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MATRIC NUMBER: 16/LAW01/011

LEVEL: 400L

COURSE: LAND LAW

COURSE CODE: LPB 402

QUESTION:

Write on the customary land tenure system as practiced 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. The examiner expects you to write based on your research or knowledge acquired with respect to customary land tenure in your locality.

LECTURER: ADEWALE TAIWO (PROF).

INTRODUCTION

According to Mqeke RB in *Customary Law and the New Millennium*, 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.

These are laws that originate from the common practices of a particular people.

It can also be said to mean an established pattern of behavior that can be objectively verified within a particular cultural setting.

This customs and practice of the people are what have been accepted by the law and is now termed ‘customary law’.

In *Owonyin v Omotosho*¹, customary law was described as “a mirror of accepted usage”_and common law of Nigerian people

It is also important to note that Nigeria, is a nation with diverse and multiple ethnic groups, therefore, the custom and practices of each group vary from one group to the other. The procedures and necessities of marriage for instance, is quite different. In Nigeria, customary law embraces both the ethnic/tribal laws as well as Islamic law.

The customary land Tenure system refers to the way land is held as regards custom, until the advent of the land use act, it wasn’t uniform in any way. In essence, the way land is handled in different communities are different.

For the purpose of this work I would be writing on communal and family land tenure practiced in my Locality which is **Agbeye, located in Odo-Otin local government, Osun state Nigeria.**

¹ (1961) All NLR 304 at 309;

Ways that land can be held in my locality

- a) **Communal land:** 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.²

A communal land has been characterized as land belonging to a vast family of which many are dead, few are living and countless members are unborn. Communal land belongs to a community, past, present and future.³

In *Tijani v Secretary of Southern Nigeria*⁴ it was held thus: “in every case the chief or the headman of the village or community has charge of the land and...is sometimes referred to as the owner. He is to some extent in the position of a trustee and as such, holds the land for the benefit of the community.

Likewise, in my locality which is *Agbeye*,

Creation: Communal Land in Agbeye has been passed down from ancestors since time immemorial. They are the original settlers of that land and thus, they have passed the land down from generation to generation.

Management: The person who has charge of the land is referred to as the “*ALAGBEYE OF AGBEYE*”. He makes decisions as regards the land with the *Council of Chiefs*. The Alagbeye of Agbeye is not the owner of the land rather, he owns the land in trust for the people. The land can be allotted to anyone who is in dire need of the land. Thus, the land is **managed** by the *ALAGBEYE OF AGBEYE* in conjunction with the chiefs.

Ownership: Communal Land in Agbeye is not owned by an individual or the chiefs, rather it is owned by the entire community. The Alagbeye, keeps the land in trust for the people and manages

² Adewale Taiwo in The Nigerian land law

³ *ibid*

⁴ (1921) 2 A.C. 399 at 404

it on their behalf as well. The Alagbeye has no personal claim on the land. The land can also be used for public purposes like, market places, township meetings and so on

Proceeds of the land (if any) go the treasury which is used for the development of the whole community.

Communal land is **terminated**, when it is sold to a stranger or an individual or when it is partitioned not allotted.

a) Family Land.

Creation & Ownership: The Adeyemo Family land was passed to the wife and the surviving children of the Adeyemo Household. This land was created when the owner of the land in question died intestate, thus leaving the land to the surviving children.

This also reflected in *Olowosago v Alh. Adebajo*⁵ it was held as follows: (i) where a land owner whose estate is governed by customary law dies intestate, such land devolves on his heirs in perpetuity as family land.

Management: The manager of that particular land is the first surviving son, who holds the land in trust for all his siblings. Proceeds from the land are shared equally amongst them all.

Family land can be terminated upon partition. The land in question is not partitioned.

In conclusion, the communal land and family land are held by the heads of the community or family, in trust for all those who are entitled to it. No one has absolute ownership.

This writer humbly submits.

⁵ [1988] 4 NWLR (pt 88) 275.

