

**SUPREME COURT OF NIGERIA**  
FRIDAY 20TH JANUARY, 2012. SC. 197/2004  
**CORAM:- W. S. N. ONNOGHEN, J. A. FABIYI,**  
**S. GALADIMA, N. S. NGWUTA, M. U. PETER-ODILI, JJSC**

1. CHIEF TAJUDEEN OLALEYE-OTE  
2. CHIEF LUKMAN OBAOKU-OTE ..... APPELLANTS  
AND  
ALIHAJA FALILATU BABALOLA ..... RESPONDENT

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LAND LAW - Customary land - Land Use Act - Application - Land Use Act confers jurisdiction on the customary court over the land - And it is the applicable law by virtue of s. 41 thereof (H1)

LAND LAW - Customary court - Jurisdiction - The value of land does not have to be stated in Grade A Customary Court - Since jurisdiction of the court is not limited - By value of the disputed land (H2)

ACTIONS - Cause of action - Applicable law - Is the law in force at the time of pendency of a suit - And not the procedural law in force when a cause of action arose (H3)

STATUTES - Words & phrases - “Or” - Interpretation - As used in 1<sup>st</sup> schedule of Customary Court Law 1986 - “Or” means “and” not disjunctive (H4)

COURTS - Jurisdiction - Ouster clause - For jurisdiction of court to be ousted - Ambiguity or doubt in statute should not be entertained (H5)

STATUTES - Interpretation - Principle - Court can supply an omission in a law - To ensure reasonableness therein (H6)

***FACTS***

Plaintiff/respondent sued defendants/appellants in Grade II Customary Court, Ifo-Ogun State, claiming inter alia, declaration of title, damages for trespass and injunction restraining appellants from further trespassing on the disputed land. The case proceeded to trial

at the court. In his judgment, the trial Customary Court Judge granted the claims of respondent and awarded damages of N600.00 to respondent. Dissatisfied, appellants appealed to the High Court of Ogun State.

In its judgment, the High Court allowed the appeal and struck out the entire proceedings of the Customary Court on the ground that it (i.e. the Customary Court) lacked jurisdiction to adjudicate on the matter brought before it by respondent. Respondent was dissatisfied with the decision of the High Court and consequently appealed same to the Court of Appeal, Ibadan Division. The court in its judgment set aside the judgment of the High Court, while that of the Customary Court was restored. Aggrieved, appellants filed appeal in Supreme Court.

### **ISSUES FOR DETERMINATION**

*“(i) Having regard to the annual rental value of the land in dispute which clearly exceeds the one prescribed by the enabling Customary Courts Law/Edict of Ogun State, whether the Court of Appeal was correct when it held that the Ifo Grade II Customary Court possessed the requisite jurisdiction to adjudicate over the respondent’s claim.*

*(ii) Whether the Court of Appeal was right when after having held that the issue of the appointment, membership and constitution, jurisdiction and extent of powers of Customary Courts in Ogun State are embodied in the Customary Courts Law and Edict particularly in respect of their jurisdiction in respect of land is only as handed down by the Land Use Act, 1978 regardless of the value of the land.”*

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

*Customary land - Land Use Act - Application*

**1. It was also submitted that the provision of S. 41 of the Land Use Act is not in conflict with the First Schedule to the Edict. But the appellant came out with contradictory argument when he says that the Edict conflicts with the Land Use Act but since the Ifo Grade II Customary Court was not created by the Land Use Act or since the Land Use Act cannot or should not be**

**said to confer jurisdiction on the Land matters, the applicable law is not the Land Use Act but the Customary Court Edict of 1986 of Ogun State. However, the position of the law is that the Land Use Act confers jurisdiction on Land, the subject of Customary right of Occupancy and that the Land Use Act being a direct enactment under the Constitution is the law applicable by virtue of its S. 41 (p. 3647 E)**

*LAND LAW - Customary court - Jurisdiction*

**2. In any case, Onasanya's case was decided in 1975, about 3 years before the introduction of the Land Use Act into our statute book. The Land Use Act was not cited and relied upon. Also the case of Alade v. Alemuloke (supra) although this Court decided that case after the commencement of the Land Use Act, its section 41 was not alluded to. The case can rightly be said to have been decided per incuriam. I can safely conclude that, in the light of my observations in the two cases, relied upon by the appellant regarding the rental value of the Land in dispute, the value does not have to be stated, before a Grade A or I Customary Court since the jurisdiction of such is not limited by the value of the land in dispute. Whither then is the appellant's authorities for their submission that the jurisdiction of the trial Customary Court Ifo Grade II or indeed that of any "native" court can be limited by annual rental value or the real value of the land in dispute? I do not think either of the two cases of Onasanya or Alemuloke supports the appellants' case. (p. 3649 D)**

*ACTIONS - Cause of action - Applicable law*

**3. However, whichever date is taken between 1984 and 1989 as being the time when the suit was filed, it is clear that as at 1990 when the trial was conducted and the delivery of judgment by the Ifo Grade II customary Court. The Customary Court Law of Ogun State had ceased to apply and the applicable law is the Customary Court Edict of 1986. This should be so because the Law establishing a Court and conferring jurisdiction on it is basically a procedural law. In matters of Laws having to do with procedure, the applicable law is the law in**

**force at the time of the pendency of a suit and not the procedural law in force when a cause of action arose: It must be noted that from the High Court of Ogun State which adjudicated over this suit (as an appellate court) to the Court of Appeal and now this court the applicable customary law is the Customary Court Edict, 1986. It is therefore that law that is applicable to this suit and for the consideration of this court. I do not see the need for the two laws to apply concurrently.** (p. 3650 G)

*Words & phrases - "Or" - Interpretation*

**4. However, it is not in all cases that the word "or" in a statute connotes disjunctive principle, to express two or more things thereby indicating the meaning of the words "and" and "or." As used in the first schedule of the Customary Court Law, 1986, herein "or" can only mean "and" not disjunctive "or," even though the word "and" is not used in that enactment. This is one provision which tends to oust the jurisdiction of a court of law. It must be strictly construed.** (p. 3651 D)

*Jurisdiction - Ouster clause*

**5. The cheapest way to oust the jurisdiction of courts is to cling to technicalities in the interpretation of ouster clauses. To simply ascribe to the annual rental value of a land in a case as being in excess of the one stipulated under the law without stating the real value of the land in dispute or vice versa, as sufficing this will easily oust the jurisdiction of Ifo Grade II Customary Court. For the jurisdiction of a court to be ousted ambiguity or doubt in the statute should not be entertained.** (p. 3651 F)

*STATUTES - Interpretation - Principle*

**6. It is one of the cardinal principles of interpretation of statute that the court can supply an omission in a law to ensure reasonableness therein. No doubt the real value of the land in dispute is nowhere stated in the writ.** (p. 3651 H)

## NOTABLE POINT OF INTEREST

### **GALADIMA JSC**

#### ***1. Effect of not stating the value of disputed land***

Thus the effect of non-stating of the value of the disputed piece of land can broadly be set out in two, viz:

