

Fiduciary in Theory and Practice: The Perspective of the Allodial Rights Holders of Customary Land in Ghana

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Abstract : The 1992 constitution of the Republic of Ghana recognises the authority and roles of traditional leaders and considers them as being entrusted with fiduciary responsibility over land in their respective territories. The new land act, Act 1036 of 2020, in buttressing the fiduciary role of traditional leaders in land matters, inserted the traditional leaders' accountability clause. Many traditional leaders have expressed their misgivings about the insertion of this clause. Therefore, there appears to be a misunderstanding of the concept of fiduciary in land management in Ghana. The objective of this study is to examine the concept of fiduciary in respect of allodial rights holders in land management and administration and how this concept is perceived and applied by traditional leaders. The study seeks to provide insights into the discrepancy between fiduciary theory and its practical implementation in Ghana. The study is based on a qualitative empirical research approach and adopts in-depth interviews as a primary method of data collection. The study also adopts the theory of New Institutionalism of social anthropology in analysing and interpreting the findings. The data for this study was collected over a period of one year, from July 2022 to July 2023, as part of one of the author's PhD dissertation. The collected data were carefully analysed using the principles of thematic analysis, identifying key themes and patterns. This study does not seek to pursue the discussions from a legal standpoint but from a social anthropological perspective and argues that the concept of fiduciary in theory is far different from what pertains in practice and that traditional leaders' assumptions and application of this concept contribute to the alienation of customary and communal land at the expense of their subjects. This study deepens our understanding of the continuous expropriation of communal landholders in many rural communities in Africa in the era of global land grabbing, which worsens their poverty levels. It also explains further the theory of new institutionalism of social anthropology by highlighting how the theory manifests in practice in the case of Ghana.

Keywords : fiduciary, customary land tenure, allodial rights, land alienation, communal land, Ghana

Conference Title : ICLUPEM 2024 : International Conference on Land Use Planning and Environmental Management

Conference Location : London, United Kingdom

Conference Dates : March 11-12, 2024