

**SUPREME COURT OF NIGERIA**  
FRIDAY 25TH APRIL, 2003. SC. 24/1997  
**CORAM:- M. E. OGUNDARE, U. MOHAMMED, A. I. IGUH,**  
**A. I. KATSINA-ALU, S. O. UWAIFO A. O. EJIWUNMI,**  
**D. MUSDAPHER, JJSC**

1. IORPUUN HIRNOR  
2. AULE ICHUGH ..... APPELLANTS  
AND  
1. AERSAR DZUNGU YONGO  
2. AYAGWA YONGO  
3. AKAZUA YONGO ..... RESPONDENTS  
4. MODOM YONGO  
5. KWAGHTAGHER YONGO  
6. TOR YONGO

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APPEALS - Right of appeal - Customary Court of Appeal - By 1979 Constitution s. 224 - Appeal does not lie from that court to Court of Appeal - On ground which does not raise a question of customary law (H1)

APPEALS - Leave - Customary Court of Appeal - By 1979 Constitution s.224 - Leave to appeal against decision of the court - Is required only at instance of an interested person - As a party thereto may appeal as of right (H2)

**FACTS**

Plaintiffs/respondents instituted this action against defendant/appellants at the Adikpo Upper Area Court in Benue State, claiming declaration to title to a parcel of farm land. After hearing, the court dismissed respondents' claims and entered judgment in favour of appellants. Respondents being dissatisfied, lodged an appeal at the Customary Court of Appeal Benue State, upon the sole ground that the decision of the trial court was against the weight of evidence. Before the appeal came on for hearing, appellants filed a notice of preliminary objection before the court, contending that the original sole ground of appeal filed against the decision of the trial court had nothing to do with any question of customary law and that the ap-

peal was therefore incompetent and unarguable. The objection was overruled. Following this ruling, appellants filed an application before the same court for leave to appeal to the Court of Appeal, Jos Division against the said ruling.

The application was predicated on the ground that although the issue involved was not a question of customary law as provided under section 224 of the Constitution of the Federal Republic of Nigeria, 1979, appellants could validly appeal with leave on matters other than customary law. The court dismissed this application and held that appeals from a decision of the Customary Court of Appeal to the Court of Appeal pursuant to the aforementioned section by a party thereto is as of right and required no leave. Following this dismissal, defendants filed an identical application directly to the Court of Appeal seeking for the leave of that court to appeal against the decision of the Benue State Customary Court of Appeal. The Court of Appeal struck out the application for want of jurisdiction. Aggrieved further, appellants have now appealed to the Supreme Court.

### **ISSUES FOR DETERMINATION**

*“1. Under the 1979 Constitution of the Federal Republic of Nigeria, does an appeal lie from a decision of the Customary Court of Appeal to the Court of Appeal on a ground of appeal which does not raise a question of customary law?”*

*2. Can the courts by themselves seek to remedy the situation by expanding the jurisdiction of the superior courts over decisions of the Customary Court of Appeal beyond what is envisaged in S. 224 of the 1979 Constitution of the Federal Republic of Nigeria?”*

**HELD** (Unanimously dismissing the appeal per **IGUH JSC**)

*Right of appeal - Customary Court of Appeal*

**1. In the face of the express provisions of section 224 of the Constitution of the Federal Republic of Nigeria, 1979 it is plain that an appeal lies from a decision of the Customary Court of Appeal of a State to the Court of Appeal as of right with respect to complaints on any question of customary law or such other matters as may be prescribed by an Act of the National**

**Assembly. No such other matters would appear to have so far been prescribed by any Act of the National Assembly pursuant to the said section 224(1) of the 1979 Constitution. It can therefore be said that an appeal for the time being does not lie from a decision of the Customary Court of Appeal to the Court of Appeal on a ground which does not raise a question of customary law. (p. 937 E)**

