

A COMPARATIVE STUDY OF ALIENATION OF  
FAMILY PROPERTY

**IN NORTHERN NIGERIA AND NORTHERN CAMEROON**

**BY**

**KUTNJEM AMADOU MONKAREE**

**JUNE, 1997.**

A COMPARATIVE STUDY OF ALIENATION OF FAMILY PROPERTY  
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**BY**

KUTNJEM AMADOU MONKAREE

A THESIS SUBMITTED TO THE POSTGRADUATE SCHOOL OF AHMADU BELLO  
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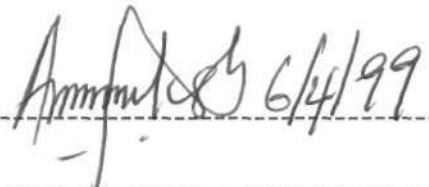
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I, **KUTNJEM AMADOU MONKAREE**, do hereby declare that this thesis, has been written by me and that it is a record of my own research work. No part of this thesis has been presented or published anywhere, at anytime by anybody, institution or organization or for the award of any academic degree. All quotations and references have been acknowledge accordingly.

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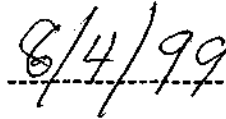
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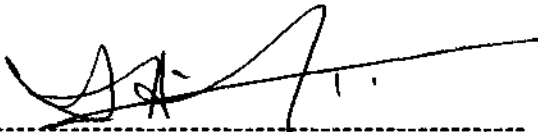
This thesis entitled, **A COMPARATIVE STUDY OF ALIENATION OF FAMILY PROPERTY IN NORTHERN NIGERIA AND NORTHERN CAMEROON**, meets the regulations governing the award of Doctor of Philosophy (Ph.D) in Law of Ahmadu Bello University Zaria and is approved for its contribution to knowledge and literary presentation.



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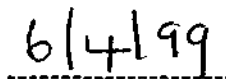
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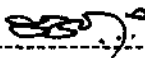
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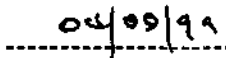
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## **DEDICATION**

This thesis is dedicated to my late senior brother, Alhaji Nsangou Manma whose desire to see this work realized, was prematurely, ended by the Almighty God. It is also dedicated to my darling wife Fatima and my dear son Kamarl and to all those to whom, knowledge is a first ambition in life.

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## **ABSTRACT**

The institution of family property is a popular form of land-holding under customary laws of Northern Nigeria and Northern Cameroon. In the past, land was in abundance but population was scanty and there was no law governing the use of land as well. Land as a commodity was therefore, free for all and sundry. Alienation of land by sale, as well as demarcation of boundaries and the like were not known.

The most popular and common form of the early land holding in Northern Nigeria and Northern Cameroon seemed to have been in the form of communal ownership and the management were vested in the Emirs, the Lamidoes the Sultans and the Chiefs. The main uses to which land was put, were buildings, farming, hunting, fishing and grazing, especially, with respect to Nomadic Fulanis and the Fulbes of Northern Nigeria and Northern Cameroon respectively. Human population and economic activities were undertaken at the level of subsistence, and therefore communal land holding would seem to have suited the people.

However, with rapid growth in population, as well as allotment of communal land to families and the need for more security in the ownership of land, there was gradual transformation of communal land into family holding. This work is aimed at examining on a comparative basis the alienation of family property (especially land) in Northern Nigeria and Northern Cameroon, which from time immemorial has been a subject of conflicts and the eventual disintegration of family institutions. Although the rules relating the alienation of family property seem to have been fairly settled, today the research shall seek to identify some of the problems of alienation of family

property not yet identified by the few available works and other problems which have recently cropped up due to increase in industrialization and commercialization, with a view to suggesting lasting solutions. This thesis also aims at bringing something together in a documentary form, which was not in existence before. That is, the Alienation of Family Property in Northern Nigeria and Northern Cameroon. It is also the objective of the work to examine how the rules of alienation of family property have developed over the years and the effect that foreign cultures have had on the Laws of family land holding.

The work starts with an introductory chapter which discusses the objectives of the thesis, its scope, the method by which the research shall be conducted and the organizational layout of the thesis.

Chapter two discusses the evolution of property law in Northern Nigeria and Northern Cameroon. In this chapter property has been defined. The customary property law of Northern Nigeria and Northern Cameroon is also discussed. And under it, land tenure under non-Muslim Law, as well as land tenure under Islamic Law is examined. Furthermore, the statutory property laws of Northern Nigeria and Northern Cameroon are discussed also.

Chapter three examines the nature of family property in Northern Nigeria and Northern Cameroon. And under it, the definition of family, extended family, family property, the modes of acquisition of family property, the management of family property and finally, the responsibilities of the family head are also discussed.

Chapter four deals with forms of alienation generally. Here, alienation itself is

defined and the various manner with which property is alienated in Northern Nigeria and Northern Cameroon discussed as well.

Chapter five examines the methods of alienation of family property in Northern Nigeria and Northern Cameroon. In this chapter the procedure for alienation is considered, under which, you have the consensus or the general method, and alienation by order of the court. Defective alienation, as well as the difference between void and voidable alienation are equally considered in this chapter.

Finally, Chapter six contains the summary and recommendations for reforms in family land tenure in Northern Nigeria and Northern Cameroon.

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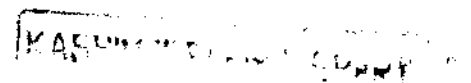
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Federal Workmen Compensation Act 1958

High Court Law (Eastern Nigeria) 1963

High Court Law of Lagos State, Cap. 52 S. 26 (1)

High Court Law (Mid-Western Nigeria) No. 9 of 1964 S. 13 (1)

High Court Law of Northern Nigeria, Cap. 40 1963 S. 34(1)

High Court Law (Western Region of Nigeria) Cap. 44 1959, S. 12

Interpretation Act, Cap 192, Laws of The Federation of Nigeria, 1990

Land Tenure Law 1962 of Northern Nigeria S. 20, S. 5

Land Use Act 1978 Cap. 202, Laws of the Federation of Nigeria, 1990, S. 24, S.

24(a), S. 24(b), S. 1, S. 50, S. 51

Native Courts Law of Northern Nigeria 1956 S. 2

Property and Conveyancing Law, Cap. 100, Laws of Western Region of Nigeria,  
1959.

The Constitution of the Federal Republic of Nigeria 1979, S. 276 (1), S. 37(1), S.6,  
S. 236

The Evidence Act of the Federal Republic of Nigeria Cap 62 Laws of the Federation  
of Nigeria, 1990 S. 14(2), S. 56.

The Worksmen Compensation Decree 1987

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## CAMEROONIAN STATUTES

Customary Courts Ordinance, Cap 142 of 1948 S. 18(1) (a)

Republic of Cameroon Law of 22nd May 1924

Republic of Cameroon, Circular No. 28 of 1966 Article 7, Article 11

Republic of Cameroon, Ordinance No. 44/1 of 6th July 1974, S.1, S.2, s.9

Republic of Cameroon, Decree No. 64 of January 30th 1964, Article 1, Article 2.

Republic of Cameroon Decree of July 7th 1966

Republic of Cameroon, Decree of 1963, Article 14

Republic of Cameroon Law No. 59/47 of June 17 1959

Republic of Cameroon, Judicial Organization Ordinance of 1972, S. 14

Republic of Cameroon, Ordinance No. 74/1,2 & 3 of 6th July, Article 14, S. 10, S. 2(2), S. 12(1), S. 11(1)(2), Article 1, Article 16, S.9, Article 5.

Southern Cameroons High Court Law 1955 S. 27(1) S. 55

The Civil Code of The Republic of Cameroon Article 731

The Constitution of The Republic of Cameroon 972, S. 27(1)

## OTHERS

British Cameroons (Administration) Ordinance N. 3 of 1924

Crown Lands Proclamation, 1902

Land and Native Rights Ordinance No. 10 of 1916, S.4

Land and Native Right Proclamation No. 9 of 1910

Land Proclamation No. 123 of 1902

Land Proclamation No. 14 of 1902

Land and Native Rights Ordinance No. 10 of 1916 S. 4, S.5

Mandate Agreement of 1922, Article 9

Proclamation No. 8 1900

### **ABBREVIATIONS**

#### **A. NIGERIAN AND OTHER AFRICAN LAW REPORTS**

A. L. R.	African Law Reports
A . N L. R.	All Nigeria Law Reports
CCHCJ	Certificate Copies of High Court Judgements
E. R. N. L. R.	Eastern Region of Nigeria Law Reports
FRCLR	Federal Revenue Court Law Reports
FSC	Selected Judgements of the Federal Supreme Court
GLR	Ghana Law Reports
LLR	Lagos Law Reports
LRN	Law Reports of Nigeria
NLR	Nigeria Law Reports
NMLR	Nigeria Monthly Law Reports
NNLR	Northern Nigeria Law Reports
NRNLR	Northern Region of Nigeria Law Reports
NSC	Nigeria supreme Court Cases
NWLR	Nigerian Weekly Law Reports
S.C	Judgements of the Supreme Court
SCNJ	Supreme Court of Nigeria Judgements

SCNLR	Law Reports of the Supreme Court of Nigeria
UGLR	University of Ghana Law Reports
UILR	University of Ife Law Reports
WACA	Selected Judgements of the West African Court of Appeal
WNLR	Western Nigeria Law Reports
WRNLR	Western Region of Nigeria Law Reports

**B      UNITED      KINGDOM      LAW      REPORTS**

A.C	Appeal Cases
ALL E.R	All England Reports
App. Cas.	Law Reports, Appeal Cases
Ch. D.	Law Reports, Chancery Division
E.R.	English Reports
K.B.	Law Reports, King's Bench
L.J. Ch.	Law Journal, Chancery Reports
L.R. Exch.	Law Reports, Exchequer
L.T.	Law Times Reports
P.C.	Judgements of the Privy Council
Q.B.	Law Reports, Queen's Bench
T.L.R.	Times Law Reports
W.L.R.	Weekly Law Reports.

## CHAPTER ONE

### GENERAL INTRODUCTION

#### 1.1 INTRODUCTION

This thesis is a Comparative study of Alienation of Family property in Northern Nigeria and Northern Cameroon. It seeks to examine on a Comparative basis, the acquisition, management and devolution of family property especially land, which has **from time immemorial been a subject of conflicts and break down of family institutions in Northern Nigeria and Northern Cameroon.**

The institution of family property is a popular form of land holding under customary laws of Northern Nigeria and Northern Cameroon. In the past, land was in abundance but population was scanty and there was no law governing the use of land as well <sup>1</sup> Land as a commodity was therefore, free for all <sup>2</sup> and sundry. Alienation of land by sale, as well as demarcation of boundaries and the like were not known.

The most popular and common form of the early land holding in Northern Nigeria and Northern Cameroon seemed to have been in the form of Communal ownership and the management were vested in the Emirs, the Lamidos the Sultans and the Chiefs. The main uses to which land was put, were buildings, farming, hunting, fishing and grazing, especially with respect to nomadic Fulanis and the Fulbes of Northern Nigeria and Northern Cameroon respectively. The human population and economic activities were undertaken at the level of subsistence, and therefore communal land holding would seem to have suited the people. <sup>3</sup>

However, with rapid growth in population as well as, allotment <sup>4</sup> of Communal land to families and the need for more securities in the ownership of land, there was gradual transformation of communal land into family holding. Other factors which gave rise to this

change were increased in the demand of land for agricultural and grazing purposes, the introduction of cash economy, the need for influence and the security of the territorial sovereignty of the Emirs' jurisdictions, as well as the need for demarcation to avoid disputes arising from encroachment with others' lands.

It was erroneously thought that the institution of family property had been abolished on the promulgation of the Land Use Act in 1978.<sup>5</sup> This was due to the assertions that the customary system of land holding (of which family property ownership is a part), had been abolished.<sup>6</sup> It is submitted that these assertions are not true. Although the Land Use Act of 1978 might have abolished some aspects of customary law, such as, ownership, it did not abolish all aspects of customary land law. For instance, customary right of occupancy is defined as:- "The right of a person or community lawfully using or occupying land in accordance with customary law..."<sup>7</sup> The implication of this is that communal and family land holding under customary law still exists.

In Cameroon like in Nigeria, Customary law (of which family land holding is an important aspect) was and is still an important branch of property law. Section 27(1) of the Southern Cameroon's High Court Law, 1955 provides that,

"The High Court shall observe and enforce the observance of, every native law and Custom<sup>8</sup> which is not repugnant to natural justice, equity and good conscience, nor incompatible either directly or by implication with any law for the time being in force, and nothing in this law shall deprive any person of the benefit of any such native law and custom."<sup>9</sup>

The implication of the above passage is that despite numerous statutory provisions on property law since the harmonization process in 1974 customary land holding is still recognized as one of the essential aspects of property law of Northern Cameroon.

It should be noted that islamic property law which was introduced in Northern Cameroon via Northern Nigeria by Sheikh Uthman Danfodio, is considered as part of Native Law and Custom, and therefore shall be treated as such. Islamic Law has been viewed and treated merely as a specie of "Native Law and Custom." Two reasons have probably accounted for this thinking. First, by the time the European Colonizers subjugated the Northern part of Cameroon, Islam and its laws already existed and had a very strong foothold there. Secondly some colonial jurists held the uninformed view that Islamic Law is not really different from native law and custom, for the reason went, "Sunna" is partly founded on the old pre-Islamic Customs, artificially attached to the conduct and the teachings of the Prophet. <sup>10</sup>

The truth however is that Islamic law differs fundamentally from customary law. Islamic law is a body of rules which gives practical expressions to the religious faith and aspirations of the Muslim covering land tenure law as well. The fundamental tenet of Islam is total and unqualified submission to the will of Allah which is defined by Islamic Law in terms of Comprehensive Code of behaviour covering all aspects of life (of which family land holding is not an exception).

It is submitted that Islamic property law is intimately related to Islamic religion and politics, which were all brought from Arabia. They are no less products of Colonization", than English or french laws in Cameroon. All of them are extraneous legal systems and have drastically affected each in its own way, and as such Islamic property law ought to be treated

as part of the laws of Northern Nigeria and Northern Cameroon. But since the rules relating to alienation of family property in Northern Nigeria and Northern Cameroon are fairly settled, we shall consider Islamic Law as part of the customary laws of Northern Nigeria and Northern Cameroon.

**It should be noted that this introductory chapter also discusses the objective and scope of the thesis as well as its organizational layout. Northern Nigeria and Northern Cameroon have been chosen for this study firstly, to limit the scope of the study, and secondly because these two systems present ideal circumstances for the realization of the comparative study envisaged by this research.**

The militating circumstances for the purpose of the studies can be stated as follows:

Firstly, after the defeat of the Germans in Cameroon by the combined British and French forces in the First world war, Cameroon was divided between these two forces (Britain and France) in 1919, under the auspices of the defunct League of Nations. By the British Cameroon (Administration) Ordinance, No.3 of 1924, Northern Cameroon was administered as though it formed an integral part of part of Northern Nigeria and the bulk of the Northern Nigerian Colonial Law (of which property Law was part) was applied to this territory.

Secondly, the "Jihad" or Holy Wars embarked upon by Sheik Uthman Dan Fodio in the early 19th Century, in Northern Nigeria, which also extended to Northern Cameroon, influenced the culture of the people of Northern Cameroon that both have much in common that may justify calling them a "Community" as generally understood in Social Sciences.

Thirdly, and most importantly is that since Northern Cameroon was later colonized and administered by the French with a different legal system and cultural background, this offers a good reason for the comparative study.

## **1.2 OBJECTIVE OF THE THESIS**

This thesis seeks to examine on a comparative basis, the disposition of family property (especially land) in Northern Nigeria and Northern Cameroon, which has from time immemorial been a subject of conflicts and the eventual disintegration of family institution. Although the rules relating to the alienation of family property seem to

have been fairly settled, the research shall seek to identify some of the problems of alienation of family property not yet identified by the few available works and other problems which have recently cropped up due to increase in industrialization and commercialization, with a view to suggesting lasting solutions. And most importantly, the research is aimed at bringing together a work that has never existed before that is, a work on alienation of family property in Northern Nigeria and Northern Cameroon.

Before now, there was no law governing land holdings in the olden days. With time, Customary law was eventually formulated, which vested title to land in the family as a whole, while the day to day administration was vested in the family head. Although the law required the family head to consult the family on important matters affecting the land as in Fako v. Fako,<sup>11</sup> he was however empowered to take routine decisions alone.

In Northern Nigeria and Northern Cameroon, the concept of family property management was so controversial that the true position was not known for quite a long time. The uncertainty in the rules of alienation of family property resulted into a lot of unscrupulousness on the part of the so-called family heads who in turn managed family property not as "trustees", but rather for their own personal aggrandisements. Whereas some family heads asserted that they alone could alienate family property,<sup>12</sup> others went as far as saying that they could even do so against the wishes of the family members.<sup>13</sup> Some even claimed that they were not accountable to the family members for their dealings with family property.<sup>14</sup>

On the other hand, family members argued vigorously that family heads had no such powers and could not consequently and for any reason whatsoever arrogate upon themselves powers which the customary land law did not provide for. They contended that every alienation

of family property required the consent of every member of the family,<sup>15</sup> and secondly that the family head was accountable to the family for his dealings over family land.<sup>16</sup>

However, as time went on, the rules became very glaring from decided cases and over the years, most of them have been properly crystallized.<sup>17</sup> The modern view is that the alienation of family property requires the consent of the family head as well as, that of all the principal members of the family.<sup>18</sup> Secondly, any alienation done by the family council is equally valid.<sup>19</sup> Thirdly, alienation by the family head without the consent of the principal members is voidable,<sup>20</sup> while alienation by the principal members without the consent of the family head is void ab initio.<sup>21</sup>

Although, it seems from the above that the law on alienation of family property in Northern Nigeria and Northern Cameroon seems to have been fairly settled, the law itself is dynamic and not static. Society changes everyday and so also is the law to suit the changing circumstances. The impact of Western civilization on the customary laws of Northern Nigerian and Northern Cameroon is being felt every blessed day and as such, the rigor of the customary land holding (of which family land holding is part) is bound to be affected. If this is so, then, it is again the objective of the thesis to examine how the rules of alienation of family property have developed over the years and the effect that foreign cultures have had on the laws of family land holding.

### **1.3 SCOPE OF THE THESIS**

Geographically, the thesis will cover what is known today as Northern Nigeria and Northern Cameroon. Although there are many ethnic and tribal groups in these areas, the composite groups have much in common that they may justify calling them a "Community" as generally understood in social sciences.

What is known today as Northern Nigeria, is made up of Nineteen States excluding the Federal Capital Territory of Abuja. These states are; Sokoto, Katsina, Jigawa, Yobe, Borno, Kano, Kaduna, Bauchi, Adamawa, Niger, Plateau, Taraba, Benue, Kogi, Kwara, Nasarawa, Gombe, Zanzara and Kebbi.<sup>22</sup> Northern Nigerian is bounded to the North by Niger Republic, to the east by the Republic of Benin, to the South by the Southern States of Nigeria and to the East by the Republic of Cameroon.

The official language of the people of this area is English. Even though there are very many ethnic groups in this area, there is justification for taking them as a group for the purpose of studying and comparing their mode of alienation of family property with that of Northern Cameroon. More than sixty per cent of the people of Northern Nigeria speak Hausa amongst whom about forty per cent speak it as their mother tongue.<sup>23</sup> Northern Nigeria has an area of over 300,570 square miles, that is, approximately 3/4 of the whole country, with a population of approximately 47, 261, 962 including the Federal Capital Territory of Abuja.<sup>24</sup> About 65% of the above population are Muslims, 30% are Christians and 5% others. Islam, which is the dominant religion of the people of this area has greatly influenced the land tenure law of the people of this area, even though the land tenure law of the non moslem people of this area has not materially shakened very much by "foreign elements" such as Islam and Westernization.

On the other hand, what is known today as Northern Cameroon, is made up of three provinces namely; Extreme North, North and Adamawa. For purposes of this study, Fouban shall be considered as part of Northern Cameroon because, the people have the same culture, as they speak Fulfulde and Hausa beside their own tongue and practice Islam as their dominant religion. The official language of the people of Northern Cameroon is French. About 80% speak Fulfulde as their mother tongue and about 40% of the 80% who speak Fulfulde, also speak Hausa because the inhabitants of this area are a mixture of Fulani, Hausa, and other ethnic groups. It should be noted that like in Northern Nigeria there are very many ethnic groups in Northern Cameroon but their cultures are very much alike and therefore, justifies them to be considered a community for the purpose of this study. The main occupations of the people of this area like in Northern Nigeria is farming, cattle rearing and carving, and their predominant religion is Islam although christianity is also practiced. The population of Northern Cameroon is about 3,183,045.<sup>25</sup>

Northern Cameroon is bounded to the North by Nigeria and Lake Chad, to the East by Chad and Central African Republic and to the South by the provinces of North West, West and Central and East.

As earlier mentioned, because of the cultural affinity between Northern Nigeria and Northern Cameroon, and because of the colonial administrative control which Northern Nigeria had over Northern Cameroon there is a lot of similarity in the family land holding of Northern Nigeria and Northern Cameroon.

Historically and legally, the research shall cover the laws of alienation of family property before, during and after colonization up to the present day. The legal

coverage of this thesis is centered around the inherent problems of alienation of family property (particularly land). As it was said earlier in the chapter alienation is the most controversial and problematic aspect of family property management. Finally, as a prelude to a better understanding of the various phenomena which exist in the laws of alienation of family property in Northern Nigeria and Northern Cameroon, a historical evolution of the property laws of the above two areas shall be discussed.

#### 1.4 RESEARCH METHODOLOGY

This thesis will review the existing rules on the alienation of family property in Northern Nigeria and Northern Cameroon. With respect to Nigeria, this is certainly not the first work on the subject, <sup>26</sup> and may not prove better than the existing ones either. As the rules on alienation of family property in Northern Nigeria are virtually settled, an extensive tour to ascertain them will not be necessary and therefore may not be undertaken. However, some field work shall be done to ascertain whether or not the situation is the same in the Cameroon.

With respect to Northern Cameroon, this is certainly the first work on the subject. The only recorded rules on alienation of family property in Northern Cameroon is Islamic Law, but this is religious, divinely acclaimed and, therefore, non-indigenous. Although the rules of alienation of family property in Northern Cameroon seems not to have been properly settled because of lack of proper custody and judicial documentation, the culture and traditions of the people of this area are similar to those of the people of Northern Nigeria and therefore, the rules of the customary land holding may be deemed to have been virtually settled as well. Nevertheless, a tour of most of the Northern Cameroon shall be carried out to ensure certainty in the rules of family land holding.

Another method to be adopted in this thesis will be firstly, to discuss in detail and examine rules and decided cases on the subject matter as are available in the libraries. Originality shall therefore lie in the appraisal of the existing rules, identifications of defects in the rules and suggestions for reforms.

An acute problem to be faced by the author is that of authorities, especially decided cases, which are very few. The reason are that a greater part of Northern Nigeria, particularly, the

Hausa Fulani community are very unlitigious people. They hate court processes and therefore very few cases go to court. Secondly, the availability of land among this community might have contributed to the lack of litigation.<sup>27</sup>

Although the research does not cover Southern Nigeria, the unique and strong family ties or system existing in the South of Nigeria does not exist in Northern Nigeria. The powerful authorities exercised by the heads of families over family lands, is not so forceful in the North. However, since the general principle of law governing family and communal land systems over West Africa are similar, decided cases from the Southern part of Nigeria and authorities from other parts of West Africa and other common Law Countries will be employed. It is to be noted that whenever a reference is to be made to such a case or cases, or authorities, they must reflect directly on a similar point to be discussed or explained or illustrated under the family land-holding in Northern Nigeria. References shall also be made to some other legal systems where the comparative study so requires.

With respect to Northern Cameroon, the problems are much more. The first problem is that of lack of available literature. So far, no work has been done on the alienation of family property in Northern Cameroon. What will therefore be presented in this thesis will be largely the efforts of the author. Secondly, like in Northern Nigeria, there is lack of decided cases. The reasons are that, just like in Northern Nigeria, the people of Northern Cameroon are unlitigious. The practice is for families to settle small disputes concerning property (land) instead of going through the complicated procedure of the courts. Another reason is that most court cases in the Northern Cameroon do not go beyond customary courts or what is known in French as (Tribunal Costumier) and even those which go to Magistrate Courts and High Courts

are not reported because there is no law reporting tradition in Cameroon. Illiteracy too, has also contributed to lack of litigation in this community because majority of its inhabitants are illiterates.

Like in Northern Nigeria, the powerful authorities exercised by family heads over family lands in some communities are not so forceful in Northern Cameroon. However, since the general principles governing family and communal land system over West Africa are similar, decided cases from Nigeria and other authorities from other parts of Western Africa will be used. It should be noted that Northern Cameroon had for forty years been administered as part of Nigeria and all the colonial laws on property law that applied in Nigeria within this period also applied in Northern Cameroon, and as such, Nigerian cases and other authorities shall be employed to illustrate similar provisions under the Northern Cameroon land tenure system. It should also be noted that reference may be made to some other similar legal systems where the comparative analysis so requires.

#### **1.5 ORGANIZATIONAL LAYOUT OF THE THESIS**

Chapter one of this thesis is an introductory chapter which discusses the objectives of the thesis, its scope, the method by which the research shall be conducted and the organizational layout of the thesis.

Chapter two proposes to discuss the evolution of property law in Northern Nigeria and Northern Cameroon. In this chapter, property shall be defined. The customary property law of Northern Nigeria and Northern Cameroon shall be discussed under which land tenure under non-moslem law as well as land tenure under Islamic Law shall be examined. Furthermore, the statutory property laws of Northern Nigeria and Northern Cameroon shall be examined.

Chapter three shall discuss the nature of family property in Northern Nigeria and

Northern Cameroon. And under it shall be considered the definition of family, extended family, family property, the modes of acquisition of family property, the management of family property and finally the prerogatives of the family head.

Chapter four proposes to deal with forms of alienation generally. Here, it shall be required to state what alienation itself is, the various manner with which property can be alienated in Northern Nigeria and Northern Cameroon, and lastly a brief conclusion of the chapter.

Chapter five shall examine the methods of alienation of family property in Northern Nigeria and Northern Cameroon. The methods or procedures of alienation of family property shall be discussed under two main headings, these are; the general or the consensus method, and alienation by order of the court.

Finally, Chapter six shall be the conclusion and suggestions for the reform of the rules of alienation of family property in Northern Nigeria and Northern Cameroon.

## FOOT NOTES TO CHAPTER ONE

1. Yakubu, M.G.: Land Law in Nigeria. Macmillan Publishers, London and Basingtove, 1985, p.7
2. Ogola, E.Y. ALIENATION OF FAMILY PROPERTY IN NIGERIA Unpublished LL.M Thesis, A.B.U., Zaria, 1989. p.1
3. Ogola E.y. I bid at p.1
4. James R.W. Modern Land Law of Nigeria. University of Ife Press, Ille-Ife 1985, p. 46.
5. It is now known as the Land Use Act.
6. Omotola, J.A. Essays on Land Use Act, Lagos University Press, 1979, p.8 (Quoted in Ogola E.Y, op. cit. at p.12)
7. Section 50, of the Land Use Act, 1978.
8. The Emphasis is mine.
9. A similar provision is contained in Section 27(1) of the 1972 Constitution of the Republic of Cameroon.
10. Anyangwe Carlson, The Cameroon Judicial System, published by C.E.P.E.R., Yaoundee, 1987, p.247.
11. (1965) N.M.L.R.3
12. Olowu v. Oshinubi (1958) LLR 211.
13. Adedibu v. Makanjuola (1944) 10 WACA 33.
14. Taiwo v. Dosunmu (1966) N.M.L.R 94
15. Danguduru v. Titilayo, suit No. UB/182/60 (Unreported) Hessa Grade 'A' Magistrate Court.

16. Taiwo v. Dosunmu (Supra)
17. Ogola E.Y. Ibid at p.4
18. Ekpendu v. Erika (1959) 4 F.S.C. 79.
19. Registered Trustees of Apostolic Faith Mission v. Eyo James (1987) 3 N.W.L.R. Part 61, p. 556.
20. Esan v. Faro (91949) 12 WACA 135.
21. Agblo V. Sappor (1947) 12 W.A.C.A. 187
22. See FIG. 1
23. Yakubu, M.G The Law of Land Ownership And Succession In Northern Nigeria - An Exposition And Critical Analysis of The Existing laws Of The Hausa Fulani Community Unpublished PH.D. Thesis, Faculty of Law, University of Birmingham, England, 1980, P.17.
24. New Nigeria Newspaper, No. 8,255 of Friday, 20th March, 1992, P.1.
25. Cameroon Post No. 59, of Wednesday, February 27th, 1991, P.1.
26. The First major work on this subject, is the book of Kasumu and James entitled, Alienation of Family Property in Southern Nigeria, Ibadan University Press, Ibadan, 1966. There is also an LL.M. Thesis by Ogola E.Y., entitled Alienation of Family Property in Nigeria, Faculty of Law, A.B.U Zaria, 1989.
27. Area Court Reform Committee, 1978 recommendations quoted in M.G. Yakubu ibid. P. 16.

KASUM

## CHAPTER TWO

### THE EVOLUTION OF PROPERTY LAW IN NORTHERN

#### NIGERIA AND NORTHERN CAMEROON

This chapter will deal primarily with the evolution of property law in Northern Nigeria and Northern Cameroon, with particular reference to land law. Before going into the evolution of property law, some preliminary discussion will be attempted on the definition of property generally, and the definition of land which is the subject matter of this research. In the discussion of the evolution of property law, customary property (land) law and Islamic law shall be examined. Secondly, statutory property laws in Northern Nigeria and Northern Cameroon shall be separately examined from the Colonial period to date.

The importance of land today cannot be over-emphasized. Land is of great concern to any nation because without it, there can be no sovereignty. Great concern is shown by both governments and citizens of Northern Nigeria and Northern Cameroon in land matters. The least tampering with an interest in land, can lead to great havoc occasioned by inordinate violence. One learned scholar of African land matters, writing on the attitude of the Yorubas towards land said, "There is no subject in which ... man is more sensitive than that of land. These normally quiet and submissive people can be roused into violent action of desperation if once they perceive that it is intended to deprive them of their land."<sup>1</sup> Although the above - quoted passage was referring to the attitude of the Yoruba people with respect to land, it may be submitted that the expression also illustrates the attitude of the people of Northern Nigeria and Northern Cameroon towards land problems today. In a general manner,

the passage has clearly portrayed the behaviour of every society to land matters, particularly the third world communities where land tenure laws is still volatile. Because of the importance of land in political economy of Northern Nigeria and Northern Cameroon, new laws and policies are emerging on land matters everyday.

Land today, in our areas of study, carries a different connotation from what it used to be in the past. The concept of inalienability by sale particularly, which was regarded by the majority of native laws and customs as a taboo, has become the order of the day amongst the people.<sup>2</sup> It is now very common in Northern Nigeria and Northern Cameroon unlike before, to find a child litigating against his father, brothers and sisters litigating against each other. It is possible to find people demonstrating against the government for taking away their community land.<sup>3</sup>

## **2.1 DEFINITION OF PROPERTY**

In order to ascertain what is property, one needs to determine its nature and scope, so as to differentiate it from other things that do not qualify as property in law. The need to define property here, is not just for intellectual exercise but also because, if it is not clearly known, no qualitative analysis of family property will be possible, D.L.A. Baker (1989) distinguishes it thus, "Property may mean the thing or things capable of ownership". In this sense, the word includes not only physical (or corporeal) things such as pen, desk, watch and land, but also non-physical (incorporeal) things such as patent rights, copy rights and debts.<sup>4</sup>

This definition portrays property as denoting the right of ownership and this ownership may be described as "the entirety of the powers of use and disposal allowed by law".<sup>5</sup> It would be unusual today to call a person an owner if he cannot enjoy such powers at all. Thus, we may

say in law that 'X' has property in a pin or in other words 'X' owns a pin. Both statements mean the same thing. Again, property does not consist merely of the title and possession, it also includes the right to make any legal use of it and the right to pledge, mortgage or sell and transfer it. In a contract of sale of goods where, for example, a student buys a book, the shopkeeper delivers the book to the buyer and at the same time, the shopkeeper passes the property in the goods (i.e ownership) to the buyer by delivery on sale.

Property has also been defined as; "something that is or may be owned or possessed; "the exclusive right to possess, enjoy and dispose of a thing; a valuable right or interest, primarily a source of element of wealth." <sup>6</sup> Roger Bird (1983) has also defined property as "that which is capable of ownership." <sup>7</sup>

From the above definitions of "Property" it can be summed up that it is that thing which every owner possesses and which he has the right to make use of, enjoy it and dispose of it or transfers ownership and possession. There are some rights therefore, that would not amount to property within this context, such as the right to life, to fair hearing and to free movements as provided by the constitutions of all sovereign nations. This is because the ownership of these rights cannot be transferred either by contract or otherwise. The worth of each item of property will depend upon the value attached to it by each particular society. The Customary Law of Northern Nigeria and Northern Cameroon recognize ownership in property and at the same time, impose some restraints on individuals' desires to do as they will, with their own property.

Under the Customary Law of Northern Nigeria and Northern Cameroon, property is classified into movable and immovable. Immovable property are viewed not only from the point of their physical immobility but also from the desire from time immemorial to retain them in the

families at all times.<sup>8</sup> The ordinary member of the family regards the alienation of such a property as a taboo or an outrage against native law and custom and an act, likely to earn the wrath of the ancestors. The houses and farmlands left by a deceased ancestor become after his death the family property for the members of his family. This family property is under customary laws, not generally subject to alienation.

In pre-Colonial Africa, property was hardly discussed with respect to land. The only identifiable property were economic crops, cattle, farming, hunting and fishing tools etc. As it has been earlier said, the components of property are very multifarious but for purposes of this research, land is what shall be referred to as property.

## **2.2 WHAT IS LAND**

The question to be raised and answered here is, what is land which has become a subject of much concern amongst the peoples of Northern Nigeria and Northern Cameroon and the world in general. It should be noted that it is not easy to give a definition of land which carries along its characteristics, functions or all that is associated with it.

