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# **LAND TENURE SYSTEM IN BENIN – WHERE DOES THE MACE LIE, THE GOVERNOR OR THE OBA?**





## INTRODUCTION

The Nigerian legal system operates a dual land tenure system, where statutory and customary laws govern land ownership. Before the promulgation of the Land Use Act (“the Act”) in 1978, Nigeria's land tenure system was primarily governed by customary laws that differed across ethnic communities. In Benin, land was held communally under Bini native law and customs, and rights to use or alienate land were acquired through the Oba of Benin, albeit as trustee for his people. In the aftermath of the Act, land ownership across various states in Nigeria was effectively vested in the Governor of a State, who holds it in trust for the people. However, it is commonplace to find that land is still owned under native law and customs in Nigeria, particularly in states, towns, or villages that have paramount rulers, such as the Benin Kingdom with its Oba who is considered the chief/sole administrator of all lands within his domain and under customary land tenure system.

This article aims to examine the intersection between the customary powers of the Oba of Benin and the statutory powers of the Governor of Edo State, as they concern the administration of land in Edo State, and particularly within the territory of Benin.

## THE BINI CUSTOMARY LAND TENURE SYSTEM VS THE LAND USE ACT:

Customarily, the Oba of Benin (hereinafter referred to as “the Oba”) is the traditional head of the Benin kingdom and the spiritual leader of the Bini people. Benin has its customary system of government, which guides and regulates the affairs of the Oba and his subjects, referred to as Bini customary law.

Under the Bini customary law, the Oba is the sole authority vested with the power to allocate Bini land, whether within or outside Benin City. All lands in Benin are considered communal property of the Bini people, and the legal estate is held by the Oba as trustee on behalf of the entire Bini community.<sup>1</sup> This customary trusteeship is captured in the Bini maxim (“Obayantor”), which means the Oba owns the land, affirming the Oba's absolute title and authority over land matters.

For communities and villages outside Benin City, the Oba appointed Enogie, Ohen, and Odionwere to oversee the affairs and activities of the people and report back. These traditional heads granted lands on behalf of the Oba. The Oba, together with his council of elders, also designates new villages and appoints chiefs to oversee them.

<sup>01</sup> ENABULELE v. AGBONLAHOR (1999) LPELR-1138(SC) (Pp. 9 paras. C-D)

<sup>02</sup> EDOSOMWAN v. OGBEYFUN (1996) LPELR-1019(SC) (Pp. 13 paras. B)

<sup>03</sup> ATTITI GOLD v. BEATRICE OSASEREN (1970) A.N.L.R. 129 @ 136; IMADE v. OTABOR (1998) 4 NWLR (Pt. 544) 20

<sup>04</sup> BELLO v. EWEKA (1981) Vol. 12 N.S. C.C. 48

<sup>05</sup> FINNIH v. IMADE (1992) 1 NWLR (Pt. 219) 511; OMOREGIE v. IDUGIEMWANYE (1985) 2 NWLR (Pt. 5) 41



Before the advent of the Land Use Act 1978, lands in Benin could only be acquired via a grant by the Oba of Benin, who approved land allocation to individuals through the appropriate Plot Allotment Committee.<sup>2</sup> A party that never applied to the Oba of Benin for a grant of title never acquired actual ownership of the land.<sup>3</sup> It is irrelevant whether such a party has stayed in possession for the longest time; they are only an occupier.<sup>4</sup> Also, a party in a claim for proof of title to succeed must trace his or his predecessor-in-title's customary grant from the Oba of Benin.<sup>5</sup>

A valid legal estate is passed to an allottee or purchaser when the application bears the Oba's endorsement with an inscription “approved,” signed and dated, and a grant by the Oba of Benin under the Bini customary land tenure becomes effective from the date the Oba appends his signature to the land application.<sup>6</sup>

Consequently, the Benin customary land tenure system is *sui generis* (of its own kind or class), unique and distinct from other recognised customary or statutory land tenure systems in Nigeria. It must be emphasized that in resolving competing claims to title within Benin, the general principles of land law are often inapplicable or insufficient, given the peculiar and entrenched nature of the Bini customary system.<sup>7</sup>

On the other hand, the powers of the Governor of a State and the procedure under the Act for conferring title on any individual over land is almost similar to the powers of the Oba. Under the Act, land ownership in Nigeria is fundamentally vested in the state governor, who holds it in trust for the people. While individuals can acquire rights to use and occupy land, typically through a Certificate of Occupancy (C of O), true ownership remains with the state. To transfer land ownership, the Governor's Consent is crucial.