*APPEALS - Leave - Customary Court of Appeal*

**2. Turning now to issue 2, it is clear pursuant to the provisions of section 224 of the 1979 Constitution that as between parties to a suit, an appeal to the Court of Appeal is as of right so long as it concerns a question of customary law and such other matters as may be prescribed by an Act of the National Assembly. It is only where an appeal in respect of a question of customary law and such other matters as may be prescribed by an Act of the National Assembly is at the instance of any other person having an interest in the matter, other than the parties, that the leave of the Customary Court of Appeal or of the Court of Appeal will become necessary before such an appeal may lie. There are, therefore, two modes of invoking the jurisdiction of the Court of Appeal with regard to appeals from the State Customary Courts of Appeal. The first is as of right at the instance of a party thereto. The second is with the leave of the Customary Court of Appeal or the Court of Appeal at the instance of any other person having an interest in the matter. (p. 938 B)**

**REPRESENTATION**

G M. K. Aondoakaa, Esq. with E. A. Uzer, Esq., for the Appellants  
J. S. Mshelia, Esq., for the Respondents

**CASES REFERRED TO**

Pam v. Gwom (2000) 2 NWLR (Pt. 644) 322

Shodehinde v. Regd. Trustees Ahmadiyya Movement (1983) 2 SCNLR 284

Babang Golok v. Mambox Diyalpwan (1990) 3 NWLR (Pt. 139) 411

**STATUTES REFERRED TO**

Constitution of Federal Republic of Nigeria, s. 224(2) (a)

Benue State Customary Court of Appeal Edict, 1994, s. 39 (1)

**LEAD JUDGMENT BY IGUH JSC**

B The proceedings leading to this appeal were first initiated at  
the Adikpo Upper Area Court in Benue State. In that court, the re-  
spondents, as plaintiffs, claimed against the defendants, now appel-  
lants, a declaration of title to a piece or parcel of farm land situate at  
C Mbaper, Shangevyia in Kwanda Local Government Area of Benue  
State.

The trial court, at the conclusion of hearing, dismissed the plain-  
tiffs' claims and entered judgment in favour of the defendants. The  
plaintiffs, being dissatisfied with this decision of the trial Upper Area  
D Court, lodged an appeal against the same to the Customary Court of  
Appeal, Benue State, upon the sole ground that the decision of the  
trial court was against the weight of evidence. Subsequently the plain-  
tiffs applied for leave to file additional grounds of appeal before the  
Customary Court of Appeal, Benue State.

E Before the appeal came on for hearing, the defendants filed a  
notice of preliminary objection before the Customary Court of Ap-  
peal, Benue State. In it, they contended that the original sole ground  
of appeal filed against the decision of the trial court had nothing to  
do with any question of customary law and that the appeal was there-  
F fore incompetent and unarguable. They further argued that since  
there was no valid appeal properly pending before the Customary  
Court of Appeal, the appellants' application to file and argue addi-  
tional grounds of appeal was unsustainable, incompetent and mis-  
G conceived and that the same ought to be dismissed.

The defendants' preliminary objection was on the 12th day of  
November, 1996 overruled by the Customary Court of Appeal and  
the plaintiffs were granted 14 days within which to file their proposed  
additional grounds of appeal. The appeal was adjourned to the 10th  
H February, 1997 for hearing.

Following this ruling, the defendants filed an application be-  
fore the Customary Court of Appeal for leave to appeal against the  
said decision to the Court of Appeal, Jos Division. The application  
was predicated on the ground that although the issue involved was

not a question of customary law as provided under section 224 of the Constitution of the Federal Republic of Nigeria, 1979, the defendants could validly appeal with leave on matters other than customary law.

The Customary Court of Appeal on the 2nd day of December, 1996 dismissed this application. It held that appeals from a decision of the Customary Court of Appeal to the Court of Appeal pursuant to the provisions of section 224 of the 1979 Constitution by a party thereto is as of right and required no leave. B

Following this dismissal, the defendants filed an identical application direct to the Court of Appeal, Jos Division seeking for the leave of that court to appeal to the Court of Appeal against the decision of the Benue State Customary Court of Appeal dated the 12th day of November, 1996. The Court of Appeal on the 17th day of February, 1997 ruled that it had no jurisdiction to entertain appeals from the Customary Court of Appeal in matters other than customary law and such other matters as may be prescribed by an Act of the National Assembly pursuant to the provisions of section 224(1) of the Constitution of the Federal Republic of Nigeria, 1979. It held that as the proposed appeal was neither concerned with any question of customary law nor with any matter prescribed by an Act of the National Assembly pursuant to the provisions of section 224(1) of the 1979 Constitution, it had no jurisdiction to entertain the same. It accordingly struck out the defendants' application for want of jurisdiction. The defendants have now appealed to this court against this decision of the Court of Appeal. I shall hereinafter refer to the defendants and the plaintiffs in this judgment as the appellants and the respondents respectively. C  
D  
E  
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The parties pursuant to the rules of this court filed and exchanged their written briefs of argument. The two issues distilled from the appellants' grounds of appeal set out on their behalf for the determination of this appeal are as follows:- G

