AN APPRAISAL OF THE JURISDICTION OF CUSTOMARY COURT OF ABIA STATE ON LAND MATTERS*.

Abstract

Jurisdiction is the authority vested in a court to act within the powers granted on the court by the statutes establishing the court. Customary Courts in Nigeria and precisely in Abia State in recent times, have being one of the constituted organs of administration of justice, taken center place in dispute resolution. Customary courts in Abia State of Nigeria have unlimited jurisdiction over land matters subject to the limitation imposed by the Land Use Act, 1978.This paper seeks to do an appraisal of this jurisdiction the customary courts have on land matters emphasis on Abia State. It examines the jurisdiction of Customary Courts of Abia State on land causes and matters, and determines whether the provisions of the laws affecting land are adequate for effective, efficient and satisfying dispensation of justice in land causes and matters particularly in Customary Courts in Abia State. Through this research, it was revealed that Abia State being an agrarian society, land causes and matter, including those connected with inheritance and succession supposedly litigated in the Customary Courts are now taken to the High Courts for litigation because most of the state lands are designated as urban area by the State Governor. This has affected the jurisdiction of Customary Courts on land matters in the State with attendant consequence of so many cases pending before the State High Courts. This article recommends urgent amendment of section 41 Land Use Act to the effect that Area and Customary Courts in Nigeria shall have exclusive jurisdiction over all lands the subject of customary rights of occupancy granted by the Local Government Councils whether or not the land is urban area.

Keywords: ***Customary court, Jurisdiction, Land matters, Land Use Act***

1.1 Introduction

Customary courts are courts of substantial justice devoid of too many technicalities.[1] However, in applying simple procedures; the courts must act within the powers conferred on them by the laws establishing them[2]. That authority or power cuts across all the ramifications of the exercise of its powers as in other courts. This capacity to act according to the authority vested on the court is referred as jurisdiction. Jurisdiction is a contextual hydra- headed term of which its meaning depends on the circumstances in which it is used. It thereby has diverse meanings depending upon the purpose or nature of enquiry at hand[3]. Legally, it seeks to address the issue whether a court has the power

* By Joshua Onyebuchi Ogbonna, LL.B,B.L, LL.M, Department of Public and Private Law, Gregory University, Uturu. Abia State. Email:joshogbonna5200@gmail.com; 08037023274

[1] Abia State Customary Courts Law s.21. Cap.82 2005 as amended by ABSN No. 6 of 2011.

[2] T Anyafulude, *Principles of Practice and Procedure of Customary Courts in Nigeria through the Cases (*1st Ed.;Enugu:Mercele Press,2012) p.60.

[3] Y. Aboki, *Jurisdiction: The new jurisdiction of Customary Courts in land matters*. in NM Jamo and AM Madaki (eds.) Administration of justice in the Customary Courts in Nigeria, Problems and

or competence to hear a given case. It is important because jurisdiction limits the power of a court to hear certain cases.

The traditional machinery for the administration of justice in pre-colonial Nigeria, is what is being articulated by various States of Nigeria as the Customary Courts' Laws with some modifications are being practised in customary courts in almost all the States in the Federation except those where Sharia courts are in place. Thus, administration of justice in these customary courts is therefore limited to those issues that native laws and customs govern. In other words, jurisdiction of the courts is limited to those issues that affect the local life of the people.

It is true that customary court is a court of substantial justice[4], however, in applying simple procedures it must act within the confines of jurisdiction of the court as stipulated by the law establishing it. This is premised on the fact that it is of fundamental importance irrespective of the non-technical nature of their proceedings.

