

**FAMILY LAND HOLDING IN NIGERIA: AN APPRAISAL OF THE LEGAL
FRAMEWORK.**

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**BEING A LONG ESSAY PRESENTED TO THE FACULTY OF LAW, GODFREY
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REQUIREMENTS FOR THE AWARD FO THE BACHELOR OF LAW (LL.B)
DEGREE**

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DECLARATION

I, **Okoronkwo Uzoma Faith**, with the registration number **GOU/U21/LAW/423**, hereby affirm that this work was duly and diligently carried out by me. The primary and secondary sources used to carry out this legal research, are acknowledged appropriately and referenced herein, within this project. This work is an original and has not been submitted in part or in full for the award of any degree in this or any other Faculty of Law within and outside Nigeria.

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CERTIFICATION.

This is to certify that this research was carried out by **OKORONKWO FAITH UZOMA**, an undergraduate Student of **GODFREY OKOYE UNIVERSITY FACULTY OF LAW**, with Registration number, **GOU/U21/LAW/423**, who has completed this long Essay for the award of the Degree of Bachelor of Laws Save for references which have been duly acknowledged, this work is original and has not been submitted in part or full for the award of any Degree in this or any other institution.

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DEDICATION

This work is humbly dedicated to the Nigerian legal sector established with the aim of examining the legal framework which regulates family land holding in Nigeria, and to the various institutions and individuals involved and invested in the study of the Nigerian land system.

To my parents, for their endless support and sacrifices and for never giving up on my academic journey.

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LIST OF ABBREVIATIONS

AC	Area Court
ACBJ	Awka Capital Bar Journal
All NLR	All Nigeria Law Reports
CA	Court of Appeal
CCA	Customary Court of Appeal
CFRN	Constitution of the Federal Republic of Nigeria 1999 (as amended)
C of O	Certificate of Occupancy
CRO	Customary Right of Occupancy
EA	Evidence Act 2011
EAA	Evidence (Amendment) Act 2023
ENGIS	Enugu State Geographic Information System
FCT	Federal Capital Territory
FHC	Federal High Court
FSC	Federal Supreme Court
GIS	Geographic Information System
LGA	Local Government Area
LFN	Laws of the Federation of Nigeria
LIRL	Land Instruments Registration Law
LL.B	Bachelor of Laws
LPELR	Law Pavilion Electronic Law Reports
LUA	Land Use Act 1978
NIALS	Nigerian Institute of Advanced Legal Studies
NLR	Nigerian Law Reports
NWLR	Nigerian Weekly Law Reports
SC	Supreme Court
SCNLR	Supreme Court of Nigeria Law Reports
SRO	Statutory Right of Occupancy
WACA	West African Court of Appeal

ABSTRACT

Family land remains an important form of customary ownership because it preserves ancestral property and it also provides social and economic security for family members. Nevertheless, its regulation is complicated because of the interaction between customary and statutory law. Thus, the study examines the extant laws and institutions which regulate family land holding and identifies the challenges which affect their operation. Methodologically, the study is doctrinal. It relies on statutes, judicial decisions, textbooks and journal articles. The study finds that family land holding is regulated by the Constitution of the Federal Republic of Nigeria 1999, the Land Use Act 1978, the Evidence Act 2011, customary law and judicial precedent. It further finds that courts, land registries, government land agencies, family councils and traditional institutions perform regulate and resolve disputes. However, the existing framework is weakened by conflicts between customary and statutory requirements, uncertainty concerning the identification and consent of family heads and principal members, inadequate documentation and registration, fraudulent and multiple sales, administrative delays, expensive litigation, discriminatory inheritance practices and inadequate compensation following compulsory acquisition. The study concludes that the major problem is not that land holding exist. Rather, it is that there is no clear, coordinated and safeguards for administration within the legal system in Nigeria. It recommends that customary and statutory requirements should be harmonised, transactions on family land should be documented, registers for family land should be created, land registration should be decentralised and digitalised, the rules should be clear for consent and representation, the rights of women and vulnerable member of the family should be protected, the compensation for compulsory acquisition should also be transparent.

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

Land is not merely an economic asset in Nigeria. It is also a social and political resource and it shapes identity. Across many Nigerian communities, land remains the primary store of wealth.¹ Family land holding is central within this setting. Family land (often treated as “family property” under customary law) is typically land held for the benefit of a family unit. It is managed commonly through a recognised head of family together with principal members (or elders). This historically evolved to preserve land within the lineage and it guarantees communal welfare for descendants who may not yet be born.² In modern Nigeria, family land holding is regulated within a legally plural environment where customary and statutory law interact uneasily. On the statutory side, the Land Use Act (hereafter referred to as LUA) 1978 introduced a sweeping reform. It vests all land in each state in the Governor to be held in trust and administered for the use and common benefit of all Nigerians.³ The act created a formal framework and this must now coexist with customary tenure which remains socially dominant in many areas.

In practice, many parcels which families continue to regard as “family land” still operate under customary regime. However, transactions involving such land intersect with the statute in Nigeria increasingly. Furthermore, the 1999 Constitution reinforces land holding. It guarantees citizens the right to acquire and own immovable property anywhere in Nigeria. It also regulates compulsory acquisition of property interests and it insists that any such

¹ JA Omotola, *Nigerian Land Law* (2nd ed. Lagos: University of Lagos Press 2021).

² *ibid*

³ LUA 1978, s1.

acquisition must be done according to law.⁴ Against this background, Nigerian courts shape the operative rules for family land holding regarding alienation (sale, mortgage, lease) and the validity of transactions. The judiciary protects the collective interest of the family against unilateral acts. In *D.W. Lewis & Ors v Bankole & Ors*,⁵ held that family members have enforceable claims in family land under applicable native law and custom. Similarly, in *Ekpendu v Erika*,⁶ the Federal Supreme Court articulated that: a sale of family land by a family member who is not the head, without the consent of the head, is void; and even where the head acts, the consent/participation of principal members remains crucial.

In recent times, there is a widespread social transformation and this has intensified the importance of regulating family land. Urbanisation has become rapid and the most private lands are being commercialised. Hence, the value of family land in peri-urban and urban centres has increased. Families often experience internal pressure as members seek to sell land for immediate gain. This may lead to disputes over whether land is truly family property, who are “principal member,” whether valid consent was obtained, and whether customary processes were followed. Moreover, many family arrangements are poorly captured in formal records.⁷ This creates room for opportunistic sales and fraudulent dealings. This becomes more complicated because of institutional factors. Land holding is regulated by numerous institutions. They include customary authorities (where relevant), family councils, the High Courts and customary courts (depending on jurisdiction and subject-matter), and administrative bodies such as land registries and agencies responsible for certificates of occupancy and consent processes. Indeed, the Land Use Act draws state institutions into land

⁴ CFRN (as amended) 1999, s41 and 42

⁵ [1909] NGSC 1 (1 N.L.R. 82)

⁶ [1959] 4 FSC 79.

⁷ U Frank-Igwe and C I G Agwor, ‘A re-examination of the jurisprudence and sale of family land in Nigeria’ [2023] (19) (1) *Journal of Private and Property Law* 54
<<https://rsuppljournal.com.ng/a-re-examination-of-the-jurisprudence-and-sale-of-familyland-in-nigeria/>>
accessed 17 December 2025.

administration. However, it is difficult for ordinary families to secure clear title or properly record family interests. This is because of they lack access to documentation among other constraint. Tenure insecurity and administrative weaknesses are recurring challenges where customary tenure remains widespread.

Critically, there are also concerns about gender and equality. This makes family land holding a critical subject of legal appraisal. In several customary settings, women do not have access to inheritance and land control historically. Yet constitution exerts pressure on discriminatory customary rules increasingly.⁸ In *Ukeje v Ukeje*,⁹ the court indicated that customary land arrangements cannot be insulated from constitutional standards when they violate protected rights. Accordingly, there is need to appraise the legal framework which regulate family land holding in Nigeria. The subject sits at the junction of customary land tenure and statutory land administration and it affects everyday realities. It also raises doctrinal questions about the coherence of the rules which govern family land holding and the relationship between customary and statutory regime. Hence, this project would clarify how Nigerian Law should manage family land holding in line with customary expectations and constitutional norms.

1.2 Statement of the Problem

Family land holding remains a major source of dispute and uncertainty.¹⁰ Notably, there is a normative and doctrinal tension and it arises from the pluralism in Nigeria. This is the first aspect of the problem. Under Customary law, family land is collective property managed under lineage rules. On the other hand, ownership is vested on the state under the statutory interventions. This creates practical uncertainty and it generates confusion over what must be

⁸ B E Umukoro, E T Kore-Okiti and O J Megbele, 'Customary land ownership and women's land rights in Nigeria: extending the frontiers of feminist environmental justice' [2024] (4) (3) *Journal of Environmental Law & Policy* 203–229.

⁹ [2014] LPELR-22724(SC)

¹⁰ Frank-Igwe and Agwor (n7).

done to create, prove, transfer, or protect family land interests in a way that is legally effective against third parties and state institutions. Secondly, alienation and consent creates another problem and it may itself become a trigger for instability. It is recognised that family land transactions require proper authority and consent.¹¹ Yet in practice, it is always difficult to determine if consent was duly obtained: *who exactly qualifies as the head of family at the material time? Who are the principal members? how many must consent? What constitutes valid “consent” (express, written, implied, or by participation)?* Hence, purchasers and lenders face risks when dealing with family land. This is because even documented transactions may be attacked years later on the basis that consent was defective.

Thirdly, there persists evidentiary and documentation problem. Many family land arrangements are rooted in oral histories and traditional boundaries. However, statutory regime relies heavily on documentary proof and registration.¹² It becomes difficult to establish a clear chain of title where families lack formal documentation or do not register interests. This may enable multiple sales and conflicting claims between customary “owners” and holders of formal documents. Fifthly, there are concerns about justice and equality when regulating family land. This relates to the right of inheritance of women and other vulnerable family members. Historically, some customary systems exclude women from inheriting land or restrict their control over family property.¹³ Conversely, the constitution protects citizens from discriminatory treatment and it also recognises property rights.¹⁴ This generates disputes within families about who is entitled to share in family land and on what basis. Indeed, the court held in *Ukeje v Ukeje*,¹⁵ that where a custom excludes female children from

¹¹ [1959] 4 FSC 79.

¹² GA Ahiakwo and ME Akari, ‘Land registration procedures in some states in Nigeria and other jurisdictions’ [2025] (11) (6) *International Journal of Law* 63–71
<<https://www.lawjournals.org/assets/archives/2025/vol11issue6/11134.pdf>> accessed 17 December 2025.

¹³ Umukoro Kore-Okiti and Megbele (n8)

¹⁴ CFRN, s 42 (1-2) and 43

¹⁵ *ibid*

inheritance, that custom is void and unenforceable because it violates the right against discrimination. Yet this principle is applied unevenly across diverse customary systems.

