

## AN OVERVIEW OF THE JURISDICTION OF AREA/CUSTOMARY COURTS.

BY

HON. JUSTICE C.E CHUKWURAH  
CUSTOMARY COURT OF APPEAL,  
ANAMBRA STATE.

I thank the Administrator of the National Judicial Institute, the Hon. Justice R.P.I Bozimo OFR for the invitation to me to address this conference of Area/Sharia/Customary Court Judges/Directors and Inspectors of Area/Sharia/Customary Courts on the topic "An Overview of the Jurisdiction of Area/Customary Courts".

I consider it an honour to be given an opportunity to address this august body of distinguished people.

### **Introduction.**

The multiplicity of the laws and rules governing the Area and Customary Courts in the thirty six states and the Federal Capital Territory makes it difficult trying to fully address the topic of this paper as far as the two inferior courts are concerned.

For the purpose of this paper I will rely substantially on Anambra State Customary Courts Law, and Rivers State Customary Courts Law.

There is no gain saying the fact that this topic under discussion is very apt considering the theme of this year's conference "Enhancing Administration of Justice in the Area/Sharia/Customary Courts

The present democratic dispensation in this country is a period when all and sundry i.e. the citizenry, is yearning for good governance, accountability and justice in all its spheres. This calls for a role by the judiciary in making sure that good governance is attained.

In achieving this, the Area/Customary Courts cannot be left out as they are the courts that normally deal with the grassroot,

Area/Customary Courts have played a very important role and are still playing this vital role in shaping the Nigerian legal system and has thus ensured that the judiciary has lived up to its expectations of good governance in the country.

These Area/Customary Courts have become permanently entrenched in the Nigerian legal system, as evidenced by the establishment of the Customary Court of Appeal as one of the superior courts of record in Nigeria, by **section 280** of the constitution of Federal Republic of Nigeria, 1999<sup>(1)</sup> as amended. This was given further impetus by **section 237(I)(b)**

The foregoing has been the foundation pillar and support that has made the Area/Customary Courts in the Federation to take their pride of place in the judicial system.

Today in Nigeria almost every state has established Area or Customary Court within its legal system. In the Northern part of Nigeria, these courts are styled Area Courts or Upper Area Courts, in the West and Southern Nigeria, they are styled Customary Courts or Area Customary Courts, while in the Mid-West, they are styled District Customary Courts and Area Customary Courts.

The Court as a Court of summary jurisdiction, and a court which resides in the heart and midst of the community they serve, are closer to the people as against the Magistrates Courts and High Courts. Some researchers have opined that Customary law regulates 80% of Nigerian laws, and that is why it is being advocated that Nigerian courts should enforce customary law. **SEE OYEWUNMI VS OGUNESAN** <sup>(2)</sup>

Area and Customary Court has its law and rules governing its practice and procedure.

The three distinctive characteristics of Customary Law are:

- 1) Customary law is essentially a body of unwritten rules applicable to a community.
- 2) The rules are intended to regulate the relationship and transaction of the community.
- 3) The community must accept and recognize the rules as binding, that is to say, as having a force of law"

## JURISDICTION OF CUSTOMARY COURT

I am going to deal on this issue of jurisdiction narrowly, because it is a very vast term which might take up to a decade to discuss.

Jurisdiction of the State High and the Customary Courts

"The State High Courts and their jurisdiction are spelt out in section 272 of 1999 constitution. Customary Courts however, where they exist are the creatures of statutes or laws promulgated by the various States Legislatures. Those statutes spell out the jurisdiction the various grades of Customary Courts are to exercise. The Customary Court Law of Ondo State is one such law. "PER OBASEKI J.S.C. (P.19, PARAS. A - B) in LOBA V AKEREJA <sup>(4)</sup>

In the South East and South-South I would discuss the jurisdiction of Customary Courts in Anambra State and in the South-South, the jurisdiction of Customary Courts in Rivers State

Jurisdiction is the life blood of any adjudication. Jurisdiction is very fundamental and always a threshold issue. It is the foundation upon which every litigation is laid. The jurisdiction of the court is determined by the plaintiff's claim as disclosed in the writ of summons, or the statement of claim, where it has been filed. For a court of law or tribunal to have jurisdiction to hear and determine any matter before it, it must satisfy these conditions or have the following ingredients

- a) It must be properly constituted as to the number or qualification of its membership
- b) any condition precedent to its existence of jurisdiction must have been fulfilled
- c) the subject matter of the case must be within its jurisdiction
- d) the case or matter must have been brought to the court by the due process of the law **SEE MADUKOLU V NKEMDILIM** <sup>5</sup>

