

ALLOTMENT AND PARTITION OF COMMUNAL - FAMILY LAND IN NIGERIA: PANACEA TO POVERTY REDUCTION

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Abstract

Poverty reduction is a serious matter that requires serious attention. No doubt there had been several strategies instituted by the Federal Government to alleviate poverty in Nigeria. Yet evidence shows that poverty is still on the increase. Land holding in Nigeria is either communal or family holdings. This makes it rarely impracticable for an individual to assume ownership of land under the customary land law. The control and management of land is either vested in the communal head or head of the family. Individual's access to land becomes subjective to the overriding consent of the communal head or the head of the family. In this paper, it is shown that allotment and partition of land could reduce poverty when an allottee is allotted land or land partitioned to an individual. The partition of family land alters the nature of ownership of the land given an individual right to dispose of his or her portion partitioned to him. The aim of this paper is to appraise the effect of allotment and partition of family land in Nigeria which strictly sensu affords individual to own land, and dispose it off to make ends meet. It is also aimed at developing our land tenure system to appreciating individual ownership of land which is scarcely recognized under our legal system. Given the above, it is suggested that communal and family heads alike are commended to accede to the yearnings of community and family members to embark on allotment and partition of land so as to give rise to individual ownership and human and capital development

Key Words: Allotment, Partition, Communal land, Family land, Catalyst, Poverty Reduction

1. 0. Introduction

Land is a gift of nature. It is essential for every human activity on earth as it is also the source of wealth. In order to regulate the ownership, use

and development of land resources, nations the world over have instituted land ownership systems aimed at consistent balancing of the interest of the government, the land owning class and the landless class¹. The land system of a given society is the manner in which land owned and possessed. It is an institutional framework within which decisions are taken about the use of land, embodying that legal or customary arrangement whereby individuals or groups or organization gain access to economic and social opportunities through land.² The land system is Also constituted by the rules and procedures which govern the right and responsibilities of both individuals and groups in the acquisition, use and control of land. Denman³ argued that all societies of whatever culture and political creed have land systems woven of property rights. These property rights lend form to the proprietary land units. The proprietary land unit is the decision-making unit which is fundamental to all positive decisions about land use and comprises two elements, the run of property rights and the area of physical land to which they pertain⁴. Any land system may portray categories of estates or rights in land. These rights are absolute or non-derivative interests and derivative interests. The absolute interests are those rights in land that confer upon their holders unconditional interests in perpetuity and in terms of quality, it is regarded as the most superior form of ownership. The absolute interests confer absolute ownership rights and as such allow for the highest scope of proprietary decisions as to the use and management of land. The derivative interests on the other hand are interests that have been derived or carved out from the larger estates or superior estates⁵. They are inferior in quality and include leaseholds, life interests, kola tenancy, mortgage, borrowed interests, pledges, among others.⁶ The land ownership structure in Nigeria is based on the absolute and derivative interests. The structure of ownership of these interests in the country has evolved through three major periods.

¹ Namson B. U, David O. A & Victor O. O. "Land Ownership in Nigeria: Historical Development, Current Issues and Future Expectations" *Journal of Environment and Earth Science* ISSN 224 -3216 (Paper) ISSN 225=0948 (Online) Vol. 4 No. 21, 2014

² Udo G. O (2003) "Model Building in Property Valuation. Enugu: Institute for Development Studies, University of Nigeria.

³ Namson B. U et al (See note 2 above) 182

⁴ Ibid 182

⁵ Udo G. O (See note 3 above)

⁶ Nwabueze, B. O. *Nigerian Land Law* (Nwamife Publishers Ltd, Enugu 1972) 54

Against the backdrop of the above, this paper is divided into five parts. The first part provides an introduction while the second part examines the concept of communal and family property, creation of family property and the control and management of same. Part three discusses the allotment and partition of family property while part four discusses the relationship between allotment and partition of family property vis-à-vis poverty reduction. The paper is concluded by a succinct summary and recommendation

2. 0. COMMUNAL AND FAMILY OWNERSHIP OF LAND

The predominant land tenure system in Nigeria during the pre-colonial period was the customary land tenancy where land holdings were owned by villages, towns, communities and families. Land was deemed not owned by individuals but by communities and families in trust for all the family members⁷. The legal estate under customary land tenancy is vested in the family or community as a unit. During this period, land belonged to the community or a vast family of which many are dead, few are living and countless members yet unborn. Thus individuals had no such interest as the fee simple absolute in possession as the actual ownership of land or absolute interest was vested in the community itself. Interests or rights of individuals in community land were derivative interests.