(1) Firstly, that even though the trial customary court would not have had the jurisdiction to entertain the suit, for the reason that the value of the land was not disclosed, it nonetheless went ahead, assumed jurisdiction and entertained the suit. B

(2) Secondly, even though there was no Grade I Customary Court in Ifo, the Customary Court Grade II assumed the status of Grade I Customary Court before which the value of the land be it rental or real does not need to be stated in a writ: (p. 3652 A) C

### **REPRESENTATION**

O.O. Ojutalayo, Esq - for the Appellants

S.A. Adepoju, Esq - for the Respondent D

### **CASES REFERRED TO**

Military Governor of Ondo State v. Adewumi (1988) 6 SCNJ 151 E  
A-G Anambra State v. A-G Federation (1993) 6 NWLR (Pt. 302) 692

Madukolu v. Nkemdilim (1962) All NLR 589-590

Rossek v. A.C.B. Ltd. (1993) 8 NWLR (Pt. 312) 382 F

Alade v. Alemuloki (1988) 1 NWLR (Pt. 69)

Adikatu Onasanya v. Adegunle Sapitan (1975) 1 NMLR 30

A-G Ondo State v. A-G Federation (2002) FWLR (Pt. 101) 1419

Idiok v. State (2006) All FWLR (Pt. 333) 1788

Ogoala v. State (1991) 2 NWLR (Pt. 175) 509 G

Abacha v. Fawehinmi (2000) FWLR (Pt. 4) 542

Emuze v. Vice-Chancellor Uniben (2003) 3 FWLR (Pt. 170) 1411

Onyeanusu v. Miscellaneous Offences Tribunal Eastern Zone Owerri (2002) FWLR (Pt.113) 272

Adisa v. Oyinwola (2000) 10 NWLR (Pt. 674) 116 H

Rossek v. A.C.B. Ltd. (1993) 8 NWLR (Pt. 312) 382

**STATUTES REFERRED TO**

Customary Courts Law 1980, schedule 1, ss. 1, 3

Customary Courts Edicts 1986, schedule 1

Land Use Act, s. 41

Constitution of Federal Republic of Nigeria 1999, s. 6(5)(2)(k)

B Constitution of Federal Republic of Nigeria 1979, s. 274(5)

**LEAD JUDGMENT BY GALADIMA JSC**

C Sometime in May 1989, the respondent as plaintiff had taken the appellants as defendants to an Ifo Grade II Customary Court, Ogun State claiming as follows:

*“Plaintiff seeks for declaration of title claiming the lawful ownership of a piece of land which was inherited from my late father Abdu Sarki Areago with purchase receipt dated 21st of April, 1940.*  
D *The plaintiff’s claim against the defendant is for the sum of one thousand naira (N1,000.00) being for trespass on the landed property being and lying at Aboro Area of Agbado in Ifo/Ota Local Government Area. The boundaries are as follows: it measures 2 acres. On the right is bounded by Late Baba Alawofun landed property. On the left is bounded by Oto landed property. At the South is bounded by Oto landed property. That an interim injunction to restrain the defendant, her agents or privies from owing or entering into the said land in dispute pending the determination of this case by the honourable court. The annual rental of the said landed property*  
E *valued Five Hundred Naira (N500.00)”*.  
F

The case proceeded to trial at the Customary Court. On 7/6/1989 one Alhaji Omidina Ote (now deceased) appeared in Court as representing the defendant (Alhaja S. A. Adeola) but the Court dis-  
G regarded his appearance on the ground that he is a stranger to the proceedings. However, upon the respondent’s application the afore-said Alhaji Ote was eventually joined as the 2<sup>nd</sup> defendant by the order of the trial Customary Court.

H Thence later, the trial Customary Court Judge, delivered his judgment on 19/9/1990, making the following orders:

*“a. the plaintiff’s claim on title of ownership to the piece of land as described on the claim sheet prevails. The defendants are subsequently restrained from further alienating on the said land henceforth.*

*b. The defendants are to pay the sum of Six Hundred Naira (N600.00) as damages to the plaintiff.”*

Dissatisfied, with this decision, the appellants appealed to the Ogun State High Court. In its judgment delivered on 7/7/99, the High Court allowed the appeal and struck out the entire proceedings of the Customary Court on the ground that it lacked jurisdiction to adjudicate on the matter brought before it by the plaintiff/respondent herein. B

The plaintiff/respondent was dissatisfied with the decision of the High Court and consequently appealed same to the Court of Appeal, Ibadan Division by its considered judgment delivered on 16/7/2004, the judgment of the High Court was set aside while that of the Customary Court was restored. It held inter alia as follows: C

*“The State Legislature in Ogun State is not deprived of the powers of creating the Customary Court in its area and defining the powers, scope and jurisdiction on issue of land is as handed over by the Land Use Act, 1978 which is to cover land in rural areas regardless of their value.”*

Being dissatisfied with this decision the appellants have appealed to this court on two grounds by notice of appeal dated 13/9/2004 and filed on 14/9/2004. E

Briefs of argument were filed and exchanged by the counsel for the respective parties. Appellants’ brief was dated and filed on 30/10/2007. Brief of the respondent dated 14/9/2010 was filed on 17/9/2010. F

In the appellant’s brief of argument, two issues identified for determination are as follows:

*“(i) Having regard to the annual rental value of the land in dispute which clearly exceeds the one prescribed by the enabling Customary Courts Law/Edict of Ogun State, whether the Court of Appeal was correct when it held that the Ifo Grade II Customary Court possessed the requisite jurisdiction to adjudicate over the respondent’s claim.* G

*(ii) Whether the Court of Appeal was right when after having held that the issue of the appointment, membership and constitution, jurisdiction and extent of powers of Customary Courts in Ogun State are embodied in the Customary Courts Law and Edict particularly in respect of their jurisdiction in respect of land is only as handed H*

*down by the Land Use Act, 1978 regardless of the value of the land."*

The only issue distilled by the respondent for determination reads:

B *"(a) Act (sic) whether the jurisdiction of a Customary Court in the South Western part of Nigeria can be limited in a land case on the annual rental value or the value of the land.*

C *(b) If the answer is yes (and I wish it is no (sic) then whether in view of the provision of Section 41 of the Land Use Act, a Litigant is not bound by the value of the land in dispute as provided in the Customary Laws of Ogun State but as provided for in Section 41 of the Land Use Act, 1978."*

I must observe that from the record of proceedings, the point of contention between the parties right from the High Court through the Court of Appeal was the competence or otherwise of the trial D Customary Court to determine the appellant's action before it. The appellants in their brief therefore aptly brought out clearly the issues distilled from the two grounds of appeal. Quite conveniently therefore, the two issues which are inexplicably intertwined have been argued together, and I shall so treat them later.

E It is the submission of the appellant's counsel that by virtue of the provision of the First Schedule to the customary courts Law, 1980, which was the relevant law in Ogun State when the action was initiated at the trial Customary Court in 1984, and Schedule 1 of the Customary Courts Edicts, 1986, which was the operative law when F the action was tried by the court in 1989, the respondent's claim was beyond the jurisdiction vested in the Customary Court. It is contended that by the First Schedule, while the jurisdiction of Customary Court Grade I is unlimited in respect of land matter that of Customary Court Grade II is limited to causes or matters in which the G value of the land does not exceed N1,000.00 or in which the rental value does not exceed N200 per annum.

