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**MATRIC NUMBER: 16/LAW01/145**

***ABSTRACT***

*Tenure system of land involves a system of rights, duties and responsibilities concerning the use, transfer, alienation and ownership security of land and its resources. This paper therefore examined land holding system under customary law within the context of my locality. It shall explore the creation, ownership, management and determination of family or communal land in my locality.*

**INTRODUCTION**

Land acquisitions include not only the purchase of ownership rights but also the acquisition of user rights, for instance through leases or concessions, whether short or long term. Land tenure system can be defined as the rights and institution that governs access to and use of land. Customary law is defined as the custom and usages traditionally observe among the indigenous. This paper will cover the Benin customary land tenure system as I reside in Ihama street, Oredo local government area, Benin city, Edo State.

**BENIN LAND TENURE SYSTEM**

Tenure arrangements were studied in central Benin, with special attention to factors diminishing or enhancing mutual trust between landowners and migrant farmers. Two contrasting tenure arrangement systems occur. The first is found in Ouoghi village, where landowners and villagers are organized around the Association de Développement Economique et Social du Village de Ouoghi (ADESVO). The second is found in the Boubouhou area, where land tenure is managed by landowner lineages.

**CREATION**

Prior to the promulgation of **the Land Use Act in March 1978,** the title to Benin land was vested in the Oba of Benin whom the people have very high regard for. He held Benin land as the overlord and trustee for the Benin people, therefore whatever power he exercised in the control of the land was unquestionable and when he made a grant of any parcel of land to anybody, he did so as a matter of favor in the exercise of his prerogative. By the promulgation of the land use decree in 1978, the law of priority under Benin customary land tenure system has been overtaken by events but the court of law now accurately considers the evidence of parties and puts same on an imaginary scales of justice as enunciated in *Mogaji v. Odofin (1978)4SC.91* before coming to the conclusion that a particular party had proved a better title to the land. In the early times, the Oba divided Benin into quarters, which were headed by chiefs appointed by him and later about 1947 created ward councils whose duty was to recommend to the Oba application for plot of land. The said ward councils were replaced with building plots allotment committee whose main function was to receive and recommend application for building plots to the Oba for approval. However, before such application was forwarded to the Oba, the committee ensured that the plot of land was not encumbered in any form by inspecting same.

**OWNERSHIP**

The term ‘ownership’ signifies the largest claim to land under customary law and it is therefore, a recognized concept of customary law, The Benin customary land tenure system practice communal landholding. Ownership is held by the Oba of Benin. In *Arase v Arase ,* The Supreme Court, per Idigbe, JSC observed as follows; ‘it is now settled by decided cases that basically all land in Benin is Owned by the community for whom the Oba of Benin holds the same in trust, and it is the Oba who can transfer to any individual the ownership of such land.

**Management and Procedure for obtaining grants by the Oba of Benin prior to 1978**

It is an accepted custom that under Benin native law and custom, all Benin land are communal property of the entire Benin people but the legal estate in such land is vested and resides in the Oba of Benin as trustee for the Benin people. Anyone that desires for a land to build applies for it to the Oba who is the only authority competent under the Benin customary law to make allocation or grant of Benin land in or outside Benin city through the appropriate ward plot allotment committee in which the land is situated. The committee makes recommendation to the application to the Oba of Benin. The committee carries out an inspection of the site in order to ascertain its location and to recommend whether the plot desired should be granted to the applicant is free of dispute. Upon recommendation the Oba gives his approval by writing ‘Approved’ in the body of the application followed by his signature on the grantee’s written application immediately transfers to the purchaser or grantee the plot of land involved. This approval remains valid until set aside by the Oba of Benin when it is proven subsequently by evidence that a prior approval for the same land had been given by the Oba, but not when made unilaterally*. Arase v Arase, the grant c*annot be vitiated because one of the parties was granted approval earlier than the other but prior on the date of the Oba’s approval depend on whoever show better title when both parties appear before the Oba to prove their case. The case of *Okeaya v Aguebor* has become the focus classicist of Benin custom relating to land ownership.

**DETERMINATION OF COMMUNAL LANDHOLDING**

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 to any portion of such land. It is described as the most remarkable principle of customary land law. However, it may be determined in any of the following ways;

1. ***Abandonment****;* where a customary tenant vacates the land without the intention of returning to it he is said to have abandoned the land.
2. ***Accomplishment of purpose;***where the customary tenancy is granted for a specific purpose or for a period of time, the accomplishment of the purpose or the exfluxion of time terminates it.
3. ***Forfeiture;*** by a court order upon a proven allegation on the complaint of the overload of act(s) of misbehavior constituting denial of his title by the customary tenant eg, persistent refusal to pay customary tributes.

**CONCLUSION**

The approval given by the Oba is all that is required by Benin customary law to vest title of land but this does not mean that the title of grantee is indefeasible when discovered that the grant is encumbered even though the Oba had entered conveyance with the grantee, it is trite that failure to fulfill a condition precedent, especially the visit to the land which a fortiori the approval of same nullified and vitiated the Oba’s approval to the grant.