

Ontological Validation of Land Tenureship in Esan Tradition

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ABSTRACT This study recognizes that land tenureship is of considerable importance in many cultures. Such tenureship is guided and guarded by certain dispositions or laws. For instance, in Nigeria, the Land Use Act of 1978 inaugurated by the Federal Government gives the impression that it is the only overriding law which guarantees land acquisition in Nigeria. In this work, efforts was made to correct the above impression by insisting that traditional or customary land tenure has the force which dwarfs other land tenureship laws. An Esan instantiation epitomizes this. In Esan tradition, the Customary Land Tenure prevails, but such is validated by the ontological or metaphysical. This aspect which current authors explored obviously has been ignored in discussions on land tenureship in Nigeria.

INTRODUCTION

But for the intervention of the International Court of Justice at the Hague, the world and Africa in particular, would have perhaps, witnessed another excruciating and devastating war of our time between Nigeria and Cameroon. Bakassi peninsula was the major issue of contention. The question was, who owns the peninsula? Who owns the land? The sustained and tenacious struggle against apartheid in South Africa was not simply a matter of skin pigmentation of black and white, it was essentially about the cogent question – who owns the land? The India-Pakistani skirmishes persists because of the vexed issue of land ownership. The Middle-East question looms large on account of land ownership.

Admittedly, land ownership is a worldwide phenomenon. The issue is provoked by the question of development and identity. People need land to build new homes, industries, churches, markets and farmlands. Besides, land tells a lot about a people and their culture. Where people live is a bench mark of personal or community identity.

There are no quick fixes in land tenureship. Land acquisition is determined by many factors or variables. Such variables could be culture specific. Following from this, we discuss in this

work, what constitute land tenureship in Esan tradition. Besides, we argue that apart from other considerations of land tenureship in Esan tradition, there is an un-discussed, but overriding desideratum, which gives validity to land ownership in Esan land. It is the spiritual or ontological praxis. We also hope that our thesis might help researchers and investors understand the mindset of the people.

WHO ARE THE ESAN PEOPLE?

Among the three major ethnic groups in Nigeria such as the Yoruba, Ibo and Hausa, Esan people may not enjoy as much international recognition, but certainly, they are very influential group of people in Nigeria and Edo State in particular. An alluring climate and rich culture speak volumes of their strategic importance in Nigeria and Edo State.

Esan people are among the Edo people of Nigeria. They are situated within the Southern axis of Nigeria. Anthony Okoduwa indicates that Esan is located in the tropical zone of the northern part of the Nigeria forest region. (Okoduwa, 1997: 1)

In contemporary Nigeria, the people under discussion are commonly referred to as Ishan. Ishan is an adulterated or “corrupted” word of Esan by the British colonialists for administrative convenience. The word *Esan* came from the Benin word, *ESANFUA* meaning *JUMP* or *FLEE* (Okogie, 1994: 1). Esan people fled to their present abode to escape the tyrannical and obnoxious reign of Oba Ewuare of Bini (Benin) Kingdom.

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Who Owns Land in Esan Tradition?

There are various forms of land tenure in Nigeria including the problematic and provocative Land Use Act which was promulgated as the Land Use Decree No. 6 of 1978, on 29th March, 1978 and it came into force immediately (Inegbedion and Ukhun, 2001: 343). Our immediate concern is about what might be called Customary Land Tenure or Traditional Land Ownership because of its seemingly overriding effect on other forms of land tenure in Nigeria and Esan land in particular. The validity of this contention is buttressed by the celebrated case of *Amodu Tijani v Secretary, Southern Nigeria (1921) 2 AC 399* where Viscount Haldane, while delivering the judgment of the Privy Council, opined that:

The next fact which is important to bear in mind in order to understand the native land law is that the notion of individual ownership is quite foreign to native ideas. Land belongs to the community, the village or the family, never to the individual. All the members of the community, the village or the family have an equal right to the land, but in every case, the Chief or Headman of the community or village or the head of the family has charge of the land and in loose mode of speech, is sometimes called the owner. He is to some extent in the position of trustee and as such, holds the land for the use of the community or family. He has control of it any member who wants a piece of it to cultivate or build upon, goes to him for it... (Inegbedion and Ukhun, 2001)

The consequence of the above means that the living, the dead and countless yet unborn owned the land in any cultural matrix or milieu, Esan land inclusive.