**See Also** -DE LLUCH vs. S.B.N.<sup>(6)</sup>, Nwachukwu vs. Afuzee<sup>(7)</sup>, NNPC vs. SIB Consortium Ltd.<sup>(8)</sup>

**CUSTOMARY COURTS LAWS, 2010 OF ANAMBRA STATE <sup>(9)</sup>**

**(Section 12)**

**JURISDICTION OF CUSTOMARY COURT IN CIVIL AND CRIMINAL  
CAUSES AND MATTERS**

<b>(COLUMN 1)</b>	<b>(COLUMN 2)</b>
Causes and Matters	Extent or Limit of Jurisdiction of Customary Court.
Land Causes and Land Matters -- -- -- --	Unlimited
Matrimonial causes in respect of marriage under Customary law -- -- -- --	Unlimited
Debt, demand or damages claimed between persons Married under customary law, or arising from marriage Under customary law -- -- -- --	Unlimited
Custody of Children and other causes and matters Relating to marriage under customary law -- -- --	Unlimited
Causes and Matters relating to inheritance upon intestacy Under customary law and grant of power or authority to any person to administer the estate of an intestate under customary law -- -- -- --	N1,000,000.00
Civil actions in contracts and torts at common law and At customary law -- -- -- --	N1,000,000.00
Breaches of Local Government bye-laws and other offences committed in contravention of any written law punishable by 14 days imprisonment or a fine not exceeding fifty thousand naira -- -- -- -- months imprisonment or N50,000,00 fine	Twelve
Stealing of Farm produce or Livestock the market value of which does not <i>exceed</i> one hundred and fifty thousand naira -- -- -- -- months imprisonment or N50,000.00 fine	Twelve

**RIVERS STATE CUSTOMARY COURTS MATTERS; NO.3. 2014 <sup>(10)</sup>**  
**FIRST SCHEDULE**  
**(SECTION 6)(1)**  
**JURISDICTION OF CUSTOMARY COURTS IN CIVIL CAUSES AND**  
**MATTERS**  
**Civil Causes and Matters**

(Column 1)

Causes and Matters

(Column 2)

Limits of jurisdiction  
of Customary Court

- |   |            |
|---|------------|
| 1. Land causes and land matters, i.e, causes and matters relating to the customary right of occupancy, occupation or possession of land in non-urban areas.....   | Unlimited  |
| 2. Matrimonial causes in respect of marriage under customary law.....   | Unlimited  |
| 3. Debt, demand or damages claimed between persons Married Under customary law, or arising from marriage under customary law.....   | Unlimited  |
| 4. Custody of children and other causes and matters relating to children under customary law.....   | Unlimited  |
| 5. Causes and matters relating to inheritance upon intestacy under customary law and grant of power or authority to a person to administer the estate of an intestate under customary law and at customary..... | Unlimited  |
| 6. Civil actions in contracts and torts at common law and at Customary Law.....   | N5,000,000 |
| 7. Chieftaincy causes and matters.....  | Unlimited  |

RIVERS STATE CUSTOMARY COURTS LAW NO. 3, 2014 <sup>(CI1)</sup>

## SECOND SCHEDULE

## SECTION 6 (2)

Criminal **Causes** and Matters

(Column I)	(Column 2)
<b>Offences</b>	<b>Limits of Jurisdiction of Customary Court</b>
1. Adjudicating without Authority (s.60)	A fine of N50, 000 or 12 months Imprisonment or both.
2. Interference with persons acting under this law (s.61)	A fine of N50,000 or 12 months imprisonment or both.
3. Exaction of fees or fines in excess of those authorized (s.62)	A fine of N50,000 or 12 months Imprisonment or both.
4. Corruption by Chairman, members, officers or and servants of Customary court (s.63)	a fine of N100,000 or 7 years other persons imprisonment or both.
5. Willful default in performance of duty (s. 64)	A fine of N20,000 or 2 months imprisonment or both.
6. Giving false evidence (s.65) imprisonment or both.	A fine of N50,000 or 18 months
7. Rendering false returns (s.66)	A fine of N50,000 or 18 months imprisonment or both.
8. Refusal to give evidence and insulting behavior (s.67)	A fine of N10,000 or 1 month imprisonment or both.
9. Refusal to obey summons of Customary Court (s.68)	A fine of N5,000 or in default of payment, to a term of imprisonment for 14 days
10. Causing persons to refrain, delay, etc from	

