**ADMINISTRATION OF JUSTICE IN AREA/CUSTOMARY COURTS:-**

**ISSUES, CHALLENGES AND THE WAY FORWARD**

*DELIVERED BY*

**HON. JUSTICE COMFORT E. TOLUWASE.**

**JUDGE, CUSTOMARY COURT OF APPEAL LOKOJA, KOGI STATE.**

I want to immensely thank my Lord **Hon. Justice Salisu Garba Abdullahi**. The Administrator of the National Judicial Institute (NJI) for extending the invitation to me to present this paper at this very august gathering. My deep regards equally go to the Director Studies and all the members of the management team of this esteemed institution. You are all highly appreciated.

**Introduction**

Administration of Justice in Area/Customary courts can be explained as a legal system by which Area/Customary Courts resolve disputes brought before them by parties fairly, properly, reasonably and justly. It is the process by which justice is made available for parties who approach these Courts based on the established legal system peculiar to this category of lower Courts.

**Brief Historical Development of Area/Customary Courts In Nigeria.**

In discussing matters relating to administration of justice in Area/Customary Courts in Nigeria, it is pertinent to take a brief look at the origin of Area/Customary Court in our legal system.

Customary Courts as we all know them today, had their origin in what was called ‘Native Courts’. Before the arrival of the colonial legal system, there was already in operation a system of law in Nigeria.[[1]](#footnote-0) Various entities had in existence, various court system for administration and resolution of disputes. The North had the Emir’s court which applied Sharia Law. The South-West which operated a monarchical style of government held court in Oba’s palace and settled disputes based on the cultural set-up of the particular society concerned. South-East operated a communal government without any central power as in the cases of the North and South-West. Splinter groups existed which handled disputes settlement also based on a generally accepted customs of the people concerned.

In 1990, however, the colonial legal system in Nigeria permitted natives of the colony of Lagos and its protectorates to operate their native law and custom, as far as they were not repugnant to natural justice, equity and good conscience and not incompatible with relevant statutes. While natives were allowed to administer their own native laws and customs, special arrangement were made under traditional leaders to ensure that disputes involving natives and non-natives were referred to the Governor. A clear distinction was drawn as to who was a native and non-native for administrative purposes. But because there were glaring injustices found in the native courts, the colonial administrators had to bring the Native courts within statutory ambit to ensure a greater measure of surveillance or supervision.[[2]](#footnote-1)

In 1906, the Native Courts proclamation was made which provided for dual system of native courts namely- minor courts and native courts. Each category had its defined limits and could hear both civil and criminal cases between natives and consenting non-natives. The same 1906 Northern Nigeria was occupied by the British, who introduced the Native Courts proclamation that reviewed the courts in northern Nigeria.[[3]](#footnote-2)

With the amalgamation of Northern and Southern Nigeria on 1st January, 1914, the Native Courts Ordinance ushered in a system which was consistent with, and enhanced the amalgamated political structure. By these enactments, Warrant Native Courts were established by residents subject to the Governor’s approval and were graded with varying powers and jurisdiction. By the **Native Courts law 1956,** Native Courts were established in Northern Nigeria with civil and criminal jurisdiction, spelt out in the Warrants establishing these courts.[[4]](#footnote-3)

Also in Eastern Nigeria, Native Courts were established with warrant chiefs and judicial officers at village and community levels. In the Western part of the country the story was very similar, Native Courts developed into Customary Courts too, so that by 1957, there was the **Customary Courts Law 1957 Cap 31 Laws of Western Nigeria**. These Native Courts metamorphosed into Area Courts throughout the Northern States in 1967 and later again metamorphosed into Customary Courts in some states in the North.[[5]](#footnote-4)

**The Meaning and Nature of Customary Law**

Customary law is a set of rules of conduct applying to persons and things in a particular locality. A.A. Kolajo defined customary law as those rules of conduct which the persons living in a particular locality have come to recognize as governing them in their relationships between one another and between themselves and things.[[6]](#footnote-5) **Obaseki, JSC** (as he then was) in the case of **Oyewunmi v Ogunsesan,[[7]](#footnote-6)** defined customary law as follows:-

*‘The organic or living law of the indigenous people of Nigeria regulating their lives and transactions. It is organic in that it is not static. It is regulatory in that it controls the lives and transactions of the community subject to. It is said that custom is a mirror of the culture of the people. I would say that the customary law goes further and imports justice to the lives of all those subject to it’.[[8]](#footnote-7)*

Thus, from these definitions, there is no single uniform set of customs, prevailing throughout the country. The term customary law therefore is used as a blanket description covering many different systems. There are as many customary laws as there are ethnic groups, although in certain cases, different groups may have the same customary law with little or no variations.