Shorter Oxford English Dictionary, defines land as: "The solid portion of the earth's surface as opposed to sea and water."<sup>9</sup> The only statute that attempted to define land in Northern Nigeria was the Property and Conveyancing Law of the former Western Region.<sup>10</sup> It gave the definition of land as: "Land includes of any tenure, building .... or parts of building (whether the division is horizontal or vertical or made in any other way) and other Corporeal hereditaments, also a rent or other incorporeal hereditament and easement, right, privilege or benefit in, over or derived from land." This is a purposeful definition of land and it seems to cover every bit of interest in land, consequently, this definition will hardly be accepted by the

peoples of Northern Nigeria and Northern Cameroon. This definition has been adopted by Professor B.O. Nwabueze in his book, "The Nigerian Land Law".<sup>11</sup> David M. Walker (1980) defines land as: "The solid and dry part of the surface of the earth, including, however, streams traversing tracts of land and enclosed or semi-enclosed area of water."<sup>12</sup>

According to Balowe at the United Nations Conference in 1958, on Political Economy of Rural and Urban Land Use. Land was defined as:"<sup>13</sup>

- (a) It is a space and room and surface upon which life takes place.
- (b) It is nature or natural environment including access to sunlight, rainfall, wind and other climatic conditions and including natural vegetation.
- (c) It is a consumption goods especially when used as a sight for dwellings and parts.
- (d) It is property with legal connotations as to rights of ownership of individuals and rights and responsibilities of ownership and sovereignty of Government. This is a more meaningful definition of land as it does not only bring out it's scope but the characteristics and functions of land.

From the above definition, one can understand that people live on the land as well as the natural vegetation and that it is a property capable of ownership and, rights and duties can be created in it.

Section 3 of the Interpretation Act,<sup>14</sup> provides that immovable property or lands include, "Land and everything attached to the earth or permanently fastened, which is attached to the earth and all chattels real." In Chief Nkwocha V. Governor of Anambra and Ors.<sup>15</sup> Obaseki J.S.C. said in examination of land in relation to the concept of ownership under the Land Use Act that,

"Land is a specie of Property. Property has been defined to mean ownership or title and sometimes, the res over which ownership may be exercised. The land comprised in the territory of each state, of the Federation is res over which the Military Governor exercised ownership in trust. It is an immovable property. It therefore comes within the meaning of 'Property' under Section 276(1) of the Constitution".

V. Sheldick gave another definition of land in the following terms". "The term land in its legal context is usually taken to indicate not only the land surface but also the minerals found in and below the flora and fauna that subsist upon it, the water supply it carries and the atmospheric advantages it enjoys ..."<sup>16</sup> The latter definitions seem to convey a better meaning than the statutory definition above, as to what land is in Nigeria and Cameroon.

From the above definitions of land, it is clear that it is difficult to give a definition of land, which will clearly show what it is. It is also obvious from the above definitions that land is capable of ownership and that the ownership of it will also entail the ownership of everything on it, beneath it and "reasonably" above it. These definitions may fit very well under the land tenure law of the Romans and the English but not under the land tenure laws of Northern Nigeria and Northern Cameroon. The peoples of Northern Nigeria and Northern Cameroon have traditionally no conception of ownership of land in the Western sense. Land belongs to God and the people are only entitled to the use and improvement of it. During my fieldwork on this research, I endeavoured to find out what land meant to the people and various answers were obtained. In Damsa in the Adamawa Province in Northern Cameroon, when I asked Imam Abubakar Jauro, he said, "Land is what we grow and graze our cattle on, live on, farm on it,

build and construct on it and grasses, animals, mountains, fish, trees, and rivers live on it. Elias Takwi from Maruwa in Southern Zaria in his own reply said "Land is what God created and made it available to all his creations to live on and earn their livelihood from, for those who can."

Virtually all the questions were answered in the same manner as the above three examples. To epitomize their definitions, land is limited to a place on which people live together with the natural vegetation and from which they can earn their living. Almost every member of the village communities in Northern Nigeria and Northern Cameroon will define land in the same manner. As far as they are concerned, land is a place where we live, build houses, farm and upon which all vegetation grow. They tend to examine land in relation to its functions. This definition is going to be very useful in this research because it is the functions of land that has given rise to the importance attached to it by the Communities under consideration. Land is indeed basic to life for a considerable group of people and its value cannot be over estimated. Land is a measure factor of economic production, and economic asset and a source of wealth and its possession has in many cases been considered a source of social, political and economic power and a great status symbol. It is because of the importance of land to every society that each country makes laws governing or controlling the use of it. Some of these laws are old and complicated to reflect social and economic patterns which may have changed very substantially.

What remains to be understood about land is whether improvements such as: fixtures, trees, houses and any other thing attached to land is part and parcel of the land. If they are part and parcel of land, then the definition of land should include anything attached to it.

Apart from the definition of land under customary land tenure, all other definitions of land mentioned above show that the principle of English common law of *quicquid plantatur solo*

Solo cedit, which literarily means that whatever is affixed to the soil, belongs to the soil, is applicable to the definition of land. By this, both the natural content which includes the surface of the earth and the sub-soil and things which grow on it as well as artificial contents such as buildings and permanent structures and fixtures will generally belong to the owner of land. In other words, land will mean land itself and whatever is affixed to it and whatever is above and beneath it.

It will appear that the Land Tenure Law, 1962, of Northern Nigeria never addressed this issue. It cannot therefore, be said with certainty the position of the law in this regard. However, since the Land Tenure Law, 1962, in Section 20<sup>17</sup> only gives ownership of improvements on the land and the land itself, it is probable that the courts in Northern Nigeria may not hold the maxim applicable. According to the Land Tenure Law, 1962, the ownership of land is vested in the natives,<sup>18</sup> so even when land is allowed to an occupier, the natives still retain the ownership of it and the occupier only owns the improvements he puts on the land. Even where an occupier owns the land, such as, the natives in occupation of the land, the minerals beneath it belongs to the Government.<sup>19</sup> So it is not certain if the maxim is applicable under the land law of Northern Nigeria.

Similarly, it seems that the Cameroonian Land Law never addressed this issue. It would therefore be absurd to state with certainty the position of the Law in this regard. It would appear that the Cameroonian statutory land law recognizes the right of ownership of land, to an extent. Section 1, of Ordinance No. 44/1 of July 6th, 1974, provides that the state guarantees to all persons, Corporate bodies having landed property, the right freely to enjoy and dispose of such lands. This implies that the state to an extent, recognizes the right of ownership or the

right of property in land. However, as it shall be seen later, the subsoil and its mineral contents, as well as, the air space belong to the Government. According to Section 2,<sup>20</sup> the following categories of land shall be subject to the right of private ownership: (a) registered land; (b) free-hold lands; (c) lands acquired under the transcription system; (d) lands covered by a final concession and : (e) lands entered in the grundbuch. This right does not require the consent of anyone for alienation.

From the above, there is an irrebuttable presumption that ownership of private property in certain categories of land is recognized under the Cameroonian Law. Section 9 of the same Ordinance provides that, "subject to the laws and regulations relating to town planning, hygiene, and policing, owners may on their lands exploit quarries as defined by the mining regulations." This provision gives effect not only to ownership in land, but also to the ownership of quarries (a place not underground where stones, slate, etc., may be obtained for building or for constructions) or things attached to the surface of it.

However, Ordinance No. 74/2 of 6th July, 1974 which establishes rules Governing State Lands, provides in Section 3 that sub-soil and air - space are the natural public property of the State. From the above statutory provisions, it is clear that an individual could have ownership in certain categories of lands and things attached to it such as crops, buildings, economic trees and the right to exploit quarries for purposes of constructions but he does not have right of ownership in the sub-soil and air-space. Even where the occupier owns the land, the minerals underneath the land and, the air-space are the belongings of the government. So it is highly

doubtful if the maxim is applicable under the law in Northern Cameroon.

Practically, the maxim does not apply at all under the native laws and customs of Northern Nigeria and Northern Cameroon. Many cases have come before family heads, customary courts (tribunal coutumieres, as it is known in French) and even Area courts where lands have been put to use without the consent of the holders or owners under native law and custom and on discovering this, the owner takes his land and compensates the person who has put it into use or where the crops are ready to be harvested, the owner will not take back his land until crops are harvested. But even here, he is entitled to a share of the crops as rents. If the discovery is made soon after the crops have been planted, the owner of the land is bound to pay back the cost of the seeds used by the intruder and the cost of labour.<sup>21</sup> The area courts in Northern Nigeria have approved this law.<sup>22</sup> The Cameroonian Customary Courts (known in French as Tribunaux Coutumieres) have approved this law as well in the case of Alhaji Salifu Nforme V. Yende Idriss & Another.<sup>23</sup> The facts of this case were as follows:- Yende Idriss and his children, settled on a piece of land, belonging to the family of Nforme and build houses and planted mangoes and pear trees on it, without the knowledge of the family. Aggrieved by this, Nforme Salifu as Head of the family took the matter to the customary court of Foumban. The Court ruled that Yende Idriss and his children should quit the land, upon compensation by Nforme Salifu for the improvements, made on that piece of land.

### **2.3 EVOLUTION OF PROPERTY LAW IN NORTHERN NIGERIA AND NORTHERN CAMEROON**

For purposes of clarity the discussion under this heading shall be divided into three parts, that is, customary Property Law in Northern Nigeria and Northern Cameroon, Statutory Property Law in Northern Nigeria and statutory Property Law in Northern Cameroon respectively.

#### **2.3.1 CUSTOMARY PROPERTY LAW IN NORTHERN NIGERIA AND NORTHERN CAMEROON.**

Under this head, an attempt will be made to discuss the historical development of land tenure under the native laws and customs of the people of Northern Nigeria and Northern Cameroon. This is very crucial for this study because the present practice of land tenure amongst the peoples under consideration is not the same with what operated some years back. This is because customary laws are not static, they change with the needs of societies.

The Customary land tenure laws of Northern Nigeria bear a lot of similarities to that of Northern Cameroon. This is so because: (1) the customary land tenure laws of the various communities in West Africa are similar and; Secondly, Northern Cameroon was for a long time administered as a subjugated territory of the Adamawa Emirate Lamido Adma and his subsequent predecessors like Lamido Zubeiru (the fanatical Moslem Emir) ensured and undertook and actually realized the effective cultural assimilation of the people of Northern Cameroon in all aspects of life including land tenure system.

It should be noted that there are very many tribes living in Northern Nigeria and Northern Cameroon, this research shall therefore not claim to exhaust all the customs of these people. However, the field work may be considered exhaustive since all the major tribes have been covered by the research. The customary law of the people of Northern Nigeria and Northern Cameroon, are considered together to avoid repetition since the Customary land tenure laws are similar. Although Northern Nigeria and Northern Cameroon which were formerly one community was artificially separated, the cultural similarities between the people have remained largely unchanged.

It has been a difficult task to trace the historical evolution of native laws and customs of the people of Northern Nigeria and Northern Cameroon, because the oral evidence is hardly

accurate and the scarcity of documentary evidence. However, because of the availability of some experts on native laws and customs in the non-moslems areas as well as the availability of materials and experts on Islamic system of land tenure, the exercise was made possible. The High Court Law of Northern Nigeria Cap. 40, 1963, provides in section 34(1) that "the High Court shall observe and enforce the observance of every Customary Law, which is applicable and is not repugnant to natural justice, equity and good conscience, nor incompatible either directly or by implication with any law for the time being enforced".<sup>24</sup> Section 2, of Native Courts Law of Northern Nigeria 1956.<sup>25</sup> provides that Native Law and Custom Covers Islamic Law. This implies that when one is considering Native Law and Customs of Nigeria, Islamic Law forms part and parcel of it or in other words, Islamic Law is one of the various Native Laws and Customs in Northern Nigeria. Similarly, Section 18(1) (a) of the Customary Courts Ordinance Cap 142 of 1948 which is applicable in Northern Cameroon, provides that the High Court shall observe and enforce the observance of every native law and custom which is not repugnant to natural justice, equity and good conscience, nor incompatible either directly or by natural implication with any native law for the time being enforced". The interpretation of this law provides that "Native Laws and Customs" includes "Moslem Law".. Just like the provision of the High Court Law of Northern Nigeria, cited above, this provision implies that "Moslem Law" forms part and parcel of the various native laws and customs of Northern Cameroon. This is not fair because ethnic customary laws in Northern Nigeria and Northern Cameroon are indigenous and as such, each system of such customary laws apply to members of a particular ethnic group. Meanwhile, Moslem law is religious law based on Moslem faith and applicable to members of the faith irrespective of their various ethnic groupings. In Northern Nigeria and

Northern Cameroon, it is not an indigenous law; it is a received and written "Customary" law introduced as part of Islam and has as its sources, the Holy Quran, the Sunnah (saying and deeds of Prophet Mohammad) and the consensus of the Moslem Jurists.

However, for purposes of convenience and chronology and also believing that the nature and characteristics of the two laws are not the same, the development of the land tenure law under native laws and customs in Northern Nigeria and Northern Cameroon shall be discussed under two sub-headings: (1) Land Tenure under non-moslem law and (2) Land Tenure under Moslem Law.

#### **2.3.1.1 LAND TENURE UNDER NON-MOSLEM LAW**

The principle of the land tenure law of the non-moslems in Northern Nigeria and Northern Cameroon is that the right to the occupation of land is based on the privilege of being a member of the family or community having ownership of the land in question. No person or authority had ownership or control over land, but everybody was entitled to the beneficial use of the family or community land as of right. According to M. G. Yakubu,<sup>26</sup> the Cardinal principle of land tenure among the community can be stated in the words used before the West African Land Committee that, "... Land belongs to a vast family of which many are dead, a few are living and countless numbers are still unborn"<sup>27</sup>. This assertion is also true of Northern Cameroon since as we have observed earlier, land tenure system is similar throughout the whole of West Africa. In the past, land tenure was based on the belief that, land is a gift from God to his creatures and that everybody and everything was entitled to the use of it without let or hinderance. Even today, this belief still rules land tenure system in some rural parts of Northern Nigeria like: Gwoza and Margi of Borno State; Cude, Fali, Njanya and Kilba of Adamawa State



and Kaje and Attakar of Kaduna State, as well as, some rural parts of Northern Cameroon like: Magba, Massangam, Koutaba of Western Providence: Damsa in Adamawa Province and Kaele and Doukoula in the Extreme North Province. This right can only be restricted in the event that the land is a sacred or taboo land or in the event that the land, has been occupied by another person. In the past, where one acquired land under native law and custom of Northern Nigeria and Northern Cameroon, only war could take it away from him or he could abandon it voluntarily. Acquisition under native law and custom is done by cultivating a piece of land, fencing it, building and the like, and once this is done, the occupant has an absolute title against all other persons. Today, land acquired under native law and custom can be expropriated by the Government, for public purposes. When land is taken away from the occupant under the land law of Northern Nigeria, compensation is made for un-exhausted improvement <sup>28</sup> Meanwhile, when land is expropriated in Northern Cameroon for a public purpose, compensation comprises the value of the land itself, as well as, the value of all the un-exhausted improvements. <sup>29</sup> This is so because absolute ownership of land is recognized under Cameroon Land Law. Under Native Laws and Customs land can be required for the construction of a market, roads, or for the buildings of a public house with compensation with another piece of land of the same quality and value. This must be done with the consent of the occupier. Where he has cultivated crops on it, he will be compensated for any of such improvements or he is given ample time to harvest his crops.

During the field work for this research, I gathered from Fouban and all other places I went to in the Northern Cameroon that, under traditional land tenure system, some voluntary contributions in the form of crops after harvests had been regularly made in the past to Chiefs

or village Heads or to any other person who had authority over land, as gifts but not as a price or tribute for the use of land per se. Similarly, the land tenure law of Northern Nigeria, did not know of any payment of tributes to Chiefs or Village heads or to any other person who had authority over land, for the use of it per se.<sup>30</sup> But however, gifts in terms of money or farm produce were made to the Chiefs or Village heads for day to day running of the Royal Courts which are considered as part of community property requiring regular maintenance.

I also gathered from a number of experts in native laws and customs of Tignere, Foumban, Kautaba, Magba, Mayo Darle, Banyo and Damsa in Northern Cameroon, as well as, Jukun and Kagoro, Idoma and Kaura in Northern Nigeria that the authority of the Chiefs and Village heads is not over the land per se, because land belongs to God, but over the people who live on it, and that the Chief or Village head, cannot refuse the grant of land for the use of a villager or community member, because God has provided land, for the use of everybody and no one therefore, has the right of denial.

All parts of Northern Nigeria and Northern Cameroon had established as their land tenure law that once land was acquired, it could be freely transferred to other members of the community without the consent of any authority. But if the transfer is to be made to a stranger, there could be some restriction because the stranger has no inherent rights in the land. If upon grant it was agreed that the stranger would pay a price or tribute for the use of the land per se, he would be bound by the agreement. A stranger according to native law and custom is a person who is not related by kinship to the members of the native community in question. Strangers are categorized under two groups; Resident and Non-Resident strangers. Resident strangers are those who have stayed long enough in the community in question to call it their home and non-resident strangers are new-comers into the community or people passing or

staying briefly. Alienation of land is more restricted to the latter than the former. Even though alienation was known under native law and custom of Northern Nigeria and Northern Cameroon, outright sale for money value was not known because it was regarded as shameful among the tribes in Northern Nigeria.<sup>31</sup> This free attitude to land by the communities of Northern Nigeria and Northern Cameroon was sustained by the fact that land was in abundance and population was scanty, and new emergent reasons such as, the socio-economic and political factors were not known. Although this negative attitude to the transfer of land by sale is still prevalent in some remote areas of Northern Nigeria like in vandekia in Benue State, and other remote areas, but not in the cosmopolitan areas of Northern Nigeria like Kaduna, Jos, Maiduguri, or Kano just to mention but a few and, big cities in Northern Cameroon like Ngaoundere, Garoua, Maroua or Kouseri.

As it was mentioned earlier in this chapter, native law and custom is not static but dynamic. It changes with time to accommodate or cope with socio-political and economic changes in the societies. The aggressive encroachment of Western Civilization has its own share of blame in the erosion of the rigor or traditional land tenure systems in Northern Nigeria and Northern Cameroon, reducing the traditional land systems to mere historical facts in some cases and areas. For example, the sale of land to a stranger which was considered a taboo against customary law, is now a common and legitimate practice even though not sanctioned by native laws.

The need to safeguard the territorial integrity and sovereignty of the areas under the Chiefs powers, required that every political group maintained its boundaries in order to avoid disputes and encroachments with the resultant serious consequences of inter-tribal wars. Because

of this sense of regional belonging and awareness, rules had to be evolved to ensure that non-natives, aliens and foreigners do not come into the jurisdiction of others to obtain interests in land without the consents of the authorities in charge. The position is the same today.

The various socio-economic changes world over and in Africa in particular, including Northern Nigeria and Northern Cameroon, have caused the natives to experience increase in the value of land. The industrial Revolution with its attendant increase in population pressure, required that food for human consumption had to be produced on a large-scale. People therefore, wanted to acquire larger and more pieces of land for the cultivation of raw materials for industries, and food, as well as grazing lands for cattle rearing which is one of the most important occupation of the Bororo Fulanis of Northern Nigeria and Northern Cameroon. As a result of the socio-economic changes consequent upon the industrial revolution, there was the need for vast pieces of lands to establish firms and industries. So the types of land or their suitability in terms of location and fertility determined their value and there came in, a scramble for suitable lands for building, cultivation and grazing. This culminated into serious competition amongst people in search for land in Dikwa Emirate in Northern Nigeria which led to the sale and control of land, as early as 1940s.<sup>32</sup> The need to secure territorial integrity, increase in population which brought about the need to produce more crops and high demand for buildings, land speculation and money economy in their totality, restricted the right to free access to land which members of the communities had enjoyed in the past and also caused the power of control of land to be vested in the hands of the Chiefs or village heads or family heads under native law and custom. The high marketability of land also caused (and is causing) some chiefs to demand for some kind of rewards from peasants before land was (is) granted to them, contrary to the

land tenure system under native laws and customs. Although the authority of the Chief over land does not empower him to demand reward or tribute for the granting of land to a native in Northern Nigeria and Northern Cameroon, he has the right to have his farmlands cultivated for him by his servants and may also ask his subjects to come and help him on his farm.

The present position is that native laws and customs of the people of Northern Nigeria and Northern Cameroon still recognize rights to free access to land by their natives, restrictions of outright sale to non-natives and aliens as well as, the communal and family land tenure systems. The individual land tenure system has also been given recognition as a new development.

#### **2.3.1.2 LAND TENURE UNDER MOSLEM LAW**

Islam has for a long time remained an unchallengeable religion in most parts of Northern Nigeria and Northern Cameroon. Since the installation of Islam in Northern Nigeria and Northern Cameroon as early as the 12th century, the lives of the Moslems have been governed by the tenet of Islam and Islamic law in particular, of which land tenure law is not an exception. It should be noted at this stage that Islamic law of land tenure does not cover all aspects of law relating to land because: (a) until recently, the moslems of Northern Nigeria and Northern Cameroon (particularly the Fulanis) were not good farmers and therefore needed land only for buildings and grazing and disputes were therefore, very rare; (b) Land was and is still very plentiful and the law did not bother itself to develop in a direction in which legal intervention was not in demand; (c) The position of Islamic law is that land is a gift of God to mankind and only the developed land can be owned. And that, no one can claim permanent title to it, unless it is developed.

Land among the moslems, is regarded as public property (Milk-al-amma) access to the use of which is free to every person provided it does not cause prejudice to the public.<sup>33</sup> The Islamic law of land tenure does not allow an exclusive right because it is left free for all moslems (Al-Ashya'ul-Mubahatul-Umumiah). Land in Islamic Law is regarded as indispensable to individual and social life just like water, air, light, fire and no person will have an exclusive power of controls and uses.<sup>34</sup> The Moslem Land Law is rooted in the general principle that, land is a gift of Allah (God) and that everybody has the right to the "Usufructuary" in it.<sup>35</sup> The term "Usufructuary" as used here simply means that an occpuire has the right to use and enjoy the fruits of his labour in the land, right to access to land, right of preventing other members of the community from interfering with his use and enjoyment of the land and, right of alienation if the grant to him by the religious authority in charge was 'permanent'. The term should therefore, not be constructed to be necessarily similar with the Roman Law of "Usufructus", which simply means the right of user.

The power of the Sultan or the Emir or the Lamido, which are the names given to the political rulers in Northern Nigeria and Northern Cameroon is limited to the administrative control over vacant lands in the interest of the moslem communities. He is not entitled to any payment in kind or in cash or in services, for the grant of land he makes to a member of the community.<sup>36</sup> It should be noted that in Founban in Cameroon, the sultan who is a Moslem ruler does not only have administrative control over land, but also the judicial control, that is, the power to settle disputes involving land since he is the Judge (President) of the " tribunal coutumiere" or customary court.

**A. CATEGORIZATION OF LAND:**

Under the Maliki Law which is the land tenure law applicable in Northern Nigeria and Northern Cameroon, land can be divided into three legal categories:

**(a) OCCUPIED LAND:**

This is land which has been occupied and is being made use of. The original acquisition might have been through grant from the Emir or Sultan or Lamido as the case may be or through inheritance by bequest from a deceased blood relation or by cultivation. And according to the consensuses of moslem jurists, there are seven ways in which land is put under cultivation; by drilling and channelling of springs on a piece of land meant for cultivation, removal of water from a flooded piece of land, setting up a substantial building on the piece of land, considerable planting on the piece of land, cultivation by ploughing and breaking up the ground because sowing alone without overturning the soil does not constitute cultivation even if it was carried out specifically by the owner of the piece of land, clearing the piece of land by cutting or burning its trees and, breaking the sooth on the land and levelling the ground and its steep slopes.<sup>37</sup>

Once land has been occupied, the occupier has absolute ownership of that piece of land against all other persons. He is free to deal with it in the way he likes as far as he does not cause prejudice or injury to other members of the public. He can sell, pledge or loan the land and enter into tenancy without the consent of the Emir, Sultan or Lamido or any authority for that purpose. The only restriction is that his title is subject to expropriation by the government for public purposes, such as, the building of a mosque, market or any public house. And where this happens, the victim of exappropriation is entitled to compensation with another piece of land having the same value, as well as, compensation for the unexhausted improvements.<sup>38</sup> The

freedom of alienation may be restricted if the alienation is to a total stranger.

**(b) UNOCCUPIED LAND**

The legal position of unoccupied land according to prof. M.G. Yakubu (1980),<sup>39</sup> can be divided into two as follows; land in the vicinity of the town and land far away from the town. With respect to vacant land situated within the vicinity of the town, the Emir or Lamido or Sultan is its Chief administrator. No occupation of such land can be done without the consent of the authority concerned. If a Moslem cultivates a piece of land in the vicinity of the town without the permission of the Emir or any person for that purpose, then the authority reserves the right to approve his action or to regard him as a trespasser. Should the authority or the ruler regards him as a trespasser, then the transgressor should be instructed to renounce his claim over that piece of land in dispute and the community, through the instrumentality of the ruler should pay to the Moslem in compensation the value of the improvement he has made on the land. When this is done, the piece of land is either preserved for the use of all Moslems or granted as a fief to someone else.<sup>40</sup>

Occupation of land within the vicinity of the town is done with the consent of the moslem authority concerned. Once it has been allocated, the person to whom the allocation is made, becomes the absolute owner.

According to the Islamic law of Maliki School which applies in Northern Nigeria and Northern Cameroon, absolute ownership means that the occupier has title against all other person. He is free to use it in the way he likes, he has the ownership of whatever development is on the land, and he is free to alienate it or transfer these interests to a third party by sale, pledge, bequest and loan.<sup>41</sup> The piece of land may not be alienated to a total stranger without

the consent of the emir or the lamido or the Sultan. With regard to land outside the town, it is free for all persons. Any person can acquire the land by occupation, i.e. cultivation, fencing, building, clearing or by planting any crops or economic trees without the consent of any authority.<sup>42</sup> If land has been acquired, the occupier establishes absolute ownership over such land. Land situated outside the town has been defined to mean land within the distance that cattle can go on feeding and come back home in the same day.<sup>43</sup> This is however, a very ambiguous description, it is therefore suggested that, Land outside the town should be land situated at 5 kilometers from the remotest part of the town so as to give room to the town planners for the future orderly expansion of the town in question.

**(c) COMMON LAND**

Any piece of land can be declared by the ruler or his deputy as public or common land. In the past, this used to include those lands gained through wars, cession or treaty. Today in Northern Nigeria and Northern Cameroon, it is comprised of a small portion of land carved out by the Emir or Lamido or Sultan as the case may be, for grazing or market place, or Mosque or prayer ground. Any person whose occupation has been jeopardized by such an act is entitled to compensation with another piece of land somewhere else and where compensation is required for unexhausted improvements on the land under consideration, it is the duty of the public to donate funds towards that.<sup>44</sup>

There are four conditions which must be satisfied before an area can be declared common land:

1. The power to carve the area must be exclusively vested in the ruler or his deputy.

According to the Maliki law which applies in Northern Nigeria and Northern Cameroon,

deputies are those assigned to a town for running the State official duties on behalf of the ruler;

There must be the need for such an area for the benefit of Moslems, such as grazing for cattle or horses, building of Mosques, prayer grounds, hospitals, market places and schools;

3. It must not be so large that it causes hardship to the people and;
4. There must be no buildings or farms belonging to other people of the community already in existence in the area. If the area is occupied, anyone who is to be displaced must receive compensation for the land itself and improvements on it.<sup>45</sup>

Islamic Law of Land tenure in Northern Nigeria and Northern Cameroon recognizes holdings of land by limitation of time, whereby ownership or property right will lapse.<sup>46</sup> Fallow farming is recognized but the owner must show evidence that he did not abandon the land or otherwise, the land will be treated as vacant.<sup>47</sup>

The evidence is shown by the original cultivator administering an oath to the effect that his abandonment of the land did not mean that he had given up occupation and that he intended to recultivate it. <sup>48</sup>

## **B. CLASSIFICATION OF LAND RIGHTS**

Under the Islamic Law of Maliki School which is applicable in Northern Nigeria and Northern Cameroon, land may be classified in five ways, as follows:

### **(a) MAMLUK LAND**

This is land held in ownership by an individual or group of individuals, such as, family or community. These are lands which have been brought into cultivation and the title in them

is vested in those who have so cultivated them or those who have unexhaustive developments in them.

(b) **AMIRIYYA LAND - STATE OWNED LAND**

This is land which has been acquired by the Government or State for its own use. The name is derived from amir, which literally means "Moslem ruler". This type of land may not be allocated to individuals.

(c) **MATRUKA LAND**

This is a piece of land reserved for the public use or individuals inhabiting the community. This land cannot be cultivated by individuals or group, nor can it be allocated by the Emir or any other authority for that purpose. Example of such lands are grazing lands, ceremonial and prayer grounds.

(d) **MAWAT LAND**

This is land that has not been brought under cultivation and is in control of no one. That is what Lord Lugard in his political Memoranda referred to as "Jajin Allah", meaning "God's Land".<sup>49</sup> Some writers term it "dead land".<sup>50</sup> The acquisition of this land does not require the consent of the Emir or Sultan or Lamido, under Islamic Law. Such lands are still available in some extreme parts of Northern Nigeria and Northern Cameroon, such as, Mambila Plateau area, Borno and Jigawa in Northern Nigeria and, Kouseri, Guidere, Garoua Boulai in Northern Cameroon.

(e) **COMMON LAND**

This is land which has been acquired through conquest or treaty or cession. The ownership of this land goes to the whole Moslem community. The administrative control of

such land is the prerogative of the Moslem ruler and he does so on "trust" for the benefit of the Moslem Community in question. Such land is not subject to allocation to an individual.<sup>51</sup> No proprietary rights can be exercised over the corpus but only over the use.<sup>52</sup> The benefits derived from this type of land are to be used for the poor and for other charitable and pious purposes.

**f. MISCONCEPTIONS AS TO THE POWERS OF THE RULERS OVER LAND**

There has been some mistaken belief by some people about the position of the ruler in the Islamic System of land tenure as being the owner of the land and as such he could claim taxes from individual occupiers for the use of it. The main issue under consideration is therefore, not one of general political and sociological powers but the real nature of the scope of his rights and duties with respect to land under his control.

There has been some misconception that tribute or land tax is payable under Islamic Law to rulers in Northern Nigeria and Northern Cameroon for the use of land per se. This is not true because in the Islamic Law of Maliki School land is regarded as public property (Mulk-al-amma) which is incapable of a single handed appropriation by an individual except for the part allocated to him which he has put under cultivation. At no point in time has there been payment for the use of land per se practiced.<sup>53</sup> There is no evidence in the Qur'an or the Sunna (deeds and saying of the Holy Prophet Mohammad) to show that the ruler can take tribute for the use of land per se from the users. According to the Qur'an, Moslems are obliged only to pay "Zakkat" or poor dues, which symbolizes the spiritual purification of property or wealth. It is obligatory on every moslem who has the required amount of farm produce to take out part of it as poor dues or "Zakkat". Property like domestic animals (cattle, sheep, horses, camels, etc) and cash whether in circulation or kept intact for a calendar year are also subject to

"Zakkat".<sup>54</sup> The proceeds of "Zakkat" during the past or during the days of the Prophet went strictly to the public treasury for maintaining the poor destitutes and for other charitable and religious purposes. But today in Northern Nigeria and Northern Cameroon, "Zakkat" is given directly by the person who is taking it out to the poor and the destitutes since there is no public treasury.

The ruler is allowed if the community is in need of funds to impose a tax on farm products other than "zakkat" for the purpose of carrying out a community project such as, the building of a mosque. This tax had been imposed and collected during the time or era of Caliph Umar.<sup>55</sup> This tax is known as Al-Karaj. If the community project is beneficial to both Moslems and non-moslems, the moslem ruler may impose this tax even on his non-moslem subjects. This tax is not paid as a consideration for the "usufructuary" rights of the land. It was paid on the farm produce grown on the land and the amount varied according to the value and quality of crops and not the size of the land. Al-Karaj is not due and payable where crops have been destroyed by floods or droughts or blight or where the crops have been destroyed by insects or some other natural calamity. In a political memoranda,<sup>56</sup> It is said that it was not clear whether in Zaria land tax was assessed on land or as capitation or income. In Ilorin, it was assessed on the wealth of the village and in Borno and Kabba provinces, it was regarded as pool-tax.<sup>57</sup> It should be noted that although tributes might have been accepted in some emirates such as Bida<sup>58</sup>, that was certainly not general all over Nigeria, especially Northern Nigeria. Similarly, there is no documentary or oral evidence to show that tax was at any point in time charged in Northern Cameroon for the use of land per se.

From the above, it is clear that the Emir or sultan or lamido who are all symbols of

Moslem leadership did not have and still they haven't any preparatory interest in land and are therefore, incapable of receiving tributes for the occupation and the use of land under their areas of jurisdiction. They do not have powers to refuse to grant land, neither did they have authority to displace a lawful occupier.<sup>59</sup> It is now settled law that the Emir or any other Moslem ruler for that purpose, has rights over the inhabitants and not over land per se. The consequences of this rule therefore, is that the Emir has the right to tax all residents of an area under his jurisdiction for a particular project and may also require them to perform communal labour but not the right to impose tax on them for the use of land per se which they occupy and use.

### 2.3.2 STATUTORY PROPERTY (LAND) LAW IN NORTHERN NIGERIA

The statutory property or land law began in Northern Nigeria as far back as 1900, when the British Colonial power was established over the territory. The history of early European contact or exploration of Northern Nigeria can be traced as far back as the 18th Century. The contact was purely on a friendly basis. The first contact of a British with Northern Nigeria was in 1885, when the Sultan of Sokoto signed a treaty affecting some parts of his land with Joseph Thompson who acted for the African National Company.<sup>60</sup> The treaty empowered the company to trade on the lands on both sides of the rivers Niger and Benue. One year later, the Royal Niger Company received a Charter from the British Government giving it the power to administer, enter into treaties, levy custom and trade duties in all the territories in the basin of the Niger and its confluence. Another treaty was entered with the Sultan in 1893, giving the company power or jurisdiction over foreigners in the Sultan's territory. In a bid to control the influence of the Company, the British Government revoked the company's Charter and established a Protectorate over Northern Nigeria on January, 1900.<sup>61</sup>

After the conquest of Sokoto Empire between 1902 and 1903, by the British soldiers under the leadership of Lord Lugard, the British High Commissioner in Northern Nigeria, the establishment of the protectorate of Northern Nigeria became a fact and a reality. At this time, the powers of the rulers over the lands in Northern Nigeria were transferred to the British Crown. Lord Lugard expressed the nature of the authority commanded by the Fulani Emirs over land, which the British Crown inherited in the following terms:

"... The Fulani in older times under Dan Foido Conquered this country. They took the rights to depose kings and create kings. They in turn, have come into the hands of the British. All these things which I have said, the Fulani by conquest took the right to do, now pass to the British... the Government in future holds the rights in lands which the Fulani took by conquest from the people and if the Government requires land, it will take it for any purposes."<sup>62</sup>

The protectorate Government attitude to land conformed with the position that had existed under native law and custom prior to the conquest. It was made quite clear that the natives would continue to acquire lands as they were used to under native law and custom, while no non-native could hold any interest in land except on lease by the Government.<sup>63</sup> The Land Proclamation No. 123 of 1902, divided the lands of Northern Nigeria into three categories.

