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Promoting Accountability and Transparency in the Customary Courts in Nigeria: Some New Approaches

Abiodun Odusote¹

¹ Senior Lecturer, University of Lagos, Akoka-Yaba. Tel: +2348152136590, Email: aodusote@unilag.edu.ng

Abstract

The Nigerian justice system currently faces significant administration and efficiency problems. It is well-established that the justice system is slow, not accountable, not so transparent and unfriendly to its users and stakeholders. The use of legal terminologies and technicalities are rife and bogged down the wheel of justice. This study aims to determine how the implementation of the customary Law of Lagos State can facilitate quick and efficient administration of justice at the customary courts. Specifically, it investigates whether the implementation of the new customary law of Lagos state and the application and enforcement of the judicial code of conduct can impact the administration of justice, particularly at the customary court level. To test the hypothesis that these legal instruments can positively impact the legal system the research adopts the doctrinal and comparative legal research methodologies. The results showed that the implementation of the new customary laws of Lagos state and the application of the judicial code of conduct at the customary court have the potential to improve the dispensation of justice at this level. Further, the judges must do substantial justice and avoid technical justice to achieve the desired end. These results suggest that in addition, new approaches to the dispensation of justice is required.

Keywords: Customary Law, Accountability, Court System

1. Introduction

It is a widely held view that in Nigeria, an overwhelming majority of cases are decided at the lower courts (Olubor 2021). The Customary Court system is a significant part of the lower Courts. However, there has been growing concern by some critics and stakeholders about the efficiency, transparency and accountability of the Customary Court system. In particular, there has been waning confidence in the efficiency of the justice delivery of the Customary Court and its effectiveness in Nigeria. It has been alleged that compliance of judicial officers and staff with judicial officers' codes of conduct is rarely monitored coupled with the fact that Court officials do not provide good service. Such concerns make it imperative to interrogate the customary Court justice system to promote accountability and transparency in the implementation of the Customary Court law. This research adopts the doctrinal and comparative legal research methodologies to achieve its objectives. In this discourse, an attempt is made to interrogate the peculiar nature of customary laws. It is clear to a discerning mind that because of the simplicity of the customary law and its primary characteristics of being flexible, largely unwritten, changes over some time and a mirror of accepted usage or culture of the people that observe it, it can easily be manipulated and abused. Customary law is elastic and adaptable to time and socio-economic changes. It enjoys validity from the

assent and recognition by the people of the community. It follows therefore that its practice and enforcement through the Customary Court system may be problematic and subject to abuse because customary law is unwritten, may sometimes be vague and exist substantially in the mind of those subject to it and the custodians of the tradition and culture. It is also difficult to apply because of diversity and differences amongst those that are subject to it or those that are the custodians. See *Lewis v. Bankole* (1908) INLR 81 at 100. Amidst plurality of customary laws in urban cities and multiplicity of customs and traditions, it might be difficult to get credible and reliable expert opinions and capable judges to adjudicate in the Customary Courts. It is in this context, that this paper examines and evaluates the nature of customary law, prerequisite and qualification for the appointment of judges at the Customary Court in Lagos State. Next, the paper extensively discusses how adherence to the judicial officer code of conduct in Nigeria and the Bangalore principles of judicial conduct can greatly improve the justice delivery and administration of the Customary Court system. It also argues that the application of the principles of fair hearing and the promotion of substantial justice is essential for the delivery of an efficient customary justice system. In conclusion, the paper makes further recommendations that have the potential of promoting transparency and accountability in the implementation of the Customary Court law.

2. Conceptual Definitions

2.1. *Accountability in the Customary Court*

In this paper, Customary Court accountability includes accountability through adjudicating by observing due process, adherence to the principles of judicial independence, applying the Customary Court law and rules of court diligently, observing the provisions of the Constitution of the Federal Republic of Nigeria 1999 as amended, in particular, adherence to the principles of fair hearing and protecting human rights, applying substantial justice, monitoring the powers of court officials and providing prompt remedies to a litigant.

