

THE JUDICIARY AND THE ROLE OF CUSTOMARY COURTS IN NIGERIA

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ABSTRACT: *Some researchers have opined that Customary Law regulates the lives of about 80% of Nigerians and that is why it is being argued that Nigerian courts should enforce Customary Laws. The Constitution of Nigeria, 1999 (as amended) has made adequate provisions for States, through their respective Houses of Assembly to establish Area and Customary Courts to hear and determine matters over persons subject to native laws and customs prevailing in the areas of their jurisdiction. These courts being close to the grassroots, citizens, can safely be referred to as grassroots Courts. It is the role of these Courts in the Nigerian legal system that this article sets out to examine. The paper also considers the applicability of Evidence Act to Customary and Area Courts and discusses whether the concept of right to fair hearing is applicable or not to these courts. The paper also examines appeals from the Customary Court.*

KEYWORDS: Customary Courts, (Criminal and Civil) Jurisdiction, Evidence, Fair hearing,

INTRODUCTION

In Nigeria, Section 17(2) (e) of the *Constitution of the Federal Republic of Nigeria, 1999 (as amended)* provides for the independence, impartiality and integrity of the Courts of law and easy accessibility thereto, while Section 6 of the same Constitution provides for the establishment of Courts for the Federation as well as for the Federating units. It has at the apex of the court system in Nigeria the Supreme Court, followed by the Court of Appeal, the Federal High Court, the National Industrial Court, High Court of the Federal Capital Territory, High Court of the States, Sharia Court of Appeal of the FCT, Customary Court of Appeal of the FCT, Sharia Court of the States and the Customary Courts of Appeal of the States. Of truth, these courts could not be said to be grassroots courts. The fact of the matter is that these courts are all usually established and sited in urban cities and locations. They are almost always approached by the elite of the society, proceedings before them being mostly understood by the elite. Indeed, more often than not, it is the elite who can afford any of these courts not so much in terms of courts fees but as it relates to the cost of obtaining and retaining the services of Legal Practitioners.

However, the Constitution is not oblivious of those people who live within the rural setting and their justice needs. Thus, it makes provisions for States, through their respective Houses of Assembly¹, to establish Area and Customary Courts for the administration of justice at the grassroots without undue regard to technicalities of the common law. These Courts, as earlier stated, can safely be referred to as the *grassroots Courts*. This is because they are close to the people and their procedures are not alien to the people. Moreover, statistics show clearly that

almost all cases involving land in the rural area, marriage, inheritance, guardianship and custody of children are determined by Customary Courts. It must be understood that by virtue of Section 6 of the Constitution of the Federal Republic of Nigeria 1999² (as amended) from which the Nigerian Judiciary derives its powers to administer justice, the judges of the Customary and Area Courts bench and their Courts form part of the system of Courts in Nigeria.

What is area/customary court?

*The Black's Law Dictionary*³ defines District Court as “a trial Court having general jurisdiction within its judicial district to hear and determine causes or matters ...” For our part, we define Area and Customary Courts as the Courts that are established by individual states to exercise summary jurisdiction over native persons only; they are to apply native Law and Custom prevailing within their judicial districts in both civil and criminal matters, but punishments given by them should not be repugnant to natural justice, equity and good conscience.

In the Southern part of Nigeria, the courts are known as Customary or District Courts while in the Northern part of Nigeria, they are called Area Courts. They have criminal and civil jurisdictions. In criminal matters, proceedings before the court are governed by Criminal Procedure Act as applicable to the South while in the Northern part of the country, they are governed by the Criminal Procedure Code. In civil matters, they are governed by the provisions of the Area Courts (Civil Procedure) Rules, the Area Courts Law and other relevant laws enacted in various jurisdictions. The general public prefers having their matters determined by the Customary and Area Courts because their procedures are simpler and cheaper compared to the conventional and common law courts, the courts are also located near to the people.

In Akwa Ibom State, the Court is called “District or Customary Court”. Section 1(1) of the Customary Courts Law⁴ provides for the establishment of the District Court thus:

The Governor may, by warrant under his hand, establish such District Courts as may be recommended by the Chief Judge

while Section 2(1) of the same law provides for the appointment of members of the District Courts bench as follows:

...the power to appoint members of the District Court shall vest in the Judicial Service Commission.