#### 2.3.2.1 THE CROWN LAND.

These were lands purchased by Lord Lugard in his capacity as the High Commissioner of Northern Nigeria, acting on behalf of the British Crown under the agreement entered into

with the Royal Niger Company. The Royal Niger Company had by a series of private treaties with several local rulers from 1896 acquired lands in its commercial capacity. The lands were very vast extending from Boussa where the River Niger enters Nigeria into Lokoja and from Lokoja on River Benue to Ibi in Taraba State where the River Benue enters Nigeria from Cameroon. The confluence of Lokoja and Kabba inclusive.<sup>64</sup> It is the view of Prof. M. G. Yakubu (1986)<sup>65</sup> and I also buy his view, that the title of the Chiefs in the lands which they transferred to the Company was a defective one, i.e. they had no title in such land which they could transfer.

#### 2.3.2.2. PUBLIC LANDS

These public lands were acquired from the Fulani Rulers and the pagan tribes that were not conquered. The components of public lands were as follows:

- (a) Lands occupied or not in actual occupation of persons or their agents, tenants etc., who held a title under either a law of the protectorate or any law or custom prevailing where the lands were situated. This certainly included lands privately acquired in the former Sardauna Province under the German Law at the time that the area was under German Hegemony.
- (b) Land which were the property of any conquered or deposed ruler, and
- (c) Lands retained by the Royal Niger Company under the same agreement with the High Commissioner. The Company acquired absolute ownership of these lands.<sup>66</sup>

The difference between Crown and Public lands was based on the fact that, the Crown lands were the private property of the Government and as such she assumed the management, control and direction of such lands. She could therefore, sell, lease, pledge or otherwise deal

with the same in any manner not contrary to the interest of the protectorates.<sup>67</sup> It should be noted that the authority of the Crown over this particular lands was a loose one since people could occupy some parts of it without the consent of the Crown.<sup>68</sup> While on the other hand, public lands were at the disposal of the natives to use and enjoy according to the rules of native law and custom subject only to the exception that, a native could not alienate it to a non-native without the consent of the High Commissioner.<sup>69</sup>

#### 2.3.2.3 LAND AND NATIVE RIGHTS PROCLAMATION NO. 9, OF 1910

Sir Piercy Girouard, the successor of Lord Lugard, was deeply interested in land question and as such, he collected information and memoranda from his political officers which he present to the Secretary of State for Colonies, who in turn appointed a Committee to investigate the subject of land tenure in Northern Nigeria . The terms of reference of the Committee were:

"To consider the evidence collected by Sir Piercy Girouard and any other evidence available as to the existing system of land tenure in Northern Nigeria and to report (a) on the system which it is advisable to adopt and (b) as to the legislative and administrative measures necessitated by its adoption".<sup>70</sup>

In two months, precisely, on July 29, 1908, the Committee submitted its report with the following principal recommendations:-<sup>71</sup>

1. That a proclamation should be enacted to the effect that the whole of the lands of the Protectorate was under the control and dominion of the Government and that no title to the Occupation, use or enjoyment of any land was valid without the assessment of the

Government.

2. That the law should be amended or declared by providing that the control and dominion of the government should be exercised in any particular case with due regard to lawful customs proved to have existed at that time in any province or district where the land is situated.
3. That the person or community entitled to the occupation, use or enjoyment of land, should have the exclusive right thereto, against all persons other than the Government.
4. That except insofar as should be specifically provided by the terms of any lease, or license, the government should be entitled for 'good cause' to revoke the title of any occupier and to assume possession or dispose of the land.
5. That in the event of any land being required for 'public purposes' due compensation should be paid by the Government to the occupier.

The recommendations of the Committee were fully endorsed by the Secretary of State on behalf of the Protectorate Government and accepted whole heartedly by Sir Piercy Girouard who described it as "in substance a declaration in favour of the nationalization of lands of the protectorate".<sup>72</sup> The recommendations were embodied in the Land and Native Rights Proclamation No. 9 of 1910, which although in different names today, govern the land tenure law of Northern Nigeria.<sup>73</sup>

Later on, some provisions of the 1910 Proclamation were revised and re-enacted by the Land and Native Rights Ordinance No. 10 of 1916. The preamble of this piece of legislation stated the intention of the Government as follows:-

"Whereas it is expedient that the existing customary rights of the natives of the Northern Provinces... to use and enjoy the land of the Protectorate and the natural fruits thereof in sufficient quantity to enable them to provide for the sustenance of themselves and their families should be assured, protected and preserved; And customs with regard to the use and occupation of land should as far as possible be preserved; And whereas it is expedient that the rights and obligations of the Government in regard to the whole of lands within the boundaries of Northern provinces of the Protectorate and also rights and obligations of the cultivators or other persons claiming to have an interest in such lands should be defined by law."

Consequent upon the above principles in the preamble which incorporated virtually all of the principal recommendations of the Committee, Section 4, provided that,

"All native lands and all rights over the same are hereby declared to be under the control and subject to the disposition of the Government and shall be held and administered for the use and common benefit of the natives and no title to the occupation and use of such lands shall be valid without the consent of the Governor. <sup>74</sup>

Section 5, of the Ordinance entrusted in the Governor the power of control and administration of the lands and in the exercise of such powers, he was to have regard to the native laws and customs in the Province or District where such lands were located. What the Ordinance did in effect, was to transfer into writing the powers which the Emirs and Chiefs had under native law and customs with respect to land, to the Governor, and at the same time recognized the rights

of the natives to the use and enjoyment of the lands in their occupation. This of course, did not go well with the emirs and the chiefs because they saw in this action a sort of an unwarranted usurpation of natural rights by the protectorate Government of Great Britain.

Even with the nauseatic and the resentful treatment of Land and Native Rights Ordinance, it lasted for 52 years without any substantial change. Even after attaining Self-Government in 1959, the Government of Northern Nigeria still retained the law.<sup>75</sup>

#### 2.3.2.2 LAND TENURE LAW, 1962

When Northern Nigeria gained her independence in 1960, the Government enacted a new law in 1962, known as, the land Tenure law, 1962.<sup>76</sup> The new law did nothing more than improved and modified the Land and Native Rights Ordinance No. 10, of 1916, in accordance with the socio-political development of the Region. For example, the power of the Governor to manage and control the native lands, under the Land and Native Rights Ordinance, was vested in the (Minister) now Commissioner for lands and Survey under the Land Tenure Law, 1962.

#### 2.3.2.5 LAND USE ACT, 1978

Population growth, industrialization, urbanization and rural exodus, accompanied land speculations and malpractice in land transactions in recent years in Nigeria brought pressure in some parts of the country which called for the re-examination of the land tenure system. This caused the Military Government to appoint a panel known as the "Land Use Panel," with the following terms of reference:

- (a) To undertake an indepth study of the various land tenures, land use, and land conservation practices in the country and recommend steps to be taken to streamline them.

- (b) To study and underline the implications of uniform land policy for the country as well as examine the possibility of a uniform land policy for the entire country, making necessary recommendations and proposing guidelines for implementation;  
**and**
- (c) To examine steps necessary for controlling future land use, opening and developing new land for the needs of the country's growing population and make appropriate recommendations.

The panel went round the entire country to gather facts from various individuals, organizations and institutions, and in December of 1977, it submitted its report. On the 29th of March, 1978, the Head of State announced to the Nation, the promulgation of the Land Use Act, 1978.<sup>77</sup> The Act was to a larger extent, a replica of the land Tenure Law, 1962. The Preamble of the original Decree read thus:

"Whereas it is in the Public interest that the rights of all Nigerians to the land of Nigeria be asserted and preserved by law; And whereas it is in the public interest that the rights of all Nigerians to use and enjoy land in Nigeria and the Natural fruits thereof in sufficient quantity to enable them to provide for the sustenance of themselves and their families should be asserted, protected and preserved."

The only difference is that the Decree did not mention the word "expediency" and the "Supreme Authority of Native Law and Custom", as in the land Tenure Law, 1962. The Decree was criticized because the preamble portrayed the intention of the Federal Military Government of Nigeria to "Nationalise" land use in Nigeria in line with that of the North. Secondly, the fact that the Decree did not abrogate or repeal the land Tenure Law, 1962, further

actualized the criticisms.

Because of the too many criticisms levied against the Land Use Act, 1978, some of its controversial provisions were amended and revised to accommodate the socio-political realities of the Nation and it is now contained in Chapter 202 of the Volumes of the Laws of Federation of Nigeria, 1990. The 1990 preamble reads:

"An Act to vest all land comprised in the territory of each State (except land vested in the Federal Government or its agencies) solely in the Governor of each State, who would hold such land in trust for the people and would henceforth be responsible for allocation of land to all organizations for residential, agricultural, commercial and other purposes while similar powers with respect to non-urban areas are conferred on Local Governments."

The Land Use Act, Chapter (Cap.) 202, <sup>78</sup> of the Laws of the Federation of Nigeria 1990, is now, the present applicable law on land tenure in the whole country without prejudice to the Land Tenure Law, 1962 and the Edicts promulgated by the various States Governments on Land tenure, which do not contradict that Act.

#### 2.2.2 **STATUTORY PROPERTY LAW IN NORTHERN CAMEROON.**

The discussion on the statutory property law in Northern Cameroon shall be divided into three parts as follows: the colonial period, the Post-Colonial Period and statutory Land Law in the United Republic of Cameroon, of which Northern Cameroon is part. Before unification in 1972, Cameroon was a Federation, made up of East Cameroon, of which Northern Cameroon was a part and West Cameroon, which is the English Speaking Cameroon we have today.

##### 2.2.2.1 **THE COLONIAL PERIOD**

The Statutory Property or Land Law began in Northern Cameroon as early as 1916, when the French Colonial power was established over the territory. Meanwhile, the history of the early European contact with Northern Cameroon dates as far back as 1899, after Governor Von Puttkamer, a German, had been given order by his government to invade Northern Cameroon. Captain Von Kamptz left Douala with some troops (Schutztruppe) and with Lieutenant Hans Dominik, Tibati was captured. Although Tibati was defeated in 1899, it was not until 1902, that the Germans got effective control of Adamawa after severe fighting with Zubeiru, the fanatical Moslem Emir (or Lamido of Adamawa). Zubeiru had been driven from his capital in Yola in 1901, by the British.<sup>79</sup> It should be noted that the whole Northern Cameroon, was under the Emirate of Adamawa and that the remaining part of Admawa today forms the Adamawa State in Nigeria.

After this defeat, the power of the ruler or Lamido of Adamawa over the lands of Northern Cameroon were transferred to the German Government of Chancellor Bismarck. Garoua, being a meeting point of several important trade routes, was caused by the German Government to become a distributing point for the products of a German firm known as "Woerman Firm," for the district of German Adamawa right up to Lake Chad.<sup>80</sup>

After the defeat of the Germans in Cameroon during the first World War, by a combined British and French forces, Cameroon was partitioned between France and Britain under the auspices of the defunct League of Nations. Northern Cameroon came under the French Colonial Rule in 1916. France by article (art) 9 of the Mandate Agreement, 1922, introduced its laws into the whole French - Cameroon through an indirect process. A French Decree of 17th March, 1903, provided that all legislation in France which had been extended to the Colony of

Senegal, should also apply in French Equatorial Africa and consequently, by virtue of the Law of 22nd May, 1924,<sup>81</sup> also applied in French Speaking Cameroon of which Northern Cameroon is a part.

On July 21st, 1932, a French Decree was passed which introduced the concept of National Lands. Before the concept of national lands under the 1932 Decree is considered, it should be noted that what amounts to national lands at any particular time, will depend upon the definition given to it by the Statute under consideration. No particular section shall be devoted to the study of National lands because it is the historical evolution of Statutory property law in Northern Cameroon that is in issue here. Lastly, what amounts to National lands under the 1932, Decree, may not necessarily be the same or identical with National lands under the 1974 Ordinance, which gives the present legal and applicable definition of National lands in Cameroon.

Under the Decree of July 21st, 1932, the French Legislator applied the technique of definition by exception to designate national lands. Consequently, National lands were by virtue of the 1932 Decree defined to include, all land in the territory except three categories of land, namely:-

- (a) Lands under Customary law
- (b) Lands covered by Certificates of title.
- (c) Public and Private Property of the State.

National lands therefore, could be defined under the 1932 Decree to mean, all lands in the state which were neither held under customary law nor covered by Certificates of title and which could not fall under public or private property of the State.

National lands were known throughout the French Administration in Cameroon as, "domain de l'état," or "State domain," in English. The French expressly regarded all lands comprised in the "domain de l'état," as the property of French State as against Cameroon under French Administration. The Management of National lands, was the responsibility of the French Administration, to be carried out in keeping with the economic and social objectives of France as a nation.

Under the French Decree of 21st July, 1932, a holder of land under Customary law, could obtain a "livret fonciers" or (land Booklet) to evidence his rights in the land if he proved the existence of these rights to the satisfaction of the French Administration.<sup>82</sup> The holder of a "Livret foncier," was however regarded as having full rights in his land. But he could not alienate his rights in the land and if the land was needed for a public purpose, he could be compensated as of right for any loss of his rights in the land in question. The Decree governed land law in French Cameroon including Northern Cameroon, until April 16th, 1957, when French Administration in Cameroon came to an end.

#### 2.3.3.2 THE POST-COLONIAL PERIOD

On December 23, 1956, a 70 man Assembly was elected to operate under a new Statute which granted internal autonomy to the French Cameroon's new institution which took over from the French Administration. Under this sub-heading, an analysis of the land legislation that were passed by the Government of French-Cameroon shall be discussed. The French-Cameroon which Northern Cameroon was a part, was known as La Republique Du Cameroun,<sup>83</sup> when she gained her independence in 1960. This region was also known as East Cameroon. The land laws that were passed by the 'East Cameroon Legislative Assembly,<sup>84</sup> applied to the whole

Republic of Cameroon including Northern Cameroon.

It should be noted that some of the provisions of the latter legislation were still in force after independence. Consequently, a brief mention must be made of law No. 59/47 of June 17, 1959. Under this law, individuals and Customary Communities could continue to obtain "land booklets," to evidence their Customary land Rights. The practice of inserting "Inalienability clauses" in the "land booklet," issued to the Customary Communities, introduced by the French Administration under the 1932 system continued. It did not take a long time however, for the Government of East Cameroon to realize that the Customary Communities were not putting lands into any productive use and that this was inimical to the economic development of the territory. In 1963, a Decree was passed to correct the errors made in the 1959 legislation.<sup>85</sup>

The "Decree - Loi" or the 1963 Decree, classified land into four categories as follows:-

- (a) National lands
- (b) State Lands
- (c) Lands held under Customary law.
- (d) Other lands covered by the Certificates of title.

National lands were vacant lands without owners. The aim of introducing the concept of National lands in the 1963 Decree, was to directly involve the State in the development and modernization of the country's agriculture. This was so, because the Government has realized that the Customary Communities were not putting lands into any productive use and that this was inimical to the economic development of the territory. The State in the discharge of its responsibility as the manager of National lands, in keeping with the economic and social objectives of the country,<sup>86</sup> carved out some areas of the national lands for agriculture. In

1964, in a place called Nkonjock, a total of 120,000 hectares were set aside for agriculture. Pieces of land were apportioned to farmers and no farmer was allowed to alienate his portion because their only interest in the land, was the right of user. In case of forfeiture, the land affected, returned to the pool of national lands for reallocation to other farmers.

Under the 1963 Decree, State lands were defined as lands at the disposal of the State and which could not be held by individuals. This form of property could not be alienated, unattachable and imprescriptible. These qualities of the State lands notwithstanding, the Prime Minister was empowered by Article 14 of the 1963 Decree, to allocate State lands to individuals by way of grant.

Under the 1963 Decree, lands held under Customary law included, lands in the effective occupation of individuals or Customary Communities for building, farming and grazing purposes. Unlike under previous laws, fallow lands were not regarded as vacant lands. the term Customary Community was defined in the 1963 Decree, as a group of people living together in the same territory as a result of parental ties, adoption or by simple association. This definition enabled a stranger to become a member of any Customary Community or group into which he was received.<sup>87</sup> This was subject to the Customary law rule that such a stranger must accept to become integrated into the group and owe allegiance to its head.<sup>88</sup> The management of lands held under Customary law was the responsibility of the Chief or the Village head. Finally rights in them were acquired by customary grant, **allocation, settlement, inheritance and partition.** Each member of the customary community could obtain a certificate of title to evidence his rights in land effectively occupied by him under Customary law. If the land was in a rural area,

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he was prohibited from disposing of his rights therein during the five years following the grant of Certificate of title.<sup>89</sup> This provision was probably intended to curb or stem land speculation. Any contract for future sale of land entered into during the five-year period was void ab-initio. The Certificate of title could however be used as security for a loan during the period of prohibition.<sup>90</sup>

In 1964, Decree No. 64/6 of January 30, 1964,<sup>91</sup> was passed, which amended the 1963 Decree. This Decree abolished the rights of the customary communities to obtain "Land booklets" or "Livrets Fonciers." By article 1 and 2 of the 1964 enactment, customary communities could claim no more than right of user over their lands. However, individual members of these communities could still cause the government to recognize their customary land rights and a "Livrets fonciers" issued to them., These then qualified the holders to go through the process of registration of title which was concluded by the issue of certificate of title. The aim of abolishing the rights of the Customary Communities to obtain "Livrets fonciers," was to stem the attitudes of the Community leaders or Chiefs who had the tendency of alienating community lands to foreign companies at very high rents. The proceeds of these rents went to their own pockets as against the interest of the community whose lands they were charged to manage and control. So, what the Communities could obtain from their lands was simply the right of user and no more. It should be noted that anyone whose customary land rights had been registered, became the owner, that is to say, he could freely alienate it in whatever form to a third party and he could enjoy all other rights of ownership.

In 1966, the Decree of July 7th, 1966 was passed to regulate the registration of land title,<sup>92</sup> the lands which were the subject of registration, were lands held under customary law and

on which "Livrets fonciers" or "land booklets," had been issued. This Decree superseded that of July 21st, 1932, enacted by the French Administration on the same subject matter. In any case, Customary rights in land, which had been proved during the period of French administration in accordance with the procedure laid down by Decree of July 21st, 1932,<sup>93</sup> were re-examined by the East Cameroon Government and if found satisfactory, were confirmed and registered. Once a holder of land under customary law had his title registered, he became the owner of that land, with full interest in it. He could use it in whatever form he wanted, and he could alienate it at will. But however, if the Government needed that land, though registered, for any public reason, it could take it over and pay him compensation worth the development on the land and the land itself.

In 1966, as well, another law or Circular No. 28,<sup>94</sup> was passed which empowered the Government or its departments to acquire lands held under customary law or registered lands, compulsorily for a public project. The enactment starts off with the provision that land may be acquired compulsorily, by a Presidential Decree.<sup>95</sup> This provision went on to state that the Presidential Decree in question must clearly describe the land which is to be compulsorily acquired and the purpose for its acquisition. The local population was to be notified 15 days before the sitting of the Board charged with the duty of ascertaining the rights in the land in question, as well as, the persons affected by the acquisition. The purpose of the notification was to give time to bring to the notice of the Board, evidence of their rights in the lands to be acquired. Once the lands were acquired, the State's title to it had to be registered one month after the Board completed its work and consequently, the land becomes part of State land.

Compensation for the loss of rights in the land compulsorily acquired, was in cash or alternative land. As regards the amount of compensation payable, article 7 simply stated that the amount of compensation payable, was limited to the damage suffered as a direct consequence of the eviction of the dispossessed. Persons not satisfied with the amount of compensation awarded by the Board, according to article 11, had the right to appeal to the same Board. The short-comings of the enactment was its denial of any right of appeal at any stage to a law court. Such a state of affairs caused some administrators to act "ultra vires," by purporting to discharge functions which were not within their authority.

#### 2.3.3.3 STATUTORY PROPERTY LAW IN THE UNITED REPUBLIC OF CAMEROON.

On May 20th, 1972, a referendum was conducted to determine whether the state of East Cameroon (French-Speaking) and the Sate of West Cameroon (English-speaking) could merge together to form a unitary State, with one nitary constitution, one legislative assembly and one government. Prior to this date, the two states had earlier came together to form what was known as the Federal Republic of Cameroon. After Referendum, it was realized that the majority of the citizens voted in favour of unification, and on June 2, 1972, the United Republic of Cameroon came into being. considering the importance of land to a country's economy, one of the tasks which the government intended to carry out without delay, was to effect Unification in the area of land laws.

On November 14th 1972, a Commission was set up to study the land laws of the former states of East and West Cameroon with a view to enacting uniform land legislation for the whole country. the Commission was thus, required to prepare draft legislation embodying the English,

French and Customary rules of land tenure then applying in the territory. The outcome of the Work of the Commission was the passing of three Ordinances in 1974 namely; Ordinance NO. 74/1 of 6th July, 1974, which established conditions for obtaining Certificates of title to land; Ordinance No. 74/2 of 6th July, 1974, which established rules governing state lands; and Ordinance NO. 74/3 of 6th July, 1974, 3 which established the procedure concerning the expropriation of land by the government for a public purpose and the terms and conditions of compensation for such appropriations.<sup>96</sup>

(a) **NATIONAL LANDS.**

National lands have been defined to include all lands in Cameroon whether occupied or not, except private property over which the proprietors hold Certificated of title.<sup>97</sup> The incidence of the above definition of national lands under Ordinance No. 74/1 of 6th July, 1974 article 14, is that all lands held under customary law in the country, including land in the effective occupation of customary communities has been nationalized. This kind of land reform is delicate because it affects the tradition and values of men. However, this wide concept of national lands under the 1974 decree, was to enable the government improve the country's agriculture in particular and its economy in general. By nationalizing all lands in the country, except, registered lands, the state becomes the sole proprietor of these lands and the state alone could allocate the lands in question or deal with them, in any other manner.

The management of national lands is entrusted in the hands of the consultative Board set up for this purpose.<sup>98</sup> The state is empowered to allocate national lands to individuals or Corporate bodies able and willing to develop them. The allocation may be by grant, lease or assignment. In whatever manner a person or a corporation may acquire interest in

national lands, his right does not go beyond the rights of user, occupation and, temporary alienation such as, loan, attachment, mortgage and pledge.

(b) **STATE LANDS**

State lands have been defined by the Ordinance to include all movable and immovable property which by nature or destination is meant either to be directly used by the public or for public services. State lands consist of two types. The first type is the public and private property of the state. The Public Property of the state consists of Coast lands, water ways, subsoil and air space, and all roads; the private property of the State according to section 10 of the 1974, Ordinance consists of:

- (1) Personal and real property acquired by the state without consideration or for valuable consideration according to the rules of ordinary law;
- (2) Lands which support buildings, constructions, structures and installations established and maintained by the state;
- (3) Real property devolving upon the state by virtue of expropriation for reasons of public policy;
- (4) grants of urban or rural lands, which are forfeited by affluxion of title or confiscation, as well as the properties of associations which have been dissolved for acts of subversion or offence against the security of the State.

The management and control of the state land is Vested in a Board, headed by the Divisional Officer of the Division where the state lands is situated. According to section 2(2) of Ordinance NO. 74/2 of 1974, the Public property of the state shall be inalienable, imprescriptible and unattachable. On the contrary, the private property of the state may be

alienated, <sup>99</sup> by allocation to public services or by assignment to public bodies. It could also be allotted as a contribution to the Capital of Companies with a right of reincorporation in the private property of the state in the event of dissolution, bankruptcy; or liquidation of the said Companies. <sup>100</sup> The Ordinance <sup>101</sup> also provides that the private property of the state could be allotted leasehold or freehold to natural persons or corporate bodies, international bodies of which Cameroon is member and to diplomatic or consular missions accredited to Cameroon.<sup>102</sup> Alienation by any of the above methods, does not vest the person to whom the private property of the state is transferred to with, any right of ownership because the state retains the ownership.

## NOTES AND REFERENCES TO CHAPTER TWO

1. Johnson, The History of the Yoruba, London, 1921, P.96, quoted in M.G. Yakubu, The Law of Land Ownership and succession in Northern States of Nigeria - An Exposition and Critical Analysis of the Existing Laws of Hausa Fulani Community, An Unpublished PH.D Thesis of Faculty of Law, University of Birmingham, 1980.
2. P.Hill, Studies In Rural Capitalism in West Africa, London 1970, P.149.
3. Like the riots by the Moslem Community in Yaounde - Cameroon, in 1992, against the Government for seizing a piece of land meant for the building of a Mosque and an Islamic School.
4. Baker D.L.A. (1989), Law Made Simple; Richard Clay Ltd., Bungay, Suffolk, P.262.
5. Pollock Frederick (1929); First Book of Jurisprudence. R. and R. and R. Clark Ltd., Edinburg, P.92.
6. Mariam - Webster, inc. Webster, Third New International Dictionary of English Language, Unabridged with Seven Languages, Volume H. to R.
7. Roger Bird (1983; Chances Law Dictionary, Sweet and Maxwell P.107.
8. Tarkang L.M. (1992) Property Acquisition and Ownership Amongst the Bakweri People of Cameroon. Unpublished (LL.M.) Thesis, A.B.U. Zaria.
9. Volume 1,P.1103.
10. Property and conveyancing Law, Cap. 100, laws of Western Region, 1959.
11. Prof. B.O. Nwabueze (1972); Nigerian Land Law, Nwanife Publishers, Enugu.

- P.1.
12. Walker M. David (1980); "The Oxford Companion to Law," Oxford, p. 710.
  13. Balowe, (1958) "Conference On World Land Tenure" New York, pp. 551 - 6, quoted in M. G. Yakubu (1980) Op. Cit. p. 2.
  14. Cap. 192 Laws of the Federation, 1990.
  15. (1984) 1 S.C.N.L.R. 634 at 658.
  16. Land Tenure in Basutoland, (Colonial Research Studies No. 13), 1954, quoted in M. G. Yakubu (1980) Op. Cit p. 2.
  17. The Land Use Act, Cap. 202 of the Laws of the Federation, 1990, also makes the same provision with the Land Tenure Law, 1962.
  18. See Section 5 of the Land Tenure Law, 1962.
  19. Section 37 (1) of the Nigerian Constitution, 1979.
  20. Ordinance No. 74/1 of 6th July, 1974.
  21. M. G. Yakubu, (1980), Op. Cit. p. 61.
  22. A Boisa v. T. Kwaji, Civil Case No. 39/MICF/73.
  23. Judgement No. 52/TC/FBN of 22 July, 1987.
  24. The equivalents are: Section 26(1) of the High Court of Lagos State (Lagos Laws Cap. 52); High Court Law (Eastern Nigeria Laws, 1963 Section 20(1). Cap. 61; High Court Law (W.R.N. Laws 1959, Cap.44) Section 12 (1); High Court Law, 1964 (No. ;9 of 1964) M.W.N.) Section 13(1).
  25. See Cap. 78 of Laws of Northern Nigeria, 1963.

26. M. G. Yakubu (1985) Land Law in Nigeria, London, p.6.
27. C.D. 1048 P. 183
28. See Section 20 of Land Tenure Law, 1962, See also the Land Use Act, Cap. 202, Laws of the Federation, 1990.
29. See Section 9 of Ordinance No. 74/3 of July, 1974.
30. Political Memoranda No. 25 and 26, See also Lugard (1929), Dual Mandate, London, p. 288 - 9, quoted in M. G. Yakubu (1980) Op. Cit. p. 74.
31. Gollan, C. J. (1902) Land Tenure in Northern Nigeria "Journal of Comparative Legislation" Vol. 4 p. 167, quoted in M. G. Yakubu (1980) Op. Cit p. 75.
32. Anderson J. N. D(1955); Islamic Law in Africa, p. 114.
33. Abdurrahim (1911) Mohammadan Jurisprudence, Madras, p. 266, quoted by M. G. Yakubu (1980) Op. Cit. p. 85.
34. Abdurrahim (1911) *ibid*, p. 264.
35. M.G. Yakubu (1980) Op. Cit. p. 86.
36. Lord Lugard (1929) Dual Manadate, London, pp. 284 - 9; See also Political Memoranda No; 10, Para. 22.
37. M. Abdullahi, Ta'alimul Al-Aradi.
38. M. Abdullahi, *Ibid*.
39. M. G. Yakubu (1980), "Land Tenure Under Islamic Law" Journal of Islamic and Comparative Law, Vol. 9, p.1
40. M. Abdullahi, Op. Cit. p. 1.
41. M. G. Yakubu Op. Cit. p.2.

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42. M. Abdullahi, Op., Cit. See also Schacht, Introduction To Islamic Law, London, 1964, p. 141.
43. M. Abdullahi, Op. Cit.
44. M. G. Yakubu (1980), Op. Cit. p. 2.
45. Abdulmalik Bappa Mahmud, The Supremacy of Islamic Law, Zaria, 1981, p. 143.
46. Haruna v. Gana Jimeta(1970) N.W.L.R. 82.
47. Ta'alimum Al - Arad.
48. M. Abdullahi op.,. cit.
49. Political Memoranda No. 10 para. 100.
50. McDawll (1966): Introduction to the Problems of Land Ownership in Northern Nigeria, Zaria, p. 3, quoted in M. G. Yakubu (1980) op. cit. p. 3.
51. M. Abdullahi, Op. Cit. P.3
52. Prof. M. G. Yakubu, Op. Cit. p.1
53. Quran IX: 103.
54. Political Memoranda No. 5 para. 7.
55. Adurrahim Op. Cit. PP. 387 - 388
56. Political Memoranda No. 5, para 7
57. Prof. M. G. Yakubu, Op. Cit. p. 5.
58. Prof. M. G. Yakubu, Ibid p. 6.
59. Lugard, Political Memoranda No. 10, Para 7.
60. This Company later became known as the Royal Niger Company.
61. M. G. Yakubu (186) Notes on the Land Use Act, Zaria, p. 1.

62. See proclamation No. 8 of 1900 as later amended by Proclamation No. 13 of 1902.
63. See political Memoranda No. 10, para. 13.
64. Ibid
65. M. G. Yakubu, (1986) Op. cit. p.3.
66. Land Proclamation No. 16 of 1902.
67. See Section (4(1) of the Crown Lands Proclamation, 1902, quoted in M.G. Yakubu Land Law in Nigeria. London, 1985, p.24.
68. Lord Lugard, himself remarked in his political Memoranda No. 10. para. 349, that the Crowns title to particularly all of them (Lands) had lapsed to the real owners.
69. Political Memoranda No. 10, pp. 349 - 50.
70. Cd. 5102 and 5108 of 1910.
71. Report of the Northern Nigeria Lands Committee Cd. 5102, 1910, quored by M. G. Yakubu (1980) Op. Cit. p. 96.
72. Quoted by M. G. Yakubu (1985) Op. Cit. p. 25 as quoted by Meek C. K., in Land Tenure and Land Administration in Northern Nigeria, London, 1957, p. 102.
73. Section 4 of Land and Native Rights Ordinance, No. 10, 1916.
74. Section 4 of Land And Native Rights Ordinance, No. 10, 1916.
75. M. G. Yakubu, (1985) Op. Cit. p. 20.
76. Cap. 59, Laws of Northern Nigeria, 1963.
77. It should be noted that law can be called a Decree or an act, depending on whether the Government is headed by a Military Regime or a Civilian one. It was enacted by a Military Regime, that is why it was a Decree at its inception.

78. The Land Use Act, 1978, shall henceforth in this research be cited as, the Land Use Act, Cap. 202, Laws of the Federation, 1990.
79. Martin Z. Njeuma. (1978), Fulani Hegemony in Yola CEPER, Yaounde, p. 210.
80. Victor Julius Ngoh, (1988), Cameroon 1884-1985, A Hundred Years of History, CEPER, Yaounde, p. 37.
81. Ngwasiri C. N.; Lecture Notes on Land Law, p.50.
82. Ngwasiri I bid p. 54.
83. Ordinance of October, 17, 1958.
84. This was the name given to the French Speaking Cameroon or East Cameroon after her independence on January, 1960.
85. The Decree was known as Loi No. 59/47 of June 17, 1959 and its Decret d'application, passed on October 7, 1959. Ngawsiri Op. cit. pp. 39 - 40.
86. Ngwasiri op. cit. p. 41, Art 26 of Deret - loi 1963.
87. Ngwasiri I bid p. 49.
88. Ngwasiri I bid p. 41.
89. Ngwasiri I bid p. 50
90. 1963 Decre-loi Art. 5.
91. Decret No. 64/9 of January, 30, 1966 and an Arrete of November 25, 1966.
92. These were complemented by Decret or Decree of November 30, 1966 and An Arrete of November 25th, 1966.
93. This was by proof of customary rights in court.
94. Circular No. 28/PG/59/0 of 2/12/1966.

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95. I bid.
96. Ngwasiri Op. Cit at P. 58
97. Art 1 of Ordinance No. 74/1
98. These Ordinances were respectively given the numbers 74/1, 74/2, and 74/3. They will be referred to in this work in the same manner as Ngwasiri Op. cit. did at p. 61, as the first, second and third of 1974 Decrees.
99. Ordinance No. 74/1 Section 11(1) & 2.
100. Each Administrative Division in the Country has a Consultative Board.
101. Ordinance No. 74/2 Section 12(1)
102. Ordinance No. 74/2 Section 12(1).

## CHAPTER THREE

### THE NATURE OF FAMILY PROPERTY

#### 3.1 DEFINITION OF FAMILY

The term "family", is not easy to define with any reasonable degree of certainty. The problem that confronts a student of Family Law in Nigeria and Cameroon is to determine without much fear of contradiction, what connotes the term "family". The difficulty in defining a "Family" is occasioned by its dynamic nature as a social institution which begins as a small domestic unit and grows with time into a complex social unit. There is also the tenacity of kinship in the area under consideration, whereby, people cherish the ties and endeavour to employ the terminology of "family" to emphasize and perpetuate them. The third reason for this difficulty it seems, is the inevitable overlapping of kinship and family boundaries and the inherent difficulty of setting a universally accepted line of demarcation.

