



Differentiation between Traditional Land Ownership in Mbaukwu, Awka South Local Government Area, Anambra State with The Land Use Act Of 1978.

Ikenna Kenneth Onyali and Dr. Alexander Nnamdi Udobi

Department of Estate Management, Faculty of Environmental Sciences, Nnamdi Azikiwe Univeristy, Awka, Nigeria

ABSTRACT

It is a well-established fact that land is the most critical factor in the social, cultural, political and economic life of nations, and an indispensable element in sustainable development. Simply put, land is life and because it commands a fundamental basis for human shelter, food production and other economic activities, it engages the interest of the government and the govern. Ownership of land is the hallmark of ordered society whatever its stage of economic sophistication. Inevitably no matter what the political outlook may be, the rights of ownership will be shared in various ratios between private and public owners of the land. In the words of Professor Elias "The indigenous system does not admit that land can ever be without an 'owner'," every inch of land in Nigeria is vested in somebody or group. In theory and in practice, a clear and unequivocal policy respecting who should own land in a Society, what and what they should own, and how many of what they can own is the beginning and the end of land policy wisdom. Land ownership is the most comprehensive relationship existing in land. It connotes the totality of rights and powers that are capable of being exercised over a thing. These have been briefly explained by Lawson in his Law of Property P.8 as "the right to make physical use of a thing, the rights to the income from it, in money, in kind or in service, and the power of management, including that of alienation. Since Lawson, they have been greatly expounded, elucidated and re-arranged in order of importance. In order to regulate the ownership, use and development of land and land resources, nations the world over have instituted land ownership systems aimed at consistent balancing of the interests of the government, the land owning class and the landless class. Land ownership structure in Nigeria has evolved over the years until 1978 when a single land policy document, otherwise known as the Land Use Act of 1978 was established to harmonise and regulate land ownership in the country. This paper differentiates between traditional Land Ownership in Mbaukwu, Awka South Local Government Area, Anambra State with the Land Use Act of 1978. The study found out that the difference between the traditional Land Ownership in Mbaukwu with the Land Use Act is mostly on Control and Management of Land, Title, Right of Occupancy, Transfer of Land and relationship. The paper recommended that the Land Use Act should be amended to bring it in line with the reality of the custom of the populace, in order to have a clear and not confusing land tenure system. The Government should revisit the method of Land holding in the country and take drastic measures to address the inequities.

Key Words: Traditional, Land Ownership, Land Use, Act

INTRODUCTION

According to (Joash Amupitan ,2012), Land occupies a very significant part in the life of people and in the economic development of any country. It has been described as "the fundamental and important asset that carries religious and political connotations in the world and especially in the continent of Africa". It has also been the subject of litigation in international courts and tribunals. A case in point is the celebrated dispute over Bakassi Peninsula between the Federal Republic of Nigeria and the Camerouns. Simply put, land is life and because it commands a fundamental basis for human shelter, food production and other economic activities, it engages the interest of the government and the govern (Amal Pepple, 2014).

The availability of land is key to human existence and indeed one of the most important national assets. Being an important factor of human existence, it has long been necessary to establish strong foundation on how to regulate the manner in which land could be acquired, allocated, managed, controlled and owned (Joash Amupitan, 2012).

Ownership of land is the hallmark of ordered society whatever its stage of economic sophistication. Inevitably no matter what the political outlook may be, the rights of ownership will be shared in various ratios between private and public owners of the land. In the words of Professor Elias "The indigenous system does not admit that land can ever be without an 'owner'," every inch of land in Nigeria is vested in somebody or group (Umeh J. A , 2007).

In theory and in practice, a clear and unequivocal policy respecting who should own land in a Society, what and what they should own, and how many of what they can own is the beginning and the end of land policy wisdom. As the Nigerian experience has, for example, amply shown, so long as the land ownership question remains unsatisfactorily answered in any country, no meaningful let alone workable land policy will ever emerge (Yakubu, 1985).