H It is submitted that a court of law is only competent to exercise its adjudicatory authority to the extent and not beyond the power conferred on it by the statute or the law creating the court. That the Statute that created Customary Courts in Ogun State as at 1989 when the Ifo Grade II Customary Court became seised of jurisdiction over the subject of this appeal is the Customary Courts Edict No. 7 of 1986. It is argued that by reason of the fact that the original claim



was filed at the Ota Grade II Customary Court in 1984 the Customary Courts Law No.14 of 1980 is also relevant. It is therefore, submitted that since the respondent herein herself indicated the rental value of the subject matter of her claim is N500, in view of this value stated the Ifo Grade II Customary court had no jurisdiction to adjudicate on the land in dispute in this suit. Reliance was placed on the cases of Adikatu Onasanya v. Adegunle Sapitan (1975) 1 NMLR 30 at 33; and Made v. Alemuloke (1988) 1 NWLR (Pt. 69) p.207 at 215. B

Having analysed the provisions of section 41 of the 1979 Constitution and sections 3 and 1 of the Customary Courts Law 1980 and the Customary Court Edict, 1986 respectively, of Ogun State, learned counsel for the respondents has submitted that there is no conflict whatsoever in the aforesaid provisions. That Section 41 of the Land Use Act does not have the effect of creating a Customary Court, Area Court or any other court of equivalent jurisdiction rather it only indicates the type of court that can be approached for redress in matters relating to customary right of occupancy and no more. It is finally submitted that the case of Adisa v. Oyinwola (2000) 10 NWLR (Pt. 674) 116 relied on by the court below as the “*locus classicus*” on this matter, is no authority for the proposition for that Court to hold that C D E

“*jurisdiction on the issue of land is as handed over by the Land Use Act, 1978 which is to cover rural areas regardless of their value*”.

That this case does not remove the stratification of Customary Courts and neither does it tamper with the delimitation of their jurisdiction based on the value of the land in dispute. In the light of the foregoing, this court is urged to allow the appeal, set aside the decision of the lower court and to restore the judgment of the High Court. F G

Learned counsel for the respondent on his part submitted that the provision of s. 41 of the Land Use Act is not necessarily in conflict with S.16 of the schedule to Ogun State Customary Court Edict, 1986. It is submitted that both sections of these provisions confer jurisdiction on Customary and Area Court on Lands, the subject of customary right of occupancy. Learned counsel for the respondent set out the issues and the ratio decidendi in the two cases namely Onasanya v. Sapitan (supra) and Alade v. Alemuloke (supra) relied H

on by the appellants. He submitted that in the two cases the issue for determination has to do with whether it was necessary to state the value of the land in dispute before a Grade 'A' Customary Court of unlimited jurisdiction. The answer in both is that it is quite unnecessary since the jurisdiction of the Customary Court Grade A was not  
 B limited by the value of the land in dispute unlike that of the Customary Court Grade B. That the Onasanya's case was decided in 1975 about 3 years before the introduction of the Land Use Act. Hence, the Act was not cited in determination of that case, moreso that the statements made about rental value, in the case was made obiter.  
 C That there was no decision that the jurisdiction of a Grade B or II Customary Court shall be limited by the annual rental value or the value of the land in dispute. Moreover, although this court decided that case after the commencement of the Land Use Act, the Land  
 D Use Act under its S. 41 was not alluded to. It is submitted that the decision in that case can rightly be said to have been made per incuriam.

It is contended by the learned counsel for the respondent that whatever date is taken between 1984 and 1989 as being the  
 E time when the suit was filed, one clear thing is that as at 1990 when trial was conducted and the judgment delivered, the Customary Court Law of Ogun State, 1980 had ceased to apply. It is submitted that the applicable law is the Customary Court Edict of 1986. It is further  
 F submitted that there is no necessity or the need for the two laws (supra) to apply concurrently.

I must say at the onset that while the learned counsel for the respondent earns my commendation for being extra vigilant in drawing our attention to some obvious slips in the lead judgment; he at  
 G the same time gets my admonition for proliferation of issues from only two grounds of appeal of the appellants. I shall say no more but to highlight the slips so as to put the records of appeal straight. The first slip noted in the lead judgment on page one is whereat was stated:

H “While arguing the appeal, the learned counsel for the appellant Mr. O.O. Ojitalayo decided to argue one of the additional grounds of appeal”

I agree with the learned counsel for the respondent herein that the correction here is that the party which his Lordship referred

to as the appellant is not the “appellant” but the “respondent”, while M. O.O. Ojitaloyo could have only appeared for them. Again on the last page of the lead judgment, it is stated thus:

*“The appeal lacks merit and it is hereby dismissed.” Obviously this is a slip. What his Lordship could only have meant is that the appeal “succeeds”.*

Thirdly, the award of N5,000.00 costs to the respondent” on the last page of the judgment should be deemed “costs to the “appellant”.

Lastly, there are some instances in the lead judgment where the “appellant” was erroneously interchanged for “the respondents” and vice versa.

Now to the appeal. As can be gleaned from the appeal, the position of the appellant before the Court of Appeal is that since the annual rental value of the plaintiff’s land was stated to be N500 which was in excess of the N200; then the Ifo Grade II Customary Court had no jurisdiction to entertain her claim and that the High Court was right when it struck out the claim. Another erroneous argument put forward by the appellant is that the Ogun State Customary Court Edict, 1986 is not a creation of the Constitution.

***It was also submitted that the provision of S. 41 of the Land Use Act is not in conflict with the First Schedule to the Edict. But the appellant came out with contradictory argument when he says that the Edict conflicts with the Land Use Act but since the Ifo Grade II Customary Court was not created by the Land Use Act or since the Land Use Act cannot or should not be said to confer jurisdiction on the Land matters, the applicable law is not the Land Use Act but the Customary Court Edict of 1986 of Ogun State. However, the position of the law is that the Land Use Act confers jurisdiction on Land, the subject of Customary right of Occupancy and that the Land Use Act being a direct enactment under the Constitution is the law applicable by virtue of its S. 41***

I shall have recourse to S. 41 of the Land Use Act, 1978, and the 1<sup>st</sup> Schedule to the Customary Edict 1986. Section 41 reads:

*“An Area Court or Customary Court or other Court of equivalent jurisdiction in a State shall have jurisdiction in respect of proceedings of a Customary Right of Occupancy granted by a Local*

*Government under the Decree, and for the purpose of this paragraph, proceedings for a declaration of title to a Customary Right of Occupancy and all Laws including rules of Court regulating practice and procedure of such Court shall have effect with such modification as would enable effect to be given to this section.”*