Indeed the problems are interlocked and it justifies an appraisal of the legal framework which regulate family land holding in Nigeria. The key concern is not whether customary family land should disappear (indeed, it remains functional socially). It is whether the law provides clear and enforceable rules on family land holding. Therefore, this study would evaluate the adequacy of the existing legal architecture.

1.3 Research Questions

The following questions emanate from this research:

- i. What are the existing legislations which regulate family land holding in Nigeria?
- ii. Which institutions regulate family land holding in Nigeria?
- iii. What are the challenges in regulating family land holding in Nigeria?

1.4 Aim and Objectives of the Research

The aim of this project is to examine the legal framework which regulates family land holding in Nigeria. The specific objectives are

- i. To examine the extant legislations which regulate family land holding in Nigeria
- ii. To Identify the institutions which regulate family land holding in Nigeria
- iii. To examine the challenges in the regulating family land holding in Nigeria

1.5 Research Methodology

This study utilises the doctrinal legal research strategy, sometimes known as the "Black Letter" methodology. The objective of this technique is to collect, organise, and explain the

law, offer comments on the sources utilised, and then identify and define the underlying theme or system, as well as how each source of law is related.

This strategy is advantageous because it provides a strong framework for constructing a thesis, arranging the paper, and offering a comprehensive description and explanation of the rule. This method has the potential to be excessively formalistic and may result in an oversimplification of legal theory. In doctrinal research, the rule itself, cases created under the rule, legislative history, if relevant, and commentary and literature on the rule serve as data sources

1.6 Significance of the Study

The significance of this research is that it examines the legal framework which regulates family land holding in Nigeria and attempts at filling the lacuna of uncertainties and confusion in relation family land holding, the extant legislation which regulate family land holding in Nigeria, the institutions which regulate family land holding in Nigeria, and the challenges in the regulating family land holding in Nigeria.

This research and its findings will contribute to the expansion of legal knowledge in the area of land law by properly examining this concept and perform an in-depth search and bring to limelight laws or guidelines (if any) regulating this concept not previously known to the public.

1.7 Scope of the Study

The study covers the following scope. It examines what constitutes family land under the law in Nigeria. It also analyses the legal regime which govern family land comprehensively. Importantly, it examines the relationship between customary family land transactions and

statutory or administrative requirements. The study also covers the institutions which regulate or shape outcomes in family land disputes. Moreover, family land often becomes contentious during succession. Hence, the study also appraises how inheritance practices and how it affects access and control. The study also identifies and analyses the core challenges in regulating family landholding.

Customary law is diverse in Nigeria. Geographically, this study does not restrict itself to one ethnic group or state custom. It examines family landholding through decisions of superior courts and authoritative materials. Thus, the study covers the whole Nigeria and it recognises that customary principles may vary by region and it relies on judicially recognised rules and comparative commentary where appropriate. The time frame of this study is contemporary. Hence it focuses foundational authorities and modern developments up till 2026. Older cases are considered where relevant. Consistent with the project design, the scope is limited to doctrinal legal analysis of primary and secondary sources. For avoidance of doubt, the study does not:

- i. Valuate family land or market analysis of land prices.
- ii. Carry out detailed anthropological fieldwork into cultural land rituals.
- iii. Examine non-family communal landholding systems that do not raise the incidents of family land (though brief comparisons may appear for clarity);
- iv. Examine land issues solely tied to environmental land regulation, or international boundary disputes.

1.8 Limitation of the Study

This study is designed to be comprehensive. However, there are notable limitations. These do not undermine the study. They define the boundaries of what the research may claim

responsibly. Firstly, this study leans on reported judicial decisions heavily. However, reported cases represent only severe disputes which reach litigation and proceed through appellate processes. Many family land conflicts are resolved privately or settled through community mechanisms. Hence, this study may over-represent severe disputes and then under-represent routine family land issues. Secondly, Nigeria has multiple customary systems and they differ greatly in family land holding. Application may differ across communities even where courts speak of general principles. Therefore, it would be difficult to evaluate family land practices uniformly. In addition, not all customary incidents are captured exhaustively. Thirdly, Institutional practice is central to land administration. Thirdly, administrative records on land matters are not always publicly accessible or consistently updated. Additionally, registry systems may be fragmented across states. This restricts the extent to which the research can rely on official administrative data. Fourthly, it is not feasible to examine every of land practices in all 36 states within a single undergraduate project. Therefore, the study prioritises those areas which are most directly connected to the research questions. These limitations are addressed by reviewing extensively binding and persuasive judicial authorities, statutory provisions, leading textbooks, peer-reviewed literature and policy-oriented scholarship.

1.9 Literature Review

Under this section, literatures are analysed to identify gaps and inconsistencies. The review is grouped into four themes:

Theme 1: Foundations of family/communal land holding under customary law

Nwogu¹⁶ clarified what “ownership” and “possession” mean within the customary land tenure system in Nigeria. In addition, he examined how customary tenure co-exists with statutory tenure under the Land Use Act. Nwogu¹⁷ argues that customary tenure typically vests radical title in the family/community. Conversely, individuals hold primarily use-and-enjoyment interests allocated within the group. He observes that a *duality* is created when customary tenure is recognised alongside statutory regime. He concluded that there is need to consolidate/harmonise the two systems. This work has notable limitations. It does not sufficiently isolate *family land holding* as a distinct sub-category with its unique rules. It also does not test how courts and land registries operationalise these concepts in everyday family land disputes.

On the other hand, Bokani¹⁸ examined whether trust improves administration of communal/customary land and reduce insecurity of title where alienation is controlled by communal heads subject to concurrence of “principal members.” He found that insecurity persists despite the Land Use Act. In addition, the concurrence requirement creates hardship and injustice for innocent purchasers because. This is because it is difficult to verify the “right” head/principal members. He recommended that there is need for a trustee-based structure constituted under company law. This work has notable limitations. It assumes that formal trustee structures would be socially acceptable and enforceable across diverse customary settings. It also focuses on *communal* land generally. It does not map the distinct doctrinal rules which governs *family land* fully.

¹⁶ M I O Nwogu, ‘Ownership and possession of land under the Nigerian customary land tenure system: a legal appraisal’ [2023] (19) (2) *UNIZIK Law Journal* 86–95 <<https://journals.ezenwaohaetorc.org/index.php/ULJ/article/download/2293/2340>> accessed 17 December 2025.

¹⁷ *ibid*

¹⁸ AM Bokani, ‘Analysis of trust in the administration of communal land in Nigeria’ [2024] (19) *The Nigerian Juridical Review* 59–71 <<https://tnjr.uneclaw.ng/index.php/tnjr/article/download/94/85>> accessed 17 December 2025.

Elias¹⁹ examined customary land concepts in Nigeria. He clarified that customary landholding is a social institution in which land is held by the group as a continuing entity and it is managed through recognised authorities for the benefit of members. This work has a notable limitation. It does not capture newer pressures fully: accelerating urbanisation, monetisation of family land, frequent sales to third parties, documentation culture, and the modern legal consequences of the LUA consent/registration regimes.

Theme 2: Statutory framework which shape family land holding

Ezeanokwasa and Eze²⁰ reviewed critically the requirement of Governor's consent for alienation of interests in land under Land Use Act. They examined whether the consent regime still serves the developmental goals of the Act. They found that consent is counter-productive. It obstructs transactions and it also undermines access to land for farming/industrialisation. They recommend that should the requirement for consent should be expunged from the the Act. This work has notable limitations. It treats "alienation" broadly and it does not theorise how the consent regime uniquely burdens *family land transactions*

Similarly, Agwor²¹ assessed how the Land Use Act altered customary land tenure in Nigeria. They found that the Act vest ownership on the state. They also observed that consent is required for transfers. Ultimately, they suggested it is vital for family heads to participate in land transactions. This work has notable limitations. It is mainly descriptive and it restates statutory provisions. It also does not interrogate the deeper regulatory problem: *uncertainty* created when customary authority structures (family head/principal members) collide with statutory requirements. Lastly, it does not analyse how institutions operationalise these rules.

¹⁹ TO Elias, *Nigerian Land Law and Custom* (Routledge Revivals 2026).

²⁰ J O Ezeanokwasa and A I Eze, 'The requirement of Governor's consent in the alienation of interest in land under the LUA: a critical review' [2021] (2) *Awka Capital Bar Journal (ACBJ)* 23–36
<<https://nigerianjournalsonline.org/index.php/ACBJ/article/download/1830/1720>> accessed 17

²¹ C I G Agwor, 'Effects of the LUA 1978 on customary land tenure in Nigeria' [2023] (3) (1) *Journal of International Trade Law and Contemporary Problems* 58-73.

Odoyi and Riekkinen²² examined land policy tools/instruments for formalising informal settlements in Nigeria. They also examined how land governance affects tenure security. They found that statutory tools and formalisation mechanisms often misalign with informal/customary realities. They also observed that the LUA makes it difficult to obtain formal titles. Moreover, administrative delays mean that formalisation becomes difficult. This work has notable a limitation. It does not examine *family land holding*. Rather, it analyses formalisation of informal settlement.

Theme 3: Institutional regulation

Aminu²³ examined how courts ascertain customary law. He interrogated the standards for legitimacy and certainty of customary-based claims. Aminu²⁴ argued that they are contested and uncertain. He pointed out that there are debates for codification and it would reduce uncertainty. This work has a notable limitation. It does not examine the concept of “family land” extensively.

Ahiakwo and Eli²⁵ analysed the procedures for land registration in Nigeria. They focused on legal steps as well as administrative requirements. They found that perfection is a core pathway to secure land interests. It also reduces vulnerability. However, there are procedural complexity and institutional bottlenecks and this frustrates compliance. This work has notable limitations. It does not centre on family land holding specifically. It also does not connect land administration “paper rules” to the lived governance of family property.

²² E J Odoyi and K Riekkinen, ‘Exploring land policy tools and instruments for formalising informal settlements: the case of Rivers State, Nigeria’ [2025] (166) *Habitat International* 103605 <<https://www.sciencedirect.com/science/article/pii/S0197397525003212>> accessed 17 December 2025.

²³ A A Aminu, ‘Jurisprudential Examination of the Challenges in Ascertaining Nigerian Customary Law’ [2023] 8 *Novena University Law Journal* 98–116.

²⁴ *ibid*

²⁵ Ahiakwo and Akari (n12).

Frank-Igwe and Okara²⁶ assessed the legality of resolving disputes (including land disputes) through customary arbitration in Nigeria. They found that customary arbitration remains relevant where communities/families prefer internal settlement. The work clarifies dispute institutions beyond courts. However, this work has a notable limitation. It does not fully address a recurring family land problem. Arbitration/settlement may lack documentary footprint and this may be challenged when land is sold to outsiders or when registration/perfection becomes necessary.

Theme 4: Challenges in regulating family land holding.

