

# A Critical Study of the Exercise of Jurisdiction of Customary Courts in the Nigeria Legal System

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## ABSTRACT

This paper discusses strictly the concept of *jurisdiction*, and its incidents. It educates us on the nature, meaning and importance of the jurisdiction of courts generally, with special reference to the customary courts in Nigeria. Many States in Nigeria operate the customary court system, and some even have Customary Courts of Appeal which entertains appeals from the customary courts in their respective States. This paper examined the indices of a court's competence by using the customary court as a practical example. This no doubt, is very interesting and helps us understand deeply what the concept of jurisdiction is all about, for a court that has no jurisdiction lacks competence to hear a Suit or Matter. *Territorial* and *substantive jurisdiction*, *jurisdiction* and *judicial powers* were clearly defined and distinguished. The roles of the Customary Courts of Appeal (as a Court of Superior Record under the 1999 Constitution of the Federal Republic of Nigeria) were clearly spelt out. Customary Courts of Lagos, Kaduna and Enugu States had their jurisdiction and Matters that can be brought under them practically illustrated as examples in this paper, and suggestions as regards the judicial powers and jurisdiction of the customary courts were made in this paper to help improve the customary courts system in Nigeria.

**Keywords :** Jurisdiction, competence, customary courts, customary Court of Appeal of a State, members, president of customary court, Lagos, Enugu, Kaduna, Land Use Act, judicial powers, unlimited, Causes, Matters.

## INTRODUCTION

### MEANING, NATURE & IMPORTANCE OF JURISDICTION

Jurisdiction may be defined as the power of a court of law to adjudicate on a Cause or Matter brought before it. According to the Oxford Dictionary of Law<sup>1</sup>, it is *the power of a court to hear and decide a case or make a certain Order*. Anyafulude<sup>2</sup> says that jurisdiction is the threshold of any action in court, and therefore must be looked at and decided first. This is because any proceedings of a court in the absence of jurisdiction is futile, and the whole proceedings rendered a nullity, however well the said proceedings must have been conducted. See *Ayman Enterprises Ltd v. Akuma Industries Ltd* (2003) 13 NWLR PT 836 @ p.22; *Amoo v. Alabi* (2003) 12 NWLR PT 835 @ P.537.

In *Salau v. Aderibigbe*<sup>3</sup>, A sued B in a Customary Court for damages for wrongful seizure and detention of a Motor vehicle under a hire purchase agreement. The issue before the High Court of Western Nigeria was whether the trial customary court had jurisdiction to entertain a claim of hire purchase under S. 19 of the Customary Courts of Law of Western Nigeria. The Court held that-

1. As customary courts are inferior courts created by statute, they have only such jurisdiction that is conferred upon them by that statute;
2. Evidence that customary law was applicable to the claim was unnecessary to give the Court jurisdiction. The law establishing a Court provides for its jurisdiction and every court must strictly confine itself to the jurisdiction as provided by the law creating it.

In Enugu State, s.12 of the Customary Courts Law 2004 provides for the jurisdiction of customary courts by stating that -

- (1) A customary court shall have and exercise jurisdiction over all persons and classes of persons within the territorial limits of its jurisdiction;
  - (2) A customary court shall have and exercise jurisdiction over Causes or Matters set out in column I of the second schedule to this Law to the extent or limits set out in column 2 thereof.
- In Lagos State, the jurisdiction of customary courts is provided in sections 22 and 23 of the Customary Courts Law 2011 as follows:

<sup>1</sup> Oxford University Press (6<sup>th</sup> Edition), 2006

<sup>2</sup> *Principles of Practice and Procedure of Customary Courts in Nigeria through the Cases* (Mercele Press Nigeria, Enugu), 2012 @ p. 60

<sup>3</sup> (1963) WNLR 80

1. Customary courts shall exercise the jurisdiction conferred on them by or under this law.
2. Subject to the provisions of this law, a court shall have jurisdiction over all persons within the State. As noted earlier, we can see that a customary court, or any other court that lacks jurisdiction is not competent to try a case or conduct any proceedings whatever in respect of a Cause or Matter.