B Learned counsel for the respondent has cited and relied on several other provisions in his submissions, dealing with the creation and jurisdiction of the Customary Courts in Ogun State, when the action was initiated and tried by the trial Customary Court. He al-  
C luded to the Customary Courts Edict No. 7 of 1986 the statute that created Customary Courts in Ogun State as at 1989 when the Ifo Grade II Customary Court became seised of jurisdiction over the subject of this appeal. It is contended that by reason of the fact that the original claim was filed at the Ota Grade II Customary Court in  
D 1984 the Customary Courts Law No. 14 of 1980 is also relevant. The provisions of those two pieces of legislation are in pari materia on the issues of creation and jurisdiction of the two grades of Customary Courts in Ogun State, especially sections 3 and 1 respectively of these two legislations dealing with the establishment of Customary  
E courts in Ogun State while sections 17 and 16 respectively of the two statutes provide for the jurisdiction of the Courts in their respective schedules. The main argument of the appellant is hinged on the schedule to the two legislations. It is reproduced thus:

F *“Causes or matters in which the value of the land does not exceed N1,000.00 or in which the rental value does not exceed N200.00 per annum.”*

It is contended that in view of the rental value thus stated, the Ifo Grade II Customary Court had no jurisdiction to adjudicate  
G on the land in dispute in this suit. It is the submission of appellant’s counsel in their brief of argument that the rental value of the land over which the Ifo Grade II Customary Court can adjudicate must not exceed N200.00 per annum. The respondent stated the annual rental value of her land as N500.00. It is the appellants’ contention  
H that for this reason, the court below was wrong when it set aside the judgment of the High Court which struck out the respondent’s claim. Both section 41 of the Land Use Act and section 16 of the 1<sup>st</sup> schedule of the Ogun State Customary Court Edict confer jurisdiction on Customary Courts to adjudicate on land matter. The subject of cus-

tomary right of occupancy. The only difference that can be pointed out here is the court to which a litigant can approach be it Customary Court or the Area Court.

It is noted that the appellants in their brief of argument citing the cases of Adikatu Onasanya v. Adegunle Sapitan (1975) 1 NMLR 30 at 33 and Alade v. Alemuloke (1988) 1 NWLR (Pt.69) 207 at 215, has submitted that the annual rental value of the land in dispute ousted the jurisdiction of the Customary Court. I could not lay my hand on the Onasanya case (supra). I read Alade's case (supra). In the latter case the issue for determination has to do with value of the land in dispute before a Grade 'A' Customary Court of unlimited jurisdiction. This Court decided that:

*"Grade "A" Customary Courts being conferred and invested with "unlimited jurisdiction in land cases there will be no need stating any amount on the particulars of the writ because its jurisdiction is not limited by the value of the land in dispute."*

***In any case, Onasanya's case was decided in 1975, about 3 years before the introduction of the Land Use Act into our statute book. The Land Use Act was not cited and relied upon. Also the case of Alade v. Alemuloke (supra) although this Court decided that case after the commencement of the Land Use Act, its section 41 was not alluded to. The case can rightly be said to have been decided per incuriam. I can safely conclude that, in the light of my observations in the two cases, relied upon by the appellant regarding the rental value of the Land in dispute, the value does not have to be stated, before a Grade A or I Customary Court since the jurisdiction of such is not limited by the value of the land in dispute. Whither then is the appellant's authorities for their submission that the jurisdiction of the trial Customary Court Ifo Grade II or indeed that of any "native" court can be limited by annual rental value or the real value of the land in dispute? I do not think either of the two cases of Onasanya or Alemuloke supports the appellants' case.***

It is the consensus of the parties to this appeal that the jurisdiction which a court of law has to adjudicate over a matter can only be derived from either the Constitution, Act, Decrees Law and Edicts: See African Newspapers of Nigeria v. Federal Republic of Nigeria

(1985) 2 NWLR (Pt.6) 137.

I shall now go down the memory lane for the purpose of the appeal. The 1979 and 1999 Constitution created superior Courts of records in Nigeria under their respective S. 6. These courts include Supreme Court, the Court of Appeal, the Federal High Court, the State High Court, and so on. These Constitutions did not directly mention the Customary and Area Courts. But by virtue of s. 6(5)(2) (k) of 1999 Constitution State Houses of Assembly are enjoined to make laws establishing courts beside those specifically mentioned as aforesaid. Despite the creation of the superior court by the Constitution, each of these courts has a statutory law that can be said to establish it. For example, the Supreme Court Act 1960 (Cap. S. 15, Laws of Fed. 2004), Court of Appeal Act 1976. By comparison, the inferior Courts, (which the Customary Courts in Ogun State are) have laws that established them. It is in pursuance of the above that the Ogun State Government decided to establish and confer jurisdiction on Customary Courts in the State over matters, the subject of Customary law vide the passage of the Customary Court Law of Ogun State 1980 and the Customary Court Edict of 1986.

I had set out quite a number of laws which I thought could assist in determining this appeal. However, I agree with the Learned Counsel for the respondent that there is need to clear the ambiguity as to which one of the Customary laws mentioned earlier applies in this appeal. I shall therefore, recapitulate the following points. The new Local Government Areas were created in Ogun State after 1984 pursuant to which the suit had to be transferred to the Ifo Grade II Customary Court by virtue of the fact that the land in dispute had fallen under the new Local Government Area. This was in 1989. The suit was therefore filed in 1984 and not 1989.

***However, whichever date is taken between 1984 and 1989 as being the time when the suit was filed, it is clear that as at 1990 when the trial was conducted and the delivery of judgment by the Ifo Grade II customary Court. The Customary Court Law of Ogun State had ceased to apply and the applicable law is the Customary Court Edict of 1986. This should be so because the Law establishing a Court and conferring jurisdiction on it is basically a procedural law. In matters of Laws having to do with procedure, the applicable law is the***

**law in force at the time of the pendency of a suit and not the procedural law in force when a cause of action arose:** See Rossek v. A.C.B. Ltd. (1993) 8 NWLR (Pt.312) 382 at 472 and 474. **It must be noted that from the High Court of Ogun State which adjudicated over this suit (as an appellate court) to the Court of Appeal and now this court the applicable customary law is the Customary Court Edict, 1986. It is therefore that law that is applicable to this suit and for the consideration of this court. I do not see the need for the two laws to apply concurrently.**

From this provision, it is clear that it is not only annual rental value of N200.00 that determines the monetary jurisdiction of Grade II Customary Court of Ogun State on land matters. Indeed another determining factor of the jurisdiction of the Grade II Customary "Court, Ogun State in land matter is the value of the land which must not exceed N1,000.00. Clearly, the real or purchase worth of a land is different from its annual rental value which is to annual rent payable on that land. **However, it is not in all cases that the word "or" in a statute connotes disjunctive principle, to express two or more things thereby indicating the meaning of the words "and" and "or."** As used in the first schedule of the Customary Court Law, 1986, herein "or" can only mean "and" not disjunctive "or," even though the word "and" is not used in that enactment. **This is one provision which tends to oust the jurisdiction of a court of law. It must be strictly construed.** See Abacha v. Fawehinmi (2000) FWLR (Pt.4) 542; (2000) 6 NWLR (Pt. 660) 228; Emuze v. Vice Chancellor Uniben (2003) FWLR (Pt.170) 1411; (2003) 10 NWLR (Pt. 828) 378. **The cheapest way to oust the jurisdiction of courts is to cling to technicalities in the interpretation of ouster clauses. To simply ascribe to the annual rental value of a land in a case as being in excess of the one stipulated under the law without stating the real value of the land in dispute or vice versa, as sufficing this will easily oust the jurisdiction of Ifo Grade II Customary Court. For the jurisdiction of a court to be ousted ambiguity or doubt in the statute should not be entertained. It is one of the cardinal principles of interpretation of statute that the court can supply an omission in a law to ensure reasonableness therein. No doubt the real value of the land in dispute is no where stated in the**

**writ.** Thus the effect of non-stating of the value of the disputed piece of land can broadly be set out in two, viz:

(1) Firstly, that even though the trial customary court would not have had the jurisdiction to entertain the suit, for the reason that the value of the land was not disclosed, it nonetheless went ahead, assumed jurisdiction and entertained the suit.