Although it is difficult to state precisely what the term family amounts to within the context of this research, it is imperative to attempt it because, it is very instrumental to the realization of the objectives of the thesis. It should be noted at the onset that Northern Nigeria and Northern Cameroon are made up of dozens of ethnic groups, with scores of languages and dialects. There are religious and customary variations in the mode of achieving legal results (such as getting married and so on). Even with all these variations, however, it is surprising that the substantive laws are similar as between the different ethnic groups. And so, for purposes of defining "family" Northern Nigeria and Northern Cameroon shall be considered as one entity.

The term "family", has been attempted to be defined by different writers. In the opinion of Taslim Elias, "Family is the smallest unit in the body polity which is invariably or mainly composed of a man, his wife or wives and their children."<sup>1</sup> This seems to be a narrow concept of family and accords more with the Western Concept of family which is a conglomerate of husband, wife and their children.<sup>2</sup> Abdal Ati has Islamically defined a family as designating "a special kind of structure whose principles are related to one another through blood ties and/or marital relationships and whose relatedness is of such a kind as to entail mutual expectations that are prescribed by religion, reinforced by law and internalized by the individuals."<sup>3</sup> Clearly, this definition is based on the mutual expectations that follow from membership in such a structure. The membership may be ascribed as a result of natural blood ties, or acquired through marriage or both ascribed and acquired if the membership unit includes, as it may, more than a marriage pair. The definition is more in line with what is understood as family in Northern Nigeria and Northern Cameroon. P. C Lloyd also defines family as "any group from the smallest (nuclear family of man, his wife and children) to several thousands tracing descent from a common ancestor."<sup>4</sup>

Considering the term "family" with respect to inheritance, C. O. Olawoye opined that the term family has a restricted sense.<sup>5</sup> He believes that because family property relates to land inherited by those heirs of the body of the founder of the family and the bodies of the beneficiaries down the line, only those who for the time being are entitled to the inheritance, are within the group.<sup>6</sup> In his opinion therefore, family in the context of property is the amalgam of those who are entitled to claim as heirs of the founder of the family at the material time. It should be noted that although the Islamic Law definition of family is wider than that given by

C. O. Olawoye, so as to cover even non-heirs, Sharia law limits the amount of property in general which one can bequeath to the non-heirs-members of the family. One cannot under Islamic Law bequeath more than 1/3 of his property to non-heir-members of the family without the consent of the eligible heirs, otherwise, his disposal of the property infringes upon their rights.<sup>7</sup>

Similarly, there is no statutory provision in Cameroon and Nigeria that gives a satisfactory definition of the term family. Definitions that exist, were made had hoc for given purposes. Two examples will suffice to illustrate the assertion. Section 2(1) of the Fatal Accident Act, 1961<sup>8</sup> of Nigeria, defines an "immediate family" in these words, "immediate family" means: (1) In relation to a deceased not subject to customary law, includes: - the widows; the widower; and parent; any child; (2) In relation to a deceased who was subject to Customary law, not being Islamic Law, means in addition to the above, brothers and sisters including surviving step brothers and sisters; (3) In relation to a deceased who was subject to Islamic Law means, in addition to the above, father or mother of the deceased, including any grand-father or grand-mother, step-father or step-mother - entitled to share in the award of 'diya' prescribed by Islamic Law for involuntary homicide. The Federal Workman Compensation Act,<sup>9</sup> on the other hand defines "family" by implication as, "Members of the family means - when used in relation to a Native,<sup>10</sup> anyone of those persons mentioned in one of the columns in the First Schedule according as the family is based on the paternal or maternal system; (b) when used in relation to any person not being a native: wife, husband, mother, father, grand-father, grand-mother, step-father, step-mother, son, daughter, grand-son, grand-daughter, step-son, step-daughter, brother, sister, half-brother, half-sister."

The first schedule lists the following persons as members of the family in a "Paternal System": "Mother, father, wife, son, daughter, brothers, sisters, father's father, father's brother." For a Maternal System: "mother, father, wife, son, daughter, brother, sisters, mother's mother, mother's brother, mother's sister, sisters's son, sister's daughter, mother's sister's son, mother's sister's daughter."

Under the Civil Code which is applicable in Cameroon, article 731 suggests the definition of "family" with respect to inheritance as including all children, descendants, ascendant and all collateral parents. In other words, family connotes children and all blood relations.

Neither legal writers nor statutory laws have therefore, provided any clear definition of what the word family stands for. A brief or cursory look at the judicial definition of the term "family" will show how judges have fought series of battles in an attempt to find a clear and concise definition of that term. The earliest Nigerian case that discussed this issue comprehensively, seems to be the case of Coker v. Coker.<sup>11</sup> The crux of the matter in this case was the interpretation of the phrase:- "I have and bequeathed my present dwelling house to the whole of my family or blood relation and their children's children throughout".<sup>12</sup> Carey J. relying heavily on the decision in an English case of Pigg v. Clarke<sup>13</sup>, held that family in the context of the bequest meant "his children". Although somewhere in his judgement he mentioned that his guiding principle was the common custom of Egbas of Lagos of which tribe the testator really belonged. The crux of the matter in the Pigg's case was the interpretation of the phrase, "My said family," in the will of a beer housekeeper in Ipswich England. The testator had in his will left, property for what he referred to as "my said family." Jessel M.

R. after considering all the evidence before him; including the English concept of family and the fact that the testator had seven children and grand children on the date of the will, came to the conclusion that the primary meaning of family is children of the testator.

Although in deciding Coker's case, Justice Carey claimed to rely on the testator's custom, the extensive quotations from Pigg's case does not support such a reliance. Whereas Mr. Coker's will might have been equitably interpreted, so as to protect the children whose only breadwinner had ceased to exist, the practice of whole sale importation of foreign decisions into local cases may do more harm than good. Considering that Northern Nigeria and Northern Cameroon are areas where the extended family system is extensively practiced, it is submitted that the use of the intention of a beer housekeeper in England, as a measure of the intention of a Nigerian or Cameroonian with a different Socio-cultural background (i.e. entrenched practice of extended family system) in the distribution of his legacy is not correct.

The history of the Nigerian testamentary cases seems to show that since Pigg's case, Nigerian Courts seem to have conclusively decided that only children can inherit the property of their deceased parents.<sup>14</sup> Even a widow or very close relatives cannot benefit unless specifically mentioned in the will.<sup>15</sup> Strict Native Law and Customs of Northern Nigeria and Northern Cameroon as well as Islamic Law which also applies there, does not disqualify relatives of deceased persons from benefiting in the distribution of the testator's legacies.<sup>16</sup> There is however, one authority which suggests that, family includes both children and other relations. The case in point is Sogbesan v. Adebisi<sup>17</sup> In this case, the court in addition to appointing the deceased's brother as head of the family also held that both the deceased's sisters, their children as well as the children of the deceased body, all constituted the family of the

deceased. Whereas this decision is more in line with the author's view on the subject, it should be pointed out that this case had very peculiar facts, therefore, the decision should be limited to its facts.

Notwithstanding the peculiar nature of this case, it is the submission of the author that, the common judicial approach of the courts to the interpretation of the term "family", i.e., by using the notion of nuclear family which is the full practice in England as opposed to Northern Nigeria and Northern Cameroon where it is rarely practiced, as a criterion for solving similar problem in a different socio-cultural setting, is to say the least unreflective of the extended family system which has been and may continue to be part of the socio-cultural system of Northern Nigeria and Northern Cameroon.

### **3.2 THE EXTEND FAMILY**

The "Extended family" is a conglomeration of several English type of nuclear families. But unlike the nuclear family which is the smallest unit in the social structure of many societies, the extended family is a larger unit in the social structure of some societies. It is usual for such extended families to have the same ancestral father, that is to say, membership of the "extended family", is acquired through belonging to the family of the founder of one of the several nuclear families which make up the "extended family" in question. This means that the most common pre-requisite of membership is by birth into the family. Membership could also be acquired through marriage, particularly, in patrilineal societies. The wife automatically becomes a member of the husband's family as soon as the marriage is contracted. Slaves or their descendants may also be considered as members of the "extended family".<sup>18</sup>

Chinwuba Obi (1966)<sup>19</sup> defined extended family as "the smallest sub-division of a traditional society, consisting of all the persons who are descended unilineally from a common

ancestor, who live and function as a group, occupying a common territory and recognizing one or more of themselves as their political head or governing body as the case may be - together with persons who, though not blood descendants, of the said ancestor, have been absorbed into the group."<sup>20</sup> The requirement of common territory means that once a female member of the extended family gets married, she ceases to become a member of her maiden family (as a political unit) but retains her family membership (as a social unit). In her book entitled Land Tenure in An Ibo Village, M.M. Green, defined extended family as,<sup>21</sup> "... a group of loosely related people, known by a common name and consisting usually of a man and his wives and children, his sons', wives and children, his brothers and half brothers and their wives and children, and probably other near relations. ""

In Northern Nigeria and Northern Cameroon I found out from my field work that all the definitions of "extended family: which were gathered, were the same in substance with the above definitions.

An extended family being a social institution, is also a corporate body. It could therefore own land which belongs to every member of the group. As a corporate body, it has a legal personality that empowers it to sue or be sued in its own name. The head of the extended family may either be the most senior member of the various nuclear families or the elected representative of the members. As the head of the nuclear family owes several obligations to members of his family, so also does the gainfully employed members of the extended family owe obligation to the less fortunate members of the group. The obligation owed to the extended family is a moral one. Its moral nature notwithstanding, the obligation is well known and accepted by most members of the extended family under the Customary

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Social System of Northern Nigeria and Northern Cameroon . The assistance rendered by the income earning members to the unemployed and less fortunate members of the "extended family", takes a variety of forms. It could take the form of housing, feeding, clothing, medication as well as, educational training. The demands of the extended family on the income earning members of the family could seem to make the responsibility of the income earners more than that of their western counterparts. This extraneous responsibility shouldered by the members of the extended family system has been judicially noticed in the case of Giwa v. Giwa

<sup>22</sup> The facts of this case were that, the Petitioner (the wife of the respondent) applied for maintenance after a decree absolute had been granted. But the court discovered from the evidence before it that, in addition to the maintenance of his nuclear family, the respondent also contributed to the maintenance of his other brothers, unemployed relations and two elderly aunts.

Disturbed by this discovery, Sowemimo J., as he then was, said

"The unfortunate thing with regard to Nigerians contracting marriage under either the English Laws or the Local Marriage Act, is that those laws do not take into consideration the "extended family" responsibility of either the husband or the wife as the case may be. The result has been that those English cases cited, can not be of great assistance if one has to take into consideration what is the accepted practice amongst the Yorubas as regards their attitude with regard to responsibility of their families having regard to the extent of the meaning to that term.<sup>23</sup>

Although this case was decided with reference to the Yoruba Custom, it is relevant to Northern Nigeria and Northern Cameroon where "extended family" system is an established customary practice as well.

However, it would seem that the extended family system was more solid and cohesive in the olden days when most people lived in villages. Modern factors such as, modern commerce, Western education, human migration, urbanization, industrialization and the like would seem to have had some negative effect on the cohesion of the system. This is because some of the members living far away from home became divorced from the system. However, the present harsh economic conditions which have deprived several people of their jobs in the cities, has also contributed to the hitherto, weak cohesion of the system.

The extended family system is a system that takes care of the welfare of its members. It is a sort of social welfare system that takes care of the economically unfortunate members of that family. Although the system is good, nevertheless, it has its own disadvantages. For example, the burden it places on the well-to-do members of the system, lowers their standard of living. It also causes serious alienation problems and consequently impedes economic development. Whatever the disadvantages of the extended family system, it should be retained at all cost because it instills a sense of charity and solidarity amongst people of common ancestors.

### **3.3 WHAT IS FAMILY PROPERTY ?**

Family property may be defined as any form of property, the radical title of which vests in the family as a corporate body.<sup>24</sup> Family, property may also be defined as, "property which has devolved from father to children and grand children under the native law and custom and

which no individual child or member of the family has his or her separate share."<sup>25</sup> This definition brings out the basic characteristics of family property which may be summarized under two heads. First, family property refers to land which belongs to the family as a distinct, perpetual, legal entity. It belongs equally to all the members of the family. Secondly, no single member of the family for the time being, possesses any separate and disposable or alienable interest in the property.<sup>26</sup> This point is illustrated by the case of Ogumefun v. Ogumefun,<sup>27</sup> Where one of the two beneficiaries of a family house disposed of her interest by will. The court ruled that in the absence of partition, no one has an alienable interest in a "will". The court also held in Caulcrick v. Harding,<sup>28</sup> which had substantially the same facts with the above case that, in the absence of partition, no one has an alienable interest in Family Property. In Miller Bros. v. Ayeni,<sup>29</sup> where creditors tried to attach the interests of the members in the family property, the view of the court was equally the same that, the interest of a member in family property is inalienable in the absence of partition. Thirdly, the fact that family property is vested in a body corporate, implies that no transaction affecting interests therein, is valid unless done by or with the consent of the family itself,<sup>30</sup> acting through its "alter ego," which for this purpose is the family head or family council (conseil de famille, as it is known in Northern Cameroon ). This rule however, is subject to two provisos. A court of competent jurisdiction can authorize a dealing (e.g. a Mortgage or sale) if the overall interest of the family or justice of the case requires that this should be done.<sup>31</sup> Similarly, where the family sleeps on its rights, it will be estopped from upsetting an otherwise unlawful transaction if to do so will involve injustice to an innocent third party.<sup>32</sup>

According to what was gathered during the field work for this research, family property is understood in Northern Nigeria and Northern Cameroon to mean, land which the whole family holds jointly. The *raison d'être* for the very concept of family property as it was gathered, was people's desire down the centuries to preserve their land for posterity and so, perpetuate their own memory while providing posterity with a lasting basis for unity and a place to build and/or grow food crops upon. If a man's family is taken away therefore, the need for family property disappears. The land which is the subject of family property may be used jointly or separately, but the ultimate ownership of the land lies in the whole family and in the management of a family head or family council, whichever, the case may be. No single member of the family possesses a separate, detachable, disposable,<sup>33</sup> attachable,<sup>34</sup> or heritable interest therein. The family as a legal entity owns the land and therefore, any transaction entered into, affecting interests therein, is invalid, unless done with the consent express or implied of the family itself.<sup>35</sup>

In Northern Nigeria and Northern Cameroon, peasants find many advantages in family property or family land holding as a productive unit. It combines joint social and material security against individual distress due to illness or crop failure and to the spreading of ceremonial expenditures at marriages, childbirth, naming, ramadan, christmas and circumcision ceremonies. The head controls the holding, directs the labour force and distributes food supplies from the family land for the common meal. He provides male members with plots, the ownership of which remains with the family and he may also pay taxes due from male members of the family with proceeds from the family land or family property. Any grown up male



member who wants to move out of family land may do so by telling the family head, who allocates a plot for him from the family land. As soon as he occupies his own plot, that family land is broken and he now starts a new family land. He retains his membership of the family as a social unit but not his membership of the family as a legal unit, for the purpose of the remaining family land.

#### **3.4. MODES OF ACQUISITION OF FAMILY PROPERTY**

Family property could be created in one of several ways, by allotment, settlement, intestacy, making an oral or nuncupative will and by purchase with family resources. Before considering each mode of acquisition, it should be noted that in some cases, family land can also be created out of individually owned property. It does not matter how the land was acquired in the first place.<sup>36</sup> The property must be individually owned so as to confer on the holder, exclusive, alienable and heritable interest therein. The individual owner must be dead. The deceased must have left a "family" as recognizable under native law and customs as well as Islamic Law and, at his death, his family must contain two or more persons entitled to inherit him,<sup>37</sup> because being survived by a sole heir, will not bring the concept of family property into operation. The *raison d'être* for the very concept of family property was people's desire down the centuries to preserve their land for posterity and so perpetuate their own ownership while, providing posterity with a lasting basis for unity and a place to build and/or grow food crops upon.

Bequeathing land, therefore, to a sole heir who under customary laws of Northern Nigeria and Northern Cameroon, has the right to dispose of his inheritance as free as he can with his own

individually acquired property, does not bring into operation the very concept of family property.

Before delving into the several ways in which family property may be acquired, it should be noted that the discussion shall be limited to those tenure that confer property rights in land to the family as an entity and will not discuss the law relating to these forms in detail. For instance, it will be sufficient to show that "allotment" or 'will', is a form of tenure which creates rights in land and we shall not engage in discussing in detail, the law relating to wills or allocation. It should also be noted that there is a lot of similarity between the land tenure law of Northern Nigeria and that of Northern Cameroon arising from cultural similarities. Majority of the inhabitants of Northern Cameroon like Northern Nigeria are Hausa/Fulanis, who before colonization were under the Adamawa Emirate. So the artificial separation of the two areas by the colonialists, did not necessarily amount to cultural separation.

#### **3.4.1 SETTLEMENT**

Acquisition of family property by settlement is an old form of family property creation. Although the land Use Act, vests title to all undeveloped lands in the Governors of States,<sup>38</sup> and ordinance No. 74/1 of 6th July, 1974,<sup>39</sup> applicable in Cameroon, vests title to all national lands in the State, this mode of acquisition of family property is still very much in practice in Northern Nigeria and Northern Cameroon, because of the availability of unoccupied lands. This mode of acquisition vests title in the family. For the family to acquire land by settlement, the land must be that which no previous claim exist.<sup>40</sup> The family must not only show that their ancestors or itself were the first to arrive on the land, but also indicate its presence by putting

a sign on the land. That sign can be by building, cultivation, by hunting, by digging a fish pond, by planting a particular type of tree or by naming the Settlement. If the ownership of the land is in dispute, the ability of the family to describe convincingly, the origin of the name of the place is of great advantage.

In any litigation, the first settler needs not prove a grant from anybody because being the first to settle on the land, the question of proving grant from a landlord does not arise. In Ajala v. Awodele,<sup>41</sup> the plaintiff claimed a declaration of title and an injunction to restrain the defendant from entering into a parcel of land. The plaintiff's claim was based on early settlement. The court in its decision in favour of the plaintiffs observed that, "Settlement is one of the traditional modes of acquisition of land and it is irrelevant to argue that the title is defective because his ancestors had no grant from anybody". Also, in Owunujin v. Omotosho,<sup>42</sup> where the court was faced with the problem of deciding which of the rival claimants owned the land in question, it said:

"But ownership or title must go to the first settler in the absence of any evidence that they (the ancestors of the parties) jointly settled on the land or that grant of joint ownership was made to the later arrival by the first. The question therefore, resolves itself to who was the first settler on the land, Okegbemi or Owonuji."

The inevitable conclusion from the above authorities is that, acquisition of family property by way of settlement and every activity on the land by the settlers or the family, brings the land under the control of the family. The settlement vests the family with interest in the land. The principle of family acquisition of land by settlement has not only been recognized

under land tenure laws of Northern Nigeria and Northern Cameroon , but also by all people all over the world. It has been recognized in International Law as one of the various ways by which territory (Land) can be acquired.<sup>43</sup>

### **3.4.2 ALLOTMENT**

**Allotment is used here as an adjective depicting a permanent allocation of land which passes the ultimate title to the allottee or the family. Where land is within the vicinity of a community settlement, allotment can only be made by the Emir, Chief, Lamido or Sultan. In this case, the family cannot acquire an interest in land without the consent of the authority in charge of the land in question. Allotment by an authority must be consciously done and understood by all the parties as such.<sup>44</sup> The onus of proving allotment is always on the party alleging it. Whether there has been allotment, is a question of fact, to be gathered from all the circumstances surrounding the case.**

Allotment vests the family with interests in the land. The family is free to alienate to another person or group of persons in accordance with native law and customs. The family has rights in the land against the whole community and it enjoys it in perpetuity. The rule that allotment of community land transfers title to the land in the family, is also recognized under Islamic Law of the Maliki School,<sup>45</sup> which applies in Northern Nigeria and Northern Cameroon.

This methods of acquiring family land under native laws and customs, is widely practiced. The need for the exercise of control over the allotment of land to families is enhanced by socio-political developments, such as, increase in population. high need of land for public utilities such as, schools, hospitals, public corporations and other public institutions.

### **3.4.3 INTESTACY**

Intestacy simply means that a deceased died without making a "will", It is by far the greatest mode of acquiring family land in Northern Nigeria and Northern Cameroon. It is well known principle of customary laws of the area under consideration that when a man dies intestate, his land as a rule, becomes family property. Family property by intestate succession can only be created out of individually owned property. It is immaterial how the later acquired it in the first place. It may have been carved out of virgin land, received as a gift, purchased, or acquired by the holder as his own share of the land of a wider family which had been permanently partitioned.<sup>46</sup> The land therefore, must be individually owned as to give the holder exclusive, alienable, attachable and heritable interests therein. Again, for family property to arise by intestacy, the owner must not have only died intestate, but must also had found a "family" as recognized by customary law and, the family must contain two or more members at his death, entitled to inherit him on his intestacy.<sup>47</sup>

**Intestacy may be likened to the switch that turns on the customary law of the deceased in the distribution of his legacy.** Intestacy does not apply to land or rights in land held jointly by the family or community because an individual has no personal private right to devolve same to his successor. The laws governing intestacy are always and every where part and parcel of the general structure of property relationship.<sup>48</sup> These rules of customary law are mostly applicable to the non-muslims of Northern Nigeria and Northern Cameroon .

The Islamic Law of the Maliki School which is applicable in Northern Nigeria and Northern Cameroon, recognizes intestacy as a mode of acquisition of family property. Under the Islamic law like the customary law, intestacy arises in circumstances where the devolution

of property takes place without the intervention of the owner, that is, when the owner of such a property dies without specifying how and in what manner or form, his property should be divided among his heirs. He is deemed to have died intestate. With respect to intestacy the Qur'an says, "from what is left by parents and those nearest related, there is a share for men and a share for women whether the property be small or large-determinate share."<sup>49</sup> What this implies is that where a muslim who owns property dies without making a "will" or "bequest", as it is technically understood in Islamic Law, property in it shall pass to his family as family property, which can be managed as such for the benefit of all the members or partitioned to each member and everyone of them possessing exclusive, attachable, alienable and hereditary right in his or her own share.

For this principle of intestacy to confer property rights on the family according to Islamic law, the owner must have actually died. This death can either be death in fact or death in law.<sup>50</sup> Secondly, he must have left property which is the subject matter of the intestate succession. The property may be land, cash, etc. It can even be the usufruct, ie., tenancy or trust, or rights involving financial obligations not personal rights as in the case of ranks; easements; mortgage pre-emption etc. Thirdly, there must be heirs as beneficiaries of the property left by the deceased person and these heirs must be moslems.<sup>51</sup> These rules of Islamic law of intestacy apply to all moslems in Northern Nigeria and Northern Cameroon and is widely known amongst them as one of the modes of acquiring family property.

The statutory law currently governing devolution of right of occupancy on death in Northern Nigeria is, Section 24 of the land Use Act, 1978.<sup>52</sup> The Act creates two types of

tenancies. These are customary right of occupancy and statutory right of occupancy. According to subsection (a) of Section 24, where a deceased person leaves "a customary right of occupancy, unless non-customary law or any other customary law applies, be regulated by the customary law existing in the locality in which the land is situated."

Sub-section (b) of section 24 talks about statutory right of occupancy. It provides that, "in the case of a statutory right of occupancy (unless non customary law or other customary law applies) be regulated by the customary law of the deceased occupier at the time of his death relating to the distribution of property of like nature to a right of occupancy".

The application of the above mentioned two sub-sections is subject to two provisos, as per section 24 of the Land Use Act, that:

- (a) No customary law prohibiting, restricting or regulating the devolution on death to any particular class of persons, or the right to occupy any land, shall operate to deprive any person of any beneficial interest in such land (other than the right to occupy the same) or in the proceeds of sale thereof to which he may be entitled under the rules of inheritance of any other customary law; and:
- (b) "a statutory right of occupancy shall not be divided into two or more parts on devolution by the death of the occupier, except with the consent of the Governor".

The summary of the two sub-sections is that whereas one is governed by the customary law, the other is governed by the personal law of the deceased. This would mean that cases of Tappa v. Kuka<sup>53</sup> and Re Whyte<sup>54</sup>, which applied the personal laws of the intestate deceased in the distribution of their properties are still good laws under sub-Section(b). It would also mean that even where property had originally been acquired by a father under conveyance according

to English Law, it would vest in the children as a family property under native law and custom if he died intestate.<sup>55</sup>

In Miller Bros. V. Ayeni,<sup>56</sup> where the question of the devolution of an intestate father's properties came up for determination, Van Der Meulen J. of the supreme court observed as follows:

**"...Although their father had bought the land under a conveyance of October 6th, 1889 yet on his death intestate, the children held undivided share in common under local customary tenure, and not as tenants in common under English law."**<sup>57</sup>

In Northern Cameroon, the application of the customary law of inheritance is complicated because, there is no single system of customary law for the whole area. The principle adopted therefore, is the applicable customary law to which the intestate was subject, irrespective of where the property is situated or where the death occurred. This implies that if a Tupuri man dies intestate leaving property or land in Fouban, in the Western Province, the intestacy is governed by Tupuri customary law of the far North Province and not the Fouban customary law of Western Province. In effect if he died intestate leaving a piece of land, the property right in it will pass to his family as family property and, the family will have exclusive, alienable, attachable and disposable rights to it.

#### 3.4.4 **BY ORAL OR NUNCUPATIVE WILL**

A will is a declaration by which a person making it (the testator) provides for the distribution or administration of his property after his death.<sup>58</sup> Wills are of two types. The first

is the English type of Will, which is governed by the Wills Act, of 1837 which is applicable in Nigeria and Cameroon. The second type of will is regulated by customary laws. Whereas the former is in writing, the later is unwritten or oral. This type is what is referred to in this write-up as oral or nuncupative Will. It is one of the several ways in which a family can acquire landed property in Northern Nigeria and Northern Cameroon under the applicable Customary Land Tenure Laws.

**Nuncupative Wills take the form, of an oral declaration (death-bed-declarations) made voluntarily by the testator during his lifetime. It is usually made either at the time the testator is in good health or in anticipation of death.**

**For a declaration to amount to a nuncupative will, certain conditions must be fulfilled.** Firstly, the property which is the subject matter of the Oral Will, must be properly identified. This means that the property must be properly described or capable of beings identified or must be in existence and, the beneficiaries must also be clear. Secondly, the property must be the testators private property and not family property.<sup>59</sup> The "Will" must be made in the presence of witnesses, who themselves, are persons other than the beneficiaries. It was the view of the Federal Supreme Court of Nigeria in Ayinke V. Ibidunni,<sup>60</sup> that the declaration be done in the presence of four witnesses. The testator is free to dispose of his will, in accordance with the dictates of his conscience,<sup>61</sup> If he instructs that on his death, his landed property should be retained as family property so as to perpetuate his memory that must be done by his survivors. People prefer to turn their lands into family property by "wills", because of fear that as soon as they are dead, their lands may be sold away by their families and their children in particular.

It is usual for the surviving members to carry out the intention of the testator because the last words of a departing parent often consist of words of advice to the children he is leaving behind. It is also believed that anyone who varies the wish of a deceased person may earn the wrath of his spirit from the grave. It is also the practice for the Courts to respect and uphold the intention of the testator.<sup>62</sup> Carey J., summed up these practices in the following words. "In all cases concerning the interpretation of 'wills', it was the duty of the court to endeavour to ascertain so far as possible the intention of the testator."<sup>63</sup> The customary rules governing oral or nuncupative wills as examined above, applies strictly to the non-moslems of Northern Nigeria and Northern Cameroon<sup>64</sup>, since the Islamic Law of Maliki School which applies in the whole of West Africa including the areas covered by this research, varies with some of the customary law rules on nuncupative wills, as a mode of creating family property.

The Islamic Law of Maliki School recognizes oral "wills" or "bequest", as a form of creation of family property. Bequest is defined as "the legal declaration of the intention of a moslem with respect to his property, which he desires to be carried into effect after his death."<sup>65</sup> The word bequest connotes a gratuitous contract between one person (the legatee), which gives a right of what does not exceed one-third of his (legator) estate to the legatees after his death. A bequest or "will" could be oral or written, but however, both have the same effect, that is, of transferring not more than one-third of the legator's property to the legatees. Our concern under this sub-heading is with oral bequest or "will".

The burden of proving and establishing an oral will is always a very tedious task, which must be proved with the utmost care and precision; and with every circumstances of time and place.<sup>67</sup>

**This acquisition of land by oral bequest is recognized under Islamic Law of Maliki School as one of the several ways of acquiring family property. The rules governing the Islamic Law of Bequest is applicable to all muslims the world over and in particular to the muslims of Northern Nigeria and Northern Cameroon which are the areas of concern in this research. Once a family acquires land through this method, it has exclusive disposable, attachable, heritable and alienable right in the land in question.**

#### **3.4.5 BY PURCHASE WITH FAMILY RESOURCES**

The acquisition of lands with family funds, is one of the recognized modes by which family property is acquired in Northern Nigeria and Northern Cameroon. The familiar judicial authority on this is Nelson V. Nelson<sup>68</sup> In this case, a father devised land to his eldest son by an oral will, to hold for himself and the other children. Later on government acquired the land and made compensation. With the concurrence of all the children, the first son/first defendant, bought the property in dispute (the subject matter of this suit), with the compensation money in his name under a conveyance in English form. He later sold the house to the second defendant, where upon, the brothers brought this action for a declaration of title to the land. The Court delivered the following judgement. "The original disposition by the plaintiff's father clearly showed the intention that his children have joint but exclusive interests in land. To apply English law to the transaction subsequent to the death of the father would defeat the object of the testator. The Court went further to say that:

"Whatever was the form of conveyance to the first defendant, there could be no doubt that it was the intention and purpose of the children that the property purchased, should replace the other one acquired by the government. It should also be held on the same terms as the properties originally disposed of by the appellants father". These circumstances did not establish that the appellants agreed that their rights should be regulated according to English Law, the sale was therefore, accordingly void. The above judgement shows how ready the courts are, to always uphold the intention of the testators and to ensure that property acquired with family funds always remain that of the family until the time, it is partitioned by the family head or on the order of the Court.

### 3.5. MANAGEMENT OF FAMILY LAND

The administrative control and management of family land, is vested in the family head. He manages it for the use and enjoyment of the entire family. Although he is the manager of the land, the legal title to or ownership in the land, vests in the family as a whole. This means that all the members in the family own the rights and liabilities in the land, and no act of one member can affect or change the legal position of the land, unless there was an agreement to that effect. Thus, the head cannot sell family land alone.<sup>69</sup> If he does, title may not pass. Although he may have a right by virtue of his position to take decisions alone on routine and emergency matters, such decisions must be in the interest of the family as an entity. It follows therefore, that the family would not be bound if those decisions are for the personal benefits of the family head.<sup>70</sup>

Because the family head has the administrative control and management of family land, any family member who wants it for building or cultivation, goes to him for a portion. This

right is non-proprietary, inalienable and non-heritable. Every member possesses it by virtue of being born into the family. A member has an occupational right to any portion allocated to him for life. His occupational right to it, is heritable if the family permits, but the proprietary right is non-heritable. He can be dispossessed of it.<sup>71</sup> The rule amongst the muslims of Northern Nigeria and Northern Cameroon is that if the occupier uses the land in an improper manner, such as erecting a brothel or developing it to a liquor center, he may be dispossessed of it. In other words, he is only allowed to hold it during good behaviour.<sup>72</sup>

A member's right to occupy family property, does not convert it into his personal property.<sup>73</sup> The occupational interest of the holder is in the form of a customary tenancy.<sup>74</sup> The judicial description of customary tenancy is that, it is a right to occupy land belonging to another person, a mere possessory right.<sup>75</sup> A customary tenancy creates in a real sense, the relationship of landlord and tenant between the parties to it and is not in the nature of a mere occupational license which confers no interest in land. A customary tenant has definite rights in the land which are enforceable against the world at large, including the grantor and those claiming under or through him.<sup>76</sup> Consequently, a member can therefore, maintain an action in trespass against other members, including the family head.<sup>77</sup>

A member has no right of interference or again, he has no right of ingress and egress in respect of portions not allocated to him,<sup>78</sup> because any unreasonable interference as such, would give rise to an action in trespass against him.<sup>79</sup> It was the view in Oshodi V. Dakolo,<sup>80</sup> that where a member's allocated share is acquired by the Government, the compensation paid, goes to the holder, although he could give some to the head of the family for his reversion.<sup>81</sup> When the holder dies, his interest in the family land reverts to the family,

<sup>82</sup> who may permit his children or survivors to inherit the interest. In Northern Nigeria and Northern Cameroon, if a temporary acquisition of a member's allocated portion is made by the Government for which compensation is due, he may not give anything to the family out of the compensation because, it represents an indemnity for suspending his right of user which he had in the family land in question.

### **3.6 FAMILY HEAD AND HIS RESPONSIBILITIES OR DUTIES**

#### **3.6.1 WHO IS A FAMILY HEAD?**

The first head of the family is usually the founder of the family. <sup>83</sup> On his death, the headship devolves on either his appointee or the most senior of his surviving children. This is the traditional method of appointing family head. Although this method is generally no longer in practice in Northern Nigeria and Northern Cameroon, it is very much in practice in Fouban and Maiganga in Northern Cameroon. The eldest son who by appointment by the deceased before his death, becomes the family head, is known in Fouban as (poum-mon) in the local dialect or (Mogaji) in Hausa.

However, seniority is no longer the only determining factor. The Heads can now be appointed in one of the following ways:-

- (a) By popular acclamation or acknowledgement of a member who has been acting as such.
- (b) By formal election or appointment by the members at a family meeting.
- (c) By the traditional method. The members are free to elect any of their senior members to become the head of the family once they are convinced that he can deliver the goods. In making the selection, the members choose one of them who in their

assessment is best suited and capable of protecting the interest of the family in the land. It is always insisted that only males can be elected to the post. But nowadays even females can be family heads. In practice, there are many females who are heads of family houses in Fouban, Maiganga, Banyo, Ngaoundere and Garoua in Northern Cameroon, as well as, Jos, Kaduna, Gombe, Gembu, Kano, Maiduguri and Zaria in Northern Nigeria. Even among Muslims where women are excluded from certain leadership, in practice, there are women who are heads of family lands and family houses.<sup>84</sup> There is still very strong tendency among non-muslims of Northern Nigeria and Northern Cameroon towards maintaining the traditional method that only males can become heads of families.

### **3.6.2 RESPONSIBILITIES/DUTIES OF THE FAMILY HEAD**

The control and management of the family land is entrusted in the family head. He is the "trustee-beneficiary" of the family land.<sup>85</sup> He is one of the beneficiaries of the family land and at the same time a "trustee"<sup>86</sup>. The word "Trustee" as used here, should not be misunderstood, as it does not connote the same thing with trusteeship under English Law. Fundamental differences exist between the family head (trustee) and a trustee known to English Law.

