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Customary Land Tenure Systems

Assignment

Prepare a brief paper on the customary land tenure system as practised in your locality (state the locality, state, local government or community you are writing about). This should briefly cover the creation, ownership, management and determination of family or communal land in your locality. Note that the examiner expects you to write based on your research or knowledge acquired with respect to customary land tenure in your locality.

Answer

Customary law can be defined as customs that are accepted as legal requirements or obligatory rules of conduct; practices and beliefs that are so vital and intrinsic a part of a social and economic system that they are treated as if they were laws¹

Customs can be defined as a way of behaving or a belief that has been established for a long time among a group of people²

Customary land tenure describes the ways of landholding in various customs. The creation, management and determination of landholding varies from place to place as the custom varies.

My locality is Ogun state which is home to people that are Yoruba and practice the Yoruba customs. Each custom has a unique way of holding land while sharing common principles or

¹ Black's law dictionary, 8th edition, 2004.

² Dictionary.cambridge.org

features, for example in the Onitsha Province of Anambra, Eastern Nigeria the practice of Kola Tenancy was popular. Under Kola Tenancy land-owners would grant unwanted portions of their land to grantees (described as tenants) for a kola or other token payment and sometimes for no consideration at all³. Therefore Kola tenancy can be seen as a method of land holding unique to that custom, it has its own method of creation, management and determination. This custom is also similar to the Yoruba custom of landholding as people also granted land for farming to others, this shows that landholding across various customs has a lot of similarities.

Ownership of land can be found in the community, family and also in individuals. The family land is managed by the head of the family and the communal land is managed by the Oba who is the king of the community. These are the people in charge of the control of the land and the management of the land. In my locality family ownership of land is popular followed by individual ownership of land, land also belongs to the King.

Land holding is created in various ways in the Yoruba locality, in the olden days land conquered by war can be held by the Oba on behalf of the whole community. Landholding can be created by various situations such as inheritance where a member of the family especially the head of the family dies, it can also be passed on through lease for monetary consideration, as an indigenous mortgage known as a pledge or through sale of the land giving the purchaser absolute ownership of the land. Land is shared equally among children through a distribution method called Ori oju ori (Everyone is Equal) however even where this is used it doesn't necessarily mean that it would be equally shared, sometimes seniority is also considered in terms of location to be given and sizes of the land. The second method of land sharing is Idi igi it is based on the number of wives. An Igi represents a wife and land is equally shared amongst the wives to hold as trustees for their children, if there are 4 wives the land would be shared into 4 portions. The first wife may be given prime location over other wives as she is their senior. It has a lot of controversy so it's no longer generally used because it is not equitable as a wife could have 8 children and receive the same size of land as a wife with only one child. Sharing the land equally between the wives through Idi igi can lead to disagreements. Therefore Ori oju ori is predominantly applied. These are the methods of creating family landholding in my locality.

³ Adewale Taiwo, The Nigerian Land Law, (Princeton and Associates publishing co. Ltd 2016) 192.

Land can also be used as security for debt through a pledge. In *Laregun & Ors V. Funlayo*⁴, the plaintiff sued for recovery of land which was pledged to the defendant for over thirty years during which the defendant planted economic trees, it was held that the mere planting of economic trees and lapse of time did not defeat the right of the plaintiff to recover the pledged land. The pledgor or his successor in title may redeem the pledged property, and where the property is a family property, the general rule is that where any member redeems it with his personal money, it remains a family property and he has no legal right to recover the money from the family funds⁵

Management of family and communal land in my locality is done by the King of the locality and the male heads of the families (Olori Ebi). The king has the right to settle dispute over land, he can rent or sell communal land to strangers. It is the head of the family that would decide to rent out the land or sell it, but the Olori Ebi has to have the consent and support of the major members of the family in making such important decisions.

Determination of landholding in my locality is done through

1. Payment of debt: If the land is used as security for money owed, once the debt is settled determination of the landholding occurs and ownership of the land reverts to the person who used the land as security
2. Forfeiture: Forfeiture is the loss of any property without compensation as a result of defaulting on contractual obligations, or as a penalty for illegal conduct. In the case of *Asani Taiwo & Ors. v. Adamo Akinwunmi & Ors*⁶, one of the issues was whether a denial of the landlord's title by a customary tenant is serious misconducts for which liability to forfeiture may be incurred and it was held that there are various ways whereby a customary tenant may incur liability to forfeiture under native law and custom and a denial of the landlord's title is one of the serious misconducts for which liability to forfeiture may be incurred.

⁴ (1956) WRNLR 55.

⁵ Property advisory network "Acquisition Of Jointly Owned Properties: Part 2" posted March 23, 2019 CHRIS WILLIAMS NWOKORO

⁶ (1975) LPELR-SC.151/1974