(2) Secondly, even though there was no Grade I Customary Court in Ifo, the Customary Court Grade II assumed the status of Grade I Customary Court before which the value of the land be it rental or real does not need to be stated in a writ:

See *Onasanya v. Sapitan* (supra) and *Made v. Alemuloke* (supra); where it was held that in a land case before a Native Court A or I, value of the land in dispute can be dispensed with. Whichever of the two results is adopted the fact remains that the Customary Court of Ogun State Grade II, irrespective of its class or classification assumed jurisdiction over land in this case mindless of the value of land as stated in the writ as above that prescribed by the Law. It is this practice that the court below affirms, when it held that the Ifo Customary Court Grade II is not different from Grade I. I do not think in any case that the classification appears to have any impact on that court.

Assuming that the jurisdiction issue in this appeal can be properly determined solely on the annual rental value of the land in dispute without recourse to the value of the land, I would eventually come to the same conclusion that the lower court was right when it held that irrespective of the Grade of the Customary Court in Ogun State, a prospective land claimant can approach any Customary Court within his District in the appropriate Local Government Area. I do not think that the Constitution intends the mundane categorization or classification of one Customary Court or Area Court as “inferior” or “superior”. I reiterate however that the Ogun State is not deprived of the power to create Customary Courts in its area and defining the powers, scope of operation and jurisdiction of these courts. However, their jurisdiction on issue of land is governed by the Land Use Act, 1978 which provides for these courts to cover land cases in rural areas regardless of their value. A litigant is entitled to seek redress in a land matter in any grade of the customary courts regardless of the value of the land.



In the light of the foregoing, I come to the conclusion that this appeal lacks merit and it is hereby dismissed. The decision of the court below is affirmed. I assess costs of N50,000.00 against the appellants but in favour of the respondent.

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B

**ONNOGHEN JSC**

I have had the benefit of reading in draft the lead judgment of my learned brother, Galadima, JSC and I agree with his reasoning and conclusion that the appeal lacks merit and ought to be dismissed. C

I order accordingly and abide by the consequential orders made in the said lead judgment including the order as to costs. Appeal dismissed.

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D

**FABIYI JSC**

I have had a preview of the judgment just delivered by my learned brother, Galadima, JSC. For the reasons contained therein. I agree that the appeal should be dismissed. I order accordingly. E

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**NGWUTA JSC**

In May 1989, the respondent, then plaintiff, commenced an action against the appellants as defendants in a Grade II Customary Court, Ifo, Ogun State. She sought a declaration of title and injunction against the appellants in respect of a piece of land at Abaro Area of Agbado in Ifo/Ota Local Government Area of Ogun State. She claimed she inherited the land from her late father who purchased same on 21<sup>st</sup> April 1940. She claimed N1,000.00 as damages for trespass on the land. She put the annual rental value of the land at N500.00. F G

In its judgment, dated 19<sup>th</sup> September 1990, the trial Customary Court granted the declaration sought by the respondent and awarded her N600.00 (Six hundred naira) as damages. The appellants were aggrieved and appealed the judgment on the 7<sup>th</sup> July, 1999 in which it allowed the appeal and struck out the claim on the ground that the Grade II Customary Court, Ifo lacked jurisdiction to enter- H

tain the claim.

The respondent disagreed with the decision of the High Court and appealed to the Court of Appeal, Ibadan Division. The lower court, in its judgment delivered on 16/7/2004 allowed the appeal, set aside the judgment of the High Court and restored the judgment of the trial Customary Court. Specifically, the lower court held:

*“The State Legislature in Ogun State is not deprived of the powers of creating the Customary Court in its area and defining the powers, scope and jurisdiction on issue of land as handed over by the Land Use Act, 1978 which is to cover land in rural areas regardless of their value.”*

Against the said judgment, the appellants appealed to this court on two grounds in their notice of appeal dated 13/9/2004 and filed on 14/9/2001.

Learned counsel for the parties filed and exchanged briefs of argument in accordance with the rules of this court. Appellants’ brief was dated and filed on 30/10/2007 while the respondent’s brief was dated 14/9/2010 but filed on 17/9/2010

In their brief of argument, the appellants framed the following two issues for determination of the appeal:

*“(1) Having regard to the annual rental value of the land in dispute which clearly exceeds the one prescribed by the enabling Customary Courts Law/Edict of Ogun State, whether the Court of Appeal was correct when it held that the Ifo Grade II Customary Court possessed the requisite jurisdiction to adjudicate over the respondent’s claim.*

*(2) Whether the Court of Appeal was right when jurisdiction and extent of powers of Customary Courts in Ogun State are embodied in the Customary Courts Law and Edict particularly in respect of their jurisdiction in respect of land is only as handed down by the Land Use Act, 1978 regardless of the value of the land.”*

The respondent presented a lone issue split into two:

*“(a) Whether the jurisdiction of a Customary Court in the South Western part of Nigeria can be limited in a land case on the annual rental value as the value of the land.*

*(b) If the answer is yes (and I wish it is no) then whether in view of the provision of Section 41 of the Land Use Act, a litigant is not bound by the value of the land in dispute as provided in the*

*Customary Laws of Ogun State but as provided for in Section 41 of the Land Use Act, 1978.”*

Learned counsel for the parties invoked S. 41 of the Land Use Act and 16 of the Customary Court Edict of Ogun State 1986. They are ad idem that there is no conflict between the Federal legislation and the State Law. Section 41 of the Land Use Act provides: B

*“41. An Area Court or Customary Court or other court of equivalent jurisdiction in a State shall have jurisdiction in respect of proceedings of a customary right of occupancy granted by a Local Government under the Decree, and for the purpose of this paragraph, proceedings for a declaration of title to a customary right of occupancy and all laws including rules of court regulating practice and procedure of such court shall have effect with such modification as would enable effect to be given to this section.”* C

The 1<sup>st</sup> Schedule to S. 16 of the Customary Court Edict of Ogun State, 1984 provides: D

*“Causes or matters in which the value of the land does not exceed N1,000.00 or in which the rental value does not exceed N200.00 per annum.”*

