INDIVIDUAL PROPERTY HOLDING:

A COMPARATIVE STUDY BETWEEN CAMEROON AND NIGERIA.

BY

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INDIVIDUAL PROPERTY HOLDING: A COMPARATIVE STUDY BETWEEN CAMEROON AND NIGERIA.

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Department of: Private Law

Faculty of : Law

D E C L A R A T I O N

I hereby declare that the realisation of this work is a record of my own research. It has not been published or presented anywhere for a higher degree. All quotations and references have been acknowledged accordingly.



TANGIE TABITHA NEH.

C E R T I F I C A T I O N

This thesis entitled Indiviauai Property Holding: A Comparative Study between Cameroon And Nigeria by TANGIE TABITHA NEH meets the regulations governing the award of the degree of Master of Laws of Ahmadu Bello University, and is approved for its contribution to knowledge and literary presentation.

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Date 17/5/96

DEDICATION

This thesis is dedicated to my beloved parents, papa Tangie Lucas Chengwa and Mama Christina Nchangfu Tangie for their Love and affection.

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May I add here that all errors and contrary opinions are exclusively mine, while due credit has been given to those whose works were quoted.

ABSTRACT

Property is very important in our society today. Property is held by various groups and the individual is no exception. Generally, lawyers and economists are well acquainted with the prominent role of property not only in the economy of any given jurisdiction but also it's Socio-political significance. Despite this awareness,, the activities of the informed groups of the Nigerian and Cameroonian communities do not reflect any serious concern for the prospects of individual property holding.

Today, due to modern developments such as population increase, the desire for high living standards, education, introduction of cash economy, individual property holding has gained tremendous grounds.

Even though individual property holding is a recent development, its evolution can however be traced. The purpose of this research work is therefore aimed at making a comparative study on the individual property holding between Cameroon and Nigeria, tracing its development from pre -Colonial era up to present day.

The, research will Commence with an examination of the historical background of property holding in both countries prior to the introduction of European statutory land tenure laws. Attempt will be made to define property, the determination of the scope and the method of approach to the research. Material was got by consulting books, newspapers, articles, journals, publications relevant to the field of study. Furthermore, information was got from the Bamenda High Court and Court of Appeal, and the Lands and Survey Office in Bamenda. Some general discussions on the subject were made with some family heads in Bafut. A sketch map has been drawn to locate the position of former West Cameroon,

The research considers the classes of property holdings under customary law, like the communal, family and individual holdings. The research reveals that, individual property holding was rare in pre-colonial era, but it is now the rule and not the exception.. The recent development of individual property holding is due to Socio-economic development in our society. \

The work also examines the present land tenure reforms in Cameroon and Nigeria in general and the individual tenure in particular. It further examines the techniques adopted in fitting the various categories of individual property in these countries into the framework of the present land legislation .

The disposition of rights in individual property- will be discussed. This will be done by examining the quantum of rights acquired by the individual, the restrictions imposed on such rights by the appropriate authorities and the transferability of these rights. Individual rights in property could be transferred in many ways, amongst which are gift, lease, mortgage, sale, bequeath.

Finally, the last chapter will draw conclusions from the results arrived at in the preceeding chapters. The nature of the evolution of individual property holding will be considered and recommendations proposed.

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13. Aldin V. Clark (1894) 2 Ch. 437
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16. Archibong V. Archibong(1947) 18 NLR 117
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19. Balogun V. Oshodi (1981) 10 NLR 36 at 50
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38. L.E.D.B. V. Ashanti(1937) 3 WACA 143
39. Lewis V. Bankole (1908) 1 NLR 81
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- Code Civile (French) Art. 2106

- Constitution of 1979 (Nigeria) S.42

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- Crown Lands Management Proclamation 1906

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  Cap. 56
  Cap. 72

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  S.3
  S.5
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    Art. 36

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    Art. 1
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    Art. 1(1)(2)
    Art. 2(a)(b)(c)(d)(e)
    Art. 3(1)(2)
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Ordinance No. 74 - 2 of 6 July 1974

    Art 3(1)

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Art 1
Art 2
Art 3
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Art 5
Art 7
Art 8
Art 9

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  S.1
  S.2(1)(a)
  S.3
  S.4(a)(b)
  S.5(1)(a)
  S.6(1)
  S.7
  S.8
  S.12(1)
  S.19(5)
  S.28(1)(2)(3)(6)(7)
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- Treaty of Versailles June 28th 1919, Art. 119.
- Wills Act, 1837(Western Nigeria) Cap.133, S.6, 9.

TABLE OF ABBREVIATIONS

A.C.	Appeal Case
A.G.	Attorney General
A.N.L.R.	All Nigeria Law Reports
Art.	Article
B.C.A.	Bamenda Court of Appeal
B.H.C.	Bamenda High Court
CH.D.	Chancery Division
E.d.	Edition
E.G.	For Example
E.N.L.R.	Eastern Nigeria Law Reports
Etc.	Et Cetera, and so on.
F.C.J.	Federal Court of Justice
F.S.C.	Federal Supreme Court
G.L.R.	Ghana Law Reports
H.C.	High Court
Ibid.	Ibidem, in the Same Place
K.B.	King's Bench Division
L.E.D.B.	Lagos Executive Development Board
L.L.R.	Lagos Law Reports
L.N.R.O.	Land and Native Rights Ordinance
L.T.O.	Land Tenure Ordinance
L.U.A.	Land Use Act
N.L.R.	Nigeria Law Reports
N.O.	Number
N.R.N.L.R.	Northern Region Nigeria Law Reports
N.W.L.R.	Nigeria Weekly Law Reports
N.W.P.	North-West Province
Op.Cit.	In the Work Cited
Ord.	Ordinance
P.	Page
P.M.	Prime Minister
S.	Section

Sar. F.C.L. - - - - - - - - Sarbah, Fanti Law Reports

S.C.N.L.R. - - - - - - - - Supreme Court of Nigeria Law Reports.

T.L.R.- - - - - - - - - - - Tanganyika Law Reports.

V. - - - - - - - - - - - - - Versus or Against

Vol. - - - - - - - - - - - Volume

W.A.C.A.- - - - - - - - - - West Africa Court of Appeal

W.C. - - - - - - - - - - - West Cameroon

W.C.C.A. - - - - - - - - - West Cameroon Court of Appeal

W.C.H.C. - - - - - - - - - West Cameroon High Court

W.C.L.R. - - - - - - - - - West Cameroon Law Reports

W.N.L.R. - - - - - - - - - Western Nigeria Law Reports.

CHAPTER ONE

1.0 INTRODUCTION

Inspite of the historical, social, political religious and geographical differences existing between Cameroon and Nigeria in pre-colonial times, they share a lot in common when it comes to law relating to property holdings. However, with the scramble for, and final partition of Africa amongst European powers, Nigeria came under British influence while Cameroon came under German influence. However, after the First World War of 1914/1919 Cameroon was partitioned between Britain and France under the auspicies of the Mandate system of the League of Nations Organisation. From this period onwards, the mode of reception of Colonial laws did not differ; as the introduction of colonial land laws in both countries was at the instance of the colonialists. This colonial period marked the beginning of the introduction of English property laws into Nigeria, and German, English and French Laws into Cameroon.

Before the advent of the colonialists into these countries, there had been in existence different types of property holdings like the communal, family and to some extent, individual holdings under customary law. Customary Law recognises that the dominant rights can be vested in an individual, community or family. The family holding is a form of tenure well-known in both countries and forms the main basis of property holding.

Generally, lawyers and economists are well acquainted with the prominent role of property not only in the economy of any given society, but also its socio-political significance. Despite this awareness, the activities of the informed groups of the Nigerian and Cameroonian communities do not reflect any serious concern for the prospects of individual property holding.

Today, due to modern developments such as population increase, introduction of cash economy, the desire for high living standards, education, individual property holding has gained grounds tremendously.
The above factors led to the promulgation of land reforms in these countries. These reforms have extricated the system of tenure from the purely customary notion based on communal holding and have diluted it with the Western styled individual holding concept.

The purpose of this study is therefore to make a comparative study on the individual property holding in Cameroon and Nigeria, tracing its development from pre-colonial era up to present day. Secondly, to enhance a better understanding of the operation of Nigerian and Cameroonian property laws so as to assist the authorities on how to discharge their basic property law functions or obligations.

The research will commence with an examination of the historical background of property holding in both countries prior to the introduction of European statutory land tenure laws. Attempt will be made to define property, the method of approach to the research and the determination of the Scope.

The second chapter is devoted to the analysis of various types of customary property holdings, e.g. the communal and family holdings in general terms and individual holding in particular.

The third chapter examines statutory property holding. The discussion will be done by listing property that an individual is capable of acquiring.

Chapter four discusses the disposition of rights in individual property. The quantum of rights acquired by the individual and the restrictions imposed on such rights by the appropriate authorities will be considered.

Finally, the fifth chapter is to draw conclusions from the results arrived at in the preceeding chapters. Recommendations will be proposed here.

1.1 HISTORICAL BACKGROUND OF PROPERTY HOLDING

An attempt to study the whole or portions of Cameroon and Nigeria's property law and indeed their entire legal systems can best be prefaced by a cursory appraisal of their historical legal development. This necessarily starts with the discussion of the pre-colonial era when customary laws reigned supreme. In those days, property was held, used, and abandoned either at the dictates of custom or other exigencies such as wars. For the purpose of clarity, it is intended to discuss the topic under two broad headings.

1.1.1 N I G E R I A

It is important to note that prior to the advent of colonial rule in Nigeria, the system of property holding was largely communal holding. In the muslem communities of the North like Sokoto, Kano, Katsina, Borno, Zaria etc, the general principle governing the tenure of native lands was that title to land was based on a communal holding, and whatever property right the chief may possess in legal theory does not amount in practice to anything more than an administrative control over the lands in the interest of the whole community. Therefore, the position of the Chief in matters of land holding is like a trustee. Individuals and families acquire rights in land by applying to the chief of which the grant may be in perpetuity.

But in the non-muslem tribes of the North like the Junkuns and the Nupes, family holding formed a pool at the disposal of its head. This was also the position in most areas of the former Plateau Province.

When the colonialists came, they realised that the greater parts of the North was under the Sokoto Caliphate founded by Dan Fodio after the fulani jihad that was waged and directed by him in 1804. The jihad led to the conquest of all the Hausa States and some non-Hausa speaking areas, and all the conquered lands were in favour of the Muslem states. The customary land owners were divested of their title, and vested on the new rulers on behalf of the muslem states. The previous owners were however, allowed to remain in possession as rent paying tenants. It should be noted however that the Jihad did not reach all the parts of the North. So those parts that were not conquered continued to operate their traditional systems of land tenure and land ownership.

The colonialists found the system in the Sokoto caliphate suitable for their colonial aims being mainly economic and commercial. Therefore, they introduced laws to facilitate their trade and protect their general interests.

The land tenure system was then harmonised in this area and later extended to other parts of the North. The subsequent legislation that were passed by the colonial authorities were in essence consolidating the lands under the State Control. After the British conquered the muslem rulers, they inturn claimed to have succeeded to the rights of the muslem rulers by the same token, namely, conquest. The British High Commissioner did not waste time in pointing this out to them. It was declared that the ultimate title to the land was henceforth vested in the Crown. This claim was immediately given a statutory basis by enacting the Public Lands Proclamation, 1902, which declared as public lands, all those lands being the property of any conquered or disposed ruler, and all lands not in the actual occupation of persons or of tenants, agents or servants of persons having original or derivative title to such lands under any proclamation, or under any law or custom prevailing in the part of the protectorate where such lands were situated. In practice however, the Crown never possessed nor claimed any proprietory rights in those lands except the Crown lands which it took over from the Royal Niger Company or those which it acquired beneficiary for public purposes. Over these latter categories of lands the Crown claimed the rights of beneficial ownership. The crown passed a real right of administrative control over public lands in Northern Nigeria as it was a product of conquest.

It even included the right to approve disposition of land. This position was held by the Crown in relation to lands in the North till 1910.

This position, however, became unsuitable to the colonialists and it became necessary for another law regarding land to be passed. After a lot of efforts, a committee was appointed by the secretary of State for Colonies charged with the following terms of reference:

a) To consider the evidence collected by Sir Percy Girouard and any other evidence available as to the existing system of land tenure in Northern Nigeria.

b) To report on the system which it is advisable to adopt and as to the legislative and administrative measures necessitated by its adoptation.

The recommendations of the committee were accepted by the Secretary of State for colonies and were embodied in the Land and Native Rights Proclamation, 1910. This was re-enacted in 1916 as Land and Native Rights Ordinance. The Ordinance was revised and re-enacted as the Land Tenure Law, 1962. The object of this legislation as declared by its preamble, was in part, to define the rights and obligations of the government in regards to lands of Northern Nigeria. In doing this the distinction between Crown and Public Lands was discontinued on the ground that, since the whole of the protectorate was already under the control of the

Crown, it was unnecessary. This legislation gave the government the power to grant anybody right of occupancy over unoccupied land, without reference to anybody, and to revoke any occupancy rights under certain conditions. Indeed, the Land Use Act, 1978 is in most parts a reproduction of the Land Tenure Law, 1962 of Northern Nigeria. As many as thirty-two Sections of the fifty Sections of the Act were fashioned after the Land Tenure Law, 1962. In fact, one would not be wrong to say that the Act was the revised and re-enactment of the Land Tenure Law, judging from the fact that the two are very similar.

The position of the law in the southern Nigeria as regards property holding was basically different from that of the North both before the advent of the colonialists and the enactment of the Land Use Act. Before and during Colonial era, there was in Southern Nigeria up till the promulgation of the Act, customary system of individual ownership of property. For instance, individuals or groups of relatives notably the Ibos, Yorubas and the Yakos held lands within the clans where there was marked individualisation of farm work. Farms were held by adult male individually, like the Ozuitem-Ibo. However, the common type of property holding in most parts of the South at the time was communal.

The Privy Council emphasised this clearly in the following words:

> ".... the notion of individual ownership is quite foreign to native ideas. Land belongs to the community, the village or the family..."[1]

It seems that the statement is not entirely correct under the customary system of individual ownership as Nwabueze pointed out that,

> "On the contrary, it can even be said that all family lands must have had their origin in individual ownership."[2]

It is clear from this that the notion of family property carries with it an acknowledgement of an original individual acquisition by the founder of the family and when he dies intestate, the land becomes family land. One thing which is clear here is that title to the land was vested in the community or family, though an individual could be permitted either by the community or family to acquire separate property anywhere in the area. For instance, it was stated in Fadire V. Abiri[3] that where any member of the community clears or cultivates any piece of land hitherto unoccupied by any member of the community or family; he becomes the owner of the Land. Evidence was also given in Adewoyin v. Adeyeye[4] to show that the Oni of Ife could give any

portion of land in Ife town to a native of Ife provided that the land is virgin and the Oni Consulted any family which may have hunting rights in the land. Despite the above cases cited, the evidence of Elesi of Odegbolu before the West African Lands Commission in 1912 lay credence to the statement of the Privy Council in Amodu, Supra. He said:

> "I conceive that land belongs to a vast family of which many are dead, few are living and countless members still unborn."

This confirms the contention that in Southern Nigeria lands were owned by groups of persons in most cases though there were lands that may be owned by individuals customarily.

The constitutional status of Southern Nigeria outside Lagos was declared to be a protectorate in which the Crown possessed no sovereignty as such, but just power and jurisdiction. There was no actual annexation of the territory such as what happened in Lagos, therefore the sovereignty still remained with the indigenous communities. It follows therefore that no property rights passed to the Crown in Southern Nigeria outside Lagos under the treaties of Cession.

The property rights that were enjoyed, the sovereignty remained with the traditional chiefs as it used to be before the colonialists came. This is to say that the traditional property holding persisted in the south outside Lagos even after colonisation of the place.

Before the British came, all lands except the official residents of the chiefs in some places in the South belonged not to the state but to the social groups like family, a village or even the whole community as an entity. For instance, in the case of Ntiaro V. Arpran,[5] although the plaintiff's case was dismissed for want of evidence of ownership, there was no suggestion throughout the course of the trial of the case that the foreshare in question belonged to the Crown. Also, in Amachre v. Kallio,[6] an injunction was granted to restrain one community from fishing in the adjoining creeks in another community's territory despite the fact that both of them had treaties of Cession of jurisdiction of land by the communities or families.

Though individual property holding was not common in pre-colonial days, it became prominent later due to modern developments. Those who acquired land became absolute owners. The 60^{S} and 70^{S} witnessed an unprecedented influx of people from the rural to urban centres in search of better conditions of living.

The population in the towns and cities increased tremendously. Development projects needed to be established to cater for the welfare of the people. The Federal and State Governments needed land for these projects but acquisition of land was increasingly difficult. The government of the day therefore instituted various bodies, panels and Task Forces to examine the problems and recommend solutions. Some of these like the Rent Control Panel, 1976 and the Land Use Panel, 1977 submitted reports to the Federal Government suggesting ways and means to curb rent increases and land speculations. Based on these reports and experiences, the then Federal Military Government of General Obasanjo promulgated the Land Use Decree(Act) on March 29th, 1978.

1.1.2. C A M E R O O N:

The Germans intercepted the smooth development of Customary land Law as such, introducing Western foreign concepts. There was for instance, the introduction of the famous June 15th 1896 Law instituting Crown Lands. The central point in this law was that with the exception of the rights of Chiefs and their communities over unoccupied lands, all other lands supposedly having 'no owners' belonged to the Crown.

The effect of course, was to convert vast portions of lands into Crown lands, fortunately for the natives this was never put into effect.

As a question of fact, in strict customary land law theory there is no unoccupied lands. In any case, the German attempt to harness land went beyond the abortive attempt of 1896 as evidenced by the Grundbuch.[7] The Grundbuck or land register conferred rights that have withstood the tides of change prior to the Land Tenure Ordinances as witnessed by article 2(e) of Ordinance No.74/1. The Germans never understood nor had time to understand that there was a world of difference between the individual property holding system applicable in Germany[8] and the predominantly communal holding system in operation in Cameroon or Africa as a whole. Dr. Enonchong[9] puts the land holding system in Cameroon in the following words:

> "The whole land was deemed to belong to the community as a Corporate entity."

A perhaps more accurate statement on who owns the land under Customary land law was by the renowned Elesi of Odegbolou, a Nigerian Chief. Appearing before the West African Lands Commission in 1912, said,

> "Land belongs to a vast family of which many are dead, a few living, and countless members are yet unborn."

The idea was that, dealings in land according to the customary land law must be such as to cater for the interests of the many 'dead' and the 'countless unborn'. Thus, though isolated cases may be found here and there of individual 'ownership', it is by no means true to say that land was broadly speaking communally owned.

As part of the peace treaty after the First World War, the Germans were kicked out of Cameroon and the British and French took over the administration of Cameroon. These two 'powers' effected a partitioning of Cameroon from which she has never or shall never recover. This partitioning of Cameroon received international recognition in the Treaty of Versailles.[10] However, 'the dividing up' did not formally take place until the proclamation of a Franco-British Declaration of July 10th 1919 monitored in Paris. The whole transaction was sealed by article 22 of the Leaque of Nations Covenant enacted under the great influence of President Woodrow Wilson of the United States of America.

Part of that article conferred on the territory of Cameroon the dubious status of a 'Mandated Territory.'[11] This means that, the part of Cameroon that fell under British mandate was to be administered as part of Britain and that which fell under the French Mandate was to be administered as part of France.

In consequence of the above operations, cultural imperialism emerged with the consequent transplantation of the legal systems of the administering powers. The powers, however, effected such changes mutatis - mutandis, in consonance with the projection of their interests. Land and the control or use of the land embodied a greater portion of that interest and so lay exposed to intervention. The point was that some of the citizens of these highly capitalistic societies could not make their own back at home and so sought new possibilities in the colonies. They needed enough guarantees and legislation , particularly on land, which was the only adequate means of doing it. This was to enable them to tap the huge agricultural and mineral resources of these virgin lands. Besides, Britain and France did not ignore the words of the great political sociologist, Max Weber:

> "For conquering peasant communities the natural way is to take the land directly..."[12]

It was in pursuance of her mandatory powers that Britain issued the British Cameroons Orders-in-Council of June 26th, 1923. That Order formally annexed Cameroon administratively to Nigeria, that is, that she was to be administered as an integral part of that Country. This part of Cameroon under British mandate is known as former West Cameroon. This historical accident has resulted in close ties between Britain and Nigeria on the one hand and Cameroon on the other. Furthermore, this is what explains why any treaties on Anglophone law cannot, indeed ignore Nigerian Law which itself is a child of the British legal system eventhough it has now attained its independence. The only difference between the "child" and the "father" is that the pure milk of British law was diluted with customary laws in both countries.

The situation in Francophone Cameroon was not different. In fact, it received its orders almost directly from Paris. Yet, at the same time, it applied laws formally enacted only for French colonies at a time when Cameroon was under German administration as if it was a French colony at the time of such enactment.

On the eve of Cameroon's independence there was the passing of the 1955 Southern Cameroons High Court Law. According to a provision of that law, the sources of law applicable in former West Cameroon were the English Statutes of General Application applicable in England on or before the first day of January 1900 and thereafter, Nigerian statutes atleast until 1923. That law further allowed for the application of the English Common Law and Equity as well as such principles of customary law as are not repugnant to natural justice, equity and good conscience.[13] It must be noted that S.9(1)(a) of that law does not allow the High Court to exercise original jurisdiction in matters of, or, connected to land. Dione v. Nakena[14], an unreported case gave a judicial approval to this view.

Perhaps the most far reaching pre-independence development was the enactment of the notorious 'Land and Native Rights Ordinance.'[15] The preamble to that law gave further effect to the 1955 High Court Law in its intendment which was to ensure, protect and preserve 'the existing customary rights of the natives of the Cameroons under United Kingdom Trusteeship to use and enjoy the land and the natural fruits thereof in sufficient quantity to enable them to provide for the sustenance of themselves and their families,' and above all 'to preserve,

as far as possible, the existing native customs with regard to the use and exploitation of the land.'

Whereas the Land and Native Rights Ordinance applied in West Cameroon, former East Cameroon was under the rule of the 'Décrêt Loi' or Decree Law of 9th January 1963 and its connected decrees of application and modifying ordinances. In essence, this Décrêt Loi was admired principally because it conferred a more complete title, the 'titre fontier' or land title whereas its counterpart for anglophone Cameroon barely granted at best a statutory lease.

At this juncture, it would be interesting to note the reasons for the passing of the 1974 Land Ordinances. The introduction of peaceful governments, high standards of living, population increase and the introduction of mechanised agricultural systems were at the background of this legislation . Furthermore, land is now being commercialised and the unit of holding is gradually drifting away from community to individualism. Besides, wealthy native capitalists are mushrooming and the spectre of agricultural debts looming high with many peasant farmers becoming tenants on lands formally owned by them. Speculation in land is now no longer as foreign as it was fifty years ago.

As a matter of fact, on July 7th, 1974 the Cameroon Legislature enacted a series of Ordinances regulating the all important subject of property holdings and geared to control the existing virtually chaotic situation. Today, the law regulating property holding in Cameroon is the Land Tenure Ordinances of 1974 and the subsequent Decrees of Application.