### ADVENT OF THE LAND USE ACT, URBAN DESIGNATION OF BENIN CITY, AND THE VALIDITY OF BINI CUSTOMARY LAND TITLES

This part aims to address some interrelated issues on the sub-topic as follows: whether the Land Use Act overrides Bini customary land law; whether the Bini native law and custom would still apply to an area designated as urban area, whether holders of title to land in the area would be deemed to be holders of statutory right of occupancy as against customary right of occupancy, and whether valid land titles in Benin must now derive from the Governor or may still be traced through the Oba of Benin? These

<sup>22</sup> EDOSOMWAN v. OGBEYFUN (1996) LPELR-1019(SC) (Pp. 13 paras. B)

<sup>23</sup> ATTITI GOLD v. BEATRICE OSASEREN (1970) A.N.L.R.129 @ 136; IMADE v. OTABOR (1998) 4 NWLR (Pt. 544) 20

<sup>24</sup> BELLO v. EWEKA (1981) Vol. 12 N.S.C.C. 48

<sup>25</sup> FINNIH v. IMADE (1992) 1 NWLR (Pt. 219) 511; OMOREGIE v. IDUGIEMWANYE (1985) 2 NWLR (Pt. 5) 41

<sup>26</sup> AIGBE v. EDOKPOLO (1977) 2 SC.1

<sup>27</sup> ISAAC v. IMASUEN (2007) vol. 25 W.R.N. 74 @ 87-88





questions require a careful analysis of statutory provisions, judicial interpretations, and the continuous relevance of native law and customs within Nigeria's land tenure system.

With the promulgation of the Land Use Act, 1978 (the Act), all land within each state of the federation, except those vested in the Federal Government or its agencies, is vested in the Governor of that state, to be held in trust and allocated for the use and benefit of all Nigerians.<sup>8</sup> It is essential to note that the Act supersedes other land laws in Nigeria. The Act abolished the radical title previously held by individuals, families, and communities,<sup>9</sup> including the Oba of Benin's customary trusteeship over lands in Benin.

Nevertheless, the Bini customary land tenure system, though no longer supreme, like other state land laws, was not obliterated. Its enforceability depends on its consistency with the Act and evidence of its recognition.<sup>10</sup> This dual framework is evident in Section 48 of the Act, which retains existing land laws subject to necessary modifications to bring them into conformity with the Act's provisions. Bini customary land tenure law, being judicially recognised, is subservient to the Act.<sup>11</sup> It is further reinforced by Sections 34 and 36, which preserve pre-1978 land holdings, converting them into statutory rights of occupancy (in urban areas) or customary rights of occupancy (in rural areas). Also, under Section 50 of the Act, which is the interpretation section, the term “customary right of occupancy” means the right of a person or community lawfully using or occupying land in accordance with customary law and includes a customary right of occupancy granted by a Local Government under the Act. It is pertinent to note that with the grant of a right of occupancy, holders of land are only vested with possession of the land.<sup>12</sup>

Despite the statutory overhaul, judicial recognition of Bini customary tenure persists. In *Okeaya-Inneh v. Aguebor*<sup>14</sup> the courts reaffirmed the validity of Bini customs in land transactions. Similarly, *Ojah v. Ogoni* and *Izevbigie v. Olobor* the courts upheld the position that the Act did not divest lawful occupiers of pre-existing interests but instead preserved them within the Act. The Appeal Court in *Olagunju v. Adesoye*<sup>15</sup> went further to affirm that the Act extinguished radical title in Southern Nigeria, vesting land in the Governor, and introduced a uniform tenure system while limiting all interests to rights of occupancy.