Communal Land Tenure is usually based on the inalienable and equal rights of joint ownership of land by every member of the community, with some appointed members, usually elders and titled men, given the responsibility to act on behalf of others as custodians of the land. In Igbo land, some cardinal principles of land tenure are that the land belongs to the community and cannot be alienated from it without its consent; within the community, the individual shall have security of tenure of the land required for his compounds, gardens and farm; and, no member of the family shall be without land⁸ Communal Land tenure varies from community to community and is related to farming practices, ethnic

⁷ Omuojine, E. O. (1999) "The Land Use Act and the English Doctrine of Estate".

Journal of the Nigerian Institution of Estate Surveyors and Valuers. 22 (3) : 54 -56

⁸ Adegboye R.O (1966) "An analysis of land tenure structures in some selected areas in Nigeria. Ibadan, Nigeria NISER

heterogeneity and stability of leadership. However, a distinctive feature of communal land tenure systems as noted by Arua⁹ is that joint decisions are taken on which land to cultivate, which crops are to be grown, the number of seasons during which the land is to be cultivated and the length of the fallow period.

The community lands comprised lands which the entire community has an individual or proprietary interest. Such community lands were supervised and administered by the chiefs and traditional rulers. The stool or chieftaincy lands were found mostly among the Yoruba and comprised the Oba's palace and the surrounding lands. The family lands were lands that were vested in the members of the family as a corporate group. Individual property comprised lands whose title was vested on individuals and was obtained by partitioning of the family land to individual members of the family. However, during the pre-colonial period, land held under customary tenure cannot be sold or alienated. Such an act was generally regarded as capable of depriving the future generations of opportunity to acquire land¹⁰

Communal land is a land belonging to the community, village or family and never to an individual and does not attach itself to a title.¹¹ Basically, the strongest aspect in communal land is the family. The concept of communal land ownership breaks down gradually into holdings by lesser units, the family and the individual. Customary ownership by itself is a generalization of the tenural process which introduces administrative control that may not extend to every bit and piece of land in the area where the community is based¹². The community itself may be a tribe, town, village or even an extended family so long as they form a district

⁹ Arua E. O. (1997) "Multidimensional Analysis of Land Tenure Systems in Eastern Nigeria, Land Reform Bulletin 2.

¹⁰ Bardi M. C. (1998) "Geographic Information Systems as a Tool for Successful Implementation of Land Use Decree: The Quantity Surveyor, 29 (1) : 17 -22

¹¹ *Gonimi & Others v. Makintami* (2020) LPELR 51463 (CA) & *Ogunleye v. Oni* (1990) LPELR - 2342 (SC)

¹² Coker G. A. B Family Property among the Yorubas (Modern Law Review, London, 1967) 179. See also Ijaiya B. L. et al (2020) "A critical Analysis of the Allotment and Partition of Family Property under the Customary Law in Nigeria: In Contemporary Issues in Public, Human Rights and Islamic Law, Lydia A. Nkasah et al (Eds) pp 117-136, published by Grosvenor House Publishing Limited, Surrey, United Kingdom, Available at www.grosvenorhouseprinting.co.uk

social and political entity and are a common legal source¹³. The imminent theory of the inalienability of land in our indigenous societies has resulted in the formulation of the legal principle that the title to family or communal land is vested in the community as a whole¹⁴