Frank-Igwe and Agwor²⁷ re-examined jurisprudence on sale/alienation of family land in Nigeria. He focused on doctrine and recurring disputes around authority and consent. They observed that invalid sales frequently arise where required consents are absent or contested. They also pointed out that courts protect family interests. Yet they produce harsh outcomes for purchasers sometimes. This is common where the apparent authority of the family head misleads third parties. This study has notable limitations. It is case/doctrine-focused primarily and it does not examine *regulatory design*. For instance, how do institutions (courts, registries, local governments) reduce the frequency of void family sales?

Umukoro, Kore-Okiti and Megbele²⁸ investigated women's land rights under customary ownership in Nigeria. They link deprivation in family/communal land to broader social and environmental justice outcomes. They found that discriminatory inheritance/customary practices impair women's land rights even when the constitution prohibits this. They found that transactions are often channelled through male community/family heads. This work has notable limitations. It is less developed on doctrinal "micro-mechanics." For example, how

²⁶ Frank-Igwe and Okara (n7).

²⁷ Frank-Igwe and Okara (n7).

²⁸ Umukoro, Kore-Okiti and Megbele (n8).

should family land rules be re-conceived to protect vulnerable members without collapsing customary governance?

Bokani²⁹ examined how insecurity of customary title and concurrence requirements generate hardship and injustice for innocent purchasers. He found that is difficult to verify who is the head/principal member and it is a persistent source of insecurity. He recommended that are the governance of communal property should be reformed structurally. This work has notable limitations. It only proposes that formal trustees should be utilised. However, this may not be the only or best pathway.

Gap in Knowledge

Across the literatures, three broad insights emerge:

The literature recognise family/community ownership structures and that it is governed by the heads/principal members. However they assume that “family land holding” is a sub-point within customary tenure. It is not distinct regulatory object which required rules and safeguards.

The literature indicate that Land Use Act created the consent and vesting structures and this reshape landholding and transferability. However, they frequently examine consent in isolation. They do not analyse the *compliance problem* created when customary family concurrence and statutory consent/perfection overlap.

The literature indicate that it is difficult to ascertain ownership of customary titles. They also found that there are administrative bottlenecks in titling/formalisation. However, they do not

²⁹ AM Bokani, ‘Analysis of trust in the administration of communal land in Nigeria’ [2024] (19) *The Nigerian Juridical Review* 59–71 <<https://tnjr.uneclaw.ng/index.php/tnjr/article/download/94/85>> accessed 17 December 2025.

fully integrate these institutional weaknesses into a coherent appraisal of how family land is actually regulated (or mis-regulated)

The gap this project addresses is therefore a *doctrinal study which*:

- i. maps and evaluates the extant legislation affecting family land holding
- ii. evaluates the institutions which regulates family land holding
- iii. diagnoses the challenges and reforms in family land holding.

This aligns directly with the aim of the project: *to examine the legal framework regulating family land holding in Nigeria.*

CHAPTER TWO

CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1 Conceptual Framework

This section provides the conceptual and theoretical foundations for appraising the legal framework which regulate family land holding in Nigeria. It clarifies what “land” and “family land” mean within the law in Nigeria. It also explains the incidents (features) of family landholding under customary law, and identifies the recognised sources through which family land is created.

2.1.1 Meaning of Land

In ordinary usage, “land” refers to the physical surface of the earth. In law, however, the concept is broader and more technical. “Land” includes the ground surface and also things attached to it, and interests capable of being owned, possessed, enjoyed, transferred or restricted by law.³⁰ The common law captures this breadth through the classical maxim *cujus est solum ejus est usque ad coelum et ad inferos* (he who owns the soil owns up to the heavens and down to the depths). The maxim is not absolute in modern times due to public rights such as aviation, mineral regulations, and planning laws). However, it shows that land is more than soil; it is a bundle of rights and recognised interests. Land is best understood as: a physical object (the parcel, boundaries, fixtures); and a legal institution (rights, powers, duties, liabilities, limitations). Thus, land law is concerned with title, possession, control, use, exclusion, and alienation.³¹

³⁰ Omotola (n30).

³¹ I. A. Umezulike, *ABC of Contemporary Land Law in Nigeria* (Revised & Enlarged edn, Enugu: Snaap Press Nigeria Ltd, 2013) 5–6.

A critical point is that land ownership may be “radical” (ultimate) or “derivative” (secondary). The Land Use Act 1978 provides that all land in each State is vested in the Governor to be held in trust and administered for the use and common benefit of all Nigerians.³² This introduced a new framework of landholding which co-exists, (sometimes uneasily) with customary tenure that vested land in the community or family. Even under the statutory regime, individuals and families hold rights of occupancy (statutory or customary) commonly and other interests recognised by law. The law therefore does not treat land as a single, indivisible “thing.” Rather, it recognises multiple layers of interests which may exist in the same land, and the validity of dealings depends on compliance with both rules of customary authority and statutory requirements such as consent and registration.³³ Land is social trust and this resonates with family landholding. Equity has long recognised that land may be held for the benefit of others even where legal powers of control are exercised by one person.

2.1.2 Meaning of Family Land

Family land refers to land owned by a family collectively as a continuing unit under customary law and it is managed by the head of family in consultation with principal members. It is held for the benefit of present and future generations. In family land, the family head does not hold absolute ownership. He is more a manager or trustee-like figure for the lineage.³⁴ Family landholding is therefore an institution of communal ownership in miniature: the land belongs neither to one individual nor to a transient group, but to the family lineage as a continuing entity. It is owned collectively for the benefit of all family member. Control is exercised through recognised authority structures. In D.W. Lewis &

³² LUA 2004, s1

³³ Frank-Igwe and Agwor (n20)

³⁴ *ibid*

Ors v Bankole & Ors,³⁵ the courts held that family land is property in which members possess enforceable interests under customary law.

The nature of family land therefore rejects the simplistic notion that “possession equals ownership.” A family member may occupy or farm on family land. However, occupation does not create exclusive ownership. No family member transfers full ownership of family land as though it were his personal property, unless the law recognises that authority. Family land is not identical to communal land.³⁶ Communal land is held by a broader community, village, or clan. Conversely, family land is held by a narrower lineage unit. Nevertheless, both share incidents of customary tenure: collective ownership, management by recognised authorities, and restrictions on alienation to protect future generations.³⁷

2.1.3 Nature of Family Landholding in Nigeria

Family landholding has distinctive features. They include the following.³⁸

- i. **Collective ownership:** the family as a unit owns the land; individuals have beneficial rights of use and enjoyment.
- ii. **Management by family head:** the head are administrator/manager for the family.
- iii. **Concurrence of principal members:** major decisions, particularly alienation, require consultation and concurrence.
- iv. **Inalienability without authority:** sales, mortgages, leases, and gifts require compliance with the structures of customary authority otherwise they are void or voidable.

³⁵ [1908] 1 NLR 81 (SC).

³⁶ Frank-Igwe and Agwor, (n32)

³⁷ Bokani (n30).

³⁸ Umezulike (n24)

- v. **Intergenerational character:** land is preserved for unborn descendants and this makes it a “continuing trust.”
- vi. **Protection by courts:** courts intervene to prevent fraud, abuse of authority, and dissipation of lineage property.

These incidents flow from a public-policy rationale. Family landholding prevents reckless dissipation of common assets and this promotes welfare and continuity. *Ekipendu v Erika*³⁹ crystallised the rules on sale of family land. The court emphasised that a sale by a family member who is not the head of family, without the consent of the head is void; and that even where the head acts, the consent/participation of principal members remains crucial. In this case, a dispute arose because the family land was dealt with by persons who did not carry the full customary authority required to pass title. The apex court protected the beneficial interest of the family and it ruled that the transaction is defective because requisite authority and consent were absent.

Similarly, in *Esan v Faro*,⁴⁰ the West African Court of Appeal addressed the situation where a family head sells family land without meaningful concurrence. The court held in substance that where alienation occurs without consent and against the wishes of a not unimportant minority of principal members, the sale is voidable and may be set aside. This protects minority interests within the family. It prevents the head and a few elders from treating family land as personal property. The court reinforced this stance in *Mogaji v Nuga*.⁴¹ It held that the authority of the head of the family is not absolute but conditioned by customary governance rules. The rationale is that family land is not a free commodity like market goods. It is “ancestral capital.” Thus, the law restrains alienation to preserve lineage continuity.

³⁹ [1959] SCNLR 186

⁴⁰ [1947] 12 WACA 135

⁴¹ [1960] 5 FSC 107

*Adeleke v Iyanda*⁴² illustrated the risks of dealing with family land. The dispute involved parcels said to be family property. The defendants contended that the land was sold without due authority by descendants of the family to purchasers and a portion was resold. The Court treated the matter through the lens of proper title and authority. It held that purchasers must prove valid root of title where land is alleged to be family property.

The family head occupies a dual legal position. He is the representative of the family in external dealings; and the custodian bound to act for the benefit of the family. His powers are therefore fiduciary in substance. If he purports to sell family land as his personal property, courts may treat the act as an abuse of authority. One recurrent practical challenge is identifying “principal members.” Customary law differs across communities, and families may disagree on who qualifies as principal members. This creates evidentiary uncertainty and transaction risks because many family arrangements are not documented. Family arrangements are often poorly captured in formal records, enabling opportunistic dealings and fraud.⁴³ Thus, even when a purchaser obtains a deed signed by some elders, the transaction may still be challenged years later on the ground that the “right” elders did not consent, or that the head was appointed improperly.⁴⁴

The 1999 Constitution guarantees the right to acquire land in Nigeria⁴⁵ and restricts compulsory acquisition except in accordance with law and upon compensation. Family landholding must therefore operate within constitutional boundaries. A major constitutional pressure point is gender equality. In *Ukeje v Ukeje*,⁴⁶ the Supreme Court condemned Igbo customary law that excluded female children from inheriting their father’s estate. It held that

⁴² [2001] 13 NWLR (Pt 729)

⁴³ Frank-Igwe and Agwor (n7)

⁴⁴ Umezulike (n40)

⁴⁵ LUA, s43.

⁴⁶ [2014] LPELR-22724(SC)

is unconstitutional because it is discriminatory. It held that a custom which disentitles females from inheritance is void, being inconsistent with constitutional equality rights.