Firstly, a trustee under English law, is vested with a legal title to the land, which gives him the right of ownership in the property. The beneficiary only holds an equitable interest in the property. This is not the position under the customary land tenures under consideration. Under the customary land tenures of Northern Nigeria and Northern Cameroon, the title to the family land is vested in every

member of the family<sup>87</sup>. They are therefore, all joint legal owners and beneficiaries. The family head is therefore not the owner of the land and cannot sell the family land alone.<sup>88</sup> Secondly, where the trustee refuses to take steps to enforce a claim, the remedy of the beneficiary is not to institute action against a stranger directly, but to file a bill against the trustee for the execution of the trust.<sup>89</sup> Here again, the rights and powers of the members in family property are different. In fact, any member can institute action against a third party for the recovery of family property if the head refuses to do so.<sup>90</sup> Thirdly, a trustee has a duty to furnish any beneficiary who may so demand, the necessary information concerning the trust property. Any member with interest in the property can enforce this obligation against the trustee.<sup>91</sup> Although the family head also has a duty to furnish members with information about the management of family land, the degree of accountability seems to be lower than that which obtains under English law. This is so because, the head of the family is not accountable to junior members of the family<sup>92</sup>.

One of the duties of the family head is to allocate family land to other members of the family for building and cultivation. Where there is excess, he may make temporary grants to strangers after consultation with other elderly members of the family. Actions affecting family land are brought by him as a legal representative,<sup>93</sup> although any member of the family, however, may institute an action in the court to protect the family property where the head is absent or where he decides to keep mute.<sup>94</sup> The family head's routine matters and emergency actions with family land in good faith (such as sales) bind the other members. The family members would be bound as such if, for example, the proceeds of the sales are used in paying for taxes, hospital bills, education, funeral services for family members or for paying rates and

had powers to sell family land alone, even against the wishes of the family, the West African Court of Appeal held that, the proposition was very startling and amazing, and therefore, cannot be accepted. The case was therefore sent back to the High Court for further consideration on the basis that the court was bound by the express admission of the defendant that no Magaji can sell family land without the consent of the family.

Two years later, the case of Osure V. Anjorin,<sup>100</sup> also came up for consideration. In it, the plaintiff had asked the family head for an account of the rents and profits collected by him from the family property. He had earlier on in 1917 and 1920, obtained judgement against the defendant for an account which the latter duly rendered up to December, 1925 and stopped. Baker AG. C. J. had no problem in granting his prayers. Just a year later, another interesting case of Archibong V. Archibong,<sup>101</sup> came up before justice Robinson for consideration. The facts were as follows: The Duke town of Calabar was made up of five families. The families had a piece of land which had been acquired by the Government for a public purpose and when the purpose was over, the government leased the land to three companies. The community now, in order, to recover its land, appointed Reverend Effiong as an agent to negotiate with the government for its return. The Reverend in the exercise of his powers as an agent, got back the land and the accumulated rents amounting to \$3,000.00. Thereafter, he convened a meeting of the heads of the five families (Etuboms) and handed over to them from his Pocket, a sum of \$1,759. Before he could do this, he had explained that the total compensation was \$3,000, but that the sum of \$1,241, went for incidental expenses.

The Etuboms, impressed with the services of Reverend Effiong, gave him \$500 as a presence and another \$500 was deposited in an account for the Duketown

Community. The balance of \$759 was then shared among the five houses, one of which was Archibong family.

The Archibong family had four branches. The heads of two of the four branches were not satisfied with their share of the money. They therefore brought this action against the Etubom of Archibong house for failing to ensure that the \$3000 was divided equally among the five houses. They therefore, prayed the court to either grant them their proportionate share or order an account of \$3,000 and pay over to them, what was found due.

The Etubom in its defence, advanced two arguments. He firstly argued that the plaintiffs had no legal right to call him to account and that since the death of the last Obong, the five Etuboms had functioned in his stead as a Council. Secondly, he argued that the decision as to the sharing of the money was unanimous and, therefore, they cannot be questioned as to the propriety of the decision. In his decision, Robinson J., left no one in doubt that the action of the Etuboms fell below expectation when he criticized them for failing in their responsibilities towards their houses, when they failed to inquire from Reverend Effiong how he had spent the sum of \$1,240, which he claimed were incidental expenses. After the blistering criticism of the lapses of the Etumboms, Justice Robinsons took the pains in his decision to explain the role of the family head as follows:

"It seems to me that he must be regarded as a kind of trustee and that each member of Archibong house has some kind of interest in the trust moneys. His obligation to the Cestuis que trust are not nearly so high as those of a trustee known to English Law. He is given considerable latitude, but his actions must

be capable of reasonable explanation at any time, to the reasonable satisfaction of members of a sub-branch of his house. He cannot treat house money as his own. If it is his own, he can throw it away or misuse it. He cannot do that with house money, although I think he can spend it, without consulting any member, if he thinks reasonably, it is in a good cause and for the good of the house. He should certainly keep accounts and work on some rules, either laid down by himself or preferably after consulting with the heads of his house. The same remark applies to the heads of the branches."

The first defendant was ordered by the Judgement to render and account and to pay over of whatever was found due to the beneficiaries of the property.<sup>102</sup>

That was the position of the law until 1966. The principle of accountability by the family head in his dealings with family property, emphasized by the above cases is no longer the position of the law today. In the case of Taiwo V. Dosunmu,<sup>103</sup> a principal member of Dosunmu family had sued the head and another principal member to give a full and true account of all the moneys and profits that had passed through their hands as a result of the control and management of the 'Dosunmu family property in Lagos. He also prayed that the family head (first defendant) pay over to him, his share of the income. In his statement of defence, the first defendant (family head), denying most of the allegations, contended that he was not accountable to the plaintiff and wish the court to dismiss the claim with costs. The trial court, after reviewing all the cases where it was held that the family head was liable to account, found itself bound by the decisions of the West African Court of Appeal

in Nelson V. Nelson<sup>104</sup> and Solomon V. Botchway<sup>105</sup> both Ghanaian cases where it was held that he was not liable to account.

Dissatisfied with the judgement of Coker J., Mr. Taiwo (the plaintiff) appealed to the Federal Supreme Court. Sitting on the appeal were Justices Brett, Onyeama and Ajegbo. the unanimous decision of the Court was read by Brett J.S.C. Brett said in his judgement that, Coker J., ought not to have treated in a Nigerian Court, the customs of the Fantis and Ga speaking people of Ghana as judicially noticed. He ended his judgement by laying emphasis that his judgement should not be understood to mean that the existing custom of non-accountability does not exist. He opined that the duty was incumbent on the first respondent to prove the existence of the custom in accordance with Section 14 (2) and Section 56 of the Evidence Act. Thereafter, the appeal was allowed and the case sent to the trial court for a retrial to establish the alleged custom of non-accountability. Unfortunately, nothing was heard of the case again.

The decision of the trial court to say that the head of the family is not liable to account on how he manages family property is to say the least very unfortunate. the decision bluntly denied the members of the family the right of information about family property. Despite the disappointing end of this case, it is the view of the Arthur that Justice Coker's decision should be ignored for its loneliness and singleness in the wilderness of the Nigerian judicial authorities.<sup>106</sup> Rather, the cases of Archibong V. Archibong, Adedibu V. Makanjuola, Adedire V. Ife Divisional Council and Osure V. Anjorin, earlier discussed, be considered and regarded as good law. To hold otherwise, would reinforce the unscrupulous heads of the families to selfishly mismanage family property. But if the decision in the case must stand, then the customary land tenure systems of Northern Nigeria should adopt the land

tenure law of Fouban in Cameroon where a general family meeting can be convened to depose the head who cannot account properly on his dealings with the family property and a new one chosen in his stead.

The effect of the decision in Taiwo V. Dosunmu<sup>107</sup>, is likely to be outrageous to our present sense of justice and, will open floodgates for fraud, prodigality and negligence.<sup>108</sup> It is also likely to cause untold hardship to other members of the family especially the young ones. By saying that the earlier decided cases based on the concept of accountability should be regarded as good law, it is not to mean that native law and custom should be stagnant. Native law and custom is "a mirror of accepted usage."<sup>109</sup> That is to say it is flexible and adoptable and, therefore, not static. It changes as the society changes. Courts are therefore not to always feel bound by their previous decisions on the principles of customs, unless there is evidence that, that is still the existing native law and custom. That is, if those principle tali with the contemporary socio-economic changes in the community whose custom is in issue. Therefore, the native law and custom which the court is to enforce, should be the existing one and not that of the bygone days.<sup>110</sup> what we are saying is that, if the law on accountability must change, then the change must be in interest of the family members.

In conclusion, "the traditional system, when the family was partly a cohesive unit symbolized and represented by its head in all matters concerning the affairs of the family, and the head was not accountable, should not be the case today".<sup>111</sup> It is submitted that in those days, the needs of the society were very limited and the propensity for individual-holding of property was not rampant. The ultimate goal of

the head of a family was the beneficial and smooth running of the family's social affairs. The family heads of the past were God-fearing, law-abiding, people of high integrity and moral rectitude. But today, the quest for wealth has overtaken the need for a good reputation. Things have changed considerably. Economic hardship has influenced people to compromise their religious and social principle. The simple life of the people has become complex. Men and women have learnt to build for themselves financial pyramids. Those mean tendencies should be recognized as an economic and social reality which is manifested by the communities aspirations and expectations, in line with economic and social development. It is therefore trite that the head of the family should give account on how he manages family property. Therefore, the right to render an account to more than one member should be a legal right. This will bring peace and harmony in the family as an entity.

### NOTES AND REFERENCES TO CHAPTER THREE

1. Elias T.O.:Nigerian Land Law, Sweet and Maxwell, London, 4th Edition, 1971, P.91
2. Eric Butterworth David Weir: Sociology of Modern Britain. Fontena Books, London, 1983, P.18
3. Hammudah, 'Abdal' Ati, The Family Structure In Islam, The Islamic Publication Bureau, Lagos, 1982, P19
4. Lloyd, P.C.Yoruba Land Law, Oxford University Press, London, 1962, PP.31-32.
5. Olawole, C.O. Title to land In Nigeria, Evans Brothers Nigeria Publishers Ltd., Ibadan, 1974, P.26.
6. I bid. P.26
7. Qur'an 2:18, 14"11 - 12, 176. Shafi'i (3), Vol.4, P.108. 112,115.
8. This Act has not been revised or reviewed in the 1990 Laws of the Federation.
9. Laws of the Federation of Nigeria (1958 Rev. Ed.) Cap. 222. The Workmen Compensation Decree, 1987 does not contain this.
10. "Native" is defined by the Interpretation Act, to be a Nigerian and to include a "Native Foreigner" which in turn means a member of an indigenous African tribe.
11. (1943) 14 N.L.R. 83.
12. Supra.

13. (1876) 3 Ch. Division, 672.
14. Adesheye V. Taiwo (1958) 1 F.S.C., 84. Lopez V. Lopez (1924) 5 NLR 155.  
LEDB v. TUKURU (1963) LLR 155.
15. Jacob V. Oladunni Brother (1935) 12 NLR 1.
16. Coker G.B.A. Family Property Among The Yorubas. 2nd Edition (sweet  
and Maxwell. P.28)
17. Ogola, E.Y. Op. Cit. P.17.
18. Dabiru V. Gbajumo (1961) 1 All N.L.R. 225 at 231.
19. Chinwuba Obi, S.N. Modern Family Law in Southern Nigeria, Sweet a n d  
Maxwell Ltd, London, 1966, P.10.
20. I bid. P.10
21. Green M.M. Land Tunure In An Ibo Village, Land Humphreys, London,  
1941, P.2-3.
22. Suit No. WD/40.69 (unreported) High Court of Lagos, January, 1970.
23. Supra.
24. Chinwuba Obi, W.N.; Op. Cit. P43.
25. Adedipe J. In Ogundairo V. Aminatu (1967) LLR 9.
26. Buraimo V. Gbamgboye (1940) 15 NLR 139.
27. (1931)10 NLR 82.
28. (1926) 7 NLR 48.
29. (1924) 5 NLR 42.

30. Adagun V. Fagbola (or Lasisi) (1932) 11 NLR 1110, Oshodi V. Aremu (1954) 14 WACA 83.
31. Chinwuba Obi, S.N. Op. Cit. P.44.
32. Angaran V. Olushi (1907) 1 NLR 661, Manklo V. Bonso (1936)3 WACA 62.
33. Buraimo V. Gbangboye (supra).
34. Majekodunmi V., Tijani (1932) 11 NLR 74.
35. Sogunro-Davies V. Sogunro (1929) 9 NLR 79 Johnson V. Macaulay (1961) 1 ALL NLR 743.
36. Chinwuba Obi, S.N. Op.Cit. P45.
37. Ibid, P45.
38. Section (1) of Land Use Act.
39. Article 16 of Ordinance NO. 74 - 1 of 1974.
40. Olawoye C.A., Title to Land In Nigeria, Op. Cot P.39. Article 16 of Ordinance No. 74-1 of 6th.
41. (1927) N.M.L.R. at 27.
42. (1962 ) W.N.L.R. 1 at 3.
43. Prof. M.G. Yakubu; Land Law In Nigeria, Op.Cit. P.29.
44. Abike V. Adeokun (1986) ; Part 303 NWLR P.548.
45. Ganjarma V. Ganjurma (1962) N.R.N.L.R. 47.
46. Balogun V. Balogun (1943) 9 WACA 78; See also Chinwuba Obi Op. Cit. P45.
47. Chinwuba Obi, S.N.; Ibid, P.45.
48. Yakubu M.G.; Land Law in Nigeria, Op.Cit, P.133.

49. Keffi, S.U.D.; Some Aspects of Islamic Law of Succession. Rukhsa Publications Kano, 1990. P1.
50. Keffi, S.U.D. Ibid, pp. 1-3.
51. Bambale, Y.Y.; Modes of Acquisition and Transferring of Private Ownership Under Islamic Law; Unpublished (LL.M.) Thesis, A.B.U. Zaria, 1992, P.130.
52. (Cap 202) Laws of the Federation of Nigeria 1990.
53. (1945) 18 NLR 82.
54. (1924) 18 NLR 70.
55. (1924) 5 NLR 42.
56. (1924) 5 N.L.R. 42
57. Supra.
58. Roger Bird: Osborne Coincide Laws Dictionary, 7th Edition, Sweet and Maxwell, London, P.345.
59. Ogunmefun V. Ogunmefun (1931) 10 NLR 82.
60. (1957) 4 F.S.C. 280.
61. This freedom is not applicable under Islamic Law because the testator is not allowed to part more than 1/3 of his estate to non-heir without the consent of the legal heirs.
62. (1935) 12 N.L.R. 1.
62. Shaw V. Kehinde (1947) 18 NLR. 129.
63. George V. Fajore (1939) 15 NLR. 1.
64. Supra.

65. Tyabji's (N.D.) Muslim Law, 4th ed. P. 754, Para. 665.
66. Chap. 5 V. 109.
67. Gurin, A.M.; An Introduction To Islamic Law of Succession; (Testate Succession) (Unpublished) C.I.L.S., A.B.U., Zaria, 1987 P.157.
68. 13 N.L.R. 248.
69. Ekpendu V. Erika (1959) 4 F.S.C. 79. Essan V. Faro (1947) 12 WACA. 135. Agloe V. Sappor (1947) 12 WACA 187. Fako V. Fako (1965) N.M.L.R.
70. Yakubu, M.G.; The Law of Land Ownership and Succession in Northern Nigeria. An Exposition and Critical Analysis of the Existing Laws of Hausa/Fulani Community.(PH.D.). University of Birmingham, 1980, PP.195 -6.
71. I bid P.156.
72. Oshodi V. Inasa (1925) but referred to by Graham Paul J., In Ashoghon V. Oduntan (1935) 12 NLR. P.7 at PP.9 - 10.
73. Lenge V. Imale (1959) WNLR 325.
74. Adegun V. Fagbola (1932) 11 N.L.R. 110.
75. See Osborne C.J. In Lewis V. Bankole (1909) 1 N.L.R. 81, 105 See also Lord Holdane in Amodu Tijani V. Secretary of Southern Nigeria (1915 - 21) 3 N.L.R. 24. See also Webber C. J. In Ita V. Asido (1935) 2 WACA. 339.
76. Nwabuezwe B.O.; Nigerian Land Law, Nwamife Publication Ltd., Enugu, 1972, P.246.
77. Abgloe V. Sappor (1947) 12 WACA 187.
78. Lewis V. Bankole (1908) 1 NLR. 24.

79. Banjo V. Banjo (1947) 8 WACA 148.
80. (1930)A.C. 672.
81. Supra.
82. Emmanuel Young Ogola Op. Cit P.88.
83. Balogun V. Balogun (1935) 2 WACA 290 at 299.
84. Yakubu, M.G.; The Law of Land Ownership and Succession in Northern States of Nigeria. Op. Cit. P.133.
85. Bassey V. Cobham (1924) 5 N.L.R. 90.
86. The Trusteeship is not the same with that under English Law.
87. Jegede M.I. (1966) "The Position of Head of the Family In Relation to Family Property", Nigerian Bar Journal, Vol.7, P.27, quoted in E.Y. Ogola, 1989, Op.Cit P.51.
88. Coker V. Oguntola (1985) Part 5 N.W.L.R. P. 87, Oshodi V. Aremu (1952) 14 WACA 83.
89. Ojikutu V. Fella (1954)14 WACA 628.
90. Emmanuel Young Ogola Op. Cit., P.33.
91. Bassey V. Cobham (1925) 24 NLR 92. Kwam V. Nyeni (1959) GLR. 67.
92. Abude V. Onano (1946) 12 WACA. 260. Fynne V. Gardinar (1993) 14 WACA 26/ Nelson V. Nelson (1932) 1 WACA 215. Solomon V. Botchway (1943) 9 WACA 127.
93. Adagun V. Fagbola (1943) 1 NLR 92.
94. Adegbite V. Lawal (1948) 12 WACA 398.

KASHI...  
...P.L.C.

95. (1965) N.M.L.R. 3.
96. Kosoko V. Kosoko(1937) 13 NLR 131, Akande V. Akanbi(1966) NBJ.86.
97. (1966) N.M.L.R. 94.
98. Archibong V. Archibong (1947) NLR 117.
99. (1944) 10 WACA 33.
100. (1946) 18 N.L.R. 45.
101. *Supra*.
102. See also the case of Adedire V. Ife Divisional Council (1963) 1 ANLR 39.
103. (1966) N.M.L.FR. 94.
104. (1932) 1 WACA 215.
105. (1946) 12 WAC 12.
106. Emmanuel young Ogola, *OP. cit.* p. 41.
107. *Supra*.
108. Akande v. Akanbi (1966) N .B.J. p.86.
109. Lewis V. Bankole *Supra*.
110. Dawudu V. Danmole (1958) 3 F.S.C. 46.
111. Asante, "Fiduciary Principles. In Anglo - American Law and Customary Law of Ghana", 1965, 14 I.C.L.Q. 1144 quoted in M.G. Yakubu, The Law of Land Ownership and Succession in Northern States of Nigeria, *Op.Cit.* P.206.

## **CHAPTER FOUR**

### **FORMS OF ALIENATION**

The subject matter of this chapter is the various forms by which the interest of the family in family land, may be alienated or disposed of. The term interest here, represents the sum total of "rights" vested in a family with respect to a parcel of land, and which the family as a corporate body, may have the power to dispose of, subject to any law prevailing in the area. The rights in land which the family may hold and dispose of are such rights as, the right to occupy, cultivate and reap the crops, to build and reside, the right to breed animals on the land, right to pass it to descendants and the right to enjoy a peaceful possession without disturbance.

It should be noted that although this chapter is aimed at discussing the various forms by which family property may be disposed of in Northern Nigeria and Northern Cameroon, this discussion will not embark on a detailed analysis of the laws relating to these forms of alienation. For instance, it will be sufficient to show that "sale" or "gifts" is a form or one way in which family property can be alienated and we shall not engage in discussing the law of sale and gifts in detail.

#### **4.1 MEANING OF ALIENATION.**

Generally speaking, alienation simply means, the power of the "owner" to dispose of his interest in real or personal Property. <sup>1</sup> Alienation of family property, is the act and the power of the family as a corporate body, to dispose of its interest in real or personal property to another in accordance with any prevailing law. There are many forms of alienation such as, customary tenancy, pledge, gifts, sale, transmission on death, mortgage, grant, lease and loan. Some of the forms of alienation which have been mentioned above, only suspend the rights of

the family in the property for a period of time, while others completely abolish both the title of the family to the land, as well as, the rights therein. Those alienation which completely abolish title and rights in family property are known as complete alienation.

The most fundamental principle in indigenous land tenure systems of Northern Nigeria and Northern Cameroon, was the theory of inalienability of land. "In the olden days, complete alienation of family property was unheard of,"<sup>2</sup> "and undoubtedly foreign to native ideas."<sup>3</sup> In L.E.D.B. v. Federal Administrator - General,<sup>4</sup> a claim of an absolute gift of land alleged to have been made 105 years ago, was dismissed. The court holding that if there was any gift at all, it conferred only a right of occupancy under customary law. And in Okiji V. Adejobi,<sup>5</sup> a claim of title, based upon a sale 200 years ago, was rejected by the court.

Various reasons have been advanced for this theory of inalienability of land and some of them based on religious or African attitudes towards land. The inalienability concept sets out to protect the rights of the unborn generations as well as the dead. It was considered outrageous against the departed ancestors, whose spirits laid buried in the soil, to alienate or sell the land, and, an act of unwisdom to defeat the rights and interests of the unborn, for land was conceived as "a sacred trust received from the ancestors and to be handed on intact to their posterity".<sup>6</sup> Another reason is that outright or complete alienation will deprive the family of its essential quality, which is the descent to future generations.<sup>7</sup>

This theory of inalienability of land, was in practice among the non-moslems of Northern Nigeria and Northern Cameroon. Islam which from history to date remains the unchallengeable religion in many parts of Northern Nigeria and Northern Cameroon, is diametrically opposed to the magico-religious attitudes

towards land, or any property for that matter. This makes the magico-religious reason for inalienability of land, not tenable. It was never unlawful to sell land and the fact that it did not take place or exist, was an economic consequence. <sup>8</sup>

Where land is so abundant that every member of the family including new additions can obtain as much as he wants, alienation and especially complete transfer will hardly arise. <sup>9</sup> It is this economic fact that made it appear as if family land was inalienable all over Northern Nigeria and Northern Cameroon.

However, the alienation of land has come to stay in the areas under consideration, especially in the urban centres and even in some rural areas, due to the increase in the economic value of land, consequent upon industrial revolution and increase in population pressure as well as, the desire of the people to realize the economic advantage of land through pasturing, building, cultivation, etc. However, alienation to complete strangers and persons of questionable character or integrity, is restricted. The wisdom behind this restriction is that, if such people are brought into the family land, the onerous task of the family head will be over-burdened by the need to cope with troublesome outsiders.

#### **4.2. MODES OF ALIENATION IN NORTHERN NIGERIA AND NORTHERN CAMEROON.**

##### **4.2.1 SALE OF LAND UNDER CUSTOMARY LAW.**

Sale of land under customary law is a form of contractual transaction between a vendor and the purchaser. Roger Birds defines sale as a transfer of right in property in consideration of a sum of money. <sup>9(a)</sup> Sale is one of the means by which interest in property is permanently transferred. Sale of land was a phenomenon, unknown to Customary law. <sup>9(b)</sup> Until recently,

land was regarded in all parts of Northern Nigeria and Northern Cameroon as God-given for the sustenance of man and not to be made the subject of commercial transactions.<sup>10</sup> The notion of individual ownership of land was not known. Land was considered family or communal property, and as such, each and every member had access to the enjoyment of it and therefore, no one had the need to buy it. Land was considered in many communities to be a sacred trust which should be handed down intact to posterity or to future generations. In many parts of Northern Nigeria and Northern Cameroon, there was no problem of scarcity of land and consequently, it commanded no exchange price.

Among the tribes of Northern Nigeria like Idoma in Benue State, Kataf and Attakar and Kagoro in Kaduna State, as well as among the tribes of Northern Cameroon like Banyo, Maiganga, Tignere and Garoua Boullai, the sale of land was forbidden and the act was looked upon as a sacrilege or an abomination. Those tribes which did not prohibit the sale of land, frowned at it whenever it took place or was about to be transacted. The negative stands taken by customary law towards alienation of land by sale was because of the importance of land as the most valuable property or capital. Its alienation by a member in possession was considered to be a serious act, which if not checked could cause a family to lose the goose that lays the golden eggs. Land was and still, is God given providence and the most important source of sustenance. Above all, land is the most enduring property or capital for which any family or community could boast of having. Land in those days was synonymous with material wealth and a symbol of political power. However, this position has not changed. It was in view of this that sale of land without the consent of the grantor was considered a challenge to the family's title. Under the

customary land tenure systems of Northern Nigeria and Northern Cameroon, this act was regarded as a misbehaviour, the remedy for which was ejection or forfeiture of title.<sup>11</sup>

However, the customary law that disallowed the sale of landed property, was to be short lived. With the introduction of money economy and the European concept of real property, high demand for land for the cultivation of crops and for grazing cattle, as well as., the high demand for lands for buildings and industries occasioned by urbanization, which brought about growth in population, the alienation of landed property by sale has come to stay.

It seems clear by now that most customary lands are owned by the families not individuals.<sup>12</sup> Therefore, anyone wishing to buy family lands must as of necessity obtain all necessary consents before settling on the land. It has now been established that the sale of family land by a family head is bad, so also is the sale by the principal members of the family without the consent of the family head.<sup>13</sup> The purchaser must therefore ensure that he obtains the consent of the family head and the principal members of the family before he pays out the price. The rule is *caveat emptor* (let the buyer beware). It is necessary to scrupulously investigate into the competence of the alienating authorities because, customary land transactions are today fraught with fraudulent practices.<sup>14</sup> Customary landowners have been known to sell the same piece of land to different persons.<sup>15</sup> This explains the reason why the purchaser must be very vigilant especially when transactions over such lands may not be registered at the Land Registry.

#### 4.2.1.1 METHOD OF SALE.

Under the customary laws of Northern Nigeria, writing was originally unknown. This meant that if the vendor subsequently denied that he ever entered into the transaction, there was

no documentary proof upon which the purchaser could rely. This state of affairs was not conducive for proper sale and therefore, encouraged fraud. In order to solve this problem, the operators eventually came up with the requirement that any transfer of land be effected in the presence of witnesses. Although the presence of witnesses is not a complete panacea to the problem of fraudulent conveyancing, nonetheless, it was the lesser of the two practical evils. It is now established that a valid sale under customary law, must be done in the presence of witnesses.<sup>16</sup> This means that both the payment of the purchase price and the actual handing over of the land must be done in the presence of witnesses. The importance of these requirements have been stressed over and again by the Supreme Court of Nigeria.<sup>17</sup> The Supreme court of Nigeria confirmed its previous decisions in the case of Folarin V. Durojaiye.<sup>18</sup> The plaintiff Ramota Adeoye had claimed that an authorized agent of the owners of the land, sold it to her under native law and custom and that her father paid the purchase price. the defendant on the other hand claimed that the same land was sold to him by the vendor family under English law. At the trial, the defendant tendered his deed of conveyance and also explained satisfactorily of how he was put into possession. On the other hand, the plaintiff did not only fail to call any witnesses of the sale, but also failed to show where the handing over possessing of the land took place. After scrutinizing the evidence carefully, Obaseki J.S.C. laid down the following guidelines in his leading judgement:<sup>19</sup>

"To transfer an absolute title under customary law, it ought to be pleaded and proved that sale was concluded in:-

- (1) The presence of witnesses and the names of those witnesses should be pleaded as well as the fact that they witnessed the actual delivery and handing over of the land to the purchaser. There must be either a conveyance executed in his favour or an entry into possession by the purchaser to clothe him with legal title in the first instance and equitable title in the second instance."

The effect of the above judgement is that, the cardinal requirement of a valid sale under customary law, is the handing over of the land or being led into possession in the presence of witnesses or in the alternative, clothe the transaction with a deed of conveyance, otherwise, the sale is invalid.

In Northern Cameroon, the sale of real property is largely accepted under native laws and customs. The customary land tenure law on the sale of property, especially, land, became similar to English and French law. The general principles of the law of contract (or *droit des obligations* as it is known in French language) apply to customary law as concerns the sale of land. The sale of land in Northern Cameroon like in Northern Nigeria is fraught with a lot of fraudulent practices. The rule is therefore that, the "buyer beware". Where the land which is the subject of sale is a family land, the purchaser must obtain the consents of the head of the family and the principal members. It is also the duty of the purchaser to ensure that the vendor is the right owner of the land or again, that he is competent to effect the sale. He can do this by inquiring from the neighbours and the Land Registration Office if he has registered the land. The 1974 Ordinance requires that title to land acquired under customary law, be registered with the Land Registration Office.<sup>20</sup>

This requirement is likely to give rise to some problems since not all titles to land acquired under customary law may be registered. However, this may not pose much problems in Northern Cameroon because, the idea of (system of registration) or "system d'immatriculation", had been introduced by the Decree of 21st July, 1932, making it compulsory for all family lands to be registered. So most often than not, family land titles are registered. The supreme Court of Cameroon in the case of Assah V. Nkwelle Tobia and Ekengho Fandong<sup>21</sup> declared as void ab initio, sale of a piece of land unregistered.

The act of selling a piece of land to more than one person also characterizes the sale of land in Northern Cameroon. The law provides penalty for anyone who sells or leases the same piece of land to two or more persons or effecting sale or leases of lands belonging to others, not so empowered.<sup>22</sup> Anyone found guilty of the above fraudulent acts will be punished with a fine of 25,000 to 100.000 Francs C.F.A. or imprisonment for 15 days to 3 years or with both such fine and imprisonment.<sup>22a</sup>

Sale of property is recognized under the Islamic law of Maliki School which applies in Northern Nigeria and Northern Cameroon, as one of the ways in which family property can be alienated. Sale under Islamic law may be defined as the transfer of property in exchange for money, clothe by the mutual consents of both parties to the transaction.

For a sale to be valid, the subject matter of the sale transaction must be generally in existence. The subject matter must be lawful, as in things that are unlawful, is prohibited. The subject matter must be capable of being delivered or possessed. There must be a valid offer and acceptance. There must be no deception or fraud on the part of the parties, especially, the seller.<sup>23</sup> The parties are allowed to include options in the sale transaction.

These options are either to accept or withdraw the offer. Normally, three days are provided to the parties within which they can exercise these options.<sup>24</sup> There should be no price control on property which is the subject matter of the sale. It should be left to be determined by the market forces of demand and supply.<sup>25</sup> It is provided by the Holy Qur'an that the agreement be put down in writing, especially, when the payment or the delivery of possession is to be done in the future.<sup>26</sup> But if the payment of the purchase price and the delivery of possession to the purchaser is to be done on the spot, the requirement of writing may be waived. The parties to the transaction must be adults, sane, and free from interdiction and must have entered into the transaction voluntarily.<sup>27</sup> Once a valid sale which meets the above conditions has been concluded, it has the effect of passing the property in the land sold, to the buyer and he thenceforth enjoys all the rights of ownership of the property in question.

It is therefore a conclusive statement that family property can be permanently alienated in Northern Nigeria and Northern Cameroon, by way of sale. This divests the family of all its rights in the land in favour of the purchaser.

#### 4.2.2 LOAN

Loan of land is one of the ways in which family property may be alienated. When a piece of land is loaned, it conveys some rights in that land to the borrower. Loan of land used to be rare in Northern Nigeria and Northern Cameroon because of the availability of vast lands and the then scanty population. Only non-indigenes loaned lands because they could not own one as of right. But today, loan of land is commonly practiced and recognized by the native

laws and customs. This new development is a product of population growth, socio-economic development of the various communities and the emergence of money economy.

Loan of land is usually for a particular purpose, which is usually farming. Loan of farmland is very common now in Northern Nigeria and Northern Cameroon, among the cattle rearers who although not good farmers themselves, own good farmlands, well manured with cow-dumps and very good for crops cultivation.

It is a basic principle of the land tenure laws of Northern Nigeria and Northern Cameroon that every member of the community has an undisputed right to the use of community land. But because of the uncontrollable growth in population and because of the desire of the members of the communities not only to engage in subsistence farming but also large scale commercial agriculture for export, their shares of community lands become inadequate for their needs. So they have to loan in order to have the quantity and the quality they desire for their various needs. Strangers who come into the communities and who do not have the right of access to land, have to take loan of land for their use. In Ghana, like in Northern Nigeria and Northern Cameroon, where loan of land is considered as one of the ways of alienating family property, justice Coussey observed as follows:

"It is a common form of tenure throughout the country for a land owner who has unoccupied land, which he or his people are unable to cultivate, to grant the same to a stranger (or any person in need) to work on it in return for a fixed share of crops (or nothing at all) realized from the land." <sup>28</sup>

What Justice Coussey seems to be saying in the above last three lines is that the landowner is only entitled to a share of crops under a loan agreement where there is a harvest. So where the

crops are destroyed by flood or locusts or any other natural disaster, both parties bear the loss. That is to say, the land owner loses the proceeds for the use of his land and the farmer loses the proceeds of his labour and other investments like the seeds and manure, etc. It is submitted that this position of customary law is fair and should be observed and enforced.

Alienation of family land by loan is not provided for under statute law of land tenure of Northern Nigeria <sup>29</sup> and Northern Cameroon. <sup>30</sup> It has long been recognized and is being practiced under customary land tenure. It is practiced among the Birom and Mangu people of Plateau State. <sup>31</sup> In Northern Cameroon, it is practiced among the Bamoun people of Western province, Garoua Boullai, Maiganga and Tignere of Adamawa Province in Northern Cameroon.

According to native law and custom of the Bamoun people in Western Province of Northern Cameroon, in the early days, some form of ceremonies were performed when someone wanted to borrow land. The borrower had to bring a pot of palm wine and sweet potatoes drinks (otherwise known as Kunu). The head of the family to whom the drinks and kola nuts were presented, gathered some principal members of the family and some elders of the community to the land in question. Some of the drinks would be poured on the land in order to bless it and validate the transaction. After the ceremony, the lender could then enjoy the usufructuary rights in the land for the agreed period.

Among the Jukuns in Northern Nigeria, the requirement was a black chicken which was to be sacrificed to the shrine. This custom was similar to that of the Ngwayat people of Adamawa Province in Northern Cameroon. Among the Kilba, Gude, Fali, Chamba and Gwoza <sup>32</sup> of Northern Nigeria, as well as, the Gbas.