According to (Lukman Shobowale, 2023), following the nation's independence in 1960, the Land and Native Rights Act of 1916 was replaced by the Land Tenure Law 1962, which was largely in effect in northern Nigeria. This land tenure system was heavily criticized for providing a different set of engagement for those who were considered "natives" and "non-natives". While the Land Tenure Law 1962 governed the land administration system in northern Nigeria, southern Nigeria operated under a different set of arrangements which can be described as the private ownership of land.

The distinction created by the multiple land administration system in different parts of Nigeria immediately necessitated the need for government to consider a uniform land administration system that is comprehensive and inclusive.

On March 29, 1978, the military administration of Olusegun Obasanjo, promulgated the Land Use Act 1978. The Land Use Act 1978 was recognised as a landmark for vesting the control and administration of land in the hands of state governors who would hold the land in trust for the people. The act however had a provision that placed a burden of "responsibility" on the state governors by charging them with the responsible allocation of land. The purpose of such allocation is residential, agricultural, commercial, industrial or even economic activities. In addition to harmonizing the land administration system, the act was also expected to check the spate of speculative purchases and ensure the redistribution of land, as a major economic resource.

Over the last 45 years, the Land Use Act 1978 has remained the regulatory and legal framework that governs land administration in Nigeria. It was attributed especially to democratizing and harmonizing the land administration system and control in every part of the country.

Land Ownership in Nigerian Context

According to (Achinewhu-Nworgu, E. et al, 2014), Land is a crucial economic resource and source of livelihood in the world particularly as the case maybe in Nigeria as people depend on land for a living. A Traditional Nigerian has always viewed land as the fundamental element of their economic well-being as well as part of social and cultural identity. There are some common characteristics identified in African land-holding systems: a) collective ownership of land by the tribe, the community or the lineage; b) inalienability of land; c) flexible access mechanisms to land and land-related resources; and d) community-based land administered and managed by the Chiefs who are in charge of the village disputes. According to Emery (2005), speaking about property in Nigeria which is closely linked with speaking about land, the systems of land tenancy have a major impact on the sets of rights to property that can be inherited in Nigeria. She further suggests that Land is divided into three major types: communal land, individual (or private) land, and public (or state) land. Customary land is held as "corporate aggregate", through groups such as towns, patrilineal or matrilineal groups, and family systems. Such land can be used jointly, by any member, or divided amongst families for use. This land may be distant farmland, forest, or spaces like the market square. Alienation of such land is not possible without consent of the community. In contrast, private tenure in customary systems tend to be on the basis of the family unit; with the family head distributing rights to land that are inheritable to children, but non-alienable without consent of the family head. It may be stated that the head of the family in most Nigerian contexts are predominately male and have the right to land inheritance. Emery (2005) also presented an argument that the requirement of family consultation is a rule of law, and not a matter of convenience. While all individuals who are members of the community or family have a right to a portion of the land, this does not hold true for women as they are viewed as temporary members exploring land ownership and Inheritance in Nigeria therefore, they do not have permanent and inheritable rights to the land, but rights to use and enjoyment of land while physically in the family. Individuals may also hold land in their own right for example, through clearing vacant land. However, most land is acquired through inheritance within customary systems. Finally, in considering inheritance rights to land, it is also important to recognise that land has a spiritual value for many Nigerians as home to ancestors. As Gender across borders (GAB) (2012) presents, in most parts of sub Saharan Africa, women play vital role in food industries, nutrition and security which cannot be over looked.

