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## JURISPRUDENTIAL EXPOSITION OF COURT SYSTEM UNDER IGBO NATIVE LAW AND CUSTOMS\*

### Abstract

Prior to the coming of the British type of court system to Nigeria, Nigeria had an organised court system indigenous to her people. The indigenous court system which operated under native law and customs and was developed for the purpose of ensuring quick dispensation of justice aimed at steaming harmony in the society. However, the operations of these courts especially in Igbo land appeared to have been watered-down as a result of the intrusion of the British system of court over centuries ago. This paper became imperative in the light of the growing concerns on the need to revisit the court system indigenous to Igbo native law and customs. The paper was commenced by reviewing the various court systems under Igbo native law and custom. This was done for the purpose of identifying their areas of strengths and weaknesses in order to make suggestions aimed at improving the system. The paper adopted doctrinal research method. It was discovered among others that lack of codification of court systems under Igbo native law and customs hampered their generational relevance. It was based on the above that recommendations were made among which is the reinvigoration of Igbo Court system because of their peculiarity in cost effectiveness and friendly dispositions.

**Keywords:** Jurisprudential, Court System, Igbo, Native Law, Custom.

### 1. Introduction

There is no society that exists without a system of resolving dispute. This is because, as far as there are human existences, disputes are common and inevitable. This point is stressed by Durkheim, when he postulated that even in a ‘society of saints’ there would still be deviance.<sup>1</sup> Onyeozili and Ebbe argue that Igbo like every other society ‘have customary standard of conduct and negative sanctions for any breach.’<sup>2</sup> It is important to point it out that because, dispute is inevitable in human existence, it paramount to say that each society has a peculiar way of handling dispute aimed at ensuring that the collective norm of that society is held sacred.

Igbo like any other ethnic group in Nigeria has a well-entrenched system of court indigenous to the people. These courts ranged from family court, council of elders’ court, chief priest court among others. These courts resolve matters in accordance with native law and customs. Obilade noted that:

In modern society, customary law holds its place as a true sustaining the legal order.

An appeal to the underlying principles of customary law is an appeal to a reliable means of solving the problems of social order. The relevance of customary law in modern Nigerian society hardly lies in its actual content. In this age of bureaucratic regulation, when other attempts at solving the problem of society order seem to fail, there is recourse to enduring values of customary law.<sup>3</sup>

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<sup>1</sup> E Durkheim, *Division of Labour in Society* (New York, NY: Free Press, 1964).

<sup>2</sup> EC Onyeozili and OI Ebbe ‘Social Control in Pre-colonial Igboland of Nigeria’ (2012) Vol. 6, #s 1 & 2 *African Journal of Criminology and Justices Studies* 30.

<sup>3</sup> AO Obilade ‘The Relevance of Customary Law to Modern Nigeria Society’ in *Towards Reinstatement of Nigerian Customary law* (Lagos: Federal Ministry of Justice) cited in PO Isibor ‘Economic Crimes and Corruption: The Customary Law Perspective’ a paper delivered at Refresher Course for Judges and Kadis, Abuja 10<sup>th</sup> March, 2010.



Isibor argues that 'it is indeed plausible to argue that since our various anti-graft laws dealing with economic crimes and corruption have failed to produce the desired results, an appeal to enduring values of our customary laws, may have more salutary.'<sup>4</sup>The above voices added flavour to importance of customary law and by extension customary court system. This paper became imperative for the purpose of a jurisprudential exposition of court system under Igbo native law and customs. The imperativeness of the paper lies in the scanty of literature on the area under discourse. For this purpose, the paper shall do a conceptual buttress on the key words under the topic of discourse to *wit*: Igbos, native law and customs, court among others. The paper shall depict a conclusion and make recommendations for the purpose of straightening the court system under Igbo native law and customs.

## 2. Igbos

Igbo is one of the major tribes indigenous to Nigeria. Igbos predominately occupy the states of Abia, Anambra, Ebonyi, Enugu and Imo in South East geopolitical zone of Nigeria. Igbos could also be found in Delta State, Rivers State, Akwa Ibom State, Bayelsa State, Cross River State, Kogi State, Benue State among others. Igbos are mostly agrarians, artisans, craftsmen and traders. Some Igbos are in public and civil service. Igbos believe in hard work and esteem of a man in Igbo land is achieved through his industry. There are four market days in Igbo land to *wit*: *afor*, *nkwo*, *eke* and *orie*. Yam is seen as the king of crops in Igbo land while kolanut is reverence in many ways such as welcoming visitors, prayers to ancestors and gods, oath taking, reconciliation, celebrations<sup>5</sup>, among others.

