

SUPREME COURT OF NIGERIA

30TH MAY, 2008. SC. 392/2002

**CORAM:- N. TOBI, D. MUSDAPHER, G. A. OGUNTADE,
W. S. N. ONNOGHEN, F. F. TABAI, JJSC**

1. ODOEMENA NWAIGWE

2. UKWUOMA IKE APPELLANTS

3. SABASTINE NWAMADI

(For themselves and as representing

Umujuju Family of Umuogba Eziamu Okpala)

AND

NZE EDWIN OKERE

(For himself and on behalf of

Umuoheta Family of Umuogba

Eziamu Okpala) RESPONDENT

JURISDICTION - Extent - Customary Court of Appeal - Before jurisdiction can be properly invoked by aggrieved party in civil proceeding - Question for determination must relate to customary law (H1)

APPEALS - Customary law - Grounds - Omnibus ground - Is not capable of raising a question of customary law - It is therefore incapable of invoking jurisdiction of appellate court - Under statutory provisions relating to customary law (H2)

APPEALS - Grounds - Amendment - Validity of - Where a sole original ground of appeal is invalid there is no extant appeal - A purported amendment of notice of appeal is therefore untenable - As there is nothing to amend (H3)

APPEALS - Issues - Jurisdiction - Issue of jurisdiction - Is competent before Customary Courts as before any other courts - As it is an inherent power of any court to be able to determine questions on its jurisdiction (H4)

FACTS

Plaintiff/Respondent sued Defendants/Appellants at the Imo

State Customary Court holden at Okpala. Respondent's claim was for declaration of title to five parcels of farmland. At the end of hearing, the court gave judgment to the respondent granting the reliefs prayed for. Appellants, dissatisfied, appealed to the Customary Court of Appeal, holden at Owerri on a lone omnibus ground of appeal complaining that *"the decision was altogether unwarranted, unreasonable and cannot be supported having regard to the evidence on record."*

Later, they were granted leave to amend their notice of appeal by filing additional grounds of appeal. At the end of hearing, the Customary Court of Appeal set aside the judgment of the Customary Court. Respondent's appeal to the Court of Appeal, on the ground that the Customary Court of Appeal lacked the jurisdiction to entertain the appeal of the appellants, was successful. Aggrieved, Appellants have now brought this appeal to the Supreme Court against the judgment of the Court of Appeal.

ISSUES FOR DETERMINATION

"3.01. Whether having regards to Section 247 of the Constitution of the Federal Republic of Nigeria, 1979, which invests appellate jurisdiction on the Customary Court of Appeal of a State only in respect of question of Customary Law, the Customary Court of Appeal of Imo State had jurisdiction to entertain the defendants/appellants appeal thereat when their notice and ground of appeal in the Customary Court of Appeal did not raise any question of Customary Law but merely stated "that the decision of the court is altogether unwarranted, unreasonable and cannot be supported having regards to the evidence on record" - an omnibus ground of appeal adopted only to criminal appeal and forbidden in civil appeals - see page 65 of the records?"

3.02. Whether the Customary Court of Appeal of Imo State was right to ex proprio motu amend the respondents (sic) notice and ground of appeal which contains a sole omnibus ground of appeal that reads "that the decision of the court altogether unwarranted, unreasonable and cannot be supported having regards to the evidence" which sole ground in the notice of appeal being incompetent also rendered the appeal itself incompetent?"

3.03. Where "the Customary Court of Appeal of a State erro-

neously assumed jurisdiction to entertain a matter that raised questions other than of customary law would an aggrieved party not be acting within the provisions of Section 224(1) to bring an appeal to the Court to of Appeal on that ground?"

HELD (Unanimously dismissing the appeal per **ONNOGHEN JSC**)
JURISDICTION - Extent - Customary Court of Appeal

1. The primary issue for determination is the extent of the jurisdiction conferred on the Customary Court of Appeal of a State to hear and determine appeals from the Customary Court. It is settled law that appellate jurisdiction is always statutorily conferred on a court or tribunal either by the Constitution of the Nation or a Statute of the National Assembly or House of Assembly of a State. In the instant case, the relevant constitutional and statutory provisions are Sections 247(1) and (2); 224(1) both of the 1979 Constitution and Section 55 of the Imo State Edict, No.7 of 1984.

It is clear from the two provisions supra that whereas Sections 247(1) conferred appellate jurisdiction on the Customary Court of Appeal of a State to hear appeals from the Customary Court of a State in respect of civil proceedings involving questions of Customary Law, Section 224(1) of the same Constitution on the other hand, confers appellate jurisdiction on the Federal Court of Appeal, now Court of Appeal, to hear and determine appeals from the decisions of the Customary Court of Appeal of a State with respect to any question of Customary Law and such other matters that may be prescribed by an Act of the National Assembly.

It is therefore very clear that before the appellate jurisdiction of either court can be properly invoked by an aggrieved party to any civil proceeding the question(s) for determination by the appellate court must relate to Customary Law in contra distinction to English or Common Law or any other system of law other than Customary Law of the State concerned. It follows therefore that any appeal by any party to either of the said appellate courts, the grounds of which or question for determination of which is not based on Customary Law, is incompetent ab initio!

It is the argument of learned counsel for the appellants that Section 55 of the Imo State Edict, No. 1 of 1984, made pursuant to

the provisions of Section 247(2) of the 1979 Constitution, expanded the jurisdiction conferred on the Imo State Customary Court of Appeal by virtue of Section 347(1) of the 1979 Constitution, thereby conferring jurisdiction on that court to hear appeal on a ground of appeal such as that complained of in the amended lone omnibus ground of appeal before that court. Is that correct? Will such a provision not be contrary to the relevant constitutional provision? If it be contrary or inconsistent therewith, what is the legal consequences flowing therefrom? Questions, questions, questions.

I agree with the submission of the learned counsel for the respondent that what Section 55 of Edict No.7 of 1984 did is to introduce monetary qualification of One Hundred Naira in respect of appeals under Customary Law. It cannot be otherwise, as the Constitution is the supreme law of the land and it is settled law that any law or Act or section thereof that is inconsistent with any provision of the Constitution is null and void to the extent of the inconsistency. It is therefore clear that Section 55 of Edict No. 7 of 1984, cannot legally expand the jurisdiction conferred by the Constitution on the Customary Court of Appeal of Imo State, if it does it would be void to the extent of the inconsistency.” (pp. 2347 E/2348 B/2349 E)

APPEALS - Customary law - Grounds - Omnibus ground

2. Does the omnibus ground of appeal in the instant case raise any question of Customary Law so as to competently invoke the Jurisdiction of the Imo State Customary Court of Appeal? In the case of Golok v. Diyalpwan, this court held, per Uwais, JSC., (as he then was) inter alia as follows:

“With regards to ground 4..... the particulars thereof clearly show that the nature of the complaint is general. It is 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 envisaged by Section 224 subsection 1 of the 1979 Constitution.”

Underlining supplied by me.

