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ABSTRACT

This paper examines the structure of customary land tenure system in my locality. This paper also places particular attention to the peculiarities and intricacies of my locality which is the town as Ibadan town in present day Oyo State. References will be made to the ownership, management, creation and determination of land in Ibadan Town.

INTRODUCTION

Customary land tenure system is the indigenous system of land holding and use In *Owonyin v Omotosho*, customary law was described as “a mirror of accepted usage”¹ and common law of Nigerian people.² Like all other customary law, it is largely unwritten and flexible.

Conceived as a sacred institution given by God for the sustenance of all members of the community, land has economic, social, political and religious significance. Land is synonymous with capital, wealth, dignity, straight, liberty and freedom. Among the Yorubas, land is a source of sustenance.

I am an indigene of Ibadan, the capital city of Oyo State. Due to the closely knitted societal format and the extended family system of Yorubas, it isn't surprising to note that land is hardly owned by individuals but rather it is often held by the family or community. Chief Elesi of Odogbulu, a traditional ruler, expanded the traditional conception of land as belonging to a vast family of which many are dead, few are living and countless members are unborn.

The usual belief is that “*Oba lo nile*” meaning that the king is the custodian of the land. This was authenticated by the Supreme Court in *Titiloye vs Olupo*³. Infact, it is suspected that that is what influenced the Federal Government into enacting the Land Use Act, 1978 but this is where the customary land tenure system in Ibadan differs. Gavin William rightly noted that Ibadan has no political tradition which confers on the Olubadan the authority to distribute land among towns lineage. Land in Ibadan is owned by family and lineages primarily.

¹ (1961) All NLR 304 at 309; This definition was also adopted by the Nigerian Supreme Court of Nigeria in *Kimdey v Military Governor of Gongola State* [1988] 2 NWLR (pt 77) 445; see also, *Zaidan v. Mohssen* (1973) 11 SC 1, 21.

² See *Ex Parte Ekepenga* FSC 204/1961 of 30/4/1962 (Unreptd.)

³ *Olawoye, CO.*, Title to land in Nigeria. (Evans Brothers 1974) page 20 -21

OWNERSHIP

Family land in Ibadan is land vested in a family as a corporate entity. In leading case of *Amodu Tijani v Secretary Southern Nigerian*,⁴ Viscount Haldane gave judicial impetus to corporate ownership of land by stating that notion of individual ownership is quite foreign to native ideas. The individual member of the family therefore, has no separate claim of ownership to any part or whole of it⁵. It is trite that no rule of customary law is more firmly established than that no member of a land-owning family has a separate individual title of ownership to the whole or any part of it.⁶ A corollary to this is that a member has no disposable interest in family property either during his life time or under his will

CREATION

In Ibadan, family land is created where a founder or land owner who is subject to customary law dies intestate, all his children, wives and heirs have the right over his landed property and can appropriate it as family property. This in *Ogunmefun v. Ogunmefun*⁷, one of the principles established in that case was that where a family member or head died intestate, the land reverts to the family as family property. The court in *Abeje v. Ogundairo*⁸ held the property inherited by a single heir or an only child was nevertheless a family property or through acts of parties

- i. First Settlement -The maxim “*Eni a ba laba ni baba*” operates here. Family property may arise where a family, through its ancestors were the first settlers on a parcel of virgin land and exercise of ownership over sufficient length of time, numerous and positive enough to warrant inference of exclusive ownership.⁹
- ii. Conquest -Historically, the early Yorubaland was characterized with inter and intra-tribal wars, dominated with the emergence of warlords. It was therefore, a common practice for a clan or family to appropriate the land of the conquered.
- iii. Purchase - Generally, it is possible under Yoruba customary law relating to land tenure system for a person to buy a property and then dedicate same to the use of his family. Family property may arise where family funds are used to purchase land. ¹⁰
- iv. Gift

⁴ (1921) 2 A.C. 399 at 404.

⁵ Utuama, A. A., 1989. Nigerian Law of Real Property. Ibadan: Shaneson C.I. Ltd. p. 11

⁶ *Miller Bros (of Liverpool) Ltd. v. Abudu Ayeni* 5 NLR 42 at p. 44

⁷ (1988) 4 NWLR PT 88 pg 257

⁸ (1967) LLR PG 9

⁹ *Ajala v. Awodele & Ors* (1971) NMLR 127

¹⁰ *Nelson v. Nelson* (1951) 13 WACA 248

Where a family is a donee of unconditional gift of land, family property will also arise. This follows the rule that a donor of land under an unconditional gift to a donee cannot recall his title.¹¹

MANAGEMENT AND CONTROL

In this context, the Ibadan customary land tenure system vests the family head with the power of management, to oversee the family property and other family businesses. The family heads are known as “*Mogajis*”. The Supreme Court of Nigeria referred to the family head as a Manager in *Akano v. Ajuwon*.¹² he has the power and authority to direct the affairs of family property. In any of these capacities, he bears a fiduciary relationship to family property. In ancient times, improvements such as erection of family house, family compounds, and cocoa plantations were done by collective efforts of the family members under the directives, management and control of the family head. Management of family property is fundamentally the duty of the family head, however with the active participation of principal and other members of the family.

Determination of Family Property

In Ibadan, termination generally occurs through two ways;

(i) Absolute Transfer where the family transfers the totality of its interest in the family land to another person. This may be by way of sale or gift. Where this happens, the transferee becomes the absolute owner.¹³ A transfer of family property is proper and valid where the transfer is sanctioned by the family head and principal members of the family.

(ii) Partition -Partition is the act of sharing of family property among the members of the family. Where there is partition of family property, each “partitionee” becomes an absolute owner of his or her share.¹⁴

Conclusion

The customary land tenure system in the city of Ibadan is very much similar to many other towns and localities in Western Nigeria, where land is owned collectively by a single family. However, it is pertinent to note that it is misleading to say there’s no individual land ownership in Ibadan and Yorubaland in general. The basis of the concept of family property is the recognition of individual ownership. An individual who acquired absolute ownership of land either through self-help or grant from traditional authority or by purchase would have the land devolved on his children as family property on his death unless the land was partitioned.

¹¹ *Jegede v. Eyinogun* (1959) 4 FSC 270

¹² (1982) 11 SC 1 at p. 72

¹³ See *Aganran v Olushi* 1 NLR 66; *Coker v Sanyaolu* (1983) 3 SC 124.

¹⁴ *Nwabueze, op. cit.*, 41.