The foregone historical analysis throws light on the state of Nigeria and Cameroon's land law, more particularly, it explains why recourse has to be made to certain foreign legal systems constantly. For instance, the Interpretation Act provided for the application of the English Common Law and Equity which are not repugnant to natural justice, equity and good conscience. The effect of the provision was that, it permitted the application of the English property law in appropriate cases in Nigeria and Cameroon. On the basis that courts in these countries held that a person can lose his rights in land under the rule of prescription that is, long usage, Under customary land law, long usage alone cannot make the original owner lose his rights in land. Interests in land like 'fee simple' and 'tail interest' are often mentioned in our courts. Again, the German Word Grundbuck is mentioned in the Cameroon 1974 Ordinances as well as the French Décrêt-Loi.

The protracted problem of 'Ownership' of land under customary land law is yet to be resolved. It is because of the application of the received English Law that the Courts have applied the maxim of quic quid Plantatur Solo Solo Cedit to the land law. As a result of the reception also, the English property and conveyancing Statutes like Conveyancing Act, 1571, Real Property Limitation Act 1833 etc. do apply in Cameroon and Nigeria today.

1.2 MEANING OF PROPERTY

The Word 'property' has several meanings and its exact meaning can only be defined in the context in which it is used. Even when it is reduced to its most elementary components, it has two different meanings in law.

D.L.A. Baker (1989) distinquishes it thus:

> "Property may mean the thing or things capable of ownership. In this sense the word includes not only physical(or corporeal) such as a pen, desk, watch and land but also non physical(incorporeal) such as patent rights, copyrights and debts".[16]

From the definition, the word 'property' is used to denote the right of ownership in a thing.

This ownership may be described as 'the entirety of the powers of use and disposal allowed by law.'[17] Thus, the owner has the right to use, enjoy and dispose of such property.

In Common Law jurisdictions, a distinction was made between 'tangible and intangible' property that corresponded roughly to the Roman division of things into Corporeal and incorporeal.[18] Tangible property includes lands and certain chattels known as choses in possession, that is, rights in definite tangible things over which possession may be taken. Intangible property is largely one of the two types:

(1) Choses in action, namely, rights of property that can only be claimed or enforced by legal action and not by taking physical possession, such as bank accounts, debts generally, stocks and shares, and industrial property, including patents, registered designs, trademarks and trade names and copy rights, and

(2) Incorporeal hereditaments, namely, heritable rights, or rights passed by way of descent to heir, such as those relating to lands, and all other things that are part or affixed to land and also easements, profits and rents.

Under Native Law and Customs, one is compelled to prefer the classification of property into movables and immovables.[19] Movables include everything that can be moved and which is the subject of human ownership. They include (a) household articles like furniture, spears, guns, cutlasses, Kitchen utensils, (b) livestock, (c) Money, which has been a recognised form of property from time immemorial though the precise form of currency in actual use has, as in most societies varied from generation to generation.

Immovable property may be sub-divided into:

(1) economic trees and plants: It must be pointed out that the term economic trees and plants embraces not only fruit trees such as the oil palm, mango, the kolanut tree but also timber trees such as iroko, or mahogamy tree. It also includes those trees which are normally planted by man and those which are self-sown as a rule.

(2) Land: in pre-colonial Africa, property was hardly discussed with regards to land. The only identifiable property were economic crops, farming, cattles etc. This was due to the abundance of land in the primitive societies where everyone had enough land on which to live and farm. Again, the Africans considered land as a gift of God and the source of human sustenance.

Today, the need to possess land is stronger and more widespread than it used to be. Land has become a yardstick of measuring a man's wealth, The most wealthy people today were those who owned lots of landed property.

At this point, it will be worthwhile to consider a few definitions of land. According to principles of English Common Law, land includes everything "up to the sky and down to the centre of the earth."[20] Therefore, the presumption is that a transfer or the ownership of a particular parcel of land includes not only the physical soil but all buildings permanently attached to the soil. Burn E. H. (1976) defines land thus: "Land includes the surface of the earth, together with all the sub-jacent and super-jacent things of a physical nature such as buildings, trees and minerals."[21]

A remarkable aspect of African Customary Law is the fact that 'land' does not include things growing on or attached to the soil. Thus, neither economic trees nor houses are part of the land on which they stand.

The English maxim of quic quid plantatur Solo Solo Cedit is not true of African law in general or of Nigerian and Cameroonian Law in particular.

From the foregone, it can be seen that land is very important in every society today and it is because of this that most learned authors consider its study indispensable. By virtue of cultivation, land has become the most important economic good. Meek C.K. (1959)[22] has stressed the importance of land thus:

> "Land has something of a sacred character and rights over land are more jealously treasured than any other form of rights".

Furthermore, a good number of writers and judges are concerned with the conception of property only in relation to land. This does not mean that movable roperty is not regarded as being important as land but because of the reasons that it is difficult to find a uniform system of interests in movable property. Secondly, apart from money, the distribution and enjoyment of movable property does not entail as much ostentation as to invite legal inquiry. It is because of the importance of land to any nation that each country makes law to control the use of it.

1.3 METHODOLOGY

The approach to be adopted in this research work will be essentially a comparative study of the individual property holding in Cameroon and Nigeria. The search for relevant information starts with the maximum use of Libraries notably, The President Kennedy Library, Kongo Campus, Ahmadu Bello University, Zaria, The University of Jos Library and The University of Yaounde Library in Cameroon.

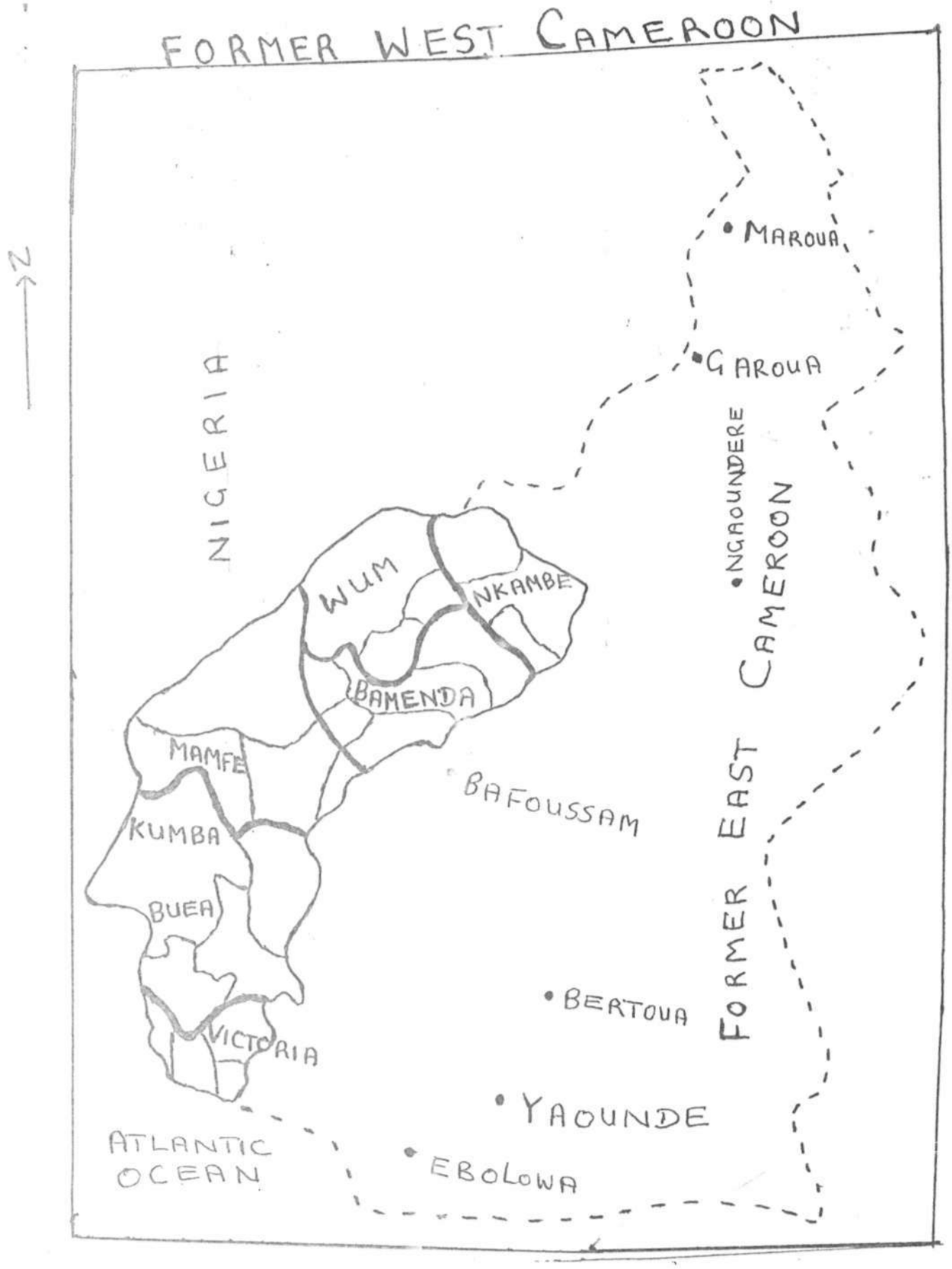
Other materials were collected by consulting recent books, articles, magazines, newspapers and journals relevant to the field of study.

An examination of various rules of customary law relating to individual property holding will be made, illustrating them with Nigerian cases and some unreported Cameroonian cases. Statute Law especially the Land Use Act and the Land Tenure Ordinances will also be examined. For purposes of comparism, references will be made to some judicial pronouncements of some African jurisdictions as concerns property holding where necessary.

1.4 SCOPE

This study is undertaken to examine individual property holding both under customary and statute laws in Cameroon and Nigeria. Emphasis will be laid on the Former West Cameroon in general and the North-West Province[23] in particular. In the case of Nigeria, references will be made in general terms because Nigerian Customary property holding systems are similar in almost all respects.

This write-up is not exhaustive in the sense that law being an area where legal giants like Elias, Nwabueze, Yakubu and all other Scholars of high repute have excelled themselves, a beginner has to be very careful in her views. Moreover, the aspect of property law considered here do suffer from paucity of decided cases on the part of Cameroon. This work has therefore been written against the background of an almost complete absence of reported cases. In consequence, most of the cases reported are Nigerian cases and cases from the West African Court of Appeal.


FORMER WEST CAMEROON
N
NIGERIA
MAROUA
GAROUA
NGAOUNDERE
FORMER EAST CAMEROON
WUM
NKAMBE
BAMENDA
MAMFE
KUMBA
BUEA
VICTORIA
BAFOUSSAM
BERTOUA
YAOUNDE
EBOLOWA
ATLANTIC OCEAN

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CHAPTER TWO

2.0 CLASSES OF HOLDINGS UNDER CUSTOMARY LAW

2.1 MEANING OF CUSTOMARY HOLDING

The term 'Customary Holding' generally connotes the various methods of acquisition, use, including rights and duties that may accure to any individual or political group within a particular society in relation to property. Customary land law in Nigeria and Cameroon have existed for centuries serving as an integral part of traditional agricultural economies. Under this form of holding rights in land are not determined by contractual arrangements but rather by the social status of the cultivator. Thus under the family system of holding, head chiefs and all individual members of the family have rights in family land.

The concept of customary land holding defines the ways in which individuals gain access to, and acquire rights of use over land, either temporarily or permanently. This means that certain privileges opportunities and claims are conferred on the individual users of the land. Customary land holding may be said to represent the relationship of man to the soil. Thus Social relations among people as individuals and groups form the main focus in land holding systems, for such relationships are guided by native law and customs which control social, econcomic and political aspects of people's lives.

Meanwhile opening up opportunities for individuals to try and achieve their set objectives. This relationship of man to soil causes many activities to be performed on land so that man subdivides the land under a particular pattern and allocates it for use. On the other hand, the evidence of this relationship may be seen in the action which men perform as they attempt to transform the land by classifying and apportioning it through Community action, family and individual holdings.

Under the customary landholding, rights to the control and use of land were held by individual members of the community or family. Interests in land may not be alienated except with the knowledge and full consent of those elders considered as principal members of the land owning family or community. This system of land holding is well depicted in African landholdings where under the customary holding land is considered as belonging to past, present and future generations. The restrictions on alienation was a means of enduring the security of rights in land so that an individual farmer or a member of the family or community could use the land to produce adequate food for himself and members of his family.

The Customary land holding in Cameroon and Nigeria were predicated on the desire to fulfil the needs of these communities.

There was the need to provide food for members of the family and village communities. Sources of supply included hunted aminals, staple foods, fruits and fish.

Customary land holding is governed by rules of customary law. Historical records indicated that long before the nineteenth century, each of the territories which now constitute Nigeria had a system of local laws. These laws have been referred to as 'Native Law and Customs' or Customary law today. In most parts of Nigeria and Cameroon, the rules of customary landholding applicable is unwritten. Customary laws differ or vary from locality to locality but they essentially have common features such as group ownership, group management vested in the head of either family or community. Thus the definition of 'custom' by the Evidence Act and the Laws of England revealed that for a practice to be regarded as a custom, it must:

(i) be a rule,
(ii) apply to a particular locality;
(iii) be of long usage and;
(iv) have a force of law.

It would therefore not be entirely wrong to conclude that the essential aspects of our customs and traditions are similar to those of England. These are: immemorial antiquity, reasonableness, continuity since its immemorial origin and certainty.

2.2 OWNERSHIP UNDER CUSTOMARY LAW

The notion of ownership could be described as the most comprehensive relation that may exist in property. It potrays the totality of rights and power that could be exercised over a thing. This includes the right to make physical use of a thing the right to income from it, either in money, in kind or in services and the power of management including that of alienation or diposition.

Ownership of property under customary law had been a problem particularly for people who do not understand property holding under customary law. Such persons have often expressed /doubt if any individual member of the family or community can ever claim that he owns property under customary property law. The genesis of this doubt is basically the lack of /understanding of the system which initially was compared to either the communist communal ownership or the early Greek system of ownership. Under the communist ownership, property was owned by the whole community and shared in the degree of interest equally.

They used it for common purposes and for the benefits and enjoyment of all. The Greek System of ownership under the Roman Law was that either the individual or community that owned property owned the sum total of all rights and privileges attached to the property. Under this system, ownership meant the most comprehensive power of freedom of use and disposal which was meant to be absolute and unlimited.

John Austin's definition of ownership as stated by Yakubu M.G. 1(1985)[1] is,

> "A right over a determinate thing indefinite in point of user and unrestricted in point of disposition and unlimited in point of duration."

The various ways the early lawyers and administrators defined 'ownership' under customary property law were allodial titles, customary and possessory titles. They did not want to call it ownership because of the restrictions under customary law. In fact, many writers have doubted if it was necessary to cast doubts whether the concept of ownership under customary law exist simply because the right to determine the user and the right to dispose it have limitations and therefore not absolute. Ownership of property can exist even when there is limited restriction on determining who uses it, how it is disposed and the duration of one's interest.

As far as African Systems of Customary land law are concerned, there is no doubt that the concept of ownership does exist, because in most modern states it is impossible for any person or group of persons to have any absolute power over property, particularly rights and privileges relating to land because in must modern states, the interest of the state is superior to the right of the individual. So the Orthodox definition of ownership as it existed under the Roman Law is not appropriate today. Ownership of property under customary law does exist because every family has definite rights over usage. This implies that within the lawful means and the nature of the thing, the owner could use it in any way he likes. The owner also has the right to income which means the use of the thing by other persons on terms that will generate part of the income to the owner. This could be in the form of periodic rents or lumpsum payments to the owner. Furthermore, ownership under customary law does exist because of the power to alienate the property. This assumes the marketability of the property, for a thing cannot command a market value if the owner cannot alienate it. In this regard, the owner can give it out in return for an economic rent; mortgage it as a security for loan or sell it out-right and thus realise its entire value in cash.

There is also the right of management which implies that the owner has right to defend his enjoyment of the thing owned against any unauthorised interference.

2.2.1. COMMUNAL HOLDING

The word 'Communal holding' refers to a community which means a group of people. In Africa, a whole village or tribe can be a community and the number of people that make up a community is unlimited. They do not need to belong to the same tribe or religion, but in some cases, there could be a relating factor of language, culture or geographical factor unifying them. For instance, the TIKARS[2] of the North-West Province of Cameroon share many things in Common because of their tribal origin .

Communal land holding is characterised with what could best be referred to as the 'Corporate title'. This means that the entire title of the community land is vested on the given community. A member of the community is therefore entitled to a grant of it according to his needs subject to the availability of such vacant land. Lands which were allocated to members were usually for farming or for occupation. Once a grant was made to a member, he has full and exclusive possessory rights to the land which do not include the right of alienation. His rights subsist in the land and could not be taken away from him unless he commits a breach of his term.[3]

Bentsi-Enchill(1964)[4] refers to the members' rights as rights of common user which are shared by the members inter-se. As a result, an individual member cannot dispose of the corporate title unless on the basis of delegation by the corporation.

In communal landholding, the exercise of management and control of communal land is vested in the Chief, headman or whoever is the controlling unit of the particular area. The most popular attribute of a Chief is that of trusteeship Thus, he is variously described as trustee, guardian, Custodian, headman or caretaker. Whatever name is given to him, the position of law in Cameroon as held by courts is that;

> "The village head is only a Caretaker and not land lord"[5].

Speed C.J.[6], in describing the position of the Chief in managing Communal land said;

> ... But in every case the chief has charge of the land. He is to some extent in a position of a trustee and as such holds the land for the use of the community. He has control of it and any member who wants a piece of it to cultivate or build a house upon, goes to him for it. He cannot make any important disposition of the property without consulting the elders ofthe Community and their consent must in all cases be given before a grant can be made to a stranger.

It is crystal clear from the above judicial exposition that the Chief is the main agent through whom all negotiations over or concerning land are made particularly the allocation of the land to members of the community who are in need of and even to strangers. However, the Chief cannot allocate any piece of land already occupied and developed by any of his subjects to some other person. Such was the case in, Presbyterian Church Moderator V D.C. Johny.[7] Here, the Fon of Mankon purported to allocate a piece of land situated in Mankon to the appellants. The respondent claimed title to the land under customary law through inheritance from his father. The Fon maintained in court that all the land in Mankon belonged to him. In dismissing the appeal, the court held that the Fon held the land of Mankon not in his own name, but in the name of the people of Mankon. The court's ruling in this case illustrates two principles of Customary law. First, the principle that the Fon cannot allocate a piece of land already occupied by a member, secondly, the fact that title to the land is vested in the group not in the Fon.

Apart from the allocation of land the Chief is also the political or religious leader of the community. In that capacity, and as a religious leader, the sacred places of worship, the shrines of the community are directly under his supervision and control.

In the North-West Province of Cameroon the main traditional religious organ is variously known as 'KWIFOR', 'NGUMBA', 'NGWERON'.

Community land can be created when a new settlement is founded and the founders hold tenaciously to it on the basis that it belongs to the entire community. The founder can prove settlement by building on the land, cultivating and hunting on the land in question.[8]

It could also be created by conquest. Thus in Mora and Ors V. Nwalusi & Ors[9], the respondent brought an action claiming a declaration of title to land. There were no buildings on it which was used solely for cultivation but which was agreed that the land in ancient times belonged to a tribe which had been evicted there-from in war, and that the victors and their successors had since occupied, claiming title by conquest. It was held that possession of land by conquest suffices to establish ownership.

It could also be created by out spread and expansion, gift, and loans.

2.2.2. FAMILY HOLDING

Family is a sociological word and the number may be great or small. The size and membership of a family Varies greatly and is, more often than not, seriously influenced by the given locality. 'Family holding' implies that title is vested in the family as a corporate entity.

It represents the main form of land holding in Cameroon and Nigeria today. The nature of family holding was described in Amodu Tijani V. Secr. Southern Nigeria[10] as follows, "... Land belongs to the Community, the village or the family..."

The family property which is the subject matter of this type of holding means the landed property left by the founder of the family is to be used or shared equally among his heirs. The rules of customary land tenure in this type of holding are largely the same in Cameroon and Nigeria although the composition of the group(s) that may make up a family varies from place to place. In the strict English sense, a family could comprise the husband, the wife and children. In traditional Nigerian and Cameroonian Societies, this composition is extended to include other persons from a common ancestor. However, the definition of family property must be restricted to those heirs who are entitled traditionally to inherit the property. Thus in Coker v. Coker[11] Edward Foster died leaving by will his dwelling house to his family or blood relatives and their children's children, and that it cannot be sold for any debt. The dwelling house was subsequently sold by order of court and a summons was brought to determine who were entitled to share in the proceeds of the Sale. It was held that the intention of the testator was to make his dwelling house a family

house, following the Yoruba custom and that consequently those entitled to share in the proceeds of its sale were those of his descendants entitled under the custom to reside in the premises at the time of sale.

Title to family property which is the subject of family holding is vested in the family as a corporate entity. This principle was stated in Ogunmefu V. Ogunmefu[12], where the grandfather of the parties to the action died intestate leaving real property to which he was seized in fee-simple. He left two children, a boy and a girl, surviving him. When the girl died, she made a will giving her relatives her share in the property of X. It was held that upon the death intestate of Thomas Williams Davies, the founder of the family, the property devolved on his children as family property. The court held the devise was invalid because:

"Title to the family land vests in the members of the family as a corporate group. It is joint and indivisible, no part capable of being alienated absolutely by an individual member even if it has been allocated to him without the consent of the members of the family."

As a matter of fact, the head and members of the family may come and go but the title perpetually remains vested in the family. The entire members of the family hold the family property jointly and for this reason, no single member can alienate any part of it unilaterally.

Thus, Jibowu, A.G. F.C.J. as he then was delivering the judgement of the supreme Court observed that [13] ;

> "Although pieces of lands may be allotted to members of the family, the allottees have only the right to occupy and use the lands which they cannot alienate or part with with-out the consent of the family".

For the same reason, a member's interest in family property can not be attached for his private debt. Thus, in Miller Bros V. Ayeni,[14] the appellants were judgement creditors. Respondent was their judgement debtor, and claimants were his brothers. The appellants sought to attach the interest of the respondent in certain family property in satisfaction of their judgement debt. It was held that the appellants cannot attach the judgement debtor's interest in a family property in respect of which there has been no partition of interest between the members. The respondent had no right to alienate family property without the consent of the family.

The power of management and control of family property is vested in the head of the family under customary land tenure. This is illustrated by C.J. Memeondes as follows:

> The idea underlying land tenure in Africa is that land is the property of the family and that the head of the family is the trustee of the family. And that every free man in the community is entitled to as much land as he can reasonably acquire to support himself and his family. He is entitled to keep that land as long as he cultivates it, as long as he behaves himself or as far as circumstances permit.[15]

The head as a trustee and in the exercise of his power of management derives certain rights and duties. He has, like other members of the family equal rights to family property. He has the right to make grants to family members and even to strangers. He can also revoke these grants and eject such persons from the occupation of the land where their action so justifies.[16] He has the right to sue and be sued in respect of all actions affecting the family property as the legal representative of the family. Kwan v. Nyien,[17] a Ghanian decision, throws light on this point.

"As a general rule the head of the family is the proper person to institute all suits for the recovery of family property." Although this is neither a Nigerian or Cameroonian case, yet the rules of Customary law propounded or recognised in it apply in both countries Mutatis-Mutandis.

