

**SUPREME COURT OF NIGERIA**

22ND JANUARY, 1999. SC. 161/94

**CORAM:- A. B. WALI, M. E. OGUNDARE, U. MOHAMMED,  
S. U. ONU, A. I. IGUH, JJSC.**

JOSEPH OHAI	.....	APPELLANT
AND		
SAMUEL AKPOEMONYE	.....	RESPONDENT

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***CUSTOMARY LAW*** - Appeals - Decision of the Customary Court of Appeal - The only matter appealable from it - Is that which involves questions of customary law.

***CUSTOMARY LAW*** - Meaning - Question of Customary law - What customary law means.

***CONSTITUTIONAL LAW*** - Jurisdiction - Conferred on the Court of Appeal under s. 224(1) of the 1979 Constitution - To receive appeals from the Customary Court of Appeal - The National Assembly has not prescribed matters with respect to which it is permissible to appeal.

***JURISDICTION*** - Defect - Of jurisdiction - The rules of natural justice - It is only after the court has assumed jurisdiction properly - That observance of the rules would be looked into.

**FACTS**

The plaintiff/appellant sued the defendant/respondent in the Isele -Uku District Customary Court for a declaration of title to land situate at Idumu -Etiti Agba Quarters, Onicha-Olona and for injunction. The court entered judgment in favour of the plaintiff. Dissatisfied the defendant appealed to the Aniocha Area Customary Court. That Court dismissed the defendant's appeal. The defendant remained dissatisfied and lodged a further appeal to the Customary Court of Appeal of the former Bendel State. The court also dismissed the appeal. The defendant has again

appealed to the Court of Appeal Benin Division which after considering the submissions made before it allowed the appeal, set aside all the orders made by the three courts below it and remitted the case to the Isele - Uku District Court to be reheard. In its judgment the Court of Appeal rejected the objection raised to its jurisdiction to entertain the appeal.

The plaintiff has now appealed against that decision to the Supreme Court raising a single issue.

**ISSUE FOR DETERMINATION**

*Whether the Court of Appeal had jurisdiction to entertain the defendant's appeal from the judgment of the Customary Court of Appeal.*

**HELD** (Unanimously allowing the appeal per lead judgment of **MOHAMMED JSC**)

***Customary law - Meaning***

1. Is interpretation of a statute a question of customary law? The simple answer is No. The meaning of customary law has been given by this court in the case of Zaidan, K. v. Mohssen, F. H. (1973) 11 SC. page 1, thus:

*"..... customary law is any system of law not being the common law and not being a law enacted by any competent legislature in Nigeria but which is enforceable and binding within Nigeria as between the parties subject to its sway." (p. 171 A)*

***Customary law - Appeals***

2. It is therefore abundantly clear that the only matter from the decision of the Customary Court of Appeal of a State appealable to the Court of Appeal is that which involves questions of Customary law. The question of interpretation whether the Sheriffs and Civil Processes Law, Cap 407, Laws of the Federation is applicable to Customary Courts is not an issue determinable by the Customary Court of Appeal of a State. (p. 171 D)

***Jurisdiction - Defect***

3. There is no dispute over this essential requirement in the administration of justice. However, defect of jurisdiction relates to embarking on

the case, and not to miscarriage in the cause of it or to the correctness of the decision. The Queen; ex parte Laniyan Ojo v. Governor -in- Council Western Region (1962) All NLR 149 at 154. It is after the court has assumed jurisdiction properly that observance of the rules of natural justice would be looked into. Any defect in competence of a court renders the proceedings before it a nullity - Gabriel Madukolu and Ors. v. Johnson Nkemdilun (1962) All NLR 581 at 590. (p. 171 G)

### ***Constitutional law - Jurisdiction***

4. The second class of cases with respect to which jurisdiction is conferred on the Court of Appeal under section 224 (1) of the constitution to receive appeals from the decision of customary Court of Appeal of a State is in respect of matters as may be prescribed by an act of the National Assembly. The lower court resorted to this provision of the constitution in its pursuit of jurisdiction to determine the appeal, in this case, from the decision of the customary Court of Appeal. Chief Williams, SAN, submitted, quite correctly, that neither the National Assembly nor any other authority lawfully exercising the powers of that Assembly has prescribed any matters with respect to which it is permissible for a person to appeal from decisions of the Customary Court of Appeal of a State. I therefore agree that the Court of Appeal had no jurisdiction to entertain the appeal filed by the defendant/ respondent from the judgment of the Customary Court of Appeal of the then Bendel State. (p. 172 B)

