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**EDO STATE**

**AKOKO-EDO LOCAL GOVERNMENT AREA**

**EKPE COMMUNITY**

**CUSTOMARY LAND TENURE SYSTEM IN EKPE, AKOKO-EDO LOCAL GOVERNMENT AREA, EDO STATE**

**INTRODUCTION**

 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 these people. In our context, 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 to a large extent, by the provisions of the Land Use Act, 1978.

 In the case of 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.

 The classification of land tenure system in Ekpe community s not entirely different from the customary land tenure system. Land is either owned by the entire community or a family. An individual could not own a land by his/her self.

**OWNERSHIP**

1. **Communal Land Tenure System:**

The communal land tenure system in Ekpe community ordains the community head as the governing power of the land. Although, the land jointly belongs to every member of the community, the head of the community (THE ONOSE) takes the decision of how the land would be used. Mostly, the land is typically used for large scale farming, other agricultural purposes, markets, public ceremonies, village gatherings or community gatherings etc. On the flip side, the land cannot be used as collateral to obtain a loan.

1. **Family Land Tenure System:**

 The family is a very important unit in the Ekpe community and in customary law as well. In Ekpe, land is never owned individually but either by the whole community or by a family. In this land tenure system, the land is owned by the head of the family which is the husband/ father of the family who is a representative of the whole family. In cases where the father or husband is not present or available, the eldest member of the family is represented as the owner of the land, unless there is a will there is a will that states otherwise.

1. **Individual or Leasehold Tenure System:**

 Although Ekpe community strictly follows the customary land tenure system, there was no individual ownership of land until the introduction and application of the provisions of the Land Use Act 1978. The Act regulates the ownership, alienation, acquisition, administration, and management of the land within Nigeria.

 Section 5(1) of the Act empowers the Governor of the state to grant statutory right of occupancy to any person for all purposes. Also, section 5(2) of the Act provides that upon the grant of statutory right of occupancy, all existing rights to the use and occupation of the land which is subject of the statutory right of occupancy shall be extinguished.

 This was the reason for the introduction of individual ownership in Ekpe community. A person can own a land for the max of 99 (ninety-nine) years in Ekpe community. The leasehold tenure system is having ownership rights over a property for a given period of time.

**CREATION OF FAMILY LAND**

 Family property can be created either by act of parties or by operation of law. This is stating the law as it is today in Ekpe community, because to the earliest natives the idea of making a will was inconceivable, at least in the pre-colonial and early stage of the colonial era. It was therefore not possible then to create family property among native as an instrument intervivos. One major factor responsible for that was that the early natives were predominantly illiterates. In Olowosago v. Alhaji Adebanjo, the court held that; (I). where a land owner dies, such land devolves on his heirs in perpetuity as family land. (ii). family land can be created by a conveyance inter vivos, where land is purchased with money belonging to the family. (iii). Family land can also be created by the use of the appropriate expression in the will of the owner of the land, and; (iv). Family land ceases to be such land on partition. Note: Land tenure system in Ekpe community is governed by the customary law.

**MANAGEMENT OF FAMILY PROPERTY**

 Management takes place within a structured organisational setting with prescribed roles. It is directed towards the achievement of aims and objectives through influencing the efforts of others. Management involves identifying the mission, objectives, procedures, rules and the manipulation of the human capital of an enterprise to contribute to the success of the enterprise. In this context, the customary land tenure system vests the family head with the power of management, to oversee the family property and other family businesses. The Supreme Court of Nigeria referred to the family head as a ‘Manager’ inAkano v. Ajuwon, The apex court re-affirmed this description in the case of Solomon & Ors. v. Mogaji**.** The family head, whether referred to as a ‘‘manager’’, ‘‘director’’, “representative”, “agent”, “caretaker” or “fiduciary,” he has the power and authority to direct the affairs of family property. In any of these capacities, he bears a fiduciary relationship to family property.

 Since family property is vested in the family as a whole and ownership of the land is joint and indivisible so that is impracticable for every member to be part of the controlling nucleus of the family property, the administrative control and management of the family land is vested in the family head in conjunction with the principal members of the family.

**DETERMINATION OF FAMILY PROPERTY**

 Family property may be determined in any of the following ways:

 (I). Absolute Conveyance of the family land Where the totality of the interest of the family is conveyed by way of sale or gift of family property is determined. Usually in modern times, the English method of transfer is adopted but such transfer is not valid unless the deed of transfer is executed by the family head and the principal members of the family.

The Land Use Act has however converted all unlimited interest to Rights of Occupancy which is the only interest that may be retained or transferred so that today, a family retains a Right of Occupancy on family property which may be assigned with the consent of the family and the Governor.

 (ii). Partition: Partition as a legal concept is a method whereby joint possession is disunited so that each former co-tenant becomes a separate owner of a specific portion of land holding a share in severalty as opposed to an undivided share in the whole. Partition may be voluntary resulting from mutual agreement of members and effected by a deed of partition executed by the joint tenants (i.e. by the principal members of the family and the family head).