2.1.4 Sources of Family Land in Nigeria

Family land may arise through multiple pathways. Key sources include:

(a) Inheritance

The most common source of family land is inheritance. This is a land passed down through ancestors and retained within the lineage. Here, the land becomes “family property” because it is held for collective benefit, not as a personal asset of any individual descendant. The living hold the land not only for themselves but also for descendants. This explains why unilateral alienation is discouraged. It amounts to consuming the inheritance of future generations and this is contrary to the moral and legal foundation of family property.⁴⁷

(b) Gift inter vivos (gift during lifetime) to a family

Land may become family property where an ancestor or third party gifts land to a family unit. However, customary law is cautious with gifts of family land. Where a head purports to gift family land without authority, courts hold that disposition is invalid because family land is not his personal estate to donate.⁴⁸

(c) Purchase by an ancestor for the benefit of the family

A family land may arise where an ancestor acquires land using family resources or with the intention of making it lineage property. Once the land is treated as family property over time, it may be recognised as such legally.⁴⁹

⁴⁷ Umezulike (n41)

⁴⁸ Omotola (n12)

⁴⁹ Frank-Igwe and Agwor (n30)

(d) Allocation under customary tenure and transformation into family property

In some communities, land may first be allocated to an individual within a communal setting, and it would become family land subsequently when that descendants of the individual hold and manage it as lineage property. The law may recognise transformation where conduct indicates collective ownership and governance.⁵⁰

(e) Customary settlement and consolidation through long usage

Where families have occupied and exercised ownership acts over land for long periods, the land may be presumed family property where the land has been treated as ancestral. Courts rely on evidence of traditional history, long possession, and community recognition. However, the evidential burden are heavy where histories conflict.⁵¹

(f) Statutory overlay: rights of occupancy and formalisation

Although family land is rooted in customary tenure, families formalise holdings through statutory mechanisms. These include applying for certificates of occupancy, Governor's consent to transactions, and registration/perfection. This produces a hybrid (that is, customary operating through statutory instruments). Recent scholarship argue whether statutory mechanisms enhance tenure security or introduce administrative bottlenecks. Odoyi and Riekkinen⁵² noted that centralisation under the Land Use Act made formal titles difficult to obtain for many citizens due to administrative delays and limited grassroots participation.

⁵⁰ Bokani (n32)

⁵¹ Omotola (n31)

⁵² EJ Odoyi and K Riekkinen, 'Exploring land policy tools and instruments for formalising informal settlements in Nigeria' [2025](166) *Habitat International*

2.2 Theoretical Framework

This section develops jurisprudential theories that justify (or criticise) the existence and continued relevance of family landholding in Nigeria within a plural society where customary law and statutory land administration operate side-by-side. The theoretical framework explains why the law regulates family landholding the way it does, and how competing legal philosophies interpret the aim of the research.

2.2.1 Natural Law Theory

Natural law theory holds that law must be rooted in morality, reason, and justice.⁵³ A rule that contradicts fundamental justice lacks legitimacy even if it is socially accepted. This resonates strongly in land and inheritance disputes because such disputes involve fairness between family members, protection of vulnerable persons, and constraints on selfish conduct. Family landholding can be defended on natural law grounds because it promotes:

- i. Justice across generations: the living should not destroy the inheritance of descendants.
- ii. Communal welfare: land secures livelihood and dignity.
- iii. Moral restraint on power: the family head's authority is limited to prevent oppression.

This explains why courts require consent of principal members. It prevents tyranny within the family unit and enforces fairness. It also mirrors the ethical principle that power must be exercised for collective benefit. Natural law also condemns discriminatory customs. A customary rule that denies a daughter inheritance is invalid because it violates the intrinsic

⁵³ John Finnis, *Natural Law and Natural Rights*. (2nd ed. Oxford: Oxford University Press 2011)

dignity and equal humanity of women.⁵⁴ Natural law critics administrative bottlenecks under the LUA. Where the governor's consent produces severe hardship and uncertainty, it becomes unjust and contrary to the law's purpose of promoting common benefit. Recent scholarship questions whether governor's consent has become counterproductive to development and access to land.⁵⁵

2.2.2 Historical School of Jurisprudence

The historical school argues that law grows organically from the spirit, culture, and traditions of a people (*Volksgeist*).⁵⁶ Under this theory, customary landholding is not an inferior or primitive form of property; it is the historical expression of African social organization and it developed to suit communal realities. Family landholding is historically justified because it emerged to:

- i. Preserve lineage identity and continuity;
- ii. Prevent fragmentation and loss of ancestral land;
- iii. Protect weaker members of the family;
- iv. Provide social security where state welfare is limited.

The historical approach is often critical of wholesale statutory reforms that ignore indigenous realities. The Land Use Act introduced centralised control and administrative consent. This was intended to enhance equitable access and planning. However, critics argue that it disrupted customary tenure without fully replacing it with effective administration and this

⁵⁴ Ukeje v Ukeje (n20).

⁵⁵ C I G Agwor and N Amadi-Harry, 'Consent of the Governor in land transactions: whose duty and when' [2024] (10) *Journal of Commercial and Contemporary Law* 1–18
<<https://www.nigerianjournalsonline.com/index.php/JCCL/article/download/5681/7063>> accessed 28 January 2026.

⁵⁶ Funso Adaramola, *Jurisprudence* (4th edn, LexisNexis, 2008).

generates uncertainty. Derri and Egemonu⁵⁷ noted that it altered prior customary patterns of ownership and transferability. From a historical lens, these outcomes shows that it is harmful to ignore organic legal development because *consuetudo est altera lex* (custom is another law). Customary law remains a living legal order, not merely a social habit. However, historical legitimacy is not unlimited. Customs that violate constitutional values or fundamental justice cannot be preserved because they are old. *Ukeje v Ukeje*⁵⁸ shows that constitutional order and modern justice standards override history-based discrimination.

2.2.3 Legal Positivism

Legal positivism separates law from morality. Positivist argue that law is valid because when it is created by recognised authority, not because it is morally good. Positivism emphasises hierarchy of norms, and obedience to enacted law. Under positivism, the legal question is what the law does should say, not what should it say. From a strict positivist view, customary family land rules are valid only because the Nigerian legal system recognises customary law as a source of law. Courts enforce customary rules because the legal system permits it; it is not because customary rules are moral. Thus, the consent rule in *Ekpendu v Erika*⁵⁹ is binding as judicial precedent within the hierarchy of Nigerian law.

Legal positivism privileges the governor's consent in the LUA. Section 22 provides that the Governor's consent is required in order to alienate statutory rights of occupancy. In addition, Section 26 renders certain transactions void for non-compliance. This is intended to protect public control and prevent chaotic dealings in land. A major weakness of positivism is that strict application of law generates harsh outcomes for innocent purchasers or vulnerable family members. Family land transactions often occur without formal documentation, and a

⁵⁷ DK Derri and JN Egemonu, 'Impact of the LUA on Land Tenural System in Nigeria' [2022](4)(2) *American Journal of Law* 1 – 19.

⁵⁸ *Ukeje v Ukeje* (n20).

⁵⁹ [1959] 4 FSC 79; (1959) SCNLR 186 (FSC)

rigid insistence on statutory consent and perfect documentation may increase injustice. This is why equity and customary institutions remain relevant practically.

2.2.4 Legal Pluralism

Legal pluralism recognises the existence of multiple co-existing legal orders within one society.⁶⁰ Nigeria exemplifies pluralism: statutory law, customary law, Islamic law (in relevant states), and judicial precedent interact. Family landholding exists because customary law remains dominant socially. Families continue to allocate, manage, and resolve land disputes through customary institutions even while statutory frameworks require formal documentation. This duality creates both functionality and conflict. A major pluralist challenge is the compliance collision between:

- i. **Customary requirement:** consent of family head + principal members (as in *Ekipendu v Erika*⁶¹).
- ii. **Statutory requirement:** Governor's consent and registration/perfection for certain interests (LUA).⁶²

A transaction may satisfy one regime but it may fail the other. For example, a purchaser may obtain signatures of head and principal members. However, he/she may fail to perfect title and obtain consent and the transaction would become invalid statutorily. On the other hand, a purchaser may obtain a formal deed. However, he may later face customary challenge that the correct principal members did not consent. This explains why family land disputes persist even after reforms. Where customary authorities, families, courts, and state agencies overlap without coherent integration, disputes become frequent and sometimes violent. Legal

⁶⁰ T Dunlap, *Legal pluralism: history, theory and consequences* (New York, NY: Clanrye International 2023).

⁶¹ *Ekipendu v Erika* (n41)

⁶² *Agwor and Amadi-Harry* (n31)

pluralism does not mean Nigeria must accept disorder. Rather, pluralism demands coordination: clearer documentation, better land registry systems, family interest registers should be recognised statutorily, and dispute resolution frameworks that generate enforceable records.

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORK FOR FAMILY LAND HOLDING IN NIGERIA

3.1 Core Legal Framework For Family Land Holding In Nigeria

This section examines the core legal framework which regulate family land holding in Nigeria.

3.1.1 Constitution of the Federal Republic of Nigeria 1999 (as amended)

The Constitution is the grundnorm. Under the supremacy doctrine, any customary rule, statute, or administrative act inconsistent with the Constitution is invalid to the extent of inconsistency. This matters for family landholding because many customary practices (around inheritance, family authority, exclusion of certain members, and gender-based restrictions) are invalid because they are inconsistent with the constitution. The constitutions provide that every individual has the right to acquire and own property,⁶³ protection against compulsory acquisition except in accordance with law and with compensation,⁶⁴ equality and non-discrimination,⁶⁵ fair hearing and due process⁶⁶

In *Ukeje v Ukeje*,⁶⁷ the Supreme Court rejected Igbo customary law that disinherits a female child from her father's estate. It held that the custom is unconstitutional because it violates the right against discrimination. The implication for family landholding is that family land arrangements cannot be insulated from constitutional standards merely by branding them "customary." Where customary governance rules operate to deny a class of family members

⁶³ ibid s43

⁶⁴ ibid s44

⁶⁵ ibid s42

⁶⁶ ibid s36

⁶⁷ [2014] LPELR-22724(SC)

access to inheritance or beneficial interests in family land, such rules are invalidated because they are inconsistent with the constitution.

Indeed, the constitution provides that every individual has a right to own property and it does not mean that every family member becomes “exclusive owner” of family land.⁶⁸ Rather, it indicates that ownership is a legally protected interest. The law of family land is therefore best understood as regulated ownership: family members have enforceable beneficial interests. However, alienation and control must follow family governance rules. Family lands are sometimes affected by government acquisition for public purposes (for examples, roads, urban renewal, industrial schemes, or public institutions). The Constitution requires lawful procedure and compensation.

3.1.2 Land Use Act (LUA) 1978, Cap L5, LFN (2004).

This the foundational statutory intervention in landholding in Nigeria. It vested all land in each state in the Governor to hold in trust and administer for the use and common benefit of all Nigerians.⁶⁹ The Act sought to reduce speculative landholding. It unifies tenure systems and regulate land allocation. However, scholars noted that the Act created an administrative system that sometimes produces delays, uncertainty, and transaction costs for customary and family land users.⁷⁰ The Act recognises two broad categories:

1. Statutory right of occupancy (usually granted by the Governor over urban land);⁷¹ and

⁶⁸ CFRN 1999, s43 and 44.

⁶⁹ LUA 2004, s1.

⁷⁰ T Ogbukwu, ‘The legal implications of the LUA on property development in Nigeria’ (LL.B project, Faculty of Law, Alex Ekwueme Federal University, Ndufu-Alike, Ebonyi State, September 2025).

⁷¹ LUA 2004, s5 and 34

2. Customary right of occupancy (often allocated by Local Governments over non-urban land).⁷²

For family lands, the practical implication is that even where land is family property, dealings may be treated as an “interest in land” and it must comply with statutory requirements depending on location and nature of the grant. This is the compliance collision at the heart of land pluralism in Nigeria. One of the most litigated aspects of the Land Use Act is the requirement of Governor’s consent for alienation of statutory rights of occupancy⁷³ A transaction such as assignment, mortgage, transfer of possession, or sub-lease may require consent. If consent is not obtained, the transaction becomes voidable.