There is no doubt, in fact both parties agree, that the sole ground of appeal before the Imo State Customary Court of Appeal is the general or omnibus ground of appeal both in its original and amended

forms. It is therefore very clear and I hold the considered view that having regards to the provisions of Section 247(1) of the 1979 Constitution, and the decisions of this court including *Golok v. Diplwan*, the omnibus ground of appeal in the instant case, just like any other omnibus ground of appeal does not raise an issue or question of Customary Law and therefore incapable of invoking the jurisdiction of the appellate court concerned. B

Does the amendment by the Customary Court of Appeal change the legal status of the ground of appeal? I had earlier in this judgment reproduced the two versions - original and amended and it is very clear that both are omnibus grounds of appeal and therefore caught by the same incapacity. (p. 2350 B) C

APPEALS - Grounds - Amendment - Validity of

3. The issue of the filing of six additional grounds of appeal is a non-starter as it amounts to an exercise in futility, there being no valid notice of appeal due to the absence of valid ground of appeal raising a question of Customary Law for determination. Since there was no valid notice and ground of appeal to which any further grounds would have been added, the attempt at making the addition is to try to resurrect a dead horse. It is stone dead. The same reasoning also applies to the purported amendment of the original omnibus ground of appeal. It is settled law, that you cannot amend a fundamentally defective document such as notice of appeal so as to infuse life into it. In other words, a fundamentally defective notice of appeal cannot be cured by an amendment of same. You can only validly amend a valid notice of appeal not a fundamentally defective one, which in the eyes of the law is non-existent or dead. (p. 2350 H) D E F

APPEALS - Issues - Jurisdiction

4. It is the argument of counsel for the appellants that the lower court had no jurisdiction to hear and determine the appeal before it particularly on the issue of absence of jurisdiction in the Customary Court of Appeal as that issue does not involve Customary Law as required by Section 224(1) of the 1979 Constitution. G H

The question therefore is whether an aggrieved party can validly challenge the decision of a Customary Court of Appeal before

the Court of Appeal on the ground that the Customary Court of Appeal did not have the requisite jurisdiction to hear and determined the matter in issue between the parties.

In resolving the issue the lower court held, inter alia as follows:-

B *“There can be no dispute on the fact that Section 224(1) grants a right of appeal from decisions of the Customary Court of Appeal only “with respect to any question of Customary Law and such other matters as may be prescribed by an Act of the National Assembly..... “That leaves the question whether or not ground 1 can be*
 C *said to be with respect to any question of Customary Law.*

After a close reading of the provisions of Section 224 of the 1979 Constitution and considering the Supreme Court decision in Golok v. Diyalpwan, and the dicta in other cases regarding the im-
 D *portance of jurisdiction in the adjudicatory process I am inclined to the view that ground 1 in this appeal is legitimate and valid. Surely, a customary court must have the power to determine whether or not it has jurisdiction to entertain the matter brought before it. Such court, being a creature of statute, can only exercise such jurisdiction as is*
 E *conferred on it by statute or the Constitution. It must therefore, possess the inherent power to determine whether the matter brought before it for adjudication is within the jurisdiction conferred on it. Without such power it cannot properly function as a court of law or of justice.....*

F *If the customary court can determine whether or not a given matter is within its competence then the courts which hear appeals from it must surely have jurisdiction to determine indeed if such matter was within the jurisdiction of the lower court. That being the case,*
 G *an aggrieved party would, in my view, be acting within the provisions of Sections 224(1) and 247(1) if he went before a higher court on a ground of appeal that complained that the customary court erroneously assumed jurisdiction to entertain a matter that raised questions other than of Customary Law.”*

H I fully agree with the lower court on the issue and adopt the above reasoning and conclusion as mine. (p. 2351 F/ 2352 D)

NOTABLE POINTS OF INTEREST

ONNOGHEN.JSC

1. Appeals - Proliferation of issues is condemned

It is very clear that learned counsel for appellants formulated three issues from each of the three grounds of appeal filed thereby making the total to be 9 (nine) issues out of the three grounds filed! The above situation is very much against the settled position of the law that though an issue may be formulated out of a ground or grounds of appeal, the issues so formulated cannot be more than the grounds of appeal filed. This is the principle against proliferation of issues for determination. In short, it is trite law that one cannot formulate more than one issue from a ground of appeal. In the instant case, the learned counsel for the appellants formulated three issues out of each ground of appeal filed. That is proliferation of issues for determination in the extreme! (p. 2343 D)

2. Concept of jurisdiction is universal

I hold the considered view that a question of jurisdiction of a court or tribunal is of universal application to every civilized society or community whether Customary or English.

In the case of *Madukolu v. Nkemdilim* (1962) 1 All NLR 587 at 595, which incidentally originated from the Native Court of Mbachete in the then Eastern Nigeria, jurisdiction is said to encompass the following:-

“Put briefly, a court is competent when -

‘(1) it is properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or another, and

(2) the subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction; and

(3) the case comes before the court initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction.

Any defect in competence is fatal, for the proceedings are a nullity however, well conducted and decided, the defect is intrinsic to the adjudication. “

It is therefore clear from the above statement of the law by this

court that jurisdiction is the life wire or blood that gives life to any adjudication in whatever system of law that comes into focus, be it Customary Law or English Law. We should not forget that English Law also includes the English Common Law which does not enjoy a higher legal status than our Customary Law. It follows therefore that since the concept of jurisdiction is of universal application and known to Customary Law when applied to Customary Courts, an error of jurisdiction by a Customary Court or Customary Court of Appeal which is a defect intrinsic to the adjudication, is an issue or question of Customary Law within the meaning of Sections 247(1) and 224(1) of the 1979 Constitution and therefore appealable as an issue of Customary Law up to the Supreme Court. To hold otherwise, is to kill the development of that branch or system of adjudication in this country, as there would be no means of checking excess or absence of jurisdiction in the relevant courts and thereby encourage adjudication far in excess or absence of jurisdiction in the relevant customary courts, be it of first instance or appellate. (p. 2353 E)

REPRESENTATION

- E O. O. Amuzie, for the Appellants.
C. U. Njepuome, (with him; J. I. Ogamba), for the Respondent.

CASES REFERRED TO

- F Pam v. Gwon (2000) 1 S.C, 56; (2000) 1 SCNQR 23-26
Oyewunmi v. Ogunesan (1990) 5 S.C. (Pt.I) 1; (1990) 3 NWLR (Pt.137) 182 at 207
Golok v. Diyalpwah (1990) 5 S.C. (Pt.I I) 129; (1990) 3 NWLR (Pt.139) 413-414
G Awhinawhi v. Oteri (1984) 5 S.C. 38; Atuyeye v. Ashamu (1987) 1 S.C. 333 at 358
Aremu v. Commissioner of Police (1965) 1 ALL NLR 217
Iboko v. Commissioner of Police (1965) 1 All NLR 219
Ekpenvono v. State (1967) 1 ALL NLR 285
H Ogboda v. Aduluqba (1971) 1 All NLR 68
NTA v. Anigbo (1972) 5 S.C. 156; (1972) 5 S.C. (Reprint) 101
Mobil Oil v. Coker (1975) 3 S.C. 175; (1975) 3 S.C. (Reprint) 124

STATUTES REFERRED TO

Constitution of the Federal Republic of Nigeria, 1979, ss. 224 (1) & (4) and 247 (1) & (2)

Customary Court Edict, 1984 (Edict No. 7), s. 55 (1) (a), (b) & (c)

LEAD JUDGMENT BY ONNOGHEN JSC

This is an appeal against the judgment of the Court of Appeal holden at Port Harcourt in appeal No. CA/PH/17/94, delivered on the 29th day of November, 2007, in which the court allowed the appeal of the appellants (now respondents) against the judgment of the Imo State Customary Court of Appeal, holden at Owerri in appeal No. CCA/ON/76/91, delivered on the 18th day of February, 1992, allowing the appeal of the appellant against the decision of the Customary Court of Okpala in Suit No. CC/0/75/88, delivered on the 31st day of December, 1990.