1.2 Statement of the Problem: There has been increasing dependence on customary courts in dispute resolutions particularly in Abia State since the improvement in the composition of the customary court bench in the year 2012. Abia State is an agrarian society and therefore, land causes and matters, including those connected with inheritance and succession are frequently litigated in the Customary Courts. It has been observed in the cause of this research that most of the land causes and matters in Abia State are now taken to the High Courts for litigation because most of the State lands are designated as urban area by the State Governor (military Governor) in the early days of the State as authorized the provisions of the law[5]. This situation has created serious problems among the citizens in rural communities who ordinarily depend on local arbitrations and customary courts for dispute resolutions. The indigenous people become disillusioned whenever they are informed that customary court do not have jurisdiction over the land in their native environment because the land in dispute is now in urban area. The prospective claimant's inability to pay for high legal services in the High Courts has left indigent litigants at the mercy of legal practitioners or in the alternative, they are forced to abandon legitimate claims to the favour of their opponents or resorting to self-help. Where however, the matter is eventually taken up at the High Court, the litigants are further challenged by overburdened High Court procedures and work load due to congestion of cases. Thus, it becomes expedient to

Prospects. Legal Essays in honour of Hon. Justice Moses A.D. Bello OFR, President, Customary Court of Appeal, Abuja, a Publication of Private Law Dept. A.B.U. Zaria, p.147.

[4]Justice of a sufficient degree, especially to satisfy a standard of fairness. Justice administered according to the substance and not necessarily the form of the law . *Merriam Webster.com Legal Dictionary*http://www.merriamwebster.com

[5] Section 3 of the Land Use Act, 1978

access the jurisdiction of the courts on land matters in the light of the provisions of the laws affecting the land causes and matters in Abia State. The questions, therefore, in the circumstance are:

1. Why are the Customary Courts unable to satisfy the legal needs on land matters of some people dwelling in major parts of rural areas of Abia State?
2. What is responsible for this situation, and the consequences on the indigent people in the State?
3. How can the situation be ameliorated in the circumstance of existing structures?

The answers to these questions could be gleaned from the facts on ground. Certain provisions of the Land Use Act (LUA), 1978[6], precisely section 3 LUA provides for designation of urban areas in the State**.** The appointment, composition and the modus operandi of the Land Use Allocation Committee created by the Act is at the exclusive discretion of the Governor.[7]The absence of clear criteria for qualifying any area as urban breeds the problem of uncertainty as to extent of land under the Governor's control[8]. While all ur**b**an areas are under the control and management of the Governor, section 39 LUA grants the High Court of a State exclusive original jurisdiction over proceedings in respect of any land the subject of a statutory right of occupancy granted by the Governor or deemed to be granted by him under the Act. Similarly, section 41 LUA provides that 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 the Act. However the decision of the Supreme Court in the case of *Adisa v Olayiwola*[9] extended the jurisdiction of the State High Courts to customary rights of occupancy under the control of the Local Governments. This was borne out of the judicial interpretation of the provisions of section 236(1) of the 1979 constitution,[10]with the effect that Area and Customary Courts have concurrent jurisdiction over any land causes and matters in respect of customary rights of occupancy been granted or deemed to be granted by the Local Government. This decision of the Supreme Court was compounded by the unguarded and extensive designation of interior communities in Abia State as urban area. Thus, litigants expecting satisfying justice from the Customary Courts at

[6] LUA Cap L5 LFN 2004

[7]OO Ekpu, *The Role of the Local Government in the Implementation of the Land Use Act: The Bendel State Experience:* in Olayide Adigun (ed) *The Land Use Act: Administration and policy Implication* (University of Lagos Press 1991),p. 49.

[8]V Ofogba, **"**Understanding the Land Use Act" (*Lawsprings& Co*) <http:/ /lawsprings.com/index.php> accessed 24 December 2016.cited by AkintundeOtobu: *The Land Use Act and Land Administration in 21st Century Nigeria: Need for Reforms***.** Afe Babalola University: J. of Sust. Dev. Law& Policy Vol. 9: 1:201,176458 -Article Text 451163 -1 -10-20180821.DOI**:** https://dx.doi.org/10.4314/jsdlp.v9i1.5

[9](2000) 6 S.C. (Pt. 2) 47,

[10] Equivalent of 1999 Constitution as amended s. 272(1).

affordable costs are sometimes disappointed because of the enormous wielding of authority of the Governor in making extensive declaration of State land as urban area thereby limiting the jurisdiction of Customary Courts in land matters in the rural areas. Thus, causes and matters that could have been disposed of at the customary courts are piled up at the State High Court begging for justice over the years.