**Validity of Customary Law**

To be valid and enforceable, a particular custom must primarily be recognized and assented to by the native community whose conduct it is supposed to regulate. There is also what can rightly be termed the tripod of validity on which it must rest, first, it must not be repugnant to natural justice, equity and good conscience; secondly, it must not be incompatible either directly or by necessary implication with any law for the time being in force; and thirdly, it must not be contrary to public policy. The elements of validity of customary law includes[[9]](#footnote-8);

1. **The Repugnancy Test**- The courts are under a duty to enforce customary laws that are not repugnant to natural justice, equity and good conscience. The word ‘repugnancy’ means an inconsistency, opposition or contrariety between two or more positions. A custom said to be repugnant is, therefore, thus, not necessarily owing to its inherent abhorrence, but essentially because of its being antithetical to pre-existing established notions of natural justice, equity and good conscience. In other words, it is its contrariety that primarily clothes it with repugnancy. Whether or not a particular custom passes or fails the repugnancy test depends essentially on its appreciation by the court guided always by the concept of natural justice, equity and good conscience. Deciding whether a custom is repugnant to natural justice, equity and good conscience or contrary to public policy, therefore it involves the value judgment of the judge which should be objectively related to contemporary mores, aspirations, expectation and sensitivities of the people of this country and the consensus opinion of civilized international community.
2. **The test of incompatibility with law in force-** the fundamental written law in force which customary law to be valid must not be incompatible with the Constitution of the Federal Republic of Nigeria 1999 (as amended). It means that where a customary law is compatible with other laws, the customary law can be applicable.
3. **The test of public policy**- the test of public policy is contained in the proviso to section 14(3) of the Evidence Act as follows:

‘Provide that in case of any custom relied upon in any judicial proceedings it shall not be enforced as law if it is contrary to public policy and is not in accordance with natural justice, equity and good conscience’.[[10]](#footnote-9) In the case of **MERIBE V EGBU**[[11]](#footnote-10) the Court declared a custom permitting two women to marry not only repugnant to natural justice, equity and good conscience but also contrary to public policy.

**The Meaning and Nature of Area/Customary Courts**

Area court or customary courts, as known in some parts of the country, are the successors to the old native courts. In essence, the present day customary and Area court metamorphosed from what used to be known and called ‘Native courts’. Customary and Area courts are the courts at the grassroots established to resolve disputes in the locality, where they operate.[[12]](#footnote-11)

Today Area/Customary Courts are creations of various State Legislations. In some States, especially in the North, you find Area, Sharia and Customary Courts. Others like Kogi, have only the Area Courts i.e, Upper Area Court, Grade 1 Area Court and Grade 2 Area Court. Without the Sharia or Customary Courts. The Sharia Court of Appeal and Customary Court of Appeal are fed from appeals from these Area Courts.

**Distinction between English Courts and Area/Customary courts.**

It is evident that, themajor difference regarding these courts is their rules of procedure and their jurisdiction. There is no atom of doubt that, English types of court’s procedures are fraught and encumbered with the technical justice given the hiccups associated with the rules of evidence. The rules and provisions of English courts accommodate technicalities whose strict observance mostly hampers substantial justice. However, on the part of Customary/Area courts, their proceedings are simple which gives room for easy and expeditious actions. The rules of technicalities are dispensed with in favour of substantial justice.[[13]](#footnote-12)

The simple approach of their proceedings makes room for accessibility even by primitive illiterates. The gravamen of the features of the Area/Customary Courts anchors on the provision of the laws to the effect that, these courts should pursue substantial justice as against technical justice. This provision is replicated in most Customary/Area Court Laws of various States mutatis mutandi. It enjoins the Courts to lean heavily on the side of substance rather than form.[[14]](#footnote-13) The relevant provision provides mutatis mutandi as follows: viz:

*“No proceedings in an Area Court and no Summons, Warrants, Process, Order or Decrees issued or made thereby shall be varied or declared void upon appeal or revision solely by reason of any defect in procedure or want of form; but every Court or authority established in or for the purpose of exercising power of appeal or revision under the law, shall decide all matters according to substantial justice without undue regards to technicalities”*[[15]](#footnote-14)

Without an atom of hesitation, this particular provision, replicated in the Customary/Area Courts of each State seems to have accorded Area/Customary Courts a wide and unfettered discretion in administering substantial justice. This provision is the foundation for the simplicity of procedure for adjudication in these courts.[[16]](#footnote-15)

The provision enjoins the observance of substance rather than form. Consequently, there is no doubt that these Courts (Customary/Area courts) are not bound even by their rules, but to be merely guided. Justice Belgore JSC (as he then was) strengthened this position in the case of **Eli Ogah V Vincent Ikalile[[17]](#footnote-16)** while commenting on the procedure in Area/Customary when he thus posited.

*“They are not prisoners of cumbersome procedure and if they have rules of procedure, they are mainly to be guided by them per curiam”*

Prior to this opinion as expressed by his lordship, the erudite Law Lord, Oputa J. (as he then was) in the case of **Ezekwuike V Peter Nwoka[[18]](#footnote-17)** while construing the provision of section 30 of the former **Eastern State Customary Law**, which provision is in pari materia with Section 60 of the stated:-.

*“These rules must therefore be read together with the customary law under which they are made and cannot repeal or contrast express provisions of that law from which they derived their authority*”.[[19]](#footnote-18)

There is no scintilla of doubt that the proceedings of these Courts are not only cheap, simple and rid of technical justice, but their judgments are to be looked upon with leniency as compared with the English types of court. **His Lordship Ogwegu JSC** (as he then was) lent credence to this position, in the case of **Iledare V Ajagbona**,[[20]](#footnote-19) When he intoned thus:

*“It should be remembered that, this case was tried by a Customary Court and latitude must be given and broad interpretation placed on its proceedings and the Court is enjoined to look at substance rather than form”*

Given the forgoing therefore, the following factors are some of the characteristic features of Area/Customary courts, namely:

1. The Law is simple to understand.
2. The procedures are simple; they are not complex as that of English Courts.
3. They are not bound by the rules of Evidence.
4. Rules of technicalities are not allowed.
5. The laws administered are native law and custom prevailing in the areas of their jurisdiction or the customary laws binding between parties before them. Notwithstanding, they are not precluded from the application of the principles of English law as agreed by parties.
6. Their judgments are viewed with leniency than the English types of court.[[21]](#footnote-20)

However, although Customary/Area Courts have been said to be precluded from the application of the rule of evidence, especially that they are not bound by the **Evidence Acts,**[[22]](#footnote-21) as earlier stated, notwithstanding, in the actual sense, are Area/ Customary courts really or completely exempted from the clutches of the rules of evidence law? It is needful to examine the provision of section 20 of the Area court law[[23]](#footnote-22) on a general note in the light of the prevailing circumstance. **Section 20(1)b)** of **the Area Court law of Kogi State Area Court law 1991.** So also section 20(3) of the law thus provides namely[[24]](#footnote-23):

*“Nothing contained in this section shall be deemed to preclude the application by an Area Court of any principle of English law which the parties to any court case agreed or intended should regulate their obligation in connection with the transaction which are in controversy before the court”*

Considering the administration and enforcement of local laws together with the observance of the principles of English law by the Customary/Area courts, which laws undoubtedly are administered or applied in consonance with rules of evidence by the superior courts, would it be appropriate under the circumstance to say that Customary/Area courts are not bound by the case law decided upon the rules of evidence derived from Evidence Act; considering the principle of binding precedent? [[25]](#footnote-24)

It is relevant to say that the real source of law sometimes, lies not in the written laws or statutes as the laws found in formal legal sources most of the time, gives inadequate pictures of what really goes on or transpires in the community. It is also without an element of doubts that the principles of law administered by the Superior Courts in adjudication regarding matters under statutory law and principles of English Law are largely determined based on the principles derived from the rules of evidence which has been held as binding on lower courts. Apart from this, it is observed that there are some salient principles of law derived from the rule of evidence that Customary/Area Court cannot gloss over without a breach of substantial justice. [[26]](#footnote-25)