It is the duty of the family head to manage the family property for the benefits of all members of the family. In this regard, he has the duty to keep accounts and up-to-date information about the family property and to make them available to all the members. The issue of accountability was emphasized in Archibong V. Archibong[18] that, the action of the head must be capable of sound explanation, at anytime, to the reasonable satisfaction of the members of the family. To facilitate this duty, he must "certainly keep accounts and

work on some rules, either laid down by himself or preferably after consulting the heads of the house."

Apart from the rights of the family head, the family members also have the right to a portion of the land for its use and enjoyment. Furthermore, they have a right to income derived from the family property. Thus , all the family members will share the usual income that comes to the land when the family land is sold or the government pays compensation for acquisition of the land.[19]

Every member of the family has the right to participate in the management of the group property. Some members take part directly while others participate indirectly. Those who manage the property directly are elders, headmen or representatives of family who were specifically appointed to manage the family property. Others may take part indirectly because they don't actually take part in the day to day management of the group property and they are only consulted on major issues affecting the property.[20]

Family property may be created by intestate succession. This arises where the head of a family dies without making a will with regard to sharing of the land among his children. The unshared land remains family property. Thus in Cole V. Cole[21], Alfred Cole contracted marriagewith a lady in Sierra Leone. They returned to Lagos with a son who was a lunatic. On the

death of Alfred Cole intestate, his brother A.B. Cole declared himself trustee for Alfred Cole and his customary heir. Mary Cole, deceased's wife appealed against the decision of the trial court and the appeal was allowed.

Family property may also be created by will, that is when the testator makes a will and provides specifically that his property should be jointly owned and used by members of his family.

It could also be created by purchase[22] or gift.

2.2.3. DEVELOPMENT OF INDIVIDUAL HOLDING

There has been considerable controversy over the issue whether under African customary land law there was anything as individual holding of property. This issue arose in the celebrated Nigerian case of Amodu Tijani V. Secretary of Southern Nigeria[23]. In that case under the Public Lands Acquisition Act of 1903, the colonial Government acquired certain pieces of land situated at Apapa within the formal colony of Lagos. The plaintiff, the head chief of the Oluwa family and one of the land owning white-cap chiefs of Lagos, claimed compensation for these lands, first as absolute owner thereof but later as representative of his family. Analysing the indigenous system of land tenure in Africa, Viscount Haldane, delivering the judgement of the Privy Council Said:

> The next fact which it is important to bear in mind in order to understand the native land law is that the notion of indivdual ownership is quite foreign to native ideas. Land belongs to the community, the village or the family, never to the individual...
>
> This is pure native custom along the whole length of this coast and wherever we find, as in Lagos, individual owners, this is again due to the introduction of English ideas...

The bone of contention in the court was, under what capacity did the chief claim the compensation? The Privy Council finally held that Amodu was not claiming compensation on his own capacity as a family member but on a representative capacity as a family head. That, on a representative capacity, he would distribute the money to all members of his family.

The decision in this case established that individual property holding never existed under African customary land tenure systems. This assertion can only be true of the pre-colonial era because in the ancient times, individual ownership of property was rare. In the course of this research work, two family, heads in Bafut in the North-West province of Cameroon, Papa Tamfuh and Chief Wanki, maintained that in the pre-colonial era title to land was vested either in the community or the family and that the notion of individual ownership was a recent development. They explained that, in pre-colonial era, groups of family members will work on the farm jointly under the supervision of the head of the family. The produce from the farm will be owned

by all the members. The head was responsible for all matters affecting the family members, for instance, he paid taxes for the male members, marry wives for them, cater for them and their children. The land which they cultivated belonged to them all as members of the same family jointly and indivisibly. There was no idea of working or farming individually because they believed in the saying that 'many hands do light work.' Furthermore, they could not imagine the idea of alienating the family or community land either by sale or otherwise. First, there was abundance of land where everybody could have as much as he needed, secondly, sale of land was regarded as a taboo under customary land law.

But during and after the colonial era, this system started changing its form gradually due to the introduction of individual property holding by the colonialists. A practice evolved under the customary land law whereby each member cultivated land for himself and his immediate family, that is himself, his wife and children, though still living in the family house and farming on the family land. He reaps the fruits of his labour alone and decides on how to use it alone. He stores his produce from the farm in his own separate barn to the exclusion of other members of the family. The two family heads made me to understand that even though

individuals could farm individually, title to the land was still vested either in the family or community. They only have possessory or usufructuary rights on the land. They have no proprietory rights and so could not alienate the land without the consent of the family or community. This system is individual farming and not individual ownership of land. The indigenous members of the family have the erroneous believe that when they farm individually or build on the family land allotted to them, it means that they own the land there-of. When we talk of individual ownership of land the first thing that comes to mind is the fact that the owner alone has the right over such property. But this is not the situation in the above case.

Recently, there has been serious debates on the issue that the use of the term 'ownership' of land to describe an interest in land under native law and custom is unsuitable and undesirable and above all, it is said that this terminology is aimed at equating ownership of land under the English Law with that of native law and Custom. This confusion surrounding the use of this term was judicially recognised in the case of Kwesi Enimil V. Kwesi Tuakyi[24] by the Privy Council thus:

> The term 'owner' is loosely used in West Africa. Sometimes it denotes what is in effect absolute ownership, at other times it is used in a context which indicates that the reference is only to rights of occupancy... In these circumstances it is not suprising that it is difficult to be sure what is meant in any particular case of the expression 'owner.'

From the above it can be said that Customary Land law does not consider 'ownership' in the strict English sense and it is submitted that a terminology be found to describe an individual's interest in family property. Considering the nature of such individual interest or holding in such circumstances, it was held that:[25]

> Each individual member of the family has in addition vested in him or her what may perhaps can be described as a right of user during his or her life time. That individual right of user is purely and simply a life time interest. On the death of the individual that interest reverts to the whole family...

It can be observed from the above judicial opinion that the interest of an individual in his own portion of land allotted to him by the head of the family or chief is a life interest only. After death the title to the land reverts to the family or community if he has no heirs.

The individual also have possessory interest besides the interest of user because he is in possession of the portion of the family property as such he has the right to exclude all other persons from trespassing into the land.

Meanwhile as the individual has possessory right, the ultimate title to the land is vested in the family or community.

It was held[26] that the nature of customary landholding is in the form of usufructuary interest. This means that the occupier is entitled to reap the fruits of the trees standing on the land, if any of if he tills the land, he is entitled to the benefits or income of his labour.

From the foregoing one can conclude that individual holding of property was unknown in the West African sub-region and where they occur should be regarded as an exception to the general rule of land holding under native law and custom. This view has been expressed by Yakubu M.G.(1985)[27]

> "about 70 years ago, according to responsible oral opinion, it was an exception to the general rule of landholding under the native law and custom to find a person holding land in an individual capacity ".

This view is true of customary land holding in Cameroon and Nigeria.

Despite the advantages derived from group ownership of property, there was a need to accept a change in the traditional system. This need arose from the fact that an individual's responsibilities have increased tremendously. Thus an individual has to provide medical care for his family, educate his children, provide better housing, clothing for

himself, live a more descent and at least comfortable or average if not magnificient life. These cannot be achieved under the ancient system of communal and family holdings.

The arrival of Europeans in Africa did sow the seeds of the on-going drift from communalism towards greater individualism in land holding. What then were the reasons for the drift? This is the question to be determined.

2.3. REASONS FOR THE DEVELOPMENT OF INDIVIDUAL LAND HOLDING.

Eventhough individual ownership of land was rare in olden days, in modern days, however, it has gained tremendous prevalence. Presently, it is prevalent in the more sophisticated urban centres that it appears to predominate communal and family holdings. The explanation for this prevalence can be found in Socio-economic changes resulting from the introduction of peaceful government as contrasted with the era of intertribal wars. The growth of education and the consequent reception of capitalist philosophy of individualism. The introduction of money economy and the modernisation of living standards also had their own roles to play. Land is now being commercialised and the unit of holding is gradually drifting away from community to individualism.

2.3.1. THE INTRODUCTION OF MONEY ECONOMY

Initially the African system was predominantly subsistence. There was no need to grow cash crops, no need to build houses to rent out to others. The introduction of money economy meant that individuals had to work very hard to satisfy their needs and those of others. There was the economic emancipation of the individual as a result of new patterns of economic activities. The trade contact with the Europeans which was based on the exchange of goods for money and the acquisition by the individual engaged in it of Wealth of a permanent kind, capable of being transmitted from one generation to the other. The idea of personal acquisition was bound to affect the traditional system of land tenure which was found to be incompatible with changes. Progressive or hardworking members of the family could not sell the land or use it to secure loans. Long term crops could not be cultivated because of insecurity of title. The courts condemned traditional system declaring it incompatible with socio-economic development. In the case of Lewis V. Bankole[28],

Speed C.J. said: There was much that was admirable and much that I hope will be retained for many years in the family system which they evolved, but it can hardly be denied that their ideas of ownership of property were utterly unsuited to modern requirements; that those ideas have been dying a more or less natural death...

The death of traditional system of property holding is unavoidable in our modern society for hardworking individuals would not like to share their rewards with others simply because they are members of the same family or community. There is therefore a change from traditional subsistence to a market economy. The individual began to acquire land as a personal possession. There was also need to look for money which led to the production of cash crops like cocoa, tea, rubber, plantains, cotton and building of houses to rent out for money and also dwelling houses of permanent nature.

2.3.2. MODERNISATION OF LIVING STANDARDS.

Modernisation of living standards is another factor that encouraged individual ownership of property. There was the change from traditional to modern conditions. The influence of urban life in rural areas, for instance, ways of dressing in the urban areas were different from those in the villages, the food they eat, modern buildings and social amenities such as electricity, water supply, motorable roads, cinema shows, impoved the living standards in these rural areas. The need for a high standard of living makes one to determine the type of environment he will like to live in and even the type of food he will like to eat. To enjoy these facilities, individual effort is necessary.

For instance, no one will have the courage to build a nice house when he knows that the whole family has the right to live in, simply because it is built on family land.

2.3.3. SECURITY PROVIDED BY GOVERNMENT

The security provided by government or state encouraged individual ownership of property in Cameroon and Nigeria. Property was held jointly for protection and security reasons against invaders, fear of tribal wars, confiscation of property. This caused people to form groups for the purpose of common defence. Subsequently, there was the introduction of the judicial system where there was government to enforce the law, so there was less the need to live in groups. The advent of colonialism saw the establishment of government with all its coercive organs including a judicial system vested with the powers of enforcing laws. This development effectively threw over-board the idea of living in groups for defensive purposes. The activities of government resulted in the emergence and growth of urban centres. Therefore people were then moving and working freely since there was a firm government to protect them.

2.3.4 THE GROWTH OF EDUCATION AND HEALTH SERVICES

The growth of education and health services encouraged the acquisition of individual property. Education made individuals to leave their areas of origin to foreign lands. While out of their family

unit, individuals have to purchase individual property which can be disposed or alienated at will. When a person is educated, he makes efforts to know and resolve his problems personally. He determines for himself what to do and what not to do. This contributed immensely to the collapse of the old system. Good health services also encouraged movements of individuals from rural to urban centres.

2.4. MODES OF CREATION OF INDIVIDUAL PROPERTY

Individual property can be created in one of the following ways:

2.4.1 CLEARING VIRGIN LAND

As it is generally the custom, an individual who is bold and industrious enough goes and clears a piece of virgin land or forest and use it for farming. When this is done and no body challenged his being there, such individual acquired a perpetual interest therein. Here, the individual acquires such land not only for farming but also for residence. In so doing, he does not just acquire two/or more pieces of land in the same place but he will get one piece of land in a particular area and another or others some where else. Thus a person may have several landed property spread all over the village.

2.4.2 GIFT TO AN INDIVIDUAL

A gift of land is a gratuitous transfer of land from the donor to another with the intention that the

rights of the donor, (owner) shall pass to the donee, that is to whom the gift is made. Customary Law has from very early times recognised the transfer of land by way of gift from one group to the other but a well known grant to an individual occurs when a family makes an absolute gift of a portion of its land to one of its members for meritorious[29] or enterprising services[30]. For instance, a gift of land to a stranger may be done in order to reward him for his contribution for the progress and well being of his host. Instances of these specific contributions may include a case where a stranger is appreciated for his military powers and assistance during the slave trade[31] or where he is industrous on the farm. He may also be given land where he is transparently good and honest in his dealings with the host. Thus in Agbloe v. Sappor[32] a part of family land was given as a gift to Sappor in appreciation of his efforts to redeem family property pledged by a previous family head. For a gift to be valid, it must have been done out of a free volition of the donor. If a gift was influenced by any undue influence, the gift can be declared null and void and would not transfer what it had purported to.

A gift of land may either be absolute or conditional. A gift is absolute when it does not have conditions attached to it. It is also known as simple gifts and

it has the same legal effect as sale, that is, it confers absolute title or ownership of land with all its incidents. Absolute gifts exist under Nigerian and Cameroonian Customary Land holdings. With the consent of the whole family, land could be, and was given outright to family members and to strangers in need. Thus in Balogun and Ors V. Oshodi/Chieftaincy[33], the Oshodi family claimed an unconditional proprietory interest in the Oshodi compound granted to them by a white-cap Chief of Lagos. It was held that:

> "... the land could be alienated to a stanger with the general consent of the family. Otherwise Oshodi Tappa could not have obtained a title from the white-cap chief to whose family he was himself a stranger."

Conditional gifts were made subject to certain conditions or satisfaction of a particular thing or time. This type of gift does not operate as a gift in its legal sense until the pre-condition is satisfied. For example, a person making a gift of a car to his daughter subject to her passing her LL.M. degree. Even if the daughter has taken and is using the car, it is not a gift until she has got her LL.M Degree and that is the only time when the gift becomes legally valid. Most gifts under the customary land law of Nigeria and Cameroon are of this type. It was held in Chief Etim & Ors. V. Chief Eke & Ors[34] that:

> It is now settled law that once land is granted to a tenant in accordance with native law and custom, whatever be the consideration, full rights of possession are conveyed to the grantee. The only right remaining in the grantor is that of reversion, should the grantee deny title or abandon or attempt to alienate...

Conditional gifts are not considered to be gifts because they do not confer absolute title to the grantee. The grantor is still the owner, subject to the fact that he cannot alienate the land to third parties. Such alienation by the grantee is not only void, it also affords the grantor a good reason for forfeiting the tenant's grant. Furthermore, a customary tenant can only use the land for the purpose for which the grant was made and cannot change the prescribed use without the consent of the grantor. This means that if a grant is made for farming, the grantee may not plant economic trees or convert the land to a building estate. In some areas like Yoruba areas, the grantee may not even reap palm fruits,[35] unless they have been planted by him with the grantor's permission. From the foregone, one will not hesitate to say that conditional gift is a bar to individual landholding.

2.4.3 ALLOTMENT TO AN INDIVIDUAL

Allotment of Communal or family land is one of the earliest methods of creating individual property known to customary law.

Allotment is made by the Chief or family head out of communal or family land respectively to individuals. Not every grant of communal land to an individual is an allotment, as the chief's powers extend to allocating portions of communal lands. If tribute is payable the presumption is that the land has been allocated and not allotted. It is possible under Yoruba Law as well as in former West Cameroon for land to be allotted by the Chief to an individual. Most of the villages in the North-West province of Cameroon like Bafut, Bali, Mankon allot lands to individuals and my father's[36] own land was allotted to him by Chief Wanki Nebachang[37] of Mambu-Bafut, in 1945.

2.4.4. SURVIVORSHIP:

This means that if many persons acquire property and happen to die leaving only one member, he would be regarded as the sole surviving member for purposes of landholding. The Ghanian authorities argue to the effect that the family property would in such circumstances change in nature and become the separate property of the surviving member.[38] There has been no statement on this point in Cameroon and Nigeria, but there had been an assertion of similar import in one textbook[39] on Nigerian Family Law to the effect that:

> "There is of course a rule of survivorship in family property, though in a different sense from joint tenants. In family property, if the other members die without issues, the last surviving member takes the property absolutely".

2.4.5 PARTITION

Customary Law has from early times recognised the possibility of terminating family holding by partition. The power to demand a partition of family property is one of the ancient rights of the members of the family where there is a serious friction within the family which cannot be settled. In Lewis V. Bankole (Supra), the question posed by the court as to the remedies available when there is an unsettled dispute between members of the family, Chief Ojora answered that:

> "If they cannot settle it, the Chief will go and inspect the property and partition it."[40]

This statement of Customary Law was assented to by the other Chiefs. The effect of partition has always been to give to each member of the family an absolute interest in his allotted portion. The partition may also be carried out through a voluntary arrangement among the members. That is to say they call on a third party to do the partition. Chiefs ELETU AND ASHOGBON as expert witnesses described it in the case of Richardo V. Abal[41] as follows:

> "The Council of the family or of neighbours as the case may be, would divide the property into two or more parts as required and the eldest child whether male or female would take first choice."

2.4.5.1. Partition by Consensus of all the Members of the family

This is done during family meetings where they may agree that the family property be partitioned into plots and each member takes his own share, thus becoming individual property. This is well illustrated by the case of Balogun V. Balogun[42] where the land in dispute originally belonged to one Oloko Balogun. In 1903 the Children of Oloko Balogun, by deed partitioned the whole of their father's property among themselves. One of the children, Ali Balogun, in addition to his own portion, later purchased the portion acquired by another of the seven children. He died intestate leaving two sons, the plaintiff and one Yesufu Balogun, who partitioned between themselves their father's share of the property. Later Yesufu conveyed his share to the plaintiff by deed. The plaintiff claimed against the defendants, the Children of Yesufu, a declaration that he was absolutely entitled to Ali Balogun's share of the property and for the ejectment of the defendants. On the other hand the defendants claimed that the land was family property and that the deed of conveyance executed by their father was ineffectual. In dismissing the defendant's claim, Graham C.J. said:

> It being established that there can be..., absolute alienation of family property by general consent it is clear that the 1903 partition deed, to which all the members of 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 and conveyance by and between the sons of Ali Balogun effectually vested in the plaintiff the absolute title of Ali Balogun to which the 1936 conveyance... referred which it is not disputed include the premises of which the appellant now asks for recovery of possession.

To effect a valid partition, the consent of all the principal members of the family is required. In the case of a principal member who is not available, the absence of consent will not affect the validity of disposition.[43] It is submitted that, a partition made in pursuance of an agreement to which the head of the family was a party but to which one or more vital members did not consent, would pass a voidable title to each allottee. Such a title would be perfected on a conveyance of the grantee's plot to a bona fide purchaser without notice of the defect in the agreement.[44] This position holds true in the North-West Province of Cameroon. In the case where a principal member is an infant, his consent may be disregarded. But Graham, J. stated the contrary[45] where he said that where there are minors their representatives must consent to the partition. He said:

> "Obviously if the proper representatives of the minors consented, a binding scheme of partition could be arranged".

He found that in the case before him, there was the consent of the representative of the infants. Thus the pronouncement made, as to the consequence of partition without the consent of an infant's representative is obiter.

2.4.5.2. Partition By Court Order

The right of asking for partition is a basic right of each member of the family. Partition is a convenient escape from serious and frequent family bickering and the courts are always guided by this knowledge in granting or refusing partition. The jurisdiction of the common law courts to partition property to individuals goes back to sixteenth century statutes[46] and was applied by the Customary Courts as Statutes of General Application.[47]

Eventhough a member of the family has the unrestricted right to apply to the court for a partition, it seems that the court will not order a partition of family property at the request of a member unless there is a dispute in the family which renders the maintainance of family ownership unwise in the interest of peace in the family. This principle was elaborated upon in Lopez V. Lopez,[48] where Combe C.J. Said:

> Where there has been a persistent refusal by the head of a family or by some members of the family to allow other members of the family to enjoy their rights under native law and custom in family land, the court has exercised, and will continue to exercise, its undoubted rights to make such order as will ensure that members of the family shall enjoy their rights and if such right cannot be ensured without partitioning the land, to order a partition.

The plaintiffs' claim was dismissed for want of any ground which could justify the court in ordering a partition of the land without any disturbance.

The court may also order a partition of the family property when the head of the family or those who are in control of the management of family property mismanaged it. Mismanagement of the family property means that those in charge are managing it not in the interest of all the family members.

Partition of family property may also be ordered where there is a dispute in the family over the property so that the functioning of the family property is not guaranteed or becomes impossible. When this is established before the court, it has no choice but to partition the family property.

There could be an order for the partition of family property when the property can no longer be used as family property.

That is, when the property is too small so that it does not serve the purpose of keeping it as family property. Thus in Ajibabi V. Jura,[49] the court ordered a partition of family property consisting of a two-roomed house, which could not provide residence for all the family members.

Finally, the court may order a partition of the family property when it is just and fair under the circumstances.

When family property is partitioned by consensus of the family members or by court order, the joint family land holding comes to an end and individual properties are created.

2.5. INDIVIDUAL INCAPACITIES TO OWN LAND

This refers to the disabilities that may hinder individuals from owning land under customary law both in Cameroon and Nigeria. It is on this basis that one is proceeding to analysing cases of certain persons who are subject to disabilities restricting the interests in land which they may hold, create or alienate.

2.5.1 Infants or Minors

By definition, an infant is a person who has not attained the age of majority. There is no doubt that minors are individual members of the community for purposes of property ownership but owing to their inferior social position in society, their rights in either family or community property are different from those of the adult individuals. This is because they cannot fulfil the customary law requirement of effective use in case of farm land or having separate apportments allotted to them in the family house. For this reason, they do not hold land directly. What normally happens is that, an adult relative, for example the father, uncle or brother will hold the land for the infant on trust until his attainment of puberty. So there is no doubt that a minor has rights in family land because according to Obi S.N.(1966)[50].

> "If minors do not have rights and interests in family property then when partition takes place, a sub-branch of the family with only minors as its members will be disregarded in the partition."

In the case of Agusibo V. Agusibo,[51] an unreported case in Onitsha, the court held inter-alia that, a minor could hold land through a trustee and that for the purpose of partition he would rightly be given one.

In the case of alienation, the consent of a minor is not needed,[52] but in the case of partition, his consent is required.[53] To entirely ignore the consent of the minor is unfair. In conclusion therefore, one could say that in most of our customary systems of property holding, minority per se is no bar to the holding of property though these rights are held on trust for them until they attain majority.

2.5.2 Slaves

These are those whose ancestors were either servants to the family or were offered for sacrifice in the olden days. Formerly, they had very little rights in family property until they were emancipated. However, the real position of these slaves depended very much on whether they were completely assimilated or not. In places where assimilation was not complete, their rights and interests in family property were limited, compared to those of blood members. Accordingly; these categories of individuals do not in certain respects enjoy the plenitude of powers of disposal which the normal family member does; for example, he may have to pay to his master some tributes for his holding and may be forbidden to plant permanent or economic crops on the land allocated to him. These areas include Oweri, Onitsha and Ihiala.