*"1. Whether the Court of Appeal has jurisdiction to entertain an appeal challenging the decision of Benue State Customary Court of Appeal, relating to competence of grounds of appeal before it. H*

*2. If the answer to the above issue is in the affirmative, whether grounds exist in this appeal which warrant a departure from the decision of this Honourable Court in the case of Pam v. Gwom (2000)*

2 NWLR (Pt. 644) 322.”

The respondents, on the other hand, submitted that having regard to the facts of the case and the grounds of appeal filed by the defendants, the two issues that arise for determination in this appeal are as follows:-

B “1. Under the 1979 Constitution of the Federal Republic of Nigeria, does an appeal lie from a decision of the Customary Court of Appeal to the Court of Appeal on a ground of appeal which does not raise a question of customary law?

C 2. Can the courts by themselves seek to remedy the situation by expanding the jurisdiction of the superior courts over decisions of the Customary Court of Appeal beyond what is envisaged in S. 224 of the 1979 Constitution of the Federal Republic of Nigeria?”

D At the hearing of the appeal, learned leading counsel for the appellants, M. K. Aondoakaa, Esq. applied for and was granted the leave of this court to withdraw issue 2 set out in the appellants’ brief of argument for the determination of this court. Issue 2, having been withdrawn, was accordingly struck out.

E I have given a close study to the issues raised by the parties for the determination of this appeal and it is clear to me that having regard to the grounds of appeal filed, the two issues formulated on behalf of the respondents firmly clinch the questions for determination in this appeal. I shall therefore adopt them for my resolution of this appeal. At the oral hearing of the appeal before us, both learned  
F counsel for the parties adopted their respective briefs of argument. The main submission of learned leading counsel for the appellants is that the Court of Appeal being a superior court of record, the presumption is that nothing shall be intended to cut its jurisdiction unless  
G the contrary is so expressly stipulated. Citing the decision of this court in Shodehinde v. Registered Trustees, Ahmadiyya Movement (1983) 2 SCNLR 284; (2001) FWLR (Pt. 58) 1065 he submitted that while a person’s access to have his civil rights adjudicated upon by the court may be restricted or ousted by a statute, the language of such  
H a statute must be construed rather strictly and that ouster of jurisdiction needs express words for effectiveness. Learned counsel conceded that the appellate jurisdiction of the Benue State Customary Court of Appeal is restricted to questions concerning customary law only. He further conceded that the sole ground of appeal filed in the cause

which complained of weight of evidence could hardly be said to involve any question concerning customary law and that consequently an application for leave to file and argue additional grounds of appeal could not in law be sustainable. He however submitted that if the Benue State Customary Court of Appeal wrongly assumed jurisdiction in the case, it is the duty of the Court of Appeal to review the decision of the Customary Court of Appeal and do what is appropriate in the interest of justice. In conclusion, learned counsel argued that a liberal and constitutional approach in the interpretation of section 224(1) of the 1979 Constitution with the other relevant laws in force confer jurisdiction on the Court of Appeal over the proceedings in issue. He urged the court to allow the appeal. Learned counsel for the respondents, Mr. J. S. Mshelia, in his reply submitted that the jurisdiction of the Court of Appeal to hear appeals from any Customary Court of Appeal is derived from section 224(1) of the 1979 Constitution. He argued that the Constitution only allows an appeal by a party thereto from the Customary Court of Appeal 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. Learned counsel argued that the 1979 Constitution intended to narrow the right of appeal from the Customary Court of Appeal to the Court of Appeal with a view to enhancing the finality of its judgment as much as possible. He contended that what the appellants are seeking to achieve in this appeal is to confer unlimited right of appeal on aggrieved persons from the decisions of the Customary Court of Appeal contrary to the express provisions of section 224 of the 1979 Constitution. Learned counsel submitted that the Court of Appeal was right in declining jurisdiction in this matter in view of the express provisions of section 224(1) of the 1979 Constitution. He urged the court to dismiss the appeal as unmeritorious.

