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**Matric. NO: 16/LAW01/012**

**COURSE: LAND LAW II (LPB 402)**

**ASSIGNMENT:** Prepare a brief paper (not more than 3 pages) on the customary land tenure system as practised in your locality. State the locality, state, local government area or community you are writing about. This should briefly cover the creation, ownership, management and determination of family or communal land in your locality.

### **Introduction**

I am from Onicha Olona in Aniocha North Local Government Area of Delta State. My community is mainly an agrarian community as the main occupation of people residing there is farming. It is mainly subsistence farming in its rudimentary form as mechanized farming is absent in the community. As farming is done in this way, land on which the farms are cultivated is a very essential asset in the community. Consequently, the ownership and possession of land are critical in the livelihood of my people. I will now attempt to discuss the land tenure system of my people.

### **Ownership**

Ownership of land in my community is either communal or private. Family ownership is uncommon in this area of the country.

- **Communal Ownership:** Usually farm land is own communally. As a result no individual has a right to farm in a particular portion of the community's farm land. Therefore, different persons can farm on the same portion of land at different time periods. The person entitled to farm on a given plot or plots of land is the person to first identify it and clear it for cultivation for that particular farming year. After harvesting his produce, he allows the land to lie fallow for some years for it to become cultivatable in later years by any other person among his kindred. However, each quarter or village within the town has its own farm land that a person from another quarter or village has no right to farm on except with

the special permission of the leaders of the quarter/village that owns that portion of farm land.

- **Family Land Ownership:** This kind of land ownership is unknown in my community. This is largely due to the form of inheritance system that we have. Here, whatever is owned by a deceased is inherited by his eldest son or immediate younger male sibling. There is no doubt that this form of inheritance cannot pass the test of legal scrutiny as it is repugnant to natural justice, equity and good conscience and also not in consonance with the land mark cases of our courts. However, where the eldest son is considerate, the assets left by his father would be shared among his siblings after the final funeral ceremonies of their late father. Such assets including landed property automatically also translate to individual assets, once shared, hence the absence of family land ownership in my community. This is a far departure from the Yorubas that have and recognize family ownership of land.
- **Private Ownership:** Private ownership of land arose originally through the earliest settlers in the community. They shared a certain portion of land to each of themselves or to each family while the family units went further to do individual sharing of the land given or allocated to it. Subsequently, private ownership emerged through either purchase or inheritance.
- **Ownership by Purchase :** A community can decide to sell landed property to another person usually from the same community but in recent years, strangers can now buy either from the community or from individual owners. Members of the community can also approach individuals with land more than they require to purchase part of their own.
- **Ownership through Inheritance:** Inheritance is another way of becoming a land owner in my community.
- **Ownership through Gift:** Land owners have the right to make gifts of their land while they are alive or in their wills for implementation after their demise.

However. Just like the Binis, a testator is not allowed to devise the house in which he lived and died to a person other than his eldest surviving son because the Will Law of Delta State makes the law subject to the customary law of the testator. In the celebrated case of **Idehen vs. Idehen [1991] 6 NWLR 387**, the Supreme Court held that a Bini testator cannot devise the house where he lived and died (Igiogbe) to another person other than his eldest surviving son as it would run contrary to the custom of the Binis and the Wills Law of the then Bendel State of Nigeria.

### **Creation of Titles to land**

- **By the community** : Title to land from the community is created by the head of the community in conjunction with the elders representing each of the families that make up the community. Before the advent of the British and their statutes, it was by handing over of the specific parcel of land to the purchaser or donee. The land must be properly demarcated and handed over to the purchaser or donee in the presence of witnesses for both sides. However, with the colonization of Nigeria and emergence of laws regulating land transactions, such titles are now created mainly through deeds by the relevant parties.
- **By Private Individuals:** This is used to be by also taking the purchaser or donee of the land to the particular land and handing it over to him in the presence of witness. It is now created through execution of deed of conveyance or assignment or even power of attorney. Such instruments including purchase receipts can be used to procure certificates of occupancy or registered where their registration is permissible.

### **Management of Land**

Management of land is dependent on the ownership. Where the land is owned by an individual, he determines how to manage it. This could be either by himself or through his attorney or agent. The powers of the attorney or agent will depend on authority they are given. On the other hand, for communal ownership, the king of the community and his chiefs are in charge of the administration of the communal landed property.