Esan people are communal in nature. This means that their hopes, aspirations and relationships are perceived in communalistic terms. Following the above, land ownership in Esan has a communal foundation. According to Okogie (1994),

Land in Esanland was strictly communal and held in trust by the Onogie (king) for his people. It could neither be sold nor bought. If there was a dispute over a piece of land in the village, the Edion looked into it and effected a settlement. If it was a dispute involving two villages, the onogie decided the matter.

Palace Grounds/Market Places

In Esan land, there are places which are the exclusive preserve of the Onogie (chief or king).

These places are strictly, commonly and “constitutionally” understood by everyone to belong to the Onogie in office. For instance, such places are the palace grounds and the market place. It is this understanding which warrants “main markets” in Esanland being named “after their Onogies”. For instance, there are markets prefixed after the Onogie such as Eki Ojjeuronmun, Eki Ojjeugbegun, Eki Ojjeubiabza, etc. Literarily translated, the above means the markets of Uronmun king, Ugbegun king and Ubiabza king respectively (Okogie, 1994).

House Location

Another important issue in land tenureship in Esanland is the question of the location of a building or house. The piece of land where a building is sited or located and the “cleaned” area around the building is a man’s possession. His children also have ownership claim to the building and the cleared portion around the house. What happened in a situation in which a man decides or relocates or live elsewhere outside his former abode? Strictly speaking, no one has the right to trespass the vacated piece of land and the building. The reason for this is that his former residence had become the man’s IJIE or ITEKEN or IJIJOBGE (A man’s IJIE or ITEKEN or IJIJOBGE, ITOLUWA or ICHUWA is where he lives and dies (it is his ancestral home). If the house had fallen down and the place had become bush, the old building site or ITOLUWA or ICHUWA was still his sacred possession (Okogie, 1994). On the other hand, if a man endorses or permits another person to build on his ITEKEN, he ceases to be the bonafide owner of the house and the land on which the house was built.

An important issue associated with ITEKEN is that it cannot be sold to a non-member of the community or village. It would be considered adversarial or inimical to the community. This act could put the sovereignty and integrity of the community in jeopardy. Admittedly, the implication of a man’s inability to sell his ITEKEN to a stranger means the “ownership” of land was not absolute. Absolute ownership was vested in the elders of the community. In the case of Ijiogbe, the ancestral Ijje, the statutory owner was Ominijogbe – the first surviving son of a deceased man.

The Ominijogbe who is usually the first male child of a departed father is the automatic owner of the “ancestral Ijje” or Ijiogbe. The succession

of inheritance or ownership of Ijje is authenticated by the presence of a surviving first son of a dead man in a family. The first son of a man is the rightful owner of Ijiogbe after performing the necessary burial rites of his late father. In a situation in which a diseased man has no surviving son, his brother takes possession of the Ijiogbe.

Farmlands

Regarding the important issue of ownership of farm lands, Esan custom and tradition provided adequate definition of the legal owner of such. In clearly defined terms, a farmland belongs to whoever deforested and farmed on a piece of land. In this case, where a “hitherto”, “virgin” and unclaimed forest was cleared by a person, it becomes his possession. This law remains in force even in contemporary times. As Okogie (1994) has rightly noted:

The basic law over farmland was that HE WHO FIRST FARMED A VIRGIN FOREST, A LAND HITHERTO UNCLAIMED, OWNED IT. That means that in Esan custom the first man to clear a forest, cut down the trees for the purpose of farming, owned it OVER GENERATIONS. It is expressed as ONON GBE EGBO YAN EGBO (He who de-virgined a forest owned it).

Once this law has been established and recognized in Esan land, the piece of land “which now becomes a man’s property immediately becomes his family’s property. It passes from generation to another by virtue of the fact that every man passes it to his son”. When a man decides to become an absentee farmer or landlord over his acquired piece of land, no one can trespass or farm on the land left by the owner who remained domiciled elsewhere. If any man so desires to utilize the piece of land, permission must be sought from the authentic owner of the land. Once the permission is granted, the land must be vacated after the farming season by the borrower of the land. There is also an understanding that no permanent economic or commercial trees such as orange trees, palm trees, rubber trees etc, should be planted by a borrower of a farmland. This act or order mitigates against the ambitious, selfish and futuristic intention of the borrower possessing the land he borrowed.

