

COURT OF APPEAL
ENUGU DIVISION
31ST JANUARY, 2000. CA/E/65/98
CORAM:- E. C. UBAEZONU, S. A. OLAGUNJU,
J. A. FABIYI, JJCA.

HUMPREY EZE ENUGWU APPELLANTS
AND

1. DANIEL EZE OKEFI & 3 ORS. RESPONDENTS
(For themselves and on behalf of their
five other relations)

APPEALS - Court - Jurisdiction - Customary right of occupancy matter
- Where there is a competent Magistrate's court - Appeal from a custom-
ary court straight to the High Court without passing through the
Magistrate's court - Is improper

APPEALS - Jurisdiction - Court - Leave to appeal - Where the
Magistrate's court is competent - Excursion to the High Court for leave
to appeal out of time - Is an exercise in futility.

JURISDICTION - Appeal - Issue of jurisdiction - Can be raised at any
stage of a Proceeding - Even on appeal - And it can be raised any how.

JURISDICTION - Court - When a court is said to be properly seised of a
matter.

LAND LAW - Customary right of occupancy - Jurisdiction of a custom-
ary court - Presided over by a person who is not a legal practitioner - To
entertain matters relating to customary right of occupancy - Such a court
is not deprived of jurisdiction - Notwithstanding the provision of section
250 (2) of the 1979 Constitution.

FACTS

The plaintiff/appellant sued the defendants/respondents in the customary court of Udi Customary Court District, Enugu State claiming for an order requiring the defendants to leave the plaintiff's house (compound) and go to their father's house at Amebo Village Obinagu Udi, and an order that the defendants had no claim to the Estate of the plaintiff whatsoever as they are not from Owah Village and not of the same parents with the plaintiff. It is a common ground that the claim relates to the estate of a deceased person in Owah Village in Udi, a non-urban area, that the estate in question comprises house (compound) and therefore land, and that as such the estate is subject to Customary right of occupancy. Judgment was given in favour of the plaintiff/appellant in the Customary court. Dissatisfied the defendants/respondents appealed to the High Court of Enugu Judicial Division. At the High Court, counsel for the plaintiff raised a preliminary objection on the jurisdiction of the High Court and competence of the appeal in view of the fact, inter alia, that the defendants bypassed the Magistrate's Court to which their appeal should lie first before the High Court. The learned trial Judge over ruled the objection hence this appeal to the Court Appeal, Enugu Division. Both parties raised two issues each.

ISSUES FOR DETERMINATION

"(i) Can an appeal from Customary Court on land matter subject to Customary Right of Occupancy lie straight to the High Court bypassing the Chief Magistrate's Court or Senior Magistrate's Court within the jurisdiction.

(ii) Can the mere fact that an appeal found its way into an appellate Court, without the appellant complying with the Rules and conditions of appeal, constitute a valid appeal?"

HELD (Unanimously allowing the appeal per lead Judgment of **UBAEZONU JCA**)

Jurisdiction - Appeals

1. An issue of jurisdiction can be raised at any stage of a proceeding even on appeal. I may add, it can be raised any how. Once the attention of a

court is drawn to an issue of jurisdiction in the proceeding, the court must entertain it and rule on it. The court should not gloss over it. (p. 717 C)

Land Law - Customary right of occupancy

2. The Land Use Act which started life as a Decree was held to be superior to the Constitution of the land. It was later incorporated in and became part of the 1979 Constitution. While Section 41 of the Act gives an Area Court or Customary Court jurisdiction in matters relating to customary right of occupancy, section 250(2) of the Constitution takes away that jurisdiction if the said Court is not presided over by a person qualified to practice as a legal practitioner in Nigeria. I do not know any Area Court or Customary Court of first instance which is presided over by a person qualified to practice as a legal practitioner. It would seem therefore that Section 41 of the Land Use Act is in conflict with section 250(2) of the 1979 Constitution of the Federal Republic of Nigeria. However, section 47(1) of the Land Use Act provides:

"47(1) This Act shall have effect notwithstanding anything to the contrary in any law or rule of law including the Constitution of the Federal Republic of Nigeria....."

What is more, section 274(5) of the 1979 Constitution provides that:

"Nothing in this Constitution shall invalidate the following enactments, that is to say:-

(d) the Land Use Decree 1978".

These provisions of the Land Use Act and the 1979 Constitution settle the question of jurisdiction raised in the respondents' brief. Thus, the fact that the Customary court is not presided over by a person who is qualified to practice as a legal practitioner in Nigeria does not deprive the court of the jurisdiction to entertain this suit. (p. 718 B)

Appeals - Court

3. Thus, the Chief Magistrate's Court Udi has "original jurisdiction to try the cause or matter" but for the provision of S.41 of the Land Use Act

which prescribed the Customary Court as the appropriate Court to exercise jurisdiction over the cause or matter. Under S.49(1)(a) of the Customary Court Edict the appeal in this case should appropriately go first to the Chief Magistrate's Court Udi. The appeal from the Customary Court B straight to the High Court without passing through the Magistrate's Court is improper. The appeal to the High Court is therefore incompetent and should be struck out. (p. 720 D)

C ***Jurisdiction - Court***

4. For a court to have the jurisdiction to entertain a matter, the court must be properly seised of the matter. A court is properly seised of a matter if the matter comes before it in accordance with the rules of the court dealing with the proper pendency of such matters before it. (p. 723 E) D

Court - Leave to appeal

5. Thus, Section 51(3) permits a person wishing to appeal to apply to the appropriate appellate court for leave to appeal. The appropriate appellate court is the Magistrate's Court having jurisdiction within the area of jurisdiction of the Customary Court that gave the decision - Section 49(1)(a) of the 1984 Edict. It is only where the Magistrate's Court in the area of jurisdiction of the Customary Court has no jurisdiction that the intending appellant will go to the High Court under Section 49(1)(b) of the 1984 Edict. It is not disputed that the Chief Magistrate's Court Udi has jurisdiction to entertain the subject matter of the claim. Excursion to the High Court, whether for leave to appeal out of time or for the appeal itself is an exercise in futility. (p. 724 A) G

