



AN OVERVIEW OF FAMILY LAND UNDER THE NIGERIAN CUSTOMARY LAW AND PRACTICE

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ABSTRACT

The concept of customary family land ownership has been an interesting subject of consideration in both academic and the judicial circles in Nigeria. This study was undertaken with a view to finding a way out of the protracted challenge. The study established that family land ownership under the customary law is as old as the history of land itself, and is acceptable as a means of land ownership with many judicial decisions to that effect. One major cause of conflict in this practice is the customary practice that prohibits senior female members from becoming head and subsequent prevention from inheriting such properties. Therefore, it is recommended that a more liberal approach to the application of customary law and practice should be given to enable the equal rights of all family members over family land. Additionally, it was suggested that female family members should be allowed to inherit family and decision making over family land should be democratic.

INTRODUCTION

Land ownership is as old as the history of land itself. This issue has revolved through many centuries without losing its relevance in law. Land ownership through the customary law differs with what it is under the land use act. Our emphasis is going to be centered on the customary land ownership by the family.

DEFINITIONS OF TERMS

The terms to be defined in this work are; the family, land, customary ownership etc.

Family: it can be seen as a group consisting of two parents and their children living together as a unit.

A family can also be seen as all the descendents of a common ancestor, in this definition also include the extended family

A family is defined in another context as a group of individuals who share a legal or genetic bond

Land: a standard dictionary of English defined land as the solid part of the surface of the earth and as distinct from the bodies of water.

Section 3 of the interpretations act defined land thus; immovable property means land and land includes any building and any other things attached to the earth or permanently fastened to anything, so attached but does not include minerals.

Under English law the meaning of land is expressed in the maxim *quicquid plantatur solo solo cedit* which mean, whatever is affixed to the soil belongs to the soil. In another latin maxim *cujus est solum ejus est usque ad caelum et ad inferos* which mean “whose is the soil, it is his, even to the heaven and to the depth of the earth”

The definition of land expressed in the above maxim is also widely accepted, the courts have also made several pronouncements in that regard. One of the early cases is that of *FRANCIS VIBITOSE* where the plaintiff bought a land from the defendant and a deposit of \$26 was paid. The contract was subsequently abandoned. The plaintiff however developed the land which cost \$120, the contract was later confirmed, in an action, the court held that the plaintiff could only recover the \$26 for failed contract but the money used in developing the land cannot be recovered because of the doctrine, the development also belong to the land.

There are many exceptions to this general principle of law among which are;

- customary law practice
- The oil and minerals act also deposit all oil and minerals in each land to the federal government of Nigeria, and they don't form part of the land. a tenant of an agriculture holding agriculture fixtures are also not part of the land etc.

Customary land ownership: this refers to the systems that most rural African communities operate to express possession and succession.

Ownership and Family Land

As earlier stated, the family in the social context refers to a man, his wife (wives) and his children. But in extended families, all other relations also form part of the family. For the purpose of the ownership of land and succession, a family under customary law means the children of the founder of a property that is to be held to be family land. This point was illustrated in the famous case of *Adesev V Taiwo* (1938) 114 NLR. 83 where the court held that the term “family” for purposes of succession to land means the children of the founder who are entitled to his property and will hold it as a joint family property

As a general rule, widows, brothers and sisters and cousins or uncles of a deceased founder of the family do not constitute members of the family for succession purposes. However, the deceased may by declaration in a will include them in his family land as generally a real property to be inherited by the surviving children of the deceased founder to the exclusion of all others.

Individual members therefore have no separate claim of ownership to such properties and cannot dispose off such interests either in his life time or under his will. This principle was illustrated in the case of *Solomon V Mogaji* where a family he had sold family land as his own, on appeal to the Supreme Court it was decided that the sale was void because the family head has no separate individual interest to transfer to another party.

Ways of Acquiring Family Land

- i. by operation of law: if a land owner who was subjected to customary law dies instantato his self acquired land devolves on his children as family land in accordance with the customary law in practice, or in another way if the testator give a land to his children to hold jointly as a family land.
- ii. By purchase: when a family’s fund is used to purchase land, it will automatically become a family land. In the case of *Nelson V Nelson* (1951) 13 A.C.A 248 where a family member converted land title through convergence to himself, in an action, the court held that the convergence notwithstanding the land was still a family land and the convergence was void.
- iii. Family land can also be acquired by virtue of being first settlers on the land. Example if ones ancestors where the first to settle on the land exercised all acts of ownership over the land for many years it becomes their land. In the case of *Idundun V Okumgba* (1976) 9-10 S.C. 227 the

defendant title to land was challenged in court and they traced their title to the first settler on the land. Their title was confirmed by the Supreme Court.

- iv. By conquest: a family land may be acquired when a family conquers another family or community and take over their land, it can confer good title to the family.
- v. By gift: where a family unconditionally gives land as gift to another family it can confer legitimate right over the land.
- vi. Through judicial decisions: where in a judicial contest, a family is given title over a disputed land; the decision confers good title to such family.