It must be observed that before now, the District Courts bench in Akwa Ibom State was occupied by laymen though sometimes retired civil servants who are chiefs and traditional office holders consisting of a President and two members. However, currently, the Chairman of that Court is a legal practitioner of not less than five years at the Bar sitting with two lay members. The Chairman of the Court is on full time and pensionable appointment in Akwa Ibom State Judicial Service on the recommendation of the Chief Judge while the two lay members are appointed on full time basis for three years and on expiration of their terms of office, they may be re-appointed for a second term if in the opinion of the Judicial Service commission such re-appointments are

desirable. For the purpose of hearing causes or matters, the 3 members of the Court shall be present. However, where the 3 members cannot for any reason be present, 2 out of 3 members may hear a cause or matter. One member cannot sit alone to hear a matter and where that happens the judgment will be a nullity. The Law also provides that where the Chairman and one other member are present, the Chairman has two voting powers.

The issue of appointment of two laymen as members of the Customary Courts on non-permanent and unpensionable basis to sit together with a pensionable Chairman to form a quorum for the purpose of hearing any cause or matter, in my respectful view, does not enhance justice as such appointment should be permanent and pensionable if we must achieve efficient Justice delivery at the grassroots courts at the end of the day. In Lagos State, establishment of Customary Courts is provided for in Section 1 of the Customary Laws⁵ which states:

The Judicial Service Commission of Lagos State in consultation with the Governor of Lagos State shall establish Customary Courts

while Section 2 of the same Law provides for the composition and quorum of the Courts thus:

A Customary Court shall be properly constituted if it has a minimum of 3 members and a maximum of 5 members and that for the purpose of hearing any cause or matter, 3 members of the Court shall be present.

Section 5 of the said Law states that a person shall be qualified to hold office as a President or a member of a Customary Court if he/she is:

- (a) A person of proven character and good standing in the society;
- (b) A person of adequate means;
- (c) Properly placed by his circumstances to perform the function as a member of the Customary Court;
- (d) A person with educational qualification not below School Certificate and has attended the age of 50 years.

In Akwa Ibom State and other states of the Federation, the states are divided into parts for purposes of administration of the Customary Courts Law. The Chief Judge of the State, as part of his administrative and supervisory functions, creates the divisions which are called Customary Courts divisions.

On the issue of educational qualification, the author submits with respect that the educational qualification should not be anything below a degree from a recognized University in Nigeria or elsewhere. It is also submitted that the President of the Court should be a legal practitioner of not less than 5 years at the Bar. On the issue that the President of the Court should be a legal practitioner, the Lagos State Judicial Service Commission should borrow ideas from Akwa Ibom State and Delta State and amend its conditions of service accordingly.

Jurisdiction of customary courts in criminal matters

It was stated earlier that Customary Courts are creation of statutes. Such statutes invariably specify the offences cognizable in these courts. Rules which must be used as guides by these courts are also provided to checkmate arbitrariness. Apart from capital offences, Customary Courts in Akwa Ibom State for instance have jurisdiction to hear and determine virtually all the offences contained in the criminal code subject however to specified limits in respect of powers to impose punishment as contained in the First Schedule to the Customary Courts Laws⁶. Indeed Section 1 of the First Schedule provides as follows:

...Customary Courts have jurisdiction to hear and determine criminal causes and matters where the penalty is a fine not exceeding one thousand naira or imprisonment for a term not exceeding three months or both such fine and imprisonment, or where, in the case of juvenile offenders, the penalty does not exceed twelve strokes...

The Venue of the Court to hear and determine criminal causes and matters is provided for in Section 8 (1) of the Law and it says:

Subject to the limit of Jurisdiction set out in the First Schedule, all criminal causes and matters shall be tried and determined by a Customary Court having jurisdiction over the area within which the offence was committed.

Section 7 (2) of the Law which makes provision for the punishment to be imposed on conviction of the offender says:

The maximum fine and the maximum imprisonment which a customary court may impose is a fine of one thousand naira or imprisonment for three months or both.

Furthermore, Section 55 of the Customary Courts Laws⁷ gives a Customary Court powers to hear and determine cases of assaults, obstruction, molestation and so on. That section states:

Any person who commits a common assault on or obstructs, molests or resists, or aids or incites any other person to commit a common assault on, or to obstruct, molest or resist, any person acting or proceeding to act in the execution of his duties under this Law shall on conviction be liable to a fine not exceeding two hundred naira or to imprisonment for a term not exceeding one month.

