**NAME: NASA-OKOLIE KAMSI COURSE: LAND LAW II**

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***CUSTOMARY LAND TENURE SYSTEM***

***ABSTRACT***

*Land has always been a major factor of life and to that extent has an array of uses. It is a socio-political entity for members of the community, it is a quantum of rights and interest for a lawyer, it is a ‘Diety’ that exercises inherent control over people for a religious person, it is factor of production for an agriculturist and an economist, it is an object of wealth for a politician, it is a long term investment for an investor, it is the means to an end for a business man and the list goes on and on.*

*Land tenure on the other hand is a dual faced relationship that is legally and customarily defined among people. Therefore, customary land tenure system simply is the system of landholding that was traditionally observed among the indigenous people and with time formed part of their customs, traditions and even their religion.*

*This paper analyses the customary land tenure system in eastern Nigeria and in particular, Ihiala Local Government Area of Anambra State. It also identifies the ownership, creation, management and determination of customary land holding.*

*The paper concludes that the pattern of customary land tenure system practiced in Anambra State and in particular, Ihiala Local Government Area is one that is mixed in nature, allowing for individual, family and communal land holding.*

BACKGROUND

For the Igbo’s, the mother earth which is land, commonly referred to as **“*ala”*** is a gift from GOD ***“CHUKWU”*** and is the greatest ‘diety’ after their heavenly creator (*Parrinder, 1976).* According to their belief, she is near to them as an ancestor, for they are buried in her womb and she sends the dead back again in rebirth.

Customary law has particularly been defined by the Nigerian Supreme Court as ‘***…the organic or living law of the indigenous people of Nigeria regulating their lives and transactions’.[[1]](#footnote-1)*** The customs of the people of **Ihiala LGA of Anambra State** has significantly changed over time. There was a point where land could only be held by the community or family, now, we are at a point in history where land can be held validly under customs by individual. Let’s have a more cursory look at each of the concepts.

COMMUNAL LANDHOLDING

This is based on the inalienable and equal rights of every member of the community with some appointed member usually ‘elders or titled men’, given the responsibility to act on behalf of others as ‘custodians of the land’, ‘trustees’ or more loosely called, ‘owners’. In ***Eze v Igiliegbe & Ors[[2]](#footnote-2),*** the court held that it was right to presume as a matter of customary law that the land belongs to the community as a whole.

Creation;

* By acts of the parties; when a community first settles, conquers, purchases or is gifted a land.

Ownership;

* The community.
* Strangers may be granted a portion for possession for a valid and reasonable customary tribute.

Management;

* The community head.
* Any other validly appointed person.

Determination;

* Absolute transfer.
* Partition; where a partition happens, each ‘partitionee’ because an absolute owner of his or her share.

FAMILY LANDHOLDING

‘Family’ in family land connotes a group of persons bound by blood who are entitled to inherit jointly, the property of a deceased founder of a family, either in accordance with customary rules of succession or under a will which creates a family property[[3]](#footnote-3).

Creation;

* By operation of law; death without a will devolves property in accordance with customary law.
* By acts of the parties; when a family first settles, conquers, purchases or is gifted a land***[[4]](#footnote-4)***.

Ownership;

* The family.
* Strangers may be granted a portion for possession for a valid and reasonable customary tribute.

Management;

* The family head; he is given the responsibility to act on behalf of others as the ‘custodian of the land’, ‘trustee’ or more loosely called, ‘owner’[[5]](#footnote-5). ***Bassey v Cobham[[6]](#footnote-6)***.
* The eldest surviving son; the death of the founder of the family makes this and the succession goes on[[7]](#footnote-7).

Determination;

* Absolute transfer; totally terminates a family land[[8]](#footnote-8), but where it is without consent, it is void ab initio.[[9]](#footnote-9)
* Partition; where a partition happens, each ‘partitionee’ because an absolute owner of his or her share.[[10]](#footnote-10)

INDIVIDUAL LANDHOLDING

Individual ownership was not contemplated in time past[[11]](#footnote-11), but as a result of colonialism, modern conditions, and economic emancipation it has developed for itself a trend ***Arase v Arase[[12]](#footnote-12)***. Communal and family land holding is now on a gradual decrease in Ihiala LGA, Anambra state due to the rise in knowledge of individual landholding. People rather own a land than share a land with people that eventually causes problem.

Creation;

* By valid purchase.
* By gift.

Ownership;

* The individual.
* Strangers may be granted a portion for possession for a valid and reasonable customary tribute.

Management;

* The individual owner.
* Any other validly appointed person.

Determination;

* Absolute transfer.
* Gift; gifting the land to anther individual can terminate individual land holding.

**CONCLUSION**

Customary land tenure system in the opinion of the writer supports both moral and social justice by giving everyone access to the means of sustenance. Even though from the onset, the customs of my people did not contemplate a scenario where land could be held by individuals, colonialism, passage of time, and modernization among other factors, has made the customs of Ihiala reached a point where it can accommodate individuals holding land valid under customs.

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1. *Oyewumi v Ogunsesan (1990) 3 NWLR (PT 137) at 182* [↑](#footnote-ref-1)
2. (1952) 14 WACA 16 [↑](#footnote-ref-2)
3. Sogbesan v Adebiyi (1941) 16 NLR 26 [↑](#footnote-ref-3)
4. Olowosago v Alh. Adebanjo (1988) 4 NWLR (PT 88) 275 [↑](#footnote-ref-4)
5. See Amodu Tijani v Secretary, Southern Nig. [↑](#footnote-ref-5)
6. 1924) 5 NLR 92 [↑](#footnote-ref-6)
7. Lewis v Bankole (1909) 1 NLR 81 [↑](#footnote-ref-7)
8. Aganran v Olushi 1 NLR 66 [↑](#footnote-ref-8)
9. Ekpendu v Erika (1959) 6 FSC 79 [↑](#footnote-ref-9)
10. Akayede v Akayede (2009) 11 NWLR (PT 1152) 217 [↑](#footnote-ref-10)
11. Ibid 7 [↑](#footnote-ref-11)
12. (1981)b5 SC 33 [↑](#footnote-ref-12)