Land Leasing

In Esan custom and tradition, the system of

land leasing depended on a number of considerations or factors viz:

- (a) a lessor
- (b) a piece of land to be leased
- (c) an individual or group in need of land for specific purpose – lessee

With specific reference to item (c), a lessee’s ability to secure a piece of land rests on his being introduced by a friend, an in-law or to become a rich man’s servant. Okojie (1994) reiterates that if a man upon being introduced,

later wanted to build a house, the man he had come to live with, leased him a piece of land near his own house. If a number of people, say three to five came together from the same district and wanted to live in a village, they had to tell the Edion, who in this case, formed the lessor. Where there was a wholesale migration of a village to another district belonging to another Onojie, the matter was at a higher level and the Onojie had to be informed. He as the custodian of the communal land, had the authority to allocate a parcel of land on which the new arrival settled.

Soon after the different lessees leave or vacate the land, it is immediately repossessed by the lessor. No Esan indigenes who relocate to another place in Esanland could secure “land rights”. To secure land rights, the qualification for this rests on their being integrated or absorbed into a lineage – lineage rights are strangers rights by “adoption” or absorption.

Economic Trees on Bush Path

In Esanland, there was a common practice of planting single economic trees such as para-rubber, cocoa, dicanuts etc. on bush paths which led to farmlands. Ownership of such economic trees was not in dispute. The planter and his family owned the trees. The path or land on which such trees were planted however, did not belong to the planter and his family. In a situation where someone desired to build on the land which harbours the economic trees for personal or community development, permission is sought from the planter of the economic trees. Usually, the permission is granted. A refusal to grant such a request is met with sanction by elders (edions) in the community. The sanction is a clear pointer to the fact that the land belongs to the community, and that economic trees on bush paths, which led to farmlands do not confer land ownership on any planter of such trees.

Land Boundaries

Land boundaries are significant features of land tenure in Esan tradition. The essence of boundary demarcation is to ensure peace and harmony among the people. Perhaps, this may have partly accounted for the relative peace which exist among Esan people.

Boundaries were established or/and demarcated by the OKOVEN which is a “common oath”. The oath inaugurated a non-aggression pact between neighbouring villages or “adjacent villages”. The oath took place on the spot or the path connecting two villages. It is marked by “UKHINMIN TREE (*Neubodia leavis*)”. The spot constitutes Alu Okoven (a place where the oath was taken). Two villages could be said to own it given that it was a spot the covenant of peace was “signed, sealed and delivered”. Beyond the Alu Okoven, it “was no man’s land” or property.

Ontology in Esan Tradition

Our discussion on Esan ontology should begin by referring to African ontology. African metaphysics or ontology can be understood within the context of causality. Chiedozi Okoro argues that African metaphysical notion of causality is agentive. Ancient Africans viewed causality from the other worldly perspective. The traditionally African understanding of causality is religious, supernatural, mystical, and mythical (Okoro, 2003). Even though there are apparent physical manifestations in our lived world, such physical realities are sustained by invisible forces – the spiritual. Quoting K.C. Anyanwu, Okoro (2003) posits that even in the game of pure chance, nine Africans out of ten would attribute their luck or misfortune to a god or the gods.

Refuting Jean Paul Sartre’s cum Western conviction that man essentially is the sole determinant and source of his freedom, Anyanwu is said to have indicated that in African worldview, whatever force (man) acquires is given to him by a superior being who already possesses this force, just as any diminution of his force is the result of some evil-intentioned agent capable of destroying one’s force. Thus, the African conception (of causality) is essentially religious. Insisting on the immutable and unquenchable, unknowable and uncontrollable nature of force in African metaphysics, K.C. Anyanwu is further quoted as saying that,

Force is not communicated or reduced primarily by some form of physical causality, because force does not belong to the physical order. It is metaphysical. It is therefore not accessible to scientific or empirical verification. It belongs to the order of invisible entities which cannot be known but believed in; which cannot be rationally proved, but only revealed by tradition; which cannot be coaxed into action by exercising a direct causal influence on them, but only by symbolic and ritual (quasi-sacramental) form of causality (Okoro, 2003).