In the areas of assimilation like Opopo and Bonny District in Nigeria, the slaves were allowed to participate in most of their customs. They do not pay tributes or render services as a condition of their tenure. The extent of the land right of assimilated slave is illustrated by the case of Alaka V. Alaka & Ors,[54] where the plaintiff, issued execution against certain lands at Epetedo in Lagos and the claiment, one Aminu Ekri claimed to be entitled to a share thereof. It appeared that the lands concerned were originally granted by one Chief Oshodi to one Oguntusi, one of the domestic slaves of Oshodi. The defendant in the case was a fellow slave of Oguntusi, but the claimant failed to prove that he or his father was, but it was clear that atleast he was a slave's slave of Oshodi. Nicoll C.J. delivering the judgement of the supreme court held:

> I am satisfied on the evidence that the land in question was given by Oshodi to the headman of his household in trust for all his (Oshodi's) household. The appellant was clearly a member of his household, whether as son or slave or slave's slave is immaterial. As such therefore he has sufficient interest to oppose the property being sold for the debt of another member of the household.

In the North West Province of Cameroon, Slaves in general were being assimilated in those days. They were treated as those of the Ibo land in Nigeria.

2.5.3. Women or Females:

In general, a married woman or female is subject to disabilities to own or hold land under customary land law both in Cameroon and Nigeria. Customary law does not recognise the rights of females in family property and it is difficult for a female to own a self-acquired property. Women were considered as having indirect rights in family property. This means that they have a right as dependents to reside on such property and cannot be turned out of any rooms in their actual occupation without an alternative being provided for them.

As regards the allocation of family property to women, the family is under no obligation to give them one. What happened was that they asked for farm plots which they wished to cultivate. Their request was normally granted but if refused they had no legal remedy against the family. In the N.W. Province of Cameroon, women were entitled to farm plots for cultivation. If such a request was refused, it was usually regarded as being abnormal and they may report the family head to some elderly members of the family

Furthermore, if a family decided to partition family property permanently or to alienate it outright, it is under no obligation to consult with its female members. In fact, it may even be lawful to partition an area occupied by a woman without her knowledge. This means that women had no say in the management of family property, no were they entitled to share in money realised from the proceeds of such sale.

However, under S17 of the English Married Women's property Act 1882, which is a statute of General Application in both former southern Cameroon and Nigeria, it was provided that:-

> "in any question between husband and wife as to the title to or possession of property, either party may apply in a summary way to the court, and the court may make such order with respect to the property in dispute....as it thinks fit."

It is clear from the provision of this law that in both Cameroon and Nigeria, a woman or a female member of the family will have a say in family property and will be rightly entitled to acquire and own one.

Although this statutory provision negates the point being made on tne capacity to hold land, the position under customary law has not changed until perhaps reference is made to the statute.

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CHAPTER THREE

3.0. STATUTORY LAND HOLDING

From the down of history traceable at least to ancient Greece, there has been legislation on land. Solon is well known for his abolition of landed debts in Greece and placing an upper limit on the quantity of land that can be purchased.[1] Even in Rome as far back as 367 B.C., the Licinio Sextian Law limited the acreage of any land to 500. In 342 B.C. by controlling interest rates in land and reducing the amount of land, the law successfully acted as a bar against the subjugation of the poor by the rich by means of loan capital[2]. In England, from the Norman Conquest stretching through to the war of the Roses, the upkeep of the army and the duty to serve the king was closely tied to the system of land tenure, a situation which gave rise to the compiling of the Domesday Inquest[3], which served as the basis for an equitable system of land tax. In France, one of the principal causes of the 1789 Revolution was the redistribution of property.

From the foregoing, it is evident that Cameroon and Nigeria did nothing new under the sun when its legislators passed the 1974 and 1978 laws respectively. Historically, these laws are the product of many years of more or less timid attempts which date as far back as the German and British days.

The main enactment which regulated land holding in the Cameroonsunder British administration as earlier stated in chapter one was the Land and Native Rights Ordinance Law of 1916, This, and the other Land Ordinances applicable in the territory continued to be applied to West Cameroon. In fact, these Ordinances continued to regulate land matters in the English speaking provinces of Cameroon up to 1974, when Land Legislation was enacted for the whole of Cameroon. Since the land and Native Rights Ordinance was not Originally intended to apply outside Nigeria, it was necessary to modify some of its provisions when it was applied to the Southern Cameroons in order to make the Ordinance suitable to the circumstances of the inhabitants of Cameroon. The British Administration had effected some changes in the Ordinance as applied in the Southern Cameroons but these changes were mostly terminological and the changed status of the territory on attaining independence in 1961, meant that further modifications had to be carried out in the provisions of the Ordinance to reflect the changed political situation. These were carried out by the government of West Cameroon.

The powers vested in the Governor of Nigeria by the Land and Native Rights Ordinance with respect to the Southern Cameroons were from October 1, 1961 exercised by the Prime Minister of West Cameroon,[4] While the Land and Native Rights Ordinance operated in Northern Nigeria under the British administration, the Government of Northern Nigeria, after independence in 1960, enacted the Land Tenure Law, 1962. The new Law was reported to have only improved and modified the existing law in accordance with the Socio-political development of the region.[5] The law governing land tenure remained essentially the customary law in the Southern protectorate, except for some small and particular strips of land to which some statute laws applied. Such statutes include the Native Lands Acquisition Proclamation of 1900, the Crown Lands Management Proclamation, 1906 and the Native Lands Acquisition Ordinance, 1908. In the Colony of Lagos, English Statutes relating to land like land (Perpetual Succession) Act, Conveyancing Act were introduced. Rights and dealings in land within the colony were governed by statutes. No customary land law applied except in matters relating to the use and enjoyment of land.

The United Republic of Cameroon, came into being on June 2, 1972. There was the unification of laws on the Creation of the unitary state especially in the field of land law considering the importance of land to the country's economy, one of the tasks which the government intended to carry out without delay. A Commission was set up on November 14, 1972, 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 of Cameroon. The Commission was then required to prepare draft legislation syncronizing the English, French and Customary rules of Land tenure for application in the territory. The Reports of the Commission resulted in the enactment of three Ordinances on land tenure, state lands and compulsory acquisition on July 6, 1974.[6] These were followed by three Decrees[7] two years later, which provided for the detailed application of the Ordinances. The first of these Decrees established the conditions for obtaining certificates of title to land, it can rightly be regarded as dealing with registration of title to land. The second sets out rules for the management of national lands.

National lands fall under the first of the 1974 Ordinances concerned with the question of Land tenure. The third Decree deals with the management of the private property of the state.

On the eve of the enactment of the 1974 Ordinances in Cameroon, the rules of land holding operating in the territory were haphazard because they were based on at least three different systems of law, namely, English, French and Customary Laws, where the English and French Land Laws substantially overshadowed the local Customary land laws. It was not the intention of the Cameroon government that the situation should persist for long. The first indication of government policy with regard to the land tenure situation came from the President of Cameroon at a press-Conference held in Yaounde in 1973, He stated in this connection that:

> .....This means first of all completing the work of unification within the framework of the new national institutions by harmonising the national legislation in those areas where disparities still exist. This is both an urgent and delicate

> task; urgent because it is obvious that sets of laws which correspond to different principles cannot co-exist for long within a unitary state ; delicate because it affects the traditions and values of men. This is in any case particularly necessary as it regards land and forestry regulations.[8]

The Land Tenure Law of Northern Nigeria, 1962 could not effectively solve the land tenure problems of Nigeria. This was due to population pressure, urbanisation and Socio-economic growth, with social and economic problems connected with land issues. These factors led to migration or drift of population from rural to urban centres in the search for improved and better living conditions.

The Federal and State Governments wanted to establish various development projects for which they needed land but the acquisition was becoming increasingly difficult as a result of specualtion. Bare land which had no marketable value whatsoever under the traditional system of land tenure has now attained a high market value. Land became so expensive that the cost of a bare plot of land was so much for an average Nigerian. Even acquiring land for public purposes by the Governments become very difficult and sometimes even impossible because of cost of compensation.

Furthermore, statutory law was necessary in Nigeria in response to the public outcry on the high rent in the country and also to create a basis for the assessment of compensation in respect of land compulsorily acquired for public purposes.

In addition there was the emergence of statutory law in order to remove the controversies resulting at times in loss of lives and properties.

The government wanted to streamline and simplify the management of ownership of land in the country. Moreover, the government also wanted to assist the citizenry irrespective of his social status to realise his ambition and aspiration of owning a piece of land where he and his family can live a secure and peaceful life.

Lastly, statutory laws were enacted in a deliberate effort to unify land tenure in Nigeria.

Due to the above reasons, the Federal Government lamented the situation in the whole of Nigeria in the following terms:

> Government requires land on an increasing scale for its development projects. This is also true of a private sector. Although legislation exists empowering the Government to acquire land compulsorily for public purposes, it has become difficult to do so at reasonable cost in some of Nigeria's urban centres. Several projects in the Second Development Plan have failed to take-off because of the difficulty in obtaining land in major urban centres, Many private projects must have also run into similar obstacles. Even where land was readily available, the price is often prohibitive, and compensation claimed and paid by Governments have been generally much higher than the true opportunity cost of land. This situation has obviously been aggravated by the activities of land speculators who purchase land which they do not intend to develope, hold on to them till development has substantially increased their market value and then sell at abnormal profits.9

This problem was more acute in the Southern part of Nigeria where bare land had already acquired a high market value. In the Northern part where the problem had just begun, people became apprehensive.

It became no longer an easy matter to get an allocation from the Chief. Land speculation all over the urban centres of Northern Nigeria became well pronounced and practiced at a high level of dimension. The Rent Control Panel appointed in 1976 to study the system of land distribution and speculation recommended inter alia that the Federal Military Government should take over by statute all undeveloped land in the country. Thus, it became generally agreed that the Government should do something about land distribution in Nigeria, and the Federal Government decided to act by looking into the land problems in the Country. In June 1977, it appointed a Panel with the name, 'Land Use Panel' to examine, study and analyse the various land tenures in the country and recommend steps to be taken to streamline them. The panel went round the whole country and took evidence from various individuals, organisations and institutions. On the 29th of March, 1978, the Head of the Federal Military Government announced the promulgation of the new statute with regard to all lands in the country.

This chapter will examine the present land tenure reforms in Cameroon and Nigeria in general

and the individual tenure in particular. It will further examine the techniques adopted in fitting the various categories of individual property in these countries into the framework of the present land legislation .

3.1 INDIVIDUAL INTEREST IN PROPERTY

In Cameroon individuals hold land known as 'Private Property'. One does not need a scholar's mind to grasp on reading through the June 1972 constitution that cameroon's supreme law recognises if not guarantees the right to private ownership of property which is a key issue in modern capitalism. Concrete prove of this constitutional guarantee is Ordinance No.74/1 which recognises private lands. Private Land has been defined to mean land owned by private individuals.

Eventhough most legislation recognise private or individual ownership of land, however it is equally true that a good number of States in Africa do not allow for private ownership of land, the cases for Tanzania and Nigeria being the clear examples. In Tanzania, all land was vested in the President of the Republic who held it for and on

behalf of the nation. This was so made plain by the Land Tenure (Village Settlement) Act of 1963 and reiterated with greater emphasis by the now historic Arusha declaration of 1967 instituting Julius Nyerere's African Socialism. Meanwhile, pending the full realisation of this, a transitional arrangement has been made whereby the occupier of the Land is allowed to hold and administer the same in accordance with well assorted regulations;[10] adopted to suit the eventual take-off of the nation's development plan. At the Matured state of the land law of that Country, the State would simply lease out parcels and closely supervise all transactions thereto.[11]

In Nigeria, Section 1 of the Land Use Act has vested in the Governor of the State the power to administer all lands in the State. It should be noted that what is vested in the Governor is the administrative power to control and not proprietory power. The difference between the two types of control is that the former is just ordinary day to day administration and the latter is the power to control which includes ownership and right to decide whether to give part of it to another person or not. It is therefore wrong to say that it is the latter power that is vested in the Governor.[12]

The situation in Cameroon has in practice been the search for a convenient meeting point for both private individuals and public interests in land that best meets the needs of both. Ordinance No. 74/1 is to the effect that the state shall be the guardian of all lands in the Nation.

Having established a solid basis for the discussion, it is intended to now address the more technical aspects namely; the categories of individual property recognised by the 1974 Ordinances. Prior to the enactment of the Ordinances, there existed in the country at least eight types of property over which individuals held property rights. Of this number, five were accorded the status of full property rights in accordance to the first of the 1974 Ordinances. These are:

(a) Registered Lands;
(b) Freehold Lands;
(c) Lands acquired under the transcription System;
(d) Lands covered by a final concession and;
(e) Lands entered in the Grundbuch

The combined effects of articles 4,5 and 17 give rise to 4 others, namely:

(i) Lands covered by Certificates of Occupancy;
(ii) Lands covered by 'Livrets Fonciers'[14],
(iii) Lands covered by Land Titles resulting from final judgements, transfers, assignments and conveyances[15] and;
(iv) Unregistered customary land which is in effective occupation by a Cameroonian[16]. Some of the above categories also apply to individuals in Nigeria.

3.1.1 REGISTERED LANDS

Prior to the coming into effect of the new Land Ordinances of 1974 registration of Land though unknown to land owners in Anglophone Cameroon was a very familiar feature to their French speaking brothers. Its origins were buried in the success achieved by the Land registration experiement effected in Tunisia in pursuance of a French decree dated 1/7/1885 and its subsequent implementation in Afrique Equatoriale Française by the decree of 28/3/1889. Cameroon did not come under French influence until after the first world war, when a decree was enacted in line with all her Master's Colonies. This Law was however, amended in article 5 of the 9th of January 1963 décrêt-Loi, which was further amended by article 1 of Law No.66/3 of July 7th 1966. This article provided that in the event of establishing propriatory rights subsequent to a proper investigation by the relevant competent authorities, the land so

investigated is to be registered in the name or names of the person or persons thus asserted to be the owners.

All what the holders of the title deeds over lands, except the holders of land certificates obtained under the System of registration in the former East Cameroon, were required to do to bring their tenure into line with the present legislation was to lodge their deeds at the lands services of their areas for 'publication' (entry) in the land registers. Where any of them fails to have his title deeds recorded in the land register, Section 3(2) states that dealings which he effects with respect to the land in question shall be of no effect. Since the Ordinance accords the status of full property rights to these pre-1974 title deeds it follows that their validity is not affected by failure to have them recorded in the land register. The inescapable conclusion which results from such a situation is that the fact of proprietorship is ascertainable not from the land registers established under the present legislation but from earlier registers some of which were created by the German administration since 1896.

Similarly, the origin of land registration can be traced back to the advent of modern conveyancing which began with the influx of Europeans into the West

African Coastal settlement of Lagos around 1872. According to Webber J. in Balogun V. Oshodi[17], registration was introduced in Nigeria as a result of the proliferation of sales of land after the arrival of the Europeans. One significant thing in this decision is the fact that registration emanated from the complication brought by the conveyancing practice and thus the two go hand in hand. The Law governing land resistration in Nigeria is the Land Instruments Registration Law applicable in each of the three former regions i.e. Northern[18], Western[19] and Eastern[20]. These laws derive their origin from the Land Registration Act of 1924.

Section 3 of the Registration of Instruments Law of Northern Nigeria provides that the Governor shall establish Land Registry from time to time for the registration of instrument affecting land and each registry shall have such registers and other officers as may be required. The procedure for land registration is the same as in Cameroon. Thus, any grant of land executed after the commencement of this law shall, so far as it affects any land, be void unless the same is registered.[21] It should be worth while noting that these land registration Acts were inadequate, and according to Omotola J.A. (1984)[22]

the Land Use Act was enacted to cure these inadequacies. The Act begins this supposed cure by taking away absolute ownership of land from the individuals or community and vesting it in the Chief Executive of each state, the Governor.[23] The individual(s) could now only have a right of occupancy. But this is not to say that the Land Use Act has repealed or replaced the Land Registration Acts, but merely that it has provided and added title securing system.

From the foregoing one can rightly say that registered lands both in Cameroon and Nigeria, confer ownership rights to the individual. This is because, when the document is a genuine one and all the other facts surrounding it are correct and the document is registered, then the property belongs to the person who registered it and the law will protect him from others. However, if the document is obtained by fraud, misrepresentation, undue influence or even mistake of fact, it does not protect the interest of the person who registered it. This means that the validity which the registry was supposed to give to the registered property will not be available. In other Words, registration of an instrument affecting property does not cure any defect in the instrument and registration alone does not confer upon it any

effect or validity which it would not otherwise have had;[24] as was the case in Crayem V. Consolidated African Selection Trust Ltd.[25]

Holders of registered lands are not under any duty to execute any act, not even undergoing the formality of re-registration, so as to revitalise their rights. It should therefore be noted that the position of registered lands is in keeping with the view expressed by many writers for instance that "being the most supreme, and apparently the most perfect form of title under the new law, holders of such property, including the church and moslem organisations... are not expected to do anything with them"[26]. In one word, registered lands are equivalent to lands covered by a land certificate as per the 1974 Land Ordinances and the Land Use Act[27].

3.1.2 LANDS UNDER THE GRUNDBUCH

Article 2(e) defines lands entered in the Grundbuch as "Lands subject to right of private individual property." This type of land does not apply to individuals in Nigeria as the name clearly indicates. Its origin is German and was codified in Cameroon at the time when Cameroon was a German Colony. It is a voluminous land register found in the land office in Buea.

Behind these registers is boldly engraved the word 'Grunbuch' and in brackets, the following English words 'Ex-Enemy Properties in the Cameroons under British Mandate'. But under the Land and Native Rights Ordinance[28], some of these lands were bought by the Nigerian Government, though under the Land Use Act these lands were not termed Grundbuch subject to individual ownership. These registers cover only lands situated in Anglophone Cameroon.

Perhaps a more detailed examination of the land enshrined in the Grundbuch would help in our comprehension of what it actually is . As a whole, the registers were in various volumes with each opening up with the heading 'Grundbuch des Schukgebietes Von Kamerun', a translation of which reads 'land Registry of the Cameroons Protectorate:' At the bottom of each register is 'Band number,' follows the sheet no or 'Blatt N.F.' as the Germans would have it. The first page of each register contained the 'Rezeicknung des Grund-Flucks' meaning 'description of the land', and adjacent to this, more to the left, there is the 'ubichreihungen' or the 'transcriptions'. Under the two headings were inserted details in respect of the 'Reftand heile' or constituent parts of the land in question on the one hand and details covering taxation and size of land that is, the 'Nrides Steventbuchs,'

The next page of the register contained information about the number and the owner's full names, the time and grounds for acquisition of the land, and the true value thereof. Having dealt with section 1, Section 2 is found on the third sheet. That sheet indicates the number, the amount and the terms of encumbrances and restrictions on the property, and finally, modifications which include registration and cancellations. In terms of practical example, one finds under Terms of Encumbrances and Restrictions on Property the following, translated by the authorities. 'In respect of land granted to the protestant Missionary Society in Basel, registered on 12/9/1803 for mission station in Victoria', and further on that;'It is obligatory on the part of the proprietor to maintain at all times the piece of land registered on sheets 85 to 92, owned by the Basel mission Society, free and undisturbed to Limbo River between the Government washing House and the old Buea Street.' A restriction then appears to the effect that no houses shall be constructed 'for the purpose of selling native liquor and ammunition and gunpowder' on the land registered on title sheet No.1. From the provisions as above, one notes that for the Germans and those who sought title to land under them, such titles were to be held

'free and undisturbed' and this 'at all times' in which case the grant was perpetual and intended to confer such supreme power of use and abuse as conferred or conferable under the 1974 Ordinances.

The question one may well ask is: was it necessary for the legislator to require the holder of this deed to lodge the said deeds at the provincial or Divisional Lands Services for publication in the Land Registers and threatening any such failure with refusal to recognise the rights so granted? Indeed, but for its colonial overtures, one would have suggested that it was so necessary but that, it was thought, would be venturing into slippery grounds.

In sealing up the register the German Reichstag provided that it be added, 'Registration by virtue of the lease of 1/8/1903 on the.... 2/11/1903', and then signed by a government official which in the Basel Mission case, was Lammerman. It is obvious that, there seems to be hardly any difference worthy of that name between the German Grundbuch and the present system of registration under the 1974 Land Ordinances.

3.1.3. RIGHT OF OCCUPANCY HOLDINGS:

This right was issued in pursuance of the Land and Native Rights Ordinance Cap 105 and the land Registration Ordinance Cap 108 of the 1948 edition

of the laws of the Federation of Nigeria and Cameroon. It was introduced from Northern Nigeria into the English-Speaking Cameroon by the British Administration in 1927. The Land and Native Rights Ordinance was the main land legislation in the territory up to 1974, when the present reforms replaced it. Prior to 1955, all applications for right of occupancy were filed in Enugu, one of Nigeria's three land registry offices, in 1955, precisely from the 5th to the 7th of January that year, all land documents were moved from Enugu to Buea. The exact documents thus transferred comprised of; the land register of deeds, register of applications for certificates of occupancy enclosing the applicant's initials and the purpose for which the certificates were being sought.

The highest interest in Land under the land and Native Rights Ordinance and which was evidenced by a certificate of occupancy was a right of occupancy. This right was defined in section 2 of the Ordinance as 'title' to 'the use and occupation of land and includes the title of a native community lawfully using or occupying land in accordance with native law and Customs.'

There were two types of rights of occupancy namely, those of natives and those of non-natives, or customary and statutory rights of occupancy respectively. The customary rights of occupancy were held in perpetuity, whereas the statutory rights were held for a maximum period of 99 years. They were renewable and like the German Grundbuch were subject to a number of conditions one of which was the annual payment of rents. It was also further provided that the consent and prior authority of the state had first to be obtained in writing before any disposal or mortgage of the land or landed property was carried out.[29] Failure to observe this provision of the law nullified the arrangement entered into as was the case in the Liquidator of Kamerun Ltd V. W.M. Brandts Sons and Co. Ltd.[30] In the case in point, the respondent Co. held debentures against which the company had charged all its assets. The court recoiled from the view that such debentures were valid even in respect of land in West Cameroon relying for its support on the absence of the consent of the P.M. as required by S.11 of the Land and Native Rights Ordinances, and S.14 of the Land Registration Ordinance. This invalidity of the debentures did not however extend beyond the company's land.

Perhaps a true nature of a certificate of occupancy was brought to light in M.E. Eseme V. Esso Afrique Equatoriale[31] where Endeley J. Noted that " a certificate of occupancy is a leasehold agreement. It is a contract in which case, actions arising from such a document are actions in contract and the contractual relationship in this case has been created by the Law; where in the contracting parties are the Government and those who enjoy customary rights over land in West Cameroon." From the principle established in this case, it is clear that irrespective of the Provision of section 13 of the L.N.R.O. to the effect that the revocation of a right of occupancy is unlawful save under stated conditions, it does not mean that the mere possession of such a certificate is final.

Thus, a holder of a certificate must show that the certificate complies with the native law and customs of the former West Cameroon, as enacted under Section 5. Thus in Chief Thomson EWONE V. A.G. & Director of Lands and Survey[32] the high authority of the Federal Court of Justice annulled a Certificate of occupancy issued against the native law and customs of the Bakweri people in the former West Cameroon.

The granting of a certificate of occupancy extinquishes all other rights over the land. This principle was established in the case of Oke Kalu & Odum Kalu V. The Trustee of Bassel Mission[33] Where the West Cameroon Count of Appeal noted that where a person remains on land as a trespasser, he cannot raise the fact of occupation against he who holds the certificate of occupancy. In this case, the court went on to say that "the fact that the defendants knew about 15 years ago that they are to quit the plots will not allow one to say that the defendants can plead laches and acquiescence," This was definitely by reason of the fact that the plaintiffs have every right of action to eject trespassers from their land.