For instance, can Customary/Area Courts gloss over the principles of fair hearing, the rule of estoppel particularly the doctrine of res judicata, the governing principle of relevancy in admissibility of evidence etc. on the guise of not being bound by the Evidence Act? And by so doing would not have occasioned manifest injustice? It is therefore submitted that in practice, Customary/Area Courts are to a large extent bound by the rules of evidence as contained in the Evidence Act, especially given the law that they are bound by the decision of superior courts. To hold otherwise will amount to relegating the already established principle of stare decisis.[[27]](#footnote-26)

**Quorum Competency**

The competence of court includes quorum competency: the quorum of a court has to do with constitution of the court in terms of its membership. In some states of Nigeria, an Area/Customary Court with a sole judge sitting alone is well constituted. However, in some states, an Area/Customary Court is well constituted with two or three members sitting. For instance, in Kogi State of Nigeria, an Area Court is duly constituted by a lone member of the court, learned in Islamic law when sitting on matters touching Islamic law. On the other hand from the intonation of section 4(3)b) of the law[[28]](#footnote-27), the court while sitting on non Islamic matters is duly constituted by three (3) man panel.

Ordinarily, as earlier stated, but for the purpose of emphasis, it is peremptory for three members to sit over a non islamic matter in Area courts in some states, particularly in Kogi State, given the word ‘shall’ as used in the provision of the enabling statute as stated by the court. However, it is not in all circumstances that all the three (3) members must be present for the court to be well constituted. There are some situations where the absence of a member would not render the constitution of a matter by the two (2) members who are present, incompetent. **Section 3(1**) of the law[[29]](#footnote-28), allows two (2) members to sit in the absence of a member of the court. It thus provides:-

*“whenever, a member of a court is unable through absence, illness; or any other cause to be present and it is consequently impossible for three (3) members to be present at the hearing or continued hearing of the case, them, subject to the provisions of paragraph (2) of this Direction, the decision of two (2) members present shall be deemed and taken to be the decision of the court and in the event of the members present disagreeing, the member presiding shall have a casting vote.”*

The court in the case of **Obafemi V Bello[[30]](#footnote-29)** stated as follows:

*“it is trite law that can Area court of a bench of two (2) members can proceed to hear a case if for any reason one of the member is absent, provided that the name of the member who is absent and the fact that he is absent are noted on the record of proceedings. The Area Court (quorum) direction, 1968, as contained in the legal notice is also a permanent fiat given to Area Courts empowering them to sit without their full complement in cases of necessity. The objective of the quorum direction is to obviate the inconveniences and the attendant delay which an adhoc section for every occasion is bound to entail”*

**Subject matter competency**

The subject matter of a case is the cause of action, A cause of action is the entire set of circumstances which give rise to enforceable claim by a party, usually a plaintiff or counter claimant as the case maybe. Where a cause discloses no cause of action, the court cannot assume jurisdiction. Area Courts in Kogi State and in the former Northern Region have both criminal and civil jurisdiction. The criminal jurisdiction of Area Courts in Kogi State, used to be regulated by Criminal Procedure Code or any law creating the offences and the penalty thereto. However, the criminal jurisdictions are now regulated by Administration of Criminal Justice Law, 2017.[[31]](#footnote-30) On the other hand, the Kogi State Area Court (Civil procedure) Rules, 1991, regulate civil action. Given the provision of the law, all grades of Area Courts have unlimited jurisdiction in the following civil causes; namely;

1. Matrimonial causes i.e marriages conducted under native law and customs;
2. Causes respecting custody of children under native law and custom;
3. Causes or matters relating to succession of properties and the administration of estate under native law where the amount specified regarding monetary jurisdiction of the court.
4. Causes and matter concerning ownership, possession or occupation of land.