By a Writ of Summons filed at the Imo State Customary Court holden at Okpala, the plaintiffs claimed the following reliefs against the present appellants:-

"1. A declaration that the plaintiffs (as expressed and in capacity) are the owners in accordance with the Native Law and Custom of Umuogba Eziamma in Okpala (and subject to the Land Use Decree) of the following parcels of farmland:-

- '(a) Okwa-Achara;*
- (b) Okwu-Icha;*
- (c) Okwu-Ogwugwu;*
- (d) Udi-Alaukwu; and*
- (e) Okwara Ishi Obibi.'*

All of which are situate at Umuogba Eziamma Okpala within the jurisdiction of the court.

2. Injunction restraining the defendants from interfering in any manner whatsoever with the plaintiffs right of ownership or possession of the said lands and in particular restraining the defendants from clearing and farming on Okwu Ogwugwu land which is due for farming by the plaintiffs this year."

At the end of the trial the Customary Court entered judgment in favour of the plaintiffs (now respondents) in the following terms:-

"From the foregoing, court upholds the claims of the plaintiffs

on the ground that all they said were testified by one of the defendants – Akalabu Nwaigwe. This is so because a house divided against itself cannot stand. So it is in the case of Umujuju family among whom are 1st defendant, Ozomena (sic) Nwaigwe and P.W.2 – Akalabu Nwaigwe who are in opposite camps over the ownership of the 5 parcels of land in dispute. Court therefore, declares to plaintiffs the Customary Right of Occupancy exclusively on the 5 parcels of land in dispute as owned by them the Umuoheta from origin. Court limits the present Umujuju under the headship of Odeomena Nwaigwe to Uzo Umujuju land only which bear Umujuju name from a long time history.....”

The defendants, appellants in this court, were dissatisfied with the above judgment and consequently appealed to the Customary Court of Appeal, holden at Owerri in the appeal earlier mentioned in this judgment on the omnibus ground of appeal complaining therein that “the decision was altogether unwarranted, unreasonable and cannot be supported having regard to the evidence on record.”

The Customary Court of Appeal later granted the appellants leave to file and argue additional grounds of appeal, which were duly filed and argued at the end of which the court allowed the appeal and set aside the judgment of the Customary Court, Okpala and dismissed the claims of the plaintiffs.

The plaintiffs who were respondents in the Customary Court of Appeal, Owerri appealed against the judgment of the Customary Court of Appeal, Owerri to the Court of Appeal where the main issue for determination is, in effect:-

“Whether having regards to Section 247 of the Constitution of the Federal Republic of Nigeria, 1979, which invests appellate jurisdiction on the Customary Court of Appeal of a State only in respect of question of Customary Law, the Customary Court of Appeal of Imo State had jurisdiction to entertain the defendants/respondents appeal threat when their notice and ground of appeal in the Customary Court of Appeal did not raise any question of Customary Law but merely state “that the decision of the court is altogether unwarranted, unreasonable and cannot be supported having regards to the evidence on record” - an omnibus ground of appeal adopted only to criminal appeals and forbidden in civil appeals.”

It appears from the record that the Customary Court of Appeal when it noticed the apparent fundamental defect in the only ground of appeal suo motu amended same to read “*that the decision of the court is altogether unwarranted, unreasonable and cannot be supported having regard to the weight of evidence*” in its ruling of 18th February, 1992, see pages 78 and 85 of the record. There was no application for the amendment before the court. It should be noted that the judgment of the Customary Court appealed against was delivered on 31/12/90, while the Notice of Appeal against that judgment was dated 4th January, 1991, - see page 65 of the record. On the other hand, the purported amendment of that Notice of Appeal by the Customary Court of Appeal was made on 18/2/92, more than a year after the judgment of the Customary Court and also the filing of the Notice of Appeal against the said judgment. The amendment granted suo motu did not include an order extending time within which the appellant was to appeal against the said judgment of the customary court in view of the obvious lapse of time within which to appeal against the said judgment as at the time the amendment was so granted in the circumstance.

It is for the above stated facts that another issue for determination before the Court of Appeal, relevant to the instant appeal was:

“Whether the Customary Court of Appeal of Imo State was right to ex proprio motu amend the respondents notice and ground of appeal which contains a sole omnibus ground of appeal that reads “that the decision of the court is altogether unwarranted, unreasonable and cannot be supported in the notice of appeal being incompetent also rendered the appeal itself incompetent.”

In resolving the issues, the lower court held, inter alia, as follows:-

“.....there can be no dispute, in view of the clear provisions of Section 247(1) of the 1979 Constitution and the Supreme Court decision in Golok v. Diyalpwan, supra, that a Notice of Appeal from a Customary Court to the Customary Court of Appeal containing only the omnibus ground is incompetent and cannot be vivified by the filing of additional grounds of appeal. If there is no valid Notice of Appeal no grounds can be added, additional or otherwise, for ex nihilo nihil fit: an addition cannot be made to what does not

exist.

Nor can there be any dispute that in light of Section 247(1) of the 1979 Constitution the Customary Court of Appeal had no jurisdiction to entertain such incompetent ground of appeal, not being an appeal involving questions of Customary Law.”

B It is against the above decision that the learned counsel for the appellants filed three grounds of appeal as are contained in the notice and grounds of appeal at pages 224-226 of the record. However, the learned counsel for the appellants in the appellants’ Brief of
C Argument filed on 14/2/03, identified nine issues as arising from the aforesaid three grounds of appeal, for the determination of the appeal. The issues are:-

“3.01. *Whether the question of the Imo State Customary Court of Appeal’s jurisdiction could be construed as an issue involving a*
D *question of Customary Law?*

3.02. *Whether the Court of Appeal was right to have proceeded to consider the jurisdiction of the Imo State Customary Court of Appeal when in fact, there was no valid ground of appeal involving the issue of Customary Law before it, filed by the plaintiff/respondent in the instant case?*
E

3.03. *Whether the Court of Appeal was right to have based its decision on technicality rather than on merit?*

3.04. *Whether it is right to construe Section 247(1), (2) of the 1979 Constitution to mean the same thing as Section 224(1) despite the fact that Section 247(2) permits each State House of Assembly to add more grounds of appeal in addition to the provision of Section 247(1) of the Constitution and dispute (sic) the fact that the Imo State provided more grounds of appeal under Section 55 of the Customary Court Edict, 1984, (Edict No. 7) in addition to the grounds provided by Section 247 (1) of the Constitution 1979?*
F
G

3.05. *Whether the Imo State Customary Court of Appeal was not right by order to have allowed amendment to the original omnibus ground of appeal in the interest of justice?*

H 3.06. *Whether the amended ground of appeal which reads:- ‘That the decision of the court is altogether unwarranted, unreasonable and cannot be supported having regard to the weight of evidence’ was not a valid ground of appeal in view of Section 55 of the*

Imo State Edict, No. 7 of 1984?

