JULIA LAW PUBLISHERS, ENGLAND, UK
WWW.JULIAPUBLISHERS.ORG

PRIME JOURNAL OF ADVANCED LEGAL STUDIES

ISSN 045-8495 (Print)
ISSN 2045-8509 (Online)

Volume 11(1) 2021 pp. 1-9

Received 23/01/2021 Accepted: 4/04/2021 Published: 11/04/2021

OATH-TAKING IN CUSTOMARY ARBITRATION IN NIGERIA: SOME REFLECTIONS ON THE SUPREME COURT DECISION IN *UMEADI v. CHIBUNZE*

Felix Chukwuemeka AMADI (PhD)[1]

ABSTRACT

In most traditional African setting, disputes are usually resolved by referral of the matter to a neutral party in the form of arbitrators. Such arbitrators usually comprising of chiefs and elders are expected to arbitrate in the matter mostly using the customary laws, traditions and practices of the people. One of the means usually adopted by such arbitrators in resolving disputes among disputing members of the community is the resort to oath-taking. Oath-taking is seen as a veritable means of establishing the truth in a matter. Oath-taking in customary arbitration has received judicial endorsement in Nigeria in several cases. Most recently, the Supreme Court even acknowledged oath-taking as one of the means of proving title to land in Nigeria. This article seeks to examine and explore the practice of oath-taking in customary arbitration in Nigeria. The paper specifically reflects on the recent Supreme Court decision in *Umeadi v. Chibunze (2020)10 NWLR (Pt. 1733)* with a bird's eye view on appraising its utility and potential danger in dispute resolution. The researcher made use of the doctrinal approach. This paper is divided into seven sections. Section one is the introductory part, section two examines the nature and scope of customary arbitration, section three deals with the basic ingredients of customary arbitration, section four is the constitutionality of customary arbitration, section five is on Oath-taking in customary arbitration while section six examines the recent decision of the Supreme Court in *Umeadi v. Chibunze (supra).* The paper concludes in section seven with recommendations.

Keywords: Oath-taking, Customary Arbitration and Reflection

INTRODUCTION

Conflicts among human beings are as old as life itself and will always exist.[2] No society have ever existed, between the individuals or the social organizations of which there have never been any differences. Put in another way, disputes are an inevitable part of human interaction.[3] Richard Bruce captured the issue of conflict in society succinctly thus:

[1] Faculty of Law, Rivers State University, Port Harcourt, Nigeria.

[2] Olubayo, Oluduro, "Customary Arbitration in Nigeria: Developments and prospects" African Journal of International and comparative law, vol. 19; P. 307

[3] J.Olakunle Orojo and M. Ayodele Ajomo. Law and practice of Arbitration and conciliation in Nigeria, Lagos: Mbey and Associate, (Nigeria) Limited (1999) P. 1, see also Greg Chukwudi Nwakoby;

> A man living on his own on a desert island can behave exactly as he likes. As soon as a second arrives, however, the two of them must come to some arrangement or agreement as to how they are going to get along together, they acquire rights and duties against each other. Every society in every age has found it essential to work out a code of rules to which members must conform, for otherwise there would soon be no society at all… only rural gangs of thieves fighting endless vendettas against one another. In particular, it has been difficult to restrict the complete freedom of each individual members of the society so as to protect all the other members from his careless, violence and dishonesty of others.[4]

Prior to the advent of colonial rule, traditional African societies had its unique dispute resolution mechanism based on customary law. Virtually all issues in controversy between disputants whether civil or criminal were referred to customary arbitrators. In Africa, arbitration grew from customary law. Indigenous Communities in Nigeria like most other traditional African societies had well-organized and structured systems of customary law before the advent of colonial rule in the late 19th century.[4] Nnaemeka Agu rightly agrees with this view when he graphically stated thus "…in all parts of Nigeria they (Europeans) met societies which had their own essential machinery for maintenance of law and order, their rights and duties, obligations and prohibitions and sanctions"[6]