Land belongs to all members of the community or village where everyone has a right. The head chief holds all land in trust for the community or the people. He gives portion of the land to a deserving member of the community who asks for it. In a loose sense, he is called the owner as he has control over the whole land¹⁵

It is also the law that when communal ownership of land is established or known to exist, it must be presumed to remain the customary practice of the community particularly throughout the coast of West Africa until the contrary is proved in the context or circumstances in which an individual successfully claims and proves ownership of a particular portion of the land¹⁶

Family land ownership on the other hand is a lesser form of communal ownership but it carries with it all the implications that go with the incidence of communal ownership. Family ownership of land is a property owned by the family collectively¹⁷. Family ownership of land denotes the unity in the enjoyment of group property by all members of a given family¹⁸. Borrowing from the English law concept of joint tenancies, family ownership of property exists where land is held by two or more members of the same family without any right of individual members to separate and distinct shares. Each members of the family is possessed of the property in every part and in the whole possession of the property is based on the four unities namely, unity of possession; unity of interest; unity of time; and unity of title¹⁹

¹³ Ibid

¹⁴ *Alli v. Ikusebiala* (1985) LPELR – 428 (SC)

¹⁵ *Oyewumi & A nother v. Ogunesan* (1990) LPELR – 2880 (SC)

¹⁶ *Lebile v. The Registered Trustees of Cherubin and Seraphim Church of Zion of Nigeria* (2003) LPELR- 1774 (SC)

¹⁷ Teslim. O. E *The Nature of African Customary Law* (Sweet and Maxwell, London, 1956) 173. See also, See also Ijaiya B. L. et al (2020) (See note 13 above)

¹⁸ Ibid

¹⁹ Coker G. A. B (See note 13 above)

There have been judicial attempt to define family property in the case of *Coker v. Coker*²⁰, Justice Carey defines family property as

A residence which the father of the family sets apart for his wives and children to occupy jointly after his deceased. All his children are entitled to reside there with their mothers and his married sons with their wives and children. No one has any changeable or alienable interest in the family house. It is only with the consent of all those entitled to reside in the family house that it can be mortgaged or sold

2. 0.1 CREATION OF FAMILY PROPERTY

The concept of family property is original to the Nigerian indigenous society and it is the bedrock of the Nigerian law of inheritance. It is regarded correctly as the corner stone of the indigenous land law. Judicial decisions are replete in the circumstances of the creation of family property. The most common circumstance is death intestate of a land owner, whose estate is governed by customary law. Such land devolves to his heirs in perpetuity as family land.²¹ Family land can be created by a conveyance inter vivos, where land is purchased with money belonging to the family²². Family land can also be created by the use of the appropriate expression in the Will of the owner of such land²³. For land to qualify as family land, the party who so claims must not only identify the origin of the property but also its status²⁴

Thus, where a father dies intestate with his children surviving him under such a situation, family land holding is created under customary law. It would have been expected that where there is a lone survival, he is entitled to inherit intestate as an individual owner free from the trouble of inheriting family land. However, the Supreme Court in *Ogundiro v.*

²⁰ (1969) OK

²¹ *Olowosago & Others v. Adebayo & Others* (1988) 2601 (SC) ; MTN Nigeria Communications Ltd v. Emegano (2016) LPELR - 41090 (CA). See also, See also *Ijaiya B. L. et al* (2020) (See note 13 above)

²² *Nelson v. Nelson* (1913) 13 NLR, 248

²³ *Re Edward Forster* (1938) NLR 83; *George v. Fajore* (1939) 15 NLR, 1 and *Shaw v. Kehinde* (1947) 18 NLR, 129

²⁴ *Gaji & Others v. Paye* (2003) LPELR - 1300 (SC). See also, See also *Ijaiya B. L. et al* (2020) (See note 13 above)

Abeje²⁵ held by way of blanket statement that customary law does not recognize a member alienable interest in the family property which in effect seizes to dictate that a lone survival could inherit property as a family property. This decision of the Supreme Court with due respect when read side by side with the recent decisions of the Court of Appeal²⁶ tend to give credence to the fact that a single individual cannot constitute a group