The traditional Igbo political system is based on 'tree shed democracy.' This is a scenario where decisions are taken under a big tree in the village or market squares where every adult especially men are expected to participate and air their views on the issue before a decision is taken on it. This arrangement in modern time could be classified as a republican form of government. The leadership in Igbo land ranged from the family units, kindred units, age grade, village committees, council of elders, traditional title holders. *ndi-ezes*<sup>6</sup> and *eze*.<sup>7</sup> Igbos believe in the gods of their ancestors which greatly influence their lifestyles, economic and social status. Igbos have hope of reincarnation. Uchendu acknowledges that 'Igbo construction of the world is that reincarnation after death and the need to join the living lineage, make the world of man and the world of the dead a single universe providing an alternative abode for man.'<sup>8</sup> Reincarnation gives hope to a traditional Igbo man since he believes that he will definitely come back in another life circle to accomplish his dreams. That is why, namesake in Igbo land is not restricted to the living only but even to the dead as there is the belief that a child named to the dead is the reincarnation of the dead.

## 3. Native Law and Customs

A conceptual analysis of a 'term' in law is not like Episcopalian doctrine that remains uncontroverted in perpetuity by members of priesthood neither is it an arithmetical formula where  $1+1=2$ . Every

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<sup>4</sup>PO Isibor 'Economic Crimes and Corruption: The Customary Law Perspective' a paper delivered at Refresher Course for Judges and Kadis, Abuja 10<sup>th</sup> March, 2010.

<sup>5</sup> GA Dike, 'An Ethno Linguistic Survey of Kolanut as Penance to Global Peace', (2010) vol. 4 No.6 *Zaria Journal of Linguistic and Literary Studies* 38.

<sup>6</sup> Ndi-ezes in some part of Igbo land may be called ndi-ozos.

<sup>7</sup> An eze is a traditional ruler in Igbo land. In some place like Onitsha in Anambra state, a traditional ruler is called obi.

<sup>8</sup>VC Uchendu, 'Ezi Na Ulo: 'The Extended Family in Igbo Civilisation' (1995) Unpublished Lecture Series.



definer in law is putting himself on the speed lane of criticism by other scholars who may be influenced by their orientations, backgrounds, personal prejudices or idiosyncrasies. For this purpose, the concept 'native law and custom' is not to be brushed aside without a review of some literature on the subject. At best what is achievable in this regard is to describe the concept of native law and custom like the proverbial blind men that went to feel the size of an elephant.

Custom is 'a rule of conduct, obligatory on those within its scope, established by long usage.'<sup>9</sup> Black's Law Dictionary identifies custom as 'a practice that by its common adoption and long, unvarying habit has come to have the force of law.'<sup>10</sup> One thing that strikes the author's mind in the above dictionaries definitions is the failure of the two dictionaries to draw a distinctive line between custom and customary law. It appears that the two dictionaries mistook customary law to custom. For the purpose of lucidity, a custom may be synonymous with culture but the aspect of the custom that has been accepted by people as a code of conduct becomes customary law. In order to drive home the perception, custom in its simplicity is the way of life of a particular set of people. The way people eat, drink, talk, walk, farm, build houses, bridges, marry, dress, greet, welcome guests, celebrate festivals, worship their gods, harvest their crops, allocate homestead, playgrounds, markets, masquerades, coronate leaders, bury death, name their children, initiate into manhood, dance, build streams among others are custom. But once any of the above aspects of custom graduates into having force of law and commanding bindingness which may result in sanction if not followed, that aspect becomes a customary law. Ese noted that customary law is the 'indigenous law of the various peoples or ethnic groups of Nigeria before the advent of foreign laws into Nigeria.'<sup>11</sup> In *Oyewunmi v. Ogunesan*<sup>12</sup>, the Supreme Court held that customary law is 'the organic or living law of the indigenous people of Nigeria, regulating their lives and transactions.' In *Aku v. Aneku*<sup>13</sup>, the Court defined a customary law as:

The unrecorded tradition and history of the people, practised from the dim past and which has 'grown' with the 'growth' of the people to stability and eventually becomes an intrinsic part of their culture. It is a usage or practice of the people which by common adoption and acquiescence and by long and unvarying habit has become compulsory and has acquired the force of law with respect to the place or the subject matter to which it relates.