1.3 Jurisdiction of the Customary Courts of Abia State.

The jurisdiction of Customary Courts in Abia State is derived from Abia State Customary Courts' Laws[11]. The customary courts, like all other courts are created by law and its jurisdiction determined by the law establishing them. Jurisdiction is a very important element in the administration of justice generally, but very intrinsic to Customary Courts since they occupy the lowest position in the hierarchy of courts in our legal system. In this respect Customary Courts' judgments would be under the scrutiny of prerogative orders of the High Courts for *ultra vires* decisions. The jurisdictions of Customary Courts in Abia State are provided for under Part IV of the Abia State Customary Courts' Law as amended 2011[12].The law provides for:

(1) people who the court shall exercise jurisdiction,
(2) the causes and matters over which the courts shall exercise its authority,
(3) monetary jurisdiction as well as
(4) punishment.

Section 14(1) of Abia State Customary Courts' Law (ABSCCL) provides that a customary court shall have and exercise jurisdiction over all persons within the territorial limits of its jurisdiction. The territorial limit of the courts in the State is the Local Government Area in which the court is located. Where there are more than one court in a Local Government Area, all the courts operate concurrently within the territorial limits based on convenience of the parties to the cause or matter. Section 15(4)(b) of the law[13] provides: "all land matters shall be tried and determined by a customary court established for the area within which the land the subject matter of the dispute is situated". However, where the land is situated in boundary area of the local governments, the law provides that the President of the Customary Court of Appeal may in the circumstance determine which of the courts shall have jurisdiction over the land. With due respect to the President of the Customary Court of Appeal, such decision would be subject to the convenience of the parties to the dispute.

The exercise of the court's jurisdiction is subject to the provisions of section 14(2) of the law, which specifies the causes and matters set out in column 1 Table A of the

[11]ABSCCL Cap 82 Laws of Abia State, 2005 as amended by ABSN No.6 of 2011
[12]ABSCCL Cap 82 Laws of Abia State 2005 as amended by ABSN. No.6 of 2011
[13] *Ibid.*

Third Schedule to the law and the extent or limit of jurisdiction of the customary courts set out in column 2[14].

The composition of a court to adjudicate on a matter is very vital to its competence. Once a court is not properly constituted there is a fundamental defect which goes to the root of the jurisdiction to deal with any matter. No matter how well the trial is conducted and brilliantly decided, if the court is improperly or inadequately constituted, the trial will remain nullity ab initio.**[15]** In Abia State, customary courts are properly constituted when the Chairman, a legal practitioner and the two lay Members sit together, as a panel**[16]**. However, the court forms a quorum and be competent with only the Chairman and one member sitting for the purpose to hear any cause or matter all through to judgment**[17]**. The quorum of the chairman and the particular member must be maintained till the final determination of the cause or matter**[18],** otherwise the judgment of the court in respect of the cause or matter becomes unsatisfactory and liable to be set aside on appeal**[19]**.

In the case of *Oluriegbe v Omotesho,*[20] the trial High Court of Ilorin, in exercising its appellate jurisdiction, was composed of two judges of the High Court and a Khadi of the Sharia Court in due obedience to the provisions of section 63(1) of the High Court Law**[21]** which was applicable to Kwara State as opposed to section 238 of the 1979 Constitution. The provision allowed only one judge of the High Court in exercising its jurisdiction. On further appeal to the Supreme Court, the court on its own raised the issue of the composition of the panel at the High Court, sitting as an appellate court. After hearing the parties, the Supreme Court held as per Justice Ogundare, JSC;

> The record of the High Court reveals that in determining the defendant's appeal to it, one Alhaji H.U. Abdullahi who is not a judge of that court, but a Khadi of the Sharia Court sat along, with the Chief Judge and another Judge of that court. That Composition clearly offended against Section 238 of the 1979 Constitution. It is clear from that record before us that the High Court of Kwara State was not properly constituted having regards to section 238 of the Constitution and its proceedings in

[14] Table 1, infra

[15] *A.G. (Lagos State) v Hon. Justice L.J. Dosumu (1989) ANLR 504, at 512.*

[16] S.4(ii) *op.cit*. The chairman must be a person of a minimum7years post call to bar experience, while the members must be literate in Igbo and English languages.