In criminal matters or causes also, a Customary Court may play the role of promoting reconciliation and encourage and facilitate the settlement in an amicable way, of proceedings for common assault or for any other offence which the Court has jurisdiction to try and which is not aggravated in degree, on terms of payment compensation or other terms approved by the Court and may thereupon order the proceedings to be stayed.⁸ It must be pointed out that it is

not intended in this article to mention all criminal offences that the Customary Courts in Akwa Ibom State have jurisdiction to enforce as that will be impossible.

In Lagos State, Section 1 (2) of the Customary Courts Law states that jurisdiction shall not be conferred upon a Customary Court under the provisions of paragraph (1) above in respect of any of the following offences: homicide; treason; sedition; rape; defilement of girls; offences against the enactments relating to official secrets; any capital offences other than the offences mentioned above. Section 3 of the same law provides thus:

(3) A customary court shall have jurisdiction to hear and determine criminal causes or matters, or impose the punishment or fine.

(4) (a) The fine which a customary court may impose in respect of an offence shall not exceed N200 but shall not in any event exceed maximum fine provided by law for that offence, and in no case shall aggregate of fines imposed by any customary court exceed the specified above.

(b) The term of imprisonment which a customary court may impose in respect of any offence shall not exceed one month, shall not in event exceed the maximum terms of imprisonment provided by law that offences and in no case shall aggregate term of imprisonment respect of two or more consecutive terms of imprisonment imposed in case by any Customary Court exceed the term specified above.

From the above, it is clear that the Customary Court in Lagos State may not handle very serious criminal matters as stated above.

In the northern part of the country and in the Federal Capital Territory, Abuja, the Area Court Law usually specifies the jurisdiction of the Courts. Just like the Customary Courts, the Area Courts equally have jurisdiction to hear and determine criminal causes or matters according to the grade of Court; they exercise limited criminal jurisdiction depending on their grade and can only impose punishment of imprisonment of a certain period and a fine of specified amount. The Area Courts also have jurisdiction pursuant to Section 18 (a) of the Penal Code⁹ which empowers the Courts to award punishment prescribed for offences in Sections 181, 287, 288, 317 and 219 of the Penal Code¹⁰.

However, a sober consideration of the above-mentioned offences and sections of the law suggests that Area and Customary Courts actually contribute to the criminal justice delivery system in Nigeria. It is however, suggested that laughable or ridiculous monetary fines provided in lieu of imprisonment be jacked up to reflect contemporary inflation. Failure to reflect reasonable fines may be counter-productive as Customary Courts bench might be tempted to impose custodial sentence in lieu of ridiculously low fines.

Jurisdiction of customary court in civil matters

The First Schedule to the Akwa Ibom State Customary Courts Laws¹¹ 2000 as an example provides for the jurisdiction of Customary Courts in Civil causes and matters in section 2 (3) (4) and (5) as follows:

- 2(3) unlimited jurisdictions in causes and matters concerning the ownership, possession, occupation or alienation of land: provided that where a claim for damages is joined such claim shall not exceed in amount the sum of one thousand naira;
- 2(4) Unlimited jurisdiction in Causes and matters relating to the succession of property and administration of estates under Customary Law where the value of the property does not exceed one thousand naira;
- 2(5) Unlimited jurisdiction in matrimonial causes and matters between persons married under Customary Law or arising from or connected with Customary Unions and in suits relating to the custody of children under Customary Law.

For item in Section 2(3) of the schedule, it must be emphasized that although not specifically mentioned, for any Customary Court to have jurisdiction to adjudicate on land matters, such land must be governed by customary right of occupancy. The land therefore must not be in an area designated to be an urban area. This is provided for in Section 41 of the Land Use Act, 1978 thus:

An Area Court or Customary Court or other Court of equivalent jurisdiction in a state shall have jurisdiction in respect of proceedings in respect of a customary right of occupancy granted by a Local Government under this Decree, and for the purpose of this paragraph, proceedings include proceedings for a declaration of title to a customary right of occupancy and all laws including rules of court regulating practice and procedure of such courts shall have effect with such modifications as would enable effect to be given to this section¹².