2. 0. 2. MANAGEMENT AND CONTROL OF FAMILY PROPERTY

The Chief or head of the family are vested with power of management and control over the land. The head of the family has a wide power of management over all land coming within the ownership of the family. Coker²⁷ stated that

He the head of the family is the right person to receive and accept on behalf of the family either in respect of the family property acquired or sold, or let or any other property that may be distributed as the common property of the family

In addition, the head of the family is responsible for conducting all litigations in respect of the family property for the conditional and unconditional allotment of family land to both members and non-members alike. He is also to ensure the enforcement of forfeiture and eviction. He also has a reserved right to be consulted in all transactions with regards to family property.

As a general rule, the management of family property is put in charge of the family head and he acts as a trustee of such²⁸. He should exercise his

²⁵(1984) LPELR - 3421 (SC)

²⁶Chukwu v. Okoh (2016) LPELR - 42117 (CA); Nwanonye v. Ananti (2017) LPELR - 1952 (CA); Ugwu v. Ezeanowai (2017) LPELR - 42754 (CA) and Okwusogu v. Okadigbo (2017) LPELR - 42751 (CA) . See also, See also Ijaiya B. L. et al (2020) (See note 13 above)

²⁷ (See note 13 above) 173

²⁸Amodu Tijani v. Secretary Southern Nigeria (1921) A C. 399; Sunmonu v. Raphael (1927) A C 881 @ 884; Bassey v. COBHAM (1924) 5 NLR 90; Archibong v.

powers not for his own private advantage but for the benefit of the family and he does not enjoy absolute power in the management of family land per se. He is required to consult the other members of the family and in the case of important decisions such as sale of family land; he must obtain the consent of the principal members of the family. As the head of the family, he cannot transfer family land as his own exclusive personal property; any transfer of the family property by him without carrying along the principal members is void ab initio²⁹

3. 0. ALLOTMENT AND PARTITION OF FAMILY PROPERTY

Allotment of family property is made by the head of the family to both members and non-members of the family. The consent of the principal members of the family is required to grant allotment to non-members of the family³⁰. Also, an allotment to either a member of the family or to a non –member of the family however long does not confer ownership on the allottee³¹. It is also important to state that, allotment and partition are both family affairs and a court cannot make an order declaring a property a joint property and consequently make an order for sharing same by a stroke of the pen³² it is also important to note that an allottee of family land has no right to pass absolute title to a stranger by whatever form of alienation.³³

On the other hand, partition of family property is the permanent division of family property amongst the constituent branches of the family. The property may be, but is not invariably divided among individual members of the family so as to vest absolute ownership in individual members. Where the division is among constituent branches of the family, a new family ownership is created in as many places as the property is divided, each branch becoming owner of the portion partitioned to it.³⁴ Just like partition puts an end to family property,

Archibong (1947) 18 NLR 117. See also, See also Ijaiya B. L. et al (2020) (See note 13 above)

²⁹Achilihu & Other s v. Anyatonwu (2013) LPELR - 20622 (SC)

³⁰Odekilekun v. Hassan & Another (1997) LPELR 22065 (SC)

³¹Agbomeji v. Bakare & Others (1998) LPELR - 244 (SC) . See also, See also Ijaiya B. L. et al (2020) (See note 13 above)

³²Osuji V. Ekeocha (2009) LPELR - 2816 (SC)

³³Ugwu & Others v. Ezeanwoi & Others (2017) LPELR - 42754 (CA)

³⁴Olorunfemi v. Asho (2000) FWLR (Pt. 20) 654 . See also, See also Ijaiya B. L. et al (2020) (See note 13 above)

communal land also seizes to be so called communal land once it is portioned. Thus, property belonging to a community upon partition is split into ownership of the constituent members or families of the community as to vest absolute ownership in the individual families. The oral partitioning of communal land is valid under customary law. The onus is on the person claiming that land has ceased to be communal property to prove such a claim³⁵