In *Savannah Bank v Ajilo*⁷⁴ a holder of land executed a mortgage to a bank without obtaining the Governor’s consent as required. The Supreme Court held that the mortgage is void because Governor’s consent was not obtained. The LUA renders transactions void where statutory requirements are not met.⁷⁵ This increases vulnerability of purchasers and mortgagees dealing with family land where they proceed informally or rely on family representatives without perfection of title. The LUA recognises “deemed grants.”⁷⁶ This matters for family land because many families hold land historically, and the law may treat such holdings as statutorily recognised rights of occupancy even without a formal grant. Thus, a family that holds land as “family land” under customary tenure may still be treated as a “deemed holder” and dealings may attract statutory consequences where the land is urban or has been developed into plots.

⁷² LUA 2004, s6.

⁷³ LUA 2004, s22.

⁷⁴ [1989] 1 NWLR (Pt 97) 305 (SC).

⁷⁵ LUA 2004, s26.

⁷⁶ commonly linked with section 34 for developed urban land held prior to the Act, and section 36 for customary holders

3.1.3 Evidence Act 2011 (as amended 2023)

Family land disputes are not only about substantive law; they are also about proof. Title to family land is contested through oral tradition, boundary evidence, family authority claims, competing deeds, or allegations of forgery. Hence, the Evidence Act is a critical component of the legal framework. In family land disputes, the typical evidentiary issues include:

- i. Proof that land is indeed “family land” (as opposed to personal property);
- ii. Proof of who is the rightful family head at the material time;
- iii. Proof of who are principal members and whether they consented;
- iv. Proof of boundaries and identity of land;
- v. Proof of documents (survey plans, deeds, powers of attorney, receipts);
- vi. Proof of customary law, where necessary.

As land cases often hinge on credibility and documentary authenticity, the Evidence Act regulates admissibility, relevance, weight, and documentary proof. The EEA 2023 introduced innovations that align the evidence law in Nigeria with technological realities.⁷⁷ It includes electronic records and digital signatures, and improves admissibility of electronic evidence. Amendments were made to sections including 84, 93, 108, 109, 110, 119, 255 and 258, among others. It introduced electronic oaths and recognition of electronic records. This is relevant to family land disputes because modern family transactions increasingly occur through WhatsApp agreements, chats, emails between buyers and family representatives; electronic

⁷⁷ EEA, 2023 amends the Evidence Act 2011 through sections 2, 3, 4 and 10 of the Amendment Act. Section 2(a), (c), (d), (e) & (f) of the EEA 2023 inserts the words “or electronic records” into key parts of section 84 of the principal Act.

payment evidence; digitally stored land records from registries; online land verification systems (for example., Lagos e-search portals).⁷⁸

Even before the 2023 amendment, section 84 of the Evidence Act 2011 provided the foundational rules on admissibility of computer-generated evidence. Section 84 allows statements produced by a computer to be admissible if statutory conditions are met. In *Kubor v Dickson*,⁷⁹ the Supreme Court held that parties tendering electronic evidence must comply with section 84. Where authenticity of a land transaction document is in dispute, Evidence Act rules on proof of documents and admissibility become decisive. In practice, courts weigh: internal consistency of documents; whether signatories had authority; whether documents were registered or acknowledged; corroboration from witnesses and acts of possession. This is one reason why digitisation of registry is significant as digital records reduce forgery through verifications.

3.1.4 Customary Law

Customary law is the “living law” and it governs family landholding historically.⁸⁰ Under customary law, family land belongs to the family as a continuing entity. Individual members enjoy use and occupation rights, but not absolute power to sell. This supports social continuity and protects unborn descendants. The living are trustees for the dead and the unborn. Thus, customary law holds that unauthorised sale is defective doctrinally because it violates the collective interest of the family. Customary law insists that for an alienation of family land to be valid, the family head must act with concurrence of principal members.⁸¹

Customary law is not absolute. It operates within constitutional boundaries. The courts in

⁷⁸ Lagos State Government, ‘LAGOS STATE LAND ONLINE: Electronic Certificate of Occupancy Application Portal’ <<https://landonline.lagosstate.gov.ng>> accessed 28 January 2026.

⁷⁹ [2013] 4 NWLR (Pt 1345) 534

⁸⁰ Epiphany Azinge (ed), *NIALS Dictionary of African Customary Laws* (Nigerian Institute of Advanced Legal Studies (NIALS) Press, 2013) 38–39.

⁸¹ *Ekpendu v Erika* (n21).

Nigeria apply a repugnancy and incompatibility test to customs. They include the following: a custom must not be repugnant to natural justice and good conscience, the custom must not be incompatible with written law, the custom must not be against public policy.

The customary law is a *fact-sensitive “living law”*. Hence, it is applied in court through **proof and judicial notice**. The Evidence Act allows a custom to be adopted as governing law where it is judicially noticed or proved by evidence. In addition, it places the burden of proof on the party which assert the custom.⁸² In other words, even where the rule on family concurrence is “well known” in legal writing, parties still need to plead the relevant customary law. They must either show that it has been recognised previously (to justify judicial notice) or they must lead credible evidence (community practice, expert testimony, prior decisions) and this establishes that the custom is binding in the locality. Contemporary scholarship has argued that the Nigerian courts have been inconsistent in applying the threshold for “judicial notice” threshold and that Evidence Act framework sometimes make the content of customary law harder (not easier) to stabilise in litigation.⁸³

3.1.5 Case Law (Judicial Precedent)

Judicial precedent is not merely an “addition” to the law regulating family land; it is the engine that operationalises customary doctrine and resolves statutory ambiguity. Courts decide:

- i. whether land is family land or personal property;
- ii. who is family head and whether principal members consented;
- iii. whether consent defect makes a transaction void or voidable;
- iv. what remedies apply.

⁸² Evidence Act 2011, s 16(1)–(3).

⁸³ AO Ewere, ‘Safeguarding the Rule on Judicial Notice of Custom in Nigeria: Preference for Repealed Rule of Evidence’ [2020] (45)(3) *Commonwealth Law Bulletin* 454.

The doctrine of precedent itself reflects *stare decisis et non quieta movere* (stand by decisions and do not disturb settled matters). This promotes certainty in land transactions. In *Ekpendu v Erika*,⁸⁴ the Supreme Court articulated a foundational rule. It held that the sale of family land by a family member who is not the head, without the head's consent, is void; and that even where the head acts, principal members must consent to it. Similarly, In *Esan v Faro*,⁸⁵ the West African Court of Appeal held that where the family head alienates family land without meaningful consent of principal members, the transaction is voidable at the instance of non-consenting members. This means that the sale may stand unless challenged by the family.

In *Offodile v Offodile*⁸⁶ the Supreme Court dealt with a dispute over sale of multiple plots from family land while the family head was away. In this case, plots were sold by family members to a nephew while the claimant (family head) was abroad; the claimant alleged that consent was not gotten and they sought declaration of nullity and injunction. The Supreme Court reiterated that consent of the family head (and/or principal members depending on transaction structure) is central to a transaction and transactions which bypass family governance are defective.

3.2 Core Institutional Framework for Family Land Holding In Nigeria

Institutions are the “living machinery” that enforce legal rules. This section examines the institutions that operationalise those core legal framework which regulate family land holding in practice.

⁸⁴ *Ekpendu v Erika* (n40)

⁸⁵ [1947] 12 WACA 135 (WACA).

⁸⁶ [2019] 16 NWLR (Pt 1698) 189 (SC)

3.2.1 Courts

Courts are central to the regulation of family land because they translate customary landholding norms into enforceable legal rights and remedies. The judicial powers in Nigeria vest in the courts.⁸⁷ The “superior courts of record” include (among others) the Supreme Court, Court of Appeal, Federal High Court, High Court of the FCT,⁸⁸ and the High Court of a State.⁸⁹ In practice, family land disputes present as civil proceedings for declaration of title, injunctions (to restrain trespass or further alienation), accounts, and sometimes setting aside of transactions for lack of consent.

Land disputes are not heard in one uniform forum. The High Court of a State has broad civil jurisdiction “to hear and determine any civil proceedings in which the existence or extent of a legal right... or interest... is in issue”, subject to constitutional limits.⁹⁰ The LUA further allocates jurisdiction in a way that often intersects with family landholding: an Area Court/Customary Court (or equivalent) has jurisdiction over proceedings relating to a customary right of occupancy granted by a Local Government (including declarations of title). On the other hand, rent recovery in respect of statutory certificates of occupancy may lie before a magistrate’s court, and rent recovery for customary rights may lie before Area/Customary Courts.

The Federal High Court has limited subject-matter jurisdiction. Hence, it is not a default forum for ordinary family land disputes (unless a federal agency, federal revenue, or federal administrative action is implicated). Section 251(1) of the Constitution lists the categories

⁸⁷ CFRN 1999 (as amended) s6(1)–(2)

⁸⁸ *ibid* s257

⁸⁹ *ibid* s272

⁹⁰ *ibid*, s251; LUA 1978, s 39(1)(a).

where the Federal High Court has exclusive jurisdiction (e.g., matters relating to federal revenue, federal agencies, and injunctions affecting the validity of federal executive/administrative actions).

At the appellate level, the hierarchy of the court shapes how customary law issues are corrected and harmonized. The Court of Appeal has appellate jurisdiction (to the exclusion of other courts) to hear appeals from the Federal High Court, State High Courts, and other listed courts. Ultimately, appeals from the Court of Appeal lie to the Supreme Court. For family land disputes grounded in custom, the CCA is relevant: it exercises appellate and supervisory jurisdiction in civil proceedings involving questions of customary law. From the CCA, an appeal lies as of right to the Court of Appeal on questions of customary law (and other prescribed matters).⁹¹ The “quality” of customary-law reasoning at trial (and the framing of grounds of appeal as “customary law questions”) decide whether an appellate court will review the dispute or treat it as factual.

Courts perform at least five core functions in relation to family land. They include the following:

- i. Declares title and determination of whether land is family property;
- ii. Reviews validity of alienation (sale, mortgage, lease, gift);
- iii. Protects against trespass and injunctions;
- iv. Interprets statutes (LUA, Evidence Act);
- v. Develop precedent and harmonisation of customary and statutory rules.

However, it is important to recognise the institutional challenges within the court. Land litigation in Nigeria is often slow, expensive, and technical. In addition, Injunctions and

⁹¹ CFRN 1999 (as amended) s 245(1)

interlocutory applications may freeze land development for years. Moreover, enforcement sometimes triggers resistance, community conflict, or allegations of “land grabbing.”⁹² Indeed, the courts are the ultimate forum of legality. However, they are not always the most efficient conflict-resolution mechanism for family land disputes.