[17] S. 4(iv) *op.cit.*

[18] *Mallo v Buwace* (1988) 4 NWLR (Pt: 89) 422

[19] *Adeigbe v Kusimu* (1965) ANLR 260.

[20] (1993) 1 NWLR (Pt.270) 386.

[21] Cap 49, Laws of Northern Nigeria (1963)

the hearing and determination of the defendant's appeal to it are therefore a nullity.

Thus, since the new composition of the Customary Court bench in 2011 great improvement in the customary court services to the people of Abia State have been recorded. The table below shows the progress so far achieved since the restructuring of the bench.

RETURN OF CIVIL CASES IN ABIA STATE CUSTOMARY COURTS FROM 2012-2020* Table 1

		2012	2013	2014	2015	2016	2017	2018	2019	
1	Total number of cases pending at beginning of the year.	6824	3847	3495	1910	1885	2613	4639	3960	
2	Total number of cases filed within the year.	4531	3963	2398	2086	2531	4066	1165	528	
3	Total No of Cases handled in the year.	11355	7810	5893	3996	4416	6679	5804	4428	
3	Total number of cases disposed of in the year.	7166	4315	2983	1297	1709	2040	1844	1920	
4	Total number of cases pending as at end of year.	3847	3495	1910	1885	2613	4639	3960	2568	
5	Percentage of total number of cases disposed of in the year (%).	63.11	55.25	50.62	32.46	38.70	30.54	31.77	42.78	
6	Percentage of pending cases at the end of year (%).	36,89	44.75	49.38	67.54	61.30	69.46	68.23	57.22	
7	Average number of cases disposed per court in a year.	132.7	79.91	55.24	24.01	31.65	37.77	34.15	35.55	

*Adapted from the records of Litigation Department of Customary Court of Appeal Abia State, with kind permission of the President.

Strictly speaking, from the table shown above the performance of the courts was encouraging during the first three years of the appointment of legal practitioners as chairmen of the courts and sharply dropped in 2015 due to industrial action embarked upon by judiciary staff nationwide. Thereafter, there have been gradual build up in the performance of the courts.

1.3.1 Jurisdiction as to Subject Matter

Section 14 (2) of the Abia State Customary Courts' Law provides:

> A Customary Court shall have and exercise jurisdiction over causes and matters set out in column 1 of the Third Schedule to this Law to extent or limit set out in column 2 thereof.[22]

Third schedule to the Law comprises of two tables: Table A provides for civil causes and matters while Table B provides for criminal causes and matters. For the purpose of this paper Table A is set out below.

THIRD SCHEDULE
JURISDICTION OF THE CUSTOMARY COURT WITH RESPECT TO
Table A: CIVIL CAUSES AND MATTERS
Abia State Customary Courts (Amendment) Law, 2008 (**Table 2)**

	Column 1	Column 2
	Causes and Matters	Extent or limit of jurisdiction of customary court
1*	**Land causes and matters relating to customary right of occupancy granted or deemed to be granted by the Local Government.**	**Unlimited**
2	Proceedings for the recovery of rent payable in respect of Customary Right of Occupancy.	Unlimited
3	Debt demand or damage claimed between persons married under customary law or arising from customary union.	Unlimited
4	Custody of children and other causes and matters relating to children under customary law.	Unlimited
5	Causes and matters under any law including lotteries, pools betting, gaming and casino promotions law (other than customary law), and laws in respect of debt, demand, damage or rate.	₦50,000
6	Causes and matters relating to succession and or inheritance upon intestacy under customary law and grant or power of authority to any person to administer the estate of intestate under customary law.	₦ 20,000.00
7	Slander	₦ 50,000.00
8	Desecration of custom or sacred places	₦50,000.00