Women are the producers of food in most African countries in the areas of farming in the communities. Women are also play the role of house wives and cater for food for families. Yet women in many African countries do not have access to and control over land, and this limits the types of food crops they can grow as well as their economic security. GAB further argues that women's access to land in Nigeria is especially limited in the Southeast where cultural norms and traditions forbid a woman to own land. In spite of the increased awareness about gender equality issues in the past three decades, these cultural dictates have been largely unchallenged at the local level where it matters most. Globally, there has been an increased focus on land rights as they are so pertinent to various aspects of development. According to Wickeri and Kalhan (2010), land ownership can be a critical source of capital, financial security, food, water, shelter and resources. The Global Land Tool Network (GLTN) (2011), a United Nations (UN) organization has found that rural landlessness is a strong predictor of poverty and hunger, and negatively impacts Empowerment and the realization of human rights. Several scholars argue that women's lack of sufficient land rights negatively affect their immediate families, education and the larger community as well, with land ownership, women can develop an income more fairly within the household. Hanstad (2010) suggests that providing sufficient land rights for women is beneficial because women are less likely to contract and spread HIV/AIDS as they do not have to resort to prostitution. Women are less likely to be victims of Domestic violence. Children are more likely to stay in school longer. Women have better access to Microcredit.

Customary Land Tenure System

According to Ilori, A & Adebayo, A.K (2019), this is seen as the system of landholding which is indigenous to Nigeria. In giving a proper conceptual clarification of what the Customary Land Tenure system precluded, it is vital to understand the concept of 'Customary', 'Land' and 'System'. Customary, gotten from the word 'Custom or customs' if plural is the action or ways of behaving that is usual and traditional among the people in a particular group or place, also meaning something that is done regularly by a person. Customary has been said to be the practice that by its common adoption and long, unvarying habit has come to have the force of law. They are the general rules and practices that have become the norm through unvarying habit and

common use. According to the Property and Conveyancing Law 1959, Land can be said to be the earth surface and everything attached to the earth otherwise known as fixtures and chattels real, also including incorporeal rights like a right of way and other easements as well as profits enjoyed by one person over the ground and buildings belonging to another.

Land has also been defined as an immovable and indestructible three-dimensional area consisting of a portion of the earth's surface, the space above and below the surface, and everything growing on or permanently affixed to it. System has also been described to mean an organized set of working principles usually intended to explain the arrangement or working of a systematic whole, and can also be known to be an organized and established procedure. Originally, customary land tenure meant the soil and the soil only. With this, we can infer that the Customary Land Tenure System can be said to be the various principles, norms and rules that governed the transactions that were made on land in the various places in Nigeria prior to the Introduction of the Land Use Act of 1978 which was intended to govern the Nigerian nation as an entity and not the over Two Hundred and fifty (250) ethnic groups with their different ways of acquiring, Enjoying and Disposing land. Critics who have looked at the Land Use Act from the angle of jurisprudence have come to alliance of the fact that it is easy to condemn it i.e. the Land Use Act as a piece of legislation not rooted in the National consciousness of the Nigerian people and which as a result did not consider the economic implication on Nigerians. These principles were broadly uniform throughout the country but varied in their various details as a result of the various ethnic differences. There were basically two systems of land tenure, one regulated by either English Statute of general application enacted in England prior to 1st January 1900 and Statutes enacted by local legislature or colonial statutes expressly made applicable in Nigeria. The Northern states had acquired a form of nationalized system of land tenure as far back as 1916 by virtue of the statute which was mandatory, while the people in the southern part of Nigeria had always had a choice as to the form of acquisition and/or vesting of land.

The Land Use Act

According to Ilori, A & Adebayo, A. K (2019) An uncontested and unarguable development in the Nigerian Land Law and Conveyance was the enactment of the Land Use Act which was promulgated on the 29th of March 1978 following the recommendations of a minority report of a panel appointed by the Federal Military Government of the time to advice on future land policy. The Land Use Act coming to correct several wrongs came to basically redirect the wheels of justice in line with the diversity of customary laws on land tenure and difficulty in applying various customs of the different people. Secondly, was the rampant practice in Southern Nigeria with regards to fraudulent sales of land, that is when land was usually sold to different people at the same time causing various litigations on the same land.

Arguments in favor of the Land Use Act have been posited to justify the invasion of the Land Use Act with claims that:

1. It sought to effect structural change in the system of Land Tenure;
2. It sought to achieve fast economic and social transformation;
3. It sought to negate economic inequality caused by the appropriation of rising land values by land speculators and Land holders; and
4. It sought to make land available easily and cheaply, to the government, private individuals and developers.