For a better appreciation of the issues that arise for consideration in this appeal, I think it will be desirable to set out relevant extracts of the proceedings of the Court of Appeal of the 17th February, 1997 concerning the application for leave to appeal in issue. These go as follows:-

*“Appearances:- Mr. E. A. Uzer for the applicant*

*Mr. V. T. Uji for the respondent*

*Uzer:- I have an application seeking leave to appeal from a*

*decision of the Customary Court of Appeal on a matter other than customary law. I rely on the affidavit in support. I urge the court to grant the application.*

*Court to counsel:- But you can only bring an appeal before this court on a matter of customary law under section 224 of the*  
 B *1979 Constitution.*

*Uzer:- I can come on any other matter other than customary law with leave.*

*Court:- That does not seem to us a correct interpretation. Look*  
 C *at sections 220 and 221. The right of appeal with leave is expressly conferred therein. If the Constitution so intends in relation to section 224 it would expressly say so.*

*Uzer:- I still think the court can grant leave to appeal on matters other than customary law.*

*D Uji:- I think also that the applicant cannot appeal to this court on issues other than customary law.*

*Court:- It appears to us that the constitutional provisions which confer a right of appeal to this court only on customary law without*  
 E *provisions of a right of appeal with leave is anomalous and unsatisfactory. It has created problems in a number of cases we have dealt with even where the issues of absence of jurisdiction in the Customary Court of Appeal have been raised. However since the constitutional provisions on the point are clear and the Supreme Court has*  
 F *in a number of cases so decided, this court has no jurisdiction to hear appeals from Customary Court of Appeal in matters other than customary law. Application is therefore struck out."*

*Now, the constitutional provisions which confer a right of appeal from the Customary Court of Appeal of a State to the Court of*  
 G *Appeal are contained in section 224 of the Constitution of the Federal Republic of Nigeria, 1979 which prescribes thus:-*

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

*(2) Any right of appeal to the Federal Court of Appeal from the decisions of a Customary Court of Appeal conferred by this section:-*



*(a) shall be exercisable at the instance of a party thereto or, with the leave of the Customary Court of Appeal or of the Federal Court of Appeal at the instance of any other person having an interest in the matter;*

*(b) shall be exercised in accordance with any Act of the National Assembly and rules of court for the time being in force regulating the powers, practice and procedure of the Federal Court of Appeal.”* <sup>B</sup>

It is crystal clear from the said section 224 of the Constitution of the Federal Republic of Nigeria, 1979 that an appeal shall lie at the instance of a party thereto from a decision of the Customary Court of Appeal of a State to the Court of Appeal as of right in all 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. Such right of appeal, however, shall be exercisable at the instance of a party to the proceedings or, with the leave of the Customary Court of Appeal or of the Court of Appeal, at the instance of any other person having an interest in the proceeding. <sup>C</sup>

***In the face of the express provisions of section 224 of the Constitution of the Federal Republic of Nigeria, 1979 it is plain that an appeal lies from a decision of the Customary Court of Appeal of a State to the Court of Appeal as of right with respect to complaints on any question of customary law or such other matters as may be prescribed by an Act of the National Assembly. No such other matters would appear to have so far been prescribed by any Act of the National Assembly pursuant to the said section 224(1) of the 1979 Constitution. It can therefore be said that an appeal for the time being does not lie from a decision of the Customary Court of Appeal to the Court of Appeal on a ground which does not raise a question of customary law.*** <sup>E</sup> <sup>F</sup> <sup>G</sup>

In the present case, it is conceded by the appellants that the application before the Court of Appeal for leave to appeal from the decision of the Customary Court of Appeal is with respect to a matter other than customary law. This is quite rightly so as the sole ground of appeal upon which the plaintiffs/respondents sought to impeach the judgment of the Upper Area Court is the omnibus ground of <sup>H</sup>

appeal which in my view cannot be said to involve any questions regarding customary law. See *Usman v. Umaru* (1992) 7 NWLR (Pt.254) 377; (1992) 2 NSCC 637 at 646. The application does not also concern any other matters prescribed by an Act of the National Assembly pursuant to section 224 of the 1979 Constitution. Issue 1 is accordingly resolved against the appellants.

