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| **EVI-PARKER CHRISTABEL**  **16/LAW01/084** | **April 16**  **2020** | |
| **ASSIGNMENT TITLE: CUSTOMARY LAND TENURE.**  **QUESTION: PREPARE A BRIEF PAPER ON THE CUSTOMARY LAND TENURE SYSTEM AS PRACTISED IN YOUR LOCALITY. THIS SHOULD BRIEFLY COVER THE CREATION, OWNERSHIP, MANAGEMENT AND DETERMINATION OF FAMILY OR COMMUNAL LAND IN YOUR LOCALITY.** | | **COURSE TITLE: LAND LAW II.**  **COURSE CODE: LPB 402.** |

**ABSTRACT**

Land is essential for every human activity on earth as it is the source of all material wealth. The paper examines the customary land tenure practice in **AMAWOM, Owerri Municipal in Imo State**. It outlines the creation of family land which is the major land tenure system practiced, the ownership, management and determination of family land in this community.

**INTRODUCTION**

Tenure in Eastern Nigeria as regulated by customary law had its roots in the traditional conception of land. Traditionally, land had economic, social, political, and religious significance. It was conceived of as a sacred institution given by God (**CHUKWU**)) for the sustenance of all members of the community, and as such it belonged to the dead, the living, and the unborn. Since the view was that the living merely held land as a kind of **"ancestral trust"** for the benefit of themselves and generations yet unborn, it was inconceivable for any individual to claim ownership of the land or part thereof or to sell it.

According to **Dosumu** (1977) and **Aniyom** (1978), the customary land tenure in the areas comprising the South Eastern States of Nigeria before colonial rule was held in the following:

1. Communal land.
2. Stool or Chieftaincy lands.
3. Family lands.
4. Individual or Separate property.

However, this paper will focus mainly on family lands because that is the major land tenure practice in my locality (**Amawom**).

**CREATION AND OWNERSHIP OF FAMILY LAND**

The family is a very important unit in customary law, and land is rarely held individually but collectively. **Dr. T.O Elias** described the **family** as the smallest social unit in the body polity; children are both male and female. However, in terms of family property under native law and custom, the family property is that property belonging to the family as a unit, it is in its real form undivided interest in land; and until it is determined, continues to be held jointly by the entire family as a unit.

There are basically 2 major types of way in which land is created – by **operation of law** and **by acts of the parties**. However, based on my locality (**Amawom**), which is the current case study, land is created by the acts of the parties; more specifically by first settlement; and as such, land is owned by the family.

**MANAGEMENT AND ALIENATION OF FAMILY LAND**

As earlier noted, management of family property involves the act of controlling, process of decision-making and controlling of every incident relating to the family property. Family land is managed by a family in a certain prescribed manner by the head of the family (**DIOKPARA)** who is the oldest member of the family. He holds the same in trust for the rest members of the family. Despite the fact that the headman possesses the right to family land, he does have the right to take decision pertaining to the land, alienate, lease or dispose of land without the consent of the principal members of the family. He must seek the opinion of the principal members of the family before taking decision on land. Land can be held partrilinearly or matrilinearly. Parilinearly deceased property is shared amongst all his sons with the oldest getting the largest share and matrilinearly, the deceased property is shared amongst his extended family, that is his next brother; though not necessarily the same mother.

The law is that, for the alienation or grant of family land to be valid, there must be a concurrence of the head of the family and principal members of the family. In the case of *Usiobaifo v. Usiobaifo*[[1]](#footnote-2) , the ***Supreme Court***, per ***Tobi, J.S.C.*** laid down the following principles to be applied in the alienation of family land:

1. Where there is a sale or conveyance of family land by the head of the family with some important members thereof but without the consent of some principal members of the family, the transaction is voidable and those members who should have consented to the transaction but did not, can take out an action to have the transaction set aside.
2. The sale or conveyance of family land by a member of the family, who is not the head of the family, is void.
3. The sale or conveyance of family land by the head of the family without the consent of principal members of the family is voidable.
4. The sale or alienation of family land by the head of the family as his own land is void.
5. Where a sale or other alienation is void, it has to be so declared if asked to be set aside but where it is voidable, whether or not it will be set aside will depend upon the facts and circumstances of the case.

**DETERMINATION OF FAMILY LAND**

Family property may be determined in any of the following ways:

1. **Absolute conveyance of the family land**: Where the totality of the interest of the family is conveyed by way of sale or gift of family property is determined. Usually in modern times, the English method of transfer is adopted but such transfer is not valid unless the deed of transfer is executed by the family head and the principal members of the family.
2. **Partition**: Partition as a legal concept is a method whereby joint possession is disunited so that each former co-tenant becomes a separate owner of a specific portion of land holding a share in severalty as opposed to an undivided share in the whole. Partition may be voluntary resulting from mutual agreement of members and effected by a deed of partition executed by the joint tenants (i.e. by the principal members of the family and the family head).

**CONCLUSION**

**Ala** (land) is valued and cherished as a source of livelihood. Even though land ownership has been mans domain. For the **Amawom** people, the mother earth is **Ala**, the greatest deity after **CHUKWU**, the heavenly creator. She is as near to them as the ancestors, for they are buried in her pocket or womb. Ownership belongs to **Ala** but is held in trust by heads of families (**DIOKPARA)** in the community.

**REFERENCE**

* **Adewale Taiwo** (2011). **The Nigerian Land Law**, Nigeria; Princeton & Associates Publishing Co. Ltd.
* Wikipedia, <https://en.wikipedia.org/wikicustomary_land>.
* <https://en.wikipedia.org/wiki/land_tenure> - Wikipedia, the free encyclopedia.

1. (2005) 3 NWLR (pt.913) p.665 at 690 Paragraphs A C , [↑](#footnote-ref-2)