Nevertheless, it is now undoubted in the light of the provision of section 39 of the land use Act, 1978, especially considering the construction of the Supreme Court in the case of **Adisa V Oyinwola[[32]](#footnote-31),**

*“That the law vesting unlimited jurisdiction on Area Court in land matter is wanting in some respect as it is only the high court that has jurisdiction over lands designated as urban land.”*

**Jurisdiction of Area/Customary Court in FCT, Abuja**

Area/Customary Courts exercise both civil and criminal jurisdiction depending on its area of jurisdiction. In the FCT for instance, the Area/Customary courts does not as at present, exercise criminal jurisdiction. It is however hoped that, sometimes soon, the need to confer some criminal jurisdiction on the customary courts will be appreciated.[[33]](#footnote-32)

**Civil Jurisdiction**

Customary courts are established to exercise civil jurisdiction in the following area:

1. Matrimonial causes and other matters between persons married under the customary law.
2. Guardianship and custody of children under customary law;
3. Inheritance upon intestacy and the administration of intestate estate under customary law; and
4. Other cases or matters for debt demand and damages.

The above represents the scope of jurisdiction of customary courts across Nigeria. These provisions notwithstanding, the customary courts are enjoined to as much as its practicable, encourage reconciliation amongst parties. Although not specifically mentioned, for any customary court to exercise jurisdiction on land matters, such land must be governed by Customary Rights of Occupancy. In other words, the land must not be in an area designated to be urban area. Section 41 of the land use Act, 1978 puts it thus:

*“An Area Court/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 Act and for the purpose of this paragraph, proceedings include proceeding for a declaration of title to a Customary Right of a 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 section.”*

This provision of the **Land Use Act** notwithstanding, the Customary Court of the FCT does not have the power to exercise jurisdiction over land in the FCT irrespective of their locations. This is so because generally speaking, land in the FCT are all designated as urban areas and are all vested in the Federal Government of Nigeria who through the minister of the FCT administers same. It does not matter where it is located; any dispute relating to land in the FCT goes to the High Court of the FCT.

In exercise of its civil jurisdiction by the Customary Courts, the appropriate customary law shall be one prevalent in its area of jurisdiction. In the FCT however, the Customary Courts exercise jurisdiction over all persons within the Federal capital Territory, so long as the subject matter relates or is on customary law and is applicable between the parties before the Court. It is therefore not necessarily the customary law prevent in its area of jurisdiction that becomes applicable. The rationale for this is not farfetched. The FCT being a cosmopolitan society, to apply the customary law prevent in its area of jurisdiction will amount to shunning a lot of its dwellers out from justice.[[34]](#footnote-33)

**Criminal Jurisdiction**

Area/Customary Courts are creation of Statutes. It is trite law that it is the Statute established a Court that prescribes its area and scope of jurisdiction. It is these Statutes that donate to the Area/Customary Court the powers to exercise criminal jurisdiction subject of course to any other written law.

**Powers of the Area/Customary Court**

The Superior Courts have the inherent and unfettered statutory power to control inferior courts and tribunals in a supervisory capacity, to keep the inferior courts within the law, within the bounds and the jurisdiction provided by the law. In Kogi State for instance, the supervisory power of upper Area Court over Area Courts Grade I and II, within its territorial jurisdiction is captured by section 32 of the law,[[35]](#footnote-34)

*“An Upper Area court may either of its motion or upon the application of either party, whenever it is satisfied that a cause or matter before an Area Court of a lower grade within the territorial jurisdiction of such Upper Area Court is from its nature, beyond the jurisdiction of such lower grade court, order that such hearing be stayed and there upon such cause or matter shall be discontinued in such lower grade Area Court accordingly and such Upper Area court shall either hear or determine the cause or matter or shall order the transfer of such cause of matter to such other lower grade Area Court within its territorial jurisdiction as the Upper Area court may think fit and there upon such lower grade court shall hear and determine the cause or matter”*

This provision is replicated in virtually if not all the Area Courts laws of the States that made up the former Northern Region. Given the intonation of the Law, an Upper Area Court reserves the prerogative either on its own motion or upon the application of either party, to order for a stay of hearing of a matter pending before a lower Area Courts and subsequently cause the transfer of the matter where it is satisfied that the matter is beyond the jurisdiction of the court. However, the supervisory roles of the High Court and Upper Area Court notwithstanding, Section 45-49 of the Law[[36]](#footnote-35) confer on the Inspector of Area Courts quasi judicial functions.