The preamble to the land Use Act vests all land comprised in the territory of each state solely in the Governor of the state, who is deemed to hold such land in trust for the people and would henceforth be responsible for allocation of land in all urban areas resident in the state and to organizations for residential, agricultural, commercial, and other purposes while similar powers with respect to non-urban areas are vested in the Local governments.

Traditional Land Ownership in Mbaukwu, Awka South Local Government Area, Anambra State.

Brief history of Mbaukwu

Mbaukwu is a village of about 47,500 people who make their living through farming and trading. Mbaukwu is situated on a high-altitude plain, hundreds of feet above sea level.

Initially, Mbaukwu was known as Ebeteghete. Mbaukwu and Umuawulu were brothers before they got divided. Mbaukwu had five (5) villages : Uru, Akabor, Namkpu, Ogba and Ovollo. Uru is the first village while Ovollo is the last village in Mbaukwu. Mbaukwu never had a king at the beginning but a leader by name Uchendu until during the regime when Gowon the Nigerian President then declared that all the Igbo communities should have a king that will be ruling them. To that effect, Mbaukwu appointed a king known as His Royal Highness Igwe Peter Anugwu who is currently on the seat. Mbaukwu have their cultures, beliefs and traditions. They also have occupation they engaged in especially during the olden days. These includes Farming, Production of gunpowder, Trading, Palm wine tapping, Blacksmith, Handcraft such as weaving of basket, mats and making of brooms and Production of local soap cream like the oil extracted from palm kernel (ude aki). They also have traditional festivals which they perform.

TRADITIONAL LAND OWNERSHIP IN MBAUKWU

In the traditional Mbaukwu society, a lot of factors conspired to determine the various types of Land tenure in the community and they include:

1) Historical Antecedent: According to (Dike A,1983) In every Igbo society there are and there has been cases of borrowing in past. One coming up may be asking question why a family that is not from their family or clan should have a portion land close to their family or land without knowing that his fore fathers may have used the same land to borrow money from another different from their family or clan.

2) Religious/Spiritual Obligation/Vocation: In a traditional society just like Mbaukwu, certain lands were devoted for worship by the traditionalist and these people have chief priest and whose instance the management of the entire land is entrusted to. These chief by virtue of their position may partition or plot these land and even go to the extent of selling them. No one can question their authority hence the popular adage in the community let the gods speak for itself (Alusi kwuelu onweya).

3) Birth Right: One by virtue of being a male member of a family in Mbaukwu is entitled to the share of the family land.

4) Political Decision (Overriding Public Interest): The government may decide to acquire land for overriding public interest (Ugonabo C. 2008).

5) Citizenship and Naturalisation: One by virtue of being male born of the Mbaukwu community is entitled to access to family land. Also there have been cases of families who naturalised in Mbaukwu and they were given parcel of land to build or occupy.

Historically, in Mbaukwu, land was held communally, however, this pattern of land ownership or land tenure has given way to individually held pieces and parcels of land, or communally specific pattern of land tenure system. The tenure system in traditional Mbaukwu society is a peculiar one; however for the purpose of this work, different ownership/tenure practices in traditional Mbaukwu society may be seen as discussed below:

A) Communal Land Tenure (Ana Obodo) The communal land tenure system in traditional Mbaukwu society existed even before the different tenure laws were enacted in Nigeria. This could be seen in the various lands dedicated for different communal use and which includes the village squares, the market and other land dedicated for farming purposes. One can gain access to community land by being a member of the community. In this type of tenure the land is owned by the entire Mbaukwu community which can be shared among the five villages; the five villages comprise of Uru, Akabor, Namkpu, Ogba and Ovollo The community land can be shared according to all male indigenes that pay the annual recurrent levy (UTU ARO) to the community for purposes of farming only. The land is held in trust by the Igwe of Mbaukwu, the traditional ruler, he hold this land in trust for the entire community. Communal land practices here is not distinct from the practices or features already discussed generally above on the types of land tenure systems.