3.07. *Whether the Court of Appeal was right to avoid making a ruling on the Preliminary Objection by the respondent against the grounds of appeal filed by the appellant?*

3.08. *Whether the Court of Appeal by orally directing the appellant to reformulate his grounds of appeal to raise issues involving Customary Law instead of making a ruling on the objection and striking out the appeal and whether it does not amount to prejudice against the respondent?*

3.09. *Whether it will not perpetuate injustice on the defendant/appellant if the Court of Appeal judgment were to be allowed to stand in view of obvious prejudice shown and in view of the fact that the conclusions and the judgment of the court of the first instance the Customary Court, Okpala, were based on the inferences and facts not adduced by either party during the hearing?"*

It is very clear that learned counsel for appellants formulated three issues from each of the grounds of appeal filed thereby making the total to be 9 (nine) issues out of the three grounds filed! The above situation is very much against the settled position of the law that though an issue may be formulated out of a ground or grounds of appeal, the issues so formulated cannot be more than the grounds of appeal filed. This is the principle against proliferation of issues for determination. In short, it is trite law that one cannot formulate more than one issue from a ground of appeal. In the instant case, the learned counsel for the appellants formulated three issues out of each ground of appeal filed. That is proliferation of issues for determination in the extreme!

However, on his part, learned counsel for the respondent Nonye Okoronkwo, Esq., in the respondent's Brief of Argument filed on 23/4/03, identified the following three issues for determination :-

"3.01. *Whether having regards to Section 247 of the Constitution of the Federal Republic of Nigeria, 1979, which invests appellate jurisdiction on the Customary Court of Appeal of a State only in respect of question of Customary Law, the Customary Court of Appeal of Imo State had jurisdiction to entertain the defendants/appellants appeal thereat when their notice and ground of appeal in the Customary Court of Appeal did not raise any question of Customary*

Law but merely stated “that the decision of the court is altogether unwarranted, unreasonable and cannot be supported having regards to the evidence on record” - an omnibus ground of appeal adopted only to criminal appeal and forbidden in civil appeals - see page 65 of the records?

B 3.02. *Whether the Customary Court of Appeal of Imo State was right to ex proprio motu amend the respondents (sic) notice and ground of appeal which contains a sole omnibus ground of appeal that reads “that the decision of the court altogether unwarranted, unreasonable and cannot be supported having regards to the evidence” which sole ground in the notice of appeal being incompetent also rendered the appeal itself incompetent?*

C 3.03. *Where “the Customary Court of Appeal of a State erroneously assumed jurisdiction to entertain a matter that raised questions other than of customary law would an aggrieved party not be acting within the provisions of Section 224(1) to bring an appeal to the Court to of Appeal on that ground?”*

Apart from the proliferation of the issues by counsel for the appellants, it is necessary to also note that there are no facts on record to ground the appellant’s issues 3.07 and 3.08 supra and there is no application by the appellants before this court to challenge the record of appeal. It may be that learned counsel for the appellants, by swearing to an affidavit on the 23rd day of February, 2003, which is attached to the appellants’ Brief and filed in this court, the learned counsel intended the said affidavit to be considered as being part of the record - a supplementary record! However, not only is the practice or procedure adopted by learned counsel novel, it is also unknown to our legal system. In the first place, it is not indicated on the said affidavit that a copy thereof was served on the registrar of the lower court who, by paragraph 11 of the affidavit is alleged to have inter alia, “doctored” the original record of proceedings. There is therefore no reaction from the lower court whose record is being purportedly challenged. In the circumstance no further reference will be made in this judgment to the said affidavit of counsel.

H That apart, it is not true as argued by learned counsel for the appellants (as would soon be made apparent) that the lower court never considered the argument of counsel in relation to the objec-

tion as it relates to the competence of the grounds of appeal, as the same issue was raised and argued by counsel in the respondent's Brief before the lower court which court duly considered same in its judgment now on appeal.

For the purpose of this judgment and in view of the proliferation of issues by learned counsel for the appellants, I will adopt the issues as formulated by the learned counsel for the respondent bearing in mind the fact that the main issue decided by the lower court was whether the Customary Court of Appeal of Imo State had the requisite jurisdiction to hear and determine the appeal having regards to the omnibus ground of appeal which made the said appeal incompetent.

In arguing issue 1, learned counsel for the appellants cited and relied on Section 224(1) of the Constitution of the Federal Republic of Nigeria, 1979, (hereinafter referred to as the 1979 Constitution) and submitted that the plaintiff's appeal to the Court of Appeal, which was on four grounds raised no issue of Customary Law in compliance with Section 224(1) of the said 1979 -Constitution thereby making it necessary for that court to strike out grounds 2-4 of the said grounds; that the lower court, however, accordingly held that ground 1 of the grounds of appeal which was on "*want of jurisdiction of the Customary Court of Appeal of Imo State was a question of Customary Law.*" In support of the quoted portion, learned counsel for the appellants referred the court to pages 168-172 of the record which pages do not contain the judgment of the lower court but the grounds of appeal filed against the judgment of the Imo State Customary Court of Appeal. It should be noted that this court has jurisdiction, by virtue of the provisions of the Constitution of this country, and other relevant statutes, to hear appeals against the judgments of the Court of Appeal, not the judgment of the Customary Court of Appeal.

However, learned counsel further submitted that the question of the jurisdiction of the Customary Court of Appeal cannot be regarded as a question of the Customary Law of Umuogba Eziana, Okpuala people of Imo State; particularly that a narrow interpretation of Section 224(1) of the 1979 Constitution as emphasized by this court in the case of *Golok v. Diyalpawah* (1990) 5 S.C. (Pt.II)

129; (1990) 3 NWLR (Pt.139) 413 at 414, will show that the right of appeal therein conferred to appeal on matters involving questions of Customary Law does not include a right to appeal on matters involving a question of the jurisdiction of the Customary Court of Appeal of a State and as such the lower court was in error in holding
 B that it includes same.

Turning to the provisions of Section 247 (2) of the said 1979 Constitution, learned counsel stated that it was in pursuance of that section of the Constitution that the Imo State House of Assembly
 C passed Edict No, 7 of 1984. Section 55 of which empowered the Customary Court of Appeal of Imo State to hear and determine the appeal before it on the amended ground of appeal; that there is no amendment that the court cannot make except the amendment is
 D (1985) 10 S.C. 272-273, *Surakatu v. Nig. Housing Dev. Soc. Ltd.* (1981) 4 S.C. 26; (1981) 4 S.C. (Reprint) 18, *Ekwere v. The State* (1981) 9 S.C. 4; (1981) 9 S.C. (Reprint) 3. Learned counsel then urged the court to allow the appeal.

On his part, learned counsel for the respondent submitted that
 E the jurisdiction of a Customary Court of Appeal of a State to hear and determine appeals is grounded on Section 247(1) of the 1979 Constitution and that such appeals must be on a question involving Customary Law otherwise the appeal(s) would be incompetent; that
 F Section 224(1) of the 1979 Constitution is of similar purport to Section 247(1) of the said Constitution; that the only ground of appeal filed by the appellants before the Customary Court of Appeal was the omnibus ground of appeal relating to a criminal appeal, not civil
 G appeal and that it raised no issue or question of Customary Law, relying on the case of *Golok v. Diyapwan*, *Pam v. Gwom* (2000) 1 S.C. 56; (2000) FWLR (Pt. I) 1 at 10 and 11. Learned counsel then submitted that even the amendment of the omnibus ground of appeal by the Customary Court of Appeal did not bring the appeal within the jurisdiction of that court, as the ground still did not raise a
 H question of Customary Law.