3.2.2 Land Registry

Land registries sit at the intersection between customary family ownership and the formal documentary system of Nigerian land law. They create an official trail of instruments (deeds, assignments, mortgages, subleases, powers of attorney, court judgments affecting land). In addition, they enable searches and help purchasers/lenders test whether the person selling family land has a defensible “paper pathway” to title. In a system where many family transactions relied on oral history, witness testimony and boundary knowledge, registration is a public memory and it reduces uncertainty and also makes disputes easier to adjudicate. Furthermore, Land registries help convert “informal family ownership” into “verifiable and enforceable title.” They provide record land instruments; verify owners and transaction history; perfect land titles; provide administrative pathway for Governor’s consent (where required); conduct institutional checks. The problem is that many families do not register interests, due to cost, bureaucracy, ignorance, or distrust. Consequently, the “paper title” held by outsiders may clash with “customary title” held by families.

Registries also shapes the outcomes of litigation through evidential rules. Under Lagos’ Land Instruments Registration framework, an unregistered registrable instrument is not to be pleaded or given in evidence.⁹³ In addition, the law establishes priority effects. Registered instruments take effect against other instruments which affect the same land from the date of

⁹² Samuel Omotere, ‘Enugu sets deadline for digital charting of private layouts’ *Punch* [2 October 2025] <<https://punchng.com/enugu-sets-deadline-for-digital-charting-of-private-layouts/>> accessed 25 January 2026.

⁹³ LIRL (Cap. L58, LFN Lagos State), s15.

registration.⁹⁴ This implies that an “outsider” may present a clean documentary chain and search results. Conversely, the family relies on customary history and oral accounts. Where the courts prefer documentary evidence (especially in urban/peri-urban settings), families lose not because customary title is “non-existent” but because it is harder to prove against registered documents. This is why non-registration is more than a bureaucratic problem; it is a structural disadvantage in adjudication. Even where customary doctrine recognises family ownership, court precedents rewards documentary regularity.

A significant contemporary development is that land administration is shifting toward digitisation. For example, Lagos State operates an online land registry portal and this enables property search and access to scanned land documents, among other tools.⁹⁵ Similarly, Enugu State has also moved toward digital land administration. Its ENGIS portal overseas verification, applications, and payment of ground rent.⁹⁶ For family land, digitisation has two potential effects. Firstly it would control fraud. It would reduce forged allocations and multiple sales by enabling easier verification. Secondly it would draw families to document and register interests. This reduces reliance on oral tradition alone. Digitisation may create a divide because if formal systems are too costly, rural or low-income families would remain excluded. However, Digitisation is not successful automatically. Chukwunweike and others⁹⁷ highlighted that there is need for institutional capacity, training, and resource allocation to support effective digitisation.

⁹⁴ *ibid*, s16

⁹⁵ Lagos State Government, ‘Lagos State Land Online: Electronic Land Administration Portal’ <<https://landonline.lagosstate.gov.ng>> accessed 23 January 2026.

⁹⁶ Enugu State Government, ‘Enugu State Geographic Information System Service (ENGIS) Land Administration Portal’ <<https://portal.engis.en.gov.ng>> accessed 23 January 2026.

⁹⁷ AB Chukwunweike, CC Egolum and CP Igwe, ‘Digitisation of land registries in South-South Nigeria: assessing institutional capacity’ [2025] (13) (8) *International Journal of Advanced Research* 1527–1537 <https://www.journalijar.com/uploads/2025/08/68bffb6e59717_IJAR-53599.pdf> accessed 28 January 2026.

3.2.3 Traditional Institutions

Traditional institutions include: family councils and elders; village heads and chiefs; community dispute resolution mechanisms; customary arbitration systems. They are crucial because family landholding is rooted in customary governance, not state bureaucracy. Traditional institutions perform three core functions:

- i. **Allocation and internal governance:** deciding which member farms or builds on which portion.
- ii. **Consent and concurrence:** the elders/principal members validate alienation decisions.
- iii. **Dispute resolution:** mediation and customary arbitration prevent escalation to court.

Many family land disputes are resolved through customary arbitration, not formal courts. In *Agu v Ikewibe*,⁹⁸ the court held that where parties submit their dispute to customary adjudicators (elders/heads) voluntarily and accept the outcome as binding, the decision may be final and enforceable in later proceedings (where the process reflects consent and finality). Customary arbitration is a legitimate mechanism for dispute-resolution. This has numerous advantages and it includes speed, cultural legitimacy, reduced costs. But it also has weaknesses. Firstly settlement terms may not be documented and outcomes may be challenged later in court. Many customary settlements are oral and this makes them vulnerable to later denial, re-litigation, or evidential defeat in court when third parties (buyers, banks) demand written proof. Customary forums may also exclude women or vulnerable members. It may replicate patriarchal structures that marginalise women, younger members, or “non-dominant” branches of the family. This produces outcomes that are accepted by some but unjust to others. Furthermore, traditional authority may be weaponised in land conflicts,

⁹⁸ [1991] 3 NWLR (Pt 180) 385 (SC).

where rival claimants obtain competing “traditional approvals,” or powerful actors exploit customary legitimacy to dispossess weaker occupiers. In addition, enforcement may rely on social pressure rather than legal certainty. In the modern era, where purchasers and banks demand documentation, traditional settlements may be insufficient to secure title. Moreover, Traditional governance may result to land grabbing and competing claims. Reports indicate that traditional authority are weaponised in land conflicts.⁹⁹ Hence, it should be noted that traditional institutions stabilise and destabilise family landholding depending on integrity, transparency, and interaction with state institutions.

⁹⁹ vLex Nigeria, ‘Contentious sale of family land’ [2019]
<<https://ng.vlex.com/vid/contentious-sale-of-family-920918054>> accessed 28 January 2026.

CHAPTER FOUR

CHALLENGES IN THE REGULATION OF FAMILY LAND HOLDING IN NIGERIA

4.1 Conflict between Customary Law and Statutory Law

The land regime in Nigeria is pluralistic. On one hand, customary law conceptualizes family land as collective property held for the family as a continuing entity. On the other, statutory law imposes a governance model centered on the state through the Land Use Act and formal title/consent systems. This creates a jurisprudential struggle between social legitimacy (customary norms that communities recognize) and legal validity (formal compliance with statutory requirements). Under customary law, a sale of family land must be conducted by the family head with the concurrence of principal members. The Supreme Court in *Ekipendu v Erika*¹⁰⁰ articulated this position, it held that:

a sale of family land by a family member who is not head, without the head's consent, is void, and even where the head acts, the participation/consent of principal members remains crucial.

In customary jurisprudence, the key question is whether the transaction was authorized by those recognized by custom as competent to bind the family, not merely whether formal documentation exists. On the other hand, the Land Use Act (LUA) sought to unify tenure and regulate transactions. Section 1 of the LUA vests land in the Governor to hold in trust for all Nigerians (this creates state-centered administration). Sections 21–22 of the LUA introduce consent requirements for alienation of land (especially statutory rights of occupancy). Going further, Section 26 of the LUA renders certain transactions null/void for non-compliance in the relevant category of interests. It is necessary to distinguish between customary consent

¹⁰⁰ [1959] SCNLR 186.

and statutory consent. Customary consent relates to the approval of the family head and principal members under native law and custom. On the other hand, statutory consent refers to the approval required by the LUA for certain categories of land transactions.

The real difficulty is not that customary law and statutory law coexist. However, it is that land law in Nigeria does not provide a coherent mechanism for reconciling both systems in family land transactions. As a result, compliance with one normative order may still leave the transaction vulnerable under the other. The biggest victim is often the innocent purchaser. Customary rules say “verify family authority.” On the other hand, statutory rules say “verify formal compliance.” Even so, both may be required simultaneously. This certainty in land transactions and frustrates the policy objective expressed in the maxim *interest reipublicae ut sit finis litium*, since disputes continue to arise long after purported transfers have been concluded.

4.2 Uncertainty Created by the Land Use Act 1978

The LUA remains one of the most criticized sources of land uncertainty. The objective of the Act was to centralize land administration and create a more predictable framework for the control and transfer of land interests in Nigeria. Nonetheless, learned scholars repeatedly notes that the consent regime and administrative structure create delays and insecurity for landholders.¹⁰¹ Uncertainty manifests in family landholding through ambiguity about whether the land is “urban” (thus under Governor’s grant) or “non-urban” (customary right under Local Government). There is also uncertainty about whether family land has matured into a deemed statutory right of occupancy. Going further, there is also uncertainty about whether a

¹⁰¹ Jude O Ezeanokwasa and Anthony Ifeanyichukwu Eze, ‘The Requirement of Governor’s Consent in the Alienation of Interest in Land under the LUA: A Critical Review’ [2021] (2) *Awka Capital Bar Journal* 23–36.

transaction needs consent, registration, or both. Indeed, the requirement for consent under section 22 of the LUA is straightforward theoretically.

However, in practice, uncertainty arises because families do not always know whether their land is within a statutory right of occupancy regime and many lands are held as “deemed grants.” In addition, informal customary transactions occur without documentation. Where parties are uncertain whether the interest being transferred falls within a category requiring statutory consent, the transaction becomes vulnerable to challenge for non-compliance. Similar difficulty arises in relation to registration, since the failure to register an instrument affecting land may weaken its enforceability as well as expose the transaction to competing claims.

In effect, uncertainty under the Act transforms what families may regard as valid internal arrangements into legally precarious transactions when tested against statutory requirements. Ironically, therefore, the LUA, which was designed to reduce confusion and establish a uniform system of land control, has in many instances produced the opposite effect because it introduces new layers of ambiguity into family land relations.

4.3 Abuse of Powers by Family Heads/Principal Members

The family head and principal members are custodians for collective benefit. Customary law clearly recognizes the family head and principal members as the persons competent to represent the family in matters relating to family land, especially in relation to alienation, management, and preservation. However, in reality, this authority is abused frequently. Abuse appears in numerous forms; this includes unilateral sale by some members while the family head is absent as well as sale by the head without genuine concurrence. The challenge in this area lies not merely in the abuse of customary authority. However, it is because there

are effective procedural safeguards regulating how such authority should be exercised, verified, as well as documented. More so, abuse may include misappropriating sale proceeds without accounting and colluding with buyers to exclude vulnerable members. More common is “double sale.” This is a situation where the same land is sold to multiple buyers. In *Offodile v Offodile*,¹⁰² the plaintiff (recognized family head) was abroad in the United States. While he was away, the 1st–5th defendants sold 25 plots of the family land to a nephew (6th defendant) without his consent. He sought declarations that the sale was null and void, and injunction restraining the sale. The Supreme Court reaffirmed that alienation of family land without proper authority/consent is defective and that the family role of the family head is crucial under customary governance.

Even where law clearly requires consent, verification of such consent is hard. Who exactly is “principal member”? How many must consent? What is proof of consent (presence at meeting, signature, written family resolution, thumbprint, community witness?) The ambiguity gives room for manipulation. As Learned scholars confirm, authority and consent remain central drivers of invalid sales and litigation.¹⁰³ Authority is easily abused because customary rules are not always documented. This creates a fertile ground for fraud and collusion, as unscrupulous family members may present themselves as authorized representatives of the family or procure the appearance of consent where none in fact existed.