2.2. *Transparency in the Customary Court*

Transparency is synonymous with righteousness. Its component includes honesty and judicial integrity. A judge should always imbibe and exhibit these virtues, not only in the discharge of official duties but at all times. He must be seen to always discharge his duties without bias and in a manner befitting the judicial office. A judge and the Court must be free from dishonesty, deceit, sloppiness, fraud, and partisanship. He must be good and morally upright in behaviour and character. Transparency is absolute. In the judiciary, transparency is second to none. It is a must-have.

2.3. *Implementation of Customary Law*

It is the Customary Court that has the jurisdiction to interpret and uphold the customary law that is applicable within its jurisdiction. The Customary Court plays an integral role in implementing customary laws, in doing this, the President and members of the Customary Court must be strong and committed to interpreting and applying customary laws to bring reliefs to litigants who had approached the court for redress.

2.4. *Nature of Customary Law*

Obaseki, J.S.C. in *Oyewumi v. Ogunesan* [1990] 3 N.W.L.R. (Pt. 137) 182 at 207 defined customary law as “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. It is said that custom is a mirror of the culture of the people. I would say that customary law goes further and imports justice to the lives of all those subject to it”. For Elias, Customary law is “the body of rules, which are recognized as obligatory by its members” (Elias, 1954). C.E. Chukwurah suggests that there are, “three distinctive characteristics of Customary Law: Customary law is essentially a body of unwritten rules applicable to a community, the rules are intended to regulate the relationship and transaction of the community and the community must accept and recognize the rules as binding, that is to say, as having a force of law” (Chukwurah, 2014). For example, Akin Ibidapo-Obe (2014), a foremost Pan-Africanist and Professor of Public Law opined that “the

traditional law of the Yorùbá of Nigeria is mainly found in the Yorùbá oral literature which includes proverbs, *oriki* (praise-poems), festivals and re-enactments ceremonies, carvings, pottery, artefacts, foods, music, myths, folklore, history, àlò (long and short stories) and *ewi*.” Further, in the case of *Zaidan K. v Mohssen F. H.*, (1973) II SC 1 the Supreme Court defined Customary Law as: “... any system of law not being a common law and not being a law enacted by any competent legislature in Nigeria but which is enforceable and binding within Nigeria between the parties subject to its sway”. Essentially, customary law consists of customs and traditions that are generally accepted conferring obligatory rules of conduct, practices and beliefs among the people that are so vital and imperative to the socio-economic system that they are treated as laws, *Sunday Anunobi v. Chief Elias Nwankwo* (2017) LPELR-43774(CA).

3. Establishment of Customary Courts

According to Obaseki J.S.C. in *Loba v. Akereja* 1988 (LPELR-2583 (SC) p. 19 paras A – B Customary Courts are the creatures of statutes or laws promulgated by the various States Legislatures. Section 6(4) of the CFRN as amended provides that the National Assembly and the States Houses of Assembly are empowered to establish courts other than those established by the Constitution, such courts must however have subordinate jurisdiction to that of a High Court. The House of Assembly of Lagos State enacted the Lagos State Customary Court Law 2011 and amended same in 2018. S. 1 (1) gives the Lagos State Judicial Service Commission the power to establish Customary Courts in Lagos State. The LSJSC is to act on the recommendation of the Attorney General and subject to the approval of the Governor in establishing the Customary Courts in Lagos State.