While the Act imposes statutory primacy, customary land tenure practices remain relevant in Benin. This is further reinforced by the enactment of the Edo State Private Property Protection Law, 2021<sup>16</sup> which

<sup>08</sup> Sections 1 & 2 of the Act

<sup>09</sup> SALAMI & ORS v. OKE (1987) 2 NSCC 1167 @ Ratio 2

<sup>10</sup> ONAMADE v. A.C.B. LTD (1997) LPELR-2671(SC) (Pp. 30-31 paras. F

<sup>11</sup> OBASOHAN v. OMORODION & ANOR (2001) LPELR-2154(SC) (Pp. 15-16 paras. C)

<sup>12</sup> SALAMI & ORS v. OKE (SUPRA) @ Ratio 7

<sup>13</sup> See note 6 (Supra)

<sup>14</sup> (1996) LPELR-2367(SC) (Pp. 24-25 paras. G) & (2005) All FWLR (Pt. 290) 1546

<sup>15</sup> (2003) JELR 53514 (CA)

<sup>16</sup> Section 15 (2), (3) & (4) of the Law

provides that the written permission of the Traditional Head (such as the Enogie, Ohen, or Odionwere) is required before any communal land transaction. These transactions must be carried out under the supervision of the Paramount Authority (in this instance, the Oba of Benin), who also receives quarterly reports of all land dealings. Allottees who obtain the approval from the traditional head subsequently apply to the Edo State Geographic Information Service (EDOGIS)<sup>17</sup> for title registration and certificates of occupancy.<sup>18</sup> This represents a system where customary land tenure law is still valid in land transactions, underlining the continuing relevance of the Oba's role, albeit in a supervisory rather than proprietary capacity.

In examining the implication where there is an inconsistency between the Act and the Customary Land tenure law, which should prevail? Section 48 of the Act provides that all existing land laws before the coming into force of the Act should be modified to conform to the Act. Additionally, Section 315(5)(d) of the 1999 Constitution, as amended, affords the Act constitutional backing under its inclusion in the Constitution. It stipulates that the Act cannot be invalidated by any other provision of the Constitution, except by amending the Constitution itself. It is treated as an enactment that enjoys constitutional protection, even though it is an ordinary Act of the National Assembly. Again, Paragraph 27 of Part I, Fifth Schedule to the Constitution (as it appeared in the 1979 Constitution and was carried over into the 1999 Constitution) lists the Land Use Act as a law with constitutional force.

Judicially, Nigerian Courts have held that the Act takes precedence, especially given its special constitutional and statutory status. Therefore, where the provisions of the Act conflict with the rules and practices under Bini customary law, the provisions of the Act will prevail. This is because the Act is a federal statute, whereas customary law is a state law that is subordinate to and subject to statutory law.<sup>19</sup>

Another question that arises is whether the native laws and customs of Benin continue to apply in areas designated as urban under the Act, or whether holders of title to land in such areas are deemed to have statutory rights of occupancy rather than customary ones. The Act empowers the Governor to designate certain areas as urban. It should be noted that long before the coming into force of the Act, Benin City had held urban status since the colonial era and remained an administrative capital through various political transitions.<sup>20</sup> It became the capital of the Mid-Western Region in 1963, continued as the capital when the region was renamed Bendel State in 1976, and retained its status as the capital of Edo State following the 1991 split of Bendel into Edo and Delta States.

Pursuant to Section 3 of the Act, the Governor, by order published in the State Gazette, designates an area in the State where there is land as urban. Section 34 of the Act provides that individuals or communities occupying land in urban areas prior to 1978 are deemed to hold statutory rights of occupancy. In contrast, Section 36 applies to rural areas, where such holders are deemed to have customary rights of occupancy. Given that land ownership in Benin is typically communal and not vested in the Oba personally, the statutory rights of occupancy under Section 34 are attributed to the communities themselves. Nonetheless, the Governor retains the radical title under the Act.<sup>21</sup>

<sup>17</sup> Edo State Lands Administration and Geographic Information Service Law, 2018, s. 2(1); the agency established under this law is the successor to the defunct Edo State Ministry of Lands and Survey.

<sup>18</sup> Section 3(5)(a) & (d) of the Edo State Lands Administration and Geographic Information Service Law, 2018.