NOTABLE POINTS OF INTEREST

OLAGUNJU JCA

1. The meaning of unlimited jurisdiction.

H High sounding to the unwary as it seems as if it confers an infinite authority to decide any matter in the universe the Supreme Court has, however, explained in Attorney-General of Lagos State v. The Hon. Justice L.J.Dosunmu, (1989) 3 NWLR (Pt.111) 552; (1989) 20 NSCC. (Pt.II)

545, 460, that the words 'unlimited jurisdiction' are a qualified concept. They are descriptive expressions that vest a court with authority to entertain an action within the limits of the authority conferred on that court by the constitution and statute including the inherent powers of the superior courts of record under sub-section 6(6)(a) of the Constitution. (p. 726 D) B

2. Definition of "Federal cause" and "State cause"

Sub-section 250(3) defines 'Federal cause' as "Civil or criminal cause relating to any matter with respect to which the National Assembly has power to make laws". The cognate expression 'State cause' will denote a reference to any matter with respect to which the State House of Assembly has power to make laws. (p. 728 F) C

3. *Rationale for vesting State Courts with jurisdiction over Federal causes*
In Bronik Motors Ltd. v. Wema Bank Ltd., (1983) 1 SCNLR. 296, the rationale for vesting the state courts with jurisdiction over federal causes was explained by the Supreme Court where at page 330 the court, per Nnamani, J.S.C., opined, inter alia, as follows: D

".....far from supporting the contention of the appellants on the issue of Federal and state judicial power, Sections 250 and 231 of the 1979 Constitution are put in their proper perspective by the historical facts to which I made reference above. Since the newly created Federal High Court.... had no Federal subordinate courts, it seemed logical to confer jurisdiction in federal causes which may arise at such level on State Court." F

Stratification of the jurisdiction of the courts within the legal system of this country along the legislative powers of the Federal and State Governments which is implied by the argument of the learned senior counsel has been shown by the fruit of the analysis in Bronik Motors Ltd. v. Wema Bank Ltd., supra, to be impracticable under a federal system of government precariously balanced on sectional diversity as in this country; and that accounts for the conferment of jurisdiction on the state courts over federal causes arising on the territories of those states. To G H

sustain the argument that such state courts must be presided over by legal practitioners before they are eligible to exercise jurisdiction over federal causes will be putting an unnecessary gloss on sub-section 250(1) of the Constitution. That cannot be and certainly is not the purpose of sub-section 250(2) thereof which from the context of Part III of Chapter VII and Part I of Chapter VIII of the Constitution read together is a reference to an interim judicial groundwork for the Federal Capital Territory. (p. 729 H)

C REPRESENTATION

E.E. Owonta - for the Appellant

H.B.C. Ogboko - for the Respondent

D CASES REFERRED TO

Barclays Bank of Nigeria Ltd. v. Central Bank of Nigeria, (1976) 6 SC. 175

Osadebay v. Attorney-General, Bendel State (1991)1 NWLR. (Pt 169)

E 525, 571,572

Kanada v. Governor of Kaduna State (1986) 4 NWLR. (Part 35) 361

Bronik Motors Ltd. v. Wema Bank Ltd., (1983) 1 SCNLR.296

Din v Attorney-General of the Federation (1988) 1 NWLR (Pt.87) 147

F Iwuaba v. Nwaosigwelem (1989) 5 NWLR (Pt.123) 623

Okoye v. N.C. & F. CO. Ltd (1991) 6 NWLR (P.199) 501

Mba v. Ibe (1999) 4 NWLR (pt.97) 97

Waniko v. Ade-John (1999) 9 NWLR (Pt.619 401 at 405-406

Ababa v. Adeyemi (1976) 10 NSCC 709 at 713

G Chikelue v. Ifemedulike (1994) 3 NACR 58

STATUTES REFERRED TO

H Constitution of the Federal Republic of Nigeria, 1999; S.286(2) Consti-
tution of the Federal Republic of Nigeria 1979; SS. 236, 250, 263, 264,
274(5)

Land Use Act, cap. 202, Laws of the Federation of Nigeria, 1990,

Magistrates' Courts Law (Amendment) Edict, No.18 of Enugu State,

1974; S.3

Magistrates' Courts Law of Enugu State, 1963, (as amended) S. 17(2) and (3)

LEAD JUDGMENT BY UBAEZONU JCA

B

The plaintiff/appellant sued the defendants/respondents in the Customary Court of Udi Customary Court District claiming as follows:-

"(a) For Order of the Court requiring the Defendants to leave the plaintiff's house (Compound) and go to their father's house at Amebo Village Obinagu Udi.

C

(b) Order that the Defendants had no claim to the Estate of the Plaintiff whatsoever as they are not from Owah Village and not of the same parents with plaintiff.

(c) For any other Orders as the Court might deem fit."

D

Judgment was given in favour of the plaintiff/appellant in the Customary Court. Thereupon the defendants/respondents appealed to the High Court of Enugu Judicial Division. At the High Court, counsel for the appellant raised a preliminary objection on the jurisdiction of the High Court and competence of the appeal in view of the fact, inter alia, that the respondents in this court by-passed the Magistrate's Court to which their appeal should lie first before the High Court. The learned trial Judge, Umezulike J., overruled the objection hence this appeal.

F

The appellant filed a brief of argument wherein he formulated two issues for determination thus:

"(i) Can an appeal from Customary Court on land matter subject to Customary Right of Occupancy lie straight to the High Court by passing the Chief Magistrate's Court or Senior Magistrate's Court within the jurisdiction.

G

(ii) Can the mere fact that an appeal found its way into an appellate Court, without the appellant complying with the Rules and conditions of appeal, constitute a valid appeal?"