Allotment is different from partition. Allotment occurs when a member of a family is granted or allotted a portion of family property for occupational use in the sense that the allottee does not become an absolute owner of the portion allotted to him no matter the period of use³⁶. In other words, allotment unlike partition does not determine the family ownership of land so as to make the allottee an absolute owner. Allotment can be made effected by the head of the family alone. Partition on the other hand, is brought about by the consensus of all members of the family. A partition which does not make provision for all members of the constituent branches of the family is void³⁷

It is important to state that partition of family property needs not under deed. It is enough if partition is created orally. What is important is that there must be the consent of the head of the family and some principal members of the family as well as other joint owners of the family property.³⁸

Equally for a partition to be valid under customary law, there are a number of factors to be considered. Thus, the Court of Appeal in *Sogbamu & Others v. Odunaiya & Others*³⁹ as per Ogunwumiju JCA stated that

There are a number of factors to be considered in deciding whether family property has been partitioned or not. What

³⁵ *Ukwu & Others v. Iludoba* (2016) LPELR – 41517 (CA)

³⁶ *Owoade & Another v. Omitola & Others* (1988) LPELR – 2850 (SC) ; *Agbomeji v. Bakare & Others* (1998) LPELR -244 (SC) and *Ugwu & Others v. Ezeanpwai & Others* (2017) LPELR - 41888 (CA)

³⁷ *Meya v. Oshuntokun* (2001) FWLR (Pt. 81) 1777

³⁸ *Chukwuma v. Chukwuma* (2009) LPELR – 1907 (CA)

³⁹ (2012) LPELR- 9272 (CA)

is apparent from this line of cases is that partitioning of family property must be made with the consent of all members of the family and for the benefit of all the members. It follows then that partitioning by the head of the family or some other member of the family without the consent of those entitled to inherit is void ab initio. It is only when the partition of family property is with the consent of all members of the family that such partition confers upon each member an absolute right to his partitioned share. The old authorities say that the family head may use the *idi-igi* or the *ori ojori* method to effect the partitioning. The method used by the family head is binding on the other members of the family, in addition to this, for a Court to hold that there was a valid partitioning where the power to partition an estate derives from letters of administration, the partitioning must accord with the provisions of the letters of administration

Where members of the family fail to agree on partition, an application can be made to Court for an order to effect partition. Thus, in *Ricardo v. Abal*⁴⁰, both the plaintiff and the defendant had effected a partition by agreement but could not agree between themselves as to who should own the first choice of the property after the division. The Court held that the eldest child should have priority of choice irrespective of sex.

It is important to note that, it is the law that to avoid disputes within the family after the demise of the owner of the property, it is an acceptable incident or feature of native law and custom to partition the property among the legitimate beneficiaries and this can be done orally or in writing.⁴¹ Partition of family property is not as a matter of course. A party who wants family property partitioned must give cogent reason to the court. In *Lopez v. Lopez*⁴², the plaintiff sought a partition of family land, which partition the defendant resisted. The parties were all children or grandchildren of the common ancestor from whom their family title were derived. The full court refused to decree partition because the appellants did not disclose good grounds for the order of partition they seek. The

⁴⁰ (1926) 7 NLR 58 . See also, See also *Ijaiya B. L. et al* (2020) (See note 13 above)

⁴¹ *Ugwu & Others v. Ezeanpwai & Others* (2017) LPELR - 41888 (CA)

⁴² (1924) 5 NLR 50 . See also, See also *Ijaiya B. L. et al* (2020) (See note 13 above)

court will decree a partition if there was such a friction in the family that it was no longer possible to maintain the coherence of the family structure.