It should be noted that the Land and Native Rights Ordinance was replaced by the Land Tenure Law of Northern Nigeria, 1962, and presently, the Land Use Act, The certificates of occupancy under the Land and Native Rights Ordinance was recognised by both the Land Tenure Law and the Land Use Act. The Land Use Act States in Section 5(1) that, "It shall be lawful for the Military Government in respect of land, whether or not in an urban area(s) to grant Statutory right of occupancy to any person for all purposes." This section gives the Governor the power to grant right of occupancy to any person, for any purpose

and over any land be it urban or other land. A statutory right of occupancy means under S.50(1) of the L.U.A. a right of occupancy granted by the Governor pursuant to section 3 which states that, "Subject to such general conditions may be specified in that behalf by the National Council of State, the Military Governor may for the purposes of this Decree by order published in the State Gazette designate the parts of the area of the territory of the state constituting land in an urban area." This section provides for the division of the State Land into 'Urban', and 'Other Land.' In the Case of Customary rights of occupancy, section 6(1) states that "It shall be lawful for Local Government in respect of land not in an urban area:

(a) To grant Customary rights of occupancy to any person or organisation for the use of land in the Local Government area for agricultural, residential and other purposes;" Thus, a Local Government can grant Customary rights of occupancy in respect of land not in an urban area to any person, or organisation.

A statutory right of occupancy granted under the provision of Section 5(1) (a) above, must be for a definite, usually a minimum of 25 years and a maximum of 99 years. This is well stated in section 8

as follows:

> "Statutory right of occupancy granted under the provisions of section 5(1)(a) shall be for a definite term and may be granted subject to the terms of any contract which may be made by the Military Governor and the holder not being inconsistent with the provision of this Decree."

From the above provisions one may conclude that rights of occupancy holding are individual properties both in Cameroon and Nigeria.

3.1.4 LANDS COVERED BY A FINAL CONCESSION:

Lands covered by a final concession are lands obtained under Decree No. 64/10/COR of 30th January 1964 enacted in order to amplify and apply Décrêt Loi No. 2 of 9/1/1963. The decree was published in the official Gazette of fourteenth February Nineteen Sixty-four and sought to regulate the allotment of state lands understood by article 1 to mean lands and real estates held by the state in what ever form conferring full interest in it in the state in such manner as therein enumerated. Article 2 further explains that all lands and real estates supporting buildings, construction works, and improvements of whatever nature conceived, born, and maintained by tax-moneys provided that such lands had not been disposed of prior to ninth January, Nineteen Sixty three.

This type of property is equivalent to state lands in Nigeria.

The procedure of obtaining such lands was that, the Prime minister's consent was sought and obtained after the catography of the area has been determined and broken up into various plots (art.3). The relevant authorities then proceeded to allocate the plots by way of auction sales as provided under article 6. Such sale must first be advertised in the official Gazette as well as by the use of posters stating all the relevant information in connection with the sale. Interested persons may file in their applications including a plan of the proposed structure to be erected on the land. In terms of the actual disposition, all those whose plans were declared as within acceptable standards were called upon to bid and the highest bidder purchases the plot. Land purchased in this manner is subject to articles 9 and 11, that is, to the realisation, of the stipulated improvements, it is a conditional sale, up on the erection of the structure.

As evidence of this conditional dealing, the State issues a title deed containing, on the face of it, a resolutory clause to its benefit, pending such grantee's performance of his own part of the contract.

The effect of this clause being the prohibition of any Sale or other disposition of the land thus acquired though for obvious economic reasons mortgage transactions thereon were allowed. If the concessionaire properly executes his own part of the contract by effecting the condition contained in the grant, the state acting through the agency of a land commission presided over by the District Officer inspects the works. Art. 29 then provides that, upon such inspection, the Secretary of State for lands shall issue an order either forfeiting the title or not, extending the improvement time for a period not longer than two years. He may also decree the withdrawal of the resolutory clause enshrined in the title deed where the land was sold, lastly, he may grant the final concession in which case the originally provisional concession will be replaced by a 'titre definitif' or final title.

Under the 1974 Ordinances, the holders of such final concessions just have to convert them into land certificates as stipulated in art. 3 thus:

(1) When the present Ordinance enters into force, the holders of the rights flowing from the deeds referred to in art. 2(b)(c),(d) and (e) shall lodge the said deed at the Provincial or Divisional Lands Service for publication in the land register.

Art. 3(2) further stipulates that failure to make such publication would nullify the legal guarantees associated with land titles.

3.1.5. FREEHOLD LANDS

Section 3 of the Land and Native Rights Ordinance declares all lands in former West Cameroon to be native lands and then goes ahead to enumerate a few exceptions amongst which are "all those lands over which a native had acquired a valid title or interest before the first day of March 1916."

Although the Land Tenure Law of Northern Nigeria replaced the Land and Native Rights Ordinance in 1962, the 1962 Law retained a number of provisions of the 1916 Ordinance including the above.[34] Although the Land Use Act replaced the Land Tenure Law of 1962, and itself a comprehensive Law relating to the control and management of the land use it has provided in Section 4 that the former State Land Laws governing land acquisition and use in the States where the Land Tenure Law of the former Northern Nigeria applies, in accordance with the provisions of that Law.[35] From the above provision, one can say that those lands over which a native had acquired a valid title or interest before the first day of March 1916 under

the Land and Native Rights Ordinance and subsequently under the Land Tenure Law, still hold such lands under the Land Use Act as per section 4.

Ownership of freehold lands can be effected only when a native could show that such right is not short of the right to freely alienate the land. Where therefore a native goes out to acquire a title in land which he is in possession of, then it must be taken that he is acquiring title under English fashion, and in this case, freehold lands, the title with the greatest quantum of interest known in English Law.

Freehold lands obtained in Cameroon was intended to carry the same effects as freehold lands in England. That is recognised as conferring a measure of title as in article 2(b), Ordinance 74/1 which states that;

> "The following categories of lands shall be subject to the right of Private property:
> (b) freehold lands;"

Provided that such holder proceeds to lodge the same with the appropriate land officers for publication in the land registers as provided by article 3(1).

In Nigeria, the problem is that of terminology. Lands held under S.4 of the L.U.A. Could be regarded as freehold lands though they are not termed freehold as such.

3.1.6 THE "LIVRET FONCIER"

The 'Livret Foncier', was introduced in French Cameroon by Decree in 1932 by the French Administration.[36] Article 4(1) makes reference to lands covered by a 'Livret Foncier' or 'Land Register Book.' Under that decree, it is provided that after a detailed investigation, a 'livret foncier' could be issued stating on the face of it what customary rights were enjoyed over a piece of communal land and by whom.

The essential point is that 'Livret Fonciers' were issued only to customary communities and in fact as in law, this decree did consolidate customary rights over a piece of land without seeking to modify them to suit Western convenience.

Under the decree, customary communities as well as its members could apply to the French administration in the territory for the recognition of their customary land rights only. A successfull applicant was issued a 'Livret Foncier' as evidence of his recognised customary land rights, but the French Administration nevertheless regarded this document as inferior to a certificate of title to land which was tenable under another Décrêt also passed in 1932, on the registration of title to land.

A holder of a 'Livret Foncier' could then apply for a certificate of title over his land in keeping with the procedure laid down in that Décrêt. When the territory gained independence in 1960, the land tenure reforms later carried out in 1963 upgraded the status of a 'Livret Foncier with the intention of making it have the same status with a certificate of title. But this development notwithstanding, still did not attain the status of a certificate of title. This is still the position under the present legislation. It is submitted that it was not accorded its rightful place in the present reforms.

Holders of 'Livret Fonciers' are required under penalty of forfeiture of rights to convert the said 'Livret Fonciers' into land certificates within the period of ten years from the date of entry into force of Ordinance No.74/1 as per article 4(1) for lands in urban areas. The period is extended to fifteen years for lands in rural areas.

3.1.7 HOLDERS OF FINAL JUDGEMENTS

Rights in land are rights in rem and as such, are valid against the whole world. An extensive investigation is usually necessary before the issue of a land certificate in order to ensure that those claiming such rights are truly entitled to them, and so, in case of dispute, recourse is made to the courts to arbitrate.

Man is still to evolve a system of determining rights generally and over land in particular. One therefore has no doubt as to why the Cameroon Parliament and the Nigerian Federal Government provided in article 5(1) and section 40 of Ordinance No. 74(1 and the Land Use Act respectively that, holders of final judgements to establish or transfer rights shall, notify the competent lands services within a stipulated period of two years from the date of publication of that Ordinance for conversion into land certificates. Under the Land Use Act, it provides for pending cases in the court or tribunal which commenced before the Act came into force. Whether these cases were in respect of title to or interest in land, they must continue. Irrespective of the right or interest sought in the case, the final judgement of the court or tribunal shall only be in respect of right of occupancy which may be statutory or customary. If the case that started in the court or tribunal was for a declaration of title in fee simple under customary law, the applicant will not be granted a fee simple interest but a customary right of occupancy.[37]

'Final judgement' here is clearly judgement against which there is either no appeal as provided by the

legislator or against which there is room for appeal but no appeal has been effected within the limits provided by Law. Judgements here must also be understood to include all pronouncements rendered by the judges sitting in their official capacities and would include in particular judgements by customary law courts by virtue of the 1955 customary court law in the case of English-Speaking Cameroon and Nigeria.

Any failure to convert any such final judgement into a land certificate or rights of occupancy within the stipulated period would result in forfeiture of such rights except of course that where such judgements relate to lands occupied bona-fide, such occupants have a preferential right in the event of the Sale of the Said lands provided they consent to effect on them such developments as is deemed appropriate. It should be noted that these provisions apply only to judgements passed before the coming into effect of the 1974 Ordinances and the Land Use Act and does not include those obtained thereafter.

3.1.8. LANDS ACQUIRED UNDER THE TRANSCRIPTION SYSTEM.

This was a system started in France under the March 23rd 1955 Law conceived to protect the rights of third parties inter se. Following the cliché of 'first come first served,' the Law seeks to obstruct this by evicting from land or negation of rights first obtained over land by any other party whose rights are subsequent thereto. The 1955 Law simply establishes a scale of preference, but does not without more, establish that the original grantor owns the land or possesses rights over it. What the law does in this case is that all transactions connected with the land are registered and published, an act which in itself confers no titles.

The transcription system is short of any force of proof because it only renders the public, what the subsequent owner and the third party have achieved in private, and by so doing, put other third parties on notice to make inquires and implicitely warning them that the true or previous land owner cannot bestow rights on the land contrary to those granted under the transcription transaction. It stops short of guaranteeing that such transaction so entered into is proper or that the subsequent or alleged owner is in fact the true owner of the land.

To avoid the full force of this rule, an extensive investigation is usually undertaken before effecting the transcription; a factor which confers on it some measure of credibility as evidence of the title provided there is publication as afore-said and in conformity with article 2106 of the Code Civile.[38] That article provides in part that the privilege of making such a transaction does not have any effect with regard to land acquired under the transcription system, unless there has been publication of such a transaction.

Generally, failing to proceed to Publication of lands acquired under the transcription system as provided by article 3 Ordinance 74/1 would relegate them by implication, into national lands.

NOTES AND REFERENCES

1. Solon (590 B.C.), during the development of the Athenian State under him, in The Legacy of the Ancient World by W.G. De Burgh (1957) New Edition, Mac Donald & Evans, 197.

2. Ibid at 208

3. Norman Conquest resulted in a body of new and uniform rules. This led to the Compilation of the Domesday Survey which was a remarkable register of Land holders compiled by the Conqueror as a basis of taxation, Hargreaves A.D.(1963) An introduction to the principles of Land Law ,8

4. Ngwasiri C. Land Law of Cameroon Vol.2, 4

5. Yakubu M.G. (1986) Notes on the Land Use Act , Ahmadu Bello University Press, Zaria, 7

6. These Ordinances were respectively given the numbers 74/1, 74/2 and 74/3.

7. The three Decrees issued on April 27, 1976 were respectively numbered as Decrees No. 76/165, 76/166 and 76/167.

8. Ngwasiri C, Supra, 63.

9. Yakubu M.G. (1986) Supra, 9

10. A report of the Rome Conference CC.166 of 11/3/66.

11. See Abolition (of Freehold Titles Conversion and Convernment leases) Act 1963 which effectively converts holders to lesees.

12. Yakubu M.G.(1986) Supra, 13

13. It is a huge Voluninous book found in the Land Offices in Buea and it is German in birth.

14. See Art. 4(1)

15. See Art. 5(1)

16. See Art. 17(2)

17. (1981) 10 N.L.R., 36 at 50

18. Cap. 58, Laws of Northern Nigeria(1963)

19. Cap. 56, Laws of Western and Mid-West States.

20. Cap. 72, Laws of Eastern Nigeria(1963)

21. Section 14, Laws of the Federation of Nigeria, 1963 Cap. 58.

22. Omotala J.A.(1984) Essays on the Land Use Act, 1978 1984, Lagos University Press. P.1

23. S.1 of the Land Use Act.

24. S.25, Laws of the Federation of Nigeria, 1963, Cap. 58

25. 12 W.A.C.A. P. 443

26. Ben Simo(1974), Guide Notes on the Cameroon Land Ordinances.

27. Sections 5 & 6

28. See 4th Schedule of the Land and Native Rights Ordinance, These were lands bought by the Nigerian Government after the 2nd World War and Vested in the Governor-General." Per Mencham V. S.D. Nyadjro. W.C.C.A. (1967) W.C. 182/67(unreported)

29. See Art. 11 L.N.R.O.

30. (1965)-(1967) W.C.L.R.

31. (1968) W.C.H.C. - WC/175/68(Unreported)

32. (1967) F.C.J. 2/9/1967, Bul. No.1, 271.

33. WC/7/67 and WC/967 (unreported)

34. Niki Tobi(1987) Nigerian Land Law. Ahmadu Bello University Press. P. 13.

35. S. 4(a) (b) of the L.U.A.

36. Décrêt of July 21, 1932.

37. See Yakubu (1986) Supra, 52

38. "... Les previleges ne produisent d' effect á L, egard des immeubles qu' autant qu'ils sont rendus publiques par une inscription á la conservation des hypotheques,"

CHAPTER FOUR

4.0 DISPOSITION OF RIGHTS IN INDIVIDUAL PROPERTY

4.1 The Quantum of rights Acquired

Having considered statutory landholding, this chapter will discuss the quantum of rights the individual owning land may enjoy. Quantum of rights means the rights an individual has in the land he occupies. An individual owner of property has the freedom to use and dispose the property as he wishes. He may also decide to make a gift, mortgage, pledge, sell or even destroy such property. The right enjoyed by individual owners of property can be classified following the duration and enjoyment of such rights, privileges , powers which control the behaviour of individuals in relation to each other. Thus, the classification of rights into absolute and transferable.

4.1.1. Absolute Right :

Professor Nwabueze(1972)[1] states that absolute right is the totality of rights and powers that are capable of being exercised over a thing. This means that the owner can make use of the property as he likes. Under customary law, absolute right of ownership is vested in the individual and this is the greatest interest in land admitted by customary tenure.

The English tenure of fee simple was at variance with that of customary law of absolute ownership. However, in the past, there had been a tendency to equate the fee simple absolute in possession to absolute ownership. This, at least, is what the judges did in Alade V. Aborishade[2] where family land had been sold and the question arose as to the exact quantum of interest thereby transferred. In that case the court held that it was "... an interest or estate equivalent to a fee simple..." Whether the interest is described as absolute or merely fee simple estate, the essential thing is that for all practical purposes the extent of rights conferred is held in perpetuity and is transmissible through heirs. 'Fee' denotes that it is an estate of inheritance, i.e, an estate which on the death of the individual tenant, is capable of descending to his heirs; and the estate is one which might continue for ever. 'Simple' distinquishes the class of heirs who could inherit, that is, heirs in general including collaterals. 'Absolute' means a perpetual fee,[3] Finally, the 'fee simple absolute' must also be in possesion, a term which in this context, includes the receipt of rents, profits or the right to receive the same as

per section 205 of the Law of Property Act, 1925.

The individual owner of property has the right to alienate the property and his right to everything under, on or over the property. According to Nwabueze (1972),

> "The real essence of ownership lies therefore in the power of alienation; it connotes essentially the totality of the rights of disposal over a thing".

An owner of land has the right to use and dispose of minerals in the subsoil, or, the top floor or his house to any height. In short, he may use his land in any manner he thinks fit including the right to destruction and committing waste.[4]

When one is said to enjoy an absolute interest in property, he does not only enjoy but bears the responsibilities that arise from such property. For instance, an owner of a goat, cat, pig, car, house has the right to use and dispose such property as he likes. However, if such property causes harm or destruction to someone, the owner is liable to pay for such damage caused.

Strangers are also known to have absolute interest in landed property in Cameroon and Nigeria. Formally the natives of almost all parts of both countries hardly sold land to strangers. The strangers had absolute interest over improvements made on the land. In most cases rents were paid to the head of the family or community, after the necessary consent of the people had been sought. The practice today has been for strangers to be landlords. A stranger can secure a piece of land for farming purpose and will have an absolute interest on whatever he produces.

The vesting of all land in the state should not be taken as meaning that private interest in land have been abrogated. The Cameroon Ordinance of 1974 allows citizens to hold an interest in land, as well as the L.U.A. of 1978. Citizens having landed property are guaranteed the right freely to enjoy and dispose of such lands as per S.1 of Ord. 74/1. This section gives owners of property absolute interest. However, the owners of such lands are not really free to dispose the property to any one at their convenience, without state authority.

From the discussion above, one would be right to conclude that, the phrase 'absolute interest' is inappropriate in describing interest enjoyed by owners of landed property. This is because the absolute rights enjoyed by the individual over land has been limited by rules of customary law which cover certain traditional rules of administration laid down by traditional rulers of the district and by limitations imposed by the State. As E.C.S. Wade (1982) puts it;

> "Today the enjoyment of Private Property right is subject to many other incursions of an economic or social character.... Today owners' rights are subjected to a wide variety of statutory controls and obligations which government has imposed upon owners and occupiers in the public interest."5

It is because of various limitations which exist over the holder of property more especially land, that the use of the adjective 'absolute' is usually avoided.

4.2 RESTRICTIONS ON INDIVIDUAL RIGHTS

4.2.1. Customary Restrictions.

Eventhough the individual landholder enjoys absolute rights over the land, he is nevertheless subject to customary restrictions. Customary law recognised the power of the political head of the

Community or family, in the exercise of his rights of administration, to impose various prohibitions and restrictions limiting the power of disposition of individual holders of property. The tendency had been for those powers to be taken over by the new statutory native, local or regional authorities,[6] however in the small villages the headmen still claim the right to continue to exercise most of their ancient functions. The restrictions took the form of prohibitions against alienating land to strangers and natives.

4.2.1.1. Restriction against Alienation to Strangers.

Strangers were persons who were new to the tribe, district or village in which they wished to settle. Though a stranger could be granted a piece of land to farm, he can not be considered to have absolute interest over a house built on such a land. Endeley J. (as he then was) remarked in the case of Roman Catholic Mill Hill Mission V. Robert Abunaw[7].

> "Even though exhibit H restricts the Plaintiff's use of the land he occupies to farming only, he admits that there are atleast four houses and several other marked building plots already on the land. This is certainly not in keeping with the conditions spelt out in Exhibit H."8

Exhibit H here is a certificate of occupancy which was issued by the Victoria Traditional Council to the plaintiff in recognition of his customary right of occupancy over the disputed land which he acquired from one madam Emma Mokomo by purchase in 1962. The plainfiff was a stranger in Victoria (now Limbe) where the land was situated. The judge did not hesitate to paint out that the plaintiff had to respect the terms governing the rights he acquired in the land by restricting its exploitation to farming and not doing the opposite, that is, building houses on the land.

The justification for such restrictions in former times can readily be appreciated. Land is a cohesive force uniting the people, any one wanting to settle amidst them must be accepted to them,

The absolute prohibition against alienation to strangers gradually broke down in many areas of Nigeria and Cameroon, for with economic progress it was soon recognised that the larger the number of non-natives that can be attracted to buy land and settle in an area, the greater the trade and prosperity that will come to the area.

For instance, in the past, the Fon of Mankon in the N.W.P. of Cameroon prohibited the alienation of land to Ibo people in that town. Today, with Modern Commercial links the Ibos are free to purchase land and build houses in Mankon Town. The law first allowed leases to strangers provided the transactions were sanctioned by the local leaders. These leaders may be the Chiefs or Abas in Nigeria or the Fons, Chiefs or Kwifor in the N.W.P. of Cameroon.

4.2.1.2 Restrictions to Natives.

There are situations in the N.W.P. of Cameroon restricting alienation of land to natives. Restrictions to natives were common in cases of hatred and Ostracism. There were certain tribes in Cameroon which had a natural hatred against others and in such a situation, an individual was not allowed to alienate his property to another member of such a tribe. Furthermore, if a native had been Ostracized for say having sex with the fon's wife, land could never be alienated to such an individual in that community and even neighbouring communities if they were aware of such an incident.

In certain circumstances, his already self-acquired property could be confiscated.

4.2.2. Statutory Restrictions:

The Cameroon and Nigerianlegislators did not on their part hesitate to impose restrictions of individual rights in property. The greatest right one can now possess in land is the right to occupy and make use of the land. This is supported by the issuance of certificates of occupancy and land certificates by either the Governor or Local Government and the provincial or Divisional Officer incharge of land respectively. The individual also have the right to alienate his property after the necessary consent has been sought. Statutory restrictions may take the following forms:

4.2.2.1 Sub-Soil

The occupier of land under the 1974 land Ord. does not own the sub-soil vertically underneath his land down to the centre of the earth as stipulated in Art. 3(1) and 3(4) of Ord. 74/2. The same is true under the Land Use Act as per S.12(1), Under Art.9 of Ord. 74/1, such occupiers of land necessarily have a right of support to their land and are free, subject to

mining, town planning and hygiene regulations, to exploit quarries on their land. By Local legislation, the entire property and control of all mines and mineral oils in, under or upon any lands in Nigeria and of all rivers, streams and water-courses throughout Nigeria, is vested in the state.[9] No person can prospect, mine, or remove materials from any lands in Nigeria without a lease or licence from the Governor. However, just like in Cameroon, certain local rights are allowed for the inhabitants of the locality who may continue to take minerals like salt, iron ore, Soda, potash etc. From land out side a mining area if it had been their custom to do so.[10] Similarly, S.3 of the same Minerals Act Cap 121 Laws of the Federation of Nigeria and Cameroon, 1958 is not in conflict with the 1974 Land Tenure Ordinances which allows for state control of all minerals and waters.

The above view clearly differs from the English concept as enunciated in A.G. V. Morgan[11], where gold and Silver were the only minerals excluded from appropriation by the owners of the land.

4.2.2.2. Air Space

Although the English Common Law defines land to include everthing "up to the sky and down to the centre of the earth", it is idle to pretend that the owner of the land owns the air-space over it up to the sky. Were this so, the national air-space would be fragmented and from a practical point of view, this would render air transportation exceptionally hard if not impossible for the number of people whose consents must be sought before a plane can fly from one area to another.