- Focus of this paper

[22] Abia State Customary Court Law, Cap 82 as amended by No.6 of 2011

1.3.2 Jurisdiction Over Land Causes and Matters

The Abia State Customary Courts' Law provides that the Customary Courts in Abia State shall have "unlimited" limit of jurisdiction with respect to land causes and matters relating to customary rights of occupancy granted or deemed to be granted by the Local Government.[23]. This provision emanates from the provisions of section 2 of the Land Use Act, 1978[24]. The "unlimited" limit of jurisdiction as provided in Column 2 of Table A Roll 1, of Abia State Customary Courts Law is in respect of the financial value and size of the land provided it is within the geographical limit of the court's territorial jurisdiction. However, the word "unlimited" in respect of the land matters upon which a customary court could exercise its jurisdiction is in consonance with the provisions of section 41 LUA extensively discussed below.

Section 2 of Abia State Customary Courts Laws defines land cause or land matters to mean:

> *"*A cause or matter relating to ownership, occupation or possession of land". Therefore, a land matter is one which raises and concerns issues as to title to land. An action for declaration of title to land or one in connection to customary pledge of various types[25] thereon is a land matter. In other words, to amount to a land matter or cause, the proceedings, either in the plaintiff's claim or in the defendant's defence, must raise an issue as to ownership of the land or property. The "unlimited" jurisdiction is in relation only to the monetary value and size of the land. It is limited by reference to the geographical location of the land and the nature of the title thereto. The geographical location of any land the subject matter of dispute before any customary court in Abia State must be in the Local Government Area in which the court is situate[26]subject to the provisions of sections 3 and 41 of the Land Use Act 1978 .

1.4 Land in Urban and Non-Urban Area

Section 2(1) LUA provides that as from the commencement of this Act -

(a) all land in urban areas shall be under the control and management of the Governor of each State. and

[23]Column 1 Roll I of the First schedule as shown above.

[24]LUA *op. cit.*

[25]EB Malachi, *Mortgage, Pledge and Charge Transactions in Nigeria: Comparative/Distinctive Analysis and Legal Examination.* IOSR Journal of Business and Management (IOSR-JBM) e-ISSN: 2278-487X, p-ISSN: 2319-7668. Volume 13, Issue 6 (Sep. - Oct. 2013), PP 100-*107 www.iosrjournals.org.*

[26] See ss.3,14(1) and 1st Schedule ABSCCL.

(b) all other land shall, subject to this Act, be under the control and management of the Local Government, within the area of jurisdiction of which the land is situated.

Thus, Section 2(2) LUA provides for the establishment in each State a body to be known as "the Land Use and Allocation Committee" with the responsibility of advising the Governor on allocation and the management of the land in the state. It is imperative to note that the composition of this advisory body is the absolute prerogative of the State Governor and as such he directs and dictates and influences the decision of the advisory committee. In other words, his decision is final and that, Local Governments take the residue of whatever the Governor has left out as non-urban area. If there is no residue the whole lands in the State would be under the control of the Governor of the State and he is not answerable to any other authority, not even the court nor the legislature can call him to order[27]. This is absurd and forms the bases of this paper as contained in the research questions.