The Law permits the Inspectors in some instances to make an interim order suspending the operation of sentences or orders made by the Area Courts or admitting to bail any person sentenced to imprisonment by the Area Courts. Suffice it to say that, this power is not administrative but judicial one.[[37]](#footnote-36)

It is relevant to note that the office of the Inspectors of Area Courts are not Courts of law or appellate courts statutorily constituted to hear or determine cases. The combined effect of **Section 6(1)(2) and (5) (a-k)** of the **Constitution of the Federal Republic of Nigeria 1999 (As Amended**) is that only such court as may be authorized by law are vested with judicial powers. It is submitted that these unwieldy powers of Inspectors can trigger abuse of judicial powers and provide avenue for unwholesome practices as the power is prone to be exercised with reckless abandonment. The result is justice dispensation at its lowest ebb without positive impact on the people. It is further submitted that the exercise of judicial power by the inspectors of Area Court runs against the grains of the **Constitution of Federal Republic of Nigeria 1999 (As Amended)** which law is the *fons et origo* of all enactment in Nigeria. Hence, all other laws are void to the extent of their inconsistencies.[[38]](#footnote-37)

**Challenges**

1. Inconvenient Court rooms and lack of basic resources. This comes from lack of adequate funding for most State Judiciaries. In many States, these judges are poorly paid. There is no adequate remuneration. Basic facilities are absent. Stationaries are rarely provided for in these Courts.
2. Non-availability of competent and credible inspectors/supervisors. Where they exist, the same problem of poor funding and lack of basic resources hampers their operation in properly supervising the Courts under their inspection
3. Corruption. It is endemic in the fabric of Nigerian society. Corruption is almost unavoidable in Nigeria because morality is greatly relaxed in Nigeria and most people struggle for survival without assistance from government.
4. Credibility. This is the foundation of effectiveness. It is directly related to the issue of corruption. The level of effectiveness of the judges manning these Courts is low due to the problem of corruption plaguing our society generally of which the Judiciary is no exception.
5. Poor standard of legal education of some of the persons recruited as judges; this continues to be a big challenge. In most States, lawyers are recruited as judges to man these Courts. This has brought a measure of finesse to the recording of court proceedings and judgement writing. Nevertheless, a lot is left to be desired from most of the record of proceedings that come from these lower Courts on appeal.

**Recommendation/Way Forward**

The fight for the financial autonomy of State Judiciaries has been on for as long as we can remember. Until the provisions of **Section 121 (3) and Section 162 (9)** of the **Constitution of the Federal Republic of Nigeria 1999 (As Amended)** come to practical manifestation and State Judiciaries are adequately funded, the problem of poor infrastructure and poor working conditions for these Court will continue to remain with us. So, I recommend with all humility that, more pressure should be brought to bear on all concerned, to see the implementation of the financial autonomy for State Judiciaries.

The continuous workshops and conferences organized yearly by this noble institution (NJI) is highly commendable. I wish to recommend that more judges and supporting staff members of these Courts be encouraged by their Management team to take advantage of these opportunities to update their knowledge and polish their skills of judicial functions.

It is very important that in recruiting personnel to fill in the offices of Judges of these Courts, regards should be given to integrity, credibility and competence; rather than god-fatherism which has unfortunately taken over the process of appointment in our public sectors today.

Corruption is an integrity issue. The Scriptures of all true religions enjoin their followers to esteem integrity above all other things. A good name is better than riches. Even though, it is of common knowledge that the Judges in Nigeria are the poorest in the whole world because of their poor conditions of service, that should not give us the license to throw our integrity into the dustbin and abuse our oath of office. Corruption robs its practitioner of self- esteem and confidence here on earth and of reward before Almighty God on whose behalf you are acting as a judge on earth. That being said, it is important that judges of these lower Courts are duly and appropriately compensated for their duties to enable them resist the temptations they are exposed to daily in the course of their assignment.

**Conclusion**

The importance of administration of justice in the Area/Customary Courts cannot be overemphasized. They form a part of the whole Nigerian Judiciary, which must be competent, independent and impartial in preserving and upholding not just the Rule of Law generally but also the customs of our people which had held the fabric of our society together at the grassroots from time immemorial. These Courts are the closest 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 these 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 areas and the less privileged get access to justice. Great efforts should therefore be put into ensuring that the officers involved in these herculean tasks are not left uncared for.