H

Arguing the issue No. 1, appellant's counsel submits that under Section 49 of the Customary Courts Edict 1984 appeals from the Customary Court shall lie to the Magistrate's Court within the jurisdiction

provided that the Magistrate's Court has original jurisdiction to try such matter. He argues that the Magistrate's Court within the jurisdiction is the Chief Magistrate's court Udi. Under Section 17(2) and (3) of the Magistrate's Court law 1963 as amended by section 3(a) and (c) of the B Magistrate's Court Law (Amendment) Edict No. 18 of 1974, a Chief Magistrate or a Senior Magistrate Grade I or II has original jurisdiction in land matters. Counsel refers to Chikelue v. Ifemedulike (1994) 3 NACR 58 and submits that it was held in that case that an appeal from Customary Court on land subject to customary right of occupancy shall lie first C to the Chief Magistrate's Court or to the Senior Magistrate's Court Grade I or II within the jurisdiction of the said Customary Court - See also Oyeniran v. Egbetola (1997) 5 NWLR (Pt.504) 122; (1997) 5 SCNJ 49 at 112. It is submitted that both the Land Use Act and the Magistrate's D Court Law are existing laws under s. 274 (4) (b) of the 1979 Constitution.

On issue No.II it is submitted that the finding of the learned trial Judge that anything that finds its way to his court, he must entertain it E "unless there are fundamental legal defects..." in the matter is wrong. Learned counsel submits that the reasoning of the learned trial Judge and the conclusion he came to in this regard is contrary to law and had occasioned a miscarriage of justice. For an appeal to be valid, counsel argues, F the appellant must comply with the rules and conditions of appeal. He says that there is nothing on record to show that the respondent paid the filing fee required by the High Court. He complains about a conflict between the motion paper and the affidavit in support. Counsel refers to section 51(1),(2) and (3) of the Customary Court Edict 1984 which stipu- G lates that an appellant who is out of time must first seek leave of the Customary Court for extension of time. If the application is refused he would thereafter apply to the appropriate appellate court for extension of time. It is submitted that there is nothing on the record to show that H provision of the Edict was complied with before the application was made to the High Court. Furthermore, under Rules 68 and 69 of the Customary Court Rules 1987, a Notice of Appeal has to be lodged at the Customary Court that gave the judgment. This provision of the Rule was

not complied with as the Notice of Appeal was headed "In the High Court of Enugu State of Nigeria." Counsel relies on Ababa v. Adeyemi (1976) 10 NSCC 709 at 713.

The respondents filed a respondents' brief and therein formulated two issues as follows:

"I. Whether an appeal from Customary Court in respect of inheritance of properties including land in rural areas (sic) from Customary Court to High Court or Magistrate's Court?"

II. Whether the High Court was right to rule that it is competent to hear and determine the appeal?"

Learned Counsel for the respondents argued both issues together. It is submitted by Counsel that the claim before the Customary Court is unlimited and therefore only the High Court has jurisdiction. The customary court had no jurisdiction to entertain the claim. I shall return to the respondents' brief in this appeal.

The appellant also filed a reply brief in which he contended that it was too late in the day for the respondents to contend that the Customary Court had no jurisdiction since such an issue was not raised in the High Court. The only issue before this court, it is submitted, is whether the appeal in this case can be made directly from the Customary Court to the High Court. Counsel refers to the case of Mba v. Ibe (1999) 4 NWLR (pt.597) 97; Waniko v. Ade-John (1999) 9 NWLR (Pt.619) 401 at 405-406

At the hearing of this appeal, counsel on both sides merely adopted their respective briefs.

This appeal on the face of it looks simple and straight-forward but in actual fact, it is far from that. It has been made more complex by the lousy nature of the respondents' brief. I had not before come across a brief as bad as that. It shows no seriousness and no attempt to grapple with the issues formulated in it or in the appellant's brief. Identical issues as in the appellant's brief were formulated in the respondents' brief but the brief proceeded to argue, still in a very lousy way, a different issue as to jurisdiction. I have set out above the issues formulated in the respondents' brief but in his sketchy argument learned counsel for the respon-

dents argued that even the customary court had no jurisdiction to entertain the appellant's claim. This was not the issue formulated by him. But before I deal with the argument of the respondents' counsel in his brief let me refer to one or two matters in the respondents' brief which shows the nonchalant attitude of respondents' counsel in settling his brief. After formulating the issues, he starts in paragraph 3(1) of his brief as follows:-

"Issues Nos. 1 and 2

Under Section 250(2)

Nothing in the provisions of this section except in so far as other provisions have been made by operation of Section 263 and 264 of the constitution as conferring jurisdiction as respects federal causes or Federal offences upon a Court presided over by a person who is not or has not been qualified to practice as a legal practitioner in Nigeria and Federal Cause means civil or criminal cause relating to any matter with respect to which National Assembly has powers to make laws."

I ask - Section 250(2) of what law? It is not stated in his brief what law he was referring to. One has to use one's legal hunch to land at Section 250(2) of the 1979 Constitution of the Federal Republic of Nigeria. It must be appreciated that at the time counsel drafted his brief in June 1999 there was in existence the 1999 Constitution of the country. Even when one reads section 250 (2) of the 1979 Constitution there is no word in it like "Nothing" as appearing in paragraph 3 (1) of the respondent's brief. What I find in my own copy of the Constitution is "Nothing" not "Nothing". These are two different words. The section was not even correctly copied out. The words "shall be construed" were omitted thus giving an entirely different meaning to the section. It would take a person reading the brief quite sometime to understand what learned counsel was talking about. Then, like a bolt from the blue, paragraph 3(ii) of the brief starts talking about "Land Use Act is a Federal Cause". These were not matters envisaged in the issues formulated by the appellant or the respondent. I am not saying that the respondent cannot raise an argument arising from the Land Use Act but such an issue ought to be properly formulated and argument on it properly developed, I feel sad, very

sad indeed at this type of brief especially when it emanates from the chambers of a Senior Advocate of Nigeria. I have said in a number of my judgments that a bad brief is irksome to the Judge and makes his difficult job a Herculean one. I plead with counsel to show some seriousness in settling their briefs.