In the case of *Samson Erhabor v. Godwin Onaghise*¹³ a judgment of Edo State Customary Court of Appeal, the Court pronounced inter alia as follows:

Item 2(3) of the First Schedule made pursuant to Section 20(1) of Bendel State Customary Court Edict 1984 applicable to Edo State gives unlimited jurisdiction to the area and district customary court in respect of land in rural areas. Consequently, we hold that the Ugboko-Niro District Customary Court had jurisdiction to adjudicate on the claim now subject of this appeal. This is because

the land in dispute being at Evbueghine Village is governed by customary right of occupancy.

For item 1(4) of the schedule in respect of matters of inheritance, the appropriate customary law shall be the one applying to the decease¹⁴. Where both parties are not natives of the area of jurisdiction of the court or the transaction, the subject of the matter was not entered into in the area of jurisdiction of the court or one of the parties is not a native of the area of jurisdiction of the court and the parties agree that their obligations shall be regulated by the customary law applying to that party, the appropriate customary law shall be the customary law binding between the parties.¹⁵ For Section 2(5) of the schedule, it should as well be stressed that although not specifically mentioned, the matrimonial causes or matters over which customary court can adjudicate must be those governed by customary law. The Court also has jurisdiction to hear and determine any matter relating to the guardianship of children and in such cases the Customary Courts are enjoined to ensure that the interest and welfare of those children shall be the first and paramount consideration.¹⁶

The Customary Courts in Akwa Ibom State also has jurisdiction to try other civil cases in which the monetary claim of the debt, demand or damages does not exceed N1,000 (one thousand naira).

The First Schedule to the Customary Courts Laws, 2001 of Kaduna State provides for the jurisdiction of the Area/Customary Courts in Section 21 in the following areas¹⁷:

- (a) Unlimited power on land matters subject to Section 41 of the Land Use Act or any other written law
- (b) Unlimited power on Matrimonial causes or matters under Customary Law
- (c) Unlimited power on causes or matters under Customary Law, whether or not the value or debt demanded including dowry or damages is liquidated
- (d) Unlimited power on guardianship and custody of children under Customary Law
- (e) Unlimited power on inheritance upon intestacy under Customary Law and grant of power to administer the estate on intestacy under Customary Law.¹⁸

The Customary/Area Courts in Kaduna State also has jurisdiction to try other causes or matters under Customary Law within the area of its jurisdiction.

The applicability of evidence act in area and customary courts

The Area and Customary Courts are vested with the jurisdiction to hear and determine both criminal and civil causes under the native law and custom. Most of the causes in Nigeria today originated from the rural areas and are governed by native law and custom. Customary laws of various communities in Nigeria have their own system which is usually adhered to by the people and the elders of the communities. In applying customs of the people, the Customary and Area Courts must have at their finger tips the test that a Customary Law must pass before it is enforced. No particular number of witnesses is required to prove a custom. It is based on the custom of the people and the mode through which it can be proved that the Customary/Area Courts have made useful judicial pronouncements in cases before them is by observing custom and tradition of the people that are repugnant to natural justice and good conscience. However, under the Evidence Act, Customary Laws are reduced to the status of facts which must be proved by evidence. It is submitted that a native law, if it exists, remains a law and needs no proof because the courts in the area where the law exists are presumed to be seized of the law. It is further submitted that just as the common law needs no proof in common law countries, the customary law prevailing within the area of jurisdiction of Area and Customary Courts together with Customary Court of Appeal need no proof before the said courts.

And important issue worthy of considering in connection with both civil and criminal procedures in the Area and Customary Courts is the extent to which these courts are bound by provisions of the Evidence Act. It must be understood that the rigid standard of proof provided for by the evidence Act does not necessarily apply in respect of proceedings in Customary or Area Courts now, but they are only to be guided by it. Prior to now, for a customary law to have a binding effect, it must be a custom that has been judicially noticed as provided for in Section 14(2) of the Evidence Act 1990 (as amended), the said section provides:

A custom may be judicially noticed by the court if it has been acted upon by a court of superior or co-ordinate jurisdiction in the same area to an extent which justifies the court asked to apply it in assuming that the person or the class of persons concerned in that area look upon the same as binding in relation to the circumstances similar to those under consideration.

Also, in the case of *Akintola & 7 Ors v Solano*¹⁹ His Lordship Hon. Justice Oputa JSC as he then was emphasized the need to prove the existence of a Customary Law before a customary Court when he observed that:

If a thing is self-evident, it does not require evidence. What therefore is evidence? Simply put, it is the means by which any matter of fact the truth of which is submitted to investigation may be established or disproved. Evidence is therefore necessary to prove or disprove an issue of fact.