**THANK YOU FOR YOUR ATTENTION.**

1. S.H. Makeri, ‘Jurisdictional Issues in the Application of Customary Law in Nigeria’ (2007) <https://edujudiciary.gov.ng/wp-content/uploads/2016/10/jurisdictional-issues-in-the-application-of-customary-law-in-nigeria.pdf> assessed on 2nd November, 2022 [↑](#footnote-ref-0)
2. S.H. Makeri, op cit at footnote 1 [↑](#footnote-ref-1)
3. S.H. Makeri, ibid at footnote 2 [↑](#footnote-ref-2)
4. S.H. Makeri, ibid at footnote 3 [↑](#footnote-ref-3)
5. S.H.Makeri, ibid at footnote 4 [↑](#footnote-ref-4)
6. George Nnamani, ‘Customary Law in Nigeria Practice and Procedure in the Customary Court and the Customary Court of Appeal’ (2020) printed and published by Chenglo Ltd. Assessed on 2nd November, 2022. [↑](#footnote-ref-5)
7. (1990) 3 NWLR (PT. 137) 182 [↑](#footnote-ref-6)
8. S.H. Makeri, op cit at footnote 5 [↑](#footnote-ref-7)
9. George Nnamani, op cit at footnote 6 [↑](#footnote-ref-8)
10. George Nnamani, ibid at footnote 9 [↑](#footnote-ref-9)
11. (1931)Ac 662 at 673 [↑](#footnote-ref-10)
12. Tunde Augustine Olowo, ‘Fundamentals of Trials in High Courts and Area/Customary Courts: Comparative Analysis’ (2019) Printed by Nathadex Publishers, Ilorin assessed on 2nd November, 2022 [↑](#footnote-ref-11)
13. Tunde Augustine Olowo, ibid at footnote 12 [↑](#footnote-ref-12)
14. Tunde Augustine Olowo, ibid at footnote 13 [↑](#footnote-ref-13)
15. Section 265 (1)(2)© Evidence Act 2011 [↑](#footnote-ref-14)
16. Tunde Augustine Olowo, ibid at footnote 14 [↑](#footnote-ref-15)
17. (1995) NMCMLR 123, cited in A.U. Eri, ‘Practice and Procedure in Area Court’ at pg 57 [↑](#footnote-ref-16)
18. (1967) ENLR 241 [↑](#footnote-ref-17)
19. Tunde Augustine Olowo, op cit at footnote 16 [↑](#footnote-ref-18)
20. (1997) 51 LRCN 1628, 1641 pg 10-13 [↑](#footnote-ref-19)
21. Tunde Augustine Olowo, ibid at footnote 19 [↑](#footnote-ref-20)
22. Section 265 Evidence Act, 2011 [↑](#footnote-ref-21)
23. Section 20 of the Kogi State Area Court Law, 1991 [↑](#footnote-ref-22)
24. Section 20 (3) of the Kogi State Area Court Law, 1991 [↑](#footnote-ref-23)
25. Tunde Augustine Olowo, op cit at footnote 21 [↑](#footnote-ref-24)
26. Tunde Augustine Olowo, ibid at footnote 25 [↑](#footnote-ref-25)
27. Tunde Augustine Olowo, op cit at footnote 26 [↑](#footnote-ref-26)
28. Section 4(3)b) Kogi State Area Court Law, 1991 [↑](#footnote-ref-27)
29. Section 3(1) Kogi State Area Court Law, 1991 [↑](#footnote-ref-28)
30. (1982) unreported KWAS/40/81 [↑](#footnote-ref-29)
31. Tunde Augustine Olowo, op cit at footnote 27 [↑](#footnote-ref-30)
32. (2000) 6 SC. 247 [↑](#footnote-ref-31)
33. A.M.A. Saddeeq, ‘The Sharia and Customary in our Judicial System: Customary Perspective’ (2019) <http://nji.gov.ng/wp-content/uploads/2020/11/NJI-Lecture-on-Customary-Perspective.pdf> assessed on 2nd November, 2022. [↑](#footnote-ref-32)
34. A.M.A. Saddeeq, op cit at footnote 33 [↑](#footnote-ref-33)
35. Section 32 of the Kogi State Area Court Law, 1991 [↑](#footnote-ref-34)
36. Section 45-49 of the Kogi State Area Court Law, 1991 [↑](#footnote-ref-35)
37. Tunde Augustine Olowo, op cit at footnote 30 [↑](#footnote-ref-36)
38. Section 1(3) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) [↑](#footnote-ref-37)