From the above judicial dictums, it is not in doubt that for any aspect of a custom to metamorphose into a customary law, it must have acquired the force of law within a given locality. The implication of the above is that any aspect of custom which does not attract any sanction if not followed does not qualify to become a customary law. For instance, a type of food eaten by certain people may be a custom but will not qualify as a customary law.

#### 4. Court System in Igbo Land

Court may be referred as a government body consisting of one or more persons appointed to sit for the purpose of adjudicating on disputes.<sup>14</sup> It is a place where justice is dispensed.<sup>15</sup> It is not in doubt

<sup>9</sup> L Rutherford and S Bone eds, *Osborn's Concise Law Dictionary* (eight edn, London: Sweet & Maxwell 1993) p.105.

<sup>10</sup> BA Garner, *Black's Law Dictionary* (ninth edn, USA: A Thompson Reuters Business, 2004) p. 442.

<sup>11</sup> E Malemi, *The Nigerian Legal Method* (Lagos: Princeton Publishing CO. 2010) P.116.

<sup>12</sup> [1990] 3 NWLR (Pt.137) 182 at 207.

<sup>13</sup> [1991] 8 NWLR (Pt. 209) 280 at 292.

<sup>14</sup> Black's Law Dictionary, p.405.

<sup>15</sup> Osborn's Concise Law Dictionary, no. 8, p.95.



that before the British intrusion into native administration in Africa and by extension to Igbo land, various communities in Igbo land had their indigenous court system in tandem with their native law and custom. Sir Henry Morton Stanley noted that:

It would be a mistake to assume that primitive Africa made no provision for the decision of contentious issue. There existed everywhere a recognised means of securing decisions on them, beginning with the arbitration by family heads, or heads of kin groups, and ending with the more formal adjudication by a chief, or a chief and his council, or some form of clan or tribal head. If these tribunals had their limitations, they nevertheless seem to have been accepted as dispensing justice to the general satisfaction of those who sought their decisions.<sup>16</sup>

The above position of Stanley is a justification that British acknowledged the existence of court system in Africa before their invasion. For the purpose of clarity, the following hierarchy of courts exists in Igbo land. They are: family court, chiefs/council of elders' court and the chief priest court (shrine).

#### 4.1. Family Court

Family is the smallest unit in political organisation. It is the first group in social organisation and the first association in human existence. If family is view in nuclear form, it may seem to be a group of persons made up of father, mother and probably children. The choice of the word 'probably children' became important in light of the ancient definition of family, where same was seen as a group of people made up father, mother and children. An elaborate definition of the word family may jettison trinity. In other words, husband and wife can constitute a family in the absence of a child or children.

In African context and by extension in Igboland, family is view beyond the component of a husband and a wife or father, mother and children. It is seen as the group of persons who share common ancestor either by affinity or consanguinity. This is the type of family largely classified as extended family which to the author's mind is *in tandem* with the Igbo setting. Section 37 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) recognises a right to a family life. It is not in doubt that in normal African setting, family life or name is guided jealously. One is expected to behave in such a manner that do not bring disrupt to his family. The first decision making starts with the family. Family is the court of first instance known to Igbo native law and jurisprudence but it is not in all cases that family court assumes jurisdiction.<sup>17</sup>

In micro-family, the father of the household is primarily saddled with the responsibility of adjudication of dispute among his family members. Onyeozili and Ebbe noted that the 'deviate acts of his wife or wives and children were dealt with exclusively by him.'<sup>18</sup> However, Onyeozili and Ebbe examination of family court system in Igboland is limited to micro or nuclear family. In pure Igbo setting, family as noted earlier is beyond husband, wife/wives and children. It is a conglomeration of cousins, nephews, children, parents, grandparents, uncles, aunts, brothers and sisters. Ezenagu acknowledges that 'in traditional African community the family is incomplete

<sup>16</sup>HM Stanley 'African Survey' cited by<sup>16</sup>E Malemi, no.9 p.153.

<sup>17</sup> Serious cases that constitute abominable offence like incest, murder, manslaughter among others are not within the jurisdiction of family court.