Be that as it may, I understand the respondent to be saying that not even the Customary Court where this suit was commenced had the jurisdiction to entertain it. The appellant in his Reply brief counters this by saying that this issue was not raised at this stage. With respect to learned counsel to the appellant, **an issue of jurisdiction can be raised at any stage of a proceeding even on appeal I may add, it can be raised any how. Once the attention of a court is drawn to an issue of jurisdiction in the proceeding, the court must entertain it and rule on it. The court should not gloss over it.**

The respondent would seem to rely on Section 250(2) of the 1979 Constitution of Nigeria. The issue raised here is a serious one. I intend to deal with it first. The said Section provides:

"250(2) Nothing in the provisions of this section shall be construed, except in so far as other provisions have been made by the operation of sections 263 and 264 of this Constitution as conferring jurisdiction as respects Federal causes or Federal offences upon a court presided over by a person who is not or has not been qualified to practise as a legal practitioner in Nigeria."

A "Federal cause" is defined in Subsection (3) of Section 250 to mean a

"civil or criminal cause relating to any matter with respect to which the National Assembly has power to make laws."

The Land Use Act (formerly Land Use Decree) is a legislation of the Federal Government. Land which was dealt with in the Act is therefore a Federal cause. Pursuant to the provisions of section 250(2) of the 1979 Constitution and since the Customary Court in which this was commenced is not presided over by a person qualified to practice as a legal practitioner in Nigeria, it is submitted by counsel that the Customary Court has no jurisdiction to entertain the suit as it was a suit commenced in pursuance of the Land Use Act.

Section 41 of the Land Use Act provides as follows:

"41. An area court or customary court or other court of equivalent jurisdiction in a State shall have jurisdiction in respect of proceedings in respect of a customary right of occupancy granted by a Local Government under this Act; ..."

The Land Use Act which started life as a Decree was held to be superior to the Constitution of the land. It was later incorporated in and became part of the 1979 Constitution. While Section 41 of the Act gives an Area Court or Customary Court jurisdiction in matters relating to customary right of occupancy, section 250(2) of the Constitution takes away that jurisdiction if the said Court is not presided over by a person qualified to practice as a legal practitioner in Nigeria. I do not know any Area Court or Customary Court of first instance which is presided over by a person qualified to practice as a legal practitioner. It would seem therefore that Section 41 of the Land Use Act is in conflict with section 250(2) of the 1979 Constitution of the Federal Republic of Nigeria. However, section 47(1) of the Land Use Act provides:

"47(1) This Act shall have effect notwithstanding anything to the contrary in any law or rule of law including the Constitution of the Federal Republic of Nigeria....."

What is more, section 274(5) of the 1979 Constitution provides that:

"Nothing in this Constitution shall invalidate the following enactments, that is to say:-

(d) the Land Use Decree 1978".

These provisions of the Land Use Act and the 1979 Constitution settle the question of jurisdiction raised in the respondents' brief. Thus, the fact that the Customary court is not presided over by a person who is qualified to practice as a legal practitioner in Nigeria does not deprive the court of the jurisdiction to entertain this suit.

I shall now turn to the issues argued by the appellant in his brief. The first and most important issue is whether the appeal which by-passed

the Magistrate's Court and went straight to the High Court is proper and whether the High Court has jurisdiction to entertain such appeal in view of the fact that the Chief Magistrate's Court Udi had jurisdiction to hear land cases. I shall first of all establish the common grounds between the parties in the case on appeal. It is a common ground that the claim relates to the estate of a deceased person in Owah village in Udi in a non-urban area; that the estate in question comprises house (compound) and therefore land; that the estate being in non-urban area is subject to customary right of occupancy. These facts would seem to be conceded by both sides. Under the Land Use Act, the claim is therefore subject to the customary right of occupancy. What court has jurisdiction to entertain a claim arising from the subject matter of the claim? Under Section 41 of the Land Use Act the appropriate court in Udi Local Government Area of Enugu State is the customary court of Udi. The relevant portion of the Act has already been set out in this judgment. I have already also dealt with the contention of the respondents that the customary court lacked the jurisdiction to entertain the matter. The respondents having lost in the customary court appealed straight to the High Court instead of to the Magistrate's Court. The question which this appeal is to answer is whether the appeal to the High Court instead of to the Magistrate's Court is competent. Section 49(1) of the Customary Courts Edict No.6 of 1984 would seem to provide an answer. It provides as follows:-

"49(1) Subject to the provisions of the Constitution and of this Edict, an appeal from the decision of a Customary Court in any cause or matter shall lie-

(a) to the Magistrate's Court within the area of jurisdiction of the Customary Court that gave the decision if the Magistrate's Court has original jurisdiction to try the cause or matter;

(b) Where Magistrate's Court no jurisdiction to the High Court in the Judicial Division of which the Customary Court that gave the decision is located."

The next question is to find out whether the Magistrate's Court within the area of the jurisdiction of the Customary Court has jurisdiction of the Customary Court has jurisdiction to deal with the subject matter of

the claim. For, if it has, the appeal will go to the Magistrate's Court under S. 49(1) (a) of the Customary Court Edict. If on the other hand, the Magistrate's Court has no jurisdiction, then the appeal will go to the High Court under S.49(1)(b) of the Edict. The relevant law is the Magistrate's Court Law 1963 as amended by the Magistrates' Courts Law (Amendment) Edict 1974. Section 3 of the Magistrates' Courts Law (Amendment) Edict No. 18 of 1974 amends Section 17(2) and (3) of the Magistrates' Court Law 1963 as follows:

"(2) A Chief Magistrate or a Senior Magistrate Grade 1 or II shall within the area of his jurisdiction, have and exercise unlimited jurisdiction in suits or matters to title to or interest in any land."

(3) A Magistrate Grade 1 or II shall have and exercise jurisdiction in suits relating to trespass to land."