The place of evidence in the process of Judicial adjudication in the Customary Court has been further put by Cross²⁰ thus:

Courts of law usually have to find that certain facts exist before pronouncing on the rights, duties and liabilities of the parties, and such evidence as they will receive in furtherance of this task is described as 'Judicial Evidence'.

In spite of the above position, in the case of *Ogunnaike v. Ojayemi*²¹, the Supreme Court of Nigeria was called upon to give judicial interpretation to Section 1(2) of the Evidence Act, 1990 (as amended), the Court held that Evidence Act would not apply to Judicial Proceedings in or before a customary or Area Court unless the Governor shall by order confer upon it power to enforce any of its provision.

Similarly, in the case of *Onwuama v Ezeokoli*²², the Court held *inter alia* that:

In considering proceedings of Native, Customary or Area Courts, an appellate Court should act liberally and this is done by reading the record to understand what the proceedings were all about so as to determine whether there is evidence of substantial justice and the absence of any miscarriage of justice. This is because such Courts are not required to strictly comply with the Rules of practice and procedure or evidence, and the rationale for creating them is for the need to make the administration of justice available to the common man in a simple, cheap and uncomplicated form. In the instant case, since the proceedings were that of a Customary Court, the Respondent was not bound to plead particulars in support of traditional history as it would have done if the case was commenced at the High Court. Furthermore, the fact that the Trial Court called a witness on its own to resolve the conflicting evidence adduced by the parties did not vitiate the proceedings.

In the same vein, recently the Supreme Court in the case of *Oguanuhu & Ors Chiegboka*²³ has made pronouncement on whether strict rules of the Evidence Act are to be observed in the Customary or native Courts as follows:

Strict rules of pleadings and application of provisions of the Evidence Act are not observed in those Customary or Native Courts. Their decisions however must be based on common sense and reasonableness of their findings.

The author regards the recent decisions of the Courts that Rules of pleadings and Evidence Acts are inapplicable in the Area, Customary or Native Courts as a very welcome development. By the author's reasoning, this is an attempt by the Courts to free our indigenous law i.e. customary laws from the 'straight jacket' made for them by our erstwhile colonial masters. This position of our law is now the trend in most parts of the world. The Chief Justice of Malaysia, Rt. Hon. Dato' Ben Chin in his speech at the opening ceremony of the 12th

Commonwealth Law Conference held in Kuala Lumpur, Malaysia published in 1999 said inter alia at page 3 as follows:

In Malaysia, like other commonwealth countries, we apply the English Legal System. While the bulk of the laws are statutory, the Court in Malaysia also applies the common law of England. But in applying the common law of England, we do not follow it blindly, because by law, we have also to consider the Malaysian circumstances, the culture, the customs and religions of the various races in Malaysia. So, it is not surprising if, on a given subject, a Malaysian Court may come to a different conclusion from English Court²⁴.

One is looking forward to the day the Nigerian Courts would disagree with principles of the common law that are in conflict with aspects of our Native Laws and Customs.

Another voice was lent to the need to promote our customary laws by Hon. Justice (Dr) G.W. Kanyeihamba of the Supreme Court of Uganda. In his paper titled '*Criminal Law Administration – Historical and Institutional Constraints*' presented at the Commonwealth Magistrates and Judges Conference held at Edinburgh, Scotland he stated at pages 12-13 as follows:

The non-recognition of some of the finer points of African Customary law was based partly on ignorance and partly on the incidents of imperialism and colonialism. However, the main reason for denying African Customary law its sanctity and value was colonialism. The policy of colonial rule was based on the theory of the superiority of the imperial race and its culture and laws over the subjugated peoples and their own culture and laws... If the later were to be allowed to believe in their own culture and values and deem them to be equal with those of their masters, they could challenge the right of the imperialism to govern them²⁵.

The learned Jurist gave example at page 14 of his paper where colonial masters forced African wives to give evidence in criminal cases against their husbands contrary to the practice in their own countries of origin where wives are not compellable witness.

We cannot now blame the present low level of the development of our customary law on our colonial masters. Nigeria became independent of the colonialist more than fifty-six years ago. The blame, in my view, should go to the practitioners at the Bar and on the Bench who still regard the laws as less prestigious and maybe primitive.