Sangams, Mantoums, Tignere and Tibati in Northern Cameroon, no form of ceremony was required, but the presence of elders were required at the transaction. The elders were required at the loan agreement ceremony to serve as witnesses in the event of any future dispute on the transaction and the land in question.

Socio-economic changes and growth of money economy has brought a drastic transformation in the mode of transaction for the loan of family lands. A purely private and commercial way of concluding the transactions has now replaced the requirement of elders having to witness the agreement.<sup>33</sup> Consideration for the loan of land has now changed from a symbolic handshake of a pot of drink or a black chicken or even a gratuitous and temporary transfer of land, to a substantial value in money or kind, to conclude a loan transaction.

This method of concluding loan transaction has been recognized under the native laws and customs of Northern Nigeria and Northern Cameroon. There must be an offer and acceptance resulting into an agreement and the land must belong to the lender. The agreement is generally put into writing containing the signatures of both parties and their witnesses. The amount of consideration must be agreed upon by the parties and made known to the witnesses in attendance. This consideration is sometimes paid in kind or in cash. Where it is paid in kind, the parties may agree for examples, as it applies in Fouban in Western Province of Cameroon, that for every five baskets of maize, potatoes, groundnut, beans, or rice, the lender gets one basket. In the past, consideration for loan of land was made only once for the number of years specified by the transaction. Today in most cases, payment is made yearly. The rationale behind yearly payment is to continuously put alive, the ownership of the lender over

the loaned land in order to prevent the borrower claiming ownership of the land with the passage of time. This is equally the practice in Northern Nigeria.

Loan of land has never culminated in transfer of title in land. Title to land has always remained with the lender, the borrower having only rights of possession and use, as against all persons including him (the lender).

Any improvement on the loaned land including permanent improvements such as, houses and economic trees remain the property of the borrower, unless there is an agreement to the contrary. The question that arises here is, what becomes of a borrower, who has his permanent and un-exhausted improvements on a loaned land at the time the loan agreement has come to an end? The rule is that, anyone who loans a piece of land, must be allowed to exhaust his own improvements on the land. Where the lender refuses, then he is bound to compensate the borrower, Where the borrower plants economic trees on a loaned land whose agreement did not prevent him to do so, then after the expiration of the period of loan, he is allowed to come on the land to pick fruits like Mangoes, Palm Nuts, Pineapples, Pears etc. However, under the customary land tenure laws of Northern Nigeria and Northern Cameroon, a loan of land in most cases is for a period, and for a purpose which is mostly farming. Any permanent improvement on the land must be done by agreement between the parties.

Under Islamic Law of Maliki School, which applies in Northern Nigeria and Northern Cameroon, loan of land (otherwise known in Arabic as 'Ariyah'), is one of the ways in which property in general and family property in particular can be alienated. Loan of land is defined as a contract whereby a person enjoys the use, possession, and benefits of a piece of land for

a fixed period of time, without consideration to the owner.<sup>34</sup> The only consideration the owner expects, is the spiritual blessing or reward from Allah, the Almighty, in the world hereafter.

For the contract to be valid, the owner of the land must be known to exist as well as the borrower who is the person who is going to possess, enjoy and make use of the loaned land. It is a requirement of the law that the owner of the land must be of a sound mind as well as the borrower.<sup>35</sup> The use and enjoyment of the land must not be contrary to Shariah or Islamic Law, such as, establishing a beer parlour, or erecting a house for the purpose of prostitution and homosexuality.

The fundamental difference between loan of land under Islamic Law and that under native law and custom is based on the requirement of consideration. While under native law and custom, there is generally the need for some form of periodic payment, which in addition to its economic significance, also symbolizes the ownership of the lender in the land, in Islamic law, the contract is *ex-gratia*. The landowner expects only spiritual blessing from God. No matter how long the land remains on loan, the owner can claim it back as long as he can establish his ownership of it by evidence of witnesses or document.

Contrary to the view of Prof. T.O. Elias which maintains that the rule of prescription will be evoked in respect of loan which over stays,<sup>36</sup> under Islamic Law of Maliki School, there is no time limit to bar a claim.<sup>37</sup> The ownership of a loaned land may likely be lost where the owner fails to adduce sufficient evidence to establish title.<sup>38</sup>

Where the borrower puts up structures on the land taken in 'Ariyah' or loan, or plants trees which bear fruits and the time is due to surrender the land to its owner or the family, the owner of the loaned land will have the following options to exercise:

- (a) He may allow the beneficiary to destroy his structures or buildings or plantations whichever, and the remains packed out at the expense of the borrower or;
- (b) He may allow the structures, buildings or trees to remain on the land and pay to the borrower the value of the improvements in their destroyed states, although they may not be actuality be destroyed. <sup>39</sup> This practice and procedure of Islamic Law of Loan 'Ariyah', is applicable in Northern Nigeria and Northern Cameroon.

#### 4.2.3 CUSTOMARY TENANCY

A customary tenancy is akin to lease under English Law. It creates in the real sense, the relationship of landlord and tenant between the parties to it and is not in the nature of a mere occupational license which confers no interest in land. A customary tenant has definite rights in the land which are enforceable against the world at large, including the grantor and anyone claiming through or under him. The interest created by customary tenancy is nothing more than a right to occupy land belonging to another person or a mere possessory right. This is indeed the judicial description of customary tenancy. <sup>40</sup> A customary tenant cannot alienate his interest in the property without obtaining the consent of the grantor because lack of power to alienate is of the essence of a customary right of occupancy.

A customary tenancy needs not be in writing. It could be done orally and the duration needs not be certain. There are basically two types of customary tenancies. There are the short tenancies granted for a specific purpose (usually for farming season) and the long tenancies

which could be for an indefinite period. Long tenancies are granted for purposes of residence and/or farming. Since in the case of tenancy for a specific period, the grantee is not to settle on the land and his occupation being for a short period, his character is not very material; he may be a native of the locality or a stranger. Indefinite long tenancies may also be made to a native or to a stranger, but a non-native must not be a person of known bad character and must be otherwise, accepted to the grantors and the community at large, as a resident. This is to ensure that an undesirable person is not brought into the family and who will make the onerous task of the family, more difficult.<sup>41</sup>

In Northern Nigeria and Northern Cameroon, a tenancy for a specific period comes to an end when its purpose has been accomplished, e.g., when the crops have been harvested, though the grantee is usually allowed an option of renewal during the next farming season.

By the customary land tenure laws of Northern Nigeria and Northern Cameroon, all the grants were entitled, was Kola and/or drinks or farm produce which bore in amount, no economic relation to the value of the land and intended simply as an acknowledgement of the grantor's title. This symbolic consideration furnished by the grantee under customary tenancy, is still obtainable in some rural areas of Northern Nigeria like Gombe, in Gombe State, Attakar and Kagoro in Kaduna State and Vandekia in Benue State, as well as, Magba and Bangourain in the Western Province and Maiganga in the North Province of Cameroon.

Rents which is a payment in cash or kind (and more usually in kind) which provides an acknowledgement of the grantor's title and bears an economic return to land, was foreign to customary tenancies. Its incidence in customary tenancies today is an innovation resulting from the influence of modern ideas, consequent upon increase in the value of land, especially in the

urban areas. The grant of land for a token is seldom made today especially in the urban areas of Northern Nigeria like Kano, Kaduna, Zaria, Jos, Jalingo, Makurdi and Maiduguri, and Fouban, Garoua and Ngaoundere in Northern Cameroon, owing to increase in commercialization of land. What used to be an annual Kola payment, is nowadays frequently committed for a cash payment in the form of a fine (lumpsum), the amount of which is subject to agreement between the parties, <sup>42</sup> often substantial in amount.

There is no doubt that the principle of customary tenancies is working well and contributing to the wellbeing of the family. Through customary tenancies, families get something in return for the use of their lands. The monetary returns for the use of their lands might be used by the family to pay medical bills, school fees, court fines, organize marriages or raise capital for members who are petty traders.

However, customary tenancy is yet to provide the base that will cope with the present economic development. Some customary tenancies do not concern themselves with economic equality between what is paid as rents and the benefit derived from the land, especially in the rural areas. Very often a land that can give a yearly return of ₦10,000 on cultivation might be rented out only for ₦500.

It is submitted that a change to catch up with the modern economic realities is highly desirable. The Native and Customary Laws of Northern Nigeria and Northern Cameroon, should change in a way that would allow land-owners to bargain without ceiling, so as to obtain the real economic value of the tenancies.

#### 4.2.4 **PLEDGES**

A pledge of land under customary law has been defined as "..... a kind of indigenous mortgage by which the owner-occupier of land, in order to secure an advance of money or money's worth, gives possession and use of the land to the pledge creditor until the defendant is fully paid or discharged." <sup>43</sup> It may also be defined as a delivery of possession and custody of a piece of land by the pledgor to the pledgee to hold and use until the agreement is determined and discharged. This type of indigenous mortgage known as pledge is found in places where land is of high economic value, such as, in places like Kwoi, Kano, Zaria, Mubi, Jalingo in Northern Nigeria, as well as, Ngaoundere, Garoua, Tibati and Maroua in Northern Cameroon. There are very few cases on pledges so, resort shall be had to other jurisdictions since the customary practice has been found to be the same throughout West Africa. Where family land is pledged to the pledgee, the latter acquires an interest in the said land. The rights of the family will be taken over by the new holder (the pledgee). <sup>44</sup> Pledge is a common practice by which family land can be alienated.

A pledge usually arises when the family is in a pressing need of money to solve a problem but does not have the means to do so. The most common reasons for the pledge of family property in Northern Nigeria and Northern Cameroon is to raise money to celebrate marriages for members of the family, to organize traditional ceremonies and festivals like the Ramadan festivities, to pay school fees and hospital charges for its members and to raise capital for trading by its members. Wherever the needs of a family cannot be met, it is customarily recognized that it can pledge its property in order to secure its needs or fulfill its duties.

The resultant effect of pledge is that the pledgee continues in possession until the debt is fully discharged. The pledgee is absolutely entitled to enjoy all the rights accruing to the former holder (the family). Unless excluded by an express term, he is entitled to use the land as he deems fit. But he cannot alienate it to another person without the consent of the family (the pledgor). A pledge is usually for a fixed period.

In Northern Nigeria and Northern Cameroon, there are two types of pledges. The first is where the land pledged, is to be used by the pledgee until the pledgor or the family pays back the loan. The implication of this type of a pledge is that, even if the pledgee uses the land for a number of years, the debt for which the land was pledged, remains intact. The pledgee remains in occupation of the land until the pledgor satisfies the agreement. If any unfortunate happening or an act of God occurs, which destroys the land, the pledgor is still liable to pay the debt.<sup>44</sup>

The second form of pledge is where the pledgee's use and enjoyment of the land, for a stipulated period (usually one year), satisfies payment for the loan owed to him by the pledgor. In this case, the use of the land by the pledgee for a period of one year, satisfies the security for which it was pledged. It is not a condition that the produce from the land or the harvest must satisfy the debt. As soon as the season is over, and the pledgee has harvested his crops, the transaction ends and the land reverts to the pledgor.<sup>45</sup> This kind of pledge is operational today only in the remote parts of Northern Nigeria and Northern Cameroon where the demand for land is low, consequent upon rudimentary form of money economy.

Mitchelling J. stated the true nature of a pledge in Adjei V. Dabanka & Akowua<sup>46</sup> that , "It is an essential of a native mortgage that possession of the

mortgage premises should be given to the mortgagee at the time when the transaction takes place between the parties".<sup>47</sup> The pledgee continues in possession until the debt is fully discharged and all the harvests from the land serves as interest on the loan itself.<sup>48</sup> The question here is whether the right to retain possession extends to excluding the pledgor from the land until he has repaid the loan? This question seems to be given a positive answer in Northern Nigeria in the case of Hassan Balogun V. Yusuf Afolabi & 6 Ors.<sup>49</sup>, where the court was prepared to award damages for technical trespass and Hurley C.J. and Ahmad J. sent the case back to the Magistrate Court for disposal.<sup>50</sup> On the contrary, the customary land tenure law of Northern Cameroon is not akin to technical trespass whereby a person will be damnified for mere going into the land in possession of another person unless real damage is done to the crops or some other property of the owner.

However, it is a fundamental aspect of a pledge that it only gives possessive rights to the pledgee. In other words, the totality of rights transferred to the pledgee, is the right to the use and enjoyment of the land. Ownership forever remains in the pledgor or the family. This implies that even the pledgor's successors in title could redeem the pledge.<sup>51</sup>

Pledge under Islamic Law can be created in two ways. The first way of creating it, is through a contract or an agreement of sale and the other through a contract of loan. The first case could arise in a situation where Ahmadou purchases a house from Ibrahim worth ₦20,000 but has no cash to pay at the time of the sale. He deposits with the vendor, his farm worth ₦40,000, so that he will pay the money within two months from the date of the sale agreement. The second example is where Hamza deposits his house worth ₦80,000 to Fatima as security for a loan of ₦40,000 payable in one year from the date of the contract. Once these contracts

are concluded, the occupation of the pledged property passes to the pledgee and he continues in complete occupation of it until the pledge is redeemed. But title or ownership in the property remains with the pledgor or the family.

As a general rule under Islamic Law, the pledgee is not to derive any benefits or enjoyment from the pledged property. There are however, two exceptions to this general rule. He may derive benefits or enjoyment in two circumstances:

- (1) Where the subject matter of the pledge is an animal, the pledgee may make use of it by riding, milking, tilling a farm, carrying goods on it etc; since the duty to maintain the animal has by operation of the law been imposed on the pledgor;<sup>52</sup>
- (2) The pledgor may derive some benefits from the pledged property if the agreement came into being as a result of sale, or if a request for the use of the subject matter was agreed upon by the parties and the period of such use expressly and clearly contained in the agreement.

The customary laws of Northern Nigeria and Northern Cameroon, as well as, the Islamic Law, has no equivalence of Prescription or Statute of Limitation and so the passing of time does not cause rights to lapse. Unlike any other customary right, a pledgor can never lose the absolute ownership of the pledged land however long the debt may remain unpaid. Pledge can always be redeemed by the pledgor or his representatives. It is never lost under the principle of "foreclosure" as in the case under mortgage. Just like under Islamic Law, the maxim is "once a pledge, always a pledge." <sup>53</sup>

The right to redeem the pledge is not limited to the pledgor alone but it extends to any of his relations, no matter how distant the relationship may be. Anyone who exercises the right, does it on his behalf and if he dies, it becomes exercisable by anybody or bodies who inherit the pledged property. <sup>54</sup> In the unreported cases of John Ekweamua & Ors. V. Bala Maiyafe,<sup>55</sup> the respondent claimed the return of a market stall pledged to the appellants by his father. When the case came to the provincial Court, the court ordered the appellant to deliver the stall to the respondent. Islamic law provides that all the sons of the deceased father are entitled to share in the inheritance of his property. The respondent was therefore not entitled to recover the stall in his own name and for himself. The case was ordered to be retried in the Urban Area Court Kano, where all persons entitled to share in the respondent's father's inheritance could be joined as plaintiffs. <sup>56</sup>

Although, the pledgor has the right to redeem the pledged property at anytime, this right must be exercised reasonably. If the pledgee has planted his crops before the pledgor offers to redeem, then native laws and custom preclude the pledgor from exercising his right of redemption until the pledgee has harvested the crops. This is fair since any decision to the contrary will be too harsh and unjust to the pledgee who has bailed the pledgor out of his problems at the time of his needs. However, the pledgor might put up the argument that the pledgee has reaped far above what is due to him under the pledge and giving him the right to harvest his crops before redeeming the pledge would tantamount to unjust enrichment.

It is submitted that where the pledgee has made so many harvests before the pledgor gives notice of redemption, if the pledgee still has crops unharvested on the land, customary law should allow the pledgor to redeem the pledge before harvest. But on condition that the crops

when harvested, shall be shared between the pledgor and the pledgee. This will reduce the economic inequality between the loan secured and the benefits derived.

Although Islamic Law follows the maxim, "once a pledge, always a pledge," the court can order for the sale of the pledged property in order to protect or safeguard the financial interest of the pledgee where the pledgor fails to redeem the pledge within a reasonable time after the agreed date of redemption.<sup>57</sup> If there is any balance of money from the sale of the pledged property, it will be returned to the pledgor. This position is but fair since, undue delay in redemption will occasion loss to the pledgee on the value of the money concerned in the loan. The aim and objective of a pledge under Islamic Law, is not for the pledgee to derive any benefits or enjoyment from the pledged property, but rather, to acquire spiritual blessings from God and to take security in respect of the loan taken by the pledgor. In this regard therefore, the stand of the law in protecting the depreciating value of the loan is fair since the pledgee generally is not to derive any benefits from the pledged property, like is the case under native laws and customs.

Under the native and customary land tenure laws of Northern Nigeria and Northern Cameroon, redemption was only possible on repayment of the pledged capital. This was because, only agricultural lands were pledged and whatever benefits the pledgee derived from it in terms of harvests was from his manual labour and the improvements on the land. However, with the introduction of Modern Commerce and money economy, the law had to be reconsidered and revised. This was necessary because modern commerce had made it possible for almost all valuable properties to be pledged with the effect that the profits from some of these properties far outweigh the capital pledged.<sup>58</sup> The judicial solution that eventually emerged was the

concept of accountability. Under this concept, the pledgee is required to account for the profits from the property. This law has properly crystallized and today, is trite law that not only is redemption possible on the repayment of the pledged capital, but it is also possible when the profits derived from the pledged property by the pledgee exceeds the loan. In this case, the pledgee will not only be asked to return the property, but also the excess profits made.<sup>59</sup> This is another indication that under native laws and customs, a pledge is perpetually redeemable.

A pledgee cannot sell land, if he does, the title will not pass because the principle "Nemo dat quod non habet" applies.<sup>60</sup> He cannot pledge it to another creditor who is subrogated to him. It is submitted that native laws and customs should develop and incorporate some rules of mortgage and Islamic Law, which allows the pledgee to buy off the land where the pledgor fails to redeem it, and other Islamic law rules on redemption like allowing the pledgee to pledge the property to a third party, fixing a date of redemption earlier than that of the first pledge. this will protect the depreciating value of the loaned amount.

#### 4.2.5 GIFTS

A gift is an out-and-out transfer of property. It may also be considered as a gratuitous transfer of land from the owner to another, with the intention that the rights or the interests of the donor shall pass to the person to whom the gift is made. The incidence is the transfer of all rights of the donor to the donee and divests him completely with all his interests in the land.

Gift is one of the ways in which family property can be alienated. In olden days, gift of land was uncommon because of the availability of land then. But due to population pressure, soil erosion and depletion, as well as, socio-economic

pressure, gift of land has become a common place practice in Northern Nigeria and Northern Cameroon. A gift being a permanent transfer of property, the donor may not revoke it.<sup>61</sup>

Under the customary laws of Northern Nigeria and Northern Cameroon, a gift of land needs not be in writing, but the transaction must be in the presence of witnesses. The presence of witnesses is needed to avoid the donor claiming later that he did not make any gift or the donee claiming ownership of someone else's piece of land on the pretext that it was made to him by way of gift.

Another important element in a gift of land is that it must be borne out of free will of the donor and not occasioned by any undue influence. Where the gift is unduly influenced, it is voidable. The person making the gift must be the owner of the property given. He must have the full intention to transfer the property. The donor should actually transfer the property, and the gift must be accepted in the lifetime of the donor.<sup>62</sup> Failure to do so, could invalidate the gift. This fact was in issue in Akerele v. Luje Labelu.<sup>63</sup> the facts of which were these: the donor executed a deed of gift purporting to convey to the donee, the fee simple of 23 acres of his (donor) share of family land. Partition of the family land had been ordered by the court and the donee was to have chosen after partition. The partition took place after the donor's death, yet the donee went on and selected for himself 23 acres of the land. The court held that the donee's failure to make the selection in the lifetime of the donor invalidates the gift. In as much as this decision must be limited to its facts (as the late donor had no alienable interests in the family property), but considering the

fact that the donee may not have the co-operation and understanding of the heirs of the donor, it is submitted that all the conditions of a valid and enforceable gift must be met before the death of the donor.

Land containing economic trees can be made away as gift to the grantee while the donor at the same time retains his rights over the economic trees.<sup>64</sup> In this case, the donor has the right to come into the land to harvest fruits or water, from the economic trees. But he cannot exercise any rights over the land itself. An absolute gift once made, is irrevocable. The High Court of Northern Nigeria decided in Mogaji Olorunojie v. Sidiku Olorunojie,<sup>65</sup> that a gift is irrevocable after a reasonable time has lapsed. What constitutes a reasonable time in this sense? This question was never answered by the court. It would appear that a reasonable time here means, that lapse of time, during which the donee has made some developments on the land, such as, erecting a building, building a wall or a fence around it or even cultivating it and having crops sown on it.

Under the Islamic Law of Maliki school which applies in Northern Nigeria and Northern Cameroon, gift is one of the ways in which property, including family property can be alienated. The word gift (hiba) has been functionally defined: "as the immediate and unqualified transfer of corpus of the property without any return or exchange value by one person to the other, during the lifetime of the donor."<sup>66</sup>

From the above definition, it is clear that there should be no conditions or restrictions attached to a gift, otherwise, it will be unenforceable. This intention of the donor must be demonstrated by his entire relinquishment of the thing given.

For a gift to be valid, there should be a declaration on the part of the donor

(al-wahib), which must be expressed in clear and unequivocal words for the transfer of property by means of gift. It must be shown clearly that the donor intends to divest himself of all ownership and dominion over the property, otherwise, the gift will be null and void.<sup>67</sup> A gift may be made orally or in writing, but in order to have proper evidence of the transaction, the one in writing is preferable. The subject matter of the gift or the property must be transferred by the donor in his lifetime to the donee. In a situation where a gift is effected and possession has not been taken of the subject matter by the donee, but remains entirely at the disposal of the donor, then on his death, he bequeaths to his heirs and not to the donee.<sup>68</sup> The donor must be a sane adult and at the same time, he must be the lawful owner of the property in question and he must act voluntarily.

The donee must actually be living at the time the gift is made. Therefore, a gift of property made to an unborn child or person not yet in existence is void.<sup>69</sup> The donee can also be an object such as a mosque, building, school, or a charitable institution.

Revocation of a gift is highly condemned under Islamic Law. According to the Holy Prophet (Peace and Blessings of Allah Be Upon Him), a gift once made, should not be withdrawn.<sup>70</sup>

#### NOTES AND REFERENCES FOR CHAPTER FOUR

1. Reger Bird, 1983, Conicise Law Dictionary, Sweet & Maxwell, London, p.2.
2. Akeju V. Suenu (1935) 6 N.L.R. 87 at 90.
3. Per Osborne C.J. in Lewis V. Bankole, (1909) I.N.L.R 82 at p.104.
4. (1960) L.L.R. 276, Bassey V. Cobham, (1924) 5 N. L.R. 92.
5. (1960) 5 F.S.C. 44.
6. Meek C.K. (1946) Land Law in the Colonies, pp. 15-152, 162.
7. Per Kingdom C.J. in Kadiri Balogun V. Anamu Balogun, (1943) 9 WACA, at p.84.
8. J.O. Ijaodola (1974), "Alienation of Land in Northern Nigeria", Journal of Islamic And Comparative Law, Vol. 5, C.I.L.S. A.B.U., Zaria.
9. Ibid.
- 9a. Roger Bird Op. Cit. p.296.
- 9b. Prof. M.G. Yakubu, (1985) Land Law In Nigeria, Macmilam Publishers, London & Basingstoke, P. 54.
10. M.G. Yakubu, (1980) The Law of Land Ownership And Succession in Northern States of Nigeria: An Exposition And Critical Analysis of The Existing Laws of The Hausa-Fulani Community. P.160.
11. Oshodi V. Tusa (1930) 10 N.L.R. 4, 11 N.L.R. 10.
12. Ogola E. Y (1989) Alienation of Family Property in Nigeria, Unpublished LL.M. Theses, A.B.U. Zaria, p. 96.
13. Ekpendu V. Erika (1957) 4 F.S.C. 79.
14. Ogumbambi V. Abowab, (1951) 13 WACA p.222.

15. Supra.
16. Cole V. Folami, (1956) 1 F.S.C. 66.  
Taiwo V. Ogunsaya, (1965) N.M.L.R. 375 at 379.
17. Supra.
18. (1988) 1 N.W.L.R. 351.
19. Folarin V. Durojaiye, Supra.
20. See Article 5 (1) of Ordinance No. 74-1 of 6th July, 1974.
21. C.S.L.D. Arret No.71/4, 16th March, 1971.
22. Law No.19 of 26th Nov,1983.
- 22a. See Section 8 (3) and Section 8 (4) (i) & (ii).
23. Karun F.A. (1939), Public Duties in Islam, The Institution of The Hisba; The Islamic Foundation, Mishkat-ill-Masabih, Book II, p.270 (reported by Muslim).
24. Ibn Taymia, (1982), Public Duties In Islam, The Institution of Hisba, The Islamic Foundation, PP. 47-50.
25. Holy Qur'an Ch.17V.35
26. Ibid. chap. 2 v . 282.
27. Kofi V. Wirsi& Ors, quoted in M.G. Yakubu (1980) Op. cit. P.125.
28. The Land Tenure Law, 1962 and the Land use Act, (cap.202) Laws of The Federation, of Nigeria, 1990
29. The Land Ordinances of the Republic of Cameroon
30. M.G. Yakubu, 1980 Op. cit P.127.
31. Ibid. P.172.

32. Ibid p. 128.
33. Keffi S.U.D. (1990) Some Aspects of Islamic Law of Succession, Rukhsa Publication,  
Kano, Nigeria P.14
34. Ibid.
35. Elias T.O. (1971) Nigerian Land Law, Sweet & Maxwell, London, p.123.
36. Rotibi V. Savage (1944) 17 N.L.R. 77. Haruna Dandako V. Gana Jimeta, (1970)  
N.S.N.L.R. 82.
37. Kyari V. Baron unreported case No. 13/62.
38. Keffi S.U.D. Op. cit. p.16.
39. See Osborne C.J. in Lewis V. Bankole, (Supra) pp.84, 105. Lord Holdane in Amodu  
Tijani V. Secretary of Southern Nigeria (1915-21) 3 N.L.R. 24.
40. Ijaodola J.O. Op. cit. p.9.
41. Prof. B.O. Nwabueze (1972) Nigerian Land Law, Nwanife Publishers, Enugu-Nigeria  
p.252.
42. Per Milchellin J. in Adjei V. Dabanka, (1930) I WACA, at pp.66-67.
43. (1930) I WACA, 63.
44. Ibid at pp. 66-67.
45. Prof. M.G. Yakubu (1985) Op. cit p.37.
46. (1930) I WACA. p.63
47. Ibid. at pp.66-67.

48. E.G. Kuahen V. Avose (1889) Lagos: Reports of certain judgements of the supreme court, vice Admiralty and full Admiralty and full court of Appeal (1884-1892)-Law Reports (Colonial) Nigeria A. Colonial Office, London.
49. Suit No. z/2A/1964.
50. The High court actually awarded damages for technical trespass in the case of Omezie V. Jos N.A. And 3 Others, Suit No. J.D/77/1963.
51. Ebiassah V. Ababio, (1946) 12 WACA, 106.
52. S.U.D. Keffi (1994) "Some Aspects of Islamic Law of pledge" unpublished Article, C.I.L.S A.B.U. Zaria. P.4.
53. NumNok V. Kwano, unreported case No.49/62 see also Efiong Etim V. Chief Etim, 16 N.L.R. 52.
54. Ijaodola J.O. Op. cit p.13.
55. Appeal No. K/39A/64 (High Court of Northern Nigeria).
56. See also the case of Mayirefic V. Brema Esiam (1951) 13 WACA, 934.
57. S.U.D. Keffi (1994) Op. cit. p.18.
58. See Amoo V. Adigim (1957) W.N.L.R. 55, where the defendant was expected to return the house to the plaintiff because, the rents that had accrued to the house from the date of the pledge, to the date of action, had far outweighed or exceeded the pledged capital.
59. Kuahen V. Avose (1889) supra.
60. Jegede V. Eynogun (1954) 3 F.S.C. 66.
61. Amadu V. Sule, unreported suit No.919/1976. (Gude Area Court).
62. Akerele V. Liyelabelu (1956) L.L.R 35

63. Supra
64. Ijaodola, J.O. Op. Cit. P.17
65. Appeal No. Z/12m/1964
66. Al-Quaradawi, Y. The Lawful And The Prohibited In Islam; I.I.F.S.O., 1984 PP. 140 - 141.
67. Y.Y. Bambale, Op Cit. 92
68. Y.Y. Bambale Ibid P. 93
69. Rahin A, The Principles of Muhammadan Jurisprudence All Parkistan Legal Decisions, Church Road, Lahore, 1978, p. 301.
70. Khan, M.Z. Riyadh As - Sabhim of Imam Nawawi Garden of the Righteous) Curzon Press, London, 1985, P. 744.

## CHAPTER FIVE

### METHODS OF ALIENATION OF FAMILY PROPERTY

The Philosophy behind family property holding has been to tie the property in the family for an indefinite period. Complete alienation of family property was never known to or practiced under the indigenous land tenure system of Northern Nigeria and Northern Cameroon. So great was the respect attached by all concerned, to the sanctity of family structure that no one dared dissipate the properties. Several reasons were advanced for this; it was spiritually believed that land belonged to the past, present and generation yet unborn. Secondly, land was in abundance and population was scanty, and therefore, no demand for it. In the meantime, the principle of inalienability of family property has been seriously invaded by the Western civilization and its modern way of life. Despite the invasion that has been done on this system of property holding to deprive the tenure of the incidence peculiar to it, it still exist. However, alienation of family property has come to stay under the customary laws of Northern Nigeria and Northern Cameroon.<sup>1</sup> This chapter shall examine the procedure for such alienation.

The procedures or methods of alienation of family property, shall be considered under two main headings these are, the general or the consensus method, and alienation by order of the court. But before we start discussion on the chapter, it should be noted that the customary land tenure laws of Northern Nigeria and Northern Cameroon have been found to be similar on most issues. It should also be noted that, because of the paucity of reported cases in cameroon, Nigerian cases shall be used for illustrations. Based on the similarities in the laws, the state

of the law in Northern Nigeria and Northern Cameroon shall be examined together. However, the comparative study will show clearly if there are peculiar differences.

## 5.1 PROCEDURE FOR ALIENATION

### 5.1.1 THE GENERAL OR THE CONSENSUS METHOD

It does happen a times that all the members of the family may agree among themselves through mutual understanding to alienate the family property. For this to happen, there is usually a formal meeting of the family members, properly convened, by the family with adequate notice given to all the principal members of the family.<sup>2</sup> For alienation by consensus to be valid, the consent of all the members of the family is required. Thus, in Balogun V. Balogun<sup>3</sup> Oloko Balogun owned property in 1903, which he left to his children after his death, as family property. All his children convened a general family meeting at which they all agreed to share the property among themselves, and they did share the same by deed. One of the brothers, Ali Balogun bought the parcels of all his other brothers. Olokun died intestate, leaving two children. They claimed that the property was family land.

The plaintiff sued, claiming title to all of Balogun said land, which the defendant claimed was family property for which they were entitled to use and **occupy**. **The trial court held that it was family property. But on appeal, the West African court of Appeal reversed the decision. Graham Paul C.J. stated that:**

It has been well established that there can be such absolute alienation of family property by general consent of all members of the family. I think it is clear that the 1903 partition deed to which all members of the Oloko's family were parties in this case effectually vested in each of the parties an absolute title to his or her

share. Similarly the later partition... vested in the plaintiff the absolute title of Ali Balogun to the partitions to which the 1936 conveyance (Ex. 13) referred...."<sup>4</sup>

Where family property is to be alienated by consensus, the consent of the infants, or some principal members who, although have had notice, but are unavoidably absent, could however be disregarded.<sup>5</sup> As a requirement also, where family property is to be alienated by partition, the alienation will be valid if the division is done in accordance with native laws and customs. If however the members of the family are muslims, alienation of family property will only be valid if the division is done in accordance with the Islamic Law of Succession.<sup>6</sup>

Through my interview with Alhaji Musa Muazu in Jos and Isiaku Yerima in Northern Nigeria and Northern Cameroon respectively, it is the customary laws of the areas under consideration that family land can be alienated if the head and all the principal members consent to it. This can be done at a general meeting of the family, properly convened and notice given to all principal members by the head of the family. If a few members are unavoidably absent, their consents can be dispensed with.<sup>7</sup>

Among the non-Muslims, if family property is to be alienated by partition, the division must be done by a third party, who is not himself a beneficiary of the property. Unlike in the past when it was prohibited for women to own land, the customary laws of Northern Nigeria and Northern Cameroon empower female members of the family to own their own portions of partitioned family property. But however, some tribes like the Attakar of Southern Zaria, in Kaduna state, and Lantang in Plateau state, do not provide for the ownership of partitioned family land by the female members of the family.<sup>8</sup> Among the Muslims, if family property is to be alienated by partition the division must be done by someone versed in the Islamic Law of

Succession and the female members must own their own shares of the landed property, contrary to the customary laws of some tribes, like the Attakars and the Lantangs. When family land is alienated by consensus, the portions which are given out, are absolute properties to whom they have been alienated. <sup>9</sup> However, it is worthwhile to note that there are other forms with which family property could be alienated by consensus, such as, sale, mortgage, lease, customary tenancy, loan, etc.

5.1.1.1 **DEFECTIVE ALIENATION.**

**A. ALIENATION BY ORDINARY MEMBERS OF THE FAMILY**

Following the case of Onisjwo V. Gbamgboye, <sup>10</sup> a valid form of alienation requires the consent of all the members of the family. Any alienation of family property therefore, by the ordinary member of the family is null and void ab initio. Ordinary members are those who have not been designated by appointment as principal members and all junior children who do not perform important family functions, as well as slave members or their descendants. Alienation by ordinary members transfers no title at all and cannot be ratified either. <sup>11</sup> The transaction is a nullity, unrecognized, and remains bad from the beginning. That is to say that even if all the members were to consent later on to that defective alienation, their ratification as such, will not regularize the transaction. The reason for this harshness on the part of the law, is not far-fetched. It is to preserve the sanctity and perpetuity of family landholding. This is necessary because family property belongs to a vast majority of persons including the unborn. And therefore a stringent procedure of alienation is required, where only the head and the principal members can validly alienate, although the family head has the right by virtue of his position to take decisions alone on routine and emergency matters. Such decisions, must be

in the interest of the family as a whole.<sup>12</sup> If the customary land tenure laws of Northern Nigeria and Northern Cameroon were to hold otherwise, some incompetent members, who either out of spite for the elders, or who are in a dire need for money, could sell family land at the detriment of the other members.