The two legislations confer jurisdiction over land matters on Customary Courts. While the Federal legislation confers unlimited jurisdiction in proceedings in respect of a Customary Right of Occupancy granted by a Local Government, the State legislation created Customary Courts of different grades with jurisdiction depending on the value of the land or its annual rental value. F

The Land Use Act vested jurisdiction in proceedings relating to customary right of occupancy granted by a Local Government on:

*“An Area Court or Customary Court or other Court of equivalent jurisdiction in a State without classification. The State Law imposed classification with jurisdiction of each grade of Court based on the value or annual rental value of the land, thus modifying the jurisdiction conferred by the Federal Law.”* G

In my humble view, the Federal Legislature effectively covered the field in relation to the jurisdiction of the relevant courts over proceedings in matters of customary right of occupancy granted by a Local Government. The State Law conferring jurisdiction according to Grade and value of the land in litigation is in conflict with s. 41 of the Land Use Act, a Federal legislation. In Military Governor of Ondo H

State & Anor v. Victor Adegoke Adewumi (1988) 6 SCNJ 151 at 159; (1988) 3 NWLR (Pt. 82) 280, this court, per Nnaemeka-Agu, JSC (of blessed memory) invoked the covering the field principle and held that where the Federal Government has validly legislated on a matter, any State legislation on the same matter which is inconsistent with the Federal legislation will be void to the extent of the inconsistency.

It follows therefore that in so far as it purports to confer jurisdiction on different grades of Customary Courts in Ogun State and to confer jurisdiction on the Courts with reference to the value or annual rental value of the land, the Ogun State Customary Courts Law is in conflict with s. 41 of the Land Use Act and to that extent the State legislation is void. Therefore the Grade II Customary Court, Ifo, Ogun State, had jurisdiction to entertain the respondent's claim without reference to the value or annual rental value of the land.

Based on the above and the more comprehensive reasoning in the lead judgment of my learned brother, Galadima, JSC which judgment I read in draft, I also dismiss the appeal. I adopt the order for costs.

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**PETER-ODILI JSC**

I agree with the judgment just delivered by my learned brother, Suleiman Galadima, JSC. In adding my voice in support I would state some remarks.

Sometime in May 1989, the respondent as plaintiff took out a Claim at the Ifo Grade II Customary Court, Ogun State against one Alhaja S. A. Adeola for the following reliefs

*"Plaintiff seeks for declaration of title claiming the lawful ownership of a piece of land which was inherited from my late father Abudu Saki Areago with purchase receipt dated 21<sup>st</sup> of April, 1940."*

The plaintiff's claim against the defendant is for the sum of One Thousand Naira (N 1,000.00) being for trespass on the landed property being and lying at Aboro Area of Agbado in Ifo/Ota Local Government Area.

*"The boundaries are as follows; it measures 2 acres. On the right is bounded by late Baba Alawofun landed property. On the left*

*is bounded by Asorobi landed property. At the upper is bounded by Oto landed property. At the South is bounded by Oto landed property."*

That an interim injunction to restrain the defendant, her agents or privies from doing or entering into the said land in dispute pending the determination of this case by the honourable court. The annual rental of the said landed property valued Five Hundred Naira (N500.00). As the proceedings progressed at the Customary Court, on the 7<sup>th</sup> day of June 1989, one Alhaji Omidina Ote (now deceased) appeared in court as representing the defendant (Alhaja S. A. Adeola) but the court disregarded his appearance on the ground that he, Ote, was a stranger to the proceeding. On the respondent's application the aforesaid Alhaji Ote was eventually joined as the 2<sup>nd</sup> defendant by the order of the Customary Court made on 13<sup>th</sup> September, 1989. The case later proceeded to trial at the Customary Court which delivered its judgment on the 19<sup>th</sup> day of September, 1990 making the following orders:

*"(a) The plaintiff's claim on title of ownership to the piece of land as described on the claim sheet prevails. The defendants are subsequently restrained from further alienating on the said land henceforth.*

*(b) The defendants are to pay the sum of Six Hundred Naira (N600.00) as damages to the plaintiff."*

Being dissatisfied with the above decision of the Customary Court, the defendant appealed against same to the Ogun State High Court by notice of appeal which was later amended with leave of the High Court granted on 15/6/99 with additional grounds of appeal therefore adding up to five. The Ogun State High Court proceeded to hear the appeal on 15/6/99 after the application to amend the notice of appeal had been moved and granted. Upon agreement of counsel for both parties and the High Court, only ground 1 of the appeal which challenged the jurisdiction of the Customary Court to adjudicate over the proceedings before it was taken.

The High Court delivered its judgment on the 7<sup>th</sup> day of July, 1999, allowed the appeal of the defendant/appellant therein and struck out the entire proceedings before the Customary Court Grade II, Ifo, Ogun State on the ground that the Customary Court had no jurisdiction to adjudicate over the matter brought before it by the

plaintiff now respondent. The plaintiff/respondent was dissatisfied with the decision of the Ogun State High Court and appealed against the same by filing a notice of appeal dated 12<sup>th</sup> July, 1999. The Court of Appeal heard the appeal and on the 16<sup>th</sup> day of July 2004 delivered its judgment, allowed the appeal against the judgment of the Ogun State High Court and restored the decision of the Customary Court. The defendant now appellant being dissatisfied by the judgment of the Court of Appeal has appealed to this court vide notice of appeal dated 13<sup>th</sup> September, 2004.

Briefly, the background facts to this matter on appeal are thus: In the version of the facts as put forward by the defendant/appellant, the plaintiff/respondent, sequel to her claim of a parcel of land at Aboro Area of Agbado in Ifo Local Government area of Ogun State and in the light of the alleged trespass thereon, the then plaintiff (now respondent) prosecuted an action against the defendant (now appellant) at the Ifo Grade II Customary Court Ogun State of Nigeria for declaration, trespass and injunction. The respondent stated the annual rental value of the land in dispute as N500.00 (Five Hundred Naira) on her claim sheet in that court.

Plaintiff at the trial in her testimony claimed to have inherited the land in dispute from her father who acquired same in 1940 by purchase effected through public auction of the land of one Farawe. The plaintiff claimed not to know the original owner of the land from whom Farawe got the property. She did not state the boundaries of the land but stated that one Samuel Olu would know these facts. The said Samuel Olu was not called as a witness but one Israel Dipeolu gave the boundaries of the land which did not tally with ones given on the plaintiff's summons. PW3, Alhaji Saratu, in an attempt at supporting the plaintiff said the plaintiff's father bought the land when the land of Eyinosun was auctioned in a clear departure from the plaintiff's claim that the land in dispute was bought from Farawe.

In defence, the defendants gave evidence that the disputed land belonged to the 2<sup>nd</sup> defendant who inherited same from his mother whose forebears originally owned the land, the property being absolutely vested in the 2<sup>nd</sup> defendant upon the eventual partitioning of the family property. The defendants apart from giving evidence personally called two witnesses in support of their claim.