<sup>18</sup>EC Onyeozili and OI Ebbe 'Social Control in Pre-colonial Igboland of Nigeria' (2012) Vol. 6, #s 1 & 2 *African Journal of Criminology and Justices Studies* 36.



without a mention of the extended family- a collection of several primary (blood related) families that pool their strength and encourage each member's co-operation for the growth and development of their members.<sup>19</sup>In the context of this paper, the author considers family in patrilineage perspective known in Igbo parlance as *umunna*.

Family court is headed by the head of the family. He sits with jurists who are usually adult male members of the family. Usually, before the commencement of hearing of a case before the family court, the most elderly person may be invited to bless a kolanut and request the ancestors to eat the kola and guide the living in the decision making. In family dispute resolution mechanism, parties are normally allowed to state their case, questions may be asked to them especially on the areas that may require clarification before they will be asked to excuse the court to enable the jurists consult each other for the purpose coming up with a common decision. The essence of asking the disputants to leave the venue temporarily is to enable other members freely express their minds and be able to point out the issue in controversy and person to be blamed without the disputing parties knowing who said what. At the end of the discussion by the other members of the family, the disputants will be called back to the venue of the sitting while a presiding judge appoints any of the jurists to relay the decision of the court to the disputants. According to Adewoye 'members of the family court would not be slow to point out the errors of commission or omission even of the party who was adjudged to be right.'<sup>20</sup>

A member of the family, who wants to activate the jurisdiction of the family court in his case, may do so by either reporting the case to the family head or bringing up the case during a family meeting. The person may report the case with either drinks or kolanuts or both which he presents to the meeting before informing the meeting of the nature of his case. However, there are certain instances of urgency where a family will normally intervene in case without waiting until any of the disputants inform the family about the matter. Such instance may include serious quarrels, fighting, cases of disgrace to the name of the family among others. The essence of the immediate intervention is to avoid a situation that may lead to serious damages to the image of the family.

At the end of family court sitting, wrong party to the dispute may be required to provide certain items like drinks, kolanuts, tubers of yam, goat and ingredients for the cooking of the food items. The above items will enable the members of the family who participated to feast and make everybody happy that the dispute has been buried. This practice has survived colonialism to the extent that even at present, family court is still very powerful under Igbo court system. Some scholars have tried to attribute family court adjudication to arbitration proceeding. However, this is not true in the real sense of it because in arbitration proceeding, parties are required to voluntarily submit to the arbitration and consent to be bind by the outcome of the arbitration. But in family court, it is compulsory for parties to the dispute to appear before it and the requirement of consent to be bound by the decision is not part of the court proceeding.

#### 4.2. Council of Elders

Council of elders has concurrent jurisdiction with the chief's court. Council of elders' court is activated in a chief-less community. In other words, where there is a chief to a community, the

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<sup>19</sup>N Ezenagu, 'Leadership Styles in the Management of Igbo Cultural Heritage in Pre-European Era' 2017<<https://www.ajol.info> accessed on 22<sup>nd</sup> March 2022>.

<sup>20</sup> O Adewoye, *The Judicial System in Southern Nigeria* (Atlantic Highlands NJ: Humanities Press Inc 1977).



adjudicatory role of the council of elders will be assumed by the chief in cabinet.<sup>21</sup> Membership of council of elders is drawn from titled men and selected men of proven integrity from clans that make up the community. According to Carlston, 'membership of council of elders includes apart from the heads of lineage group consists of rich influential men, certain titled holders...'<sup>22</sup>Ezenagu argues that the qualification of members of council of elders includes maturity of age, good knowledge of community traditions, in addition to truthfulness 'which is a prerequisite virtue for title-taking making the position sacred.'<sup>23</sup>

Council of elders' court has jurisdiction over inter-family civil and criminal matters, violation of community norms, disobedience to community order among others. Such civil causes like land dispute, matrimonial dispute among others can be brought before the council of elders' court. Criminal matters such as stealing, burglary and serious abominable offences like incest, manslaughter, murder, eating of animals scarified to gods among others can also be tried at the council of elders' court. Hearing of cases before the council of elders is done in village or market squares which used to be under a big tree because of the belief in the sanctity of village or community squares to control perjury and other sharp practices. At present and as a result of modernisation, most villages and communities now have village or community halls where decisions of the village or community are taken. For this purpose, sitting of council of elders in most villages and communities are now done in village or community halls which are also always located in the village or community squares.