giving Evidence (s. 69)	A fine of N50,000 or 6 months imprisonment or both
11. Victimization of servant etc (s.70)	A fine of N20,000 or 2 months imprisonment or both
12. Acts prejudicial to process of judgments. 71)	A fine of N100,000 or 5 years imprisonment or both
13. Falsification of records of proceedings (s. 72)	A fine of N100,000 or 7 years imprisonment or both
14. Breach of local government bye-laws of the statutory Corporations	As provided in the bye-laws.
15. Offences created by any written law punishable by imprisonment not exceeding 5 years or or not more than 5 years imprisonment a fine not exceeding twenty thousand naira	A fine not exceeding N20,000 or or not more than 5 years imprisonment
16. Stealing of farm produce, livestock, aquatic food produce or fishing implements the value of N10.00 (ten naira) or more	A fine not exceeding N20,000 of or not more than 5 years imprisonment
17. Assault fighting and breach of the peace	A fine not exceeding N20,000 or Not more than 5 years Imprisonment
18. Recovery of penalties, fines, costs and expenses Pursuant to the Public Health Law Cap. 106 and Environmental Sanitation Law Cap. 52, Laws of Rivers State	As provided in s. 39 of Cap. 106 and s. 35 of Cap 52.

A good perusal of these two provisions from two different laws, Customary Courts Law 2010 of Anambra State and Rivers State Customary Courts Law No.3, 2014 shows that the jurisdiction of Customary Courts in Rivers States is more elaborate and I would suggest that other states borrow a leaf from that of Rivers State, because when the jurisdiction of the lower courts, ie Customary Courts are

expanded, the Customary Court of Appeal will have a larger sphere of Appeal matters to handle. I would want to lay a little emphasis on the issue of jurisdiction of land causes and matters, in the laws of Anambra State, it stipulates jurisdiction of land causes and matters, **"unlimited"**, in that of Rivers State, on issue of jurisdiction of land it states

**"land cases and Sand matters ie causes and matters relating to the customary right of occupancy, occupation or possession of land in non-urban areas"**

Under column 1 of the Customary Courts of Anambra State 2010 and in some of other states jurisdiction of land causes or matters are unlimited. If the above is so, it then means that Customary Courts have unlimited powers or authority to try land causes or land matters under the customary law. This involves question relating to claims for damages for trespass, declaration of title to land, injunctions and other related land matters. However it is not obtainable as under the Land Use Act 1978, Customary Courts have the powers and authority to try land matters in respect of land subject of customary rights of occupancy, they cannot try land matters situate in the urban areas, lands in non urban areas are subject of customary rights of occupancy, while, land in the urban areas are subject to statutory rights of occupancy. The Land Use Act of 1978,<sup>(12)</sup> is therefore in conflict with the Customary Court Laws of Anambra State and in some other states. An Act is superior to a law.

"By virtue of Section 39 (1) of the 1978 Land Use Act,<sup>13</sup> the Court, which is defined to be the High Court of a State under Section 51 of the Act, shall have exclusive original jurisdiction in respect of proceedings in respect of any land the subject of a statutory right of occupancy granted by the Governor or deemed to be granted by him under the Act, which is defined to include proceedings for a declaration of title to a statutory right of occupancy; and proceedings to determine any question as to the persons entitled to compensation payable for improvement on land under the said Act." Attorney-General, Rivers State vs. Ohochukwu<sup>14</sup> , Okafor vs. Okonkwo<sup>15</sup> , Nzegwu vs. Omata<sup>16</sup> . Thus, it is clear from the above that a Customary Court has no jurisdiction to adjudicate on land in urban areas. Amadi vs. Acho<sup>17</sup> . in Messrs NV Scheef vs The MVS ArAZ,<sup>18</sup> It is settled that it is only the High Court of a State that has jurisdiction in lands in urban

areas of which Calabar is one. It therefore means that the Customary Court that shared the property the subject matter of this appeal had no jurisdiction to do so". Per

"Section 41 of the Land Use Act, 1978 reads thus: "An area court or customary court or other courts 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 Act: and for the purpose of this paragraph, proceedings includes proceedings for a declaration of title to a customary right of occupancy and all laws including rules of courts regulating practice and procedure of such courts shall have effect with such modification as would enable effect to be given to this section." The jurisdiction of Customary Courts in a State is limited to proceedings in respect of a customary right of occupancy granted by a Local Government under the Act. For the purpose of the Act, "proceedings" includes proceedings for a declaration of title to a "customary right of occupancy." This term "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 this Act," See section 51 (1) of the Act . The term "Local Government" means the appropriate Local Government or any other body having or exercising the powers of a Local Government as provided by law in respect of the area where the land in question is situated."

I would want to mention some cases, although unreported that dealt with customary rights of occupancy in customary courts sitting in Anambra State.