A judiciary with proven integrity is the bedrock of constitutional democracy (Osipitan, 2021) and the enjoyment of rule of law and civility. The judiciary provides strong support and protection for democratic principles that stand as a bulwark against tyranny and a foundation for the enforcement of rights and freedoms. The Customary Court system is a significant but often underrated part of the Nigerian judiciary. The main purpose of setting up the Customary Court is to do substantial justice without the technicalities and the harshness of the common law. The simplicity, non-technical and timeous dispensation of justice by Customary Courts adhere the Customary Court system to the locals. Decisions of the court are expected to be made per the indigenous custom of the people and common sense, not per the Common law and its technicalities. In *Oguanuhu & Ors v. Chiegboka*, (2013) Vol 221 LRCN (Pt. 2) 117 the Supreme Court held that strict rules of pleadings and application of provisions of the Evidence Act are not expected to be observed in the Customary Courts. The decisions of such court must be based on common sense and reasonableness of their findings. However, in recent times the simplicity and user-friendly nature of the Customary Court system is being displaced and eroded by stakeholders. Nwabueze rightly observes that customary law utilized the tools of flexibility, traditional legal education, and the absence of writing and the polycentric nature of its disputes to withstand the societal dynamism engendered by the Western colonial invasion of Nigeria. Ironically, these characteristics, which served customary law well during colonial rule, are now threatened by some reformist activities of post-independent Nigeria and some of its scholars, (Nwabueze, 2002). Counsel now file and exchange pleadings and apply the rules of evidence. The English system has gradually crept into the administration of the Customary Court system with its technical nature thereby now resulting in Customary Court proceedings suffering from incessant adjournments and preliminary objections. The proceedings of the Customary Court ought to be simple and user-friendly. For example, in a land matter, a party relying on traditional history need not give particulars and a Customary Court may *suo motu* invite a witness to testify as was the case in *Onwuama v Ezeokoli* (2002) 5 NWLR (Pt.760) 353 where the Court held *inter alia*:

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.

The need to promote the Customary Court system is captured in the following passage by Hon. Justice (Dr) G.W. Kanyeihamba of the Supreme Court of Uganda:

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 latter 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 imperialism to govern them (Kanyeihamba, 2020).

4. In pursuit of accountability and transparency

4.1. First Perspectives from the Bible and the Qur'an

Moses's father-in-law said to him in Exodus 18:21-22: "You should also look for able men among all the people, men who fear God, are trustworthy, and hate dishonest gain; set such men over them as officers... Let them sit as judges for the people at all times...; Psalm 82:3 Give justice to the weak and the fatherless; maintain the right of the afflicted and the destitute"; Isaiah 1:17, "Learn to do good; seek justice, correct oppression; bring justice to the fatherless, and plead the widow's cause,"; and Micah 6:8 "he has told you, O man, what is good; and what does the Lord require of you but to do justice, and to love kindness, and to walk humbly with your God?".

In the holy Qur'an, according to an eminent Islamic scholar, all human beings are God's servants and are equal before God. Hence, judges should not discriminate against the poor, everyone should be treated equally by the Judge. In the *Adab al-Qadi* (Ibrahim & Surty, 2003), (*The Judge's Etiquette*) by Abu Bakr Ahmad ibn al-Shaybani alKhassaf, an eminent jurist provide a manual to enable judges to administer justice by the teachings of Prophet Muhammad. The attributes of a judge should include; knowledge and patience; ensure easy access to court by all; any falsehood in a case should render the case a nullity; he should be familiar with the culture and custom of the people he has been appointed to judge; he should be trustworthy, and when he sparingly attends social gatherings he should refrain from discussing the matters before him.

In giving effect to the provisions of the Customary Court law and rules and the pursuit of justice at the Customary Court, the adjudicators of the court must possess sterling character and allow the qualities and judicial codes set out below to guide their conducts at all times:

4.1.1. Imperative for exemplary Standard of Conduct

The importance of a good standard of conduct appropriate to judicial office has been amplified by a judge in the terms set out below:

No one doubts that judges are expected to behave according to certain standards both in and out of court. Are these mere expectations of voluntary decency to be exercised on a personal level, or are they expectations that a certain standard of conduct needs to be observed by a particular professional group in the interests of itself and the community? As this is a fundamental question, it is necessary to make some elementary observations. We form a particular group in the community. We comprise a select part of an honourable profession. We are entrusted, day after day, with the exercise of considerable power. Its exercise has dramatic effects upon the lives and fortunes of those who come before us. Citizens cannot be sure that they or their fortunes will not someday depend upon our judgment. They will not wish such power to be reposed in anyone whose honesty, ability or personal standards are questionable. It is necessary for the continuity of the system of law as we know it, that there be standards of conduct, both in and out of court, which is designed to maintain confidence in those expectations (Thomas, 2003).