Arbitration, particularly Customary Law Arbitration is one of the oldest methods of settling disputes, the world over. In fact, it is as old as creation.[7] As a method of resolving disputes, arbitration can be traced into antiquity.[8] As an institution, it certainly predates the state, the State Judiciary[9] and the court system of adjudication, commonly known as litigation that we find in use in contemporary nation state, the world over today.[10] Arbitration is therefore not a new phenomenon. Instances of the use of arbitration for the resolution of disputes proliferate in ancient historical and anthropological records.[11] In Biblical records[12] in the Koran,[13] in records from ancient Egypt[14] and from traditional history. Throughout the ages both primitive societies and modern civilization and in all the parts of the world irrespective of whether it is an undeveloped, a developing or developed Country, arbitration is known to have existed, and still exists in one form or another.[15]

The law and practice of commercial Arbitration in Nigeria, Enugu: Iyke ventures production (2004) P1.

4 Richard Bruce; Success in law (London, John Murray publishes Ltd. 1983) P1

5 Quashigah, F.K; " Reflections on the Judicial process in traditional Africa", The Nigerian Juridical Review vol. 4 (1989- 90) P.1.

6 Nnaemeka Agu P. " The Dualism of English and Customary law in Nigeria" African indigenous laws, Elias T.O eta (ed). 1975 P. 251 at 252.

7 See, Ephraim Akpata, The Nigerian Arbitration law in Focus, (Lagos: West African Publishers limited, 1997) P1

8 Gary B. Born; International Commercial Arbitration, vol. 1 The Netherlands: Wotter Kluwer law and Business, 2009) P. 21

9 Carl Watner; stateless not lawless; voluntarism and Arbitration,

10 Ibid The voluntariyst No 84 (1997) www.voluntaryist.Com/lastvisitedSeptember2015

11 Gary B. Barn op cit.

12 See 1 kings 3:28

13 Holy Koran 4 :35

14 Gary B Barn *op cit*

15 See also Greg Chukwudi Nwakoby op cit

One of the conditions for the validity of customary arbitration in Nigeria is that it must be conducted in accordance with the custom of the people or their trade or business. Oath-taking is part of the custom of most African societies and particularly ethnic groups in Nigeria. It is commonly seen as a means of establishing the truth in a matter.

NATURE AND SCOPE OF CUSTOMARY ARBITRATION

An arbitration can be described as "the reference of a dispute or difference between not less than two parties for determination, after hearing both sides in a judicial manner, by a person or persons other than a court of competent jurisdiction.[15] The meaning, nature and scope of customary arbitration have received judicial expression. In the popular case of *Agu v. Ozurumba Ikeruibe*[17], Karibi-Whyte JSC (of blessed memory) cited in approval other judicial authorities elaborating pronounced on customary arbitration. His Lordship held thus:

> I venture to regard customary law arbitration as an arbitration in dispute founded on the voluntary submission of the parties to the decision of the arbitrators who are either the chiefs or elders of their community and the agreement to be bound by such decision or freedom to resile where unfavourable.' Let me briefly refer to the opinion of Dr. T. O. Elias (of blessed memory) in his Nature of African Customary Law (1956) page 212 where he described customary arbitration as a mode of: 'referring a dispute to the family head or elder of the community for a compromise solution based upon subsequent acceptance by both parties of the suggested award, which becomes binding only after such signification of its acceptance from which either party is fee to resile at any stage of the proceedings up to the point.' The specie of Arbitration often referred to as customary arbitration was graphically defined by Ikpeazu J. in the case of Philip Njoku vs. Felix Ekeocha as: 'where a body of men, be they chiefs or otherwise, act as arbitrators over a dispute between the parties, their decision shall have a binding effect, if it is shown firstly that both parties submitted to the arbitration. Secondly, that the parties accepted the terms of the arbitration and thirdly, that they agreed to be bound by the decision, such decision has the same authority as the judgment of a judicial body and will be binding on the parties and thus create an estoppel.' In Mbagbu v. Agochukwu, the issue was whether a dispute taken to a local non-judicial body of elders for settlement was binding on the parties. It was held that the decision was binding if accepted at the time it was made.