Here, K.C. Anyanwu clearly reminds us that in African ontology or metaphysics, causal agents such as spirits cannot be scientifically, “empirically and rationally” derived or apprehended. The perception of the spiritual is via supernatural media or modes and with the assistance of earthly agents such as oracles, herbalists, witch doctors, etc. Indeed, Idoniboye has the same mindset as K.C. Anyanwu by contending that the ontology of any distinctively African worldview is replete with spirits. Spirits are the one entity that remains constant in all African belief systems (Idoniboye, 1973).

The idea of explaining the totality of human experience or action within the framework of brain activity as invoked in Western intellectual or philosophical traditions is unattractive to the Africans. The belief that the actions of men are or can be the direct result of the influence of spirits is very ingrained in African societies (Ukhun, 2003). This point is further authenticated by Ndubuisi (2004) in his contention that Traditional Africans identified spirit as the ultimate working principle. The idea of spirit guides and directs all that Africans do, in their traditional mind-set.

The foregoing discussion imply the admission that African ontology or metaphysics can be couched in the spiritual – a phenomenon often described as “spiritual primacism”. It is a principle which states that the life of the African is permeated by spiritual entities. That is, that the vital force in African cosmology follows the dictates of spirits exclusive of any physical force. If physical force exists, it must be a consequent factor of the spiritual. It is perpetuated by the former.

From what we have seen so far, it is obvious that the African remains eternally, and overtly or covertly defined by his belief in the spiritual or spiritual entities who are said to direct the affairs

of men. At this point therefore, the urgent point we might like to make is that traditional Esan people being Africans cannot be separated or dichotomized from the spiritual. They too bear the full influence of spirits who are invisible causal agents and part and parcel of their earthly affairs. Perhaps, to emphasize the importance of the spiritual in Esan world-view, an issue of sexism against Esan women is worthy of note. Regarding sexism against Esan women, a spiritual dimension is employed to validate the disinheritance of Esan women... such may be the consequence (Ukhun and Inegbedion, 2005). A man while alive gave the family house to the first daughter; in no distant future, the house collapses under mysterious circumstances. Many other calamities could happen if the decision or law is not reversed. The woman herself may begin to experience grave misfortunes. Her misfortunes are invariably linked to spiritual forces at work. She is reminded that her spiritually induced woes could continue unless such properly was handed over to the first son (Ukhun, 1998).

Ontology and Land Tenure in Esan Tradition

In Nigeria, there are judicial pronouncements or dispositions regarding title to land. In all these, the importance of customary law (traditional law) can be distilled (Inegbedion and Ukhun, 2001). We may not go into the intricate or relevant issue why this is so. What we wish to state is that the validity of customary law is not so much because of government position or disposition but that it is culturally ingrained. We have made this point earlier in the case of *Amodu Tijani v Secretary, Southern Nigeria* (Inegbedion and Ukhun, 2001). Cultural validation is not by itself alone, it is metaphysically ontologically validated. The significant point to note is that Esan culture does not have value or operate in a vacuum. It has force on the basis of the activities of spirits. In other words, the dictates of culture make sense or are followed because such are supported by the relationship people have with spirits. Cultural morality or authority of culture exists by virtue of what people fear or feel might happen to them when the ever watching spirits decide to pass judgments on their actions. This belief is in consonance with the idea that in "traditional Africa" as in Esan tradition, life is a continuum; even after death, the spirit lingers and interacts with the living, especially those of one's lineage.

In Esan tradition, no one can inherit the PALACE GROUND except the heir apparent. Trespass on the Palace Ground is viewed with all seriousness. While there may be physical resistance to incursion into the Palace Ground, the actual resistance is spiritual as punishment is meted out to any intruder. The punishment derives from the activities of spirits of the ancestors who may regard any trespass as an affront to their rule and power. Given that Onojies (kings) are earthly representatives of the spirits, the former deserves unflinching support and protection from the latter. It is also important to appreciate the fact that the palace ground is the spiritual seat of power or headquarter where spirits, through their earthly representative, oversees the affairs of men. An illegal incursion into the Onojie's (king's) palace could attract certain unexplained afflictions. Sometimes, instant death is the reward for a trespasser except appeasements are made to the spirits with the express assistance of oracles or witch-doctors.