Learned counsel further submitted, in relation to Section 247(2) of the 1979 Constitution and Section 55 of the Edict, No.7 of 1984, that the said Section 55 merely introduced a monetary qualification

of One Hundred Naira in respect of appeals under Customary Law but does not derogate from the provisions of Section 247(1) of the 1979 Constitution which requires such appeals to be on issues of Customary Law; that where a notice of appeal is defective in that there is no proper ground of appeal contained therein, the said defective notice of appeal cannot be cured by the filing of amended grounds of appeal, relying on *Atuyeye v. Ashamu* (1987) 1 S.C. 333 at 358; *Awhihawhi v. Oteri* (1984) 5 S.C. 38. B

Learned counsel further submitted that where a Customary Court of Appeal assumed jurisdiction to hear and determine an appeal in error, an aggrieved party can proceed to the Court of Appeal on the ground that the said Customary Court of Appeal had no jurisdiction to so act; that the issue of jurisdiction is known to Customary Law just as it applies equally to English Law and is of universal application; that ground 1 of the grounds of appeal before the lower court alleging lack of jurisdiction in the Customary Court of Appeal to hear the appeal on the omnibus ground is valid and properly considered by the lower court. Learned counsel then urged the court to dismiss the appeal. C D

As had been stated earlier in this judgment, ***the primary issue for determination is the extent of the jurisdiction conferred on the Customary Court of Appeal of a State to hear and determine appeals from the Customary Court. It is settled law that appellate jurisdiction is always statutorily conferred on a court or tribunal either by the Constitution of the Nation or a Statute of the National Assembly or House of Assembly of a State. In the instant case, the relevant constitutional and statutory provisions are Sections 247(1) and (2); 224(1) both of the 1979 Constitution and Section 55 of the Imo State Edict, No.7 of 1984.*** They provide as follows:- E F G

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

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

On the other hand. Section 224(1) of the said 1979 Constitution provides as follows:-

“(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.*”

It is clear from the two provisions *supra* that whereas Sections 247(1) conferred appellate jurisdiction on the Customary Court of Appeal of a State to hear appeals from the Customary Court of a State in respect of civil proceedings involving questions of Customary Law, Section 224(1) of the same Constitution on the other hand, confers appellate jurisdiction on the Federal Court of Appeal, now Court of Appeal, to hear and determine appeals from the decisions of the Customary Court of Appeal of a State with respect to any question of Customary Law and such other matters that may be prescribed by an Act of the National Assembly.

It is therefore very clear that before the appellate jurisdiction of either court can be properly invoked by an aggrieved party to any civil proceeding the question(s) for determination by the appellate court must relate to Customary Law in contra distinction to English or Common Law or any other system of law other than Customary Law of the State concerned. It follows therefore that any appeal by any party to either of the said appellate courts, the grounds of which or question for determination of which is not based on Customary Law, is incompetent *ab initio*!

It is the argument of learned counsel for the appellants that Section 55 of the Imo State Edict, No. 1 of 1984, made pursuant to the provisions of Section 247(2) of the 1979 Constitution, expanded the jurisdiction conferred on the Imo State Customary Court of Appeal by virtue of Section 347(1) of the 1979 Constitution, thereby conferring jurisdiction on that court to hear appeal on a ground of appeal such as that complained of in the amended lone omnibus ground of appeal before that court. Is that correct? To answer the question, it is nec-

essary for us to take a look at the provisions of Section 55 of Edict No. 7 of 1984. It provides as follows:-

“55(1) An appeal shall lie as of right from the decisions of a Customary Court to the Customary Court of Appeal on any of the following grounds:-

‘(a) Where the matter in dispute on appeal to the Customary Court of Appeal is of the value of One Hundred Naira or more, or where the appeal involves a question respecting property or a right of the value of One Hundred Naira or more, final decisions in any civil proceedings or criminal proceedings under Customary Law.

(b) Where the ground of appeal to the Customary Court of Appeal involves questions of Law alone, final decisions in any criminal proceedings in which any person has been sentenced to imprisonment for a term exceeding three months or a final or forfeiture exceeding Fifty Naira by the Customary Court.

(c) Decisions on any civil or criminal proceedings or proceedings under Customary Law on questions as to interpretation of the Constitution.”

Can it be said that the above provision has conferred jurisdiction on the Customary Court of Appeal of Imo State to hear appeals from Customary Courts of that State on grounds other than strictly Customary Law as provided by the Constitution of the land? If it has, **will such a provision not be contrary to the relevant constitutional provision. If it be contrary or inconsistent therewith, what is the legal consequences flowing therefrom? Questions, questions, questions.**

I agree with the submission of the learned counsel for the respondent that what Section 55 of Edict No.7 of 1984 did is to introduce monetary qualification of One Hundred Naira in respect of appeals under Customary Law. It cannot be otherwise, as the Constitution is the supreme law of the land and it is settled law that any law or Act or section thereof that is inconsistent with any provision of the Constitution is null and void to the extent of the inconsistency. It is therefore clear that Section 55 of Edict No. 7 of 1984, cannot legally expand the jurisdiction conferred by the Constitution on the Customary Court of Appeal of Imo State, if it does it would be void to

the extent of the inconsistency.” In any event, to argue, as learned counsel for the appellants has done in respect of Section 55, is in effect to admit that the omnibus ground of appeal in this case whether in its original form or as amended by the Customary Court of Appeal suo motu does not raise an issue of Customary Law simpliciter as required by Section 247(1) of the 1979 Constitution and consequently invalid.

Does the omnibus ground of appeal in the instant case raise any question of Customary Law so as to competently invoke the Jurisdiction of the Imo State Customary Court of Appeal? In the case of Golok v. Diyalpwan, this court held, per Uwais, JSC., (as he then was) inter alia as follows:

“With regards to ground 4..... the particulars thereof clearly show that the nature of the complaint is general. It is 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 envisaged by Section 224 subsection 1 of the 1979 Constitution.”

Underlining supplied by me.

There is no doubt, in fact both parties agree, that the sole ground of appeal before the Imo State Customary Court of Appeal is the general or omnibus ground of appeal both in its original and amended forms. It is therefore very clear and I hold the considered view that having regards to the provisions of Section 247(1) of the 1979 Constitution, and the decisions of this court including Golok v. Diplwan, the omnibus ground of appeal in the instant case, just like any other omnibus ground of appeal does not raise an issue or question of Customary Law and therefore incapable of invoking the jurisdiction of the appellate court concerned.

Does the amendment by the Customary Court of Appeal change the legal status of the ground of appeal? I had earlier in this judgment reproduced the two versions - original and amended and it is very clear that both are omnibus grounds of appeal and therefore caught by the same incapacity.