Arbitration has to do with the settling of disputes between two or more persons by a neutral person who has the authority to settle the dispute and such a person is acceptable to the disputing parties as a mediator. So, the process of arbitration involves helping the parties involved in a dispute, whether on an issue bordering land, chieftaincy, inheritance, business, marital, religious matters etc to find grounds for possible agreement and settlement. The arbitrators may not only be made up of chiefs or family members, they may include a person appointed or a body of persons that the disputing parties agree should settle their dispute.

---

[16] Halsbury's laws of England, 4th edition, vol. 2 p. 256 Para. 501

[17] (1991) 3 NWLR (Pt 180) 358, 407

BASIC INGREDIENTS OF CUSTOMARY ARBITRATION

The decision of a customary arbitration is binding on the parties once the following basic ingredients are met or complied with.

(a) That there had been a voluntary submission of the matter in dispute to an arbitration of one or more persons;
(b) That it was agreed by the parties either expressly or by implication that the decision of the arbitrator(s) would be accepted as final and binding;
(c) That the said arbitration was in accordance with the custom of the parties or their trade or business
(d) That the arbitrators reached a decision and published their award; and
(e) That the decision or award was accepted at the time it was made.

From these characteristics, the definition of customary arbitration as given by Ikpeazu J. in the case of *Philip Njoku vs. Felix Ekeocha*[18] becomes very apposite. According to him;

> where a body of men, be they chiefs or otherwise, act as arbitrators over a dispute between two parties, their decision shall have a binding effect; if it is shown firstly, that both parties submitted to the arbitration; secondly, that the parties accepted the terms of the arbitration and thirdly, that they agreed to be bound by the decision; such decision had the same authority as the Judgement of a judicial body and will be binding on the parties and thus create an estoppels.[19]

It should be noted that unless the above mentioned conditions are fulfilled, the arbitration award would be unenforceable. Thus, the Supreme Court per Uwaifo JSC delivering the leading Judgment in *Eke v. Okwaranyia*.[17] held as follows:

> I think anything short of these conditions will make any customary arbitration award risky to enforce. In fact it is better to say that unless the conditions are fulfilled, the arbitration is unenforceable.

THE CONSTITUTIONALITY OF CUSTOMARY ARBITRATION

Customary law is a fact which must be proved by evidence.[18] customary law arbitration is predicated upon the practice of the people who voluntarily submit their disputes to arbitrators who are either chief or elders or their community with the agreement to be bound by the resulting decision or freedom to resile where unfavourable.[21] By virtue of section 315 (1) (3) and 4 (b) of the constitution of the Federal Republic of Nigeria 1999, Customary law and customary law arbitration being "existing law" are saved.

The section provides as follows;

> 315 (1) Subject to the provisions of this constitution, an existing law shall have effect with such modifications as may be necessary to bring it into conformity with the provisions of this…

---

17 Ibid

18. (1972) 2 ECSLR 199 at P. 205

19 This has been described as "a good and acceptable definition of Customary arbitration by Karibi Whyte JSC in Raphael Agu Vs Christian Ozurumba Ikewibe, Supra at P. 407

20 Hon Justice S.O Tonwe; Trends in Customary Arbitration, Rivers State University, Journal of Public Law, Vol. 3.2012, P1

(2) Notwithstanding in this constitution shall be construed as affecting the power of a court of law or any tribunal established by law to declare invalid any provision of an existing law on the ground of inconsistency with the provision of any other law, that is to say …

4(b) "Existing law" means any law and includes any rule of law or any enactment or instrument whatsoever which is in force immediately before the date when this section comes into force or which having been passed or made before that date comes into force after that date…"

Karibi- Whyte JSC in *Agu Vs. Ikewibe* noted as follows: "… Customary law by virtue of section 274 (3) 4(b) an existing law "being a body of rules of law in force immediately before the coming into force of the constitution 1979. This Customary law which includes customary arbitration was saved by section 274 (3) and 4(b) of the constitution 1979."[20] Section 16 of the Evidence Act[23] also provides legal basis for the existence of customary law. The Section provides as follows:

16 (1) A custom may be adopted as part of the law governing a particular set of circumstances if it can be judicially noticed or can be proved to exist by evidence.