Also seen or held or identified on the communal land is the town halls, village hall, family halls etc. Also, the community have different lands designated for different traditional function.

The Management of the Community Land (Ana Obodo): The Igwe of Mbaukwu holds the entire Mbaukwu communal land in trust on behalf of the Entire community.

B. Village land (ana ogbe) tenure: This comprises of different clans, the clan (Umunna) comprises of bigger extended families. Note that village lands emanate from the community land; they also have peculiar ways of sharing their land. Also it should be noted that Mbaukwu community comprises of five villages. The village land includes Uru, Akabor, Namkpu, Ogba and Ovollo. One of the peculiar features of the village land is that each of the five villages have their own square which is owned generally and these squares serves as meeting point for the various function by the village. Instances also abound where families who have small compound uses the square for traditional marriages.

THE FAMILY LAND TENURE: Family land is owned by a family in a certain prescribed manner by the head of the family which is usually the oldest member of the family. He holds the same in trust for the rest members of the family. Despite the fact that the headman possesses the right to family land, he does not have the right to take decision pertaining to the land, alienate, lease or dispose of land without the consent of the principal members of the family. He must seek the opinion of the principal members of the family before taking decision on land. Land can be held patrilineal and its deceased property is shared amongst all his sons with the oldest getting the largest share. Dike, A. (1983)

In traditional Mbaukwu society, the family land may comprise of the extended family structure and the nuclear family, this also came as a result of the sharing of the Ana Umunna.

Land here is shared according to the male born with age as reference "NA NNA NA NNA". The male son will in turn share with their children their own portion of the land. This is their right to ownership of a freehold land (birthright). Where any portion of the family land or other communal land is allocated to a member of other land-owning group for a time period, the right of other members to use that portion is suspended until the male son returns back to the family or community. Note also that in an extended family set up, if a grandfather is involved and is a polygamous, the first son irrespective of the fact that the mother is last to be married in the family has the NGWULU (main compound the father left behind) to himself and the other sons (last sons) from different mothers will also have access to the OGBOLODO.

Access to family land: THE NAWOGODU: Nwawaogodu is male child of a kindergarten age, not yet an adult, but has birth right to shares to land as a male; it is also a criterion for one to have an access to the family land. The question now is how can an individual male from an extended family from different mother gain access to family land??This can be achieved by the allocation of family land which is done by the family head in co-operation with the consent of the elders and representatives of the sub-units within the family. Here the principle of gbaa na nne and or gbaa na nna applies. All male sons have a right to the family land.

THE NUCLEAR FAMILY SYSTEMS: In the nuclear family of Mbaoku, sharing is considered patrilineally as the case may be. Where a man is survived by sons, his compound is inherited by all his sons as a body with the eldest son acting as the caretaker until the other sons build their own houses and vacate the compound which now wholly belongs to the eldest son. The NGWULU belongs to the eldest son .

ANA IRU EZI: In Mbaoku, Ana Iru Ezi is an elder son's birthright to an extra piece of land which is distinct from lands shared by the virtue of his position as the eldest son. This privilege is not extended to others sons, whether extended or from nuclear family.

NGWULU: This explains the fact that the eldest son (DIOKPALA) has the exclusive right to the main compound the father left behind; he will and continue to accommodate others until they build their own houses elsewhere. (Arua E.O.1997)

OGBOLODO OR MKPUKE: In the demise of the wife of an Mbaoku man, the area housing the "OGBOLODO" OR "MKPUKE" in his compound is exclusively the right of the last born of the woman who takes same over. In the event of this last son wanting to build and leave the fathers compound, he will now negotiate with the elders for an alternative land in replacement for the Ogbolodo area which he is abandoning in his father's compound .

INDIVIDUAL LAND TENURE: The individual land tenure in traditional Mbaoku society is not different from already discussed types of land tenure earlier. In traditional Mbaoku society an individual can gain access to community land for purposes of agriculture, housing etc.

