

NAME: ELUTABE AJIRIOGHENE SOPHIA

LEVEL: 400

MATRIC NO: 16/LAW01/075

COURSE CODE:LPB 402

COURSE TITLE: LAND LAW II

LECTURER: PROF. ADEWALE TAIWO

CUSTOMARY LAND TENURE SYSTEM IN ELLU, ISOKO NORTH, DELTA STATE.

INTRODUCTION

Land tenure system is the methodical process of landholding in a given society. The Nigerian customary land tenure system has however been modified to a large extent by the Land Use Act, 1978. The act provides for a unified tenure system in Nigeria, nevertheless, it is important to have knowledge of the previous tenures.

Customary law is the “custom and usages traditionally observed among the indigenous African peoples and which form part of the culture of those peoples”.¹ This paper is focused on customary land tenure system in Ellu, Isoko North, Delta State, how the land is created, owned, managed and determined.

CREATION, OWNERSHIP, MANAGEMENT AND DETERMINATION OF LAND IN ELLU, ISOKO NORTH, DELTA STATE.

OWNERSHIP OF LAND IN ELLU

Ownership under Customary Land tenure system denotes the largest claim to land under customary law and it is a recognised concept under customary law. Ownership under customary law occurs through Communal Landholding, Family Land and Individual Holding. Ownership in Ellu occurs through Family land.

¹ Mqeke R.B, *Customary Law and the New Millennium* (Lovedale Press. 2003).

FAMILY LAND

Family is defined 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 descendants claiming descent from a common ancestor; a house; kindred lineage.²

Children generally refers to both sexes, but in some societies a female child has been held not to be entitled to such family property especially where she is married as it is said that she does not belong to the family by virtue of her being under another family (her husband's family) this practice is also seen in some families in Ellu.

Family land as it operates in Ellu denotes a land held by the family members which usually comprises of the father, mother and children including the extended members of the family such as the cousins and the relatives of the head of the family. In-laws are excluded. Where the head of the family dies, that is the father, the first male child is regarded as the owner of the land, though he holds the land as a trustee for his siblings and other relatives. He has the power to sell the land with the consent of the members of the family and share the proceeds to his siblings and his mother (if alive) and other relatives. He is to share the proceeds from the land equally amongst every male member of the family, his brother(s), uncle(s), male cousin(s) and other male members of the family, even where for example his brother is dead but is survived by a wife and children, the brother's share should go to his family. Thus, so even where a male relative is dead but is survived by a wife and children, his share should go to them. As for the women, they receive what he deems as appropriate for them, they do not get an equal share as the males in the family.

CREATION OF FAMILY LAND IN ELLU

Generally family property may arise by operation of law or by acts of the parties. In Ellu what is commonly practiced is acts of the parties through settlement.

² *Okulade v Awosanya* (2002) FWLR (PT 25) 1666 at 1679 (SC)

Creation by Acts of the Parties; Parties may create family property by way of first settlement, purchase, conquest or absolute gift of land. The method common to the people of Ellu is through Settlement, absolute gift of land is also recognised. These two methods will now be considered.

- a. **First 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 over sufficient length of time. This is the case as in Ellu, after such acts of first settlement, such land is passed on from one generation to another. This explains why land is of such sentimental value to the natives of Ellu.
- b. **Gift**; where a family is a donee of unconditional gift of land, family property is created. Thus, the land is owned by the family.

MANAGEMENT OF FAMILY LAND IN ELLU

The powers and rights of ownership of the family land are vested in and are exercisable by the head of the family on behalf of the family. He takes charge of the management and control of the land. He preserves the family property from any unlawful interference and keeps it in a good state of repair, he allocates portions of the land to the needing members of the family. Where the property is rented out, he collects the rent and he takes part in the transfer or alienation of family property to give a valid title to the transferee.

Where the head of a family dies, according to the customs of Ellu, the eldest surviving male son is his successor, where the eldest surviving male son, the next surviving male son. Where there are no male sons, one of his eldest surviving brothers or to his family. This is to the effect that a woman does not succeed such a land except where there are no male members in the family.

DETERMINATION OF FAMILY LAND IN ELLU

Land can be determined in Ellu through absolute transfer by sale or gift to another person but with the consent of the family members. It can also be determined through partition, that is where parts of the land are allotted to members of the family so they own it individually.

BIBLIOGRAPHY

- Mqeke R, *Customary Law and the New Millennium* (Lovedale Press. 2003)
- Adewale T, *The Nigerian Land Law* (Ababa Press Ltd. 2011)