4.4 Lack of Clear Documentation and Registration

A major challenge in the regulation of family landholding in Nigeria is that family land interests lacks clear documentation and registration. In litigation, lack of documentation leads to inability to trace chain of title; multiple competing traditional histories; survey boundary

¹⁰² [2019] 16 NWLR (Pt 1698) 189 (SC)

¹⁰³ U Frank-Igwe and Charles I G Agwor, ‘A Re-Examination of the Jurisprudence and Sale of Family Land in Nigeria’ [2023] (19)(1) *Journal of Private and Property Law* <<https://rsuppljournal.com.ng/wp-content/uploads/2023/09/63-78.pdf>> accessed 16 March 2026.

disputes; opportunistic forgery; difficulty proving family concurrence. In *Idundun v Okumagba*,¹⁰⁴ the Supreme Court established five methods for proving title to land. They include traditional evidence, documents of title, acts of ownership, long possession as well as possession of adjacent land. The Court clarified that proof of title must fit recognized evidential pathways. Where documentary title is absent, traditional evidence and acts of possession must be credible and consistent.

Going further, it is necessary to distinguish between proof of title and registration of interest. Proof of title concerns the legal and evidential basis upon which ownership or entitlement to land is established. On the other hand, registration concerns recording of a land transaction or interest in the appropriate registry. Some states have moved toward digitized land administration. For example, The Land portal in Lagos State supports online searches and verification processes.¹⁰⁵ These reduce the opportunity for fraud. However it also exposes families who remain outside formal systems. For instance, a buyer would be reluctant to transact in land where the buyer checks registry records and finds no trace of the family's interest. In essence, documentation is the bridge between customary ownership and statutory enforceability. Without written family resolutions, registered instruments, and verifiable surveys, the law becomes reactive rather than preventive. The courts end up reconstructing history instead of enforcing clear documentary rights.

4.5 Intra-Family Disputes and Fragmentation

Intra-family disputes and fragmentation constitute a serious challenge in the regulation of family landholding. This is because family land holding involves multiple stakeholders, competing needs, as well as intergenerational interests. Most times, disputes arise over

¹⁰⁴ [1976] NGSC 2

¹⁰⁵ Lagos State Land Registry, 'Lagos eGis Portal' < <https://landonline.lagosstate.gov.ng/> > accessed 27 March 2026. > accessed 17 March 2026.

whether land is family or personal property as well as who is family head. Disputes may also arise over whether land should be sold or preserved and sharing of sale proceeds or who is entitled to inherent interest in the Land. These disputes are intensified by urbanization and magnetization of peri-urban land. As families expand across generations, the number of persons claiming an interest in family land increases. This complicates decision-making as well as makes collective management more difficult. Indeed, fragmentation affects governance because the greater the number of claimants, the harder it becomes to achieve consensus on whether land should be retained, partitioned, developed, or alienated.

Where family land is encumbered by internal disputes or unclear shares of entitlement, its economic value may be depressed because prospective buyers and valuers perceive it as legally risky property. Transferability is also undermined because land that is subject to unresolved intra-family disputes or fragmented authority is difficult to alienate securely, whether by sale, lease, mortgage, or other transaction. Going further, in *Yakubu v Obaje*,¹⁰⁶ the court reiterated that an objective of land reform was to prevent fragmentation from traditional inheritance. But in reality, inheritance remains a dominant driver of fragmentation. This means that the policy objective is only partially achieved. This issue is compounded by because of the gap in regulation. The legal regime in Nigeria relies heavily on litigation after breakdown, not rules that prevent breakdown.

4.6 Gender Discrimination and Exclusion of Vulnerable Members

The regulation of family landholding is further complicated by discriminatory customary practices that exclude certain categories of family members from inheritance, participation, or benefit, notwithstanding that the constitution guarantees right to equality and non-discrimination. This is not merely academic as exclusion from family land often means

¹⁰⁶ [2017] LPELR-43749(SC)

exclusion from wealth, housing security, as well as social status. In *Ukeje v Ukeje*,¹⁰⁷ the Supreme Court condemned the customary practice that excludes female children from inheritance and treated such discrimination as unconstitutional. The deceased died intestate; dispute arose over whether a female child could inherit under customary norms restricting women. The Supreme Court affirmed that women possess the right to inheritance. More so, they held that discriminatory customary rules are unenforceable.

Nonetheless, the legal invalidity of discriminatory customary norms does not mean that such practices have disappeared in social reality. In practice, exclusion may still occur through informal allocation processes, family pressure, silence in succession discussions, or the manipulation of customary authority in ways that are never brought before a court. The broader regulatory difficulty, therefore, is not only that discriminatory norms exist. Rather, it is that the legal system often responds only after exclusion has occurred, not embedding safeguards that ensure inclusive participation from the outset. This demonstrates that the challenge is both substantive and institutional. Substantive because exclusionary norms persist. Institutional, because enforcement often depends on affected persons initiating litigation that are costly and socially difficult.

4.7 State Acquisition and Public Purpose Claims

State acquisition and public purpose claims constitute a challenge in the regulation of family landholding because they place communal land interests in direct tension with the coercive powers of the state. Indeed, the state has the power to acquire family land where it lies in the path of roads, rail projects, urban renewal, and economic zones. The issue must be examined at two distinct levels. Firstly, the legal framework governing revocation and compulsory acquisition. Secondly, the failures that often attend implementation in relation to notice,

¹⁰⁷ [2014] 11 NWLR (Pt 1418) 384 (SC).

valuation, as well as compensation. Under the Land Use Act, the Governor may revoke rights of occupancy for overriding public interest¹⁰⁸ provided that compensation is granted to the owners of the land. Ogbonna¹⁰⁹ notes that that section 28 contemplates compensation to land owners including families/communities. Nonetheless, the 1999 Constitution expressly provides that compulsory acquisition of property must comply with due process requirements and it also guarantees prompt payment of compensation, as well as access to a court to determine compensation under Section 44(1). Notably, the Lagos–Calabar Coastal Highway project led to the acquisition of land for public purposes. It was alleged that owners of the land were not compensated duly.¹¹⁰ If those allegations are established, they would raise serious concerns under section 44(1) of the Constitution. Indeed, the existence of a valid power to revoke does not resolve the separate question whether affected landholders have been treated in accordance with the law governing compensation, and access to redress.

As Isah and others¹¹¹ note, inadequate compensation is a persistent issue when land is compulsory acquired by the state. More specifically, they explain that compensation packages in Nigeria often do not reflect the full economic and social losses suffered by affected persons. They noted that compensation tends to focus on physical improvements, structures, or limited crops. However, it overlooks perennial trees, businesses, livelihoods, and socio-cultural attachments to land. They also note that there are delays in disbursement, valuation inconsistencies, and bureaucratic bottlenecks. This reduces the real value of

¹⁰⁸ LUA 2004, s28

¹⁰⁹ MC Ogbonna, ‘Resistance to Government Acquisition by Indigenous Communities as a Result of Fragile Compensation System – A Set Back to Economic Development.’ [2025](21)(1) *Unizik Law Journal* 144 – 159.

¹¹⁰ A Egoe, ‘Lagos–Calabar Highway: Homeowners decry forceful vacation’ *Punch* [26 January 2026] < <https://punchng.com/lagos-calabar-highway-homeowners-decry-forceful-vacation/> > accessed 27 March 2026.

¹¹¹ I Isah, A M Gwiokura and M S Suleiman, ‘Compulsory Land Acquisition in Nigeria: Rethinking Compensation Mechanisms, Public Awareness, and Policy Instruments for Sustainable Land Governance’ [2025](6)(2) *Journal of Science, Management and Technology* 271 – 279.

compensation, so that cash paid is often insufficient to secure alternative land or restore livelihoods, thereby causing long-term impoverishment.

This finding aligns with Irori and Akujuru¹¹² who conducted a study on claimant expectations in Delta State communities. They found that there is significant disparity between what affected persons expect and what they receive. It was also found that there were delayed payments, undervaluation of properties, and lack of transparency in the compensation process. They add that compensation is often inadequate to restore previous living standards or secure alternative means of sustenance. This leaves affected persons in a vulnerable position. More so, claimants have low confidence in grievance-redress mechanisms, seeing legal processes as costly and ineffective. Consequently, compulsory acquisition leads to crisis in legitimacy. Resistance escalates if families perceive acquisitions as dispossession rather than lawful governance.

¹¹² Samuel E Irori and Victor A Akujuru, 'The Compensation Process and Claimants Expectations in Compulsory Land Acquisitions in Delta State Communities' [2025] (10)(2) *MOJ Ecology & Environmental Sciences* 68–75.

CHAPTER FIVE

SUMMARY OF FINDINGS, RECOMMENDATION AND CONCLUSION

5.1 Summary of Findings

This project has examined the legal framework which regulates family land holding in Nigeria. Firstly, it examined the extant legislations which regulate family land holding in Nigeria. It was found that the Constitution is the grundnorm. Under the supremacy doctrine, any customary rule, statute, or administrative act inconsistent with the Constitution is invalid to the extent of inconsistency. This matters for family landholding because many customary practices (around inheritance, family authority, exclusion of certain members, and gender-based restrictions) are invalid because they are inconsistent with the constitution. The constitutions provide that every individual has the right to acquire and own property, protection against compulsory acquisition except in accordance with law and with compensation, equality and non-discrimination, fair hearing and due process. Where customary governance rules operate to deny a class of family members access to inheritance or beneficial interests in family land, such rules are invalidated because they are inconsistent with the constitution. The Land Use Act 1978 is the foundational statutory intervention in landholding in Nigeria. It vested all land in each state in the Governor to hold in trust and administer for the use and common benefit of all Nigerians. The Act sought to reduce speculative landholding. It unifies tenure systems and regulate land allocation. However, scholars noted that the Act created an administrative system that sometimes produces delays, uncertainty, and transaction costs for customary and family land users. For family lands, the practical implication is that even where land is family property, dealings may be treated as an “interest in land” and it must comply with statutory requirements depending on location and nature of the grant. The Evidence Act is a critical component of the legal framework. The

EEA 2023 introduced innovations and these align the law with technological realities in Nigeria. Even before the amendment in 2023, section 84 of the Evidence Act 2011 made computer-generated evidence admissible. Going further, customary law governs family landholding. Under customary law, family land belongs to the family. Individual members they do not have absolute power to sell. Under Customary, for an alienation to be valid, the family head must act with concurrence of principal members. Judicial precedent also regulates family land. it operationalizes customary doctrine.