In addition to the alienation being considered void, the member of the family concerned might have his rights over that portion of land forfeited. Thus, in Lawal Braimah Onisiwo V Taiwo Bambgoye<sup>13</sup> the defendants-appellants were descendants of Bambgoye, a dometice of one of the plaintiffs-respondents ancestors. Bambgoye was given permission to occupy a portion of family land in accordance with native law and custom. The defendants-appellants had leased the property in dispute to another person for a term of 3 years without the consent of the plaintiffs-respondents. The latter accused the former of gross misbehavior, which he said could warrant forfeiture of their holdings. In pronouncing the decision in favour of the plaintiff-respondents, Kingdom C.J. said:<sup>14</sup>

"Apart from any special circumstances, when the head of the family allots land to a member of the family for him to live on, that member becomes entitled to occupy and enjoy that portion during good behaviour, but he does not become owner of the land as against the family and, he cannot alienate it without the consent of the family. If he does so, his actions amounts to misbehavior and he can be treated by the family as having forfeited his right to occupy the land and be ejected."

In yet another case of Misbehavior, Oshodi V Inasa<sup>15</sup>, the plaintiff who

was the head of the Oshodi family, sought a declaration that the defendant had sold, or attempted to sell, part of the compound and had therefore, lost all the rights that he possessed under native law and custom in respect of the land. The testimony of this case disclosed that the defendants were descendants of a former slave of Chief Oshodi. It was held that his continued holding of the family property was subject to good behaviour. Equally, in the case of Kadiri Adagun V. Fagbola <sup>16</sup> the defendant was a member of the Olorogun family. A portion of the family property was allotted to him to occupy under customary law. He entered into occupation. Without the knowledge of the family, he granted a mortgage to the second defendant over the portion allotted to him for occupation. The mortgagee eventually proceeded to advertise the property for sale. The notice of the sale was the first intimation the family had of the granting of the mortgage. The plaintiff for and on behalf of the Olorogun family claimed to set the sale aside, the mortgage, and to recover possession of the portion allotted to the first defendant. His claims were granted.

The rationale in the decisions of the courts in Lawal Braimoh Onisiwo v Taiwo Bamgboye <sup>17</sup>, Oshodi V Inasa <sup>18</sup>, and Kadiri Adagun V. Fagbola <sup>19</sup>, is because of the importance of land as the most valuable property or capital. Its alienation by a member in possession is considered to a serious act which if not checked, could cause a family to lose the goose that lays the golden eggs. Land is God- given providence and most important source of sustenance. Moreso, land is the most enduring property or capital for which any family or community can boast of having. Land is synonymous with material wealth and it is a symbol of political power because we can't talk of sovereignty without land. In view of all these fine qualities of land,

it would be unfair to allow a single individual to deprive the family of these qualities, for his own self-aggrandizement.

The rulings in the above cases represent the law in Northern Nigeria and Northern Cameroon. Where an ordinary member alienates family property, the alienation stands null and void and the alienor may forfeit his rights over the alienated portion of land and a virgin portion allocated to him.<sup>20</sup>

**B ALIENATION BY THE PRINCIPAL MEMBERS WITHOUT THE CONSENT OF THE FAMILY HEAD.**

Principal members are either designated by appointment or are automatically recognized as such by virtue of seniority of birth. In a polygamous family, all eldest children of the various wives are principal members. On the other hand, every grown up child of a monogamous marriage, is a principal member. Furthermore, other members who fall outside these groups but perform important family functions would also be accorded the status of principal members.<sup>21</sup>

Where the principal members alienate family property without the consent of the family head, the conveyance is a complete nullity. This was the position reached by the West African Court of Appeal in Ekpendu V. Erika<sup>22</sup> where the principal members of Onyike family of Aba, leased family land against the persistent refusal of the head of the family. The court held that a lease made by the principal members without the concurrence of the head of the family is void and initio. Although this case was decided with reference to the Ibo customary land law, it would appear that the same holds true of the customary land tenure laws of Northern Nigeria and Northern Cameroon. This is based firstly on the assumption that the customs of all West

Africans are basically the same. Secondly, during my tour of Northern Nigeria, all those I met, including Mallam Musa Sambo of Minna in Niger state of Northern Nigeria, told me that alienation of family land by the principal members without the consent of the family head, is null and void. Equally, I was told in Foubm and Maiganga in Northern Cameroon that alienation of family land by the principal members without the consent of the family head is null and void.

In 1985, the supreme court of Nigeria was called upon to decide a matter on this point of the law. The case in question is Aturanse V. Sunmola<sup>23</sup>. In that case, both parties to the action had bought the piece of land in dispute at different times from different principal members of the original owners of the land. The High Court Judge dismissed the suit when he discovered that both parties had bought the disputed piece of land from different principal members of the vendor family. The High court also declared their respective titles void, as the purchase was done without the proper consents being sought and obtained. The plaintiff/respondent appealed to the court of Appeal which also threw out the suit. Still unsatisfied, he appealed to the supreme court of Nigeria. The judgment of the Supreme Court was not different from those of the two lower courts. Bello J.S.C., as he then was, Kayode J.S.C. and Oputa J.S.C., were all of the opinion that sale or lease of family land by a member who is not the head of the family, without the consent of the family head, is null and void. Kayode Eso, J.S.C. in his short judgement said:<sup>24</sup>

".... Both parties in this case had a defective title by reason of the fact on the evidence, they both acquired their so-called titles from members of the family without the concurrence of the head of the family. It is now settled law that such title is void. This court has over the years laid down the principle of law

that a sale by members of the family, without the concurrence of the head of the family is void. One hardly requires any authority for this well established position. However, see Ekpendu v. Erika and the latest in the series, Solomon v. Mogaji.<sup>25</sup>

The message drawn from the above decision is that, alienation of family property by the principal members alone is void. In addition to the alienation being considered null and void, the defaulted principal member may have his interest in that portion of land forfeited. It is submitted that, in view of the importance of land to mankind the law should require that, where a person forfeits land because of misbehaviour, he should be given a virgin piece of land if it is available so that he may have to suffer to make it cultivable.

**C. ALIENATION BY THE FAMILY HEAD AND A FEW PRINCIPAL MEMBERS.**

Where the family head and a few principal members alienate family property, the transaction is merely voidable and not void. This is because at this time of money economy and the global depression affecting many economies of which Nigeria and Cameroon are not excluded, members of the family are usually scattered all over the countries in search of their daily breads. It is not usually therefore, possible to get all the principal members together each time a transaction affecting family property is to be made. Because of this unavoidable absence of some of the principal members, it is rational and fair at least to the purchaser whose money has changed hands, that the transaction be considered voidable. This makes it possible for the absentee members if they so wish, to ratify the alienation eventually. This position of the law has been stated over and over again by the courts.<sup>26</sup> In the case of Agaran v. Olushi<sup>27</sup>, the head and some principal members of the Olushi family sold family land without the consent of

the plaintiff (a principal member). The court ruled that the sale was voidable. Also in the case of Mogaji v. Nuga<sup>28</sup>, where the family head and three others sold family land without the consent of the defendant, the court equally held that failure to obtain the consent of the defendant rendered the transaction voidable. In Essan v. Faro,<sup>29</sup> the family of the plaintiff wanted to sell family land. A family meeting was convened, which of course, was well attended. But the particular piece of land to be sold was not agreed upon at the meeting. At a later time, the head and some principal members chose a particular piece of land and advertised it for sale. The appellants who disagreed with it, registered their protest by putting up a counter advertisement. Eventually, the land was slated for auction. The appellants at the auction warned the proposed buyer against buying it because there was a dispute on it. The purchaser ignored this warning and bought it and the appellants instituted this action. At the West African Court of Appeal, this sale was held voidable. This judgement gave rise to two important points of law. One that, for a valid alienation of family property to be achieved, the consent of all principal members is required.<sup>30</sup> Secondly that, a principal member needs not be head of a branch. When a transaction is considered voidable, it transfers valid title until it is set aside by a court of competent jurisdiction, and is also capable of ratification by dissent members if they so wish.<sup>31</sup>

This position of the law is commendable for two reasons: (1) Because, gone are those days when families used to lie together in clusters in the villages, and their activities were limited to subsistence farming, hunting, fishing and community services (otherwise known in Northern Cameroon as Nchi-Manjong). At this time, it was easy to bring principal family members together in the event of any alienation of family property. But today, some family

members are usually away to some parts of the country or even abroad in search of means of sustenance or education. So by considering an alienation effected without the consents of the absentee principal members, who are unavoidably absent, it makes it possible for them to ratify the sale in future, if they so wish, especially, where such a sale was made in emergency and also in good faith. Or if they do not wish to do so, they can apply to the court to set the sale aside, in which case the buyer will not lose the purchase money. The second advantage of the courts position is that, it prevents selfish family members from intentionally excluding an unavailable principal member from enjoying the proceeds of sale of family property in which he is a beneficiary.

**D ALIENATION BY THE FAMILY HEAD ALONE**

Atimes, a family head may alienate family property alone, without obtaining the consent of the principal members of the family. This un-procedural alienation usually happens in the two ways. The first is where the family head alienates the property as his private personal property and secondly, where he deals with the property in a representative capacity.

**I) WHERE THE FAMILY HEAD ALIENATES FAMILY PROPERTY AS HIS PRIVATE PERSONAL PROPERTY.**

During my tour of Northern Nigeria like in Attakar and Kagoro in Kaduna State, Lantang and Randa in Plateau State, and Foubam and Mayo Darle in Northern Cameroon , I discovered rampant cases where family heads fraudulently sell family lands as if they were their private properties. Money economy has brought about individualism, self-centeredness and very high quest for money in the societies covered by this research. This explains why some family heads in

violation of the normal alienation procedures, dispose family properties. In Northern Nigeria and Northern Cameroon, it is the rule under the land tenure laws and customs that, where the family head alienates family land single-handedly as if it were his private personal property, such a transfer would stand null and void and of no effect whatsoever.<sup>32</sup> Even if all the principal members later on, after the sale, give their consents, or see good reason in the act of the family head and therefore, ratify the transaction, the sale will still stand null and void.<sup>33</sup> In 1985, the Supreme Court of Nigeria in the case of Coker v. Oguntola,<sup>34</sup> restated this position, that, a member of the family cannot sell landed property of the family as his own private personal property. In addition to this, in Northern Cameroon, the family head can also lose his position if he alienates the family property as his own private personal property.<sup>35</sup>

The Law appears to be well settled on this point and places a check on the activities of egoistic and self-centered family heads. The next question that has not been answered is, what becomes of an innocent buyer, who took all reasonable steps to verify ownership of the land, yet, has his title to the land void.? The first time he might know of the voidness of the transaction may only be after the sale has been effected. Or when the aggrieved members of the family institute action to set the sale aside or to stop him from committing trespass on the land. Where it is established that members of the family allowed the property to be disposed of by their accredited head without offering any protest, the court would hold that the members consented to the transaction.<sup>36</sup> The consent is implied and is based on knowledge and acquiescence of the other members. However, the principle of knowledge and acquiescence, being sufficient to find consent,<sup>37</sup> must be proven by the fact that the vendor has been delegated the power of alienation, since the powers of management is not a delegation of the power of

disposition. It is submitted that since the sale of land generally, is governed by the rule of caveat emptor, purchasers should carry out a thorough investigation before buying family land.

ii) **WHERE THE FAMILY HEAD OR THE CHIEF ACTS IN A REPRESENTATIVE CAPACITY.**

There are situations where the family head or the chief discloses that the land belongs to the family and at the same time, presents himself or holds out himself as a representative of the family. But nonetheless, goes ahead to sell family property without consulting other necessary members. In other words, he sells the land behind the backs of other members.

As family property belongs to a vast majority of people, that is, the past, the present and those yet unborn, it is but normal that every proposed sale of that property be properly discussed and agreed upon by all the necessary members. The rules of customary law on alienation having been well settled in Northern Nigeria and Northern Cameroon, one would suppose that, family heads whose appointments are based on sound moral integrity should uphold their dignity by obeying the law. Unfortunately, some of them have shown acts of disregard for the rules of customary laws.<sup>38</sup> Through my interview with Mallam Ado Baba in Kano, Jato Maigari in Attakar in Kaduna State, Mallam Zakari Tonyi, Alhaji Nsangou Issah in Fouban and Tukur Ahmed in Ngaoundere in Northern Cameroon, I came to know that there are rampant cases of illegal alienation by family heads. These illegal sales they said, are occasioned by the desire to make quick money. Family heads are today very willing to sacrifice their integrities for money.

Under the customary land tenure laws of Northern Nigeria and Northern Cameroon, any clandestine sale of family property by a family head is null and void. In Cole v. Folami<sup>39</sup> the

head of the plaintiff's family sold family land without the consents of the principal members of the family. The defendant family head, having failed to prove at the court, that the required consents were obtained, *Jibowu, Ag. F.J.*, held that since the sale was a secret sale for which no family member knew anything about, it was void. Two years later in *Olowu v. Oshinubi*,<sup>40</sup> Bennet J., also arrived at a similar decision. The case also concerned a clandestine sale by a chief for his own personal aggrandizement. The Judge held that the head of the landowning family has no right to alienate family land without the consents of the principal members and accordingly, he declared the transaction void. Similarly, in *Fako v. Fako*,<sup>41</sup> the defendant who was the head of the Fako family sold three houses belonging to that family, with the consent of only one member. An action was brought by other members to set the sales aside. The defendant argued that it would be inequitable to set them aside as the proceeds were expended to buy a chieftaincy title which would be beneficial to the family as a whole. The court rejected his argument on the grounds that the acquisition of the Chieftaincy title for which the proceeds were used, was a personal aggrandizement and therefore, did not benefit the family as a corporate body.

Unfortunately, the Ghanaian Court decided in *Bayaidien v. Mensah*<sup>42</sup> and *Manko V. Bonso*,<sup>43</sup> each of them dealing with clandestine sale of family land by the head that, the transactions were merely voidable. Considering the fact that family property belongs to a vast majority of people including the past, present and the generation unborn, and the fact that requirement of consultation is one of law and not of convenience,<sup>44</sup> it would be unfair to allow a single member to dissipate family property for his won personal aggrandizement. The approach of the Nigerian Courts in *Cole v. Folami*,<sup>45</sup> *Lalowu V Oshinubi*,<sup>46</sup> is preferable. It

should be noted that in addition to rendering an alienation made by a family head without the consents of the principal members void, in Northern Cameroon, this act may also cause the family head to lose his position, as family leader.<sup>47</sup> It is submitted that the customary land tenure laws of Northern Nigeria should adopt this rule of the land tenure laws of Northern Cameroon. This will check excessive abuse of authority by family heads.

#### 5.1.2.5 THE DIFFERENCE BETWEEN VOID AND VOIDABLE ALIENATION

A void disposition means that the transfer is null and passes no title to the Purchaser. A voidable alienation on the other hand, transfers a defective and defeasible title. A defeasible title is that conveyance which is good until set aside by a court of competent jurisdiction, at the instance of the injured party. However, some writers hold views contrary to this distinction. In fact it appears that their views, "project a dark cloud over a relatively clear sky."<sup>48</sup> An Anthropologist known as P.C. Loyd, while acknowledging that the courts have drawn a distinction between void and voidable disposition, opines that: "The distinction between void and voidable is perhaps largely academic."<sup>49</sup>

Similarly G.R. Woodman, a barrister by profession also expresses the view that, "... the effect between void and voidable is perhaps not as great as might be imagined."<sup>50</sup> His reason for taking this stand being that a purchaser who enters under a voidable conveyance will be secure if the conveyance is not set aside timeously; and also, a person who enters under a void conveyance may be secure by the doctrine of estoppel by acquiescence. However, Woodman's arguments have gained some support,<sup>51</sup> but he appears to be oblivious of the fact that not all decisions are good law<sup>52</sup> even though they are binding on the lower courts on the basis of judicial precedence. Secondly, most people who are conscious of their interests in landed

property hardly sleep on their rights. In as much as Lloyd and Woodman might have expressed their views with the best of intentions, it is submitted that they failed to envisage the practical differences between void and voidable dispositions.

Furthermore, Kasumu and James <sup>53</sup> contended that the issue whether a sale is void or voidable may make a difference as to whether the purchaser gets the absolute interest of the family or a lesser interest. In view of all these postulations the difference between void and voidable alienation of family property is of utmost importance.

In the legal perspective, there are fundamental differences between a void and voidable transactions in family property. Firstly, a voidable transaction transfers a good title, that is to say, the transfer is good and remains good until set aside by a court of competent jurisdiction. <sup>54</sup> The implication of this is that, to set aside the sale, the aggrieved party must institute a legal action. On the other hand, a void alienation transfers not even a shaking or defeasible title. Infact it transfers nothing at all. The disposition is void ab initio. Contrary to Lord Denning's view , that a separate action may not be necessary to set a void sale aside as he describes in the following words:

... If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of court to set it aside. It is automatically null and void without much ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding, which is founded on it is also bad and incurably bad. You can not put something on nothing and expect it to stay there. It will collapse" <sup>55</sup>

An action is necessary to set the sale aside. In fact, it is only in this way that both parties could be stopped from making wrong assumptions about their respective interests in that family property in question. The second fundamental difference is that a voidable sale is superior to a void disposition. It follows that, in a conflict between two claimants, the holder of a voidable title prevails.<sup>56</sup> The third fundamental difference is that, a voidable title could be validly transferred to an innocent third party for value.<sup>57</sup> An innocent person for this purpose is one who buys for value and in good faith (that is, without knowledge of the defects in the seller's title). Once this disposition is effected, the original owners are divested of both their title to the land and all other interests which they might have had in the land. A number of reasons have been advanced for this. Firstly, the land is no more in the possession of the seller, therefore, restitutio in intergrum is no more possible between the seller and the original owners. Secondly, the family has slept on his rights for too long. Thirdly, the voidable title of the seller was good at the time of the transfer. And lastly, the third party has no contract with the original owners. Finally, voidable disposition can be ratified but a void transaction cannot.

Fifthly, a purchaser who enters into possession by virtue of a void disposition is a trespasser. He could be held liable for damages from the time of possession, to the time possession is given up. He is also liable because the authority by which he took possession was a nullity. On the contrary, a purchaser who takes possession by virtue of a voidable sale, is not a trespasser until the sale is avoided. In Ekpendu v. Erika,<sup>58</sup> it was held that a purchaser with a voidable title could not be held liable in trespass in retrospect. In summary, it is clear that a simplistic approach to the distinction between void and voidable dispositions, like those of Loyd and Woodman is limited and unacceptable because it does not give the full and practical

effects to the two terms. The trench between void and voidable is so wide that the practical differences becomes highly phenomenal.

### 5.1.2 ALIENATION BY ORDER OF THE COURT

Another method or procedure for alienating family property in Northern Nigeria and Northern Cameroon is by order of the court. this method falls outside the competence or domain of the family. It is usually occasioned by a disagreement between the members as to the manner in which the family property is being managed or used or dealt with. However, in some cases, especially with respect to partition, the court may only be called upon to bless or sanction an alienation even though there was no disacord between the family members. For example, in Lewis v. Bankole,<sup>59</sup> the final lease of the shops which was sent to the court for ratification was well after the disagreement between the family members had been settled. Ostensibly, it was however done to forestall future disagreement.<sup>60</sup> There are two methods of alienation of family property by order of the court that shall be examined in this thesis, namely; Judicial sale and Judicial partition. But before these two methods are analyzed, it would be necessary to consider the source of the power of the court to order the alienation of family property.

#### 5.1.2.1 THE SOURCE OF THE COURTS DISCRETION TO ORDER ALIENATION OF FAMILY PROPERTY.

It is trite law in Northern Nigeria and Northern Cameroon that any member who has been deprived of his rights in family property could seek redress from the courts through an application.<sup>61</sup> The courts can, based on such an application, order sale,<sup>62</sup> or partition<sup>63</sup> of family property. The question that created much worries to legal minds, was the source of this wide discretionary

powers of the court to deal as such with family property. So far, several views have been expressed as to the source or origin of these powers, but the debate however, continues.

According to Elias T.O.,<sup>64</sup> these powers are the jurisdictions previously exercised by the Chiefs and elders in the former times. Before the modern courts were established, Chiefs Emirs, and Elders had jurisdiction to adjudicate between members of the family on matters arising from the use of and management of family property.<sup>65</sup> When the Colonial masters established the modern courts as we have today (the common law courts), the jurisdiction formerly exercised by the Chiefs, Emirs and the elders was now exercised by the courts.<sup>66</sup> The assertion of Elias on the origin of the courts power to order sale and partition was based on the piece of evidence of chief Ojora in Lewis v. Bankole.<sup>67</sup> Where the court, faced with the problem of determining a protracted and difficult matter, had invited six Lagos Chiefs, including Ojora to come and give evidence on the custom of Lagos regarding succession to the headship of a Yoruba family and the rights of children in the family property. In answer to what proportion of property each child should inherit, chief Ojora, speaking on behalf of himself and other chiefs, said the following: "In the case of disagreement between the children, the chiefs will go and upset the family property and partition it."<sup>68</sup>

Chief Ojora's evidence only talks about partition. He makes no mention of sale or lease. The collerary therefore, is that the chief's evidence is not sufficient to justify the powers of sale and lease exercised by the courts. It is therefore, submitted that Elias' assertion (that the source of the court's powers is the jurisdiction exercised by the chiefs and elders in the former times),<sup>69</sup> is only partially true as it limits such powers to partition. "This would also seem to be the view of kassumu and James."<sup>70</sup>

On the other hand, if chief Ojora only talks of partition, it could be because at that time, sale as well as lease, of family property was not known to customary law. Customary law is dynamic and not static. It changes with time. Today, sale and lease of family land is recognized under the land tenure laws of Northern Nigeria and Northern Cameroon.<sup>71</sup> Where it is impracticable for the property to be partitioned because it is too small, the only rational alternative would be to convert the property into cash and the proceeds shared between the family members<sup>72</sup>. Since the aim of the chief was to make peace between the family members, by partitioning the property in the event of dispute, it is submitted that sale and lease should be read into the evidence of chief Ojora in Lewis v. Bankole.<sup>73</sup> This will have the same effect like partition, that is, bringing peace within the family whose property is under consideration. In view of the above argument therefore, the enormous discretionary powers of the courts in Northern Nigeria to order partition, sale and lease of family property can be said to have originated from the jurisdiction previously exercised by the chiefs, emirs, Lamidoes and Sultans in the former times.

In the opinion of chief F.R.A. Williams, in a paper entitled, "Integration in the Field of Land Law,"<sup>74</sup> since the chief or the head of the family is entitled to the control and management of family property, this authorizes the courts to do the same.

The Second suggestion regarding the source or origin of the power of the courts to order alienation of family property came from G.B.A. Coker.<sup>75</sup> Coker suggested that the power of the court arises from its inherent jurisdiction to do whatever justice demands.<sup>76</sup> The judicial support for this view is found in the judgement of Osborne C.J., in Lewis v. Bankole<sup>77</sup> where he said that:

"There is no proposal for sale before me, so it is not necessary for me to consider whether or not a native custom which prevents alienation is contrary to section 19 of the supreme Court Ordinance. But I am clearly of the opinion that despite the custom, the court has power to order sale of family property including the family house in any case where it considers that such sale would be advantageous to the family, or the property is incapable of partition."

Section 19 of the Supreme Court Ordinance of Nigeria provides that:

"...Nothing in this ordinance shall deprive the Supreme Court of the right to observe and enforce the observance or shall deprive any person of the benefits of any law or custom existing in the said colony and protectorate, subject to its jurisdiction. Such laws or Customs not being repugnant to natural justice, equity and good conscience, nor incompatible either directly or by necessary implication with any enactment of the colonial legislation existing at the commencement of this ordinance or which may afterwards come into operations."

The case of Lopez v. Lopez,<sup>78</sup> also supports Coker's view where Combe C.J. said, "The jurisdiction of the court was based upon the power of the court to make any order appearing to it necessary in the interest of equity, to ensure that all members of the family shall not be hindered in the enjoyment of their rights." In essence, what this judgement is saying is that the courts are ready in all cases to do whatever is necessary to ensure that justice and equity prevails in any issue before it.

The 1979 Constitution of the Federal Republic of Nigeria also provides in section 6 and 236 that the High Court has unlimited jurisdiction to hear and determine any civil proceedings

in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue.

In Cameroon equally, the power of the courts to order partition and sale of family property could also be said to have been derived from its inherent jurisdiction to do what justice demands and to observe and enforce the observance of customary laws. We said earlier on in this write up that the chiefs, the Lamidoes and the Sultans could have ordered sale and lease of family property to maintain peace, if these notions were known to native laws and customs. We also said that sale and lease of family land is today part of the customary land tenure laws of Northern Nigeria and Northern Cameroon. It was also observed that with the creation of modern courts, the law empowered these courts to observe and enforce the observance of native laws and customs in so far as those native laws and customs are not repugnant to natural justice, equity and good conscience.<sup>79</sup> So, the origin of the power of the courts in Cameroon to order the alienation of family property is derived from its powers to observe and enforce the observance of native laws and customs.<sup>80</sup> In Cameroon the High court is also empowered to try civil matters, the pecuniary value of which is more than 500.000frs (N75,000). This therefore, implies that where there is a dispute in Cameroon on family property, the High Court can order partition or sale of such property, provided that its monetary value is not below 500.000 francs C.F.A. (N75,000). It is the magistrate Court and at times, the customary courts that have jurisdiction on civil matters whose monetary value is below N500.000frs. C.F.A. Having said all these, it should be noted that the argument as to the powers of the courts in Northern Nigeria and Northern Cameroon to order partition or sale of family property is not rested. It continues.

#### 5.1.2.2 SALE BY COURT ORDER

In Northern Nigeria and Northern Cameroon, the courts have enormous discretionary powers to order sale of family property. There is no specific provision in the statute laws of Northern Nigeria and Northern Cameroon which empowers the courts to order sale of family property. However, it is assumed that the courts are exercising the legal authority which the chiefs, the emirs, the lamidoes had exercised in the past, as well as, its inherent jurisdiction to do whatever justice demands.<sup>75</sup> The court will order the sale of family property when it finds that it is no longer possible or desirable to keep the property as family property. For example, where the members are not agreeable to the continuance of the institution by way of living together in peace and harmony, or that they no longer respect each others rights under the supervision of the head of the family. It is not possible to enumerate all the conditions under which the court may order sale of family property but, the court always give considerable respect to the circumstances of the family at the time of the action. The court will not order a sale merely because "some of the interested parties desire to turn the property into cash."<sup>82</sup>

It is however, necessary to examine some principles upon which the court proceeds when an application is made to it for partition or sale. But before this is done, it should be noted that it is not possible for a member of the family to apply to the court for a sale simpliciter, under the courts customary law jurisdiction. This is because in a family set up, "no one member has anything in the property apart from his own interest."<sup>83</sup> What a family member has the right to apply to the court for, is partition. If a members desires property to be sold by a court order, his application must read, "Partition

and/or sale," so that the court will only order sale where partition is justified but the property is too small and the number of persons interested are disproportionately large.

The principles under which courts should make orders for the sale of family property was laid down by Osborne C.J. in Lewis v. Bankole,<sup>84</sup> that the court will order the sale of family property where (a) such sale would be advantageous to the family and (b) where the property is incapable of partition and there is no other way of doing justice to the claimants before the court.<sup>85</sup> What is advantageous to the family must in every case be a matter of fact to be determined by the circumstances of the family and the property in issue at the material time of the action.<sup>86</sup> A sale could be advantageous to the family if the property is too small in proportion to those who are entitled to inherit.<sup>87</sup> In Ajibabi v. Jura,<sup>88</sup> there were three branches in the family, comprising eight members. The court held that as the two-roomed family house could not provide a place of residence for all the members of the family, the object of preserving it as family property could not be achieved and therefore, the house should be sold and the proceeds divided among the branches. Equally, in Yahaya Abubakar v. Yahaya Abubakar.<sup>89</sup> The Tudun Wada Area court Zaria ordered the sale of a piece of family land which was found to be too small to be partitioned and the proceeds of the sale were distributed between the family members of two sons and four wives.

The judicial attitude in the sale of family land is leaned towards the traditional social value which lays a great emphasis on the coherence of the family in which land holding plays an important role. therefore, the court will not order sale simply because one or some of the interested members desire the property to be

transformed into money, without regard to the integrity and perpetuity of the family, as an institution. <sup>90</sup> But unfortunately, the Tudun Wada Area Court Zaria, in the case of Musa Abubakar v. Abubakar, <sup>91</sup> acted, contrary to this principle, and granted an application for sale simpliciter, even though it was clear from the application that **the plaintiffs only desired the property to be transformed into cash without proving that it was impossible for them to use the property as family property.** So, where some family members deprive others of the benefits of their rights in the family property, the court can interfere to order a sale where partition is not practicable. thus, in Salvador v. Salvador, <sup>92</sup> the plaintiffs were not allowed by the defendants to live in or occupy any portion of their family property and the defendants also collected rents from the property and appropriated such rents to themselves alone. The plaintiffs sued the defendants for a partition or sale of the property. The court ordered for the sale of the property and the proceeds shared between the parties, since partition was impracticable due to the smallness of the property.

The court can also order the sale of family property where on account of violent dispute and animosity between the members, it has become impossible for them to agree as to the management of the property. <sup>93</sup> In other words, the applicant must establish that he was denied his right and that the functioning of the family property has been rendered impossible, for example, in Lopez v. Lopez <sup>94</sup> members of the family were denied their right to use and enjoy the family property. Combe C.J. said:

"Where there has been a persistent refusal by the head of the family or by some members of the family for others to enjoy their right to the family land under customary law, the court has exercised and will continue to exercise it's

undoubted power to make such orders as will ensure that members of the family shall enjoy their rights and if such rights cannot be enjoyed without partitioning the property, the court will order a partition."

In Kassimu Haruna and Ors. V. Haruna.<sup>95</sup> The plaintiffs applied to the Tudun Wada Area Court, Zaria, for an order of sale of family property. According to them, the family head had taken control of all the property and was denying them, their own interests thereto. The court investigated the matter and found that what the plaintiffs alleged was true and accordingly, an order for sale was made and the proceeds of the sale was then shared between the parties in accordance with the Islamic Law of Inheritance.

Finally, the court may order the sale of family property if after inspecting the property it finds that it "consists of varying particulars of varying values which would be difficult to divide into portions of equal values."<sup>96</sup>

When the court orders the sale of family property and the proceeds are shared between the interested members, the family property disappears but the family remains as an institution. The advantage of this court order is that, it brings peace between the family members, since the source of conflict has been made to disappear. It also prevents future litigations arising from that property which, of course, is cost-saving.

#### 5.1.2.3. **PARTITION BY COURT ORDER**

Partition by court order, is one of the methods by which family property may be alienated in Northern Nigeria and Northern Cameroon. It is a fundamental right of each member of the family to ask for partition. Native laws and customs of Northern Nigeria and Northern Cameroon have from early times recognized partition as a method for determining

family property. When property is partitioned by a court order, each member has absolute ownership of his own share. Although the court has a wide discretion to grant partition, it should not however be imagined that it is possible just to ask for the partition of family property without giving any substantial reasons thereto. Native laws and customs place several necessary restrictions upon the exercise of the rights to demand partition of family property, because if it becomes too open to every member to exercise the right at will, the sanctity of the institution of family property will be destroyed.

Because the courts, like native laws and customs are always leaned towards preserving the coherence of the family through landholding, it will only decree a partition, if there was such a friction that, it was no longer possible to maintain the family structure.<sup>97</sup> It may be impossible to maintain the family structure and therefore, warranting a judicial order of partition, when there has been a persistent refusal by the family head to allow other members of the family, the enjoyment of their rights in the family land.<sup>98</sup> According to Combe C.J. in Lopez v. Lopez,<sup>99</sup> for the court to order partition based on the above reason, the complainant has to adduce strong evidence to prove such an infringement, for the court will not interfere with the management of family property by the persons entitled to by native laws to manage that property, unless clear and unequivocal infringement of right was proved: Lopez V. Lopez.<sup>100</sup> The facts of Lopez v. Lopez<sup>101</sup> were as follows: The plaintiffs sought a partition of family land, which partition the defendant resisted. The parties were all children or grand children of the common ancestors from whom their family title was derived. But whereas the plaintiffs were daughters or children of daughters of the ancestor, the defendants included in their number, the surviving sons.

It was contended that under native law and custom, females are not entitled to a share in real property and therefore, this action must fail. The Divisional court upheld this view and found for the defendants.

On appeal, the full court dissented from this finding, but upheld the decision on quite other grounds. The Court of Appeal held that under native law and custom, both males and females acquire interest in family property. The female does not acquire the same rights as the males. But her limited rights will entitle her, in so far as such rights are established, to seek the protection of the courts in respect of them. It was further held that this appeal must fail because the appellants did not disclose good grounds for the order of partition which they were seeking for. That the court will always intervene to protect members of a family in the enjoyment of their rights. But that the court will not interfere in the management of family property by persons entitled to manage it, unless prejudice to rights can be shown. Although this case was decided following Yoruba customary law, it also represents the customary land laws of Northern Nigeria and Northern Northern Cameroon since the customary laws of the tribes all over West Africa are similar. But however, the view of the court of 'Appeal that female members of the family only have certain rights in family property, and that native laws and customs denied them the right of inheritance in land, does not apply amongst the Muslims of Northern Nigeria and Cameroon. Males and females of the muslim population of Northern Nigeria and Northern Cameroon have the same rights to family land. <sup>102</sup>

There is also authority for the proposition that, an order for partition is feasible where the property or land can no longer contain the family. In this case, if partition is justified and at the same time found to be impracticable because the property is too small, the court can order

a sale. In Ajibabi v. Jura,<sup>103</sup> the plaintiff applied to the court asking for partition or a sale order of family property consisting of a two roomed house which could not provide residence for all the family members. The court held that the fact did justify a partition, but it ordered a sale because partition was impracticable.<sup>104</sup> Where the only reason for demanding partition, is the desire of a member to transform his own portion to cash, without proof of any desperate need for money to pay hospital bills, court fines, school fees for children or for paying bride price, it should not be granted. It is also suggested that where there are accusations and counter accusations of which crafts, leading to mutual suspicions, distrust, and unrest among family members, an application for partition should be granted. This will avoid serious future family bickering as well as future litigations.