The Hon. Justice I. O. Aluyi, the retired President of the Customary Court of Appeal of Edo State expressed the same view in 1991 at the All Nigeria Judges Conference held in Abuja 4th – 11th September, 1988 at page 517 where he said:

The derogatory attitude towards our law has ironically persisted with the present day educated Nigerian. He now has excessive and conspicuous appetite for imported rather than made in Nigeria goods. The implication of this sense of value is that our economic, political and social development has become stagnated and almost ruined”.

It is my humble submission therefore that collective efforts should be made by lawyers, scholars and jurists to develop and free our indigenous laws from undue technical rules of procedure associated with the English common law, so that they can truly develop just as the English people developed their customary law into what it is today.

Customary courts and right to fair hearing

Fair hearing is an aspect of public justice which sets a standard fixed by law and society which cannot be compromised by any Customary Court hearing either a criminal or civil matter as the case may be. It is in fact a constitutional requirement for adjudication. For instance, Section 36(1) of the 1999 Constitution (as amended) states that:

In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

As regards criminal proceedings, Section 36 (4) of the *Constitution of the Federal Republic of Nigeria 1999 (as amended)* which makes provision for fair hearing states thus:

Whenever any person is charged with a criminal offence, he shall unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal.

Fair Hearing is predicated on the rule of natural justice which dictates that no man should be condemned unheard and that every judge must be free from bias and its very essence is to ensure fair play.

It must be understood that no matter the grade of court where proceedings are conducted, the rule of fair hearing must be observed. This was the reasoning of the Court in the case of *Falodun v. Ogunse*²⁶ where the court held inter alia:

Although Customary Courts are not bound by technical rules of procedure, the provisions of Section 36 of the constitution relating to fair hearing is a very far-reaching provision. The requirements of fair hearing are so ubiquitous that even proceedings in Customary Courts must observe them²⁷.

In the same vein, Sections 24, 25, 26 and 27 of Akwa Ibom State Customary Court Rules²⁸ have made ample provisions facilitating fair hearing during civil trials while Sections 45, 46, 47 provide for the principle of fair hearing during criminal proceedings. For example, it is provided under Rule 44(1) that a charge sheet shall be read out by the Clerk to the accused person, who shall be asked how he pleads to it, and his answer shall be recorded. It is also provided under this rule that if an accused person cannot or will not answer directly when called upon to plead, the court shall cause to be entered, a plea of not guilty on his behalf. Under Rule 38(5) of the same Law, the Registrar shall issue a summons directing that the accused person should appear before the Court at a certain time and at a certain place to answer the charge. That is to say the accused must always be in Court before his case can be heard

By Section 36(6) of the 1999 Constitution (as amended), an accused person is entitled to be informed promptly in the language that he understands and in detail of the nature of the offence. He must also be given adequate time and facilities for the preparation of his defence. The section further provides that an accused person may either defend himself in person or by legal practitioners of his own choice. Under the same Section, an accused person is entitled to have without payment, the assistance of an interpreter if he cannot understand the language used at the trial. These are mandatory provisions, the breach of which would render the entire proceedings a nullity. **Oputa J. S. C.** in *Josiah v. State*²⁹ emphasized the consequences of a breach of the fair hearing provisions in the 1979 Constitution in these words:

Section 33 of our 1979 Constitution deals with fair hearing and then when it uses the expression 'he had been tried' this must necessitate, or imply that at the trial there was a fair hearing. Where, as in this case, there was no such fair hearing, the trial is vitiated or nullified.

Some State Laws have provisions barring legal practitioners from appearing in Customary Courts not presided over by legal practitioners. Such provisions are null and void having regard to Section 36 (6) (c) of the 1999 Constitution which provides that an accused person has the right to be represented by a legal practitioner of his choice.