### **NOTABLE POINT OF INTEREST**

#### **OGUNDARE JSC**

##### *1. A right of appeal to exist must be conferred by statute*

A right of appeal must be conferred by statute as it is a curtailment of the jurisdiction of the Court from which the appeal lies and an extension of the jurisdiction of the court to which the appeal goes - Onitiri v. Benson (1960) 5 FSC 150, 155. And for the right to exist, it must come within the purview of the statute. Section 224(1) of the Constitution does not confer a general right of appeal from the Customary Court of Appeal of

a State to the Court of Appeal but a limited one, limited to any question of customary law and such other matters as may be prescribed by an Act of the National Assembly. Our attention has not been drawn to any such Act of National Assembly. The complaint in the purported appeal by the  
 B respondent to the Court below against the judgment of the Customary Court of Appeal of Bendel State related to the application of the Sheriffs and Civil Process Act, Cap. 189 Laws of the Federation of Nigeria, 1958. This is not a question of customary law. It follows that the purported  
 C appeal did not come within the purview of sections 224(1) of the Constitution. It was accordingly incompetent. And being incompetent the proceedings in the Court below were equally incompetent and a nullity. (p. 174 A)

D **REPRESENTATION**

Chief F.R.A. Williams, SAN with Messrs. T. E. Williams, A. O. Williams for the Appellant.

Chief Chike Chigbue, S. Etukakpan, with him, for the Respondent.

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**CASES REFERRED TO**

Zaidan, K. v. Mohssen, F. H. (1973) 11 SC. page 1

Madukolu v. Nkemdilun (1962) All NLR 581 at 590

F Zaidan v. Mohssen (1973) 11 SC. 1 at p. 21

Onitiri v. Benson (1960) 5 FSC 150, 155

Timitimi v. Amabebe (1953) 14 WACA 374

Nyarko v. Akowuah 14 WACA 426

G Oranye v. Jibowu 13 WACA 41

**STATUTES REFERRED TO**

Constitution of the Federal Republic of Nigeria, 1979, ss.33, 224(1) and 247

H Sheriffs and Civil Process Act, Cap. 407 Laws of the Federation of Nigeria, 1990

Customary Court Edict of Bendel State 1984.

**LEAD JUDGMENT BY MOHAMMED JSC**

This appeal is from the decision of Benin Division of the Court of Appeal in which the lower court allowed an appeal from the judgment of the Customary Court of Appeal of the former Bendel State.

Learned counsel for the appellant, Chief Rotimi Williams, SAN., submitted, in the Appellant's brief that the Court of Appeal had no jurisdiction to entertain proceedings which gave rise to the present appeal. The learned Senior Advocate stated the facts upon which he based his submission as to jurisdiction. The facts are in the following narrative:

The plaintiff (appellant in this appeal) sued the defendant (respondent in this appeal) in the Isele-Uku District Customary Court for a declaration of title to land situate in Idumu-Etiti Agba Quarters, Oniocha-Olona. There was also a claim for injunction to restrain acts of trespass by the defendant. The Court entered judgment in favour of the plaintiff on 17th September, 1987. Not satisfied with that judgment, the defendant appealed to the Aniocha Area Customary Court. On Monday, 24th of April, 1989, the Aniocha Area Customary Court delivered a judgment in which it dismissed the defendant's appeal. The defendant remained dissatisfied with the appeal and lodged a further appeal to the Customary Court of Appeal. In its judgment, delivered on Monday, 3rd December, 1990, the Customary Court of Appeal of the former Bendel State dismissed the appeal. The defendant yet again appealed to the Court of Appeal which after considering the submissions made before it, in a judgment, written by Atinuke Ige, JCA., and concurred in by Ogebe and Ubaezonu, JJCA., allowed the appeal, set aside all the orders made by the three courts below it and remitted the case to the Isele-Uku District Court to be reheard. In its judgment the Court of Appeal rejected an objection raised to its jurisdiction to entertain the appeal.

The single issue formulated for the determination of this appeal by Chief Williams, SAN., is whether the Court of Appeal had jurisdiction to entertain the defendant's appeal from the judgment of the Customary Court of Appeal. Chief Uwechue, SAN., for the respondent agreed that the issue of jurisdiction is the only question which arises for the determination of this appeal.

In his submission, in the appellant's brief, Chief Williams, SAN., referred to section 224(1) of the Constitution and pointed out that the jurisdiction of the Court of Appeal over civil proceedings emanating from a Customary Court of Appeal is limited to only two classes of cases, to

B wit:

"(i) any question of customary law; and

(ii) such other matter as may be prescribed by the Federal Legislature."