## NOTES AND REFERENCES

1. See chapter four of this research.
2. This, I got through my interview with Yakubu, Nji in Foubon in the Cameroon, as well as, with Dr. S.M. Ngu in Kaduna in Northern Nigeria.
3. (1943) 9 WACJ.P.78' Dosumu v. Olorogun Adodo (1961) L.L.R.149
4. Kadiri Balogun v. Tijani A. Balogun and Others, 9 W.A.C.A. 78 at P.82. See also Dosumu V. Olorogun Adodo (1961) L.L.R. 149.
5. R.W. James (1973) Modern Land Law of Nigeria University of Ife Press, Ile-Ife. P.155
6. This was got through my interview with Amadou Basoro in Garoua in Northern Cameroon.
7. R.W. James Op. cit. P.155 .
8. This is the output of my interview with Dr. S.M. Ngu in Zaria.
9. See Muniratu Dosunmu and Others v. Chief Amodu Tijani O. Adodo, (1961) L.L.R. 149.
10. (1947) 7 W.A.C.A. 69,
11. See Onisiwo v. Gbamboye (1947) 7 W.A.C.A. 69.
12. Nwabueze (1982) Nigerian Land Law, Nwamife Publication, Enugu (Reprint), P.146.
13. (1947) 7 W.A.C.A. 69.
14. Onisuwo v. Gbamboye (1947) 7 W.A.C.A. 69.
15. Puxon, M., The Family and the Law, Macgibbon And Kee Ltd. (London), 1967, P.142
16. (1932) 11 N.L.R.4, 11 N.L.R.10
17. (1947) 7 W.A.C.A 69.

18. (1930) 10 N.L.R.4, 10 N.L.R.10
19. (1932) 11 N.L.R.110
20. This is the output of my interview with Yakubu Nji and Dr. S.M. Ngu in Northern Cameroon and Northern Nigeria respectively.
21. See Essan v. Faro (1947) 12 W.A.C.A. 135.
22. (1959) 4 F.S.C. 79
23. (1985) Part I, In W.L.R. 105
24. Supra.
25. See also Kano v. Olanyika (1993) 24 N.S.C. Part I., P.373.
26. See Mogaji v. Nuga (1960) 5 F.S.C. 107
27. (1907) IN L.R.66
28. (1960) 5 F.S.C. 107.
29. (1947) 12 W.A.C.A.135
30. This is contrary to the views of Ademola C.J. that, it is the consents of the majority of the family members that is required to effect a valid sale or disposal of family land.
31. Ogola E. Y. (1989) Alienation of family Property In Nigeria, unpublished LL.M. Thesis, A.B.U. Zaria, P.108.
32. Coker v. Animashawun (1960) L.L.R. 71.
33. Onasanya v. Shiwoniku (1960) W.N.L.R. 166.
34. (1939) 15 N.L.E. 72.
35. This is the output of my interview with Mr. Mfomloun Jean of Foumban in Cameroon.
36. R.W. James (1973), Modern Land Law of Nigeria, University of Ife Press, Ile-Ife P.155.

37. Mogaji v. Nuga (1960) 5 F.S.C. 107
38. Mogaji v. Nuga (1960) 5 F.S.C. 107.
39. (1956) 1 F.S.C. 66
40. (1958) L.L.R. 211
41. (1965) N.M.L.R. 3
42. (1978) S.A.R.F.C.L., 171
43. (1936) 3 W.A.C.A. 62 at 63
44. Adedubu v. Makanjuola (1944) 10 W.A.C.A. 33.
45. (1956) 1 F.S.C. 66
46. (1958) L.L.R. 211.
47. This is the product of an interview with Mallam Kengetyou Oumarou at Foubam,, in Northern Cameroon.
48. Ogola E.Y., Op. Cit P. 131.
49. LLOYD P.C. (1962) Yaruba land Law, O.U.P. London P.34.
50. Woodman G.R. (1964), "Effect Between void and Voidable Acts," University of Ghana Law Report Vol. 6 quoted in Ogola E.Y. OP. cit at P.131.
51. Agaran v. Olushi (1907) IN.L.R. 66
52. Esan v. Faro (1947) 12 W.A.C.A., 135.
53. Kasumu And James (1966) Alienation of Family Property In Southern Nigeria, Ibadan University Press, Ibadan, P.29.
54. McFoy v. U.A.C. (1961) 3 W.L.R. 1404 at 1409
55. Coker v. Animashahun (1960) L.L.R. 71 at 74.

56. Oshodi v. Imoru (1936) 3 W.A.C.A. 93.
57. Elias T.O. (1954) Nigerian Land Law And Custom, Routledge and Kegan Paul, London, P,172.
58. (1940) 15 N.L.R. 139 at P.141.
59. (1908) I.N.L.R. 82
60. Ogola E.Y. OP. Cit P.108
61. Lopez v. Lopez (1924) 5 N.L.R. 47
62. Ajibabi v. Jura (1948) 19 N.L.R. 27
63. Lewis v. Bankole (1908) IN.L.R. 82
64. Elias T.O. (1951) Nigerian Land Law And Custom Routledge and Kegan Paul, London, P.151
65. I got this from an interview with Mr. Stephen Nkom at Attadkar in Kaduna State.
66. I bid.
67. (1908) IN.L.R. 82
68. Ogola E.Y. OP. Cit. P.103
69. I bid P.103
70. I bid P.103
71. Usman Idris v. Usman, Case No.4/5/95, Tudun Wada Area Court, Zaria, unreported.
72. Supra.
73. (1908) IN.L.E. 82
74. A Lecture delivered at a conference in Ibadan, 1964.

75. Coker G.B.A. (1966) Family Property Among The Yoruba, 2nd Edition (Sweet & Maxwell); London African Universities press, Lagos PP.89-90.
76. I bid PP.89-90
77. (1908) IN.L.R. 82
78. (1924) 5 N.L.R. 47
79. Section 55 of the Southern Cameroon's High Court Laws, 1955.
80. See section 14 of the Judicial Organization Ordinance, 1972 of the Republic of Cameroon.
81. Coker, G.B.A. OP. Cit. P.112
82. Layinka Bajulaiye and Anor. V. Akapo 14 N.L.R. 10 at P.11
83. Coker, G.B.A. OP Cit. P.112
84. (1908) I.N.L.R. 82
85. (1908) I.N.L.R. 106.
86. Coker, G.B.A. OP. Cit. P.108.
87. R.W. James Op. Cit. P.164.
88. (1937) 3 W.A.C.A. at P.186.
89. Case NO. T/Z/126/7/95 (unreported).
90. Layinka Bajulaiye and Anor.V.John Balfour Smith  
5 N.L.R.105
91. (1959) L.L.R. 52
92. Case No. T/Z/126/7/95 Unreported
93. Nancy A. Smith and Anor. V. John Balfour Smith 5 N.L.R. 105.

94. 5 N.L.R. 50
95. Case No. T/Z/185/5/95 (unreported)
96. Lopez v. Lopez (1924) 5 N.L.R. 50; Thomas v. Thomas (1932) 16 N.L.R. 50.
97. See Lopez v. Lopez. ((1924) 5 N.L.R. 50.
98. Supra at P.50.
99. Supra at P.51.
100. Supra at P.50
101. Supra at P.50.
102. This is the result of an interview with Amadou Basoro in Cameroon and Issah Maaji in Kano.
103. (1948) 19 N.L.R. 27
104. R.W. James OP. Cit. P.163.

## CHAPTER SIX

### SUMMARY AND CONCLUSION

#### 6.1 THE INSTITUTION OF FAMILY PROPERTY.

The institution of family property is a popular form of landholding in Northern Nigeria and Northern Cameroon. This is not because land constitutes the most important source of wealth, but also because of the desire of the people to acquire and retain property especially land in the family <sup>1</sup>. In the past, it was possible for family property institution to remain virgin or free of alienation pressure because of two reasons: Land was in abundance and population was scanty: secondly, land as a commodity was free for all and therefore, alienation by sale or otherwise, was unknown.

The most popular and common form of landholding in Northern Nigeria and Northern Cameroon seemed to have been in the form of communal landholding and the management was vested in the traditional authorities, eg. the emirs, Chiefs, Lamidoes and Sultans. But with rapid growth in population, as well as allotment <sup>2</sup> of communal land to families, there was a gradual transformation of communal land into family holding.

It was erroneously thought that the Land Use Act, 1978, <sup>3</sup> abolished the institution of family property, because of the assertions that customary landholding had been abolished. <sup>4</sup> Although the Land Use Act, might have abolished some aspects of customary law, such as ownership, it did not abolish all aspects of customary land law. <sup>5</sup> In Cameroon, like in Nigeria, customary landholding is still recognized as one of the essential aspects of property law.

Before now, there was no law governing landholding in the olden days. With time, customary law was eventually formulated, which vested title to land in the family as a whole, while the day to day administration was vested in the family head. Although the law required the family head to consult the family on important matters affecting family land as in Fako V. Fako.<sup>6</sup> He was however empowered to take routine decisions alone. In Northern Nigeria and Northern Cameroon, the concept of family property management was controversial. This uncertainty in the rules of alienation of family property resulted into a lot of unscrupulousness on the part of the family heads. Whereas some family heads asserted that they alone could alienated family property.<sup>7</sup> others even claimed that they could do so against the wishes of other family members.<sup>8</sup> On the other hand, family members argued vigorously against the claims of family heads. They contended that every alienation of family property required the consent of every member of the family,<sup>9</sup> and secondly that, the family head was accountable to the family for his dealings over family land.<sup>10</sup>

However, as time went on, most of the rules have been crystallized. The modern view is that the alienation of family property requires the consent of the family head as well as, that of all the principal members of the family.<sup>11</sup> Secondly, any alienation done by the family council is equally valid.<sup>12</sup> Thirdly, alienation by the family head without the consent of the principal members is voidable, where this is done in a representative capacity.<sup>13</sup> while alienation by the principal members without the consent of the family head is null and void.<sup>14</sup>

## **6.2 ALIENATION OF FAMILY PROPERTY**

There are many forms in which the interest of the family in family property may be alienated, or disposed of. The term interest, represents the sum total of "rights", vested in the

family with respect to a parcel of land, and which the family as a corporate unit may have the power to dispose, subject to any prevailing law in the area. Such rights are the rights to occupy, cultivate and reap the crops, to build and reside, the right to breed animal on the land, the right to pass it to descendants and the right to enjoy a peaceful possession without disturbance. Alienation itself, simply connotes the power of the owner to dispose of his rights or interests in real or personal property.<sup>15</sup> Alienation of family property therefore, is the act and the power of the family as a corporate body, to dispose of its interest in real or personal property to another, in accordance with any prevailing law. Some of the forms in which alienation of family property may take are: customary tenancies, pledge, gifts, sale, transmission on death, mortgage, grant, lease, and loan,. Some of the above forms of alienation only suspends rights, while others completely transfers titles in the family lands to a third party.

"In the olden days, complete alienation of family property was unheard of<sup>16</sup> and undoubtedly foreign to native ideas".<sup>17</sup> Various reasons have been advanced for this theory of inalienability of land and some of them based on religious or African attitudes towards land. One is that, since the theory of inalienability of land sought to protect the rights of the unborn generations, as well as, the dead, it was considered outrageous against the departed ancestors, whose spirit laid buried in the soil to alienated or sell the land. Another reason is that, outright or complete alienation will deprive the family of its essential quality, which is the descent to future generation.<sup>18</sup> However, the theory of inalienability of land did not apply to the muslims of Northern Nigeria and Northern Cameroon because Islam, which from history to date, remains the unchallengeable religion in many parts of Northern Nigerian and Northern Cameroon, is diametrically opposed to the magico religious attitude towards land, or any property for that

matter. This makes the magico- religious reason for inalienability of land, not tenable. It was never unlawful among the muslims therefore, to sell or alienate land completely. And the fact that it did not take place or exist was an economic consequence.<sup>19</sup> Where for example land is abundant that every member of the family including new additions can obtain as much as he wants, alienation and especially complete transfer will hardly arise.<sup>20</sup> It is this economic fact that made it appeared as if family land was inalienable all over Northern Nigeria and Northern Cameroon.

Today, alienation of land has come to stay in Northern Nigeria and Northern Cameroon, especially in the urban centres and even in some rural areas, due to increase in the economic value of land, consequent upon industrial revolution and increase in population pressure, as well as, the desires of the people to realize the economic advantage of land through pasturing, building, cultivation etc. However, alienation to complete strangers and persons of questionable characters and integrity, is restricted.

### **6.3 METHOD OF ALIENATION OF FAMILY PROPERTY**

Although native laws and customs of Northern Nigeria and Northern Cameroon frowns generally on complete dissipation of family property, it recognizes the right of a member of the family to ask for the partition of family land, especially, when the continuous existence of the family property will not be advantageous to the family. For example, if the family head is mismanaging the property, or if the presence of the other members on the family property is occasioning disputes, violence and lack of peace in the family.<sup>21</sup> Secondly, the family council can on its own agree to the partition of a family property to its members, after the death of its founder, to avoid future conflicts between family members arising from the property in question.<sup>22</sup>

This method of alienation of family property is known as the consensus method. Under the customary laws of Northern Nigeria and Northern Cameroon, which applies mostly to the non muslims of these areas, female members are in some places like Attakar and Kogoro in Kaduna State, not entitled to a share in partitioned family land.<sup>23</sup>

However, unlike the customary land tenure law, in the Islamic Law of Maliki School, which applies in Northern Nigerian and Northern Cameroon, when the founder of the family dies, his property devolves to his family. And each member of his family including the females and even the unborn children are entitled to a share in it. As a general rule, such a property is to be alienated by partitioning to the family members entitled to inherit. The property cannot be partitioned unless debts or other liabilities of the deceased founder are settled.<sup>24</sup>

When property is partitioned in the manners described above, the family property ceases to exist. And each beneficiary now has absolute ownership of his own portion and can deal with it in any manner he wants, without recourse to the family.

Another method of completely alienating family property in Northern Nigeria and Northern Cameroon is by order of the court. This method falls outside the competence or domain of the family. It usually arises where there is a disagreement between the members of the family as to the manner in which family property is being used or managed. When this situation arises, the aggrieved family members may apply for "a partition and/or sale". If the court is satisfied with the reasons contained in the application for such an order, it may grant an order for partition, but if the property is found to be too small to be partitioned, the court may order for the sale of such family property and the proceeds shared between the eligible family members.<sup>25</sup> The power of the court to order partition or sale of family land upon

complaint by a member is sourced in the jurisdiction previously exercised by the Chiefs, Emirs, Lamidoes and Sultans and Elders in the former times.<sup>26</sup> Secondly, the power of courts to order partition or sale of family land is also sourced in the courts inherent jurisdiction to do whatever justice demands.<sup>27</sup>

Any alienation by a family member or a section of the family members without proper procedure, is not valid. Alienation by ordinary members of the family is void ab initio and this act might even result in the forfeiture of the rights of a member over the piece of land in question. Alienation by the principal members of the family without the consent of the family head is a complete nullity.<sup>28</sup> However, alienation by the family head and a few principal members is voidable and not void.<sup>29</sup> What this means is that, the absentee members can remedy the defect in the procedure by ratifying the act of the head and the few principal members. And lastly, any purported sale or alienation of family land by the family head alone, as his personal property is null and void.<sup>30</sup> The difference between void and voidable alienation simply lies in the fact that a void disposition is null and passes no title to the purchaser. While a voidable alienation on the other hand, transfers a defective and defeasible title. That is to say, the conveyance is good until set aside by a court of competent jurisdiction, at the instance of the injured party.

#### **6.4 RECOMMENDATIONS FOR REFORMS**

1. Nigerian courts seem to have generally concluded that only children of the founder of the family can inherit or gain, share in the property of the deceased founder of the family, as against the widow and other close relatives.<sup>31</sup> This common judicial approach by the courts, to the interpretation of the term family; by using the notion of nuclear family

which is the full practice in England as opposed to Northern Nigeria and Northern Cameroon, where it is rarely practiced, as a criterion for solving the same problem in a different socio-cultural setting, is to say the least unreflective of the extended family system which has been and may continue to be part of the socio-cultural system of Northern Nigeria and Northern Cameroon. This situation arose because our indigenous judges were more or less misled by the definition of the term given by the Colonial judges which is more or less unclear. It is recommended that our judges should not rubber stamp the decision of their predecessors if those decisions do not represent the true positions of the customary land tenure laws of Northern Nigeria and Northern Cameroon. If the courts follow the true position of the customary law, close relatives could benefit at least in movable property of the family, which of course is in consonance with the customary laws of the areas under consideration.

2. It was observed in this research that, the *raison d'etre* for the existence of family property was the people's desire down the centuries to preserve their lands for posterity, with a lasting basis for unity and a place to build and/or grow food crops upon. The advantage of family landholding is that it combines joint social and material security against individual distress due to illness or crops failure and to the spreading of ceremonial expenditures at marriages, childbirth, naming ceremonies, ramadan, christmas, and circumcision ceremonies. Because of these marvelous advantages, it is therefore recommended that family property holding should continue to exist despite the criticism against it for being inimical to economic development; as customary communities do not put land into productive use.

3. The land authorities in Northern Nigeria and Northern Cameroon should impose some restrictions on the allotment of land to families because of socio-political developments such as, increase in population, high need for land for public utilities such as schools, hospitals, churches, mosques, recreation centres, public corporations, and other public institutions. This will limit the quantity of unproductive lands available to the customary communities (the families).
4. It was observed in chapter three that the trial court in Taiwo V. Dosunmu<sup>32</sup> ruled that the head of the family is not liable to account to the other family members on how he manages family property. This decision bluntly denied the members their rights to information on family property. The effect of the decision in Taiwo V. Dosunmu (supra), is likely to be outrageous to a good sense of justice and is likely to open a floodgates for fraud, prodigality and negligence.<sup>33</sup> It is likely to cause untold hardship to other members of the family especially the young ones. This decision (Taiwo V. Dosunmu), should be ignored, because of its singleness in the wilderness of the Nigerian and Cameroonian judicial authorities. Rather, the cases of Archibong V. Archibong,<sup>34</sup> and Adedubu V. Makanjuola,<sup>35</sup> where the duty of accountability was held to be mandatory on the family head, should be applied. By saying that the earlier cases based on the concept of accountability should be regarded as good law, is not to mean that the customary land tenure laws of Northern Nigeria and Northern Cameroon should be stagnant. Our proposal for the reversion to the past decisions is simply because the traditional system, when the family was partly a cohesive unit, symbolized and represented by its head in all matters concerning the affairs of the family, and the head

was not accountable, is no longer the case today. In those days, the needs of the societies were very limited and the propensity for individual holding of property was not rampant as we have today. The family heads of the past, were God-fearing, law abiding, people of high integrity and moral rectitude. But today, the quest for wealth has overtaken the need for a good reputation. This mean tendencies should be recognized as an economic and social reality which is manifested by the communities expectations and aspirations in line with economic and social development. It is therefore, trite that the family head should be made to account to other principal members of the family on how he manages family property. This will ensure justice and equity in the enjoyment of the proceeds of family property managements by all the members.

5. It has been observed in chapter four that there are situations in which a borrower of land may still have his unexhausted improvements on the loaned land at the time loan agreement has come to an end. If the agreement did not prevent the borrower from making unexhausted improvement on the land, then, the rule is however that, one who loans a piece of land, must be allowed to exhaust his own improvements on the land. It is here recommended that where the lender refuses, then he should be made to compensate the borrower. It is also recommended that where the borrower plants economic trees on a loaned land whose agreement did not prevent him to do so, then after the expiration of the period of loan, he should be allowed to come on the land to share with the land owner in picking fruits like mangoes, palnuts, pineapples, pears etc, if the landowner cannot compensate him. This will ensure equity and peace between the family on whose land the permanent improvements was done and the borrower who made

it. However, since in Northern Nigeria and Northern Cameroon, loan of land in most cases is for a period given and for a purpose which is mostly farming, any permanent improvement on land must be done by agreement between the parties.

- 6 It is also observed in chapter four that, payment of rents whether in cash or kind which provides an acknowledgement of the grantor's title and bears some economic return to the land, is a good innovation to customary tenancies resulting from the influence of modern ideas, consequent upon increase in the value of land. This of course, is an improvement on the past, when the grant of land was only for a token or an annual kola payment. However, customary tenancy is yet to provide the base that will cope with the present economic development. Some customary tenancies do not concern themselves with economic equality between what is paid as rents and the benefits derived from the land, especially in the rural areas of this research. Very often, a piece of land that can give a yearly return of about ₦10,000, on cultivation, might be rented out only for ₦500. It is therefore, recommended that, a change to catch up with the modern economic realities is highly desirable. The native and customary land tenure laws of Northern Nigeria and Northern Cameroon, should change in a way that would allow landowners to bargain without ceiling, so as to obtain the real economic value of the tenancies.
7. It is said under the customary land tenure laws under consideration, as well as, that under the Islamic law of the Maliki School, which applies in Northern Nigeria and Northern Cameroon that "once a pledge, always a pledgee." This means that the pledgor has the right to redeem the pledged property at anytime. This may cause the problem of depreciation in the value of the money involved in the loan. This will be true for an

example where an infertile piece of land is pledged for a sum of money. This means that the pledgee cannot reap any benefit from it by way of cultivation to cushion the effect of inflation on the money involved in the pledge. This implies a fall in the value of the money involved with the passage of time, while the value of the land remains intact or may even increase if it can be used for other purposes such as buildings etc. Because of the above problem, it is submitted that native laws and customs should adopt and incorporate some rules of mortgage and Islamic Law, which allows the pledgee to buy off the land where the pledgor fails to redeem it, and other rules of Islamic Law like allowing the pledgee to pledge the property to a third party, fixing a date of redemption earlier than that of the first pledgee. This will protect the depreciating value of the loaned amount.

8. It was observed in chapter five that, under the customary land tenure laws of Northern Nigeria, especially the Attakar and Kagoro people of Kaduna State and Egbira of Kogi State, a female family member is not entitled to a share in a partitioned family property. Meanwhile, under the customary land tenure laws of Northern Cameroon, (especially in Fouban and Maiganga) female members of the family can only have a share in movable property and chattels such as utensils but not landed property. When a father lives he directs more attention to the provisions of the needs of the female children because their demands are more and their abilities to fulfil their needs are generally limited, especially as, they are of the weaker sex. This means that the death of their father (founder of the family) is likely to bring untold hardship on the female members of the family. It is therefore submitted that, excluding females totally from having shares in family property,

amounts to a serious injustice on them. This is because the denial has a serious negative economic incidence on the affected female members and the society at large, which might likely have to experience and cope with a very high rate of prostitution as we have today in these areas of research. It is therefore, recommended that the customary land tenure systems of Northern Nigeria and Northern Cameroon should provide for the inheritance of all items of family property by the female members, just like their male counterparts, like it is contained under the rules of the Islamic Law of the Maliki School. This will reduce the economic plight of the female family members after the death of the founders of the family property or their fathers or whoever.

9. It was equally observed in chapter five that in Northern Nigeria and Northern Cameroon under their customary land tenure laws, any clandestine sale of family land by a family head alone without the consent of the principal members of the family, renders the transaction null and void: Cole V. Folami.<sup>36</sup> And in addition to that, any clandestine sale of family land in Northern Cameroon without the consent of the other principal members, may cost the family head, his headship of that family. That is to say a family meeting may be convened to replace him with a more responsible member of the family. It is submitted that the customary land tenure law of Northern Nigeria should adopt the Northern Cameroon land tenure law rule which requires that, in addition to rendering a clandestine sale of family land by a family head alone, null and void, he should also be deposed as a head of the family. This will deter unscrupulous family heads from unprocedurally dissipating family property.

10. The opponents of family landholding argue that this sort of property tenureship is likely to mar industrial development since customary communities do not put lands into any productive use, which is inimical to economic and social development. It is therefore, recommended that the families should put land into more productive use by giving it out to investors on long leases, customary tenancies, on loans not necessary for, farming but for other longterm industrial purposes such as mechanized agriculture and the setting up of factories.

It is my view that disappearance of family property will destroy the customary social welfare system and the extended family system which are values peculiar to Africans and which distinguish them from other races. Family property serves as a social security for the family, it is a ready source of income for the family and therefore, should be retained by all means. There is no doubt that in some ways, family property ownership constitutes an economic impediment to development since customary communities hardly put land into any meaningful economic use.

It is my view that restriction on the amount of land allocated to families will solve this problem to some extent, that is in line with modern and contemporary developmental needs of Northern Nigeria and Northern Cameroon. In conclusion therefore, it is my view that complete abolition of family property holding may impede communal life, which is a very important and humane value, peculiar to all Africans.

## NOTES AND REFERENCES

1. James R.W. Modern Land Law of Nigeria, U.I.P., Ile-Ife, 1985, p. 145.
2. Ogola E.Y. Alienation of Family Property in Nigeria, Unpublished LL.M. Thesis, A.B.U., Zaria 1989, p.1
3. It is now known as the Land Use Act, Cap. 202.
4. Omotola J.A., Essays on the Land Use Act, Lagos University Press, 1979, p.8
5. See Section 50 of the Land Use Act, 1978 and now Section 51 of the Land Use Act, Cap. 202, Laws of the Federation, of Nigeria, 1990.
6. (1965) N.M.L.R.3
7. Olowu V. Oshinubi, (1958) L.L.R. 211
8. Adedubu V. Makanjuola, (1944)10 WACA, 33.
9. Danguduru V. Titlayo, Suit No. U.B./182/60, (Unreported) Ilesha Grade "A" Magistrate Court.
10. Taiwo V. Dosunmu (1966) N.M.L.R. 94
11. Ekpendu V. Erika, (1959) 4 F.S.C. 79
12. Registered Trustees of the Apostolic Church Mission V. Eyo James (1987) 2 N.W.L.R. Part 61, p.55
13. Essan V. Faro, (1947) 12 WACA, 137
14. Agbloe V. Sappor (1947) 12 WACA, 1987
15. Regor Bird, Concise Law Dictionary, Sweet and Maxwell, London, 1983 p.2
16. Akeju V. Suenu (1935) 6 N.L.R. 87 at 90
17. Per Osborne C.J. in Lewis V. Bankole, (1909) 1 N.L.R. 82 at p. 104

18. Per Kingdom C.J. in Kadiri Baloqun V. Anamu Balogun (1943) 9 WACA, at p.84
19. J.O. Ijaodola (1974) "Alienation of Land in Northern Nigeria," Journal os Islamic And Comparative Law, Vol. 5, C.I.L.S., A.B.U., Zaria p.34
20. Ibid
21. Lopez V. Lopez (1924) 5 N.L.R. 50; Thomas V. Thomas (1932) 16 N.L.R. 50
22. This is the result of an interview with Alhaji Swebu Njembokieh in Cameroon and Musa Muazu at Maiduguri.
23. This is the output of an interview with Dr. S.M. Ngu in Kaduna State.
24. This the result of an interview with Sheikh Uthman Danladi Keffi, An Islamic Scholar and a Lecturer in Islamic law of Succession, Faculty of Law, A.B.U. Zaria.
25. Lewis V. Bankole (1908) N.L.R. 106
26. (1908) 1 N.L.R. 82
27. Coker G.B.A. Family Property Among the Yourbas, 2nd Edition (Sweet and Maxwell), London, 1966, pp.89-90
28. Expendu V. Erika, (1959) 4 F.S.C.79
29. See Agaran V. Olushi (1907) 1 N.L.R. 66, See also Mogaji V. Nuga (1960) L.L.R. 71
30. Coker V. Animashahun (1960) LLR 71
31. (1956) F.S.C. 66
32. (1966) N.M.L.R. 94
33. AKANDE V. AKAMBI (1966) N.B.J. p.86
34. (1966) N.M.L.R. 28
35. (1944) 18 WACA 45
36. (1944) 10 WACA 33

## BIBLIOGRAPHY

### TEXTBOOKS

- Anyangwe, C. The Cameroonian Judicial System C.E.P.E.R., Yaounde, 1987
- Abdulmalik B.M The Supremacy of islamic Law, Zaria, 1989
- Abdurrahim Mohommadan Jurisprudence, Madras 1911
- Anderson, J.N. Islamic Law in London, 1955
- Baker, D.L.A. Law Made Simple Richard Clay Ltd Bungay Suffock, 1989
- Coker, G.B.A. Famil Property Among The Yoruba Sweet and Maxwell London, 1966.
- Elias, T.O. Nigeria Land Law And Custom Routledge and kegan Paul, London, 1954
- Elias T.O. Nigerian Land Law, Sweet and Maxwell, London, 1971
- Eric, B and David, W. Sociology of Modern Britain Fontena Books, london, 1983
- Grren, M,M, Land Tenure In An Ibo Village Land Humphreys London, 1941
- Hammudah "Abdal Ati" The Family Structure in Islam, The Islamic Publication Bureau, Lagos, 1982
- Hill, P. Studies in rural Capitalism In West Africa London, 1970
- Ibn Taymia Public Duties In Islam, The Institution of Hisba, The Islamic Foundation, 1982
- James, R.W. Modern Land Law in Nigerian University of ife Press. Ille-Ife, 1985

- Jaza Iri Minhajul Muslim, Second Edition, London, 1921
- Kasumu and James Alienation of Family Property in Southern Nigeria Ibadan University Press, Ibadan 1966.
- Keffi, S.U.D. Some Aspects of islamic Law of Succession, Rukhsa Publications, Kano 1970
- Karun, F.A. Publication Duties in Islam, The Institution of The Hisba The Islamic Foundation, 1939
- LLoyd, P.C. Yoruba Land Law London 1962
- Lugard Dual Mandate London, 1929
- Maiian - Webster Third New International Dictionary of English Language, Unabridged With Seven Languages Vol. H to R
- Meek, C.K. Land Tenure and Land Administration In Northern Nigeria London, 1957
- Meek, C.K. Land Law In The Colonies, 1946
- McDawell, Introduction to The Problems Of Land Ownership In Northern Nigeria, 1966
- Njeuma, M.Z. Fulani Hegemony in Yola C.E.P.E.R., Yaounde, 1978
- Ngoh, J.V. Cameroon 1884 - 1985. A Hundered Years of History CEPER Yatunde, 1988.
- Nwabueze B.O. Nigerian Land Law Nwahife Publishers, Enugu, 1972
- Obi, S.N. Modern Family Law In Southern Nigeria, Sweet

- and Maxwell London, 1966 Olawole, C.O. Title To Land In Nigeria Evans Brothers Nigeria Publishers Ltd, Ibadan, 1974
- Omotola, J.A Esseys On Land Use Act Lagos University Press, 1979
- Pollock, F. First Book Of Jurisprudence R and R Clark Ltd, Edinburg 1929.
- Roger Bird Concise Law Dictionary Sweet and Maxwell, London 1983
- Schacht Introduction To Islamic Law, Zaria 1989
- Tarkang, L.M. Property Acquisition And Ownership Amongst The bakweri People Of Cameroon Unpublished LLM Thesis, A.B.U; Zaria, 1992
- Tyabjis, N.D. Muslim Law, 4th Edition
- Walker; M.D. The Oxford Companion To Law, Oxford, 1980
- Yakubu, M.G. Land Law in Nigeria Macmillian Publishers London and Basingstoke, 1985
- Yakubu, M.G. The Law of Land Ownership And Succession In Northern Nigeria. An Exposition And Critical Analysis Of The Existing Hausa - fulani Community, Unpublished Ph.D Thesis, Faculty Of Law, Unversity Of Birmingham, England, 1980
- Yakubu M.G. Notes On The land Use Act, Zaria 1986.
- Al-Quaradawi, Y The Lawful And The Prohibited In Islam, I.I.F.S.O. 1984, PP. 140 - 141
- Rahim A. The Principles Of Muhammdan Jurisprudence, All Parkistan Legal Decisions, Church Road, Lahore, 1978 P. 301.
- Khan, M.Z Riyadh As - Sabhim Of Imam Nawawi (Garden Of Righteous) Curzon Press, London, 1985, P. 744

#### JOURNALS



Fulani Community. Unpublished Ph.D Thesis, Faculty Of Law,  
University Of Birmingham, England, 1980.

**OTHERS**

Abudullahi, M.

Ta'alinul Al-Arabi Unpublished And Undated Article.

**APPENDIX I**  
**QUESTIONNAIRES**

1. What is your name ?
2. What is your tribe ?
3. What is your Religion ?
4. What is your Rank ?
5. What is Land ?
6. Who owns Land ?
7. Do natives pay, tribute, to the Chiefs for the use of land per se ?
9. Is it allowed to alienate Land ?
10. What is a Family ?
11. What is Family Property ?
12. If the Government temporarily acquires a family members allocated portion of family land and compensates him, does he have to give the compensation to the family ?
13. Under what circumstances can one be dispossessed of his allocated portion of family Land ?
14. What are the duties of the family head ?
15. Could an individual possess Land ?
16. What are the various ways in which family property may be alienated ?
17. What is consideration for the loan of Land ?
18. What is the rate of rents for customary tenancy ?
19. What is the procedure for alienating family property under customary laws ?
20. What acts may determine family property ?
21. What is the procedure for alienating family property under Islamic Law ?
22. What are the offences for improper alienation of family property ?
23. What can you say about the activities of the family heads with regard to family property in your area ?
24. What is the punishment against a member of the family, who sells family land as his own personal property ?

25. What is the situation of a borrower of land who still has his unexhausted improvements on the land at the expiration of the loan period ?
26. Is there any economic equality between the rents paid or the use of land and the benefits derived from the use of it ?
27. What punishment does it attract for a family head who sells family land clandestinely ?
28. Can the Sultan, or Lamido or Village head refuse the grant of land for the use of a member of the community ?
29. Were the natives charged to pay tax for the use of farmlands ?
30. How was produce tax assessed ?
31. What happens in the event that crops planted on land loaned under customary tenancy are destroyed by drought or insects ?
32. How is family property determined by consensus.
33. How is family property divided ?
34. Can female members of the family own portions in a partitioned family land ?
35. What is the punishment for improper alienation of family land, by an ordinary member of the family ?
36. What is the effect of alienation of family land by the principal members without the consent of the family head ?
37. What is the plight of a family head who alienates family property as his personal property ?
38. What were the powers of the Sultan and Lamidoes or Elders with respect to family lands before the establishment of the modern courts ?
39. Under what circumstances could family property be alienated permanently ?
40. Do female members of the family have equal rights in family property as the male members ?
41. Why do some family heads sell family land clandestinely.
42. What is the effect in Islamic Law, where the owner of Land, on or before his death transfers property ?
43. What are the conditions for making an oral or nuncupative "will" ?
44. Were land Loaned Before ?

45. Who Could Loan Land Before ?
46. Is Loan of Land Common Now ?
47. What was the Procedure for Granting the loan of Land ?
48. What is the Duration for the Loan of Land ?
49. Why do Families Pledge Land ?
50. How is Pledge Transaction carried out under Islamic Law ?