As stated earlier the Customary Court found for the plaintiff

now respondent. The High Court set that judgment aside, striking out the processes on the ground that the Customary Court had no jurisdiction. The Court of Appeal allowed the appeal against the High Court judgment and restored the decision and orders of the Customary Court.

On the date of hearing the appellant through counsel adopted their brief filed on 30/10/07 which brief was settled by O.O. Ojutalayo Esq. In it were framed two issues for determination viz:

1. Having regard to the annual rental value of the land in dispute which clearly exceeds the one prescribed by the enabling Customary Court Law/Edict of Ogun State, whether the Court of Appeal was correct when it held that the Ifo Grade II Customary Court possessed the requisite jurisdiction to adjudicate over the respondent's claim.

2. Whether the Court of Appeal was right when after having held that the issue of the appointment, membership and constitution, jurisdiction and extent of powers of Customary Court in respect of land is only as handed down by the Land Use Act, 1978 regardless of the value of the land. The respondent through her learned counsel had her brief settled by Chief Dele Awoniyi and filed on 17/9/09 adopted. In it was crafted an issue which is:

*“Whether the jurisdiction of a Customary Court in the Southern Western part of Nigeria can be limited in a land case on the annual rental value or the value of the land itself.”*

Learned counsel for the respondent in that brief went on to further pose that if the answer to the issue above is yes, whether in view of the provision of section 41 of the Land Use Act, a litigant is not bound by the value of the land in dispute as provided for in the Customary Laws of Ogun State but as provided for in section 41 of the Land Use Act, 1978.

For the appellant was submitted by counsel along the lines of the brief of argument that by virtue of the provision of the First Schedule to the Customary Courts Law, 1980 which was the relevant law in Ogun State when the action at the customary court initiated in 1984 and Schedule 1 of the Customary Courts Edict 1986 which was the operative law when the action was tried by the court in 1989, the respondent's claim was beyond the jurisdiction vested in the Customary Court. That while the jurisdiction of the Customary Court

Grade 1 is unlimited in respect of land matter that of Customary Court Grade II is limited to causes or matters in which the value of the land does not exceed N1,000.00 or in which the rental value does not exceed N200 per annum.

Learned counsel submitted for the appellant that in order to determine whether a court is competent or has jurisdiction to entertain an action before it that it is the claim of the plaintiff that must be examined. That a court of law is only competent to exercise its adjudicatory authority to the extent and not beyond, the power conferred on it by the statute or the law creating the court. He said the statute that created Customary Courts in Ogun State as at 1989 when the Ifo Grade II Customary Court became seised of jurisdiction over the subject of this appeal is the Customary Court Edict No. 7 of 1986. That by reason of the fact that the original claim was filed at the Ota Grade II Customary Courts in 1984 the Customary Courts Law No. 14 of 1980 is also relevant. That the provisions of these two pieces of legislation are in pari maleria on the issues of creation and jurisdiction of the two grades of Customary Courts in Ogun State. He said the Ifo Grade II Customary Court had no jurisdiction in the matter before it, the value of the land being in excess of the N200.00 stipulated by the statute creating the court. He cited: Attorney-General of Anambra State v. Attorney-General of the federation (1993) 6 NWLR (Pt.302) 692 at 742; Madukolu v. Nkemdilim (1962) All NLR (Reprint) 589 - 590; (1962) 2 SCNLR 341; Rossek v. A.C.B. Ltd. (1993) 8 NWLR (Pt. 312) 382; Alade v. Alemuloki (1988) 1 NWLR (Pt. 69) 207; Adikatu Onasanya v. Adegunle Sapitan (1975) 1 NMLR 30.

Mr. Ojutalayo, learned counsel for the appellant went on to say that customary courts in Nigeria are not the creation of the Constitution or the Land Use Act and neither are Area courts or Magistrates Courts and so being inferior courts neither the Constitution nor the Land Use Act can be regarded or treated as conferring jurisdiction on those inferior courts. That the statute that created Customary Courts in Ogun State was the Customary Courts Law, 1980 enacted by the Ogun State House of Assembly pursuant to section 6(4) of the Constitution of the Federal Republic of Nigeria 1979, the relevant Constitution to the proceedings. He said the Ifo Grade II Customary Court, became seised of this case in 1989 when the Customary Courts Edict of 1986 had come into operation and so that



statute is also relevant.

It was also canvassed for the appellant that although the constitution of 1979 had by virtue of section 274(5) purportedly incorporated the Land Use Act, that did not make the Act part and parcel of the Constitution as the Land Use Act enjoys the status of the constitutional only in as much as it relates to the amendment procedure and no more. That section 41 of the Land Use Act which talks on a Customary Court having jurisdiction on land subject of Customary right of Occupancy does not vitiate or render impotent the provisions of the legislation which created Customary Courts in Ogun. He said there is therefore no conflict between the provisions of section 41 of the Land Use Act and sections 3 and 1 of the Customary Courts Law, 1980 and the Customary Courts Edict, 1986 of Ogun State.

In response, learned counsel for the respondent, Mr. Dele Awoniyi coasting along respondent's brief of argument submitted that the Land Use Act is what has conferred jurisdiction on Customary Courts on land subject of customary rights of occupancy and which Land Use Act being a direct enactment under the Constitution, it is the law applicable by virtue of section 41 thereof. That both section 41 of the Land Use Act and S.16 and the 1<sup>st</sup> Schedule of the Ogun State Customary Court Edict confer jurisdiction on Customary and Area Courts on lands the subject of customary right of occupancy. That the only difference in their provisions is that one classifies the customary court which a litigant can approach while the other says a Land claimant can go to any Customary Court or the Area Court.

Learned counsel for the respondent went on to contend that the jurisdiction which a court of law has to adjudicate over a matter can only be derived from the constitution, Acts, Decrees, laws or Edicts. He cited the case of *African Newspapers v. Federal Republic of Nigeria* (1985) 2 NWLR (Pt. 6) 137.

He stated on that a law establishing a court and conferring jurisdiction on it is basically a procedural law and the applicable law is the law in force at the time of the pendency of a suit and not the procedural law in force when a cause of action arose. That from the High Court of Ogun State, which adjudicated over this court in its appellate jurisdiction to the Court of Appeal and now to the Supreme Court, there has been no other Customary Court Law in Ogun State except the Customary Court Edict of 1986 and so no need for

the two laws to apply concurrently in this appeal. He cited Rossek V.A.C.B. Ltd. (1993) 8 NWLR (Pt. 312) 382.

B For the respondent was also submitted that the relevant first schedule relating to Grade II Customary Court in Ogun State, it is not only the annual rental value of (N200.00 per annum) that determines the monetary jurisdiction of Grade II Customary Court of Ogun State on land matters. That the determining factor of the jurisdiction of the Customary Court Grade II in land matters is the value of the land which must not exceed N1,000.00. He said the real or purchase C worth of a land is different from its annual rental value which is the annual rent payable on the land.