In *Madukolu v. Nkemdilim*<sup>1</sup> (which is the locus classicus case on jurisdiction of courts in Nigeria), and which also originated from a customary court, it was held by the Supreme Court of Nigeria that a court is competent when -

- a) It is properly constituted with respect to the number and qualification of its members, and no member is disqualified for one reason or another;
- b) The subject matter of the case is within its jurisdiction;
- c) The action is initiated by due process of law
- d) Any condition precedent to the exercise of its jurisdiction has been fulfilled.

Here, it is clear that jurisdiction is an aspect of the competence of a court. No waiver and no acquiescence can confer jurisdiction on a court where none exists.

#### **EXAMINING THE INDICES OF A COURT'S COMPETENCE USING THE CUSTOMARY COURT AS A PRACTICAL EXAMPLE<sup>2</sup>**

- i. **The Court is well constituted in terms of numbers and qualifications of its members-** A, B, C are members of Oli Customary Court. B was not sworn in as a member of the Court, but participated in the hearing of a case. The proceedings in that case are a nullity because of the disqualification of B who was not sworn in, even though he was appointed a member.  
Again, A,B,C are members of Oli customary court. On a certain day, A and B were absent. C alone conducted the hearing. The proceedings of that day are a nullity because the Oli customary court is not competent in respect of number of members who ought to have been three or at least, two. See the case of *Egba Native Administration v. A.L Adeyanju*<sup>3</sup> where the *Ake Court* was constituted by a Warrant under the Native Courts Ordinance which provided that the court should *consist of* a named President and 21 other named members. No provision was made for the court consisting of any less number. It was the practice for the President and two of the named members to sit together and call themselves *Ake court*. It was held that the court so constituted was not properly so done under the Warrant and that all proceedings before it were a complete nullity.
- ii. **The subject matter of the action is within the jurisdiction of the court** – the Oli customary Court has jurisdiction under the law to try all civil cases in contract, where the monetary value does not exceed N200,000. *O* sued *P* at the Oli court for a breach of contract, claiming N300,000 (three hundred thousand naira only). The Oli customary court assumed jurisdiction, tried the case, but awarded *O* only N50,000 (fifty thousand naira). The proceedings, judgment or any Order made in the proceedings is a nullity. This is because the Claim of the action is above the jurisdiction of the customary court. It does not matter that the judgment or Order made is within the jurisdiction of the customary court.
- iii. **The action is initiated by due process of law and all conditions precedent to the exercise of its jurisdiction have been fulfilled** – *O* wants to sue *P* at the Oli customary court. *O* approached the Registrar of the Court who asked *O* to give him some money. The Registrar then recorded *O*'s claim in the civil Records book. On the next day, the Registrar persuaded the newly appointed chairman and members to try the case. There was no writ of summons nor any service of court process on B. The chairman and members proceeded and tried the case, and gave judgment to A. The proceedings are a nullity because the action was not properly commenced nor was the condition precedent of proper service obeyed. A court that lacks jurisdiction also has no power to transfer a case. The proper Order to make where a court lacks jurisdiction is to strike out the suit. And if such a case is transferred to another court, the latter court has no jurisdiction because the action was not initiated by due process. Jurisdiction may be considered in terms of the subject matter or venue. In *Akrobotu v. Ameteme Normeshie*<sup>4</sup>, *O* sued *P* in the Native Court Grade B in respect of land situate at Vui. On appeal, the judgment was set aside by the Native Court of Appeal on the ground that Vui was not within the territorial area of the Trial Court. This decision was upheld on further appeal. There was no evidence on record that Vui was within the area of the Trial Court. It was also held that the jurisdiction of a

<sup>1</sup> (1962) SCNLR 341

<sup>2</sup> *Anyafulude* supra @ pp. 65 - 71

<sup>3</sup> (1936) 13 NLR 164

<sup>4</sup> 14 WACA 290

native court depends on statute and the burden of proof is upon the party who asserts the jurisdiction. Here, the evidence was unanimous that the Trial court had no jurisdiction in the case. Jurisdiction can be conveniently divided into **territorial** and **substantive** jurisdiction.