This is therefore the unassailable ground for the common law recognition that there is no cause of action for trespass through the air-space above land in such circumstances as to involve no interference with its resasonable use. To this effect, the Civil Aviation Act of 1949 particularly S.40 have received a universal approval. For Cameroon, Ordinance 74/2, 3(1) classifies the air-space as natural public property and by so doing uplifts it from the realm of individual rights in which case it shall not be liable to private appropriation.

Thus, every state has complete and exclusive sovereignty over the air space above its territory as per Art. 1 of the U.N. Convention on International Civil Aviation 1944. This convention is only applicable to Civil Aircraft, and shall not be applicable to state air craft, and no state aircraft of a contracting state shall fly over the territory of another state or land thereon without authorisation by special agreement or otherwise, and in accordance of the term's thereof. The contracting states, when issuing regulations for their state aircraft shall have due regard for the safety of civil aircraft.[12] Thus an individual may bring an action in tort or otherwise for 'the passage of dangerous projectiles' say 75 feet above the land in such a way as to cause damages to the owner of the land as in Clifton V. Viscount Bury.[13] Furthermore, the permanent occupation of the air space over the land of another without his consent first sought and abtained, for example, the branches of a tree, is both nuisance and trespass. There is no similar provision in the L.U.A. as in the L.T.O. of Cameroon, but one may suggest that there is similar effect taking into consideration the Civil Aviation Laws above.

The owner of the land is however free to use and abuse the land so owned in theory but in practice, such freedom is hedged with restrictions thus conforming the fears of some philosophers that there is no freedom anywhere not even in the use of land.

4.2.2.3. Taxation - Modern property taxes on land are simply the old forms of tributes paid to the land owning communities. Provision was made to pay taxes on land under the land and Native Rights Ordinance. Art. 7(1) of Ord. No. 76/165 stipulates that an application to transform certificate of occupancy into land certificates must be accompanied by another certificate from the Department of Lands that all rentals and dues have been paid. Art. 19(1) of the Ord. and S.5(1) of the L.U.A. enumerate landed property transactions which shall be subject to the collection of fees. They include the establishment of land certificates, miscellaneous entries in the land register, issue of statement of entries in the register or of miscellaneous certificates at the request of corporate bodies, topographical topometric, breach of any covenant in a certificate of occupancy, breach of any condition express or implied, which precludes the holder of a statutory right of occupancy from alienating the right of occupancy.

It is suggested that this list is barely indicative and not exhaustive.

4.2.2.4 The State Governor

The Governor of the state has been given powers under the L.U.A. to control the use of land by individuals as stipulated in S.1. The State Governor under S.28(1)(3) is vested with the power to revoke statutory and customary rights of occupancy respectively. The Governor can revoke right of occupancy for overriding public interest. A right of occupancy may be revoked even within the time the holder is in rightful possession for certain reasons. The holder will not argue that the period indicated on the certificate of occupancy is unexhausted. A right of occupancy can only be revoked when the revocation is in the interest of the public. This means that there must be an overriding public interest before the right of occupancy can be revoked. Overriding interest under the L.U.A. means any transfer of right of occupancy done by the holder without the relevant consent of the granting authorities, when the particular property is required by the Federal

Government or state or Local Government for public purposes, when the property is required for mining purposes, oil pipelines, when the property is required for the extraction of building materials, where the holder of a right of occupancy has breached any of the conditions contained in the certificate of occupancy and when the holder of a right of occupancy has refused or neglected to accept and pay for the certificate of occupancy which was issued in evidence of right of occupancy.[14] To amount to effective revocation, it must be signified under the hand of the governor himself or a public officer duly authorised in that behalf by the Governor as was in Majiyagbe V. A.G.[15]

The state governor also has the power to fix penal rent in case of a breach of covenants in a certificate of occupancy under S. 19. This is usually made when the occupier or holder has agreed or covenanted to develope or effect improvement on the land and has failed to do so. The offender will pay the rent in agfeed instalments over a period of twelve months. Sub section 5 gives the Governor the power to revoke right of occupancy of a person on whom penal rent has been imposed.

In this case, revocation can take effect from the period for which rent has not been paid.

The State Governor also has the powers to impose penalties on occupiers of certificate of occupancy. Section 37 provides a penalty of one year imprisonment or a fine of ₦5,000.00 on any person who may lay false claims to the Governor or Local Government in respect of any land in the state. Furthermore, S.43 deals with prohibition and penalties for unauthorised use of land. No person can in an urban area erect any building, wall, fence or other structures upon land or enclose, obstruct, cultivate or do any act on or in relation to land which a person does not hold a right of occupancy or not been allowed by the Governor to do so. Such a person is guilty of an offence and liable on conviction to imprisonment for one year or a fine of ₦5.000.00.[16]

4.2.2.5. The Local Government

The L.U,A. has not given such wide powers as given to the state governor to the Local Government. S.2(1)(a) vests the control and management of other lands to the Local Government while S.6 gives it

power to make a grant of right of occupancy to any person and for any purposes which include agriculture, residence and grazing. The Local Government has a right or power over and in the land in its area of jurisdiction to enter at any time and occupy for public purpose.

The Local Government also have powers to restrict the use of land under the Local Government Laws.[17] The most important powers, are those in relation to the control of land use and alienation to strangers.

Through its powers to make by-laws a Local Government Council has extensive powers to control both direct and indirect over the use of land. These include control of plant diseases and destruction of injurious plants or insects, control of methods of husbandary (including bush firing), control of the movement, keeping and diseases of animals. They also have power to require any person to cultivate sufficient food crops for the subsistence of himself and his dependants.

The Local Governments can also control the alienation of land to strangers within their areas under the Local Government Laws. No alien can acquire any interest or right in or over any land from a native unless such alien has been approved in writing by the Local Government Council. Having lawfully acquired such an interest, an alien can only transfer that interest to another alien similarly approved.

4.3 DISPOSITION OF INDIVIDUAL RIGHTS

Disposition or transfer of rights in land implies the displacement of rights previously owned by a person to another. For interest in property to be transferred or disposed of to another person, the transferor must have the power to transfer such interest. This must be so from the Maxim Nemo dat quod non habet, which applies with particular force. The various ways of effecting a transfer of rights in land to another can be divided into voluntary and compulsory transfers.

4.3.1. Voluntary Transfers:

Voluntary transfer of property refers to the power of disposal of interest in property by an individual without being forced. In such a case, an individual owner of property has the power to use, enjoy and dispose of his property without restrictions from any body, as opposed to family and community owned property where consent of other members is necessary.[18] Voluntary disposition of property include bequeath, leases, pledges, gift , Mortgages and Sales.

4.3.3.1 Bequeath

This is a method of tranferring interest in personal property by will. An owner of land or of any interest in land has the freedom to dispose of his property by will. Transfer of interest by will was rare in olden times, yet the dispositions of property were not unknown; and there were instances where dying persons make oral declarations as to the rights of inheritance in their property of the members of their families and thereby either restricting or enlarging the interest of members who otherwise would have enjoyed no more or less than the usual customary rights.

Wills under customary Law take the form of a death-bed declaration by the testator as to the disposition of his properties on his death, known in English Law as 'nuncupative will'. This oral death-bed declaration or disposition of property does not have the same finality as wills in English Law though it is always complied with. It is essential that the declaration should be in the presence of responsible witnesses. A declaration made in secret to the beneficiary alone, or to one of the interested parties alone is invalid. In Ayinke V. Ibidunni[19], the expert witness stated that there should be four witnesses. What is clear from that judgement is that one witness is not enough. A death-bed disposition may not be complied with under customary law in the case of a transfer of property by the owner to a stranger. Bentsi-Enchill(1964) points out that "the customary Law does not permit persons to bequeath to an outsider a greater portion of his property than is left for his family."

To prevent misunderstanding among the beneficiaries, a person, instead of making a death-bed declaration, should draw up a written will before his death.

This will indicate the manner in which personal property would be distributed. A will must be in writing.[20] No special words are required but the will must be signed by the testator or by some other person in his presence and at his direction, and it must be attested by two disinterested persons to witness the signature.[21] In the case of Eyong Eyongebi Susan V. Ruth Tako - Aya,[22] the deceased who had 3 wives and eleven children decided to execute a will which he got Mr. A.E. Tambe and Mr. T.N. Oben as witnesses. Two permanent buildings in Mamfe and the plank house in Kumba were bequeathed to one of the wives. Appellant objected on grounds that the will was not genuine and that it did not comply with the definition of a will under the Wills Act of 1837 as amended by the Wills Act of 1952. The trial judge held that S.9 of the 1837 Act was complied with and the will was property attested by A.E. Tambe and T.N. Oben. It was held that the Appellant was free to apply for a letter of Administration for the property not bequeathed by the will to respondent and to quit from respondent's property.

Bequeathing of individual property under customary law and statute law is recognised both in Nigeria and Cameroon. In both countries, death-bed disposition of individual property is recognised provided it does not go against the native law and custom. Normally the personal property of a deceased individual has to pass down to his limited family of children and wife. But where he decides to make a death-bed declaration on how his property should be distributed, this will be followed provided it is not at the disadvantage of the family and in favour of an outsider. Even where such a declaration is made in the presence of responsible witnesses it would be invalid.

A valid transfer of property by written will or customary will (death-bed declaration) will transfer interest in such property from the grantor to the grantee.

4.3.1.2. Lease:

A lease is an agreement between the landlord and the tenant whereby the former who has a right of occupation or title in the property grants part

or the whole of the property for the use and enjoyment of the latter for an agreed rent and time. The landlord is the person entitled to the immediate reversion of the property and the tenant is the person occupying the property on payment of rents or otherwise. A lease must specify the definite period of time that the lease can subsist, whether short or long the time may be. After the end of the period specified, the property will revert to the owner or lessor. When a lease agreement has been entered into, unless and otherwise decided no party will terminate it before the end of the specified period. They are normally renewable.

Customary Law lease was in the form of loan or borrowing and two types were recognised either according to their duration or the consideration given in exchange for them. Since the definition of a lease is different from the practice under native law and custom, it was used indiscriminately to define certain transactions under the native law and customs.

Various forms of transanctions classified according to their duration by customary law range from a tenancy agreement granted for a definite purpose, a term of years absolute for instance from harvest to harvest, and a tenancy agreement of indefinite duration which was granted mainly to strangers assimilated into the Community and likely to live there for an unforseeable length of time. The second mode of classification adopted by customary Law is according to the consideration provided. Thus one may distinquish a gratuitous tenancy otherwise known as a rent-free tenancy, where occasionally, gifts flow to the lessor from the lessee. There is also the share and service tenancy where the yield of the land is shared between the contracting parties. In most cases, such loans or leases become permanent especially when made to close relatives or on the death of the lessor.

Unlike the oral lease agreements made under customary law, leases under statute law is made by a written agreement which must be signed by the parties so creating it or their agents there unto, lawfully authorising in writing.

Although there is no one comprehensive statute on the subject in Cameroon and Nigeria, the English statutory provisions still apply in these countries. For example, by section 161 of the Property and Conveyancing Law, 1959, a tenant holding under an agreement for a lease in Nigeria, if he has become entitled to have his lease granted, may obtain relief against forfeiture for breach of covenant under the section just as if a lease had in fact been granted to him. Even where a court does not grant specific performance, the agreement can still be set up as a valid defence for a claim for possession, and in such a case, the landlord is entitled to claim for use and occupation.[23]

At the time of creation of a lease, it is implied that the lessor has to give to the lessee an exclusive possession and quiet enjoyment of the property. In this case, the lessee should not be subjected to harassment or disturbances from the landlord or his agent or anybody so acting for him.

For instance, a lessee who realises that his next door neighbour has tuberculosis which the landlord knew about it is held that the landlord did not give to the tenant a quiet and safe enjoyment of possession. Thus in Collins V. Hopkins[24], it was held that upon the letting of a furnished house, there is an implied warranty in the nature of a condition that the demised premises shall be reasonably fit for habitation at the date fixed for the commencement of the tenancy. A house in which a person has recently been suffering from pulmonary tuberculosis does not comply with such warranty and the tenant is entitled to repudiation of the contract of tenancy on the ground that the premises are not reasonably safe for human occupation. In Emegwara V. Nwaimo[25] it was decided that tenants were entitled to exclusive and undisturbed possession until such time as the lessor established by law process that the tenants had forfeited their rights of occupation. A landlord who enters the land to disturb the tenant's possession was held liable in damages for trespass and was restrained by injunction from further acts of disturbance. Thus, the landlord is not allowed to use force to eject his tenant in order to recover his property.

He must follow the laid down regulations as to how to recover the property. The required notice must be given and if there was a quick way of recovering to which all the parties accepted it should be applied. Notice to quit the property is usually thirty days and if the tenant does not quit, a notice of ejection usually seven days is made after which the landlord is entitled to eject the tenant. In Nigeria, the landlord is required to fix rents in accordance of the provisions of the Rent Control Laws like the Rent Restriction Ordinance.[26] Again, there is a duty on the landlord not to derogate from the grant of the lease once the parties have agreed upon. Whether the parties have provided for this or not, the law presumes the parties are bound by it. In Aldin V. Clark,[27] the landlord's new building on adjoining land which interrupted the free flow of air to the tenant's premises was held to be a derogation from his grant.

On the other hand, the tenant has also duties to observe while the tenancy is subsisting until the lease is completely discharged.

He has the duty to pay rents[28] to the landlord as agreed upon or as the landlord may reasonably demand. If he defaults in the payment of such rents, the landlord can enfore payment of rents by an action in a court of law for the payment of the rents. He may also seize the tenant's goods or property or he may forfeit the tenancy. However, forfeiture can only take place if there is a clause in the lease agreement to that effect. Unless otherwise expressly stated in the contract for the lease, it is the duty of the tenant to pay rates and taxes like water and electricity bills, telephone bills and occupancy taxes. The tenant must not commit waste. 'Waste' is any damage caused to the property that tends to the permanent and lasting loss of the person entitled to the inheritance. It may be voluntary, consisting of a positive act of distruction or damage to the inheritance, or it may be permissive waste, consisting mainly in allowing the building to decay. He must therefore, after his tenancy, hand over to the land lord the property in the condition in which he took it. There is also a duty of the tenant not to assign or sublet or under sublet the property without

the consent of the landlord. There are however, cases which appear that whereby the tenant has exercised reasonable care and behaved like a responsible and respectable person he may sublet or under sublet the property without the consent of the landlord.[29] Under customary law, where the tenant has been in possession for a long period of time, he may sublet the property without the consent of the landlord.

The important point to note is that a successful lease transaction transfers interest in the property from the lessor to the lessee for a specified period.

4.3.1.3. Pledge

A pledge is a delivery of possession and custody of a piece of land by the pledgor to the pledgee to hold and use as security for money or money's worth until the agreement is determined or discharged. A pledge is an indigenous institution known to Cameroon and Nigerian Customary Laws. Pledges of land, were usually made for payments in kind as well as in local forms of currency such as cowries in ancient times.

In Kuahen V. Avose,[30] palm trees were pledged by the defendant's great-grandfather to the plaintiff's father for the purpose of raising funds to pay tribute due from his people to king of Appa. The loan was for the sum of 1,360 bags of cowries.[31] An individual could also pledge his property for the purpose of acquiring brideprice which in some parts of the N.W.P. of Cameroon could be a Cow, Cattle or sheep or pig. Furthermore property could be pledged in order to pay the cost of funeral rites or litigation. The pledgor might find that only the pledging of his property could he acquire the use of an object which he did not have.

Today, with the introduction of money and cash economy, the pledge of land provides an important means of raising money to finance developments in the agricultural sector of the economy, to finance the building of modern family houses and to pay for the education of the pledgor's children. For example in 1976, papa Tumentang of Mambu Bafut pledged his raffia bush at 'Njiumtah' to my father in order to sponsor the education of his children.

The Cardinal principle of a pledge is that it is the ultimate right of the pledgor to redeem as soon as he pays back the money or as soon as the agreement is discharged. The right of redemption is against any person in possession, that means, a pledge can be recovered from the hands of the pledgee or his grand children or even from his ancestors. The difference between the common law and customary law pledge is that in customary law, unlike the Common and Civil Laws, a pledge is always a pledge. This rule was aptly stated in the 1933 W.A.C.A. case of Kofi V. Kofi[32] where the court felt bound to allow recovery of pledged property upon the pledgor's repayment to the pledgee only of the original debt; the borrowing and the payment being separated by sixty long years. This stand was taken by the Nigerian Court in Ikeanyi V. Adigbobu,[33] where Justice Mbanefor said:

> "A pledgor has the right of redemption and it does not matter for how long the land had been pledged, for, in native customary jurisprudence as it is in English Law once a pledge always a pledge."

The equity of redemption is always exercised and allowed by the court when certain conditions can be established. The pledgor must be able to prove the identity of the Land involved, that is stating the location, nature, boundaries of the property etc. The pledgor must also be able to describe the parties who created the pledge, whether it was his own father, grandfather or those who related to the father. The pledgor must be able to state the purpose or reason of the pledge.

It should also be noted that there is no right of foreclossure for the pledgor to redeem, neither is any right given to him to sell the property even after the agreed date of the repayment, except after the order of the court has been given. Furthermore, the property must return to the pledgor in the state in which it was given.

A pledge can be made orally. Today owing to an increase in literacy and the development of Commercial transactions it is not uncommon for pledge transactions to be reduced into written form.

4.3.1.4. Gift.

A gift is one of the means of transferring interest in property by an individual. A gift is a transfer of property from the grantor to the grantee without consideration. When a transfer of property by gift has been made, the grantee usually enjoys perpetuity of tenure. Under the Cameroon and Nigerian Customary Land Laws, gifts of property were made by individual owners to either their children, family members or to strangers, A gift of land is normally for a definite period where a grantor has more than enough land and spares some to the grantee without sufficient land for his needs and those of his family.[34] Gifts of property were common under customary land law because sale of land was rare. Some gifts are made conditional and could be revoked by the grantor if the grantee misbehaved.[35]

In former times gifts of property were made in the absence of written evidence and witnesses under the customary land law. Today, such grants are commonly made in writing and in the presence

of witnesses who have to sign the document purporting to transfer the property to the donee in the form of a gift. This formality is aimed at protecting the grantee against trespassers and fraudulent claims based on oral statement.

Gifts of land are rare today because of the economic value of land which has made individual land owners to favour sale. But once a gift is made, interest in such property passes to the grantee who has the right to exclude everybody in it including the donor. Thus, it is an effective means of transferring interest in property.

4.3.1.5 Mortgage

A mortgage is a security transaction which is designed to secure the payment of money or the discharge of some other obligation for which it is given.[36] It is the most reliable kind of security and its essential nature is that it is a conveyance of a legal equitable interest in property, usually land with a provision for redemption upon discharge of the loan or the performance of some other obligation.

Where he was a day late, he lost the mortgaged property but remained bound to pay the money borrowed. With the development of equity, the law now is that once a mortgage, always a Mortgage.

The applicable law that determines the contract of a mortgage in Nigeria and Anglophone Cameroon is the English Land Law of Tenants and the Conveyancing Act of 1881. Individual owners of property in Cameroon and Nigeria do mortgage their property to obtain loan to meet up with their financial requirements. The right of the mortgagee is primarily on the principal loan plus interest while his right to the mortgaged property is secondary. Having conveyed the property to the mortgagee through the title deeds, all the mortgagor is left with are the right to redeem and the equity of redemption. Therefore, in all subsequent transactions in the land, the mortgagor may not ignore the rights of the mortgagee where he remains in possession of the mortgaged property. With reference to mortgages, Art. 7(2) of Ordinance 74/1 provides that regulations relating to liens and mortgages shall be fixed by law.

There is no provision in the L.U.A., but it is implied that the English Laws on Mortgages are applicable. It should be noted that there are no uniform laws on mortgages applicable throughout Nigeria. For instance, since the pre 1925 Real Property Law applies in most parts of Nigeria the principal method of creating a legal mortgage of freehold therefore is by conveyance of the fee simple to a proviso of redemption.

Once a contract of mortgage has been entered into the interest in such a property is transferred to the mortgagee until the property is redeemed.

It should be noted that the idea of mortgage of landed property never existed in a typical African Society until the recognition of the economic value of land and the introduction of its market value.

4.3.1.6 Sale-

A sale of property is the permanent transfer of rights in property from the grantor to the grantee for a money consideration.

Sale is therefore one of the methods of transferring interests in property. Sale of land was unknown under strict native law and customs of people of the N.W.P. of Cameroon and Nigeria. Land was to be maintained intact for future generations. It was considered to belong to past, present and future generations to come. For instance, Sale of land among the Ibos was in general contrary to customary law.

Today, due to the rise in the Market value of land and its shortage and the development of a money economy sales are common place. Sale of land under Customary Law is a normal contractual transaction arising from a clear offer made by one party to another and accepted by that other, and it has gained a lot of importance in our society.

Some individuals in the N.W.P. of Cameroon, prompted by the quest for money have even sold lands including their living houses thereby rendering their families homeless. This situation is common in the urban centres where the value of land is high. It is doubted whether individuals today, when selling land think of the future generations, as it used to be in the past.

In former times, no writing evidencing the transaction was required. What usually happened was that the transaction was done in the presence of witnesses, for if any controversy arose out of the transfer, the witnesses would be called to testify to the conveyance and its terms. Today, written documents are frequently executed stating the fact of the sale, what portion of land is given and for what interest.

Sale of land by individuals have a statutory base in Cameroon as evidenced by Ordinance 79/17 of 13 January 1979. It is to the effect that any person desiring to transfer his real property shall apply to the appropriate Surveys Service in whose area the real property falls for the demarcation of the parcel in question.

A valid sale of land under both customary and statute laws can be concluded by the handing of the purchase money by the purchaser and the delivery of possession by the vendor. When land is conveyed under both laws, it becomes the bonafide personal property of the purchaser.

He is said to take the absolute title in the property.

4.3.2. Compulsory Dispossession of Rights.

Besides the transfer of interests in property by the will of an individual, there is the involuntary or compulsory transfer of interest in property known under both the 1974 Ordinances and 1978 L.U.A. as:-

4.3.2.1. Expropriation and Revocation for Public Purposes respectively.

The states, in order to achieve the principal objectives of their plan, have the right or power to acquire any land they need. This is indispensable for the setting up of their economic infrastructure, Schools, Colleges, Hospitals and other state projects. Compulsory acquisition subjugates the individual land owner to what is technically called'eminent domain', that is, the power of the legislative body, as part of parliamentary omnipotence, to authorise the compulsory acquisition of his land by some governmental department or public authority.

By the terms of art. 2 of Ord. 74/3, expropriation for a public purpose shall only affect private property as defined in art. 2 of the Ord. to establish

rules governing land tenure. The current decree on the subject is law No. 85/09 of 4th July 1985, to lay down the procedure governing expropriation for public purposes and the conditions for compensation.

The terminology under the NigerianLaw is revocation. The Governor as a trustee of the land in the state is empowered to revoke rights of occupancy for overriding public interest as per S.28 of L.U.A. Under the Land Tenure Law, 1962, Section 34(1) provides that the permanent Secretary can revoke a right of occupancy for 'good cause'. Despite the differences in terminology, it would appear that they convey basically the same meaning.

Overriding public interest in both Statutory and customary rights of occupancy are not defined in the Act, but this can be invoked. This includes any transfer of right of occupancy done by the holder without the relevant consent of the granting authority; whenever that particular property is required by the Federal Government for public purposes.

