NAME: OLUWADARE TESTIMONY RERELOLUWA MATRIC NO: 16/LAW01/173

**THE CUSTOMARY LAND TENURE SYSTEM PRACTICED ILEKUN COMMUNITY**

**Introduction**

 It is unapt to talk about the customary land tenure system practiced in my locality without first discussing some essential terms, pertinent to this topic.

 According to our distinguished land law lecturer, **Professor E.A Taiwo**, in his book, **‘’*The Nigerian Land Law’’***, Customary law has been defined as the ‘’customs and usages traditionally observed among the indigenous African peoples and which form part of the culture of those peoples. It is the law that was handed down from time immemorial from ancestors and as such, represents a collection of precedents and decisions of the by-gone chiefs. Customary law entails the customs and usages traditionally observed among the indigenous people that formed part of their culture and religions[[1]](#footnote-1). It has been described as ‘’a mirror of accepted usage’’ and common law of Nigerian people. Whereas, Land tenure, is the system of landholding in a given society. Also, land is a very significant property and it is one of the things man cannot do without. It is the major determinant factor for the existence of man, plants and animals.

 It is a trite fact that Nigeria is a heterogeneous society. That is, a society with diverse customs and cultures. The Ilekun community is located at the southern part of Akure which happens to be the capital of Ondo state in Nigeria. The Ilekun community‘s land tenure system is similar to that of the typical Yoruba customary land tenure system – Communal and family landholding. However, the system of ownership predominantly practiced in Ilekun community is the family ownership.

**Ownership**

Ownership signifies the largest claim to land under customary law. However, the form of ownership recognized in Ilekun community is ownership by the family.

 Prior to the colonial rule, land in Ilekun community, was hardly owned by individuals, rather it was often held corporately by the family or the community. For Africans believe that ‘’land belongs to a large family of whom, many are dead, a few are living and countless hosts are still unborn’’. Thus, it is only the family as a unit or the whole community as a body that often own land in Yoruba land. This principle was pertinent to the Ilekun community.

 Family landholding- Family is defined in the case of **Okulade v. Awosanya[[2]](#footnote-2)** as ‘’the body of persons who live in one house or under one head, including parents, children, servants...The group consisting of parents and their children, whether living together or not; in wider sense all those who are nearly connected by blood or affinity…Those defendants claiming descent from a common ancestor; a house; kindred lineage’’. Family in relation to family property means a group of persons who are entitled to succeed to the property of a deceased founder of the family. Family land in Ilekun community is a land whose rights have passed by succession to the descendants of the original owner. The title to the family land is vested in members of the family as a corporate body. The uncles, aunts, brothers, cousins or sisters of the deceased founder do not fall under the category of ‘’members of the family’’ unless the deceased by his declaration for example, in a will, enlarge the family to include his relatives. It should be noted that an individual member of the family does not have a separate claim of ownership on any part or whole of a family land unless such land has been partitioned.

**Creation**

Family property in the Ilekun community may arise by operation of law or by acts of the parties.

1. Creation by operation of law- In Ilekun community, if a landowner dies without a will, his acquired property devolves on his children as family property in accordance with the customs of Ilekun community. Family land may also arise from a declaration under a Will as where a testator devised a property to his heirs jointly to hold as family property.
2. Creation by acts of the parties- In Ilekun community, parties may by their own acts create family property by way of first settlement, purchase, conquest or absolute gift. (i) First settlement: this is the most common way of creating family land in Ilekun community. It may arise, where a family through their ancestors, where they’re the first to settle on a virgin land and having exercised acts of ownership over sufficient length time, numerous and positive enough to warrant inference of exclusive ownership. (ii) Conquest: In Ilekun community, where a family conquers a people, it may appropriate the land of the conquered. (iii) Purchase: In Ilekun community, family property may arise where family money is used to purchase land. (iv) Gift: Where a family in Ilekun community is a donee of an unconditional gift of land, family property is created. For instance, like where a family does the Elekun a favor and he rewards them with a gift of a land.

**Management**

 In Ilekun community, the family head **(Olori-ebi)** personifies the family, therefore, the powers and rights of ownership of family land are vested in and are exercisable by him on behalf of the family. The family head who is referred to as ‘**’Olori-ebi**’’ in the Ilekun community takes charge of the management and control of the land. It is the responsibility of the family head to preserve family property from any unlawful interference and to keep it in a good state of repair; to allocate portions to the needing members; where the property is rented out, to collect the rents; and take part in the transfer or alienation of family property to give a valid title to the transferee.

In Ilekun community, at the death of the founder of a family, the eldest male descendant of the family is the person to succeed the headship of the family. Olori-ebi can also be nominated by the last deceased holder on his death bed or by his will. Also, the members of the family being the beneficiaries can claim the rights of the family head if he neglects or refuses to assert such rights. The family head **(Olori-ebi)** has no form of ownership of property vested in him. He serves as a trustee of the family land where the family members are the beneficiaries.

**Determination** A family land can be determined through the following ways:

1. Absolute transfer: Absolute transfer of family property occurs 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. A transfer of family property is proper and valid where the transfer is sanctioned by the family head **(olori-ebi)** and principal members of the family. A conveyance purporting to transfer family property without the consent of the family head and principal members of the family is void *ab initio*. A transfer of family property by members alone is void absolutely, while a transfer by family head of family property as his own is of no effect. Where the family head transfers family property on behalf of the family, the sale is voidable and may be set aside at the instance of the aggrieved non-consenting member. While voidable transfer can be ratified, however a void transcation cannot be ratified. An aggrieved family member to a voidable transfer may lose his/her right to challenge the transfer where there is an unreasonable lapse of time before bringing the action.
2. Partition: Partition is the act of sharing of family property among the members of the family. In **Alhaji Barakat Alafia & Gbode Venture Nig. Ltd[[3]](#footnote-3)**, it was held that partition means the permanent division of land for purposes, not of user only, but of ownership as well. Whether or not a partition is meant to be permanent on not will depend on the circumstances of each case. Where there is a partition of a family property, each partitionee becomes the absolute owner of his or her share. Partition may be voluntary if it is as a result of mutual agreement among members of the family to partition the family property. Partition may be ordered by the court where interests of justice and peace demands it. For instance, where there has been a persistent refusal by the head of the family or by some members of the family to allow others to enjoy their rights under native land and custom in family land.

**Conclusion**

 Prior to the colonial rule, there was the customary system of land tenure where land was only owned by the community and the families. After independence, private ownership of land by individuals, families and communities has become the predominant land tenure system in Ilekun community in Akure, Ondo state. The promulgation of the **Land Tenure Law of 1962** allowed individuals to successfully own and manage land. The **Land Use Act of 1978** is the current law on landholding in Nigeria. The Act creates a tripartite system of land holding- state, federal and private/individual land holdings.

1. Taiwo E.A (2016) *The Nigerian Land* Law. Ikeja, Lagos: Princeton Publishing Co. Ltd [↑](#footnote-ref-1)
2. (2002) FWLR (Pt 25) 1666 [↑](#footnote-ref-2)
3. [↑](#footnote-ref-3)