<sup>19</sup> IDEMUDIA v. ALIGBEH (2021) LPELR-56118(CA) (Pp. 39-40 paras. F)

<sup>20</sup> O.O. Magnus and J.O. Esegbe, "Categorization of Urban Centres in Edo State, Nigeria," IOSR Journal of Business and Management (IOSR-JBM), Vol. 3, Issue 6 (Sep.–Oct 2012), pp. 19–25. Available at: [www.iosrjournals.org](http://www.iosrjournals.org). Accessed 13th June 2025

<sup>21</sup> ONI v. JOHNSON (2015) LPELR-24545(CA)

Despite these statutory provisions, the practical process of land acquisition in Benin remains rooted in Bini customary law, with land transactions initiated through a community-based allocation process that requires the community's approval before proceeding to statutory registration of title. This practice illustrates the enduring relevance of Bini customary law in landholding across lands in Benin, both in urban and rural areas.

It is thus important to emphasize that the land acquisition in Benin begins first with Bini customary land law before formal registration as required under the Act.<sup>22</sup> The Oba's approval, or more recently, the community acting on his behalf, is not merely an administrative acknowledgement, but signifies the actual transfer of the legal estate in line with Bini tradition.<sup>23</sup>

Furthermore, before the promulgation of the Act in 1978, all lands in Benin were regarded as vested in the Oba, the traditional overlord of all lands in Benin. A grant of land by the Oba under customary law was valid and enforceable, requiring no registration at the Lands Registry, Benin City, to be valid.<sup>24</sup> Although the Act now centralizes title to the Governor, in reality, the practice remains that a root of title in Benin often commences with the Oba's grant (now community grant). This customary root retains validity unless the land has been subject to government acquisition.

The kernel of the question is whether a statutory right of occupancy granted by the Governor of Edo State in respect of land situated in Benin is inferior to a grant made by the Oba of Benin, and where inconsistent, which should prevail?

The acquisition of land through Bini customary land tenure law, which is validly recognised and accepted by the Edo State Government, does not in itself negate the validity or supremacy of a statutory right of occupancy granted by the Governor under the Act.

Under the Act, the Governor is vested with exclusive authority to grant statutory rights of occupancy in respect of land designated in urban or rural areas (see Section 5(1)). A grant by the Governor under Section 5(2) extinguishes any prior occupier's right of use or occupation and is irrevocable,<sup>25</sup> except that the occupier can demonstrate it has a deemed right of occupancy which was not first revoked with compensation paid. The Act, being a federal legislation with a constitutional flavor, overrides all inconsistent customary or state legislation.

<sup>22</sup> EHOLOR v. OSAYANDE (1992) LPELR-8053(SC) (Pp. 31 paras. E)

<sup>23</sup> OJO v. AZAMA (2001) 4 NWLR Part 702 page 57

<sup>24</sup> AMU & ANOR v. OKEAYA-INNEH & ANOR (2021) LPELR-55660(CA) (Pp. 68-70 paras. F)

<sup>25</sup> OLAGUNJU v. ADESOYE & ANOR (2009) LPELR-2555(SC) (Pp. 53 paras. A)

This position has received consistent judicial affirmation in the following cases:

- In **Olagunju v. Adesoye**,<sup>26</sup> the Appeal Court held that with the coming into force of the Land Use Act, all land are vested in the Governor of a state, thereby extinguishing the radical title of traditional institutions.
- **Nkwocha v. Governor of Anambra State**,<sup>27</sup> the Supreme Court, per Eso, J.S.C., elaborated on the constitutional status of the Land Use Act. The Court, relying on section 274(5) (now Section 315(5)), held that “nothing in this Constitution shall invalidate” the Land Use Act, and that it must “continue to apply and have full effect in accordance with its tenor.” The tenor of the Act, according to the Court, is to nationalize land by vesting ownership in the state, with private individuals only entitled to rights of occupancy. This means that the Land Use Act overrides any inconsistent customary or state land law and must be interpreted accordingly.
- **Ale & Anor v. Ugiagbe & Anor**<sup>28</sup> The Court of Appeal gave specific judicial affirmation of the Governor's power to make valid grants in respect of urban land in Edo State, notwithstanding the provisions of the Forestry Law of Bendel State that purported to confer similar powers on the Executive Council. The Court held that Sections 1 and 2 of the Land Use Act override inconsistent state laws and vest exclusive power in the Governor. The Court further emphasized that a gazetted grant made by the Governor (Exhibit E, which is the order de-reservation of an area in the Ogba Forest Reserve in Oredo Local Government Area of Edo State of Nigeria, an urban area for the benefit of the Evbuowe, Efionayi, Evbuoghodo, and Idemudia communities) was lawful, valid, and could not be invalidated on account of any contrary provision in the Forestry Law.<sup>29</sup>