A judge and particularly a customary court judge is required to maintain a form of life and conduct which is more disciplined, cautious and restricted than that of other people. A customary court judge is not a celebrity in the community and must not be seen to be hobnobbing with politicians and the privileged in society. To preserve the integrity of the justice system, the rule of law and the sanctity of the judiciary, a judge being someone in authority must live a peaceful and quiet life marked by godliness, honesty and dignity (1 Timothy 2:2). Trust in the justice system is anchored not only on the competence and diligence of the judges but also on their integrity and character. A Customary Court judge must not only be a good judge but must also be a morally upright person and a good man. It is acknowledged that it would be unreasonable to expect a judge to completely retreat from society and public life in isolation from family and friends but in socializing, a judge must exercise great caution. This is because it is important for the integrity of the justice system that the judiciary should be perceived as independent. The test for independence should include the perception of being independent. A judge must always act in a manner that reflects the highest ethical and professional standards of conduct and performance that promotes transparency, accountability, integrity and respect for the independence of the Judiciary.

4.1.2. The Nigerian Revised Judicial Code of Conduct (NJC, 2012)

S.318 CFRN defines a judicial officer as follows:

"Judicial office" means the office of Chief Justice of Nigeria or a Justice of the Supreme Court, the President or Justice of the Court of Appeal, the office of the Chief Judge or a Judge of the Federal High Court, the office of the Chief Judge or Judge of the High Court of the Federal Capital Territory, Abuja, the office of the Chief Judge of a State and Judge of the High Court of a State, a Grand Kadi or Kadi of the Sharia Court of Appeal of the Federal Capital Territory, Abuja, a President or Judge of the Customary Court of Appeal; of the Federal Capital Territory, Abuja, a Grand Kadi or Kadi of the Sharia Court of Appeal of a State; and a reference to a "judicial officer" is a reference to the holder of any such office

Though it appears under S.318 of the CFRN, copiously cited above, the customary judge is not a judicial officer under the 1999 Constitution but for administration and dispensation of justice, the Customary Court judges are judicial officers (Anyafulude, 2018). Nevertheless, in the context of the judicial code of conduct, the term judicial officer includes Magistrate, Area/Sharia or Customary Judge or any person holding a similar office in any inferior court. The explanatory notes to the revised code of conduct for Judicial Officers of the Federal Republic of Nigeria throw more light on this issue. It states that:

In this Code, the term "Judicial Officer" shall mean a holder of the office of Chief Justice of Nigeria, a Justice of the Supreme Court, the President or Justice of the Court of Appeal, the Chief Judge or Judge of the Federal High Court, the President or Judge of National Industrial Court of Nigeria, the Chief Judge or Judge of High Court of a State and the Federal Capital Territory, Abuja, the Grand Kadi or Kadi of a Sharia Court of Appeal of a State and the Federal Capital Territory, Abuja, the President or Judge of a Customary Court of Appeal of a State and of the Federal Capital Territory, Abuja and every holder of similar office in any office and tribunal where the duties involve adjudication of any dispute or disagreement between person and person (natural or legal) or person and Government at Federal, State and Local Government levels including the agents and privies of any such person.

The National Judicial Council is established under Section 153(1) of the Constitution with power relating to appointments and exercise of disciplinary control over judicial officers specified in paragraph 21 of Part 1 of the Third Schedule of the Constitution. It also has the power to deal with all matters relating to policy and administration. Following the above, the NJC has put in place the Revised Code of Conduct to regulate the general conduct of Judicial Officers of the Federal Republic of Nigeria.