Also in the civil proceedings at the Customary Courts certain provisions are made to ensure fair hearing during trial. First of all, every civil cause or matter commenced by a plaintiff, stating the names and last places of abode of the parties and the substance of the claim intended to be brought³⁰. Application of any person desirous to institute civil proceedings may be made by the plaintiff on payment of prescribed fees, then the Registrar shall issue a plaint on behalf of the plaintiff and the plaintiff is duly reflected in the plaint thereafter the process shall be served or executed upon the person to whom reference is made therein by such officers as are authorized by law in that behalf.³¹

At the completion of the registry formalities, the process or other documents could be served by handing the process or other document to the person to whom it is addressed³² or by substituted service where personal service is not convenient.³³ The court shall not proceed to

adjudicate upon any cause or matter which depends upon any process or other document having been served unless service is admitted by the person concerned or proved or deemed to have been affected.³⁴ Furthermore, the claim shall be read out by the clerk to the defendant who shall be asked how he pleads to it and his answer shall be recorded³⁵. Where the defendant admits the claim, the Court shall hear the statements of the parties and give its judgment. Where the defendant does not admit the claim, the plaintiff shall adduce evidence in support of this case. At the conclusion of the evidence by both sides, the Court shall consider the whole evidence and give its judgment thereon. In every matter in which there is a dispute with respect to the appropriate customary law, the court shall clearly state in its judgment the appropriate customary law applicable to the cause or matter.³⁶

Appeals from customary court

The decision and or the judgment of the Customary and Area Courts may be appealed against to the Customary Court of Appeal in a state that has developed and applied the Customary Court of Appeal system. In the same vein, the decision of a Customary Court may be reconsidered by the process of appeal to the Magistrate's Court and the High Court of a State in States that do not apply the Customary Court of Appeal system. For instance, in Akwa Ibom State that does not apply the Customary Court of Appeal system, appeal from Customary Courts or District Courts lie to the Magistrate's Courts. Section 41 (1) of the Customary Courts Law³⁷ provides thus:

Any party aggrieved by the decision or order of a District Court may, within thirty days from the date of such decision or order, as the case may be, appeal there to a magistrate's court having jurisdiction to hear and determine appeals from a District Court.

Sub- section (2) of the same section states as follows:

Any party aggrieved by the decision or order of magistrate's court having jurisdiction to hear and determine appeals from a District Court may, within thirty days from the date of the decision or order, as the case may be, appeal to the High Court which court shall have appellate jurisdiction to hear and determine such appeal.

Going further, Section 41(3) of the same law makes provision to the effect that Appeals from the decision or order of the High Court lie in the Court of Appeal. As earlier stated, it must however be noted that in many states of Nigeria where Customary Law and Customary Court of Appeal system are well recognized and established appeals from Customary Courts lie to the Customary Court of Appeal vested with the attributes of a Superior Court of record, and its establishment is optional to any state that requires it. The States that have so far availed themselves of this constitutional provision by establishing the Customary Court of Appeal are Edo, Delta, Rivers, Imo, Plateau, Abia, Taraba, Benue and Federal Capital Territory. The

author is aware that arrangement for the establishment of the Customary Court of Appeal in Akwa Ibom and other States of the Federation has reached an advanced stage.

The author is also aware that in Akwa Ibom State a bill for the establishment of Customary Court of Appeal was signed into law by His Excellency, the Executive Governor of Akwa Ibom State. The writer is also aware of the fact that Court rooms for Customary Court of Appeal are equally in place both in Uyo and Ikot Ekpene Senatorial Districts. The above position is highly commendable; what remains is the political will by the Akwa Ibom State Government vis-à-vis the Akwa Ibom State Judiciary to actualize the establishment of the Court. Our government should know that this Court which is optional to any state that requires it is a superior Court of record and its establishment shall provide employment to many senior lawyers in the state. The establishment of this Court in the state would also decongest the appellate load of the Magistrate's and High Courts as the case may be. This Court would equally afford a platform for a closer and more efficient administration of customary law in our legal system.

CONCLUSION

This paper has examined the role of the Customary/Area Courts in the administration of justice at the grassroots level in Nigeria and from our discourse it is manifestly clear that the Customary Courts which form part of our system of courts are important even in the present day dispensation of Justice. Their importance in our legal system cannot be overemphasized. This is so because these courts procedure and proceedings are simple and not alien to the rural people and almost all cases involving marriage, succession, inheritance, guardianship, custody of children, land matters in the rural areas and even some contractual relations are determined by the Customary Courts. Also, these grassroots courts are not courts that allow technicalities to override substantial justice. For instance, if certain technicalities are likely to cause hardships, the court will disregard them if the end of justice will be met. Again, these Courts are also important because they ensure that even those in rural area and the less privileged get access to justice in a country like Nigeria where majority of the populace live in rural and unsophisticated society and handle a great part of the work in the judiciary.