Member's Rights over Family Land

Family members have the same right exercise as enjoyed by any land owner, the rights enjoyed include but not limited to share in any income from the land, to have a say in its management, to use it for their occupation etc. if a member or some members are denied any of such rights they can sue to claim their rights, that was the decision of the court in the case of *Osaro V Anjorin* where (1932) 16 NLR 5 some members of a family sued the family head to account for money collected from family land and the court affirmed their claim and enter judgment in their favour.

It is important to note that all family members have equal rights over family land but for effectiveness and efficiency in management the family is divided into different compartments with different duties to perform.

Family Head: Rights and Duties on Family Land

The headship of the family is determined by customary law and practice, hence there is no uniformity in arriving at who becomes the head of a family. In Yoruba culture for instance, the eldest son is normally the head of the family, same with some minority tribes like sayawa (zaar) people of bogoro and tafawa balewa areas of bauchi state, ngas in plateau state, jarawa in bauchi state

Duties and Rights

- i. The family head must consent to any alienation of family land. However, he cannot sale or alienate family land as his personal property in his personal capacity. That was the decision in *Solomon V Mogaji* (1990) 4 NLR (Dt.144) 407 where a family head sold family land as his own, other family members sued him, on appeal to the supreme court, it was held

that the purported sale was void because he cannot give what he does not have as expressed in the maxim *nemo dat quam non habet*

- ii. Control and management: it is the responsibility of the family head to control and manage family land, in doing that he can allocate portions of such land to family members or even non family members for either agricultural or business purposes only, oral tradition has it that if such allocations are given with considerations, the proceeds must shared with other family members based on the agreed ration.
- iii. He institutes action against trespasser to family land on behalf of the family members.

It should also be noted that if the family head exceeds his powers, in any of the areas he exercise his rights, the court will consider it as an abuse of right and give an order to stop it. However, emergency situations are given due consideration by the courts based on circumstances of each case and exercise of such excess powers may be considered in its merits.

Principal Members

Principal members are the head of a branch of s family, in other words, they are the first male child of each woman in a polygamous family or if the land belongs to more than one family (a kindred) then the principal members are the first male children of each nuclear family. The major function of principal members is to give consent before alienation of family land, without obtaining such consent by the head of the family any alienation will be void, as decided in *Solomon V mogaji*.

Family members may require that family land be partitioned to the beneficiaries, in which case the sharing formula will be determined by the council of elders, the court in *Olorunfemi & Ors V Asho & Ors (2000) 1 SCWJ 122* held that partition may be by general consent of members of the family.

The principal members also have the right to remove the family head if the head is not representing other members well. Whenever the head is successfully removed a new family leader must be appointed, to continue leading the family.

Junior Members and Family Land

Junior members are family members that are not involved in management and administration of family land, even though they have equal right over the family land with the family head and principal members. Their rights is limited to interest over the land and any proceed if any accruing from the land.

Women don't have right over family land under Nigerian customary law and practices as a general rule; however, some cultures allow them to benefit from cash proceeds from the land but not to stay in a family compound with her husband.

However, if a father want his daughter to inherit a landed property, he can purchase a land for her but never the land inherited from ancestors because such landed properties are considered sacred and if allowed to inherit it, her own children that are from a different kindren will later inherit it from her thereby allowing strangers to inherit family land. But a widow of a deceased may be allowed to stay in a portion of family land pending her death, if she does not have a place to stay after the death of her husband, but she does not have right to alienation. The practice is similar in most cultures in Nigeria.

CONCLUSION

Landed property is naturally considered as a sacred property that is held in trust by the present generation for the unborn generations. In Africa and especially in Nigeria, family land has been one of the means of land ownerships in Nigeria many centuries ago even to the present age. The validity of title to land is determined from the process of its acquisition and must be considered with all seriousness.

Family land as a land owned by members of one family with the exception of others cannot be alienated by one person without the consent of others. To get good title from family land, the members with the responsibility of alienation must all be involved to confer good title.

Under customary law practice, non family members are not permitted to inherit family land that is the reason why female members can only inherit family land purchased by deceased parents not their ancestral family land to prevent future inheritance by strangers.

RECOMMENDATIONS

From the study above, it is established that family land with ancestral title is considered sacred and inheritance process is strict. The following recommendations are raised by these researchers;

- i. Female family members should be allowed to inherit family land notwithstanding the tribe they are married to.

- ii. Female family members should be allowed to be family head for the purpose of administering family land if they happen to be the first in the family.
- iii. Decision making in regard to alienation should be democratic and should involve all family members as some principal members can be easily compromised

REFERENCES

- [www.merriam-webster.com>dictionary](http://www.merriam-webster.com/dictionary). Accessed on 11/09/2020 at 2:01pm
Family.loveto know.com3 definition-family. Accessed on 11/09/2020 at 2:11pm
oxford advanced learners dictionary p472
Interpretation act cap 192 vol. 10. Laws of the federation of Nigeria 1990.
(1938) Nigerian law reports.