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**MATRICULATION NUMBER: 16/LAW01/027**

**LEVEL: 400**

**COURSE CODE: LPB 402**

**COURSE TITLE: LAND LAW II**

**QUESTION**

Prepare a brief paper on the customary land tenure system as practiced in your locality. This should cover the ownership, management and determination of family or communal land in your locality.

**INTRODUCTION**

This paper is on the customary land tenure system practiced in the east, specifically Umuahia south local government of Abia state. In it I will be discussing the creation, ownership management and determination of the system based on the type of ownership used. Before proceeding into my work I will first of all be defining what land tenure and customary law are as they will appear in my work.

Land tenure is the system of land holding in a given society.[[1]](#footnote-2) Land tenure can be defined as the manner in which a party holds or occupies an area of land. The rules governing land tenure are invented by societies to regulate land ownership behaviours. Tenure rules help define how property rights to land are allocated within societies.[[2]](#footnote-3)

Customary law on the other hand, can be defined as the custom and usages traditionally observed among the indigenous people that form part of their culture and religions. it has been described in **Owonyin v. Omotosho**[[3]](#footnote-4) as “a minor of accepted usage” and “common law of Nigerian people” in **Ex Parte Ekpenega**[[4]](#footnote-5). Customary law varies amongst the ethnic groups of Nigeria hence its non-uniformity throughout the country due to ethno-cultural differences.

In attempting a combined definition, I will define customary land tenure system as the manner in which a party holds or occupies an area of land based on the custom traditionally observed by the people of that land.

Customary land tenure system has been explained in the following concepts of: ownership, communal land holding, family land, creation of family land, management of family land, determination of family property, individual land holding and decrease in communal and family land. However, I may not be explaining all because it will be based on what is practised in my locality.

**CUSTOMARY LAND TENURE SYSTEM OF UMUOPARA, UMUAHIA SOUTH LOCAL GOVERNMENT AREA, ABIA STATE**

**OWNERSHIP:**

The customary land tenure system practiced in my locality is family land Ownership. This means that it is the family that owns land and possession vests ownership. Woodman defines family as “a group of persons lineally descended from a common ancestor exclusively through males in patrilineal communities or exclusively through females in matrilineal communities and which group succession to office and property is based on this relationship.[[5]](#footnote-6)

Family land is a land vested on family as a corporate entity. An individual member of the family has no separate claim to any part or whole of it.[[6]](#footnote-7)

**CREATION:**

Family land is created by inheritance, pledge or purchase.

* **Inheritance:** this falls under creation by operation of law where acquired property is devolves on the children either by application of customary law where there is no will or by a declaration made under a will. Creation of family land by inheritance is created by a long history of possession of that land.
* **Pledge and Purchase**: this falls under creation by the act of parties. In the case of pledge, land is given as a security for money given. In the case where the pledgor cannot pay the money, extra is being charged or extra is being given by the pledgee till title to the land is voluntarily transferred to him by those indebted to him.
* In the case of purchase, families can buy land and the family money is used to buy land[[7]](#footnote-8)or family can exchange land; exchange in the sense that if a land which is closer to the one the family lives in or occupies is owned by another person and the family has land elsewhere, an exchange can be agreed to be made by the family and the other party. This gives room for expansion of family land.

**MANAGEMENT:**

Families manage their land by themselves there is no estate management entity. The Supreme Court referred to the family head as the manager. He has also been described on various occasions as representative, agent, caretaker, trustee, and many more.[[8]](#footnote-9)

**DETERMINATION:**

Family land in my locality can be terminated by sale on the agreement of the rest of the family. The family head cannot solely sell or buy land on behalf of the family because it will be void the family decides when to buy, sell or who to give land to. If the head sells or buys land on behalf of the family, the family has the right to rectify or disclaim such sale or purchase as such, no member of the family has a separate individual interest in the family land. In **Solomon and ors v. Mogaji**,[[9]](#footnote-10) a family head sold family land as his personal property and the Supreme Court held that the purported sale was void ab initio because he had no separate individual interest to transfer to the appellants.

**CONCLUSION**

I would like to conclude by saying that there is no room for division where family property is involved as I have explained above. Every decision on property is made by the family as a whole. Even the law does not allow a member of the family go outside the family to make decisions in respect of the family property because it will still make the rest of the family rise up to claim such property against that family member.

1. Adewale Taiwo, The Nigerian land law. Published by Ababa Press Ltd. 2011. [↑](#footnote-ref-2)
2. <https://www.schoolmattazz.com>. Published February 2017, accessed 23rd April, 2020. [↑](#footnote-ref-3)
3. (1961) ALL NLR 304 at 309 [↑](#footnote-ref-4)
4. FSC 204/1961 of 30/4/1962 (Unreptd.) [↑](#footnote-ref-5)
5. Woodman, G.R., Customary Land Law of the Ghanaian (Ghana University Press, Accra,1996) 218 seen in The Nigerian Land Law supra [↑](#footnote-ref-6)
6. Unity Bank Plc. V. Bouari (2008) 7 NWLR (pt1086) 372 at 398 SC. [↑](#footnote-ref-7)
7. Nelson v. Nelson (1951) 13 WACA 248 [↑](#footnote-ref-8)
8. Akano v. Ajuwon (1982) 11 SC 1 at 72 [↑](#footnote-ref-9)
9. (1982) 11 SC 1 [↑](#footnote-ref-10)