Public purposes means that anything which the Government has a substantial interest in it; When the particular property is required for mining purposes or oil pipelines or anything connected therewith; When that particular land covered by the right of occupancy is required for the extraction of building materials; Where the holder of a right of occupancy has breached any of the conditions contained in the certificate of occupancy; where the holder of the right of occupancy has refused or neglected to accept and pay for the certificate of occupancy which was to be issued as evidence of the right of occupancy.

For revocation to be effective, it must have been signified[37] under the hand of the governor himself or a public officer duly authorised in that behalf by the Governor and the notice must be given to the holder. The Act does not define a public officer but Section 18 of the Interpretation Act, No. 1, 1964 provides the definition as "a member of a public service of the Federation within the meaning of the Constitution".

The Governor must publicly state that such a person has been authorised to revoke the right of occupancy on his behalf. It must be published in the Gazette otherwise any revocation by any public officer is null and void. This provision came up for interpretation in the the Case of Majiyagbe V A.G. & Ors[38] where it was held that the officer in the Plateau Provincial Office was not authorised by the Governor to perform the act of revocation.

Again, if the revocation is not for a breach of either conditions of grant or those contained in the certificate of occupancy, then if it is for public purposes, it must be confirmed. It is necessary to state the public purpose so that from the glance of the letter you will know that the land is required for public purposes.[39]

Under the 1974 Ordinances,[40] the Ministerial Department or such other public body as requires the land files in an official application stating the purpose of the project and a statement of accounts as to its estimated cost. This is followed by inquiries by a commission of enquiry headed by the Senior Divisional Officer or his representative.

The mission of this commission is to make an inventory of the property found on the land as well as all rights and their owners which have been the subject of registration. In other to ensure that there is no injustice, the law requires that the people likely to be adversely affected by the expropriation be invited at least fifteen days in advance to partake in all the activities of the commission.[41]

All such information as is relevant is assembled and a detailed report made and forwarded to the Minister incharge of lands who issues a decree which transfers the interest in the land, with immediate effect, to the public body seeking it. From the foregone, it is interesting to note that while those individuals affected are in some cases called upon to participate in the expropriation process under the Ordinances, such individuals do not participate in a revocation process under the Nigerian Law. All what takes place is that he is informed of the proposed revocation by serving a notice to him to that effect.

According to the terms of article 9 of Ordinance 74/3, and Section 29 of the L.U.A., expropriation or revocation gives birth to a right to compensation.

It must be noted that compensation under the Nigerian Law is not paid for every revocation. Compensation can be paid only where the revocation was required for public purpose by the Federal or Local Government, where the property is required for the extraction of building materials and finally where the property is required for mining purposes. In all other cases of revocation, the holder is not entitled to compensation. Payment of Compensation under the Nigerian Law is also a requirement of the Constitution which provides that, every person shall be entitled to property and accordingly no property movable or immovable shall be taken possession of compulsorily and no right or interest in such property shall be acquired compulsorily in any part of Nigeria except for public purpose and by or under the provision of a law that (a) requires the prompt payment of compensation thereof and (b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to the High Court having jurisdiction in that part of Nigeria. [42]

Assessment of compensation in both countries is based on three principles; Compensation shall be for

the land itself, which will be the amount of the annual rate rent which the holder pays and this is usually indicated in the certificate of occupancy. Secondly the economic value of buildings and other installations and the value of undeveloped land calculated according to the considerations enumerated under 9(a)(b) and (c). Thirdly, the value of crops destroyed or to be destroyed.

Compensation of revocation for mining purposes is treated under Section 77 of the Minirals Act[43] and it is assessed for fair and reasonable compensation for disturbance, damage which is being done to the surface of the land, and un-exhausted improvements.

Meanwhile artice 7(2) allows the authority in whose favour the expropriation is being carried out to replace compensation in kind to the same value if it so prefers, Section 33(1), L.U.A. provides for resettlement in any other place by way of a reasonable alternative accomodation. The alternative accomodation must be accepted by the holder of the right of occupancy. What constitutes a reasonable

accomodation must be agreed to by the two parties to the transaction. In strict sense, no one single piece of land can be said to have exactly the same value as another.[44] The problem likely to bother the mind of the courts is, supposing an expropriated or revocated person refuses to accept compensation in kind of the same value or of unreasonable value, would he be let free to insist on monetary compensation as envisaged by article 7(1) and Section 29(1)? It is suggested that the revoking authority would have no alternative than to pay compensation. However, it is also suggested that this will depend on the peculiar facts of the case and as it does not appear from the provision of Section 47 of L.U.A. that an aggrieved holder can seek redress in a court of law because it would not lose sight of the fact that government finances may be over-strained were expropriated or revocated citizens show a general preference of compensation in money.

There is no doubt that the compensation is for or is intended to make up for direct material loss, which is immediate, and certain and occasioned

by the eviction. As such, such direct loss as costs of moving a house, or reinstallation do not come within its sphere. Indeed, it is difficult to draw a line between compensation as envisaged by Ord. 74/3 and 1978 L.U.A. on the one hand and compensation under the English Land Compensation Act 1961 which insists on the market value of the property. One will note that whereas in both cases, compensation would have the same results, it is unlikely that the amount would be the same in Britain where it is being determined by the forces of demand and supply, which may not in some cases reflect the true economic value of the property.

Under S.4(4) of Ord. 85/09/85, the victims of expropriation shall be given six months notice, with effect from the date of publication of the expropriation decree to evacuate the property, but in cases of urgency, the time limit shall be reduced to three months as per S.4(5). But under the L.U.A., the rights of the holder of the property comes to an end as soon as the notice of the revocation has been handed over to him or on such

later date as might have been stated in the notice.

The end result of expropriation or revocation is that the title to the land passes from the original individual holder of the property to the government or the public body for whose benefit it is acquired as specified in S.4(1) of Law No.85/09 of 4th July 1985 and S.28(7) of the L.U.A.

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CHAPTER FIVE

5.0 CONCLUSION AND RECOMMENDATIONS

5.1 EVOLUTION OF INDIVIDUAL HOLDING

This thesis compared individual property holding in Cameroon and Nigeria both under customary and statute laws. This has been done by tracing its development from pre-colonial times up to present day. It must be noted from the entire research that the notion of individual property holding under the native law and customs was rare in pre-colonial times. This was judicially recognised in the celebrated Nigerian case of Amodu V. Secretary of Southern Nigeria[1] where it was held that land belongs to the community, village or family and never to the individual, and that the notion came due to the introduction of English ideas. Furthermore, the research has highlighted the misconception of the traditional land tenure system in relation to individual by distinguishing between individual farming, individual interest in family or communal lands and individual title to land. It was discovered in course of the research that, title to land was never vested in the individual but rather in the family and or community.

For this reason, it would be erroneous to believe that individual property existed before colonisation under customary land law.

It is clear from the research that, there are many similarities between individual property holding in Cameroon and Nigeria in the selected areas covered by the research. This was conspicously seen in matters relating to the creation and the disposition of rights in properties. In both countries, individual property could be created by clearing virgin forest, gift, purchase, allotment and by partition of family land. Each of these methods vested in the individual an absolute title in the property. The various ways by which individual rights in land could be transferred to another person were the same in both countries. They include among others, mortgage, sale, gift, pledge, bequeath and lease.

It is worth noting that the evolution of individual property holding was slow in the past but has lately gained tremendous force. The slow process of evolution could be attributed to the economic and Social Conditions of Customary Laws.

Although customary land law evolved to serve the needs of the peasant farmer by providing social and individual securities, it however has not evolved without its short comings in relation to individual property holding. It has been founded that, communal and family land holdings militate against alienation or easy disposition of land to individuals which is a pre-requisite for the proper economic use of the land. This drawback is attributed to the customary land law which requires that a valid alienation can only be made when there is a consensus of atleast the family head and the principal members of the family or community. This condition in modern times cannot be easily satisfied by the individual. The purchase of land as a means of creating interest in land was forbidden under strict native law and customs. Land was considered to belong to the past, present and future generations and should therefore be maintained intact. In addition, land was regarded as a deity and gift from God, therefore it was a taboo to alienate it by means of sale.

For example, in the case of Okiji V. Adejobi[2], A claimed to have derived his title to land through an ancestor, who he maintained had obtained title by purchase 200 years before. The court held that customary law did not recognise such transaction 200 years ago.

A careful study of the system shows that the absence of security of title under the customary land law has been the underlying factor for the absence of individual large scale land transactions. Since most tracts of land were held under native law and customs which required no evidence in writing, most individuals were legally handicapped to mortgage, sell, or pledge their lands to secure loan for money from finance institutions and societies.

Another obstacle on the slow evolution of individual property holding posed by customary land law was abviously the restrictions on some categories of individuals to acquire and own property, like strangers, infants and females.

Strangers were only granted land after the necessary consent had been sought which may or may not be accepted. In most cases, if they were to be granted land, this could take a long time before this was done. This was because under customary law, land was regarded as a social factor unifying the people and any stranger coming to be integrated into the society must be accepted by every member of the society.

Under the customary land law, females were subject to disabilities to own property. The position was that, they could only have the right to stay in the family house, but can not inherit or acquire land of their own. In most parts of Nigeria like in the N.W.P. of Cameroon it was difficult for a female to own a self-acquired property. This was quite evident when they were disregarded as regards the partition of family property.

There is no doubt that infants are individual members of the society for purposes of property ownership, but owing to their inferior social

position in society, their rights in family or community lands were restricted. This was because they could not fulfil the customary land law requirement of effective use in case of farm land. For this reason, they could not own land directly except through a guardian or trustee.

The absence of registration of land held under the native law and customs contributed not only to the economic draw-back of many individuals, but it is also the root cause of many litigations for the declaration of titles to land. The usual method of establishing title to land by oral evidence was undesirable to the individual. In those days of old, land records were unknown and the only form of land recording known as such resulted from personal familiarity with the ground. The question of adequate demarcation of land was not acute in those days. First, as time goes on, human memory becames dim, secondly, the eye witnesses who could have given useful evidence might have been dead or even when they were alive, would not give true evidence.

Therefore, the only evidence at the disposal of the court will be hearsay stories. It was discovered that, long pledges gave rise to endless litigations. More often than not, the pledgee or his successors in title claimed absolute ownership of the land either because he has planted permanent economic trees or because the pledgor had not been keen about the redemption. The above factors contributed greatly to the slow development of individual property holding in Cameroon and Nigeria.

The nature of individual property holding in both countries currently has changed. It is now the rule rather than the exception. This change is partly due to the change in social and economic development of these countries and the development of statute laws. For instance, under the customary land law, an individual could acquire property by clearing virgin land and if nobody challenged his being there, he will acquire an absolute title to it. Today, no individual can think of acquiring property through this means because there is no unoccupied land. This situation is prominent even in the rural areas of the N.W.P. of Cameroon

where certain far-off bushes and hills were abandoned to those who were unfortunate not to have accessible lands either for residential or agricultural purposes. As time went on, people were gradually exploiting these areas at will, because they were considered to be 'no man's land.' These occupants have become the absolute owners and there is no vacant plot there even to be bought with millions of francs. A typical example is Agyati in Bafut which has been turned into a fashionable residential area or district.

The rise in finance-centred economy has made sales for value to be common place today. Eventhough customary land law came to recognise sale of land, a valid sale transaction did not need any requirement of a written document because the payment of the purchase money and the delivery of possession in the presence of witnesses was enough for a prospective buyer to acquire a valid and an absolute title. It is a statutory land law requirement that, a sale of land should be accompanied by acknowledgement of receipt and execution of a deed of conveyance in favour of the purchaser. Thus, in Adelaja V. Salo[3],

De Lestang F.J. said:

> "In olden days the act of giving possession was done publicly and ceremoniously and this public act was the only evidence of the sale. With the advent of education and the impact of European Laws and Customs, the Practice arose and grew to issue receipts for such transactions...."

Gifts of land was one of the modes of acquiring interest in property by an individual under customary land Law. Today, gifts of land are very rare. It is difficult for someone to give away a parcel of land to another without consideration either in kind or cash. Even those who had been given land gratuitously may find it difficult to give part of it to anybody including perhaps even the original grantor. It would rather sound embarrassing to hear that somebody has had a gift of land today. This is again due to the economic value attached to the land.

There has been a changing attitude towards the rights of women to acquire and own property today than it used to be in the past. Under the 1974 Ordinances as well as the L.U.A., females are under no restrictions to acquire and own property. The traditional customary law restrictrictions having been swept away by legislation.

A close examination of individual property holding in the N.W.P. of Cameroon today will reveal that about 50% of the landed property is owned by women. This equality move made possible by legislation has made most women to be more pushful than some men. Most of these women even own houses not only for their personal use but to rent them out to the government and other men. What a challenge! Without legislation, women would have continued to suffer great injustice under the customary land tenure law.

The absence of land registration held under the customary law has taken a different direction. There has been attempts made by the legislature to ensure a degree of security for those individuals with land interests, and at the same time to ensure continues availability of land for future generations. Due to legislation,

the old system of relying on trees and other natural boundaries such as streams, rivers, hills or valleys cannot give necessary security and certainty as registration. In Bafut[4] in the N.W.P., there are common trees used by the indigenes to mark boundaries such as 'Nkeng' and 'Wumb.' Whenever these trees were destroyed either by drought or other natural causes like bush fire, there were problems or difficulties in identifying the boundaries. As a result of non registration, vendors used it as a catalyst to fraud. This was eminent where he is either selling the same piece of land to different purchasers at different times,[5] or, a purchaser is buying the same piece of land from different members of the same family over and again. Thanks to the Land Registration Act, 1935 and the Land Tenure Ordinances[6] which were enacted to change this situation. Today the main laws which govern land Registration in Nigeria include: the Land Registration Act of Lagos and the Federation of Nigeria,[7] the Land Registration Act of Nigeria,[8] the Land Instrument Registration Law of the Western States,[9] the Land Instruments Registration Law of the Eastern States,[10] and the Land Registration Law of the North.[11]

Registration of land confers and guarantees the title of the applicant so registered as owner and Land Certificates when granted, are unimpeachable except as provided by statute. The registered proprietor's rights shall be free from all other unregistered interests and claims and besides, he can borrow money easily on the security of the land. An inspection of land registration shows at all material times the legal situation of the land in which case persons dealing on the evidence of the register need have no worries, for they know that the registered proprietor alone can dispose of his rights, in which case all dealings in the land can be effected with security and expedition.

The above changes in the evolution of individual property holding in both countries have emensely fostered the growth of individual property holding. Individualisation of property have conferred many benefits some of which must be enumerated.

Individual property holding has the advantage of acquiring absolute title to the land and that title is not subordinate to any superior title. This established a system which vests an individual with proprietory rights in land.

Secondly, individual property holding does not undergo the vigorous exercise of consent of both the family head and the principal members of the family with regards to alienation of the property. Thus, it has now become for an individual to take decisions in connection with his land which is an improvement of the previous situation where numerous members had to be consulted and each with his own varying interests to protect. A refusal of an individual or part of the group would mean that the project anticipated to be carried out would be fraustrated.

Since the individual owner will be more concerned with the management of the property, he will become prosperous and this will boast up his or her social and economic standing.

Finally, individual property holding acts as a catalyst to land development in that there is a positive incentive to the improvement of the land. This is more easily achieved where the occupier is also the owner. The fact that a farmer owns his farm, improves it by his own efforts in the believe that he will reap the full benefits of his own improvements and hand the property on to his heirs in better condition is a tempting one, whereas, the customary land occupier who is not the owner goes to see the demise of this temptation. Individual property owners today are more progressive because of the desire to satisfy their needs. In so doing, they sell or mortgage part of their property to secure a loan for further development.

The important point to note is that Cameroon and Nigeria are fully aware that what is material is not the occupation or ownership of the land but its development. To this effect, the states associate themselves with the individuals over ownership, each having as much as he can effectively

develope at any one time and then allowing a no man's zone, the national lands for further Government development. The above philosophy of ownership operates within the wider national philosophy of 'Planned Liberalism.' This ideology according to the then Cameroon's Head of State President Ahmadou Ahidjo means a national economic situation where;

> "the state while encouraging individual initiative takes on the responsibility in defining, directing, promoting and controlling the development of the nation".[12]

5.2 RECOMMENDATIONS

One hardly finds it necessary to insist on the importance of land and land tenure in developing countries such as Cameroon and Nigeria because it is too obvious.[13] Land is the source of all life, food and fertility, and custodian of social norms and morals and for the most part, the only source of income. The outcome being then that land has something of a sacred character and rights over land are more jealously treasured than any other form of rights. It is because of the importance of land that many text-book writers and authors

are concerned with the conception of property only in relation to land.

However, having gone through this research work, it cannot be said with accuracy that the Nigerian and Cameroonian laws relating to individual property holding in the selected areas covered by the research are perfect. Therefore, recommendations are hereby proposed to effect reform of the laws so as to make the customary land tenure respond to current changes in economic and social development of both countries.

The customary land law notion that infants are under disability to own land should be discarded with. Infants are individual members of the community for purposes of land ownership and age is irrelevant in owning individual property.

It is however clear from the provisions of article 36 of decree No. 76/105 that infants may have land certificates issued in their names. But the Nigerian Legal Position as to infants owning property is different. 57 of the L.U.A. forbids the Governor to make a grant or consent to an assignment or subletting of a statutory right of occupancy to a person under the age of 21 years, though could do so through a guardian or trustee. It is submitted that this limitation should be done away with because many Nigerians before the age of 21 are wealthy enough to own large farms and require land for residential and industrial purposes.

The absence of land registration under the native law and customs is the root cause of litigations for the declaration of titles to land. It is therefore

submitted that individuals and head Chiefs should register their lands in order to secure better titles for the future generations because once registered, such landed properties will be free from all uncertainties. The Governments should introduce a compulsory system of land registration, enforce it effectively in the rural areas. In course of the research, it was realised that some typical rural societies in the North-West province of Cameroon are ignorant as to what land registration provides for. One papa Andreas Ngwa at Akonduo, in Mambu-Baiut when asked whether he had registered his land and after he had been explained what registration is all about said that:

> I cannot take my money and give to the government, Any person who tries to seize my land will be taken to the 'Kwilor. '14.

Land registration at present is mostly restricted to urban areas. The governments, in order to encourage Land Registration in the rural areas should impose higher registration fee in the urban centres than in the rural areas. They should make the process for registration easy for the ordinary man because the present process is long and cumbersome. The compulsory system of land registration advocated is a good idea but may

face the danger of some problems associated with survey of the land, lack of finance and manpower. The governments should therefore take steps to address these problems by training the necessary manpower and in Cameroon particularly, the government should establish departments of land management in institutions of higher learning in the country.

The survey of all lands in these countries would bring enormous benefits to these societies.

For instance, it will solve the problem of uncertainty regarding boundaries, thereby limiting litigations over land, though may not completely eradicate them. In fact, no legislation can, because litigations over land are as old as Biblical memories if one judges from the terms of Genesis 13:1-18. and there is therefore no reason to belief that they would now disappear.

The above recommendations are not exhaustive but it is hoped that they will help to assist writers and authors on land law on the operation of Nigerian and Cameroonian property laws in general and in particular, address their minds towards individual property holding, considering the position of individual property owners in both countries.

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APPENDIX

Ordinance No. 74-1 of 6 July 1974
to establish rules governing land tenure,

Mindful of the Consitution of 2 June 1972;

Mindful of Law No. 73-3 of 9 July 1973 authorizing the President of the Republic to establish by Ordinance rules governing land tenure and Government owned land properties,

THE PRESIDENT OF THE REPUBLIC
HEREBY ORDAINS AS FOLLOWS:

PART I

GENERAL PROVISIONS

1. (1) The State guarantee to all natural persons and corporate bodies having landed property the right freely to enjoy and dispose of such lands.

(2) The State shall be the guardian of all lands. It may in this capacity intervene to ensure rational use of land or in the imperative interest of defence or the economic policies of the nation.

(3) The terms and conditions of such intervention shall be fixed by decree.

PART II

PRIVATE PROPERTY

2. The following categories of lands shall be subject of private property:

a) registered lands;

b) freehold lands;

c) lands acquired under the transcription system;

d) lands covered by a final concession;

e) lands entered in the Grundbuch.

3. (1) When the present Ordinance enters into force, the holders of the rights flowing from the deeds referred to in Article 2(b).c),d) and e) shall lodge the said deeds at the Provincial or Divisional Lands Service for publication in the land registers.

(2) Failing such publication, no deed to establish, amend or transfer real property rights to the lands in question may be transcribed or opposed to third parties.

4. (1) (Ordinance No.77-1 of 10th January 1977) the holders of land register books or certificates of occupancy relating to land in urban areas shall be bound, under penalty of forfeiting their rights, to convert the said books or certificates into land certificates within a period of ten years as from 5 August 1974, the date of publication of Ordinance No.1 of 6 July 1974; the said time limit shall be extended to 15 years for land in rural areas.

(2) Provided that certificates of occupancy issued to natural persons of foreign nationality and corporate bodies may be covered only after examination of each specific case.

5. (1) (Ordinance No.77-1 of 10th January 1977) Holders of final judgements to establish or transfer interest in reality in urban centres shall, also under penalty of forfeiture, notify the competent Lands Service within a period of ten years from 5 August 1974, the date of publication of Ordinance No.1 of 6 July 1974, for conversion of the said judgements into land certificates; the said time limit shall be extended to 15 years for land in rural areas.

(2) Provided that when such judgments relate to lands occupied in good faith, the occupants shall in the event of sale of the said lands have a preferential right to be exercised within the framework of the development of the area in question.

(3) All landed property cases pending before the courts and introduced outside the scope of the registration procedure shall fall within the jurisdiction of the boards provided for in Article 16 below. The dossiers relating to such cases shall be transferred to the said boards when the present Ordinance enters into force.

6. (1) Applications for land certificates and certificates of occupancy in progress on the date on which the present Ordinance enters into force shall proceed to completion in accordance with the regulations in force.

(2) Certificates of occupancy issued in pursuance of the present article shall be converted into land certificates under the conditions laid down in article 4 above.

7. (1) The terms and conditions of issue of land certificates, and the rules relating to the cancellation of the same, shall be fixed by decree.

(2) Regulations relating to liens and mortgages, the prenotation of charge, and distraint of real property, shall be fixed by law.

8. (1) Deeds to establish, transfer or extinguish real property rights shall be drawn up by notary, under penalty of being null and void.

(2) Assignments and leases of urban or rural lands which are not registered in the name of the seller or lessor shall be null and void.

(3) The parties thereto and the notaries and court registrars who draw up such deeds shall further be punishable with a fine of 25,000 to 100,000 francs or with imprisonment of 15 days to 3 years, or with both such fine and imprisonment.

(4) The same penalties shall apply to:

(1) Persons selling or leasing one and the same land to two or more persons;

(2) Persons effecting sales or leases of lands belonging to others, not being so empowered;

(3) Notaries and court registrars who assist the abovementioned persons or who draw up deeds for lands situated outside the territorial jurisdiction of their chambers;

(4) Persons registering lands who knowingly omit to record mortgages or real and existing charges or liabilities burdening the said lands.

(5) Persons who use or occupy land which does not belong to them, without the authorization of the person who is qualified to give it. In such a case, the court shall order the eviction of the occupant at his expense.