(2) The burden of proving a custom shall be upon the person alleging its existence.

17 A custom may be judicially noticed when it has been adjudicated upon once by a superior court of record

18 (1) Where a custom cannot be established as one judicially noticed. It shall be proved as a fact

(2) Where the existence or nature of a custom applicable to a given case is in issue, there may be given in evidence the opinion of the person who would be likely to know of its existence in accordance with section 73

(3) In any Judicial proceeding, where any custom is relied upon, it shall not be enforced as law if it is contrary to public policy or is not in accordance with natural Justice, equity and good conscience.

From the fore going provisions of the Evidence Act, it is clear that the question of customary arbitration becomes an issue of native law and custom.

OATH-TAKING IN CUSTOMARY ARBITRATION

One of the essential characteristics of customary arbitration is that it must be conducted in accordance with the custom of the people. In most Nigerian communities, the practice of oath-taking during local arbitrations is common. There is no denying that often times, oath-taking before a Juju shrine may be a viable option for the amicable resolution of the dispute under customary law. In such circumstances, it is usual for both parties to agree that the Juju oath-taking should be administered on one of the disputing parties. This is usually undertaken or done with the understanding that after the period agreed upon (usually one year) that the Juju would victimize or vindicate the swearer of the oath. If the swearer is victorious, he would be entitled to Judgment. Where such a practice is applicable, it is seen as the most credible and reliable method of ascertaining the truth.[24] Though the issue of oath-taking as part of custom

[21.] Supra at 180 Paras B-C.

[22] Evidence Act 2011, Act No 18; Laws of the Federal Republic of Nigeria.

[24] Nlerum S. Okogbule; the Role of Customary Arbitration in Nigerian Jurisprudence, Modern practice Journal of Finance and Investment law vol. 9 Nos. 1-2, 2005 P. 8

[26] (2004) 13 NWLR (Pt 889) P. 20 at P. 40

has generated a lot of controversy, Courts in Nigeria have come to recognize this basic reality by upholding local arbitrations carried out through the method of oath-taking. There are two schools of thought on the issue of oath-taking in customary arbitration, *viz*:

a. Oath-taking establishes truth and should be encouraged.
b. Oath-taking creates superstitious fear and should be discouraged.

In *John Onyenga & 2 others Vs. Chief Loveday Ebere & 2 others*[23] the Supreme Court declared as follows: "Oath-taking is a valid process under customary law arbitration and it is one of the methods known to customary law for establishing the truth of a matter." The Court went further to posit that: "Where two parties to a dispute voluntarily agree to the resolution of their dispute by oath-taking in accordance with customary law, neither of them can thereafter resile from the exercise of oath-taking."[26] In *Ume vs. Okoronkwo*.[27] Ogwegbu. JSC noted thus:

> Oath-taking was one of the methods of establishing the truth of a matter and was known to customary law and accepted by both parties. The 1st Defendant only resiled after the arbitrators had made their awards by refusing to produce the "Juju". It was not open to him to do so at that stage..

On the other hand, in *Achiakpa vs. Nduka*,[28] Iguh JSC noted as follows:

> In my view, the Justice of any case does warrant that it be determined not only on the basis of the swearing of Juju oath but on appraisal and evaluation of all the competing evidence adduced by the parties before the court.

Some ugly development relating to oath-taking in Nigeria

> Today, there are some very ugly developments that have bedeviled this practice among several ethnic groups in Nigeria. Sometime ago, precisely in the year 2004, the dreadful activities of the controversial Ogwugwu-Nkpa shrine in Okija, Anambra State, Nigeria, one example of the many shrines where disputing parties take oaths as was the practice among the Igbo people was exposed to public ridicule through the mass media.[29]

Although the Supreme Court of Nigeria has taken judicial notice of the realities of the dreaded shrine, the exposure of its clandestine activities to the public has attracted a bad image to the practice of oath-taking under customary law in Nigeria. Today in several part of Nigeria, people tell lies and claim ownership of what do not belong to them particularly land and swear juju oath without any repercussion. This is because before swearing the oath, they have taken the antidote that neutralizes the effect of the juju. So most times, you find disputants end up compromising the priest or priestess of these deities and they end up neutralizing in secret what they have done in the open before the arbitration panel. With the availability of antidote and the unstable attitude of most priest and priestess of deities, oath-taking in customary arbitration cannot be a better way or option of establishing the truth in matters.