- a. **Territorial jurisdiction** – refers to a geographical area within which judicial authority may be exercised. A customary court Area is usually divided into towns or areas within which the court exercises its jurisdiction. Oli customary court has J, K, L & M, areas or communities. The court can therefore, exercise its judicial authority in respect of persons or things within J, K, L, M. It has no authority over persons and things within N because N is outside the scope and influence of its judicial authority. The law that creates the court limits its territorial jurisdiction. Aside from land Causes or Matters, territorial jurisdiction is substantially regulated by where the defendant is resident when the Cause of action arose. This was illustrated in *Lasisi Akintayo v. Salami Atanda*<sup>1</sup>
- b. **Substantive jurisdiction** – means the subject matters or things which the court is authorized to try as provided in its Enabling Law.

#### **Substantive Jurisdiction of Customary Courts in Lagos State<sup>2</sup>**

- 1) Matrimonial Causes and other Matters between persons Married under customary law or arising from or connected with a Union contracted under customary law and Related Matters  
- **Unlimited jurisdiction**
- 2) Suits relating to the Guardianship,  
Custody of children under customary Law - **unlimited jurisdiction**
- 3) Causes or Matters relating to  
Inheritance upon intestacy and - **value of Property or Claim**  
the Administration of Intestate - **shall not exceed N500,000**  
Estates under customary law.
- 4) A customary court shall have civil jurisdiction  
in other Causes or Matters as conferred upon  
under any Bye – Law passed by a Local Govt. – **where passed, the Claim shall not exceed N5,000**

Customary Courts in Lagos State do not have any criminal jurisdiction, except to punish for contempt as provided by Law. In my view, there is no reason why a customary court should not have jurisdiction to entertain criminal Matters, even though they may be exempted from trying murder due to the seriousness of the Offence. Again, where a Bye- Law is passed by a local Government, the jurisdiction of the Customary Courts should be beyond five thousand naira (N5,000) if the penalty is really to serve as a deterrent to Law breakers. For instance, if a Bye – Law is passed to the effect that *nobody should dump Refuse, urinate or defaecate in certain marked places*, and people disobey this law, they should be sanctioned with payment of a much higher amount of money than five thousand naira. Or else, we may never have a sane society.

#### **Substantive Jurisdiction of Customary Courts in Enugu State**

In Enugu State, the civil and criminal jurisdiction of customary courts are provided for as follows:

1. Land Causes or Matters - **unlimited**
2. Matrimonial Causes in respect of marriages  
under Customary law - **unlimited**
3. Debt, demand and damages claimed between customary  
Law, or arising from marriage under customary law - **unlimited**
4. Custody of children and other Causes or Matters - **N200,000**
5. Causes or Matters relating to inheritance upon intestacy  
under customary law - **N200,000**
6. Breach of Civil actions in contracts and torts at common  
Law and customary law - **12 months imprisonment or N2000 Fine**
7. Breaches of Local Government Bye-laws or  
Rules of Statutory Corporations, and other Offences  
committed in contravention of any written law. - **punishable by**  
- **not more than 2 years**  
**imprisonment**

<sup>1</sup> (1963) 2 ALL NLR 164

<sup>2</sup> See *Anyafulude* @ pp 73- 74

With respect to breach of civil actions in Contracts and Torts, the option of N2000 should never be introduced as an option of Fine where the cost of the breach exceeds such amount. It could be twelve months imprisonment (as stated) or an option of the exact amount being claimed by the plaintiff or party who suffered damages. Anything less would amount to injustice to the affected party. Hence, the jurisdiction of the customary courts in Enugu State should be reformed to reflect this position.