The issue of the filing of six additional grounds of appeal

is a non-starter as it amounts to an exercise in futility, there being no valid notice of appeal due to the absence of valid ground of appeal raising a question of Customary Law for determination. Since there was no valid notice and ground of appeal to which any further grounds would have been added, the attempt at making the addition is to try to resurrect a dead horse. It is stone dead. The same reasoning also applies to the purported amendment of the original omnibus ground of appeal. It is settled law, that you cannot amend a fundamentally defective document such as notice of appeal so as to infuse live into it. In other words, a fundamentally defective notice of appeal cannot be cured by an amendment of same. You can only validly amend a valid notice of appeal not a fundamentally defective one, which in the eyes of the law is non-existent or dead. See *Awhinawhi v. Oteri* (1984) 5 S.C. 38; *Atuyeye v. Ashamu* (1987) 1 S.C. 333 at 358.

There is the issue that the lower court did not consider the objection of the appellants, then respondents, as to the jurisdiction of that court to hear the appeal as the grounds of appeal therein did not involve a question of Customary Law. I have carefully gone through the record and it is very clear that apart from raising the question by way of Preliminary Objection, learned counsel for the appellants also raised it as an issue before the lower court, which court dealt exhaustively with same.

It is the argument of counsel for the appellants that the lower court had no jurisdiction to hear and determine the appeal before it particularly on the issue of absence of jurisdiction in the Customary Court of Appeal as that issue does not involve Customary Law as required by Section 224(1) of the 1979 Constitution.

The question therefore is whether an aggrieved party can validly challenge the decision of a Customary Court of Appeal before the Court of Appeal on the ground that the Customary Court of Appeal did not have the requisite jurisdiction to hear and determined the matter in issue between the parties. It should be noted that whereas an omnibus ground of appeal is a complaint against the facts, a ground of appeal challenging the

jurisdiction of a court is a ground of law.

In relation to the issue under consideration, the lower court stated inter alia, thus in its judgment:-

“.....Chief Amuzie, for the respondent, has argued that we cannot even get to the point of discussing the issue whether or not the Notice of Appeal before the Customary Court of Appeal was competent. This, according to him, is so because the ground of appeal asking us to do so is itself incompetent for the same reason upon which the appellant is inviting us to tamper with his victory in the lower court .

If indeed ground 1 before us is incompetent and there is consequently no appeal before us then, of course, we cannot go into a consideration of the validity or otherwise of the decision of the Customary Court of Appeal as there would be no appeal asking us to do so.....”

In resolving the issue the lower court held, inter alia as follows:-

“There can be no dispute on the fact that Section 224(1) grants a right of appeal from decisions of the Customary Court of Appeal only “with respect to any question of Customary Law and such other matters as may be prescribed by an Act of the National Assembly.....” That leaves the question whether or not ground 1 can be said to be with respect to any question of Customary Law.

After a close reading of the provisions of Section 224 of the 1979 Constitution and considering the Supreme Court decision in Golok v. Diyalpwan, and the dicta in other cases regarding the importance of jurisdiction in the adjudicatory process I am inclined to the view that ground 1 in this appeal is legitimate and valid. Surely, a customary court must have the power to determine whether or not it has jurisdiction to entertain the matter brought before it. Such court, being a creature of statute, can only exercise such jurisdiction as is conferred on it by statute or the Constitution. It must therefore, possess the inherent power to determine whether the matter brought before it for adjudication is within the jurisdiction conferred on it. Without such power it cannot properly

function as a court of law or of justice.....

If the customary court can determine whether or not a given matter is within its competence then the courts which hear appeals from it must surely have jurisdiction to determine indeed if such matter was within the jurisdiction of the lower court. That being the case, an aggrieved party would, in my view, be acting within the provisions of Sections 224(1) and 247(1) if he went before a higher court on a ground of appeal that complained that the customary court erroneously assumed jurisdiction to entertain a matter that raised questions other than of Customary Law.

I fully agree with the lower court on the issue and adopt the above reasoning and conclusion as mine. I had earlier stated, while considering the instant issue that an issue of Jurisdiction of a court or tribunal, be it Customary or English, is strictly a matter of law Customary or English or whatever. It is not a question or issue or matter of facts. On the other hand, a complaint that a decision of a court is against the weight of evidence or is unreasonable, unwarranted and cannot be supported having regards to the evidence is purely a complaint on facts with no connection whatsoever to law - customary or otherwise, for the question of law raised under Sections 224(4) and 247(1) of the 1979 Constitution to be valid it must relate to some aspects of the Customary Law that the relevant Customary Court applied or has the jurisdiction to apply. I hold the considered view that a question of jurisdiction of a court or tribunal is of universal application to every civilized society or community whether Customary or English.

In the case of *Madukolu v. Nkemdilim* (1962) 1 All NLR 587 at 595, which incidentally originated from the Native Court of Mbachete G in the then Eastern Nigeria, jurisdiction is said to encompass the following:-

“Put briefly, a court is competent when -

(1) it is properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or another; and

(2) the subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the court from exercis-

ing its jurisdiction; and

(3) the case comes before the court initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction.

B Any defect in competence is fatal, for the proceedings are a nullity however, well conducted and decided, the defect is intrinsic to the adjudication. “

C It is therefore clear from the above statement of the law by this court that jurisdiction is the life wire or blood that gives life to any adjudication in whatever system of law that comes into focus, be it Customary Law or English Law. We should not forget that English Law also includes the English Common Law which does not enjoy a higher legal status than our Customary Law. It follows therefore that since the concept of jurisdiction is of universal application and known D to Customary Law when applied to Customary Courts, an error of jurisdiction by a Customary Court or Customary Court of Appeal which is a defect intrinsic to the adjudication, is an issue or question of Customary Law within the meaning of Sections 247(1) and 224(1) of the 1979 Constitution and therefore appealable as an issue of E Customary Law up to the Supreme Court. To hold otherwise, is to kill the development of that branch or system of adjudication in this country, as there would be no means of checking excess or absence of jurisdiction in the relevant courts and thereby encourage adjudication far in excess or absence of jurisdiction in the relevant customary F courts, be it of first instance or appellate.

In conclusion therefore and having resolved all the relevant issues against the appellants, it is my considered view that this appeal is grossly without merit and is consequently dismissed by me with G costs which I assess and fix at N50,000.00 in favour of the respondent. The judgment of the lower court is hereby affirmed by me.

TOBI JSC

H This matter has passed through three courts. Customary Court, Customary Court of Appeal and the Court of Appeal. This is the fourth, and of course, the final court. The appeal has to do with ownership of farmlands. They are Okwu-Achara, Okwu-Icha, Okwu-Ogwugwu, Udi Alaukwu and Okwara Ishi Obidi.