D For the respondent was further canvassed that “or” as used in the first schedule of the Customary Court Law 1986 of Ogun State can only mean “and” and not disjunctive “or” even though the word “and” is not used in that enactment. That the law is settled that any provision in law which tends to oust the jurisdiction of a court of law as this Customary Court Law, shall be strictly constructed. That if the word “or” as used in the provision of the Customary Court Law under reference is given a disjunctive meaning it follows that the stating E of the annual rental value of the land in dispute as in this case as being beyond the one stipulated under that law without stating the value of the land in dispute or vice versa will suffice and thus easily remove jurisdiction from the Ifo Grade II Customary Court. He said that would be one of the cheapest ways to oust the jurisdiction of a F court of law without first clearing the doubt about whether the two values ought not to be stated. That would run contrary to the age long principle of law that for the jurisdiction of court to be ousted, ambiguity or doubt in the statute should not be entertained. That the G proper thing to do is to read “and” into the 1<sup>st</sup> Schedule of the Customary Court Edict, 1986 of Ogun State even though that word may not have been in the law thus supplying the completeness which would make the interpretation reasonable.

H Learned counsel said that when the two values of the land are stated together in the writ to determine the jurisdiction of the Ifo Grade II Customary Court, then it follows that the stating of the annual rental of the land in dispute alone without stating that of the land in dispute means and infers that the values were not fully stated. In short, the value of the land in dispute can be said not to have been

stated. That for the jurisdiction of the Ifo Grade II Customary Court to have been said to be ousted, the value of the land in dispute ought to have been stated and shown to be above N1,000.00 as well.

For the respondent was contended that the bottom line is that the Customary Court Grade II of Ogun State irrespective of its class or classification correctly assumed jurisdiction not minding whether the value of the land was correctly stated or beyond the value prescribed by law. That the Court of Appeal was right to have held that irrespective of the grades of the Customary Court in Ogun State, a prospective land claimant can approach any customary court within his district for adjudication. That in essence even if the Ogun State Customary Court Edict, 1986 legally classified Customary Court into one of unlimited jurisdiction that section 41 of the Land Use Act has changed all this. He said, if there is a conflict between the Land Use Act and the Ogun State Customary Court Edict of 1986, the Land Use Act would prevail, but there is no conflict here. He cited: A-G Ondo State v. Attorney-General of the Federation (2002) FWLR (Pt.101) 1419; (2002) 9 NWLR (Pt. 772) 222; *Idiok v. State* (2006) All FWLR (Pt. 333) 1788; (2006) 12 NWLR (Pt. 993) 1; *Ogoala v. State* (1991) 2 NWLR (Pt.175) 509; *Abacha v. Fawehinmi* (2000) FWLR (Pt. 4) 542; (2000) 6 NWLR (Pt. 660) 228; *Emuze v. Vice-Chancellor U nib en* (2003) 3 FWLR (Pt. 170) 1411; (2003) 10 NWLR (Pt. 828) 378; *Onyeanusu v. Miscellaneous Offences, Tribunal Eastern Zone, Owerri* (2002) FWLR (Pt.113) 272; (2002) 12 NWLR (Pt. 781) 227.

The above is summary of the submissions of counsel either way. The stand point of the appellant is that the jurisdiction of the Customary Court of Ogun State over land matters is as stipulated in the State Law and in this instance the Customary Court Law 1986 and that it is not section 41 of the Land Use Act that would hold sway. The respondent disagreeing with that view contends that it is the Land Use Act that has conferred the jurisdiction on Customary Courts on land subject of customary right of occupancy as the present case. That the Customary Court Law cannot therefore create a boundary into which a Customary Court can venture in relation to land subject to Customary right of occupancy.

The Court of Appeal in delivering its judgment had held as follows:

*“The State Legislature in Ogun State is not deprived of the power of creating the Customary Court in its area and defining the powers, scope and jurisdiction of the courts - but their jurisdiction on issue of land is as handed over by the Land Use Act, 1978, which is to cover land in rural areas regardless of their value.”*

B The First Schedule of the Customary Courts Edict, 1986 relevant for this purpose and for the Customary Court Grade II, the court of first instance in this appeal provides as follows:

C *“Cause or matters in which the value of the land does not exceed N1,000.00 or in which the rental value does not exceed N200 per annum.”*

In respect to the Land Use Act section 41 provides thus:

D *“An Area court or Customary Court or other court of equivalent jurisdiction in a State shall have jurisdiction in respect of proceedings in respect of a customary right of occupancy granted by a Local Government under this Decree, and or the purpose of this paragraph, proceedings include proceedings for a declaration of title to a customary right of occupancy and all laws including rules of court regulating practice and procedure of such modification as would*  
E *enable effect to be given to this section.”*

With the two disparate statutory positions it was well thought out what came out as the position of the Court of Appeal stated at pages 105-106 of the record in this way:

F *“The operative Constitution here is the 1979 Constitution which has a section for the creation of superior courts of record in the land both at Federal and State levels, first instance and at appellate level. The section defines the establishment of such court, appointment of members of the courts, jurisdiction of the court, both of first*  
G *instance and appellate level, constitution for the purpose of exercising its jurisdiction, practice and procedure in the courts. There are inferior courts and tribunals which are not appointed by the Constitution but appointments are left as specified by the Constitution with the State House of Assembly to promulgate laws creating such courts*  
H *like the Magistrate courts and Customary Court. By virtue of the relevant section of the 1979 Constitution - the Customary Court Law of Ogun State 1980 and Customary Court Edict 1986 of Ogun State were created by the State Legislature. Like in the ease of the Constitution and the superior courts of record the issue of the appoint-*

*ment, membership and Constitution, jurisdiction and extent of powers of such courts are embodied in the Customary Court Law and Edict particularly in respect of their jurisdiction over land. These statutes will also indicate the hierarchy of these courts.”*

Having stated the law and constitutional provision and situating them with the facts and circumstances of the case at hand, it is not difficult to see that the Customary Court Law or Edict while creating the Customary Courts with its grading cannot go as far as to determine which of those Customary Courts can adjudicate on a piece or parcel of land under the customary rights of occupancy since the superior legislative provision is the Land Use Act having constitutional backing, has in section 41 stated in clear terms that disputes over such land are to be dealt with by the Area Court or Customary court. Therefore a provision in the Customary Court Law stating value of such land or the rental thereof can be properly described as going to no issue. This is because it would have the capacity if it were otherwise to oust the jurisdiction of any customary court in its adjudication over the land in the rural area of its sitting which is not permitted. To elaborate further, every customary court within a specific area can deal with land disputes under customary rights of occupancy within that area and there is no basis for a plaintiff to go outside the area or community wherein the land is situated shopping for the particular grade of Customary Court because the value of the land is supposed to be what and what not. See *Adisa v. Oyiwola* (2000) 10 NWLR (Pt. 674) 116; *Rossek V.A.C.B. Ltd.* (1993) 8 NWLR (Pt. 312) 382 at 472.

From the above and the better articulated lead judgment, I dismiss the appeal and affirm the judgment and orders of the Court of Appeal which restored the judgment of the grade II Customary Court Ifo in Ogun State. I abide by the consequential orders of the lead judgment.. Appeal dismissed.