### THE POSITION IN KADUNA STATE<sup>1</sup>

The First Schedule to the Customary Courts Law 2001 of Kaduna State provides the limit and powers of the Law to be administered in Section 21 as follows:

<b>Types of Causes or Matters</b>	<b>Jurisdictional Powers</b>
1. Land Matters	- <b>subject to Land Use Act or any other written Law</b>
2. Matrimonial Causes or Matters under Customary law	- <b>unlimited</b>
3. Causes or Matters under customary law, whether or not the value of debt, demand, including dowry or damages is liquidated	- <b>unlimited</b>
4. Guardianship and custody of children under Customary law	- <b>unlimited</b>
5. Inheritance upon intestacy under customary Law and grant of power to administer the Estate on an intestacy under customary law	- <b>unlimited</b>
6. Other Causes or Matter under customary law	- <b>unlimited</b>

In Kaduna State, adjudicating in land Matters is subject to Land Use Act, and S.41 of the Act provides that *an Area court or customary court or other 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<sup>2</sup> under this Act; and for the purposes of this paragraph, proceedings include proceedings for a declaration of title to a customary right of occupancy and all laws including Rules of court regulating practice and procedure of such courts shall have effect with such modifications as would enable effect to be given to this Section.*

This shows that the jurisdiction of the customary courts is quite wide. For adjudication of land matters, the appropriate customary court law to be applied shall be the customary law of the place where the land is situate. For inheritance, the appropriate law shall be that of the deceased. Where both parties are not Natives of the area of jurisdiction of the Court or one of the parties is not a Native of the area of jurisdiction of the Court, and the parties agreed that their obligation shall be regulated by customary law applying to the party, the appropriate customary law shall be the customary law binding between the parties.

As for all other civil Causes or Matters, the appropriate customary law shall be the one prevailing in the area of jurisdiction of the courts. By section 59 of the 2001 customary courts Law of Kaduna State *no proceedings in the customary courts, and no summons, warrants, process or Order issued or made thereby shall be varied or declared void upon appeal solely by reason of any defect in procedure or want of form, but every court exercising powers of appeal under this Law shall decide all Matters according to substantial justice without undue regard to technicalities.* Also, s.53 (i) of the same law provides that any party, in a civil Case or Matter who is aggrieved by a decision or Order of a customary court, may within 30 days of the date of such decision or Order appeal to the Customary Court of Appeal.

The position in Kaduna State is quite just, but the types of Causes or Matters under its no. 6 above is quite vague. It tells us that the customary courts shall have unlimited jurisdiction over *other Causes or Matters under customary law.* It did not list exactly what *other Causes or Matters* are, in which case, the customary courts are free to try any Matter they feel they have jurisdiction to try, even if the subject Matter does not fall within its powers. Those Matters should be expressly stated if the Court must not over step its bounds.

<sup>1</sup> Hon. Justice S.H Makeri – *THE JUDICIARY AND CHALLENGES OF NATION BUILDING (Jurisdictional Issues in the Application of Customary Law in Nigeria)* – A paper delivered at THE 2007 ALL NIGERIA JUDGES CONFERENCE ON 5<sup>th</sup> – 9<sup>th</sup> NOVEMBER, 2007

<sup>2</sup> *Madu v. Mbakwe* (2008) 10 NWLR PT 1083 p. 296 per Supreme Court of Nigeria ; *Nwagbara – Selected Cases on Land Law, Equity, Trusts, Taxation, Banking & Conflict of Laws (CI Publications, Nigeria) 2004 @ pp. 257 - 258*

## MEANING OF AND DISTINCTION BETWEEN JURISDICTION AND JUDICIAL POWER<sup>1</sup>

Jurisdiction is defined as the power of the Court to hear and determine the subject matter in controversy between parties. In other words, jurisdiction is the authority of the court to exercise judicial powers. Judicial powers on other hand is the totality of powers a court exercises when it assumes jurisdiction to hear a case. A Court must first have jurisdiction before it can proceed to exercise powers. Judicial power is a very wide expression. According to *Anyafulude*<sup>2</sup>, apart from its meaning as the power which every sovereign authority must possess to enable it to settle and decide controversies between its subjects and itself, it also co-exists with the power of the State to administer public justice, make laws as well as execute them.