The Revised Code of Conduct for Judicial Officers of the Federal Republic of Nigeria is set out below (Rules 1-12):

A Judge should avoid impropriety and the appearance of impropriety in all of the Judge's activities both in his professional and private life.; A Judge shall in his or her personal relations with individual members of the legal profession, who practice regularly in the Judge's Court, avoid situations which might reasonably give rise to the suspicion of or appearance of favoritism or partiality; A Judicial Officer should be true and faithful to the

Constitution and the Law, uphold the course of justice by abiding with provisions of Constitution and the Law and should acquire and maintain professional competence; A judge owes it a duty to abstain from comments about a pending or impending proceeding in any Court in this country; but in exercising such rights, a Judge shall always conduct himself in such manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary; A judge has a duty to abstain from involvement in public controversies; A judge should not adjudicate over a matter in relation to the Judge's personal and fiduciary financial interest, including the interests of members of the Judge's family; A Judge shall not allow the Judge's family, social or other political relationships improperly to influence the Judge's judicial conduct and judgment as a Judge; A Judge may engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties; A judge is prohibited from acceptance of a gift, bequest, loan, favour, benefit, advantage, bribe etc A Judicial Officer should diligently discharge his administrative duties, maintain professional competence in judicial administration and facilitate the performance of the administrative duties of other Judicial Officers and court officials; A Judicial Officer should disqualify himself in a proceeding in which his impartiality may genuinely and reasonably be questioned; A Judicial Officer should regulate his Extra-Judicial Activities to minimize the risk of conflict with his judicial duties, A Judicial Officer shall not take or accept any Chieftaincy title while in office; A Judicial Officer should regulate his travels within and outside Nigeria so as not to affect his judicial duties or cause a delay in the administration of justice or detrimentally affect his performance or the overall performance of the judiciary; Judicial Officer while in service shall not publish any book or cause another person, group of persons, publishing house, whosoever, acting on his behalf to publish any book until he ceases to be a Judicial Officer where such publication may infringe in any manner the Code of Conduct for Judicial Officers. In addition, the Bangalore Principles of Judicial Conduct (Vale 1-6) also emphasizes that a judge must imbibe the following attributes: independence, impartiality, integrity, propriety, equality, competence and diligence.

A Customary Court judge, in particular, must ensure that he serves all the people, regardless of ethnic groups, places of origin, sex, religious beliefs or political opinions. That is why the judge must avoid stereotyping, embrace and understand diversity in society as well as differences in people. Hsun Tzu (1967), a distinguished Chinese elder and beloved magistrate counselled:

Fair-mindedness is the balance in which to weigh proposals; upright harmoniousness is the line by which to measure them. Where laws exist, to carry them out; where they do not exist, to act in the spirit of precedent and analogy – that is the best way to hear proposals. To show favouritism and partisan feeling and be without any constant principles – this is the worst you can do. It is possible to have good laws and still have disorder in the state

And the Bible admonishes the judges to “hear the disputes between your people and judge fairly, whether the case is between two Israelites or between an Israelite and a foreigner residing among you” (Deuteronomy 1:16 NIV). In the Qur'an, justice abhors discrimination on the prohibited grounds of ethnicity, rank, language, colour, nationality, sex, status or religion. All humans are created by God and are servants of God, and as such should be treated equally in courts of law (Mo Tzu, Hsun Tzu, & Han Fei Tzu, 1967).

4.1.3. The Capacity of the Customary Courts and Judges

The capacity of the Customary Court to perform its role transparently and efficiently is central to the promotion of accountability and efficiency. Capacity can be enhanced in the proper engagement of the right personnel to man the Courts. Section 2(2) of the Lagos State Customary Court (Amendment) Law 2018 provides that:

A Customary Court is properly constituted with a minimum of three (3) members and a maximum of (5) members one of whom shall be the President.
Provided that one of the members presiding is knowledgeable in Native Law, Custom and Tradition.

A member of the Customary Court is required to hold a degree from any recognized University or Polytechnic.

Section 5 (A) states the qualification to hold the office as a member of the Customary Court as follows:

- (a) a holder of a degree in any recognized University or Polytechnic
- (b) at least (50) years of age
- (c) of proven integrity and good standing in society.

In addition, Section 5 states that to hold office as a President of the Customary Court, the candidate must be a Legal Practitioner or a Law graduate, must be at least fifty (50) years of age and have proven integrity and good standing in society.