***Turning now to issue 2, it is clear pursuant to the provisions of section 224 of the 1979 Constitution that as between parties to a suit, an appeal to the Court of Appeal is as of right so long as it concerns a question of customary law and such other matters as may be prescribed by an Act of the National Assembly. It is only where an appeal in respect of a question of customary law and such other matters as may be prescribed by an Act of the National Assembly is at the instance of any other person having an interest in the matter, other than the parties, that the leave of the Customary Court of Appeal or of the Court of Appeal will become necessary before such an appeal may lie. There are, therefore, two modes of invoking the jurisdiction of the Court of Appeal with regard to appeals from the State Customary Courts of Appeal. The first is as of right at the instance of a party thereto. The second is with the leave of the Customary Court of Appeal or the Court of Appeal at the instance of any other person having an interest in the matter.***

The proposed appeal in the present proceeding is by the respondents, parties to the suit, and not by some other person having an interest in the matter as provided under section 224 (2)(a) of the 1979 Constitution. No question of the leave of the Customary Court of Appeal or of the Court of Appeal therefore arises for a valid appeal to lie. It is clear to me that the 1979 Constitution pursuant to the provisions of section 224 thereof intended to narrow the right of appeal from the Customary Court of Appeal to the Court of Appeal with a view, perhaps, to enhancing the finality of the judgments of the former as much as possible. This seems to be in line with the provisions of section 39(1) of the Benue State Customary Court of Appeals Edict, 1994 which enacts as follows:-

*“39(1) Subject to the provisions of the Constitution of the Federal Republic of Nigeria regarding appeals to the Court of Appeal or*

*any legislation amending or replacing the same, the judgment, order, decree or decision of the court on any matter brought before it and within its jurisdiction shall be final.”*

Nor can section 224(1) of the 1979 Constitution which confers the right to appeal by a party to a suit as of right be interpreted as including the right to appeal with leave by such a party when no provision to that effect is therein contained. See too Babang Golok v. Mambox Diyalpwan (1990) 3 NWLR (Pt.139) 411; (1990) 5 SCNJ 198 where this court per Uwais, J.S.C. as he then was put the matter thus:-

*“... The intendment of the 1979 Constitution is that the right of appeal to the Court of Appeal from a decision of the Customary Court of Appeal of a State should be one tier. It cannot, therefore, be possible to interpret the provisions of section 224 sub-section (1), which gives the right to appeal as of right, to include the right to appeal by leave. To do otherwise will, in my opinion, give a wider interpretation to the provisions of the subsection which are clearly intended, in the context of the Constitution, to have narrow meaning.”*

Learned counsel for the appellants is, with respect, in error when he submitted that the appellants as parties to the proceeding could validly appeal with leave on matters other than customary law when no such provision is made either under the 1979 Constitution or under any Act of the National Assembly. I agree with learned counsel for the respondents that what the appellants appear to be seeking from the court in this appeal is to hold that there should be unlimited right of appeal from the decisions of the Customary Court of Appeal to the Court of Appeal. This, with respect, is neither the law nor is it in alignment with the intendment of the 1979 Constitution. Issue 2 is accordingly resolved against the appellants.

In the final result, this appeal fails and the same is hereby dismissed with N10,000.00 costs to respondents against appellants.

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### OGUNDARE JSC

I have read in advance the judgment of my learned brother, Iguh, JSC just delivered. I agree with him that this appeal fails. I too dismiss it.

The appeal turns on a narrow issue and that is the jurisdiction of the Court of Appeal to entertain an appeal from a decision of a Customary Court of Appeal of a State.