C It is relevant at this stage to reproduce the provisions of section 224(1) of 1979 Constitution (as amended). It reads:-

D *"An appeal shall lie from decisions of the Customary Court of Appeal of a State to the Court of Appeal as of right in any civil proceedings before the Customary Court of Appeal with respect to any question of Customary law and such other matters as may be prescribed by an Act of the National Assembly."*

The lower court, per Atinuke Ige, JCA., in trying to find jurisdiction over the appeal before it held as follows:-

E *"It seems to me that the Customary Court of Appeal was right to look into the provisions of the law cited before them and decide whether or not the law can be termed Customary Law or a Law applicable to Customary Courts."*

F *The matter of Sheriffs and Civil Processes Law Cap. 407 Laws of the Federation is an Act of the National Assembly hence it comes within the purview of the Customary Court of Appeal which considered whether or not it is applicable to Customary courts. This Honourable Court also has jurisdiction to hear the complaint about the issue."*

G Chief Williams, SAN., argued that the reasoning above is faulty because neither the National Assembly nor any other authority lawfully exercising the powers of that Assembly has prescribed any matters with respect to which it is permissible for a person to appeal from decisions H of the Customary Court of Appeal of a State.

Chief Uwechue, SAN., for the respondent, submitted that the Court of Appeal was of the view that what was before the Customary Court of Appeal and before it, was the question of interpretation of the

scope of the customary law. But it is relevant to pause here and inquire whether such an exercise falls within the provisions of section 224(1) of the Constitution. **Is interpretation of a statute a question of customary law? The simple answer is No. The meaning of customary law has been given by this court in the case of Zaidan, K. v. Mohssen, F. H. (1973) 11 SC. page 1, thus:** B

*"..... customary law is any system of law not being the common law and not being a law enacted by any competent legislature in Nigeria but which is enforceable and binding within Nigeria as between the parties subject to its sway."* C

It is pertinent to point out here that the matter in which the Customary Court of Appeal of a State can exercise jurisdiction has been prescribed under Section 247 (1) of the Constitution and it reads:

*"A Customary Court of Appeal of a State shall exercise appellate and supervisory jurisdiction in civil proceedings involving question of Customary law."* D

**It is therefore abundantly clear that the only matter from the decision of the Customary Court of Appeal of a State appealable to the Court of Appeal is that which involves questions of Customary law. The question of interpretation whether the Sheriffs and Civil Processes Law, Cap 407, Laws of the Federation is applicable to Customary Courts is not an issue determinable by the Customary Court of Appeal of a State.** E F

Chief Uwechue, learned Senior Advocate took shelter under the rules of natural justice and submitted that it had been provided under section 55 of the Customary Courts Edict of Bendel State 1984 that:

*"..... every court exercising powers of appeal under this edict shall decide all matters according to substantial justice ....."* G

**There is no dispute over this essential requirement in the administration of justice. However, defect of jurisdiction relates to embarking on the case, and not to miscarriage in the cause of it or to the correctness of the decision. The Queen:: exparte Laniyan Ojo v. Governor -in- Council Western Region (1962) All NLR 149 at 154. It is after the court has assumed jurisdiction properly that** H

observance of the rules of natural justice would be looked into. Any defect in competence of a court renders the proceedings before it a nullity - Gabriel Madukolu and Ors. v. Johnson Nkemdilun (1962) All NLR 581 at 590.

B The second class of cases with respect to which jurisdiction is conferred on the Court of Appeal under section 224 (1) of the constitution to receive appeals from the decision of customary Court of Appeal of a State is in respect of matters as may be prescribed by an act of the National Assembly. The lower court resorted to this provision of the constitution in its pursuit of jurisdiction to determine the appeal, in this case, from the decision of the customary Court of Appeal.. Chief Williams, SAN, submitted, quite correctly, that neither the National Assembly nor any other authority law-  
C fully exercising the powers of that Assembly has prescribed any matters with respect to which it is permissible for a person to appeal from decisions of the Customary Court of Appeal of a State.  
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I therefore agree that the Court of Appeal had no jurisdiction to entertain the appeal filed by the defendant/ respondent from the judgment of the Customary Court of Appeal of the then Bendel State.  
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In the result, this appeal succeeds and it is allowed. The judgment of the Court of Appeal, Benin Division, is hereby set aside. The appeal filed by the Defendant/Respondent before the Court of Appeal is hereby struck out. I award N10,000.00 costs in favour of the plaintiff/Appellant.  
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### WALI JSC

I have had the advantage of a preview of the judgment of my learned brother, Uthman Mohammed JSC, and I agree with him that the Court of Appeal is limited to hearing an appeal from the customary Court of Appeal of a State in the following to classes of cases:  
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(i) *any question of customary law, and*

(ii) *such other matter as may be prescribed by the Federal Leg-*

islature.

