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ABSTRACT

This term paper seeks to discuss the type of customary land tenure system practiced in my locality; Ndi Oji Abam in Arochukwu Local Government, Abia state. The mode of creation, ownership, management and determination of family land tenure would be discussed.

INTRODUCTION

Land tenure is the system of landholding in a given society. According to World Intellectual Property Organization(WIPO) customary law is, by definition, intrinsic to the life and custom of indigenous peoples and local communities. What has the status of “custom” and what amounts to “ customary law” as such will depend very much on how indigenous peoples and local communities themselves perceive these questions, and on how they function as indigenous peoples and local communities.¹

However, the term “customary law” is used in a blanket form and it should not be taken to indicate that there is a single uniform set of customs throughout Nigeria. Nigeria is a society with diverse tribes, customs and cultures and within those tribal group, some local variations and differences exist.²

Customary land tenure system refers to the system of land holding governed by the customary law. It should be noted that since 1978, the Nigerian customary land tenure has been modified to a large extent, by provisions of the Land Use Act, 1978. The Act provides for a new uniform land tenure system in Nigeria. In *Otunba Hakeem Sobande v Barrister Andy Igbowkwe*,³ the Supreme Court held that the object of the Land Use Act is not intended to destroy incidence of customary law, but it modified its application.

CUSTOMARY LAW CONCEPTS

¹ <https://www.wipo.int> › pdfPDF customary law - WIPO

² See Taiwo, EA., *The Nigerian Land Law*, (Princeton & Associates Publishing Co. Ltd, 2016) 170.

³ (2016) 11 NWLR (pt 1523) 335 at 355

The have been various controversies as to whether the concept of ownership has been existing in African customary law. One view is that the concept of ownership is strange to customary ideas⁴. The other view is that the concept of ownership has since long been part of the Nigerian customary law. Under the Nigerian customary law, ownership may be held by (a) the community (b) family and (c) the individuals.

In answering the question, family land holding tenure system is practiced in my home town Abam. According to Woodman, he defined family as a group of persons lineally descended from a common ancestor exclusively through male (in communities called patrilineal for the reason) or exclusively through female starting from the mother of such ancestor(in communities called matrilineal for this reason) and which group succession of office or property is based on this relationship.⁵

CREATION

Family land in my locality is created by the founding fathers who settled on a virgin land and exercised acts of ownership over the land for a sufficient period of time that it can be inferred that they own the land. They intended that the property should be passed down from generation to generation through their female daughters. But overtime, the men gradually started holding the family land on behalf of the family.

OWNERSHIP

Family land is owned by the family as a whole Each member of the family has equal rights over the family land and no one can act without the consent of the elders in the family.

MANAGEMENT

Families in Ndi Oji Abam are matrilineal but when it comes to family land holding, over time, the men was in charge of that. Each family has a family head, which in most cases is the eldest man in the family, who is responsible for holding the land on behalf of the family. There are rare circumstances though, where females in the family are allowed to hold the family land. Circumstances such as when she is the only child or where there are only female children in the family. Also females are allowed to hold land if they have enough resources to maintain and take care of the land.

The family head controls and manages the family land on behalf of the family. The family live together on a particular land and any other land they have will be used for farming. They also rent the family land to other families who need it for farming. Formerly, the rent usually last for 7years after which the borrower will return the family land to the family but in recent times,

⁴ See Coker, G.A.B., *Family Property Among the Yorubas*, 2nd ed. (1962) 32 & 33.

⁵ Woodman, G.R., *Customary Land Law of the Ghanaian* (Ghana University Press, Accra, 1996) 218.

because of the increase in population, the rent only lasts for 5 years after which the property returns back to the family.

The family head does not make decisions on the family land alone, he has to consult with the other elders in the family. There are circumstances, however, where he can act on his own for the interest of the family but not arbitrarily. Where he acts arbitrarily, the family members may report him to the Eze. The Eze is the King of the land. The Eze would mediate between the family and try to help them reach an agreement. The Eze and his Eze-in-council will then reach a verdict. Where he also uses the family land for his own personal interest, he might have to pay a particular fine to the Eze when reported.

At the death of the previous family head, the eldest family head automatically becomes the new family head who controls the family land on behalf of the family. The family land can be used as a security to receive a loan and upon payment of the debt the family land can be retrieved no matter how long it takes.

TERMINATION

In Abam previously, family land can never be terminated. No matter what the family land has been used for, it usually comes back to the family no matter how long it takes. But in modern times, because of societal and economical changes, children in the family now sell the family land in exchange for money. This is due to the fact that most of these children stay in the urban areas and rarely go back home and as such rarely see the need to keep the land and as such they sell the family land to other families.

Also, when the family land is shared equally between every member of the family and as such transforms the family land holding tenure system into individual land holding tenure system.

In conclusion, although we still have the family land holding tenure system running in Abam, because of the changes happening in the society most family lands are held within the immediate family and not the big family as a whole.

REFERENCE

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Taiwo, EA., *The Nigerian Land Law*, (Princeton & Associates Publishing Co. Ltd, 2016) 170.