\* Dr Gabriel Ezekwem & ors <sup>15</sup>

Vs

Chief Clement Ukpaka & ors

\* Rev Fr. J.E.N Uchem, Cyprian Uchem <sup>20</sup>

Vs

Mr Felix Mgbu & 4 ors.

For the entire Umuezeakpu Family

\* Godwin Mbachu & 2ors. <sup>21</sup>

Vs

Augustine Ezenwugu & 2ors.

Some other cases that deal with customary rights of occupancy are:

ABOLE VS BONIFACE B. GWAR <sup>22</sup>

ADISA VS OYINWOLA <sup>23</sup>

OGUNLEYE VS VON. <sup>24</sup>

Having discussed the cases on the deemed grant of right of occupancy, it remains to be added that the above decisions are just a few of the cases where the courts have had the opportunities to pronounce on the status of a person who has title or interest over a piece of land.

For a better appreciation of the issue, it is necessary to observe that under the Land Use Act, 1978, two types of rights of occupancy were thereby created. These comprise of statutory right of occupancy and customary right of occupancy.

I choose to discuss the above, the Land Use Act of 1978, the customary right of occupancy, because of the conflict that arise based on these issues.

I still maintain that we should all have a look at the Rivers State Customary Courts Law as it relates to trial in land matters.

### **Area Court**

Area Court exists in the Northern parts of Nigeria including the Federal Capital Territory Abuja.

The Area Court can be categorized into

1. The Upper Area Court
2. The Area Court I
3. The Area Court II

The jurisdiction of the Area Court includes the following:

- a) All questions of Islamic personal law
- b) Matrimonial causes and matters between persons, married under Customary Law.
- c) Suit relating to custody of children under Customary Law
- d) Civil actions involving demands and damages
- e) Matters relating to succession to property and the administration of estate under Customary Law.
- f) Matters concerning ownership, possession or occupation of land

Today, area courts judges are generally trained legal practitioners. Nevertheless, area courts judges administering Islamic law generally think of themselves as Qadis and their courts as religious courts, and this is how the people generally perceive them, but that is not the case.

Area Courts and Customary Courts in Nigeria are on the same pedestal in that they are the courts that are closer to the masses and deal with every day to day matters.

A close look at the jurisdiction of these two courts, ie Customary Courts and Area Courts, shows that these two courts have jurisdiction on matrimonial causes and matters on Customary/Islamic Laws , custody of children in marriage under Customary/Islamic Laws, issue of administration of estate under Customary/Islamic Laws. We can also see that these two courts deal with issues pertaining to land in non-urban areas.

Going through the jurisdiction of the courts afore-stated except the River State Customary Courts, the issue of chieftaincy matters remain silent. But in the Rivers State Customary Court Law, Section 91(1) shows that the Customary Courts have original jurisdiction in chieftaincy matters.

## **WAY FORWARD**

It will be necessary to increase the jurisdiction of these courts, ie Customary Courts and Area Courts to accommodate minor offences such as minor traffic and sanitation offences which do not require custodial sentences. I also recommend that those who make laws for the states should look at the Rivers State Customary Courts Law with a view to expanding the jurisdiction of the Customary and Area Courts in the various states which in turn will advance our justice delivery system.

In conclusion, I wish to thank all present here, but more especially the Administrator of National Judicial Institute (NOT) for this wonderful opportunity given to me to present this paper. I hope that the pressing issues raised herein would be given urgent attention especially the issues that pertain to enlargement of jurisdiction. Once more thank you all and *God* bless all of you.

•

**REFERENCES**

1. Constitution of Federal Republic of Nigeria 1999 as amended
2. (1990) NWLR pt. 137
3. Supra
4. 1988 (LPELR-2583 (sc)
5. 1962 1 All NLR/1962 SCNLR 341
6. (2003) 9 NWLR pt 842 page 1.
7. (2009) 4 NWLR pt 1131 pages 336
8. (2009) All FWLR pt 452 page 1036
9. Customary Courts Laws 2010 of Anambra State.
10. Rivers State Customary Court Law No. 3 2014
11. Supra
12. Land Use Act of 1978
13. Supra
14. (2014) 6 NWLR (pt. 869) 340
15. (2012) 7 NWLR (pt. 796) 262 CA
16. (1999) 1 NWLR (pt. 592) 537 at 539 CA
17. (2005) 12 NWLR (pt. 939) page 386
18. (2000) 12 sc pt. 1 page 164
19. CCNN/24/99 (unreported)
20. CCU/19/999 (unreported)
21. CCACN/12/2001 (unreported)
22. (2008) vol 5 MJSC 38 at 51
23. (2000) 10 NWLR pt 975
24. (1990) 2 NWLR pt. 135 pg 733