concept being that it is a foreign concept while other people believe it to have been a part of African customary law. Ownership is further subdivided into three categories namely; Community, Family and Individuals. For Community Land Holding- this is described as a situation where land is vested in the community a corporate whole in which no individual member of the community can claim exclusive ownership to any portion of such land. A community may be described as a social or political concept and as such cannot act on its own. The communities are headed by a Chief/ Traditional ruler who exercises control and manages the land on behalf of the community. This was emphasized in the case of *Amodu Tijani V Secretary Southern Nigeria*⁵ where it was held that belongs to the community, village or the family and never to the individual. For Family holding- There is no universal definition of the term family and as such there are various definitions of the term. In the case of *Okunlade V Awosanya*⁶ where family was defined as ‘the body of persons who live in one house or under one head, including parents, children, servants... The group consisting

¹ Land Use Act 1978

² Customary Law and New Millennium (Lovedale Press: Alice 2003)

³ *Owonyin V Omotosho* (1961)

⁴ *Otunba Hakeem Sobande V Barrister Andy Igbokwe*

⁵ *Amodu Tijani V Secretary Southern Nigeria* (1921) 2. A.C 399 at 404

⁶ *Okunlade V Awosanya* (2002) FWLR (pt 25) 1666 at 1679 per Uwaifo Jsc

of parents and their children, whether living together or not; in wider sense all those who are nearly connected by blood or affinity... Those descendants claiming descent from a common ancestor; a house; kindred lineage' In the case of *Coker V Coker*⁷ family was simply referred to as children. Family in relation to family property means a group of persons who are entitled to succeed to the property of a deceased founder of a family such persons are usually the children of the deceased founder of the family. In most traditional societies, female children are not allowed to inherit the property of their late father. Family land is vested on a family as a corporate entity and therefore no individual member has a separate claim of ownership to any part of it. Only family can transfer its title to another person. If the alienation, sale, lease is made by the principal members without the consent of the family head who is the custodian, it will be void but if the sale is done by the family head without the consent of the principal members it will be voidable. It is valid if both parties are present. In the Umuenyi community which is an Igbo community, land is owned by families with the family head being in charge of the dealings concerning the land. In this community, land is believed to be owned by male children and not the female children. In the event of the death of the family head, the eldest son becomes the next family head and will reside on the land where the late father resided. The son will be in charge of the distribution of other lands if they exist among the other brothers. The community does not recognise illegitimate male children so every male child is entitled to property regardless of the woman he was born from.

The second concept is the creation of family land. This can occur by Operation of law which is that if the land owner is subject to customary law dies without a will to his acquired property, the property devolves to his children as family property in accordance to customary law rules. Family property may arise from a declaration under a will where the testator devised the property to his heirs to jointly hold the land as family property. The second way of creating land is by the 'acts of parties' which can be by; First settlement which arises where a family through their ancestors were the first to settle on the land and exercised acts of ownership over a sufficient period of time which is positive enough to grant exclusive ownership; Conquest- where a family conquers a people, it may usurp the land of the conquered; Purchase- it may arise where the family money is used to purchase land; Gift- where the family is a donee of the unconditional gift of land, a family property is created. Land is created in Umuenyi mainly by the acts of the parties which is by way of purchase and gift. When purchasing a piece of land, the person will pay a sum of money to acquire the plot of land after which an extra fee will be payed to the people of the community where the land was purchased who will serve as witnesses of the purchase. The payment to these people can be in form of money or items like cows, goats, yam, wine, etc. In the situation of gifts, this can be done by word of mouth of the person who owns the land. It is important to note that before the advent of customary law, how family land was created in the community was that the person just had to point at an area which could be large 3,000 square meters and the made use of corner stones or boundary markers known as '*Ishi okii*' to indicate where the land began and stopped. The marker could be in form of a tree or a small pebble which was how they came into ownership of land. In recent times, people purchase lands and make use of land beacons to signify the land that is theirs.

The third concept has to deal with the management of family land. The family head embodies the family and as such rights and powers are vested in and are exercisable by him

⁷ Coker V Coker (1938) 13 NLR 83 at 85

on the behalf of other family members. The family head is in charge of the management, preservation and control of the land and in a loose form of speech he may be referred to as the trustee of the property. In the case of *Lewis V Bankole*⁸ it was stated at that the death of the founder, the eldest son is the proper person to succeed the headship of the family. The case of *Basse V Cobham*⁹ further explained the duties of the family head saying the role is synonymous with the role of a leader to the community and a trustee to beneficiaries who in this situation are the family members. The family head is in charge of managing the property of the family, his actions regarding the property should be done with the interest of the family members in mind and shouldn't been carried out under selfish pretences. It was stated in the case of *Foko V Foko*¹⁰ where the family head sold family property for the purpose of obtaining a chieftaincy title for himself, it was held that he couldn't deal in family property for his personal benefit and as such the purported sale was declared void. In Umuenyi community, the family head carries out functions with the intention that it is the best course of action regarding the family property. The other family members serve as a guide when the family head wishes to carry out decisions but the final decision is left to the family head.

The final concept is determination of the family property simply means the putting to an end/termination of the possession of family property. It can be done in two ways: Absolute transfer- This occurs where there is alienation of the interest of a family land to another person which may be by way of sale or gift. When this happens, the transferee becomes the absolute owner. This transfer is only valid when it is done by the family head and the principal members. If it is done by principal members without the permission of the family head it will be *void ab initio*, if it is done by the family head without the permission of the principal members, it is voidable. The second way is by partition- this involves the sharing of the family property among family members. This division of land is not for purposes but ownership as well. Partition may be ordered by the court where interest of peace demands it in instances where the family head refuses to allow others enjoy the property. It differs from normal division because in that instance only occupancy is affected and not ownership but in partition it affects both occupancy and ownership. The two ways are common in the Umuenyi community especially partition of land. It should be noted that the family head can decide to give land to a female member of the family for it is not against custom for a woman to be entitled to own land.

In conclusion, it has been illustrated that the Umuenyi community which is an Eastern Nigerian community have their various practises when it comes to practises that concern communal land holding. Each culture has their own unique procedures but for this community the processes stated in this paper is how things are done but with the development of laws and technological innovation there are slight changes but these changes doesn't greatly affect the communal land tenure system of the community.

⁸ Lewis V Bankole (1909) 1 NLR 81

⁹ Basse V Cobham (1929) 9 NLR 84.

¹⁰ Foko V Foko (1965) NMLR 3