# THE JURIST

An Annual Publication of the Law Society, University of Ilorin Vol. 9, 2004

## Essays in Honour of CHIEF WOLE OLANIPEKUN, SAN



"A CELEBRATION OF LEGAL EXCELLENCE"

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# THE CREATION OF FAMILY LAND IN NIGERIA

BY
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## INTRODUCTION

### THE CREATION OF FAMILY LAND IN NIGERIA

Land, as conceived by Law, is fraught with controversies. However, for our purpose, land may be defined as the earth surface, subsoil, the air-space above it as well as things that are permanently attached to it.[1]

The Property and Conveyance Law[2] defines Land to include buildings, structures, right and privileges and rents etc. Thus, both the Common Law and Statutory definitions are in agreement. Land as conceived consists of natural and artificial elements. This is usually expressed by the Latin maxim *quic quid plantatur solo solo cedit.* The legal significance of this is that what ever human improvement that is attached to the land accrues to it and belongs to its owners unless there exists a contrary Intention[3].

## History of Land's Creation

We hardly need to point out that in all parts of Nigeria. Customary tenure was and still is recognized. In the Northern States, customary interests in land were not only recognized but safeguarded under the Land and Native Rights Ordinance, now replaced by the Land Tenure Law of 1962[4].

It may therefore, be said of the Northern States that to a very large Extent English Conveyance practices have been "kept at bay". However, it must be quickly added that

statutory Rights of Occupancy can be created in the Northern States under the Land Tenure Law 1962. In the rest of the Federation, even though English Conveyancing Law was introduced, the existing Customary Law was also preserved. A large part of the Land in Nigeria is therefore still held under customary tenure[v].

**The Creation Of Family Land In Nigeria**

Under the customary land Law, every piece of land in Southern states of Nigeria had owner.

The owner could or might be a societal unit as large as a kingdom, a town for example Akure, a family or even individuals[vi].

But one must quickly add that land owned by individuals invariably becomes family land; if the owner died intestate the land would be descend to his children as a body. In the absence of children the land would descend to members of his wider family[vii].

At Law, land in its physical states is not capable of ownership. Rather the subject of ownership consists of some rights to use and enjoy the land to the exclusion of other persons, which is recognized and protected by Law. These rights vary in degrees. Broadly speaking, these are denoted by "ownership and possession"[viii].

1. Ownership – Ownership signifies the maximum right or interest that exists in lands. The right of owner is therefore, not subject to or restricted by the superior right of another person. Ownership rests on the owner, the right to possession. The right to possession is actually in possession. On the other hand, possession is mediate, where the owner grants

the partition of family land with the consent of members of family confers upon each member an absolute right to his petitioned portion. However, where a partitionee dies without a surviving heir, his absolute share reverts to the family as family property.[18]

In conclusion the term 'family' connotes a group of persons bound by blood who are entitled to inherit jointly the property of a deceased founder of a family either in accordance wit customary rules of succession or under a will which creates a family property.

## END NOTES

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12 (1931) 10 NLR pg.82

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