9. Subject to the laws and regulations relating to town planning, hygiene and policing, owners may on their lands exploit quarries as defined by mining regulations.

PART IV

TAXATION ON LANDED PROPERTY

19. (1) The following landed property transactions shall be subject to the collection of fees:

- Establishment of land certificates;
- Miscellaneous entries in the land register;
- Issue of statements of entries in the land register or of miscellaneous certificates at the request of corporate bodies;
- Topographical, topometric and surveying work.

(2) The rates of such fees shall, where applicable, be fixed by the Finance Law.

20. The revenue referred to in Article 19 above shall be collected by land revenue collectors against collection orders established by competent lands and survey services.

21. The officials empowered to record offences against the present Ordinance shall be appointed by the Minister in charge of Lands.

22. The present Ordinance, which repeals provisions repugnant hereto together with the Decree Law of 9 January 1963 and the Land and Native Rights Ordinance of 1 January 1948, shall be registered, published in the Official Gazette in French and English and enforced as a law of the United Republic of Cameroon.

Yaounde, 6 July, 1974. El Hadj Ahmadou Ahidjo,
President of the Republic.

Ordinance No. 74-3 of 6 July 1974

concerning the procedure governing expropriation for a public purpose and the terms and conditions of compensation.

THE PRESIDENT OF THE REPUBLIC

Mindful of the Constitution of 2 June 1972;

Mindful of Law No. 73-3 of 9 July 1973 authorizing the President of the Republic to establish by Ordinance rules governing land tenure and Government owned lands and properties;

Mindful of Ordinance No. 74-1 of 6 July 1974 to establish rules governing land tenure.

HEREBY ORDAINS AS FOLLOWS:

1. (1) Expropriation for a public purpose shall be pronounced by decree on completion of the procedure defined by the present Ordinance. By the said decree, existing titles over the land in question shall be extinguished and the land thus declared free shall be registered in the name of the State. The interest authority shall take possession six months from the date of signature of the decree. Provided that such period may be reduced to three months if the expropriation is declared urgent.

(2) No building permit may be issued, under pain of being declared void in the public interest, after notification of the decree to the Mayor.

2. Expropriation for a public purpose shall only affect private property as defined in Article 2 of the Ordinance to establish rules governing land tenure.

CHAPTER 1

EXPROPRIATION AT THE REQUEST OF THE PUBLIC SERVICES OF THE STATE

3. Any Ministry wishing to undertake an operation for a public purpose must to the Minister in charge of Lands and submit a dossier comprising:

- An explanatory report stating in particular the aim of the operation;
- A document stating the main characteristics of the operation to be carried out;
- A brief evaluation of the expenses.

4. (1) The Minister in charge of lands shall by order declare the proposed work to be for a public purpose and shall prescribe that a preliminary investigation be conducted by the Prefect of the Division where the land to be expropriated is situated.

(2) The investigation shall be carried out by a valuation commission comprising:

Chairman:

- The Prefect of the Division concerned or his representative.

Secretary:

- The divisional representative of the Lands Department.

Members:

- A surveyor from the Surveys Department;
- A technical expert in construction;
- A technical expert from the Ministry of Agriculture.

(3) The duties of the commission shall be:

- To determine the contents of the property to be expropriated;
- To make an inventory of the various rights at issue and establish the identity of the holders thereof:
- To value the items constituting the unexhausted development on the land;
- To demarcate the land in question.

5. The populations concerned, who shall be informed not less than fifteen days in advance by the Prefect or the purpose of the expropriation, must be invited to participate in all the stages of the investigation.

6. (1) At the end of the investigation, the Prefect shall assemble a dossier comprising the following documents:

- The application of the service requesting the land;
- The order appointing the valuation commission;
- The valuation report concerning buildings;
- The investigation report of the commission outlining all matters arising from the expropriation.

(2) The dossier constituted as above shall be transmitted to the Minister in charge of Lands with a view to the preparation of the decree provided for in Article 1 above.

CHAPTER II

PROCEDURE FOR COMPENSATION

7. (1) Expropriation shall confer the right to monetary compensation under the condition defined by Article 9 below.

(2) Provided that the authority benefiting from the expropriation may replace monetary compensation for lands by a compensation in kind of the same value.

8. Compensation for expropriation shall be related to the direct, immediate and certain material damage coused by the eviction.

9. Subject to the provisions of Article 13(2) of the Ordinance to establish rules governing land tenure, compensation for expropriation shall comprise the following:

- The value of the crops destroyed calculated in accordance with the scale in force;

- The value of the buildings and other installations calculated by the valuation commission referred to in Article 4;

- The value of the undeveloped land calculated as follows:

  a) In the case of urban lands officially allocated subject to payment, compensation may not exceed the official price of public lands in the particular town centre;

  b) In the case of lands held by virtue of a normal transaction under ordinary law, compensation shall be the purchase price to which shall be added the ancillary costs of purchase and of obtaining title:

  c) In the case of Lands held by virtue of a customary tenure under which a land certificate has been issued, compensation may not exceed the amount of the expenses incurred by the issue of the said certificate.

CHAPTER III

EXPROPRIATION AT THE REQUEST OF OTHER PUBLIC BODIES

10. (1) Before expropriation for a public purpose can be carried out on behalf of councils, public establishments, public service concessionaries or semi-governmental corporations with a view to carrying out work in the general interest, the latter must first negotiate with the owners concerned. The results of the said negotiations shall be communicated to the Minister in charge of Lands who may attempt arbitration.

(2) When arbitration is unsuccessful, the expropriation shall be carried out at the expense of the party benefiting therefrom under the conditions provided for in Articles 4 et seq of the present Ordinance.

CHAPTER IV
DISPUTES

11. In the case of dispute over the amount of the compensation fixed by decree, the dispossessed person shall send in a claim to the Prefect of the Division in which the expropriation took place; the latter shall submit the claim to the commission provided for under Article 4 above.

12. The chairman of the commission shall notify the parties concerned of the date, time and place of the meeting. The parties shall be heard by the commission. The latter may only validly conduct business if three members at least including the chairman are present. A report shall be established and transmitted to the Minister in charge of Lands who, if the claim is rejected, shall immediately inform the claimant of his decision.

13. If he is dissatisfied with the decision of the Minister, the claimant may, within one month of notification, refer the matter to the Court of First Instance within whose jurisdiction the real property is situated. In accordance with the procedure and subject to any appeals under ordinary law, the Court shall confirm, reduce or increase the amount of the compensation in accordance with the valuation rules fixed by the present Ordinance.

Decree No. 76-165 of 27 April 1976 to establish the conditions for obtaining land Certificates.

THE PRESIDENT OF THE REPUBLIC.

Mindful of the Constitution of 2 June 1972 as amended by Law No. 75.1 of 9 May, 1975;

Mindful of Ordinance No.74.1 of 6 July 1974 to establish rules governing land tenure, in particular Article 7 thereof

HEREBY DECREES AS FOLLOWS:

CHAPTER I

GENERAL PROVISIONS

1. (1) The land certificate shall be the official certification of real property rights.

(2) Subject to the provisions of Articles 2(3) and 24 of this decree, land certificates shall be unassailable, inviolable, and final. The same shall apply to documents certifying other real property rights.

(3) When recorded in a special register called a Land Register, a real property right shall be deemed registered and may be opposed to third parties.

2. (1) A person whose rights have been encroached upon in consequence of a registration shall have no claim on the property; in the sole event of fraud, he shall have a personal action for damages against the perpetrator thereof.

(2) The action shall be brought before the civil courts for the area where the property is situated.

(3) Provided that, in the event of an error in Government services, in particular an irregularity in the course of the procedure for obtaining a land certificate, the Minister in charge of Lands may, on inspection of authenticated deeds submitted, direct that the irregularly issued land certificate be withdrawn.

(4) An appeal may be brought against the Minister's decision before the appropriate administrative court.

(5) Withdrawal of the land certificates issued shall entail the transfer, without charge of this certificate to the initial owner, if the property was registered. The property shall revert to its exact condition prior to the issue of the certificate, if the property was not registered.

(6) A land certificate may be withdrawn under the provisions of paragraph(3) above only within the time-limit allowed for appeals against administrative decisions, except where there is fraud on the part of the holder.

CHAPTER II

MEANS OF OBTAINING LAND CERTIFICATES

1 - Conversion of miscellaneous deeds into land certificates.

3. (1) Applications to convert various deeds into land certificates shall be addressed to the Head of the Provincial Lands Service for the area where the property is situated. Such application may concern:

- deeds of acquisition of land entered in the Grundbuch;
- deeds of lands acquired under the transcription system:
- final allocation orders for a grant of State lands;
- land register books, or certificates of occupancy;
- final judgments to establish or to transfer real property rights;
- agreements between Africans made under the system of the Decree of 29 September 1920, repealed by the Law of 27 June 1961 concerning deeds executed and authenticated by a notary;
- deeds of acquisition of freehold lands.

(2) They shall be stamped and contain the following information:

- full name of applicant, date and place of birth, parentage, profession, domicile, family status;
- all information required to identify the property;
- any transfers, transactions, leases, mortgages and other liabilities which encumber the property.

4. The application shall be accompanied by a plan and a field report of the demarcation of the property, and all contracts and public and private deeds establishing the real property rights to be registered.

5. (1) If the property is not marked out with survey beacons, the Head of the Provincial Lands Service shall direct that demarcation be carried out at the expense of the owner.

(2) The demarcation shall be carried out in presence of the neighbours by a sworn surveyor of the Surveys Service.

(3) In the event of dispute about the boundaries of the property, the surveyor shall mark out the piece of land in dispute on the plan. If it concerns State lands, the dispute shall be brought before the Minister in charge of Lands who shall make a final decision; if it concerns private property, the dispute shall be brought before the appropriate court.

(4) Any dispute concerning ownership of the land shall be inadmissible.

6. The deeds in litigation may not be converted into land certificates until the Provincial Land Service has been notified of the final decision given by the authority or court of last appeal.

7. (1) Applications for conversion of certificates of occupancy into land certificates should further be accompanied by a valuation report assessing the development of the land and a certificate from the Department of Lands that all rentals and dues have been paid.

(2) If the dues paid up at the date of the application for conversion are less than the official price of State lands, the applicant shall be obliged to pay the difference.

8. Certificates of occupancy issued to natural persons of foreign nationality and to corporate bodies may be converted either into land certificates or into leases, subject to the provisions of Articles 4 and 10 of Ordinance No. 74-1 of 6 July 1974 to establish rules governing land tenure, and the Decree to establish the terms and conditions of management of the private property of the State.

CHAPTER III

COMMON PROVISIONS

1. Precautionary measures prior to issue of land certificates.

30. The plans accompanying the deeds mentioned in Article 3 above must, before any entry is made in the land register, be confirmed by the Surveys Service, which shall ascertain that they conform in all respects to the initial configuration of the properties concerned, and that there is no encroachment on natural or artificial public property.

31. Before converting deeds into land certificates, the Head of the Provincial Lands Service shall be responsible

for verifying the documents lodged, and further satisfy himself:

(i) of the identity and capacity of the parties;
(ii) that the property is disposable.

32. (1) The property shall be deemed disposable when the deed to be converted contains no entry liable, absolutely or relatively, temporarily or fianlly, to preclude commercial transactions thereon.

(2) Properties subject to expropriation shall not be disposable.

33. The encunbrances entered on deeds to be converted into land certificates shall, unless they are extinguished, be entered on the new land certificates; no additional fees or dues may be charged for such entries.

34. The Head of the Provincial Lands Service shall cancel the deeds produced in support of the application for registration, and place them in his records. Provided that where such deeds concern a further property separate from that to be registered, the Head of the Provincial Lands Service shall transmit to the parties a copy of the said deed after cancelling on it the property to be registered.

II. Issue of land certificates.

35. Each registration shall entail the establishment, by the Head of the Provincial Lands Service, of a land certificate which must include:

(i) a description of the property with details of its composition, contents, situation and boundaries and of adjacent areas;

(ii) details of the civil status of the owner:

(iii) a statement of the real rights in the property and the encumbrances attached to it;

(iv) a serial number and a specific name;

(v) a plan of the property duly signed by a sworn surveyor, and countersigned by the head of the Surveys Service in whose area the property is situated.

36. When a land certificate is issued in the name of a minor or of any other legally incapacitated person, the age of the minor or the nature of the incapacity shall be entered on the certificate.

37. When a land certificate is issued following a sale, the Head of the Provincial Lands Service shall, prior to parcelling out, transfer or merger, determine:

(i) that the transaction has been carried out in accordance with Article 8 of Ordinance No.74-1 of 6 July 1974;

(ii) that the property is situated in the area within his competence, and that it is the property specified in the conveyance of the right;

(iii) that the plan annexed to the certificate has been duly countersigned by the head of the Surveys Service in whose area the property is situated;

(iv) that the certificate is in due form, having regard to the registration regulations.

38. (1) After registration of the property special certificates may be established at the request of the parties concerned, in the name of the holder of a life interest or long lease, the superficiary, or the pledgee, as proof of entry of their real rights in the property registered. In such cases, all relevant references shall be entered on the certificate of the property established in the name of the owner.

(2) The owner, to the exclusion of any other person, shall be entitled to a duplicate of the land certificate and of the annexed plan. The said sole duplicate shall be personal and the Head of the Provincial Lands Service shall certify its authenticity with his signature and the official stamp. Holders of a life interest or long lease, superficiaries, and pledges, shall also be entitled to a full, true and authenticated duplicate of the special certificate for which they have applied. Other holders of real rights shall be entitled only to the issue of personal certificates of entries reproducing in full the entries relating to real rights or encumbrances.

(3) When two or more persons are joint owners of a property, the certificate, its duplicate and the annexed plan shall bear the names of the joint owners. The duplicate shall be issued to the owner whose name is at the head of the list. The other owners shall, on application, be entitled only to certified true copies from the land registers.

III. Rectification of land Certificates

39. (1) When omissions or errors have occurred in land certificates, or in the entries, the parties concerned may apply for their rectification. Furthermore the Head of the Provincial Lands Service may, on his own responsibility, automatically rectify any irregularities attributable to himself or to one of his predecessors, in the documents used for establishing a certificate or any subsequent entries.

(2) Rectifications shall be authorized by decree where they infringe on the rights of third parties. The decree shall stipulate, if need be, the terms and conditions for safeguarding the rights of third parties.

(3) In all cases, the original entries shall remain intact, the corrections being entered under the date thereof.

(4) All relevant land registered entries made in accordance with the provisions of the present decree shall be entered, erased, restricted or rectified by the Head of the Provincial Lands Service by means of summary annotations on the land certificates and the duplicates issued. Such annotations shall be signed and dated.

40. (1) Each time an amendment is made to the land certificate, it shall be made simultaneously on the duplicate issued to the owner. Where a summons to the owner to produce his duplicate has remained without effect, the owner shall forfeit his rights which shall be restored to him only after compliance with the required formalities. During such forteiture, no parcelling out or transfer may be effected in favour of third parties; where applicable, the latter may bring an action for damages against the owner.

(2) Plans shall be amended accordingly.

IV. Right of access to the land register - Loss of land certificates.

41. The Head of the Provincial Lands Service may, on application by any interested party, certify that a duplicate land certificate is a true copy or that certain particulars cited in the application are true entries, or certify that there are no entries on a land certificate.

42. In the event of the property in question being encumbered with a deferred mortgage, reference to this shall be made in the certified statement, and the operative duration of the distraint shall be mentioned if the nature of the information applied for requires this diclosure.

43. (1) In the event of loss of the duplicate of a land certificate, the Head of the Provincial,Lands Service may not issue a new one until he receives an order made on the owner's motion by the president of the civil court in whose area the property is situated.

(2) The court order shall declare the lost duplicate null and void. A notice shall be published to this effect in the Official Gazette by the Head of the Provincial Lands Service.

Decree No. 79-17 of 13 January 1979
relating to private real property transactions.

The President of the Republic

Mindful of the Constitution of 2 June 1972, as amended by Law No. 75-1 of 9 May 1975;

Mindful of Ordiance No. 74.1 of 6 July 1974 to establish rules governing lead tenure.

HEREBY DECREES AS FOLLOWS:

CHAPTER ONE

GENERAL PROVISIONS

1. The sale, free assignment of exchange of real property between individuals shall, within the meaning of this decree, constitute a private real property transaction.

CHAPTER II

PROCEDURE

3. (1) Any person desiring to transfer his real property shall apply to the appropriate Surveys service in whose area the real property falls for the demarcation of the parcel in question.

(2) The application shall contain:

- the full names of the owner;

- the number of the land certificate;

- the area of the parcel and, where applicable, the number of the plot and the name of the person acquiring the plot.

(3) The Surveys service shall, free of charge, place the property beacons, prepare the cadastral report and draw the plans. The report hall be signed by the owner.

4. The stamped and endorsed plans and the demarcation report shall be handed to the applicant for the procedure to be continued. The Surveys service shall bring its documents up to date.

5. The seller and purchaser shall jointly submit to the competent notary a file comprising the following documents:

(a) the plan and demarcation report;

(b) the town-planning certificate;

(c) the copy of the land certificate;

(d) a certificate attesting that the State has waived the right of preemption provided for in Article 10 of Ordinance No.74-1 of 6 July 1974 in the case where the owner is foreign nationality.

6. In the event of a complete transfer of the real property, the owner shall be exempted from producing the documents provided for in Article 5(a) above.

7. (1), The Notary must inform the purchaser of the charges and easements which apply to the real property under pain of assuming personal responsibility for them; they shall be mentioned in the deed.

(2) The said deed shall be lodged and a receipt given in exchange within the 8 days following its registration by the Lands service in whose area the real property falls; the deed shall be accompanied by the documents referred to in Article 5.

(3) It shall be entered in a special register according to the chronological order of arrival.

This register whose pages shall be numbered and initialled shall indicate/show:

-the serial number;

-the date and time of reception of the file;

-the attesting notary;

-the nature of the deed;

-the full name of the owner;

-the full names of the person acquiring the real property;

-the number of the land certificate;

-the area of the parcel in question and, where necessary, the number of the plot.

8. The lands Service shall verify the validity of the documents in the file. It shall establish the land certificate or return the file to the notary.

9. Land registers and cadastral documents shall be finally brought up to date by the competent services before the certificates are handed over to their owners.

10. A copy of the plan bearing the number of the new land certificate and the name of the person acquiring the real property shall be forwarded to the Surveys service.

CHAPTER III

FINAL PROVISIONS

11. Deeds of real property transactions not yet registered on the date when this decree takes effect shall be subject to the procedure provided for by this decree.

12. This decree shall be registered and published in the Official Gazette in French and English.

Yaounde, 13 January 1979.

AHMADOU AHIDJO,
President of the Republic.

LAW NO. 85-09 OF 4th July, 1985.

to lay down the procedure governing expropriation for public purposes and the conditions for compensation.

The National Assembly has deliberated and adopted;

The President of the Republic hereby enacts the law set out below.

CHAPTER 1

Section 1 - (1) In order to carry out projects of general interests, the State may resort to the procedure of expropriation for public purposes.

(2) This procedure may be either direct, if it is intended to carry out projects of public interest, or indirect, upon the request of local council publics establishments, public utility undertakings or semi-governmental corporations.

Section 2 - Expropriation for public purposes shall exclusively affect private property as recognized by the laws and regulations.

Section 3 - (1) Persons affected by expropriation shall be entitled to compensation in cash or in kind under the conditions defined in this law.

(2) The compensation to be granted to a victim of expropriation shall be fixed by an expropriation decree.

Section 4 - (1) The expropriation decree shall entail the transfer of ownership as well as the existing land titles to the State or to any other public body that benefits from such a measure.

(2) In principles, expropriation shall give entitlement to prior compensation.

(3) However, in certain cases, the beneficiary of exporpriation, may before actual payment of the compensation is made, occupy the premises as soon as the decree of expropriation is published.

(4) Victims of expropriation shall be given six months notice, with effect from the date of publication of the expropriation decree, to evacuate the premises.

(5) This time-limit shall be reduced to three months in case of urgency.

Section 5 - A declaration of expropriation for public purposes shall suspend all transactions and development on the land in question. Under penalty of incurable nullity, no building permit may be issued in request of the area concerned.

CHAPTER II

Compensation.

Section 6 - Compensation for expropriation shall be affected by the corporate body benefiting therefrom.

Section 7 - (1) Compensation for exporpriation shall be related to the direct, immediate and verifiable material damage caused by the dispossession.

(2) Such compensation shall cover:

- bare land;
- crops
- buildings;
- any other type of development, whatever its nature, duly verified by the verification and valuation commission.

(3) The composition and functioning of the verification and valuation commission shall be determined by regulations.

Section 8 - (1) Compensation shall be monetary. Provided that the corporate body in whose favour the expropriation is made may, as concerns land, replace monetary compensation by compensation of the same kind or of the same value.

(2) Where compensation is made in kind, the land provided must, as far as possible, be located in the same council area as the expropriated land.

(3) Where the value of the land given as compensation is higher than that of the expropriated land, the balance shall be paid by the person receiving the compensation. If it is lower, the beneficiary of the expropriation shall pay monetary compensation to the tone of the balance.

Section 9 - Compensation for bare and undeveloped land shall be made under the following conditions:

(a) In the case of lands held by virtue of customary tenure under which a land certificate has been issued, the compensation may not exceed the minimum official price of undeveloped lands in the area where the land certificate was issued.

(b) In the case of lands held by virtue of a normal transaction under ordinary law of purchase of State land, compensation shall be equal to the pure price, to which shall be added the ancillary costs of purchase.

Section 10 - (1) The details relating to the calculation of the value of crops destroyed shall be fixed by decree.

(2) The value of buildings and other developments shall be calculated by the verification and valuation and valuation commission.

(3) No compensation shall be paid for the destruction of old or crumbling buildings, or those that were erected contrary to town-planning regulations, legislative or statutory provisions governing land tenure.

Section 11 - Any compensation granted prior to the entry into.

CHAPTER III

D I S P U T E S

Section 12 - (1) In the case of dispute over the amount of the compensation, the dispossessed person shall forward his claim to the administration in charge of lands.

(2) If he is not satisfied, the claimant may, within one month from the date he was notified of the challenged decision, refer the matter to the competent court of the area in which the real property is located.

(3) In accordance with the procedure and subject to any appeals under ordinary law, the Court shall confirm, reduce or increase the amount of the compensation, following the valuation rules fixed by this law and its implementation instruments.

CHAPTER IV

Miscellaneous provisions.

Section 13 - The guardians and legal representatives of dispossed persons who are under a legal disability or interdiction may be authorised by order of the President of the Court to accept the compensation offered by the administration.

Section 14 - No action to set aside a contract or claim a title, nor anyother real action shall halt expropriation or prevent the effects thereof. Complaints shall deal with the amount of the compensation but not with the right to expropriate.

Section 15 - (1) The expropriation procedure shall be fixed by regulations.

(2) Cases of compensation still uhder consideration on the date of entry into force of this law shall be treated in accordance with the former regulations until they are resolved.

Section 16 - This law which repeals all previous provisions repugnant thereto, in particular Ordinance No. 74-3 of 6 July, 194 concerning expropriation for a public purpose, shall be registered, enacted and published in the official Gazette in English and French.

YAOUNDE, 28 June 1985.

PAUL BIYA
THE PRESIDENT OF THE REPUBLIC.