In another case of *Ajobi v. Oloko*⁴³, the court ordered partition because the plaintiffs were not allowed to participate in the occupation of family property. Also, in *Miller v. Ilukwe*⁴⁴, the Court ordered partition of the properties concerned because the defendant took over the collection of the rents of three properties and refused to give account. Alternatively, the court may order a sale of family property if it would be more beneficial to the parties. Thus, in *Ajibabi v. Jura*⁴⁵, the court ordered the sale of two rooms because the object of preserving them as family property could not be achieved. The courts are however loath to interfere with a decision of the family with regards to the method of partition of family property. In *Dawodu v. Danmole*⁴⁶, where there was a dispute about whether the per stripes method of distribution or the per capital method should be employed in the distribution of family property, the Privy Council, affirmed the decision of the lower court that the decision of the family head who had employed the per stripes method was final

4. 0. ALLOTMENT AND PARTITION OF LAND VIS -À-VIS POVERTY REDUCTION

Poverty remains widespread within Nigeria. This is no longer a controversial subject. What is controversial is the choice of appropriate strategies for poverty reduction. The major suggestions are that the strategies must be multidimensional and for all the strategies recommended to work, the society needs to be committed, disciplined and consistent with all the ideals that ensure poverty reduction. This is because poverty reduction cannot come by accident but through conscious and concerted efforts. Since poverty is largely a social problem rather than individual dispositional, society has to address it critically, severally and simultaneously at all fronts. It is in recognition of this that allotment of communal land by the community and family heads respectively as well as partitioning of family land becomes a potent strategy to alleviate poverty. It is envisaged that where a member

⁴³ (1956) LLR 105 . See also, See also Ijaiya B. L. et al (2020) (See note 13 above)

⁴⁴ 1986) 11 CA 293 . See also, See also Ijaiya B. L. et al (2020) (See note 13 above)

⁴⁵ (1948) 19 NLR 27 . See also, See also Ijaiya B. L. et al (2020) (See note 13 above)

⁴⁶ (1958) 3 FSC 46 . See also, See also Ijaiya B. L. et al (2020) (See note 13 above)

of a community is allotted a land to farm or plant crop will reduce poverty to a minimal particularly within the nuclear family of the allottee. Importantly, partition on the other hand which vests absolute ownership of the land on the allottee vests right in the allottee to dispose of the land as he so wishes for money

Under individual tenure in the ancient times, land was available to the individual owner for agricultural purposes, but may be also given out to others on a rental basis, especially for cultivation. In many rural areas in Nigeria, outright purchase of such land was difficult; in a few, it was even prohibited by the lineage or clan. Land may be pledge able but was inalienable. Private individuals as well as institutions exercise ownership rights according to customary and statutory land tenure. Individuals become entitled to parts of family land by virtue of birth into a family or clan. They can also enjoy absolute rights of ownership on the basis of being the first to clear and occupy a plot of land. Under statutory law, any individual or registered group can own land.

Allotment of communal land is administered by the communal head. While the family head allots family land to members of the family and outside alike which land becomes inalienable. Empowering community member or family member through allotment and partition of land to farm on or carry on any human activities thereon is a good strategic to reduce poverty in the society. Many people are facing difficulty to access to land despite the will and strength to embark in farming and other agricultural activities.

5. 0. CONCLUSION AND RECOMMENDATION

From the foregoing, it is crystal clear that where allotment are administered by the communal land by the community and family head, an allottee could use the land in a manner that will be beneficial to him and his family, such an allottee could engage in small scale farming or large scale farming, and more particularly the construction of fish ponds which has not taken a dramatic turn in areas where people concentrate on recently to boost their income. No doubt, the standard of living is improved where such land allotted is effectively used. Proceeds gotten from the farm could be used to cater for himself and the family. On the other hand, a partition land extinguishes communal and family property. The partition of land gives absolute right to the person to whom land is

partitioned to dispose of the land partitioned to him in a manner he so desires. A person to whom land is partitioned could freely alienate same by way of sale, conveyance and any other means through which consideration is furnished in turned to lift out such a person from the poverty line To achieve this feat the following is hereby recommended

Community and family heads are commended to embark in the devolution of the power and management of the Communal and family land to allowing for effective accessibility to land by members of the society for effective use of same either for farming, fishing and any other human activities that will be profitable

More importantly, there should be an amendment to the Land Use Act to give more recognition to individual ownership of land which has been overshadowed by the communal and family land tenure ownership