The appeal is so much a parade of kindred. They are the Umujuju, Umukpe, Umuanyanwu and Umuoba. A kindred is a family relationship. It could also mean generally a people belonging to the same group by blood or consanguinity. It also could mean next of kin, but in the context of this appeal, it does not convey that meaning. It rather conveys the meaning of family relationships by blood or consanguinity. B

It is the case of the plaintiff/respondent that the Umujuju kindred lived a communal life of farming and sharing their farmlands communally and harvesting their economic trees until some of them including the father of the plaintiff/respondent and the plaintiff/respondent himself seceded from the Umujuju kindred and found a new kindred called Umuoheta. He claims ownership of the five parcels of land. C

Following conflicting announcements on Imo Radio Broadcasting Corporation by the parties as to the birth of the new kindred of Umuoheta, the plaintiff/respondent sued the defendants/appellants at the Customary Court in a representative capacity. He asked for one declaratory relief and one injunctive relief. D

The Customary Court gave judgment in favour of the plaintiff/respondent. The defendants/appellants appealed to the Customary Court of Appeal. That court reversed the decision of the Customary Court. An appeal by the plaintiff/respondent to the Court of Appeal was upheld. The Court of Appeal gave judgment in favour of the plaintiff/respondent. That court held that the Customary Court of Appeal sitting at Owerri had no jurisdiction to hear the appeal. E

Dissatisfied, the appellants have come to the Supreme Court. Briefs were filed and duly exchanged. The appellants formulated nine issues for determination. The respondent formulated three issues. Why a proliferation of nine issues? What are nine issues doing in an appeal which has six grounds? It is the law that issues are formulated from grounds of appeal and not the other way round. Therefore, generally, issues should be less than grounds of appeal. This is because a combination of grounds may give rise to an issue. Although a ground of appeal may give rise to an issue, this is not that common. There cannot be a situation where issues are more than grounds of appeal. F

Because counsel did the wrong thing, he found himself in a G

predicament when he started arguing the issues. He now argued issues 1, 2 and 3 together in amplification of ground 1. He did the same thing in respect of issues 4, 5 and 6 on ground 2. Again he did the same thing in respect of issues 7, 8 and 9 on ground 3. How come? How can counsel justify arguing three issues on one ground of appeal?

Appeals are not won on the quantity of issues out on their quality. While a well thought out and well framed single issue can win an appeal, bogus, verbose and rigmarole issues will not. There is really no need for the nine issues counsel formulated in this appeal. He succeeded wasting his time and the time of the court. Let him not do so again,

Learned counsel for the appellants, Mr. O. O. Amuzie, submitted on issues 1, 2 and 3 that the Court of Appeal wrongly held that the issue of want of jurisdiction of the Customary Court of Appeal of Imo State was a question of Customary Law. Citing Section 224(1) of the 1979 Constitution and *Pam v. Gwon* (2000) 1 S.C. 56; (2000) 1 SCNQR 23-26, *Oyewunmi v. Ogunesan* (1990) 5 S.C. (Pt.I) 1; (1990) 3 NWLR (Pt.137) 182 at 207 and *Golok v. Diyalpwah* (1990) 5 S.C. (Pt.II) 129; (1990) 3 NWLR (Pt.139) 413-414, learned counsel contended that it cannot be validly argued that the right to appeal on matters involving questions of Customary Law also includes the right to appeal on matters involving a question of the jurisdiction of the Customary Court of Appeal.

On issues 4, 5 and 6, learned counsel, relying on Section 247(2) of the Constitution and Section 55 of the Imo State Customary Courts Edict, No. 7 of 1984, submitted that the Imo State Customary Court of Appeal has jurisdiction to hear the appeal on the amended ground of appeal. He contended that a court of law can make use of any amendment. He cited *Okonjo v. Odie* (1985) 10 S.C. 272, *Kata v. Nig. Housing Development Society Ltd.* (1981) 4 S.C. 26 and *Ekwere v. The State* (1981) 9 S.C. 4; (1981) 9 S.C. (Reprint) 3.

On issues 7, 8 and 9, learned counsel submitted that the Court of Appeal ought to have given a ruling on the Preliminary Objection raised against the grounds of appeal as they stood at that time. By advising the respondent's counsel to reformulate his grounds of appeal to raise issues of Customary Law, it gave the impression that it

was not impartial and thereby occasioned a miscarriage of justice, counsel argued. He cited *Onajobi v. Olanipekun* (1985) NSCC Vol. 16, 611. He urged the court to set aside the judgment of the Court of Appeal.

Learned counsel for the respondent, Mr. C. U. Njepuome, relying on Section 224(1) of the 1979 Constitution, pointed out on issue No.1 that the ground of appeal filed by the appellants at the Customary Court of Appeal was an omnibus ground adopted for criminal appeals, or ground which did not raise any question or issue of Customary Law. He submitted that the appeal before the Customary Court of Appeal was incompetent because the notice and ground of appeal filed did not come within the ambit of Section 247 of the 1979 Constitution.

On issue No.2, learned counsel argued that Section 55 of Edict No. 7 of 1984 merely introduced a monetary qualification of N100.00 in respect of appeals under Customary Law; a section though an existing law, did not derogate from the provision of Section 247(1) of the 1979 Constitution. He dealt with what can be regarded as the contents of an omnibus ground at pages 21 and 22 of the Brief and the consequences of filing defective notice and grounds of appeal at pages 23 to 26 of the Brief.

On issue No.3, learned counsel submitted that the respondent was right in bringing an appeal before the Court of Appeal on the issue of jurisdiction and the Court of Appeal was right in its decision that the Customary Court of Appeal had no jurisdiction in the matter. He cited Section 247(1) of the 1979 Constitution. I will not take what learned counsel referred to as miscellaneous issue in paragraph 7.01, page 32 of his Brief, as I do not know of any such issue in the Rules of this court.

Section 224(1) of the 1979 Constitution provides as follows:-

“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.”

As it is, the subsection provides for two situations where appeal will lie as of right from the decision of Customary Court of Appeal.

The first one is in respect of civil proceedings before the Customary Court of Appeal involving question of Customary Law. The second one is not as specific as the first one. It is generic and omnibus. It provides for any other situation in which the National Assembly can by an Act enact.

B The applicable provision is the first arm or leg. The provision is quite clear. The matter on appeal must involve Customary Law. I should pause here to say that Section 247(1) of the 1979 Constitution also provides that a Customary Court of Appeal of a State shall
C exercise appellate and supervisory jurisdiction in civil proceedings involving questions of Customary Law. And what is Customary Law? Customary Law generally means relating to custom or usage of a given community. Customary Law emerges from the traditional usage and practice of a people in a given community, which, by common adoption and acquiescence on their part, and by long and unvarying habit, has acquired, to some extent, element of compulsion, and force of law with reference to the community. And because of the element of compulsion which it has acquired over the years by constant, consistent and community usage, it attracts sanctions of different kinds and is enforceable. Putting it in a more simplistic form, the customs, rules, traditions, ethos and cultures which govern the relationship of members of a community are generally regarded as Customary Law of the people.

F In *Owoniye v. Omotosho* (1961) 1 All NLR 304, Bairamian, FJ., described Customary Law as “a mirror of accepted usage.” In *Kindey v. Military Governor of Gongola State* (1988) 2 NWLR (Pt.77) 445, the Supreme Court adopted the definition in *Owoniye*. See also *Zaidan v. Mohssen* (1973) 11 S.C. 1; (1973) 6 S.C. (Reprint)
G 43.

The single ground of appeal to the Customary Court of Appeal is at page 65 of the record. It reads:-

H “*That the decision of the court is altogether unwarranted, unreasonable and cannot be supported having regard to the evidence on record.*” .

