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**CUSTOMARY LAND TENURE SYSTEM AS PRACTISED IN MY LOCALITY (MBRIBT-ITAM, ITAM, ITU LOCAL GOVERNMENT IN AKWA-IBOM STATE)**

**INTRODUCTION**

Land tenure is a system of landholding in a particular society. Customary land tenure system cannot be looked at without first knowing what customary law is. Customary law is the custom, traditional usage observed amongst indigenous African people which form the culture of such people. It is a representation of a collection of precedents and decisions of old chiefs. It is of essence to note that customary land tenure system was the former system of land holding in Nigeria. The **Land Use Act** provides for a new tenure system but there is a need to have a background knowledge about the customary land tenure system. Although in 1978 Nigerian customary land tenure system was modified by the provisions of the Act, it was stated in **Otumba Hakeem Sobande v Barr. Andy Igbokwe** that the objective of the Act was not to destroy the precedence of customary law but to modify it.

**Creation of Family Land in my locality (Itam)**

My locality is Mbribit-Itam in Itu Local Government Area of Akwa-Ibom State. The customary land tenure system practised in my locality is predominantly the family landholding system. A family is a body of persons who live in one house or are under one head, including parents, children and servants, and their children whether living together with their parents or not[[1]](#footnote-1). The creation of family land in my locality is done by the act of parties, particularly by gift and first settlement where ancestors of a family were the first to settle on virgin land and exercise their rights of ownership over such land[[2]](#footnote-2). The existence of needed public places such as town halls or village square and playground for children in age groups was brought about by different families living close to each other on their respective family lands who saw the need for these places, and by means of “forfeiture” of a portion of each of their lands, they established needed spaces like the town hall which is referred to as *“afe obio”* in my locality. A place like a court was also established which was referred to as *“ufed”,* built within a forest called *“usak”,* where land dispute cases and other such matters were judged by the village and family heads. Over time, some family lands are ceded off as gifts, where the family becomes a donee of a particular land as a gift[[3]](#footnote-3). A land given as a gift is irredeemable.

**Ownership of Family Land in Itam.**

The issue of ownership has brought about debate on whether or not ownership is applicable to the Nigerian customary law. The argument in favour of ownership being a recognizable term in the Nigerian customary law sees it as being applicable in a loose manner in the sense that it is sometimes seen as “absolute ownership” and other times it is seen as “right of occupancy”[[4]](#footnote-4). In Itam, ownership was vested in individuals (via inheritance) in various families who could either pass it on to their offspring as inheritance, or gift to other people. The issue of ownership became a problem in family landholding in Itam as over years, as it became difficult to trace the real owner of a particular land. Especially where portions of each family land has been forfeited for public use such as for the town hall and there is an issue as to which family has rights over and should claim such land. In some cases, the original owner of a land may lose his land completely. There was also the issue of land fragmentation, where the problem of the size of the land being too small for farming or industrial purposes which caused disputes between families.

**Management of Family Land in Itam.**

It is the family head that manages and controls the family land. In Itam, the rights and powers of such land is vested on the family head who is referred to as *“Obong Ekpuk”* who exercises such rights on behalf of members of the family. The family head exercises his rights and powers over family land in conjunction with the village head who is referred to as *“Obong Obio”.* The family head has the power to allocate portions of the land to members who needed it. The family head is also in charge of collecting rent, preventing unlawful interference in the family land, keep the family land in good state and to take part in transfer or alienation of the family property in order to ensure that good title passes. In **Inyang v Ita[[5]](#footnote-5),** it stated that who the family head is depended on the family members to choose either by election, or the deceased holder of the position can appoint on his death bed[[6]](#footnote-6). It was stated that the family head can be seen as the trustee of the family[[7]](#footnote-7).

**Determination of Family Land in Itam.**

Family land can be determined either by absolute transfer or by partition. Absolute transfer is where the family transfers all its interests in land to another person either by sale or gift. This transfer is only valid where it is approved by the family head and principal members of the family. It is important to note that it is from the majority of the principal members of the family that approval needs to be gotten from. It is important to note that the transfer of property without the consent of the family head and principal head of the family is void *ab initio[[8]](#footnote-8),* transfer by members of the family alone is void. Transfer of the family property by the head of the family as his own has no effect[[9]](#footnote-9), and transfer by a family head is voidable. In Itam land is determined by partition, relying on oral history told by the elders who are in charge of the partitioning. In very common cases, the use of certain plants to indicate such demarcation is employed. Some of these plants include, *“okono”* or *“udot oko”,* which means “something that protects the fence”. Partition is the sharing of family land amongst members of a family or to non-members of the family. Where family land is determined by partition, the partitionee becomes absolute owner of his/her own portion of land. Partition can either be voluntary[[10]](#footnote-10), that is agreed amongst members of a family, or it can be ordered by the court in order to preserve justice and peace[[11]](#footnote-11). Partition is often mixed up with allocation of family land or communal land. The common factor between the two terms is that they both include “division”. While allocation of land deals with occupancy rights for a period of time, partition has to do with transfer of right in property permanently. Whether or not the division is permanent or not depends on the facts of the case.

**CONCLUSION**

In conclusion, the system of landholding in Itam although predominantly the family landholding, has some elements of individual landholding which included inheritance, gifts and lease holding system - much of which may or may not have led to the decrease in family land and/or the loss of family lands in my locality. Over time, these changes which have brought about industrial and commercial development, has in turn increased the demand and sale of lands. In a way too, these recent development has ushered confusion and greed among families.

1. Okulade v Awosanya (2002) FWLR (pt. 25) 1666 at 1679, per Uwaifo, JSC. [↑](#footnote-ref-1)
2. Ekpo v Ita 11 NLR 68. [↑](#footnote-ref-2)
3. Ashafa v Awawu 11 NLR 39. [↑](#footnote-ref-3)
4. Onwoamanam v Fatunde (1986) 2NWLR (pt. 21) 199 [↑](#footnote-ref-4)
5. (1929) 9 NLR 84. [↑](#footnote-ref-5)
6. Balogun v Balogun (1934) 2 WACA 290 [↑](#footnote-ref-6)
7. Bassey v Cobham (1924) 5 NLR 92. [↑](#footnote-ref-7)
8. Ekpendu v Erica (1959) 4 FSC 79. [↑](#footnote-ref-8)
9. Atunrase v Sunmola (1985) 1 NWLR (pt. 1) 105. [↑](#footnote-ref-9)
10. Balogun V Balogun (supra) [↑](#footnote-ref-10)
11. Adeleke v Aserifa (1986) 3 NWLR (pt. 30) 575. [↑](#footnote-ref-11)