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QUESTION

Prepare a brief paper (not more than 3 pages, 12pt, Times New Roman, 1.5 line spacing) on the customary land tenure system as practiced in your locality (state the locality, state, local government or community you are writing about).

INTRODUCTION

I have established in this work the determination of customary land tenure system, the creation, ownership and determination of family land with respect to the family land tenure system practiced in my locality.

Land Tenure is the system of landholding in a given society. According to **prof Mqeke**, customary law is defined as the “custom and usages traditionally observed among the indigenous African people 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, it 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. In **Owonyin v. Omotosho**, customary law was

described as as: “mirror of accepted usage” and common law of Nigerian people. However it should be noted that the term “customary law” is used in a blanket form and it should not be taken to indicate that there is a single uniform set of customs throughout Nigeria. Nigeria on the other hand is a society with diverse tribes, customs and cultures.

However, it should be pointed out that customary law in Nigeria embraces both the ethnic/tribal laws as well as Muslim law. It should be noted that since 1978, the Nigerian customary the **land Use Act, 1978**

SOME CUSTOMARY LAW CONCEPTS

land tenure has been modified to a large extent, by the provisions of

Though the Nigerian customary law differs from one locality to the other and from one tribal group to the other.

OWNERSHIP

There are contentions as to whether or not the concept of ownership is known to African customary law. One view is that the concept of ownership is unknown to customary ideas. The term “ownership” signifies the largest claim to land under customary law and it is a recognized concept of customary law. Under the Nigerian customary law, ownership may be held by (a) the community (b) Family (c) the individuals

In my locality Isoko South Local Government Area of Delta state ownership of land is held by the family and some by the community. The major occupation of my people includes farming and fishing. For the purpose of this work I will be throwing more light on the ownership, creation, Management & Determination of family land with customary land tenure system in my locality Isoko south local government.

Family is defined as “the body of persons who live in one house or under one head. On another hand Family Land is vested on family and a corporate entity in my community one person cannot claim ownership to the family land. However ownership of land in my locality is decided **ODION (which is the king and the Eldest man in the community)** and the council of elders. In each family, the eldest male will be the one to share the land to the other males in the family.

Furthermore, where there is conflict as regards to ownership of land the ODION and the council of elders settles the conflict. There is also discrimination as to women owning land in my **Isoko- south local government**, women are not allowed to own or have a share of the community land. Also a man who owns a land in **Isoko- south local government area** is required to share his land to his male children before his death.

CREATION OF FAMILY LAND

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

1). CREATION BY OPERATION OF LAND

If a landowner who is subject to customary law dies without a will, his acquired property devolves on his children as family property in accordance with the applicable customary law rules. This is the way family property is commonly created.

2). CREATION BY ACTS OF THE PARTIES

Parties may their own acts create family property, by the way of first settlement, purchase, conquest or absolute gift of land.

i). **FRIST SETTLEMENT**

Family property may arise where a family, through their own ancestors were the first to settle on a virgin land and exercised acts of ownership. In the case of Ajala v. Awodele & ors the Supreme Court held that they should be no question as to whom made the grant

ii) **BY PURCHASE**

Family property may arise where family money is used to purchase land.

iii) **BY GIFT**

Where a family is done of unconditional gift of land, family property is created.

MANAGEMENT OF FAMILY LAND & DETERMINATION OF FAMILY PROPERTY.

The family head personifies the family. As such, the powers and rights of ownership of family land are vested in, and exercisable by him on behalf of the family. The family head takes charge of the management and control of the land. It is the responsibility of the family head to preserve the family property from any unlawful interference and to keep it in a good state of repair.

The determinations of family property are **Absolute Transfer and partition**. **Absolute Transfer** of family property occurs where the family transfers the totality of its interest in the family land to another person **PARTITION** is the act of sharing of family property among the members of the family.

In conclusion, Nigeria customary differs from locality to another, it still shares common features.