The paper stresses the fact that customary courts must observe the principles of fair hearing in all trials. It is also stressed that the Evidence Act is not applicable in civil causes or matters in or before any Area or Customary Court as well as Customary Court of Appeal except there are specific legislation to that effect. It is submitted with respect that a Customary Law, if it exists, remains a law and need no proof because the Courts in the area where the law exists are presumed to be seised of the law. It is further submitted that just as the common law needs no proof in common law countries, the customary law prevailing within the area of jurisdiction of the Area and Customary Courts together with Customary Court of Appeal need no proof before the said courts.

Finally, this paper has highlighted the fact that in majority of the states in Nigeria appeals from Area and Customary Courts lie to the Customary Court of Appeal of a state while in some states of the Federation including Akwa Ibom State Appeals from Customary Courts lie in the Magistrate's Court or to the State High Court. This situation, it is submitted with respect, appears not to promote the growth of our Customary Law vis-à-vis Customary Courts Judicial system in Nigeria. Accordingly, we recommend that the Akwa Ibom State Government and

other States of the Federation should as a matter of priority establish Customary Court of Appeal as this would promote the growth of our native laws and customs and ensure effectiveness and high standards in the practice and procedure of the Customary Courts in our Nation's Judiciary; after all, it is clear that there is a global reversion to the tenets of Customary Law.

ENDNOTES

- ¹ Section 6(5)(k), Constitution of the Federal Republic of Nigeria, 1999 (as amended).
- ² Cap C23 LFN, 2010
- ³ Garner, B., *Black's Law Dictionary* (7th ed; St. Paul; Minn, 1999) p. 358
- ⁴ Cap. 40, Vol. 2, Laws of Akwa Ibom State, 2000
- ⁵ Customary Courts Law of Lagos State, 2011
- ⁶ Cap. 40, vol. 2, Laws of Akwa Ibom State, 2000
- ⁷ *Ibid*.
- ⁸ Section 19 Customary Courts Law, Cap.40, Vol. 2 Laws of Akwa Ibom State, 2000.
- ⁹ Cap; p.14, LFN, 2010
- ¹⁰ *Ibid*
- ¹¹ Cap. 40, Laws of Akwa Ibom State, 2000
- ¹² Cap.15, LFN, 2010.
- ¹³ Appeal No CCA/20A/95 of 18th April, 1996 (unreported)
- ¹⁴ Section 10 (a) of the Customary Courts Law, Cap. 40, Vol. 2, Laws of Akwa Ibom State, 2000.
- ¹⁵ *Ibid*
- ¹⁶ *Ibid*, Section 17
- ¹⁷ Makeri, S. (President Customary Court of Appeal Kaduna State) A paper delivered at the All Nigeria Judges Conference, Abuja on November, 2007, p.10
- ¹⁸ *Ibid*
- ¹⁹ (1986)4 S.C, 141 at 184
- ²⁰ Cross on Evidence (5th ed, Sweet and Maxwell 1993) p.10
- ²¹ (1987) NWLR (PT 53) 760
- ²² (2002) 5 N. W. L. R part 760 at p. 353
- ²³ (2013) vol 221 LRCN (Pt 2) 117
- ²⁴ The report of the 12th Commonwealth Law Conference of Judges and Magistrates held at Kuala Lumpur, on September, 13th – 18th 1999, p. 3
- ²⁵ Kanyeihamba, G. (JSC) Uganda," criminal Law Administration – Historical and Institutional Constraints" A paper presented at the Commonwealth Magistrates and Judges Conference held at Edinburgh, Scotland(2000) p. 12-15
- ²⁶ (2010) All FWLR (Pt 504) 1404 at 1427
- ²⁷ *Kwali v. Dobi* (2010) All FWLR (Pt. 506) 1883
- ²⁸ Cap 40, Laws of Akwa Ibom State, 2000
- ²⁹ (1985) 1 N. W. L. R. (Pt. 1) 125 at 141
- ³⁰ Section 3(1) of the Customary Courts Rules, Cap 40, Laws of Akwa Ibom State, 2000
- ³¹ *Ibid*
- ³² *Ibid*
- ³³ *Ibid*

³⁴ *Ibid*

³⁵ Rule 24, Customary Courts Rules Cap. 40, Vol. 2, Laws of Akwa Ibom State, 2000

³⁶ *Ibid*

³⁷ Cap. 40, Vol. 2, Laws of Akwa Ibom State, 2000

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