It is generally acknowledged that anyone that meets the above qualifications will be competent and skilled. However, it should be remembered that the fact that a Customary Court is presided by a lawyer does not make it lose its peculiarities as a customary law court. Regards must be heard to the facts that the litigants are locals and the nature of customary law courts is plain and simple. Composition of a customary law court by lawyers should enrich rather than impede the application of customary law, no regard should be made to the application of technicalities and strict rules of pleadings and Evidence Act in the customary law court despite its composition made up of lawyers *Ezike Theophilus v Gabriel Ezeh* (2017) 1 ESCCALR 85 at 87. The principle governing the customary court law proceedings is the attainment of substantial justice based on “reasonable practice, tradition and custom of the local people.”

Still on the qualification as president and members of the Lagos State Customary Court, beyond academic and age qualifications, a judge must be able to manage his court efficiently. A judge must manage and also decide cases. Cases must be promptly decided, copies of ruling and judgment delivered must be made available to litigants and their counsel within a reasonable period. And records of the court should be kept safe, Order 12 Rules (3) 1 and 4, the judge must take all reasonable and necessary steps to prevent court records from disappearing. Court records are sacred and should be treated as such. The court will outlive the judges. Court records should be kept in a manner that will make them easy to be retrieved at a later date. In sum, a judge must maintain professional competence and also effectively supervise the administrative and support staff (Integrity Group, 2001). In promoting accountability and transparency it is significantly also important that the judge and the customary court system interrogate the many incidents of court officials requesting unofficial payments. It is pervasive in our climes for court officials to demand unofficial payments for services they have been employed to perform, ranging from the court bailiffs demanding money for service, registrars making unofficial financial demand for the issuing of certified true copies of court processes and the gateman making an unofficial demand for payment before cars can be parked in the court premises!

4.1.4. Substantial Justice

Customary courts are by nature created to do substantial justice under largely unwritten custom and tradition of the people with the only exception that such custom and tradition must not be repugnant to natural law equity and good conscience. Hence, S.25 (1) of the Lagos State Customary Court Law 2011 provides that a “Customary Court shall observe and enforce every customary Law which is applicable and is not repugnant to natural justice, equity, and good conscience or incompatible either directly or by implication with any law for the time being in force, and nothing in this Law shall deprive any person of the benefit of Customary Law”. Kayode Eso J.S.C. in *State v. Gwonto* (1983) 1 S.C.N.L.R. 142 at P.160 also postulated that: “the Court is more interested in substance than in mere form. Justice can only be done if the substance of the matter is examined. Reliance on technicalities leads to injustice.” As a Customary Court, the court is obliged to apply substantial justice because most often the parties to a dispute are no strangers to each other. They share a common bond and culture and are well known to each other. Substantial justice is justice administered according to the substance and not necessarily the form of the law. Nwabueze puts it succinctly as follows:

Another feature of customary law is that parties to a dispute subject to customary law are usually no strangers to each other. There is usually a tie, social, marital or tribal, binding them. For instance, land disputes are usually between people related by blood. This is in contradistinction to modern land adjudication, which may be between parties who are strangers to each other and may even be of different nationalities. Apparently, for this reason, disputes in an African setting are considered to disrupt the societal or family equilibrium. The main aim of the adjudicators will be to restore that equilibrium and this might only be achieved by not deciding strictly on the rights of the parties. Legal rights are not emphasized as much as reconciliation. Thus, an African justice system is mainly reconciliatory (Uchendu, 1965).