THE ANA ALUSI (SACRED LAND): Some land in Mbaoku community is still seen today as OFIA ALUSI OR ANA ALUSI. These lands are where some traditionalist/heathen offer prayers and sacrifices to their gods, it is held sacred by the chief priest and those members of such traditional religion. It is exclusively for the members and no one is expected to encroach in such land.

MBAUKWU COMMUNITY LAND DISPUTES RESOLUTION AND BOUNDARY PROBLEMS

In Mbaoku town, the Isi-Isiakpu in various villages and the town in general handles land disputes and boundary problems when they are amongst the citizens. When these disputes are between the town and neighboring towns, such disputes or problems are referred by the Mbaoku Central Council to its land committee for action in case of litigation.

PUBLIC OWNERSHIP AND STATUTORY TENURE:

The Mbaoku community cannot be said to be ignorant of the fact that government has the right to acquire land within its domain for public purposes. In spite of the tenure systems practiced in the community, she cannot boast to resist the interference of the government or right of the government over compulsory acquisition. Also when the rate of change in the socio-economic structure of society is faster than the rate of change in customary law, the state often intervenes with statutes or policies to facilitate changes. Under customary tenure systems in eastern Nigeria, rudimentary powers of compulsory acquisition existed. Public rights were exercised whenever land was to be used for the ultimate benefit of the public in general (Famoriyo, 1983). Important statutory interventions into land tenure in eastern Nigeria include the Acquisitions by Aliens Law, the Registration of Titles and Acquisition of Public Lands Act and the Land Use Decree.

DIFFERENTIATION BETWEEN TRADITIONAL LAND OWNERSHIP IN MBAUKWU, AWKA SOUTH LOCAL GOVERNMENT AREA, ANAMBRA STATE WITH THE LAND USE ACT OF 1978.

1. Control and Management of Land

Traditional Land Ownership in Mbaoku is controlled by the Communities, families through the head of the Family or the traditional ruler (Igwe of Mbaoku) who also acts as the manager holding the land for the communal use. The Head of the family in Mbaoku acting in the position of trust is always and presumed to be the owner of the land. The Land is usually vested in the family head of Mbaoku community in conjunction with the principal members of the family. The family head is appointed by the deceased member of the family, by the acclamation or by the traditional method. Most times, the family head is usually the eldest surviving male child of the founder of the family. He is seen to be the '*Primus Inter Pares*' and enjoys the family property with the other members of the family. He is expected to manage the property and keep it in good state of repairs. He is the person entitled to take up actions or defend actions involving the family property. He also is the only person to allocate family land, conducting private and external business of the family, having the right to enforce forfeiture of the interests of erring customary tenants.

The Land Use Act in Section 2 provides that as from the commencement of the Act, all lands in the urban areas were to be under the control and management of the State Governor, and the other lands in the rural areas shall be under the control of the Local government. Unlike the traditional Land Ownership in Mbaoku where the Head of family will seek the advice of the other principal members of the family before doing anything to the land, under the Land Use Act, in Section 2(2), the 'Land Use and Allocation Committee' has the responsibility of advising the Governor on any issue as regards the management of the land. While the above applies to state governments, 'The Land Allocation Advisory Committee' will be with reference to the Local Governments and his management of the lands in their care as established under Section 2(5) of the Land Use Act of 1978. Under the Management by the Governor of the State, Section 4 of the Land Use Act makes succinct provision as to the fact that until other provisions are made on behalf and subject to the Act, land under the management and control of the government shall in the case of any state where the Land tenure Law of former Northern Nigerian applies, be administered in accordance with the provisions of the law, and in every other case, in accordance with the provisions of the state law.