In the case of Ijeogbe (ancestral home of a man), no one has the right to acquire or inherit it. Only the first surviving male of a deceased man has tenureship right over such land. There are conditions stipulated for acquiring the Ijeogbe or Ichuwa. An illegal occupant of the Ijeogbe or Ichuwa will sooner or later face the wrath of spirits of the land. The wrath may be manifested in various manners. In a polygamous setting for instance, if out of love for his second wife either through natural means or manipulation by the former, a man gave his Ijeogbe to the son of his (beloved) second wife, spirits of the land would react as the belief goes. Sometimes, the disinherited first son may not fuse over his misfortune since justice will soon come his way because in no distant time, his half brother would get afflicted by the gods. Calamities such as financial misfortune, marital instability, etc. could be his bed-fellows.

"ONON GBE EGBON YA GBO (He who de- virgined a forest owned it)" is not a trivial assertion in Esan tradition. Deforestation involves a lot of sacrifice and the reward of such is permanent ownership of such a piece of land. Spirits are said to reward good deeds, hard-work, etc. The logical consequence of this is that spirits frown at any dubious or forceful attempt to deny a man the reward of his hard-work or labour. As in other cases, the belief is that spirits or the gods would surely punish anyone who attempts to dis-

possess his neighbour of his hard-earned property.

CONCLUSION

C.G. Okogie pointed out that until modern times, when people ceased to believe strongly in the power of departed spirits and the sure destruction following unsavouring acts, gives the impression that the spiritually fixated Esan tradition is on the wane (Okogie, 1994). It could be true that cross-culturalism, globalisation and colonialism and its cognate-religion, may have ushered in some fundamental changes in Esan tradition, but the truth is that spirits and their activities remain sacrosanct in the life of traditional Esan people. To discuss Esan belief system in isolation of spiritual entities tantamounts to bifurcating a thing from its shape. Metaphysics deals with foundations. These foundations are profound principles of life. Principles are those ideas in the human mind which guide daily activities, as well as create harmony between people and things. Once an idea has been certified as the working or guiding principle of the day, it permeates the entire life system of the people in question (Ndubuisi, 2004). The ontological or metaphysical revolves around the idea that spirits rule the world in Esan tradition. Therefore, in matters of land tenure apart from other considerations, such is essentially validated by the

supreme power of spirits as we have indicated in this work.

REFERENCES

- Idoniboye, D.E. 1973. "The Idea of an African Philosophy: The Concept of 'Spirits' in African Metaphysics." *Second Order*, 11(1): 83.
- Inegbedion, N.A. and C. E. Ukhun. 2001-2004. "Land Use and Customary Land Holding: Wither the Land Use Act?" *Lesotho Law Journal, A Journal of Law and Development*, 14(2): 343.
- Ndubuisi, F.N. 2004. "The Metaphysical Foundation of African Traditional Medicine." in *Network 2000: In the Spirit of the Harlem Renaissance, Wisconsin*, 12: 29.
- Okoduwa, A.I. 1997. "A Geography of Esan", (p.1), in A.I. Okoduwa (ed.), *Studies in Esan History and Culture*. Benin City: Omo-Uwessan Publishing Ltd.
- Okojie, C.G. 1994. *Esan Native Laws and Customs*. Benin City: Ilupeju Press Ltd. p. 1.
- Okoro, C. 2003. "On Causality and Science: Towards a Deconstruction of African Theory of Forces", (pp. 14-15), in Muyiwa Falaiye (ed.) *African Spirit and Black Nationalism: A Discourse in African and Afro American Studies*. Lagos: Foresight Press.
- Ukhun, C.E. 1998. *Sexism in Philosophy: An African Perspective*. Unpublished Ph.D. Thesis, Edo State (now Ambrose Alli) University, Ekpoma, Nigeria.
- Ukhun, C.E. 2003. "The Metaphysical, Sexism and an African Culture." *Ufahamu, A Journal of Africanist Studies*, XXX(1): 72-73.
- Ukhun, C.E. and N. A. Inegbedion. 2005. "Cultural Authoritarianism, Women and Human Rights Issues Among the Esan People of Nigeria." *Africa Human Rights Law Journal*, University of Pretoria, 5: 136.