This bias for substantial justice is reflected in Section 29 of the Customary Courts Law, 2011 which provides that, “in any proceedings before it, the customary court shall proceed without undue formality and shall ensure that the proceedings are not protracted”. This position appears to be a codification of the Court of Appeal judgment in *Okeke v President & Members Customary Court* (2001)11 NWLR (Pt. 725) 507 where the court held that, “customary courts have their practice and procedure as embodied in the Customary Courts Law and Rules of the States in the country where they are applicable. By the nature and customary laws, they relate to the traditional unwritten law of the people handed down from generation to generation. Where members of the courts are familiar with the custom of a community they can apply it without first requiring evidence *Ehigie v Ehigie* (1961) All NLR 842. In another instance, the court held that failure to comply with the Rules of Court by the Customary Court may not vitiate the judgment of the Customary Court. In *Nwigwe Unonu v. Onweonu Ohabia*, 1964 ENLR 94 the plaintiff filed an action in the customary court for a refund of 67 pounds being the dowry paid based on the unsworn evidence of the plaintiff. He was awarded the refund of the 67 pounds paid for the dowry. At the county court, the unsworn testimony of the Plaintiff was rejected based on Order 25 (1) of the Customary Courts’ Rules, 1957 and the dowry was reduced to 18 pounds. On appeal to the High Court, it was held that the Customary Court is mandated to observe the statutory provisions of Order 25 (1) of the Customary Courts’ Rules, 1957 but in this instance, none observance had not vitiated the judgment, only the weight of evidence was affected. Hence, the plaintiff was entitled to the judgment of 18 pounds despite his unsworn evidence and that of his witnesses. In this case, the courts applied substantial justice *Alice Odewara v. The State* (unreported) HOS/10CA/68.

Furthermore, transparency and accountability require that in proceedings before the Customary Court, all customary laws, principles and rules pursuant to S. 47 of the Lagos State Customary Law 2011 should be applied in the promotion of substantial justice. English laws and common law may not apply to the Customary Court law proceedings except where express provisions are made for English law or common law to apply. Hence, technical issues such as particularization of claims, locus standi, legal personality, abuse of court processes may not apply except where non-application may lead to a substantial miscarriage of justice *Tetter Okuma v. Tsutsu* 10 WACA 89.

Substantial justice further requires the Customary Court to properly evaluate the evidence presented by the parties, make specific findings and give reasons for its judgment. Issues not raised by parties should not be pronounced upon *Adeniji v. Adeniji* (1997) ALL NLR 301. This is a mandatory provision *Nnando v. Diokpa* (1959) WNLR 309. The court must hear the complete evidence before delivering judgment *Essien v. George* (1962) ALL NLR 1064.

A Judge should strive to comply with the provisions of S. 294(1) of the CFRN, 1999 as amended by delivering Judgments and Rulings within 90 days after adoption of written submissions of counsel. Even under the ancient Roman Law, the Twelve Tables (450 B.C.) contains the injunction “the setting of the sun shall be the extreme limit of time within which a judge must render his decision” (Scott, 1932). Finally, in applying sanctions under the customary law system, scholars have argued and correctly so that “sanction under customary law, does not have the same nature as the sanctions of a modern state, with its full machinery for the administration of justice. Customary sanction takes the form of ostracism, compensation, propitiation, restoration or apology” (Nwabueze, 2002)

4.1.5. Application of the Principles of Fair hearing

All courts at all times must observe the principles of fair hearing, it is absolute and there is no derogation about this right. The provisions of Section 36 (1) CFRN as amended applies to the proceedings of the Customary Court. These constitutional provisions relate to a fair hearing. These provisions embraced the twin pillars of natural justice (Oputa, 1981); the two components of fair hearing under natural justice are the rule against bias (*nemo iudex in causa sua*, or better still, "no man is allowed to be a judge in his cause"), and the right to a fair hearing (*audi alteram partem*, or "the other side must be heard") *Alakija v Medical and Dental Disciplinary Committee* (1959) 4 F.S.C 385. The most basic requirements of fair hearing require that adequate notice of the nature and purpose of the proceedings must be given to all the parties; parties must be afforded an adequate opportunity to prepare their respective cases; present facts, arguments and supporting evidence either in writing, orally or by both means; be

represented by counsel of their choice during all stages of the proceedings; consult an interpreter at all stages of the proceedings if required; have their rights or obligations affected only by a decision based solely on evidence known to and presented by the parties to public proceedings, and have a decision by the court rendered without undue delay. Parties must be given the right to appeal the decisions of the court (UN document E/CN.4/Sub.2/1994/24). In the context of the customary law court, in *Falodun v. Ogunse* (2010) All FWLR (Pt. 504) 1404 at 1427 27 the court held that “although Customary Courts are not bound by technical rules of procedure, the provisions of Section 36 of the constitution relating to a fair hearing is a very far-reaching provision. The requirements of fair hearing are so ubiquitous that even proceedings in Customary Courts must observe them” *Kwali v Dobi* (2010) All FWLR (Pt. 506) 1883.