The advent of the Land Use Act showed that the quantum of parcel of land over which a customary land owner may exercise the right of control and management depends on two basic considerations namely: whether the land is situated in urban or non-urban areas and also whether it is developed or undeveloped. Section 32(4) stipulates that where the land is developed, the land shall continue to be held by the person in whom it was vested immediately before the commencement of this Act as if the holder of a statutory right of occupancy issued by the Governor under this Act. Section 34(5) prescribes that on the commencement of the Act, where it is an Undeveloped land, one plot or portion of the land not exceeding half of one hectare in area shall be subject to subsection (6) of Section 34, continue to be held by the person in whom the land was so vested as if the holder of the land was the owner of the statutory right of occupancy granted by the governor in respect of the plot or portion as aforesaid under this act.

Despite the invasion of the Land Use Act, the customary right of use and control of the land in Mbaukwu community has not been totally swept away as the Land Use Act only divested any claimant of radical title and limited its claims to a right of occupancy, taking away freehold title vested in Individuals or communities .

2. Right of Occupancy

While under the traditional Land Ownership in Mbaukwu land could be gifted, hence inferring the absolute transfer from the grantor to the grantee who may be a stranger or member of the family and for such gifts, no money or payment in whatever kind was required, hence divesting all allodial rights to the grantee. Also, under the traditional Land Ownership in Mbaukwu, land could be borrowed for farming purposes for a specific duration depending on the purpose for which the grant was made, and where the land is borrowed and put into permanent use, it is more likely to presume Customary tenancy.

Under the Land Use Act, Section 5(1)a stipulates that it shall be lawful for the Governor in respect of land, whether or not in an urban area to grant statutory right of occupancy to any person for all purposes. This infers the difference that while under the traditional Land Ownership in Mbaukwu, land was majorly granted for farming purposes, under the Land Use Act, it is for all purposes. The Land Use Act also makes clear provisions under Section 7 of the Land Use Act that it shall not be lawful for the Governor to grant a statutory right of occupancy or consent to the assignment or subletting of a statutory right to a person under the age of twenty-one (21) years, unless he has a guardian or a trustee, which unlike the traditional Land Ownership in Mbaukwu didn't make such provisions.

3. Title

The Land Use Act has vested all lands in the Governor of the state and also all Federal lands in the President as well pronounced in Section 1 and 2 of the Land Use Act, upon which title is issued by the Governor. Under the traditional Land Ownership in Mbaukwu, all lands were vested in the villages, communities, or families with the head of the community or family as the Manager or Trustee, holding the Land in Trust for the entire village or community or family and equally issues title under the customary land tenure system.

4. Transfer of land

Traditional Land Ownership in Mbaukwu prescribes that any form of alienation without the proper consensus of the proper members of a family would be deemed void or voidable as in different instances. While the family property may be allotted to the members of the family, allottees cannot alienate or part with possession without appropriate consent as established in the case of *Alao v. Ajani* where the court held that a member of the family is not permitted to introduce a stranger into the family by the back door. For any alienation to be valid, the concurrence of the Family head and the principal members must be sought and obtained. Any alienation without the consent of the family head will be regarded as void ab initio however, when the head of the family alienates a land without the consent of the principal members, such will be deemed to be voidable, and also the consent must be that of adult, or minor through the loco parentis. However, a gift made by the family head without the concurrence of the principal members is void, and also when the gift is made by the principal members without the consent of the head of the family, such alienation will be deemed to be void ab initio.

The Land Use Act makes clear and lucid provisions in Sections 21 and 22 that any form of transfer of right of occupancy or any part thereof in the form of assignment, mortgage, sublease, or transfer of possession is unlawful without first seeking and obtaining the consent of the Governor of that state. Thus, it must be noted that mere seeking of the approval will not amount to the grant of the approval. Section 36(5) of the Land Use Act reiterates the fact that invalid transfer is not only void but creates an illegality; hence an offence punishable with terms of imprisonment or fine. For Land in the urban areas, the transferor must first comply with the rule at customary law and obtain the necessary consent of the family or community before seeking and obtaining the consent of the Governor, as both are necessary requirements.

5. Relationships

Under the traditional Land Ownership in Mbaukwu, customary tenancy is usually granted to another person at customary law, a right of occupation of land to use the land in return for the payment of tribute to the family or community head. However, under the Land Use Act, every land owner now has a limited right on the land in the form of right of occupancy, the radical title now vested in the Governor as the position of the overlord (Landlord) now that of a tenant is subject to the administrative control of the Governor or the Local Government.