In this context, a statutory right of occupancy granted by the Governor cannot be considered inferior to a customary grant by the Oba of Benin. Where both grants relate to the same land and are inconsistent, the Governor's grant prevails.

One may inquire into the jurisprudence of landholding in Nigeria in light of the Supreme Court's decision in **Ogunleye v. Oni**,<sup>30</sup> that the Act is revolutionary and meant to streamline land use and management in the entire federation. The Court emphasized that the Act is not a magic wand or a destructive monster that swallowed all rights on land, or that the Governor or Local Government, with the mere issuance of a piece of paper, could divest families of their rights. Therefore, the Act, as it is, does not intend to extinguish existing land rights, especially those rooted in customary law, but rather to manage and regularize them under statutory control.<sup>31</sup>

This naturally raises critical questions:

First, does any residual power exist in any other authority within the state, such as traditional institutions, that would be inconsistent with the powers of the Governor under the Act?

<sup>26</sup> See note 16 (Supra)

<sup>27</sup> (1984) LPELR-2052(SC) (Pp 23-25 paras. B)

<sup>28</sup> (2020) LPELR-51028(CA) (Pp. 39-47 paras. F-F)

<sup>29</sup> See Footnote 31 above

<sup>30</sup> (1990) 2 NWLR (Pt. 135) 745, at 770, per Belgore, JSC.

<sup>31</sup> Ibid., at page 772, paras. B–C, per Belgore, JSC.





As earlier noted, Section 1 of the Act vests all land in each state in the Governor, and for the control and management of land in urban areas, while Local Governments exercise similar authority over rural lands. In interpreting this structure, the dictum of Belgore, JSC in *Ogunleye v. Oni* (at p. 772) is instructive. His Lordship stated that in areas not declared urban, the status quo remains, and persons in such areas are deemed to hold customary right of occupancy, as if conferred by the Act.

Applying this principle to land tenure in Benin, where customary landholding is communal, ownership remains vested in the community. Allocation or transfer of such land is subject to the written approval of the community's traditional head, and periodic reports are submitted to the Oba of Benin, the Paramount Authority.

Thus, a form of residual authority subsists in the Traditional Heads of various communities, since they act on behalf of the Oba of Benin in managing communal lands. This residual authority, however, is not inconsistent with the Governor's powers under the Act. Instead, it operates in conformity with Section 48 of the Act and is further reinforced by Edo State's legislation (The Edo State Private Property Protection Law, 2021). Moreover, the legal requirement that land-related reports be made to the Oba, rather than the Governor, affirms that the customary land tenure system operates as complementary, not in contradiction, with the statutory framework established under the Act.

Secondly, can the Oba of Benin own land and grant rights of occupancy under any recognized legal system? To answer this, one must distinguish between traditional land rights under customary law and statutory rights under the Act. The Oba's landholding authority is derived from Benin customary law. Although lands and properties acquired through inheritance from an ancestral lineage belong to the stool and are not shared, privately owned property can be shared or sold under Benin customary land tenure.

Despite this customary authority, the Oba's power to grant rights of occupancy is not recognized under the Act. Under the Act, the power to grant a statutory right of occupancy lies exclusively with the Governor (Section 5), while the Local Government grants customary right of occupancy (Section 6). The Oba, like any other holder or occupier of land, before the coming into force of the Act, is deemed to hold a right of occupancy under Sections 34 and 36 or may be formally granted a statutory right of occupancy under Section 5, either of which is transferable.





Therefore, whereas the Oba can allocate his land within the framework of customary law, such allocation does not automatically carry statutory validity under the Act unless statutory application is made to the appropriate Government agency or ministry. His power to grant a legally recognized right of occupancy under the Act is not recognized unless acquired as a deemed holder before the Act commenced or as a grantee from the Governor.