4.1.6. New Approaches Required

Some of the complaints that have been allegedly made against the Customary Court system in Nigeria include judges and staff having immoral affairs with litigants or litigant’s spouses, court staff soliciting unofficial payments to provide services they have been employed to perform which should be free; judges and staff being rude to court users; failure to notify users about hearing dates; poor record-keeping and retrieval of court records; failure to record court proceedings accurately (British Council, 2021) etc. Most litigants that approach the Customary Court may not have the means to seek further remedy and seek remedies from higher courts. Hence, it is suggested that a court inspection system be put in place by the Lagos State Judicial Commission to constantly go around the Customary Court system for inspections. The inspecting body should be independent of the court system and should have the power to review court records, interview members of staff and litigants, observe proceedings and the court setting and infrastructures. This Inspection System has been reportedly implemented in Enugu Customary Court system and it has hugely increased the efficiency of the system and user’s satisfaction. Judges and staff should also be constantly trained to be able to perform their duties effectively.

4.1.7. Application of Information Communication Technology

It is a notorious and worrying fact that the state of infrastructure in most Nigerian Courts is in a state of disrepair. Sometimes the courts would be so filled up that lawyers would not have any seat to sit to present their cases. Many Courts are not accessible to the physically challenged. Some lack basic working tools such as computers, constant supply of electricity, durable tables and chairs. One of the steps to be taken in promoting accountability and transparency at the Customary Court is the provision of relevant ICT tools, including an e-library, relevant soft wares, computers and printers. It is good to know that the calibre of judges and staff at the Lagos State Customary Court are familiar with word processing skills. Equipping the Customary Courts with information technology tools will enable the courts to be able to produce a judgment much faster with computers. And because of the ability to manipulate different documents through copy, cut and or paste, or working from templates, it is far easier to produce a document with the information the court wants to be included in it. In addition, on the same computer, it is possible to store the document, and retrieve it very fast, call up other documents, without having to move from one office to the other. Overall, judgment can be produced much faster and such judgements can go into a court system database and can be easily retrieved in the future. The provision of computers and competent staff to operate them at the customary courts will largely increase the speed and efficiency of the justice system. Storage and retrieval of court processes will become more secure and transparent. It will become easier to access certified true copies of court records and processes. There is no doubt that the application of technology in the Customary Courts will reduce inefficiency, inaccuracy, lack of transparency and promote accountability and integrity.

4.1.8. Training

The importance of training and retraining cannot be over-emphasized; the judges and staff members of the Customary Court should be constantly trained so that their skills and competencies can be updated. Research findings have revealed that training presents a prime opportunity to expand the knowledge base of workers, it makes workers more confident in the performance of their duties, and training also increases efficiency and productivity. Training can take diverse forms; roundtable, workshops, seminars, conferences and attendance of short courses. It makes the judges and staff members feel they are appreciated and valued.

5. Conclusion

This paper has endeavoured to show that the Customary Court system is an integral part of the justice system and that the Customary Court has been charged with the interpretation and implementation of customary laws which are largely unwritten. In doing so, the judges of the Customary Courts are faced with the unenviable task of interpreting customary laws that are intrinsically difficult to interpret and implement. However, in making the challenges faced by the President and members of the court less cumbersome, only individuals with requisite capabilities and qualifications should be appointed to adjudicate at the customary law courts. In addition, those appointed should imbibe the judicial officers' code of conduct and the Bangalore Principles of Judicial Conduct. The Customary Court adjudicators are also required to be of noble character in and out of court, they should diligently apply the principles of fair hearing and ensure substantial justice rather than technical justice. It has also been shown above that there is potential for efficacy inherent in the appointment of an independent inspection body that will act as a watchdog to the Customary Courts. The paper also makes a case for the application of information communication technology which has become an indispensable tool for the modern judicial system. In sum, it is in the religious observance of all the issues raised and discussed above that accountability and transparency can be ensured in the implementation of customary law.

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