Thus, the Chief Magistrate's Court Udi has "original jurisdiction to try the cause or matter" but for the provision of S.41 of the Land Use Act which prescribed the Customary Court as the appropriate Court to exercise jurisdiction over the cause or matter. Under S.49(1)(a) of the Customary Court Edict the appeal in this case should appropriately go first to the Chief Magistrate's Court Udi. The appeal from the Customary Court straight to the High Court without passing through the Magistrate's Court is improper. The appeal to the High Court is therefore incompetent and should be struck out. In Chikelue v. Ifemedulike (supra) the Court of Appeal in very certain terms held that an appeal from the Customary Court where there is a Magistrate's Court having jurisdiction over the subject matter of the claim should first of all go to the Magistrate's Court and from thence to the High Court. Said Tobi J.C.A. in his lead judgment at Page 67 of the law report:

".....Accordingly by the combined interpretation of Section 49(1)(a) of the Customary Court Edict, 1984 and the provisions of Section 17(2) & (3) of the Magistrates Courts Law, 1963 as amended by the Magistrates Courts Law (Amendment) Edict, 1974, appeal in this matter lies, in the first instance, to the appropriate Magistrate's Court and not to the High Court. In other words, the High Court has no jurisdiction to

entertain appeal in the first instance. The position of the law is that where a Court lacks jurisdiction to hear a matter, it must be struck out. See Din v Attorney-General of the Federation (1988) 1 NWLR (Pt.87) 147; Iwuaba v. Nwaosigwelem (1989) 5 NWLR (Pt.123) 623; Okoye v. N.C. & F. CO. Ltd (1991) 6 NWLR (P.199) 501. " (*Italics mine for emphasis*) B

My amazement is that in spite of the fact that this decision was cited to the learned Judge of the High Court and he seemed to have read it but failed to follow it. Said the learned Judge at page 21 of the record of appeal: C

"I now come to what the superior authorities say. Counsel arguing the objection cited with great confidence the Court of Appeal decision in Jeremiah Chikelue v. Ezennia Ifemedulike (supra) of (1994) 3 NACR 58. It is my respectful view that Chikelue v. Ifemedulike (supra) D did not decide that on no account must an appeal go straight from the Customary Court to the High Court." (*Italics mine for emphasis*)

With respect to the learned Judge, whose intellectual prowess I admire, the Court of Appeal said exactly what he said the Court did not say - See E the above portion of the judgment of the Court of Appeal italicized by me for emphasis. How else would the Court say that an appeal from the Customary Court should not go straight to the High Court?

Again in Oyeniran v Egbetola (supra) the Supreme Court per F Onu J.S.C at page 112 stated unequivocally

".....clearly under the above law, therefore, original jurisdiction would not appear to be vested in the High Court in respect of customary right of occupancy save by way of appeal from Customary Courts through Magistrate's Courts to the High Court". (*Italics mine for emphasis*) G

In fairness to the Judge however, Oyeniran v. Egbetola (supra) was later in time to the learned Judge's ruling. In Onyishi Ugwu Nwagbo Nwa Ohuta & Ors. v. Onyishi Ugwuja Ezugwu Okigbo (1995)4 NWLR (Pt.389) 352 the Court was considering the effect of a wrongly headed Notice H and Grounds of Appeal. At the concluding part of his judgment Akintan J.C.A. Observed obiter at page 366 as follows"..... Since the subject matter of the suit was land and of which the Magistrate has no jurisdic-

tion....." There is nothing in the law report to show that the Court was referred to or considered Section 3 of the Magistrates' Court Law (Amendment) Edict No.18 of 1974 which amended Section 17(2) and (3) of the Magistrates' Courts Law 1963 giving jurisdiction on land matters to a Chief Magistrate or a Senior Magistrate Grade 1 or 11. Section 3 of the Magistrates' Courts Law (Amendment) Edict No.18 of 1974 has been set out earlier in this judgment. The Onyishi Ugwu case (supra) cannot therefore be an authority for saying, as the learned Judge of the High Court said, that "the Court of Appeal per Akintan, J.C.A. was emphatic that Magistrate's Courts have no jurisdiction in land matters at the commencement of the Land Use Act." The observation of Akintan J.C.A. cannot be the law in the face of Edict No.18 of 1974, the decision of the Court of Appeal in Chikelue v. Ifemedulike (supra) and the decision of the Supreme Court in Oyeniran v. Egbetola (supra).

In the final analysis on the appellant's issue No.1 the appeal to the High Court is incompetent and ought to have been struck out by the High Court.

As the appellant's issue No.1 disposes of this appeal, I shall only deal briefly with issue No. 2. The part of the ruling complained of in this issue can be found at page 17 of the record of appeal. It is also set out in the appellant's brief as follows:-

".....So consequently whether or not the appeal ought to have been first filed in the Registry of the Udi Customary Court under the Rules and the law, the point is that it has found its way to this Court and unless there are fundamental legal defects, I cannot close my eyes to it or pretend that it does not exist. In any case my record clearly shows that on 26/10/95, the High Court of Enugu presided over by the Chief Judge of the State granted the appellants' prayer for extension of time within which to appeal against the judgment of the trial Customary Court. This is clearly permitted under Section 51(3) of the Customary Court Edict 1984 where especially the trial Customary Court has refused leave to appeal. Leave and extension of time having been granted by another High Court, they are beyond my power to re-examine. For these reasons, it is my respectful view that the objection that no valid appeal has been filed

falls also to the ground and could not be sustained."

The above statement of the learned Judge of the High Court, if not corrected, may create a problem for the courts below the High Courts or even for the High Courts whose judgments are persuasive to each other. The "fundamental legal defects" which the Judge had in mind are not B spelled out. Could the Judge mean that whenever any case finds its way into his court he would proceed with it not minding how it came to his Court? This is not what the case of Onyishi Ugwu Nwagbo Nwa Ohuta (supra) decided. What the case was concerned with was the technicality C of stating that the Notice and Grounds of Appeal were to the Magistrate's Court but the papers found their way to the High Court. The Court of Appeal held that the appeal ought not to be struck out but should be proceeded with in the High Court. I venture to say that the proper order D was to send back the appeal to the Magistrate's Court where it rightly belongs. I hope that the fact that the learned Judge of the High Court was overruled in the Onyishi Ugwu case (supra) has not unduly played on his mind.