I do not agree with learned counsel for the respondent that the omnibus ground of appeal is only adopted in criminal proceedings. With respect, he is wrong. The omnibus ground is adopted both

in criminal and civil proceedings. See generally *Aremu v. Commissioner of Police* (1965) 1 ALL NLR 217, *Iboko v. Commissioner of Police* (1965) 1 All NLR 219, *Ekpenvono v. State* (1967) 1 ALL NLR 285, *Ogboda v. Adulugba* (1971) 1 All NLR 68, *NTA v. Anigbo* (1972) 5 S.C. 156; (1972) 5 S.C. (Reprint) 101, *Mobil Oil v. Coker* (1975) 3 S.C. 175; (1975) 3 S.C. (Reprint) 124. B

What is the content of Customary Law in that omnibus ground of appeal? There is none. Learned counsel for the appellants relied on Section 55(1) of Edict No. 7 of 1984 and submitted that the omnibus ground is vindicated by the Edict. The section reads:- C

“(i) An appeal shall lie as of right from the decisions of a Customary Court to the Customary Court of Appeal on any of the law following grounds:-

(a) Where the matter in dispute on appeal to the Customary Court of Appeal is of the value of One Hundred Naira or more, or D where the appeal involves a claim to or question respecting property or a right of the value of One Hundred Naira or more, final decisions in any civil proceedings or criminal proceedings under Customary Law.

(b) Where the ground of appeal to the Customary Court of E Appeal involves questions of law alone, final decisions in any criminal proceedings in which any person has been sentenced to imprisonment for a term exceeding three months or a final or forfeiture exceeding Fifty Naira by the Customary Court.

(c) Decisions on any civil or criminal proceedings or proceed- F ings under Customary Law on questions as to interpretation of the Constitution.”

Section 55(1) has three paragraphs. Counsel did not assist the court under which of the paragraphs the omnibus ground of appeal G relates. It does not relate to subsection 1(a) because the subsection ends with the relevant words “under Customary Law”, which vindicates Sections 224 and 247 of the 1979 Constitution. Does it relate or apply to sub-paragraph (b) the answer is no because the sub-paragraph provides for criminal proceedings. Finally, does it relate or H apply to sub-paragraph (c)? Again, the answer is, no, because sub-paragraph (c) provides for the interpretation of the Constitution. This appeal has nothing to do with the interpretation of the Constitution.

And so, the submission of learned counsel for the appellants on Section 55 of Edict No. 7 of 1984 fails.

I should not however forget to mention that the submission of learned counsel for the respondent that Section 55 merely introduced monetary qualification of One Hundred Naira, in I respect of appeals under Customary Law as rather simplistic. That is the provision of Section 55(l)(a). What of Section 55(l)(b) and (c)? Counsel conveniently avoided the two sub-paragraphs. He was wrong in avoiding them, the minister in the temple of justice that he is.

I have taken issues 1 to 6. I think I can stop here. It is for the above and the more detailed reasons given by my learned brother, Onnoghen, JSC., in his judgment that I too dismiss the appeal. I abide by the costs awarded by my learned brother.

D **MUSDAPHER JSC**

I have had the opportunity to read in advance the judgment of my Lord, Onnoghen, JSC., just delivered with which I entirely agree. For the same reasons so eloquently and comprehensively set out in the judgment which I respectfully adopt as mine, I too, find the appeal unmeritorious and consequently dismiss it. The respondents are entitled to costs against the appellants assessed at N50,000.00.

F **OGUNTADE JSC**

This appeal brings to the fore the extent of the jurisdiction of a Customary Court of Appeal under the 1979 Constitution of Nigeria. The respondent, as the plaintiff had as the representative of the Umuoheta Family of Umuogba Eziamaka Okpala instituted a suit against the appellants, who were sued as the representatives of the Umujuju Family of Umuogba Eziamaka, Okpala, claiming the following:-

"1. A declaration that the plaintiffs (as expressed and in capacity) are the owners in accordance with the Native Law and Custom of Umuogba Eziamaka in Okpala (and subject to the Land Use Decree) of the following parcels of farmland:-

- (a) Okwa-Achara;
- (b) Okwu-Icha;
- (c) Okwu - Ogwugwe;

(d) Udi – Alaukwu; and

(e) Okwara Ishi Obibi.’

All of which are situate at Umuogba Eziam Okpala within the jurisdiction of the court.

2. *Injunction restraining the defendants from interfering in any manner whatsoever with the plaintiffs’ right of ownership or possession of the said lands and in particular restraining the defendants from clearing and farming on Okwu Ogwugwu land which is due for farming by the plaintiffs this year.”*

The suit was brought at the Imo State Customary Court, Okpala. At the conclusion of hearing, judgment was given in favour of the plaintiffs/respondents. Dissatisfied, the appellants brought an appeal before the Customary Court of Appeal, Owerri on a solitary ground of appeal which stated - *“the decision was altogether unwarranted, unreasonable and cannot be supported having regard to the evidence on record.”*

Later, the Customary Court of Appeal granted the appellants leave to file additional grounds of appeal. At the conclusion of hearing, the appeal by the defendants/appellants was allowed and the plaintiffs/respondents claims were dismissed. Dissatisfied, the plaintiffs/respondents brought an appeal before the Court of Appeal, Port-Harcourt (hereinafter referred to as the ‘court below’). The court below allowed the appeal on the ground that the Customary Court of Appeal has not the jurisdiction under the 1979 Constitution to hear appeals from the Customary Court save on matters dealing with Customary Law.

The defendants/appellants have come on a final appeal before this court against the judgment of the court below. The simple question to be answered in this appeal is whether or not the Customary Court of Appeal has the jurisdiction to hear appeals from the customary court on matters not appertaining to Customary Law. This issue calls into consideration the provision of Section 247 of the 1979 Constitution. The section reads:-

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

(2) For the purpose of this section a Customary Court of Ap-

peal of a State shall exercise such jurisdiction and decide such questions as may be prescribed by the House of Assembly of the State for which it is established."

B It seems to me that Section 947 above is clear and explicit in its language. Only appeals involving questions of Customary Law could be entertained by the terms of Section 247 of the 1979 Constitution. Clearly therefore, the Customary Court of Appeal of Imo State which heard the appeal of the defendants/appellants on grounds other than Customary Law was in error. It acted without jurisdiction.

C The position was not made any better by the fact that the defendants/appellants amended their Notice of Appeal to raise other grounds which would have enabled the Customary Court of Appeal exercise appellate jurisdiction. This is the consequence of the fact that the Notice of Appeal filed by the defendants/appellants to initiate D their appeal before the Customary Court of appeal carried only one ground of appeal. If that solitary ground was invalid, then the appeal was not validly initiated. See *Atuyeye v. Ashamu* (1987)1 S.C. 333. It is a nullity. In the same way the judgment of the Customary Court of Appeal is a nullity. The result is that the court below was correct to E have allowed the appeal of the plaintiffs/ respondents. See *Golok v. Diyalpwah* (1990) 5 S.C. (Pt.II) 129; (1990) 3 NWLR (Pt.139) 413 at 414.

F It needs be said clear that, that Section 55 of the Imo State Edict, No.7 of 1987, a State Law, to the extent to which it is in conflict with the 1979 Constitution would be inoperative.

I agree with the leading judgment of my learned brother, Onnoghen, JSC. I would also dismiss this appeal with N50,000.00 costs in favour of the respondents.

G

TABAI JSC

I read, in advance, the leading judgment prepared by my learned brother, Onnoghen, JSC., and I agree entirely with his reasoning and conclusion that the appeal has no merit. The result is that H I also dismiss the appeal with costs as assessed in the leading judgment.