Secondly, it examined the institutions which regulate family land holding in Nigeria. It was found that the institutions are the “living machinery” which enforce legal rules. This section examines the institutions that operationalize those core legal framework which regulate family land holding in practice. Courts are central to the regulation of family land because they translate customary landholding norms into enforceable legal rights and remedies. The judicial powers in Nigeria vest in the courts. The “superior courts of record” include (among others) the Supreme Court, Court of Appeal, Federal High Court, High Court of the FCT, and the High Court of a State. In practice, family land disputes present as civil proceedings for declaration of title, injunctions (to restrain trespass or further alienation), accounts, and sometimes setting aside of transactions for lack of consent. Land disputes are not heard in one uniform forum. The High Court of a State has broad civil jurisdiction “to hear and determine any civil proceedings in which the existence or extent of a legal right... or interest... is in issue”, subject to constitutional limits. The LUA further allocates jurisdiction in a way that often intersects with family landholding: an Area Court/Customary Court (or equivalent) has jurisdiction over proceedings relating to a customary right of occupancy granted by a Local Government (including declarations of title). On the other hand, rent recovery in respect of statutory certificates of occupancy may lie before a magistrate’s court, and rent recovery for customary rights may lie before Area/Customary Courts. Land registries are also

institutions which regulates land in Nigeria. They create an official trail of instruments (deeds, assignments, mortgages, subleases, powers of attorney, court judgments affecting land). Registration of land reduces uncertainty and also makes disputes easier to adjudicate. Furthermore, Land registries help convert “informal family ownership” into “verifiable and enforceable title.” However, many families do not register interests, due to cost, bureaucracy, ignorance, or distrust. Consequently, the “paper title” held by outsiders may clash with “customary title” held by families. Traditional institutions include: family councils and elders; village heads and chiefs; community dispute resolution mechanisms; customary arbitration systems. They are crucial because family landholding is rooted in customary governance, not state bureaucracy. Traditional institutions perform three core functions: Allocation and internal governance: deciding which member farms or builds on which portion. Consent and concurrence: the elders/principal members validate alienation decisions. Dispute resolution: mediation and customary arbitration prevent escalation to court. Many family land disputes are resolved through customary arbitration, not formal courts. Customary arbitration is a legitimate mechanism for dispute-resolution. This has numerous advantages and it includes speed, cultural legitimacy, reduced costs. Hence, it should be noted that traditional institutions stabilize and destabilize family landholding depending on integrity, transparency, and interaction with state institutions.

Thirdly, it examined the challenges in the regulating family land holding in Nigeria. It was found that the land regime in Nigeria is pluralistic. On one hand, customary law conceptualizes family land as collective property held for the family as a continuing entity. On the other, statutory law imposes a governance model centered on the state through the LUA and formal title/consent systems. This creates a jurisprudential struggle between social legitimacy (customary norms that communities recognize) and legal validity (formal compliance with statutory requirements). The real difficulty is not that customary law and

statutory law coexist. However, it is that land law in Nigeria does not provide a coherent mechanism for reconciling both systems in family land transactions. As a result, compliance with one normative order may still leave the transaction vulnerable under the other. The LUA remains one of the most criticized sources of land uncertainty. The objective of the Act was to centralize land administration and create a more predictable framework for the control and transfer of land interests in Nigeria. Nonetheless, learned scholars repeatedly notes that the consent regime and administrative structure create delays and insecurity for landholders. Uncertainty manifests in family landholding through ambiguity about whether the land is “urban” (thus under Governor’s grant) or “non-urban” (customary right under Local Government). There is also uncertainty about whether family land has matured into a deemed statutory right of occupancy. Going further, there is also uncertainty about whether a transaction needs consent, registration, or both. Uncertainty arises because families do not always know whether their land is within a statutory right of occupancy regime and many lands are held as “deemed grants.” In addition, informal customary transactions occur without documentation. Where parties are uncertain whether the interest being transferred falls within a category requiring statutory consent, the transaction becomes vulnerable to challenge for non-compliance. Similar difficulty arises in relation to registration, since the failure to register an instrument affecting land may weaken its enforceability as well as expose the transaction to competing claims. Customary law recognizes the family head and principal members as the persons competent to represent the family in matters relating to family land, especially in relation to alienation, management, and preservation. However, in reality, this authority is abused frequently. Abuse appears in numerous forms; this includes unilateral sale by some members while the family head is absent as well as sale by the head without genuine concurrence. More so, abuse may include misappropriating sale proceeds without accounting and colluding with buyers to exclude vulnerable members. More common is “double sale.”

This is a situation where the same land is sold to multiple buyers. Another challenge in the regulation of family landholding in Nigeria is that family land interests lacks clear documentation and registration. In litigation, lack of documentation leads to inability to trace chain of title; multiple competing traditional histories; survey boundary disputes; opportunistic forgery; difficulty proving family concurrence. Intra-family disputes and fragmentation constitute a serious challenge in the regulation of family landholding. This is because family land holding involves multiple stakeholders, competing needs, as well as intergenerational interests. Most times, disputes arise over whether land is family or personal property as well as who is family head. Disputes may also arise over whether land should be sold or preserved and sharing of sale proceeds or who is entitled to inherent interest in the Land. The regulation of family landholding is further complicated by discriminatory customary practices that exclude certain categories of family members from inheritance, participation, or benefit, notwithstanding that the constitution guarantees right to equality and non-discrimination. This is not merely academic as exclusion from family land often means exclusion from wealth, housing security, as well as social status. State acquisition and public purpose claims constitute a challenge in the regulation of family landholding because they place communal land interests in direct tension with the coercive powers of the state. Indeed, the state has the power to acquire family land where it lies in the path of roads, rail projects, urban renewal, and economic zones.

5.2 Recommendations

Based on the findings, the following recommendations are proposed.

Harmonize Customary and Statutory Land Rules

It is recommended that land law in Nigeria should harmonize customary family landholding with the statutory requirements under the Land Use Act. One of the major findings of this

study is that family land transactions are trapped between two legal orders. Under customary law, validity depends on the authority of the family head and the concurrence of principal members. Under statutory law, validity may depend on Governor's consent, registration, perfection of title and compliance with documentary requirements. A reform should not abolish customary family landholding, since it remains socially functional in many communities. Rather, the law should bridge customary consent and statutory documentation of title. In practice, the Land Use Act should be amended to recognize family consent as part of the formal requirements for transactions which involve family land. Before any sale, lease, mortgage or assignment of family land is accepted for Governor's consent or registration, there should be evidence of a family resolution which would be signed or thumb-printed by the family head and principal members.

Create Family Land Registers

It is recommended that states should establish family land registers within existing land registries. The research found that land disputes arise because family interests are documented poorly. Most times, families rely on oral history and traditional boundaries. These may be valid under customary law. However, they create problems when the land is sold, inherited, acquired by government, or challenged in court. A register for family land would allow families to record the existence of family land, the name of the family, the current head of family, principal members, description of survey, and restrictions on alienation. The government should make the process affordable and accessible.

Written Family Resolutions for Alienation of Family Land

It is recommended that alienation of family land should be supported by a family resolution and it should be in writing. This should become a statutory requirement. The resolution should state the nature of the transaction, the consideration, the names of the family head and

principal members, the names of representatives who are authorized to execute documents, and how proceeds are to be managed or distributed. It should also contain the signatures or thumbprints of the principal members, with witnesses where necessary. This would provide evidence that the transaction was approved and authorized.

Reform Governor's Consent and the Procedure for Land Registration

There is need to simply and digitize the procedure for obtaining Governor's consent and registering land instruments. The Governor's consent under the LUA has to delays and additional cost in land transactions. These affect family landholding because many families and purchasers avoid formal processes due to these cost and bureaucracy. As a result, transactions remain informal and vulnerable to disputes in the future. State governments should introduce timelines for processing the applications for consent. There should also be systems for online application, electronic tracking and administrative accountability. Digitization of land registries should also be expanded beyond urban centers. However, digitization must be accompanied by public education, staff training and access to the internet so that poor and rural families are not excluded.

Strengthen the Role of Courts and Customary Dispute Resolution

It is recommended that courts should continue to protect family land from unauthorized alienation, but there should also be preventive measures. The study found that the legal regime often becomes active after disputes have already broken down. This is inefficient because litigation is expensive and slow. Therefore, customary arbitration and family mediation should be strengthened. However, their outcomes should be documented properly. Where family land disputes are resolved by elders, family councils or customary institutions, the settlement should be reduced into writing and signed by the parties. It may also be deposited at the customary court, High Court registry or land registry where appropriate. This

would give the outcome evidential value. Courts should also scrutinize customary settlements to ensure that they do not violate constitutional rights.¹¹³

Protection of Women and Vulnerable Family Members

It is recommended that the governance of family land must comply with the principles of equality and non-discrimination. Families may exclude women through silence, pressure, manipulation of meetings or refusal to recognize their beneficial interests. Therefore, the law should not just declare discriminatory customs invalid. Rather, it should create safeguards for inclusive participation. Family meetings dealing with inheritance, partition, sale or compensation for family land should include all branches of the family, including women. Any family resolution that excludes female beneficiaries or vulnerable members should be defective. Legal aid institutions, civil society organizations and community leaders should also sensitize families on the invalidity of discriminatory practices. Customary institutions must be reminded that custom is valid only when it is not repugnant to natural justice, equity and good conscience and when it is not inconsistent with the Constitution.

Improve Compensation and Participation in State Acquisition

It is recommended that government should acquire family land more transparently and compensation-sensitive. The study found that state acquisition create serious challenges because they place family land interests against the coercive power of the state. The government has power to acquire land for overriding public interest. However, such power must be exercised in accordance with due process and fair compensation. Before acquiring family land, government should identify the affected family, notify the family head and principal members. In addition, compensation should not be paid secretly to one person who may misappropriate it. Compensation should reflect not only physical structures but also

¹¹³ especially the rights of women, children and vulnerable family members.

economic loss, livelihood disruption, crops, trees, occupation, cultural attachment and relocation hardship. Where there is dispute as to the rightful family representatives, compensation should be paid into an escrow account until entitlement is determined.

5.3 Conclusion

This study appraised the legal framework which regulates family landholding in Nigeria. It found that family land remains an important institution under customary law because it protects intergenerational interests and provides social and economic security for family members. However, the regulation of family landholding is complicated by the plural legal system in Nigeria. The study found that family landholding in Nigeria is regulated by the Constitution, the Land Use Act, the Evidence Act, customary law and case-law. The Constitution protects property rights, equality, fair hearing and compensation for compulsory acquisition. The Land Use Act vests land administration in the Governor and introduces the requirements of consent. The Evidence Act governs proof of title, documents and electronic records. Customary law provides the foundational rules on collective ownership, family headship and concurrence of principal members. Case law operationalizes these principles by determining whether land is family property. In addition, whether alienation was valid, and what remedies should follow. The study also found that several institutions regulate family landholding. These include the courts, land registries, administrative land agencies, customary institutions, family councils and traditional dispute resolution mechanisms. Furthermore, the study found that there exist challenges in regulation family land holding in Nigeria. These challenges show that the problem is not the existence of family landholding itself. Rather, the problem is that there is no clear and coordinated safeguards for managing family land in a modern legal system. In light of the above, it is important that the recommendations which are proposed in this study should be considered.

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