For a court to have the jurisdiction to entertain a matter, E the court must be properly seised of the matter. A court is properly seised of a matter if the matter comes before it in accordance with the rules of the court dealing with the proper pendency of such matters before it. I have held that the proper forum for the appeal in F this matter is the Magistrate's Court having jurisdiction in land matters within the area of jurisdiction of the Customary Court. From the Magistrate's Court, the appeal will then go to the High Court. If the appeal jumps the tyle by by-passing the Magistrate's Court, the High G Court has no jurisdiction to entertain such an appeal. Such an appeal is affected by, to use the language of the Judge, a "fundamental legal defect". The Chief Judge of the State High Court who granted extention of time had no jurisdiction to so grant it. The purported extension of time granted by him is null and void and of no effect. Section 51(3) of the H Customary Court Edict 1984 cannot be relied upon. It provides :-

"51(3) Where the Customary Court refuses leave to a person wishing to appeal, he may appeal (sic) to an appropriate appellate court

for leave to appeal, and the appellate court may refuse or grant the same upon such terms and conditions as it deems just."

Thus, Section 51(3) permits a person wishing to appeal to apply to the appropriate appellate court for leave to appeal. The appropriate appellate court is the Magistrate's Court having jurisdiction within the area of jurisdiction of the Customary Court that gave the decision - Section 49(1)(a) of the 1984 Edict. It is only where the Magistrate's Court in the area of jurisdiction of the Customary Court has no jurisdiction that the intending appellant will go to the High Court under Section 49(1)(b) of the 1984 Edict. It is not disputed that the Chief Magistrate's Court Udi has jurisdiction to entertain the subject matter of the claim. Excursion to the High Court, whether for leave to appeal out of time or for the appeal itself is an exercise in futility.

This appeal therefore succeeds on the two issues formulated by the appellant in this appeal. The appeal is allowed. The ruling of the High Court in this matter in Suit No. E/3A/93 made on 12th day of July 1996 is hereby set aside. The appellant shall have N3,000.00 costs against the respondents.

OLAGUNJU JCA

I have had a preview of the judgment just delivered by my learned brother, Ubaezonu, J.C.A. I agree absolutely with him that this appeal should be allowed on the ground that the court below had no jurisdiction to hear an appeal from the decision of the trial court which stairway on the appellate ladder leads first to the Chief Magistrate's Court in the locality which is a step lower than the court below.

The leading judgment has painstakingly unravelled what appears to be a relay of a triadic knot of jumbles that formed the arrow-head of blunders coalescing in a misconception of the law which beclouded the simple issue calling for a resolution. But the presumptuous tenacity of the court below over an error of law on an elementary point provokes a few concurring comments so as to sieve the wheat from the chaff.

Firstly, the obsession by the learned High Court appellate judge with expanding his jurisdiction by declaring his preparedness to entertain any matter that surfaced on the Cause List in his court betrays a scanty comprehension of what is meant by 'jurisdiction', defined in National Bank of Nigeria Ltd. v. Shoyoye, (1977) 5 SC. 181, 190 -191, as "The authority which a court has to decide matters that are litigated before it; or to take cognizance of matters presented in a formal way for its decision". See also Ndaeyo v. Ogunnaya, (1977) 1 SC,11,24; Achineku v. Ishagba, (1988) 4 NWLR (Pt 89) 411,419' and Maiwa v. Abdu (1986) 1 NWLR (Pt.177) 437. B C

With the provisions of sub-section 49(1) of the Customary Courts Edict, Nos. 6 of 1984, of Enugu State and sub-sections 17(2) and (3) of the Magistrates' Courts Law of that state as amended by Law No. 18 of 1974 which vested a Chief Magistrate of an area with jurisdiction to hear an appeal from the Customary Court within the area and having regard to the existence of a Chief Magistrate's Court at Udi within the area of jurisdiction of the court below it became crystal clear that appeal from the decision of the Udi Customary Court which tried the action on appeal lay to the Chief Magistrate's Court, Udi, and not to the State High Court. D E

Against the background of the foregoing statutory provisions, the stand of the High Court appellate judge that it was open to him to entertain an appeal direct from the customary court is presumptuous going by the general presumption that the learned appellate judge knows the law. It is insufferably arrogant and runs against the canon of judicial ethics to have refused to follow the decision of this court in Chikelue v. Ifemedulike (1994) 3 NACR 58, a decision which is vindicated by the Supreme Court's subsequent decision in Oyeniran v. Egbetola (1997) 5 NWLR (Pt.504)122; (1997)5 SCNJ 94, 112, on a legislation that is in pari materia with sub-section 49(1)(a) of the Customary Courts Edict, 1984, of Enugu State. F G

To say the least, by his refusal to follow the decision of this Court on the pretext of distinction which is not borne out by the facts of the case the learned appellate judge has acted with uncommon effrontery and deserves the fury and venom of the Supreme Court in Tsamiya v. H

Bauchi Native Authority (1957) SCNLR 220 (1957) NNLR 72, 82-83; and Atolagbe v. Awuni (1997) 9 NWLR (Pt.522) 536, 7 SCNJ 1, 20-21, 24 and 35, which I hereby adopt to deprecate the recalcitrancy of the learned judge that has led to this avoidable appeal.

B On the positive side, the learned judge should come down from his high horse and be humbled by the examples of the Supreme Court which as the apex court in this country declined jurisdiction to entertain appeals against the decisions of the Court of Appeal where the statute which created the right of appeal against the decision on the dispute limited the right to the Court of Appeal. See Esewe v. Gbe, (1985) 5 C NWLR (Pt.93) 134; and the refusal of that court to overrule the decision in Orubu v. National Electoral Commission, (1988) 5 NWLR. (Part 94) 323, 352-353, which followed shortly afterwards.

