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Matric Number: 16/law01/099.

Level: 400.

Course Code: LPB 402.

Course Title: Land Law.

Submitted To: Prof. E.A Tawio.

Date: 20th of March 2020.

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 paper work, I have been able to establish 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, Urualla Community/village which is under Ideato North Local Government situated in Imo State, Owerri.

According to professor Mqeke, customary law is defined as ‘the custom and usages traditionally observed among the indeginous African peoples and which form part of the culture of those people”. it is a law that was handed down from time immemorial from ancestors and as such, it represents a collection of precedents and decisions of the bygone chiefs. In ***Owonyin v. Omotosho***, customary law was described as “a mirror of accepted usage and common law of Nigerian people”. Nigeria is a society with diverse tribes, customs and cultures, and even within a tribal group, some local variations and differences exists. In ***Otunba Hakeem Sobande v. Barrister Andy Igbowkwe***, 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.[[1]](#footnote-1) This view is in line with **Coker’s** belief[[2]](#footnote-2) which explains that the greatest right which a person can have in land is the right of possession.[[3]](#footnote-3) The other view is to the contrary, and it contends that the concept of customary law has been part of the Nigerian customary law. In ***Enimil & Ors v. Tuakyi***,[[4]](#footnote-4) **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

**Land holding by the people of Urualla is basically family based in nature**. In other words landholding is particularly through family creation rather than communal.

What is considered to constitute a family among the people here in review in respect of land holding including the body of persons living together under one head including parents, children and perhaps servants if any. This arrangement seem to be in perfect agreement with the definition of **Uwaifo, JSC *in Okulade v Awosanya*** where the definition of a family was given as “the body of persons who live in one house under one head, including parents, children and servants.

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 ‘**Diokpara’** 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 ‘**Igwe**’ 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 Urualla community, women do not own family land. They are not to 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 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.[[5]](#footnote-5) 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 not be no question as to who made the grant (E) by gift.

In other words, a family member may dispose his interest in the land through gift, lease or even outright sale. However, this become possible after such family has been partitioned as a family land ceases to be family upon partition.

**MANAGEMENT AND DETERMINATION OF FAMILY LAND**

Unpartitioned land in Urualla locality is strictly held in trust by the family head on behalf of the family members. The family head has the responsibility to protect and preserve such family property against any unlawful interference. However, a family head is forbidden from selling, leasing or alienating suo moto any part of the family property and every dealing with the family land must be in consultation with every member of the family whether directly or indirectly. 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***,[[6]](#footnote-6) it was held that partitioning is a permanent division of land. (B)Absolute transfer 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*****(initially***)*.

In conclusion, family landholding among the Urualla people of Igbo land is basically related to the family landholding concept of most Nigerian ethnic communities.

1. Coker, G. A.B; Family Property Among the Yorubas, 2nd ed. (1962) 32 & 33 [↑](#footnote-ref-1)
2. Coker, Family Property Among the Yorubas (London, Sweet & Maxwell,1966 [↑](#footnote-ref-2)
3. Coker , op. cit; Eute M.A; Essentials of Nigerian Land Law (Markudi; Onaivi Publishing Company, 2002) at p.33. [↑](#footnote-ref-3)
4. (1952) 13 WACA. [↑](#footnote-ref-4)
5. Sogbesan v. Adebiyi (1941) 16 NLR 2. [↑](#footnote-ref-5)
6. (2016) 7 NWLR (Pt 2) 211. [↑](#footnote-ref-6)