**NAME: OYEWALE BENJAMIN TEMITAYO**

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This paper seeks to examine landholding system under customary law in Nigeria focusing on Osun state. It shall explore the intricacies of the land tenure system practiced amongst the people of Osun state. This paper finds that customary land tenure system governed the process by which land was acquired and disposed in the olden days and that notwithstanding the confusion the land use act has brought on the customary land tenure system, it still exists under the present national land tenure system, albeit modified. In Nigeria, there are various land tenure system in Nigeria that vary from the villages, towns or cities. The purpose of this paper is to critically examine the creation of family property, the rights each individual member of the family holds and the transfer of interest in land under the customary land tenure system.

**INTRODUCTION**

The land of a given society is the manner in which land is owned and possessed. It is also constituted by the rules and procedures which govern the right and responsibilities of both individuals and groups in the acquisition, use and control of land. In its literal sense, customary land tenure system is the system of land holding governed by the customary law. This customary land tenure system is a blanket term covering the various customary land tenure systems peculiar to the various tribes and ethnic groups in Nigeria. In Nigeria, no land exists without an owner although that ownership may be the basis of a dispute[[1]](#footnote-0). In the customary land tenure system, land holdings were owned by villages, towns, communities and families. The legal estate under customary land tenancy is usually vested in the community or family as a unit. Under the Nigerian customary law, ownership may be held by;

1. **The community**
2. **family**
3. **The individuals**.

This paper would however be focusing on only the family land holding system as this was the land tenure system practised in the western part of Nigeria particularly Osun state where the writer comes from.

**FAMILY LAND**

Family land is land that belongs to a family as a whole under customary law. Family land holding in Nigeria is governed by the customary law of each ethnic group in the country. Family land refers to a parcel of property jointly owned by all members of a particular family. The term “family” in relation to a family property means a group of persons who are entitled to succeed to the property of a deceased founder of a family. Such persons are usually the children of the deceased founder of the family. Family land is land vested on family as a corporate entity. The individual member of the family, therefore, has no separate claim of ownership to any part or whole of it.

**CREATION OF FAMILY LAND**

Family property may arise by **operation of law** or **by acts of the parties**. It can be created by operation of law if a land owner who is subject to customary law dies intestate and his acquired property devolves on his children in accordance to the applicable customary laws. It can also be created by the act of the parties by way of first settlement, purchase, conquest or absolute gift of land.

**MANAGEMENT**

The powers and rights of ownership of family land are vested in, and are exercisable by the family head on behalf of the family. The family head personifies the family. He takes charge of the management and control of the land. The family head has the responsibility to;

* Preserve family property from any unlawful interference
* Keep the family property in a good state of repair
* To allocate portions to the needing members
* Where the property is rented out, to collect the rent
* Take part in the transfer or alienation of family property to give a valid title to the transferee.

In *Akano v Ajuwon,[[2]](#footnote-1)*Supreme Court referred to the family head as a “manager”. He is sometimes referred to as the owner and trustee of the land.[[3]](#footnote-2)

Family members also have certain rights in relation to the family property. These rights include;

* Right to have portion to reside
* Right to have reasonable ingress and egress,
* Right to surplus income and
* Right to have a voice in the management of family property.

**DETERMINATION**

A family property may be determined either by absolute transfer of the interest in the land or by partition of the family land. The fundamental rule for alienation of family land in Nigeria is that the family head and principal members must consent to the conveyance of family property for its validity otherwise such sale will be void or voidable as the case may be.

As mentioned earlier, in Osun state, the customary land tenure system practiced is the family land tenure system. However, the practice is no longer as popular as it used to be as most lands end up being partitioned among the individual members of the family thereby changing it to individual land holding system. Modernization, urbanization, and the force of social and economic activities since independence, have brought individual ownership of land in Nigeria into greater prominence than before.

**CONCLUSION**

The land ownership system in pre colonial Nigeria was communal. Land was deemed not owned by individuals but by communities and families. However, Communal and family landholding is now on gradual decrease in Nigeria. Notwithstanding, communal landholding is still a strong feature of Nigerian customary land law. In modern times, communal title still exist in relation to market places, communal shrines, sacred bush, and chieftaincy land, communal play grounds, communal farm lands and ponds.

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1. Land tenure, land use and land acquisition in Nigeria. Pg.72 [↑](#footnote-ref-0)
2. (1982) 11 SC 1 at 72. [↑](#footnote-ref-1)
3. See *Amodu Tijani V. Secretary, Southern Nig* (Supra). [↑](#footnote-ref-2)