D Obviously, the learned High Court appellate judge might have been carried away by the romantic epithet 'unlimited' used in section 236 of the Constitution of the Federal Republic of Nigeria, 1979, to qualify the jurisdiction of the High Court. High sounding to the unwary as it seems as if it confers an infinite authority to decide any matter in the universe the Supreme Court has, however, explained in Attorney-General of Lagos State v. The Hon. Justice L.J.Dosuannu, (1989) 3 NWLR (Pt.111) 552; (1989) 20 NSCC. (Pt.II) 545, 460, that the words 'unlimited jurisdiction' are a qualified concept. They are descriptive expressions that vest a court with authority to entertain an action within the limits of the authority conferred on that court by the constitution and statute including the inherent powers of the superior courts of record under sub-section 6(6)(a) of the Constitution.

G However, as it was pungently put by Nasir, P., in Fawehinmi v. Akilu (1989) 3 NWLR (Pt.112) 643; 671, 'no inherent power can add to the jurisdiction of any court of record where no jurisdiction to hear a particular matter has been vested by the Constitution or statute law'. H Finally, on this point, is the reminder that a court has the right to expound its jurisdiction but it lacks the capacity to expand it.

Secondly, equally unenlightened is the argument of learned counsel for the appellant in his Reply Brief of Argument that it was not competent

for the respondent to raise in this court the issue of lack of jurisdiction by the trial court to entertain the appellant's action because the issue was not raised at the court below. This is a gross misconception of the law by the learned counsel.

This is because it is trite that the question of jurisdiction is B
fundamental to adjudication the importance of which is underscored by
the latitude that the issue can be raised at any stage of the proceedings
and can even be raised for the first time at the apex court. See Oloriode
v. Oyebi (1984) 1 SCNLR 390; (1984) 5 SC 1, 32-33, Aladegbemi v. C
Fasanmade (1988) 3 NWLR (pt.81) 129; (1988) 6 SCNJ 103, 129-130;
Oloba v. Akereja (1988) 3 NWLR (pt.84) 508,520;526-527; and Ogigie
v. Obiyan (1997) 10 NWLR (Pt.524) 179, 196. Because of the far-
reaching consequence of exercising judicial powers without jurisdiction
the question of jurisdiction can be taken by the court suo motu; see D
Odiase v. Agho (1972) 1 All NLR (Pt.1) 170,176; Mogaji v. Cadbury
Nigeria Ltd. (1985) 2 NWLR (Pt.7) 393;(1985) 16 NSCC (Pt.II) 959,
993; and Din v. Attorney-General of the Federation (1988) 4 NWLR
(Pt.87) 147, 175. E

The third point which is the gravamen of the exhibition of errors
is a pretty kettle of fish. It is the hazy and barely intelligible formulation
of issues by learned Senior Advocate for the respondents which is bad
enough coming from quarters where craftsmanship is expected. It is F
worse compounded when in arguing the appeal the learned senior counsel
veered off to argue what attracted him as an important constitutional
matter not arising from the two issues formulated by the respondents or
from the two not dissimilar issues framed by the appellant.

The argument into which the learned senior counsel drifted with- G
out rhyme or reason is that the trial customary court had no jurisdiction
to entertain the appellant's action in the first place because none of the
members of that court is qualified as a legal practitioner as laid down by
sub-section 250(2) of the Constitution of the Federal Republic of Nige- H
ria, 1979. The sub-section is an ipsissima verba of sub-section 286(2) of
the 1999 Constitution as also the corresponding sub-sections (1) and (2)
thereof.

I agree with the observation in the leading judgment that the argument of the learned Senior Advocate for the respondents is muddled up and unrelated to the issues formulated in the Briefs of Argument of both parties and of dragging in the Land Use Act as being in conflict with the constitutional provisions as regards the jurisdiction of the trial customary court. I also agree with the view of my learned brother that because the argument raised the issue of jurisdiction that rubs on constitutional matter it should be examined notwithstanding the inept and unorthodox method of presenting the issue by the learned senior counsel though I will take the liberty to adopt a different approach in my examination of the problem.

Sub-section 250(1) of the 1979 Constitution vests a state court with jurisdiction over 'Federal causes' in both civil and criminal causes in respect of matters which a state law conferred such a court with jurisdiction to hear and determine. This was followed by sub-section 250(2) which provides that:

Nothing in the provisions of this section shall be construed, except in so far as other provisions have been made by the operation of sections 263 & 264 of this Constitution, as conferring jurisdiction as respects Federal causes or Federal offences upon a court presided over by a person who is not or has not been qualified to practise as a legal practitioner in Nigeria."

Sub-section 250(3) defines 'Federal cause' as "Civil or criminal cause relating to any matter with respect to which the National Assembly has power to make laws". The cognate expression 'State cause' will denote a reference to any matter with respect to which the State House of Assembly has power to make laws. Sections 263 and 264 to which reference is made in sub-section 250(2), reproduced above, are under Part I of Chapter VIII of the Constitution headed 'Federal Capital Territory' and the two sections deal, respectively, with 'application of Constitution' and 'adaptation of certain references' in both cases to the Capital Territory.

Against this background, if the two sections mentioned in sub-section 250(2) are references to the application of the provisions of the

Constitution and adaptation of some of the terminologies of the Constitution to the Federal Capital Territory the argument of learned Senior Advocate that sub-section is a rider to the jurisdiction vested in the state courts by sub-section 250(1) thereof is erroneous. It is a patent misreading of sub-section 250(2) by the learned senior counsel as on the clear language of the subject matter of sections 263 and 264 of the Constitution it is a reference to the necessary judicial infrastructure for establishing in the Federal Capital Territory courts that are presided over by non-legal practitioners to bring the legal framework of that Territory in line with that of any of the remaining states of the federation where the legal framework has taken a firm root. It cannot be otherwise.

To accept the argument of the learned senior counsel that sub-section 250(2) enjoins that exercise of jurisdiction over federal causes by the appropriate state courts must be by the courts presided over by the legal practitioners is to negate the purpose of sub-section 250(1) of the Constitution. When the argument is related to the focus of the learned senior counsel which is the operation of the category of the courts concerned in land matters that are under the Land Use Act federal causes it is a recipe for chaos having regard to the fact that the generality of the members of the area/customary courts with original jurisdiction over land matters in non-urban areas are lay-people who are not trained lawyers.