## APPEALS FROM CUSTOMARY COURTS<sup>3</sup>

The decision of a Customary Court may be reconsidered by the process of appeal to the High Court of a State or the Customary Court of Appeal. Appeal from customary courts lie to the High Court in a State that does not apply the Customary Court of Appeal System. Appeals from customary courts lie to the Customary Court of Appeal of a State which applies the Customary Court of Appeal system. The majority of the States in Nigeria have the Customary Court of Appeal.

### CUSTOMARY COURT OF APPEAL OF A STATE

A Customary Court of Appeal of a State is one of the Superior Courts of Record established by virtue of s.6 (3) and s.6 (5) (i) of the 1999 Constitution of the Federal Republic of Nigeria. Here, the Customary Court of Appeal of a State is vested with the attributes of a Superior Court of Record, and its establishment is optional to any State that requires it. It serves the following functions:

1. Decongests the appellate load of the State High Courts;
2. It supervises customary courts within its area of authority;
3. It affords a platform for a closer and more efficient Administration of customary courts, thereby maximizing the benefits accruable by the establishment of the Customary Courts Judicial system in the State;
4. The Customary Court of Appeal provides expertise in the training and retraining of members of customary courts, thereby directly ensuring high standards in the practice and procedure of these courts, and in the exercise of their civil and criminal jurisdiction.

## CONCLUSION

The customary courts are very important because they ensure that even those in rural areas and the less privileged get access to justice. However, it is important to always remember that in a country like Nigeria, the majority of the populace live in rural areas, and we must do everything to ensure that we equip the customary courts well with the required facilities and personnel, spell out clearly their jurisdictional powers and limits, leaving no room for any ambiguity as to the scope of their duties and powers as this may make them go beyond their powers in some instances and still walk away freely even if they end up with judgments that lead to miscarriage of justice. The immunity that protects them certainly ensures that they are not sanctioned if they err on any issue, including where they wrongly believed that they have jurisdiction to entertain a Matter. Every Member or President of a Customary Court in Nigeria appointed must be sworn in before he/she begins to entertain any Matter or Cause, and the Law should ensure that this is done. The Customary Courts Law of Kaduna State must be urgently reformed to either remove the last item 6 under their schedule or specify what *other Causes and Matters under customary law* are. The option of imposing Fines of two thousand naira (under Customary Courts Law of Enugu State) is no deterrence to anybody who commits a civil wrong or crime of a serious nature. Going by Nigeria's socio-economic situation, the amount of two thousand naira can solve little or no problem. Therefore, if a serious nuisance is committed by an offender, the amount of two thousand naira would definitely not constitute enough damages to the injured party or even to the Local Government where any of its Bye – Laws is breached.

On Causes or Matters relating to inheritance upon intestacy and administration of intestate estates, the jurisdiction of customary courts in Lagos State shall not exceed five hundred thousand naira. This position is wrong because any subject or property that comes within the jurisdiction of the customary court should be brought before it, even if the value of property is beyond five hundred thousand naira (N500,000). For the fact is that the property or subject falls under the jurisdiction of the customary courts. Doing anything different amounts

<sup>1</sup> *Anyafulude* @ pp. 76 - 77

<sup>2</sup> @ p. 77

<sup>3</sup> *Anyafulude* @ pp. 559 - 560

to abusing the powers of the customary courts and debasing them. It is not proper. Nigerian Customary Courts should all be reformed in line with suggestions brought forward in this paper to allow the customary courts remain relevant, and indeed the last hope of the common man.

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