The appeal of the respondent, Samuel Akpoemonye, before the Court of Appeal was not a question of Customary Law and the Federal Legislature did not prescribe any matters with respect to which it is permissible for a person to appeal from decisions of the Customary Court of Appeal of a State to the Court of Appeal. B

I therefore agree that the Court of Appeal had no jurisdiction to entertain the appeal brought before it by Samuel Akpoemonye against the judgment of the Customary Court of Appeal of Bendel State. C

This appeal is allowed. I also award N10,000.00 costs in favour of the appellant.

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### OGUNDARE JSC

Section 224(1) of the Constitution of the Federal Republic of Nigeria, 1979 provides:

*"224. - (1) An appeal shall lie from decisions of the Customary Court of Appeal of a State to the Court of Appeal as of right in any civil proceedings before the Customary Court of Appeal with respect to any question of Customary law and such other matters as may be prescribed by an Act of the National Assembly."* D

For an appeal to lie to the Court of Appeal from the judgment of the Customary Court of appeal of a State, therefore, it must relate - F

(a) to a question of customary law, and/or

(b) to such other matters as may be prescribed by an Act of the National Assembly.

Now, customary law is - G

*"any system of law not being the common law and not being a law enacted by any competent legislature in Nigeria but which is enforceable and binding within Nigeria as between the parties subject to its sways."* H

Per Elias CJN in Kharie Zaidan v. Fatima K. Mohssen (1973) 11 SC. 1 at p. 21. With this definition in mind I think it is wrong for the Court below to hold that an appeal to it from the Customary Court of Appeal of Bendel

State complaining of an error in the application by the latter court of the provisions of the Sheriffs and Civil Process Law, was competent. Clearly, such a complaint does not raise any question of customary law.

A right of appeal must be conferred by statute as it is a curtailment of the jurisdiction of the Court from which the appeal lies and an extension of the jurisdiction of the court to which the appeal goes - Onitiri v. Benson (1960) 5 FSC 150, 155. And for the right to exist, it must come within the purview of the statute. Section 224(1) of the Constitution does not confer a general right of appeal from the Customary Court of Appeal of a State to the Court of Appeal but a limited one, limited to any question of customary law and such other matters as may be prescribed by an Act of the National Assembly. Our attention has not been drawn to any such Act of National Assembly. The complaint in the purported appeal by the respondent to the Court below against the judgment of the Customary Court of Appeal of Bendel State related to the application of the Sheriffs and Civil Process Act, Cap. 189 Laws of the Federation of Nigeria, 1958. This is not a question of customary law. It follows that the purported appeal did not come within the purview of sections 224(1) of the Constitution. It was accordingly incompetent. And being incompetent the proceedings in the Court below were equally incompetent and a nullity.

For the reasons contained herein and in the judgment of my learned brother Mohammed JSC a preview of which I had ere now, I allow this appeal, set aside the purported judgment of the Court below and declare same a nullity. I award N10,000.00 costs of this appeal.

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### ONU JSC

I was privileged to read before now the judgment just read by my learned brother Mohammed, JSC. I agree entirely with him that this appeal succeeds and it is allowed by me.

I only wish to elaborate on the main issue that calls for our determination, which is:

*"Whether the Court of Appeal had jurisdiction to entertain the*

defendant's appeal from the judgment of the Customary Court of Appeal."

My learned brother Mohammed JSC has so meticulously resolved the issue arising herein that I consider it unnecessary to embark on any detailed consideration hereof. Suffice it to add that when in its judgment dated the 4th day of June, 1994, the Court of Appeal, Benin Division (per Atinuke Ige, JCA) held, inter alia, that:-

*"The matter of Sheriffs and Civil Process Law Cap. 407, Laws of the Federation is an Act of the National Assembly hence it comes within the purview of the Customary Court of Appeal which considered whether or not it is applicable to Customary Courts. This Honourable Court also has jurisdiction to hear the complaint about this issue."*

this, in my opinion, constituted faulty reasoning and is palpably wrong in that the only two classes of cases (Civil) in which an appeal lies from the Customary Court of Appeal of a State to the Court of Appeal as of right are:

(i) any question of customary law, and

(ii) such other matters as may be prescribed by an Act of the National Assembly vide section 224(1) of the Constitution of the Federal Republic of Nigeria, 1979 (hereinafter referred to as the Constitution).