The facts in this case are not in dispute. The respondents before us had sued the appellants over a piece of farmland. The trial Upper Area Court Judge dismissed respondents' claims. The respondents being dissatisfied with the decision of the trial Upper Area Court appealed to the Benue State Customary Court of Appeal upon one ground of appeal which read:

C *"Decision is against the weight of evidence."*

On receipt of the record of proceedings of the Upper Area Court, the respondents filed a motion at the Customary Court of Appeal outside the period for appealing, for leave to file additional grounds of appeal. The appellants however, filed a notice of preliminary objection contending that the Benue State Customary Court of Appeal had no jurisdiction to entertain the appeal as there was no competent appeal before it. They contended that since the only ground of appeal- the general ground did not raise question of customary law, the appeal was incompetent and as such there was no appeal upon which an application for additional grounds of appeal could be predicated. The appellants were overruled by the Customary Court of Appeal; the respondents were granted leave to file additional grounds of appeal and the appellants promptly brought a motion for leave to appeal to the Customary Court of Appeal but the motion was refused by the Customary Court of Appeal on the ground that there was no need for leave to appeal from the Customary Court of Appeal of a State to the Court of Appeal. The respondents then brought identical motion in the Court of Appeal seeking leave to appeal to the Court of Appeal from the decision of the Customary Court of Appeal of Benue State on the preliminary objection. The Court of Appeal declined jurisdiction on the ground that section 224 of the Constitution of the Federal Republic of Nigeria, 1979 then in force limited appeals from Customary Court of Appeal of a State to the Court of Appeal in any civil proceedings to any question of customary law and such other matters as may be prescribed by an Act of the National Assembly.

The appellants have now appealed to this court against the ruling of the Court of Appeal declining jurisdiction upon 2 original

and 1 additional grounds of appeal to wit:

*“(1) The learned Justices of the Court of Appeal, Jos erred in law in holding that..... this court has no jurisdiction to hear appeals from Customary Court of Appeal in matters other than customary law.’ This gives an impression to the effect that there is no right of appeal to the Court of Appeal on any other matter apart from customary law.* B

*(2) The learned Justices of the Court of Appeal, Jos erred in law by remaining silent on the issue of the constitutionality of the Benue State Customary Court of Appeal which delved into matters other than customary law in appeal No. CCA/M/1566A/96.* C

*(3) The learned Justices of Court of Appeal erred in law in declining jurisdiction over this matter when the Honourable Court had jurisdiction on the matter considering the circumstances of this matter.(The particulars to the grounds are omitted).* D

2 issues for determination have been raised and these are:

*“(1) Whether the Court of Appeal has jurisdiction to entertain an appeal challenging the decision of Benue State Customary Court of Appeal, relating to competence of grounds of appeal before it.*

*(2) If the answer to the above issue is in the affirmative, whether grounds exist in this appeal, which warrant a departure from the decision of this Honourable Court in the case of Pam v. Gwom (2002) 2 NWLR (Pt. 644) 322.”* E

Before I proceed I need to set out the relevant sections of the Constitution of the Federal Republic of Nigeria, 1979 applicable to this case. F

1. Section 247(1)

*“A Customary Court of Appeal of a State shall exercise appellate and supervisory jurisdiction in civil proceedings involving questions of customary law.”* G

2. Section 224(1)

*“An appeal shall lie from decisions of the Customary Court of Appeal of a State to the Federal 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.”* H

The National Assembly has not enacted any Act prescribing such other matters that could be determined by the Court of Appeal

on appeal from the Customary Court of Appeal of a State. Hence the jurisdiction of the Court of Appeal as at present, is limited to the first limb of sub-section (1) of section 224.

The Customary Court of Appeal of Benue State overruled appellants' preliminary objection. The appellants sought to appeal against that decision. It would appear, however, that the proposed appeal to the Court of Appeal from that decision would not raise questions involving customary law but, at best, one of constitutional Law - jurisdiction. I think the Court of Appeal was, therefore, right in declining jurisdiction in such circumstance. What is a question of customary law has been determined by this court in *Pam v. Gwom* (2000) 2 NWLR (Pt. 644) 322 where Ayoola, JSC at pages 335-336 of the report said:

*"I venture to think that a decision is in respect of a question of customary law when the controversy involves a determination of what the relevant customary law is and the application of customary law so ascertained to the question in controversy. Where the parties are in agreement as to what the applicable customary law is and the Customary Court of Appeal does not need to resolve any dispute as to what the applicable customary law, is no decision as to any question of customary law arises. However, where notwithstanding the agreement of the parties as to the applicable customary law, there is a dispute as to the extent and manner in which such applicable customary law determines and regulates the right, obligation or relationship of the parties having regard to facts established in the case, a resolution of such dispute can, in my opinion be regarded as a decision with respect to a question of customary law. Where the decision of the Customary Court of Appeal turns purely on facts, or on question of procedure, such decision is not with respect to a question of customary law, notwithstanding that the applicable law is customary law."*