Whether the customary landholding authority of the Oba of Benin creates a parallel and potentially conflicting system of land acquisition alongside the Act, such that titles granted by the Oba may conflict with those issued by the Governor of Edo State; and if so, which title should prevail in light of Section 5 of the Act and Sections 18 and 19 of the Evidence Act.

In answer these questions, we must consider what Sections 18 and 19 of the Evidence Act state. Section 18 provides that where a custom is not judicially noticed, it must be proved as a matter of fact by those likely to know of its existence. It further cautions that a custom will not be enforced as law if it is contrary to public policy or repugnant to natural justice, equity, and good conscience. Section 19 complements this by stating that any fact which tends to show how a particular custom was understood and acted upon by persons interested at the time is relevant in determining its legal recognition.

Applying these provisions to the issue at hand, Nigerian courts, in cases such as **Okeaya-Inneh v. Aguebor**, **Amayo v. Erinmwingbovo**<sup>32</sup> and **Enabulele v. Agbonlahor** (supra), have not only taken judicial notice of the customary procedure for land allocation under Bini custom but have also affirmed that the root of customary title in Benin land must be traceable to the Oba of Benin. The courts recognize that the Oba is the traditional trustee of communal land in the Benin Kingdom, and all customary grants derive their legitimacy from his authority.

While it is evident that the customary landholding authority of the Oba of Benin is judicially recognised and actively observed within Benin under Sections 18 and 19 of the Evidence Act, it cannot override the express provisions of the Act, whose legal validity is supreme. Under Section 5 of the Act, the Governor of the State is empowered to grant statutory rights of occupancy over land, extinguishing existing use and occupation of prior holders except that of a deemed holder (section 34) that must first be revoked and compensation paid.

<sup>32</sup> (2006) 11 NWLR (Pt. 992) 669



In circumstances where the Oba and the Governor purportedly grant title to the same parcel of land in Benin, it is not enough to say that the statutory right issued by the Governor must prevail. The determining factor is whether the existing right in the land is deemed vested under Sections 34 or 36, since the Governor can grant a statutory right of occupancy on land located in rural areas under Section 5. Accordingly, where the grant by the Oba is from a communal land with a proprietary right of occupancy, the extant grant by the Governor would not subsist or extinguish the existing grant, unless there is first a revocation of the existing right. This is because statutes do not interfere with legal rights already vested.<sup>33</sup> Where there is no prior existing proprietary interest on the land, the Governor's grant would prevail over that of the Oba's.

## CONCLUSION

The interaction between the Bini customary land tenure system and the statutory regime under the Act presents a layered framework for land ownership in Benin. The Bini customary system, rooted in centuries of practice and judicially recognized under Sections 18 and 19 of the Evidence Act, vests communal ownership in the Bini people, with the Oba of Benin as the trustee and principal allocator. Courts have upheld the unique requirement that valid land titles in Benin must trace their root to the Oba.

Conversely, the Act, backed by Section 315(5)(d) of the 1999 Constitution, vests radical title in the Governor, who holds it in trust for the public. Section 5 gives the Governor exclusive authority to grant statutory rights of occupancy, while Section 1 extinguishes all prior radical titles. Case law, including *Nkwocha v. Governor of Anambra State* and *Olagunju v. Adesoye*, affirms the Act's supremacy where customary and statutory rights conflict.

Nonetheless, the systems are not wholly incompatible. Sections 34 and 36 preserve valid pre-existing interests that align with the Act. In practice, most land transactions in Benin begin with community-based grants, approved by traditional authorities, and are later processed through agencies like EDOGIS, reflecting a practical fusion of customary and statutory systems.

Where conflicts arise, such as overlapping grants by the Oba and the Governor, the key issue is whether a valid customary interest existed and was not revoked with compensation. If so, it remains protected under the Act; otherwise, the Governor's grant prevails.

<sup>33</sup> GENERAL COTTON MILL LTD v. TRAVELLERS PALACE HOTEL (2018) LPELR-46311(SC) (Pp. 18-35 paras. D)

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