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Assignment Title: Customary Land Tenure.

Question: Prepare a brief paper on the customary land tenure system as practiced in your locality (state the locality, state, local government or community you are writing about). This should briefly cover the creation, ownership, management and determination of family or communal land in your locality

INTRODUCTION

In this work, I have established the definition of customary law, the ownership, creation, management and determination of family land with respect to the customary land tenure system practiced in my locality, Umuene Obiangwu Community which is under the Ngor- Okpala Local Government situated in Imo State, Owerri.

According to **Prof. Mqeke**, customary law is defined as the “custom and usages traditionally observed among the indigenous African peoples and which form part of the culture and religion of those peoples.”¹ In *Owonyin v. Omotosho*, customary law was described as “a mirror of accepted usage.”² Customary law is used in a blanket form and it should not be misinterpreted to mean that Nigeria in its entity has a single uniform set of customs. Nigeria is characterized by its diversity in culture and religion.³ In the context of this work, customary land tenure system refers to the system of land holding governed by the customary law. The Nigerian customary land tenure system has been modified by **Land Use Act, 1978** to provide for a new uniform land tenure system in Nigeria. In *Otunba Hakeem Sobande v. Barrister Andy Igbokwe*,⁴ the **Supreme Court** held that the object of the Land Use Act is not intended to destroy incidence of customary law but it modified its application.

(1) Land Ownership and Creation

Ownership is the exclusive use of property by the owner. There are contentions as to whether land in typical African society can be said to be capable of being owned and or being subject to the seemingly context of ownership *per se*. One view is that the concept of ownership is unknown to customary ideas.⁵ According to **Coker**⁶ the greatest right which a person can have in land is the right of possession.⁷ The other view is to the contrary, and it contends that the concept of customary law has been part

¹ See Mqeke RB Customary Law and the New Millennium (Lovedale Press; Alice, 2003) 3

² (1961) ANLR 304 at 309

³ Taiwo EA “Justifications, Challenges and Constitutionality of the Penal Aspects of Shari’ ah Law in Nigeria” (2008)

⁴ (2016) 11 NWLR (pt 123) 335 at 355

⁵ Coker, G. A.B; Family Property Among the Yorubas, 2nd ed. (1962) 32 & 33

⁶ Coker, Family Property Among the Yorubas (London, Sweet & Maxwell, 1966)

⁷ Coker, op. cit; Eute M.A; Essentials of Nigerian Land Law (Markudi; Onaivi Publishing Company, 2002) at p.33.

of the Nigerian customary law. In *Enimil & Ors v. Tuakyi*,⁸ the Privy Council asserted that sometimes ownership has been used to denote “**absolute ownership**” while at other times it is used in a context which indicates that the reference is only “**rights of occupancy**.” Ownership entails the right to use and enjoy the land to the exclusion of other persons, which is recognized and protected by law. Under the Nigerian Customary law, ownership may be held by (A) community (B) family (C) individuals. In my locality, ownership of land is held by the family rather than community.

The word family does not lend itself to easy and precise definition. In one sense, it may be defined as including all persons with common ancestors as defined by **Woodman**⁹. On a restrictive level, the term embraces a household; the man, his wife, the children and his dependents who are with him as established in *Okulade v. Awosanya*,¹⁰ **Uwaifo, JSC** defined family as “the body of persons who live in one house or under one head, including parents, children, servants...” But in social parlance and in my locality, the term is restricted to the man, his wife or wives and children.

Family land is vested on family as a corporate entity. An individual member of the family has no separate claim of ownership to the family land. Ownership of land in my locality is decided by family. The head of the kindred will determine how the land will be shared family by family according to the number of male children in each household. The head of each family will now take their own portion of the shared land with the eldest male also known as ‘Okpara’ having the bigger portion of land. Where conflict arises as to the ownership of land between family heads, the elders in the kindred have the power to settle the conflict. If such conflict is not resolved, it is taken to the traditional ruler, otherwise known as ‘eze’ which means ‘king’ of the autonomous community. If the traditional ruler cannot resolve such conflict, the matter will be taken to the customary court for judgment. In Umuene Obiangwu community, women do not own family land. They are not be consulted on management issues or disposition or alienation of the family land. Widows have no right of inheritance. A man before his death is required to partition his land to his male children. Where he fails to, the family is

⁸ (1952) 13 WACA.

⁹ Woodman, G.R; Customary Land Law of the Ghanaian (Ghana University Press, Accra, 1996) 218

¹⁰ (2002) FWLR (pt 25) 1666.

invited by the elders for the purpose of the partitioning of the family land among the male children of the deceased.

In my locality, land is created by law or acts of the parties. It can be created (A) where the land owner whose estate is governed by customary law dies intestate, such land devolves on his heirs in perpetuity as family land in accordance with the applicable customary law rules (B) By conveyance *inter vivos* where the family purchases land (C) where the testator expressly declares his heir(s) in his will.¹¹ But where the family land is partitioned, the land belongs exclusively to that particular member (D) by first settlement. This occurs where a family, through their own ancestors were the first to settle on a virgin land and exercised acts of ownership over the years. The SC held in the case of *Ajala v. Awodele & Ors* that there should be no question as to who made the grant (E) by gift.

(2) Management and determination of Family Land.

The **Supreme Court** referred to the family head as a 'manager' in the case of *Akano v. Ajuwon*.¹² He exercises his powers on behalf of the family. He preserves the family property from unlawful interference. However, a family head is forbidden from selling, leasing or alienating the family land without the consultation of the members of the family. Family land holding in my locality maybe determined through (A) partitioning. Here, members of the family may unanimously agree to have the family land partitioned and the interest therein transferred to each family member. In *Alhaja Barakat Alafia & Gbode Ventures Nig. Ltd*,¹³ it was held that partitioning is a permanent division of land. (B) Absolute transfer which occurs where the family transfers the totality of its interest in the family land to another person either by way of sale or gift. The transfer has to be sanctioned by the family head if not it will be void *ab initio*.

In conclusion, though the Nigerian customary law differs from one locality to the other, it still shares common broad principles or features.

¹¹ *Sogbesan v. Adebisi* (1941) 16 NLR 2.

¹² (1982) 11 SCI at 72.

¹³ (2016) 7 NWLR (Pt 2) 211.