Applying the test stated above to the present case, it is evident in regard to the grounds of appeal before the Court of Appeal, that ground 1, thereof, which complains that the judgment of the Customary Court of Appeal is against the weight of evidence; grounds 2 and 3 thereof, which in substance complained of misdirection of that court in regard to the nature of transaction between the parties; ground 5 which, putting the best construction one can on it, remained

*meaningless, and ground 6 which raises the question of the nullity of the proceedings having regard to the Constitution of the trial court, do not at all relate to a decision of the Customary Court of Appeal in respect of any question of customary law.”*

I agree with the views expressed in this passage.

The main complaint in the proposed appeal from the Customary Court of Appeal of Benue State to the Court of Appeal was as to the competence of the appeal from the Upper Area Court to the Customary Court of Appeal. That complaint would not involve a question of customary law; it is a question involving the interpretation of the Constitution. I think the court below was right to decline jurisdiction as it did. Whatever merits or demerits that might be in the decision of the Customary Court of Appeal of Benue State in the matter on hand, the remedy of the appellants does not lie in an appeal to the Court of Appeal but lies somewhere else.

It is for the reasons given herein and the fuller reasons given in the judgment of my learned brother, Iguh, JSC that I dismiss this appeal and abide by the order for costs made in the said judgment.

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### MOHAMMED JSC

I agree. Section 224(1) of the Constitution of the Federal Republic of Nigeria, 1979, provides for an appeal to be heard by the Court of Appeal from the decision of a Customary 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.

This court has made a decision on the main issue for the determination of this appeal in the case of *Dang Pam v. Sale Dang Gwom* (2000) 2 NWLR (Pt. 644) 322. In that case this court held that the right of appeal from the Customary Court of Appeal to the Court of Appeal is as of right, but it must relate to any question of customary law. There is an additional provision of any other matter as may be prescribed by an Act of the National Assembly. The National Assembly had not added any other provision to section 224(1) of 1979 Constitution which was the relevant Constitution when this matter reached the Court of Appeal. The appeal from the Customary Court of Appeal of Benue State, in this case, is not competent because an

omnibus ground which is the sole ground which the appellant had raised against the decision of the Customary Court of Appeal is not a matter of customary law.

The Court of Appeal is therefore right to hold that it had no jurisdiction to determine an appeal from Customary Court of Appeal  
B which does not concern a matter of customary law.

For these reasons, and the fuller reasons in the judgment of my learned brother, Iguh, JSC, this appeal fails and it is dismissed. I abide by all the consequential orders made in the lead judgment,  
C including the assessment of costs.

### **KATSINA-ALU JSC**

I have had the advantage of reading in draft the judgment of  
D my learned brother, Iguh, JSC. I agree with it. The appeal fails and I too dismiss it.

The plaintiffs had sued the defendants over a piece of farmland at the Upper Area Court. The trial Judge of that court dismissed the plaintiffs' claims. The plaintiffs appealed to the Benue State Customary Court of Appeal upon the omnibus ground i.e. the "*Decision is against the weight of evidence.*" Thereafter the plaintiffs filed a motion at the Customary Court of Appeal outside the period for appealing, for leave to file additional grounds of appeal.  
E

The defendants reacted by filing a notice of preliminary objection on the ground that the Benue State Customary Court of Appeal had no jurisdiction to entertain the appeal as the appeal before it was incompetent. They contended that the omnibus ground of appeal did not raise a question of customary law. They were overruled. The  
F defendants appealed to the Court of Appeal which declined jurisdiction on the ground that section 224 of the 1979 Constitution then in force limited appeals from Customary Court of Appeal of a State to the Court of Appeal in any civil proceedings to any question of customary law and such other matters as may be prescribed by an Act of  
G the National Assembly.  
H

The defendants have further appealed to this court. Section 247(1) of the 1979 Constitution governs appeals to the Customary Court of Appeal. It states thus:

*"247(1) A Customary Court of Appeal of a State shall exercise*



*appellate and supervisory jurisdiction in civil proceedings involving questions of customary law.”*