In civil cases, the disputants are given the opportunity just like the normal court to present their cases. The hearing of the case commences with the person who initiated the matter. Such a person will be given opportunity to present his case and call witnesses if any. The person against whom the case was reported will be given opportunity to cross examine the person who reported the matter together with his witness or witnesses. Members of the jury who are handling the case may also ask question to the person and his witnesses if any of them so wish. Once he closes his case, the party against whom the case was reported will open his defence. In his defence, the person against whom the case was reported is also given opportunity to present his case and call witness or witnesses if any. The person who reported the case will also cross examine the person against whom the case was reported and his witnesses. Once the parties close their cases, they will be asked to leave the venue of the hearing while the decision on the matter is taken before the disputants would be called back to the venue. Once the disputants are called to the venue, a member of the elders will be appointed by the presiding elder to relay the decision of the elders on the matter to the disputants. In case of land, the elders will visit the locus in quo and most time administer oaths on the person laying claim on the land and reserve their verdict until after one year to enable the oath manifest in guilt or the innocence of the oath taker. In criminal case, the accused is arraigned before the council of elders. The person or persons who are accusing him will be given opportunity to present their case against the accused while the accused will also have the opportunity to defend himself before a verdict will be entered in his case. Council of elders is also responsible to ensure to the execution of its judgment. Until date, the court of council of elders is still play important role in settlement of dispute under Igbo native law and custom.

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<sup>21</sup> Chief in this context means traditional ruler.

<sup>22</sup> KS Carlston, *Social Theory and African Tribal Organisation* (Chicago: University of Illinois Press 1968).

<sup>23</sup>N Ezenagu *op. cit.*, p.30.



### 4.3. The Chief Priest Court

Chief priest court is the highest court under Igbo native law and customs. This is the court where humans and spirits interbreed. It is not in all cases that are filed before the chief priest court. Matters taken to chief priest court are very serious matter that appears to have defiled human solution. In traditional Igbo communities, there exist deities of different kinds and purposes. Abominable cases and taboos are always the matters that will be handled with reference to chief priest for direction. In this instance, the chief priest would be consulted for the purpose of his interface with the divine for direction on how to settle the matter. At the end of the chief priest interaction with the gods, the guilty party may be required to perform certain sacrifices and certain cleansing done to ensure that the hallowed position of the community is restored.

### 5. Conclusion and Recommendations

What emerges from the discussion in this paper is that prior to the entrenchment of the British system of judicial administration in Nigeria and by extension to Igbo land, there exist well-structured court system in Igbo land that resolved disputes in accordance with native law and customs. Although native law and customs are unwritten on black and white paper, their existence and *modus operandi* are largely written in the hearts and memories of the people to the extent that they become generic traits. The challenge to Igbo native court system just like any other customary court system in Nigeria is that the modern law backwaters efficacy of its adjudication on matters bordering on crime and criminality. This is against the backdrop of the provision of Section 36(12) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which provides that a person shall not be convicted of any criminal offence unless such offence is written down and the penalty for which prescribed in a written law. Outside the constitutional provision outlawing conviction for unwritten crime, the English judicial administration inherited in Nigeria provides for tripartite test a customary law must pass before validity could be ascribed to it. The test include: not repugnant to natural justice, equity and good conscience; not incompatible either directly or by implication with any law for the time being in force and not contrary to public policy. It is therefore the recommendation of this paper that Nigeria should have a legal framework for the operation of courts under native law and customs. This will in no small measure bring sanity to already fragile society infested with crime and criminality. Like Isibor<sup>24</sup> acknowledged, since our various criminal laws have failed to address the challenge of insecurity in Nigeria, it became obvious that returning to enduring value of our customary adjudication will not only be timely but paramount. This system placed good harmony in our society in the time past, promoted brotherliness, encouraged the culture of hard and honest living; and sanctity in human existence. The review of the court system under Igbo native law and customs as carried out in this paper is create an awareness on the imperativeness of sustaining the Igbo custom of dispute resolutions. This geared towards ensuring that the value of Igbo customs is not completely eroded and to ensure that our cultural heritage is preserved. It is therefore recommended that reforms to Igbo Customary system be carried out in order to eliminate some practices that conflict with constitutional provisions. The paper also advocates for documentation of Igbo native court system for its sustainability and memorial survival.

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<sup>24</sup>Isibor is the President Customary Court of Appeal of Edo State Nigeria.