Conclusion

This work clearly differentiates between the traditional Land Ownership in Mbaukwu, Awka South Local Government Area, Anambra State with the Land Use Act of 1978. It equally examines the customary land tenure system along with the Land Use Act.

Land ownership is the most comprehensive relationship existing in land. It connotes the totality of rights and powers that are capable of being exercised over a thing. Ownership of land is the hallmark of ordered society whatever its stage of economic sophistication. Inevitably no matter what the political outlook may be, the rights of ownership will be shared in various ratios between private and public owners of the land.

The difference between the traditional Land Ownership in Mbaukwu, Awka South Local Government Area, Anambra State with the Land Use Act is mostly on Control and Management of land, Right of Occupancy, Title, Transfer of Land and relationship as elucidated in the work above.

Drawing from the highly conceptualized details of the thin lacuna between the practicality of the Customary Land Tenure system and the current reality, the Land Use Act has exposed the Acquisition, Enjoyment and Disposition of land, it is evident that the Land Use Act has not radically changed the presumption and regulations as to land, but only come to unify the laws and fulfill the law of customary land tenure system.

The Land Use Act should be amended to bring it in line with the reality of the custom of the populace, in order to have a clear and not confusing land tenure system. The Government should revisit the method of Land holding in the country and take drastic measures to address the inequities.

References

- Achinewhu-Nworgu, E. et al (2014) Land ownership and inheritance in Nigeria.
- Amal Pepple (2014). Address by the Honourable Minister of Lands, Housing and Urban Development at the Inauguration of the Inter-ministerial committee on national land policy on Tuesday 21st October, 2014, at the conference room of the Federal Ministry of Lands, Housing and Urban Development, Mabushi, Abuja.
- Arua E.O. & Okorji E.C (1997). Multidimensional analysis of land tenure systems in eastern Nigeria, land reform bulletin.
- Badiru, I.A. (2003). Principles and practice of estate management, Lagos.
- Dike, A. (1983). Land tenure Igboland. A journal of International Review of Ethnology and Linguistics, Anthropology system in, Vol. 78, 40-52.
- Emery, V. (2005): Women's inheritance rights in Nigeria: Transformative practices. Toronto: University of Toronto, Faculty of Law.
- Gender Across Borders (2012): *A Look at Literature in Sub-Saharan Africa* <http://www.genderacrossborders.com/>. Accessed April 2014.
- Global Land Tool Network (2011): *Gendering Land Tools*.<http://landportal.info/resource/global/gendering-land-tools>. Accessed April 2014.
- Hanstad, T. (2010): *Secure Land Rights*. Rural Development Institute.
- Ilori, A & Adebayo, A.K (2019): Customary Land Tenure System and the Land Use Act: A Comparative Analysis. IRLJ 1 (2) 2019 pp. 92 -99
- Joash Amupitan (2012) "Land titling and Registration under the Land Use Act, 1978 – Challenges and Prospects"-Paper presented at National Workshop organized by the Presidential Technical Committee on Land Reform.
- Land and Native Rights Act 1916, CAP 96, Laws of the Federation of Nigeria, 1958.
- Property and Conveyancing Law 1959.
- The Land Use Act of 1978 (Now Cap.L5 Laws of the Federation of Nigeria, 2004.)
- Ugonabo C (2008). An Overview of the enabling laws governing compulsory Acquisition of land and compensation in Nigeria, a paper presented on 4th MCPD workshop held at Barnhill resort.
- Umeh J.A. (2007). Land Policy in developing countries.
- Wickeri, E. & Kalhan, A. (2010). Land Rights Issues in International Human Rights Law. *Malaysian Journal on Human Rights*, 4(10), 16-25.
- Yakubu, M.G. (1985). Land Law in Nigeria (1st Edition). London: MacMillan Publishers Limited.