I have earlier stated that the only ground of appeal to the Customary Court of Appeal was the omnibus ground. That ground deals purely with facts and has no connection whatsoever with customary law - see *Golok v. Diyalpwan* (1990) 3 NWLR (Pt. 139) 411. The Customary Court of Appeal, as I have already pointed out, overruled the defendants. B

An appeal to the Court of Appeal from the decision of the Customary Court of Appeal was bound to be a fruitless exercise. This is obvious. The main complaint in the appeal was as to the competence of the appeal from the Upper Area Court to the Customary Court of Appeal. That complaint does not involve a question of customary law. The Court of Appeal was right to decline jurisdiction. Clearly on the State of the law, the remedy of the defendants does not lie in an appeal to the Court of Appeal. The remedy lies somewhere else. C D

For this reason and the fuller reasons given in the judgment of my learned brother, Iguh, JSC. I too dismiss the appeal. I abide by the order for costs made in the said judgment. E

### **UWAIFO JSC**

The ground of appeal in contention here is the omnibus ground that the judgment is against the weight of evidence. This fell directly to be decided in *Golok v. Diyalpwan* (1990) 3 NWLR (Pt. 139) 411 where Uwais, JSC (now CJN) in his leading judgment at page 419 said: F

*“With regard to ground 4, which has also been quoted earlier, the particulars thereof clearly show that the nature of the complaint is general. It is therefore an omnibus ground which deals purely with facts and has no connection whatsoever with customary law. There cannot, on that ground, be an appeal as of right as envisaged by section 224 sub-section (1) of the 1979 Constitution. The Court of Appeal should have struck it out.”* G H

The learned Justice also dealt with a ground of appeal in that case which complained that the Customary Court of Appeal erred in law in holding that the plaintiff failed to prove his case. It was ground

3. He observed thus:

*“Ground 3 which has been quoted above pertains to the failure of the respondent; as plaintiff, to prove his case in the Ron/Kulere Area Court. The proof of a case is undoubtedly a matter of law and since the Area Court administered customary law, as it applied to the borrowing of a piece of land, the question raised by the ground of appeal relates to that customary law. The ground is, therefore, valid and the Court of Appeal was right in refusing to strike it out.”*

I think this principle behind the decision in *Golok v. Diyalpwan* (supra) provides some considerable leeway for an insightful counsel to skillfully draw up competent grounds of appeal to meet appropriate grievances within the limitation imposed by section 245(1) of the 1999 Constitution (same as section 224(1) of the 1979 Constitution) which provides thus:

*“245(1) An appeal shall lie from decisions of a Customary Court of Appeal 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.”*

A similar skill can be applied too in respect of appeals to the Customary Court of Appeal which the Constitution also limits to questions involving customary law in sections 267 and 282(1) of the 1999 Constitution. That is the most reassuring way of getting the best of the constitutional role the Customary Court of Appeal are required to play in establishing the different customary laws in a manner that they will eventually become so notorious that they would need no further proof. Legal practitioners should therefore understand the futility of filing omnibus grounds of appeal from judgments of the Customary Courts since it will only lead to a cul-de-sac in the judicial process to develop customary law precedents even by the highest court of the land.

In the present case, the appellants were acting contrary to the Constitution by seeking to appeal on a question, based upon the omnibus ground of appeal, which was not on customary law. There is no such right of appeal. I agree with the judgment of my learned brother Iguh, JSC in which he reached that conclusion and for the reasons he has clearly stated. I, too, find no merit in this appeal and dismiss it with N10,000.00 costs to the respondents.

***EJIWUNMI JSC***

I was privileged to have read in advance the judgment just delivered by my learned brother, Iguh, JSC and I agree entirely with his reasons for dismissing the appeal. The appeal is also dismissed by me and I abide with all the consequential orders made in the same judgment.

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***MUSDAPHER JSC***

I have had the honour to read before now the draft of the judgment of my Lord Iguh, JSC just delivered. In the said judgment, his Lordship has exhaustively dealt with all the issues submitted to this court for the determination of the appeal and I respectfully agree. Suffice it for me only to adopt the reasoning as mine and to abide by the order for costs contained in the said judgment. Appeal dismissed.

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