See also Section 247 of the Constitution which is more or less in pari materia with Section 224 (ibid) and provides as follows:-

*"247 (1) A Customary Court of appeal of a State shall exercise appellate and supervisory jurisdiction in civil proceedings involving questions of Customary Law."*

*(2) For the purpose of this section a Customary Court of Appeal of a State shall exercise such jurisdiction and decide such questions as may be prescribed by the House of Assembly of the State for which it is established."*

By the purport of Section 224 of the Constitution (ibid) therefore, the only instances where decisions of the Customary Court of Appeal of a State are appealable to the Court of Appeal are where the matters or questions are of Customary law or where provisions for such appeals are prescribed by an Act of the National Assembly. In the appeal

herein, as no such jurisdiction is conferred for such an appeal to lie to the Court of Appeal from the Customary Court of Appeal the question of the interpretation as to whether the Sheriffs and Civil Process Act Cap. 407, Laws of the Federation of Nigeria would, in my view, confer no such right of appeal, the same not having been provided for by an Act of the National Assembly. Thus, the present apply lying before the Court of Appeal from the Customary Court of Appeal would, in my view, be incompetent and would be and is declared a nullity. For, it is beyond question that a judgment or order by a court given without jurisdiction is a nullity. See Timitimi v. Amabebe (1953) 14 WACA 374; Nyarko v. Akowuah 14 WACA 426 and Oranye v. Jibowu 13 WACA 41.

While therefore, courts do not deny themselves of jurisdiction (see Eastbourne Corporation v. Fortes Ice Cream Parlour (1955) Ltd. (1959) 2 Q.B. 92; (1959) 2 All E.R. 102) where in a complaint raised by an appellant such as the one in the instant case where is no bearing on customary law, the assumption of jurisdiction to entertain the same by the Court of Appeal would be palpably wrong and I so declare.

For the above reasons and the fuller ones set out in the leading judgment of my learned brother, Mohammed, JSC I too allow the appeal and make the same consequential orders as therein contained.

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### IGUH JSC

I have had the privilege of reading in draft, the judgment just delivered by my learned brother, Mohammed, J.S.C. and I agree that there is merit in this appeal and that the same ought to be allowed.

The single issue agreed to by both parties for the resolution of this court is whether the Court of Appeal had jurisdiction to entertain the respondent's appeal from the judgment of the Customary Court of Appeal, Benin City.

The jurisdiction of the Court of Appeal pertaining to appeals from the Customary Court of Appeal is stipulated in Section 224(1) of the Constitution of the Federal Republic of Nigeria, 1979. That section of the Constitution provides thus:-

*"An appeal shall lie from decisions of the Customary Court of Appeal of a State to the Court of Appeal as of right in any civil proceedings before the Customary Court of Appeal with respect to any question of Customary law and such other matters as may be prescribed by an Act of the National Assembly".*

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It is clear from the above provision of the Constitution that the range of appeals that lies as of right from a State Customary Court of Appeal to the Court of Appeal is limited. The jurisdiction of the Court of appeal over civil proceedings from the customary Court of Appeal is confined to only two classes of cases, namely:-

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(1) any question of customary law or

(2) such other matters as may be prescribed by an Act of the National Assembly.

Once the complaint is not in respect of any of the said two question, there is no jurisdiction in the Court of Appeal to entertain as of right an appeal from a State customary Court of Appeal.

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In the present case, the respondent, as appellant in the court below, complained of nothing that concerned any question of customary law or a matter prescribed by the Federal Legislature conferring jurisdiction on the Court of Appeal in respect of matters from a State Customary Court of Appeal. The main issue before the Court of Appeal was essentially the construction of the provisions of the Sheriffs and Civil Process Act, Cap. 407, Laws of the Federation of Nigeria, 1990. There is a second issue which, as formulated, raised the question of fair hearing which is amply covered by section 33 of the Constitution of the Federal Republic of Nigeria, 1979. It is clear to me that none of the issues raised by the respondent before the court below falls within matters cognizable by the Court of Appeal in respect of civil proceedings on appeal from a State Customary Court of Appeal. I think that the court below, with respect, misconstrued the nature of the case before it and thereby assumed jurisdiction, quite erroneously, to entertain the appeal.

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The conclusion I therefore reach is that the Court of Appeal erred in law in arriving at the conclusion that it had jurisdiction to entertain the appeal before it. It is for the above and the more detailed reasons

contained in the judgment of my learned brother, Mohammed, J.S.C. that I, too, allow this appeal. The judgment and orders of the Court of Appeal dated the 4th day of June, 1994 in the above case are hereby set aside and in substitution thereof the respondent's appeal to the Court of Appeal is hereby struck out. I abide by the order for costs contained in the leading judgment.

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