The implication will be an outright repeal of section 41 of the Land Use Act which confers jurisdiction in respect of land situated in the non-urban area of a state of the federation on the area or customary courts thus throwing into the wilderness the tribe of litigants over land matters in non-urban areas of the country. I shudder to conjecture the spectacle of the anarchy, But that is just by the way to demonstrate the abyss into which the wrong construction urged to be placed on section 250 of the Constitution may lead. It is comforting, however, that the existence of that section is based on a strong policy consideration weightier than the consequences of abrogation of section 41 of the Land Use Act which is the balancing of the polity.

In Bronik Motors Ltd. v. Wema Bank Ltd., (1983) 1 SCNLR.

296, the rationale for vesting the state courts with jurisdiction over federal causes was explained by the Supreme Court where at page 330 the court, per Nnamani, J.S.C., opined, inter alia, as follows:

".....far from supporting the contention of the appellants on the issue of Federal and state judicial power, Sections 250 and 231 of the 1979 Constitution are put in their proper perspective by the historical facts to which I made reference above. Since the newly created Federal High Court.... had no Federal subordinate courts, it seemed logical to confer jurisdiction in federal causes which may arise at such level on State Court."

Stratification of the jurisdiction of the courts within the legal system of this country along the legislative powers of the Federal and State Governments which is implied by the argument of the learned senior counsel has been shown by the fruit of the analysis in Bronik Motors Ltd. v. Wema Bank Ltd., supra, to be impracticable under a federal system of government precariously balanced on sectional diversity as in this country; and that accounts for the conferment of jurisdiction on the state courts over federal causes arising on the territories of those states. To sustain the argument that such state courts must be presided over by legal practitioners before they are eligible to exercise jurisdiction over federal causes will be putting an unnecessary gloss on sub-section 250(1) of the Constitution. That cannot be and certainly is not the purpose of sub-section 250(2) thereof which from the context of Part III of Chapter VII and Part I of Chapter VIII of the Constitution read together is a reference to an interim judicial groundwork for the Federal Capital Territory.

For a survey of the historical development of the conferment of jurisdiction in respect of federal causes on the state courts and the regional courts before them, see pages 341-344 of the Law Reports of the Bronik Motors' Case. The conferment of jurisdiction on those courts started with the model of Constitution which had no equivalent of the controversial sub-section 250(2) of the 1979 variant. A reflection on the underlying rationale shows that the provisions for the exercise of jurisdiction over federal causes by the state courts are based on a well thought

out policy grounded on sound reasoning and perception that is not defeasible by a clumsy attack based on an ill-digested critique that is not shown to be backed by any homework.

Therefore, as the land the subject of dispute over inheritance which the learned Senior Advocate used as a springboard to reach out to the Land Use Act which relevance to the issue formulated by the parties is far-fetched is situated at Udi in Enugu State and not at the Federal Capital Territory, Abuja, the introduction of sub-section 250(2) of the Constitution is a gamble and a thoughtless gaffe, a naive hair-splitting over a serious appellate business.

Similarly, using the dispute over inheritance to drag in the Land Use Act with a view to throttling it betrays lack of appreciation of the basic issue raised by the appeal which does not impinge upon the legal position of the Act. However, in order to correct the misconception on the matter it will be enough to chip in for the avoidance of doubt that the status of the Land Use Act as a member of the household of the Constitution has been settled by the Supreme Court in Nkwocha v. Governor of Anambra State (1984) 1 SCNLR 634 at page 652; (1984) 15 NSCC, 484, where the court, per Eso, J.S.C., explained, at page 494, that:

".... in view of all these provisions of section 274 ... the Land Use Act is not an integral part of the Constitution. It is an ordinary statute which became extraordinary by virtue of its entrenchment (S.274 (5) in the Constitution..."

But the Supreme Court refused to decide the question of the legal consequence of a conflict between any provision of the Land Use Act and the provision of the Constitution because the issue did not arise from the proceeding before this court in the case it stated to the Supreme Court on constitutional matters.

However, in Kanada v. Governor of Kaduna State (1986) 4 NWLR. (Part 35) 361, this court took the bull by the horns following its earlier unreported decision in Dade v. Governor of Kaduna State, Case H No. FCA/K/12/83 of 30/11/84, and expounded at pages 376-378, that since the Supreme Court in Nkwocha v. Governor of Anambra State, supra, had decided that the Land Use Act is not an integral part of the

Constitution but an Act of the National Assembly by virtue of section 274 of the Constitution which gives the court the power to declare in valid the provision of any law that is in conflict with the Constitution sub-section 47(2) of the Land Use Act that was in conflict with section 236 of the constitution was, protanto, null and void. That is the law.

In the final analysis, the putative appeal before the court below was incompetent as sheer ambush by that court to exact jurisdiction for itself which the court had no authority to do. In the works of Belgore J.S.C., in Osadebay v. Attorney-General, Bendel State (1991)1 NWLR. (Pt 169) 525, 571,572:

"Courts are creatures of statute based on the Constitution. Their jurisdictions are based on statutes and no court assumes jurisdiction without enabling statute....."

"When there is no jurisdiction the court will act ultra vires should it venture to assume one; for a court embarking on the hearing of a matter not within its jurisdiction is exercising in moot... Barclays Bank of Nigeria Ltd. v. Central Bank of Nigeria, (1976) 6 SC. 175."

The appeal to this court is punctuated by a welter of errors that are a carry-over from the fundamental misconception of the law by the learned High Court appellate judge who in terms of his judicial authority would not seem to see the wood for the trees. For the reasons herein canvassed coupled with the fuller reasons given in the leading judgment I too will allow this appeal and set aside as ineffectual the ruling of the court below in suit No.E/3A/93 on 12/7/96. I award N3.000 costs against the respondent.

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FABIYI JCA

I have had a preview of the lead judgment just handed out by my learned brother, Ubaezonu, J.C.A I agree with same

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