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**MATRIC NUMBER: 16/LAW01/137**

**LEVEL: 400**

**COURSE CODE: LPB 402**

**COURSE TITLE: LAND LAW II**

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**QUESTION:**

Prepare a brief paper (not more than 3 pages, 12pt, Times New Roman, 1.5 line spacing) on the customary land tenure system as practiced in your locality (state the locality, state, local government 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 system in your locality.

 **ABSTRACT**: The purpose of this paper is to briefly take one through the customary land tenure system practiced in a locality situated in the Eastern part of Nigeria paying particular attention to the creation, ownership, management and determination of the family or communal land in this locality which were acquired from my research and discussions with individuals vast in this area.

**INTRODUCTION:** The Nigerian Customary land tenure system has been modified to a large extent by the Land Use Act 1978[[1]](#footnote-2). Land is a common denominator wherein the peoples economic live lies on. Its tenures differ from slightly from society to society. Customary law entails the customs and usages traditionally observed among the indigenes that formed part of their culture and religions[[2]](#footnote-3). There is no single uniform set of customs prevalent throughout Nigeria because Nigeria is a heterogeneous society with diverse customs and cultures.[[3]](#footnote-4) Basically, customary land tenure system refers to the methods or ways of holding land in the various customs and cultures in Nigeria and in the given case, **AMAWBIA TOWN.**

**BACKGROUND:** This paper is centered on **AMAWBIA TOWN (AMOBIA**) in **AWKA SOUTH LOCAL GOVERNMENT AREA** in **ANAMBRA STATE**. Amawbia town comprises of six villages. Land tenure in Amawbia can be classified into communal land (ANA OBODO), village land (ANA OGBE), clan land (ANA UMUNNA), family land (ANA EZI NA ULO) and quite rarely individual land. Outside these is also ones dedicated to the gods of the land or otherwise known as ANA ALUSI. It is important to note at this point that under individual land tenure, land is available to the individual owner for agricultural purposes, but may be given out to others on a rental basis, especially for cultivation.

**CREATION:** As earlier stated, Amawbia practices predominantly communal land tenure and family land tenure systems. Under the communal land tenure system, a communal land is created from the initiatives or decisions of the founders of the land. The founders of the land or its original settlers may decide to designate land to the entire community[[4]](#footnote-5). One can gain access to the community land by being a member of the community. The community land can be shared among all male indigenes that pay the **annual current levy (UTU ARO)** to the community for the purpose of farming only. The land is held in trust by the **OKPALAIGWE AMOBIA,** he holds this communal land in trust for the entire community. Under the family land tenure system, a family land is created by operation of the law or by acts of the parties. Where family land results from operation of the law, if a land owner who is subject to customary law dies intestate (without a will) his acquired property devolves on his heirs in perpetuity as family land. Where family land results by acts of the parties, it could be by way of first settlement; which may arise where a family through its ancestors were the first to settle on a virgin land and exercised acts of ownership, or by conquest; although this is no longer legitimate, or by purchase where family money is used to purchase land or by gift where a land is donated as unconditional gift of land to a family. In Amawbia, family land is owned by a family in a certain prescribed manner by the head of the family which is usually the oldest member of the family. He holds the same in trust for the rest of the family. In allocating land, we have the **ANA IRU EZI** (belonging to the first son), **NGWULU** (for the first son also known as **DIOKPALA**) AND **MKPUKE** (belonging to the last son).

**OWNERSHIP:**

Whether or not the concept of ownership exists in the African customary law has been of consideration in the society. Some people are of the view that the concept of ownership is unknown to the customary land tenure system. [[5]](#footnote-6) Some others are of the view that it contends that the concept of ownership has long been part of Nigerian customary law and that the concept is not strange to customary law. Sometimes the term is used to denote absolute ownership while other times it denotes right of occupation. Under Nigerian customary law, ownership could be by the community, family and individuals. In the case of ***Eze v. Igiliegbe and [[6]](#footnote-7)others,*** it was held that it was right to presume that land belonged to the community as a whole. In Amawbia, communal land is owned by the entire community but is held in trust by the **OKPALAIGWE**, who manages the land with the members of his cabinet and the **OKEOKPA**. Family land is owned by the family and is held in trust by the eldest person in the family, who manages it with the principal members of the family. It is important to note that in Amawbia, land can be given to individuals for farming. It could also be given to women (**UMU NWANYI)** who marry into Amawbia strictly for farming purposes and not ownership.

**MANAGEMENT:** The OKPALAIGWE AMOBIA (community head) manages the communal land on behalf of the members of the community. However the responsibility for sharing or assigning communal land to individuals (Amawbia citizens) lies with the **ULONATO** group before the beginning of the farming seasons annually. The principle of corporate management of communal land was stated by Lord Haldane in ***Tijani v. Secretary of Southern Nigeria*** [[7]](#footnote-8)where he stated that in every case the chief or the headman of the community has charge of the land and in loose mode of speech is sometimes referred to as the owner. He holds the land in trust for the community. The family head takes management and control of the land. He has the responsibility to preserve family property from any unlawful interference and to keep it in a good state of repair. At the death of the family head, the DIOKPALA is the proper person by native law to succeed the headship of the family. The case of ***Akano v. Ajuwon*** [[8]](#footnote-9)referred to the family head as the manager. And as such he has the authority to direct affairs of the family property. It is however important to note that the family head manages family property subject to the decisions of the principal members of the family.

**DETERMINATION:** Family land in Amawbia could be determined by various means. One of the most prominent is by Partition. This is the act of sharing family land among members of the family. Partition means basically the permanent division of land for purposes, not of user only but of ownership as well. [[9]](#footnote-10)Partition may be voluntary or ordered by the court. Determination can also be by absolute transfer of the family property to another person. The interest in land of the family is transferred to another person either by gift or by sale. However, this must be done subject to permission by the family head and the principal members of the family. Communal land is determined by transfer to another community or individual. The means of determination in family land may also apply to communal land.

**CONCLUSION:** In conclusion, it is important to note that these customary land tenure systems generally existed before the advent of colonialism. The above therefore succinctly explains the customary land tenure system practiced in AMAWBIA (AMOBIA) paying attention to the way lands are owned, managed and determined in this community.

**REFERENCE/BIBLIOGRAPHY**:

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1. Adewale Taiwo, The Nigerian Land Law (Princeton and associates publishing co. ltd 2016)174 [↑](#footnote-ref-2)
2. Hlope v. Mahlalela [1998] 1 SA 449 T 457 [↑](#footnote-ref-3)
3. Adewale Taiwo, The Nigerian Land Law (Princeton and associates publishing co. ltd 2016) 175 [↑](#footnote-ref-4)
4. Mora and Ors v. Nwalusi (1962) 1 All NLR 681 [↑](#footnote-ref-5)
5. COKER G.A.B. Family Property Among the Yorubas, 2nd ed. (1962)32,33 [↑](#footnote-ref-6)
6. [1952]14 WACA 61 [↑](#footnote-ref-7)
7. (1921) 2 AC 399 at 404 [↑](#footnote-ref-8)
8. (1982) 11 SC 1 at 72 [↑](#footnote-ref-9)
9. Nwabueze, op.cit.40. [↑](#footnote-ref-10)