---

[26] Ibid
[27] (1996) 10 NWLR (Pt 477) 133, 144 SCN
[28] (2001) FWLR (Pt 7) 1804, 1849 – 1824C.
[29] See Vanguard online Edition; The Sunday Periscope, of Sunday September 05, 2004

Granted that rule of law and fairness are the bedrocks of a good justice delivery system, the process of oath-taking will miss its goal if it is tainted with fraud or mischief. It should be borne in mind that its central mission is to prove the truth of a matter in issue. It is like salt that once loses its flavor will be good for nothing than to be thrown away and trodden under the feet.[30] It seems that if sanity is to be maintained in the use of oath-taking especially by swearing to a juju, the local best practices must be adhered to, otherwise it should not be encouraged. Nevertheless, it can also be contended that before a person should be permitted to resile from the process of oath-taking which he willingly subscribed, the onus must squarely be placed on him to prove fraud, compromise or mischief. This view seems fortified in the sense that the juju itself should ordinarily be potent enough to 'fight' for itself against any one that attempts to corrupt or undermine its process.

OATH-TAKING IN PROOF OF THE TRUTH OF A MATTER AS AGAINST PERSONAL COVENANT

In the area of dispute resolution, customary arbitration, mediation, conciliation and other variants are deplored to achieve dispute settlement. It is in this regard that the oath-taking discussed in this paper is addressed. Consequently, it is not every administration of oath that qualify as customary arbitration for settlement of a dispute by native law and custom. This type of oath-taking should be distinguished from other forms of oath-taking for covenanting mutual respect or where there is power imbalance for coercing royalty by the superior. The inferior may be under threat, promise of favour or submission for some form of benefits which may be immoral or unwholesome. This is not the practice envisaged in this paper. Whenever oath-taking is compromised by means of antidote or fetish practices behind the scene, it is not acceptable. It is this ugly situation that informs the school of thought that canvasses the discouragement of oath-taking for being superstitious and dreadful.

SOME REFLECTIONS ON THE RECENT SUPREME COURT DECISION IN UMEADI v. CHIBUNZE (2020)10 NWLR (Pt. 1733).

In the *Umeadi* case under consideration, a customary arbitration was consented to and carried out. There was a dispute over the ownership of the parcel of land called Ishiekpe. In course of the arbitration, the Egbeagu village decided that Umuogbocha kindred should bring juju and place same on the land in dispute and the Umuofuonye family should swear to the juju by removing it from when it was placed. The 1st Respondent's father singlehandedly swore to the juju by removing it. He was not supported but rather deserted by his kindred. He lived to survive the period prescribed as the period of oath. Following his survival, the land became his exclusively. The Appellants unsuccessfully contended that one man does not swear to juju or oath alone in land matters. The Appellant also unsuccessful denied that the 1st Respondent's father only did the removal of the juju. Both the trial High Court of Anambra State and the Court of Appeal found in favour in the Respondents and declared them the owners of the land.

In the further appeal to the apex court, the Appellants contended that the Respondents did not establish by cogent evidence the custom that Amansea custom allows a member that defended the family land by oath taking to become automatically the exclusive owner of such family land. They further contended that one man could not remove juju placed on the family land of Amansea. The Supreme Court unanimously dismissed this case and allowed the current

[30] See the biblical injunction in Matthew 5:13b

decision of the lower courts. The apex court confirmed that oath-taking was a valid protest under customary law arbitration and the following positions endorsed.

- The applicable law in the matter was no longer traditional history of the matter prior to 1940 when the matter was filed but the law of oath-taking.

- Parties that believe in efficiency of juju and resort to oath-taking to prove ownership of land will be bound by it.

- Where customary arbitration is pleaded and proved, it is binding on the parties and capable of constituting estoppel.

- Where traditional arbitration resulting in oath-taking applies in a declaration of title to land, common land principle in respect of proof of same no longer apply.

From the clear decision of the Supreme Court in the case of *Umeadi,* it is apparent that customary arbitration has been given a pride of place in the Nigerian jurisprudence. This is evident in the fact that existence of resort to juju by oath-taking is now a valid means of prove of title to land for which declaration of title can be made without further proof by traditional evidence or common law. The award of land to a successful party under customary arbitration on account of successful oath-taking is binding and final and it operates as an estoppel just like Settlement Agreements or a Political Solution Agreement obtained by mediation.

CUSTOMARY OATH-TAKING, POLITICAL SOLUTION AGREEMENT AND OTHER MEDIATION AGREEMENT

The *Umeadi* case reflects the zeal of the Supreme Court of Nigeria in giving effect to resolutions, agreements or positions reached willing by parties not only to commercial contracts but to dispute settlement. The decision in the case of *Umeadi* is similar to the decision of the Supreme Court in the case of *Attorney-General of Rivers State vs. Attorney-General of Akwa Ibom State & Anor.*[31] In this case, the ownership of 172 oil wells was in issue between the plaintiff and 1st defendant on record. However, there was an agreement reached by the parties on the issue of ownership of the 172 oil wells by way of a Political Solution Agreement which was held to constitute an estoppel. The Supreme Court held as follows:

> Exhibit AMB1 clearly contains the agreement reached by the parties in settlement of the issue of ownership of the 172 oil wells between the Plaintiff and 1st Defendant. There is evidence that the terms of the agreement was regarded by the parties thereto and stakeholders as binding and was acted upon to the mutual benefit of the Plaintiff and 1st Defendant from 1st November, 2006, to sometime in 2009. It does not matter that Exhibit AMB1 is a letter written by the President of the Federal Republic of Nigeria. What matters is that it contains the agreement reached by the relevant parties as regards the final resolution of the disputed ownership of the 172 oil wells; the document conveys the terms of the consensus/agreement reached by the parties. An agreement can even be oral, as earlier stated, what matters is that there must be evidence of consensus between/amongst the parties thereto, which in this case is not a doubt. It is therefore my considered view that the Political

[31] (2011) 3 SC 1.

Solution Agreement between the Plaintiff and 1st Defendant is binding on them and therefore enforceable[32].

A painstaking consideration of the decision in *Attorney-General of Rivers State vs. Attorney-General of Akwa Ibom State & Anor.(supra)* shows that the elementary but fundamental principle of law that agreement can be written or oral applies to settlement agreement including customary arbitration by oath-taking which is often oral. This therefore means that the party relying on the customary arbitration has the onus of proof to show that there was such oath-taking and it ended in his favour. To this end, the fact of the customary arbitration must be pleaded and evidence clearly lead in proof thereof. Flowing from the totality of the decision in *Umeadi* case, the case of *Idudum vs. Okumagba*[33] on the five basic ways of proving title to land have been modified with the inclusion of customary arbitration by resort to oath-taking.

CONCLUSION AND RECOMMENDATIONS

Customary arbitration by means of juju oath-taking is a valid method of settling disputes provided the parties consent to the process. It has enlarged the ways by which proof of title to land can be achieved under the Nigerian laws by virtue of the recent *Umeadi's* case. It is no longer necessary when reliance is placed on customary arbitration by oath-taking to go through the whole process of leading traditional evidence of the history of the land before the customary arbitration as that is now replaced with the singular burden of proving the customary arbitration itself. It is recommended as follows:

- Resort to oath-taking should be clearly understood by the parties before the commencement of the process as the point of resiling may be dicey given the willingness or the readiness of the court to decline acceptance.

- Parties should be aware of the gimmicks of unscrupulous persons and administrators of the process who tend to manipulate it.

- The interest of the parties may be better served if the arbitral award emanating from the oath-taking is properly encapsulated in a written form and signed by the parties. This, will make for ease of enforceability of the award.

[32] Supra, p. 73
[33] (1976) 10 SC 227