However, Section 3 LUA further provides for designation of urban areas in the State, thus**:** "Subject to such general conditions as may be specified in that behalf by the National Council of States, the Governor may for the purposes of this Act by order published in the State Gazette designate the parts of the area of the territory of the State constituting land in an urban area". This provision has been criticized on the grounds that there has been no nationally approved standard for the demarcation or designation of areas of a State as urban as envisaged by the Act[28]. The National Council of States saddled with the responsibility is yet to come up with any regulation in that respect. Thus, the absence of clear criteria other than perhaps a defined radius from the center of the emerging urban area for qualifying any area as urban, breeds the problem of uncertainty as to extent of land under the governor's control; appropriateness of certificate to be issued; jurisdiction of courts in the adjudication of land matters; confused land identification processes and administrative conflicts between the Governor and the Local Government amongst others, in the land management sector of the nation.**[29]** Military Governors were sole administrators of the States when the Land Use Act was promulgated. The Land Use and Allocation Committee would have made little or no input in designation of places as urban area in the States since the Governors wield absolute authority over the land. The Governor is thus the unquestionable personage in the overall administration of land in the state. In practice, the composition, quality and tenure of the committee varies over time depending on the government in power and the disposition and the political inclination of the Governor affect what is

[27] LUA s.47

[28] LUA s. 46(1)

[29]Akintunde Otobu *The Land Use Act and Land Administration In 21st Century Nigeria : Need for Reforms*.www.ajol.info >jsdlp> article >view accessed 27 June 2021.

being held as urban area in the state.[30] Commenting on the composition and relevancy of the committee, Omotola[31] observed thus:

> It is doubtful whether from the composition and mode of appointment of members of the committees whether any person can ever obtain a satisfactory compensation even for improvements on land compulsorily acquired by government. Since the committee cannot be an independent and impartial tribunal, the provision is not only retrograde but also conflicts with the fundamental principles of natural justice, which requires that a person shall not be a judge in his own cause.

The effect of the provision of the Act in section 3 is noticeable in the extent of exercise of the powers by Abia State Governor (the Military Governor then) by designating almost the entire State as urban area thus annihilating the powers of the Local Government Councils in granting Customary Rights of Occupancy thereby frustrating the jurisdictions of Customary courts in land matters.[32]

Under the Land Use Act (LUA) 1978[33], the Customary Courts do not have jurisdiction on causes and matters over land situate in an urban area and subject to a statutory right of occupancy which is granted or deemed to be granted by the Governor of a State. Section 39 (1) of the LUA provides that, the High Court shall have exclusive original jurisdiction in respect of proceedings over such lands under the control of the Governor.

---

[30] PZ Datong. "*The Role of State Government in the Implementation of the Land Use Act*" in Olayide Adigun (ed) *The Land Use Act: Administration and Policy Implication.* Proceedings of Third National Workshop (University of Lagos Press 1991) 64. cited by Akintunde Otobu, *op cit*. p. 91

[31] JA Omotola, *"Compensation Provisions of the Land Use Act"* (1980) XVI *Nigerian Bar Journal* 36.Cited by Akintunde Otobu cit. p.91

[32], Abia state Designation of Areas Public Notice Urban Order 1998 in Vol. 7 Abia State Gazette No 3 of 18/6/98. Declared more than 75% of the total land area as urban. Similarly, in Lagos State, the governor by a 1981 regulation, declared almost all the lands in Lagos State as urban lands leaving the local government with little or nothing in respect of management of land in the State. In the same vein by the authority of *Onah vs Atenda* (2000) 5 NWLR (Pt. 656)224 CA. Customary Courts or Area courts have no jurisdiction on land matters in the Federal Capital Territory, (FCT) Abuja.All land within the FCT vests absolutely in the Federal Government. Issue of designating the land urban or non-urban therefore does not arise.
The Land Use Act does not apply to the FCT, so section 36 of the said Act is inapplicable. The High Court of the FCT has jurisdiction in all land matters within the Territory where the parties are private individuals as in this case. Where one of the parties is the Federal Government or one of its agencies, the Federal High Court assumes jurisdiction by virtue of section 251 of the 1999 constitution.

[33] *Op cit*. S. 41

However, section 41 LUA provides that:

> 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 Law, and for 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 courts shall have effect with such modifications as would enable effect to be given to this section.

The jurisdiction of Customary Courts in a State is limited to proceedings in respect of a customary right of occupancy granted by a Local Government under the Act. For the purpose of the Act, "proceedings" includes proceedings for a declaration of title to a "customary right of occupancy." This term means 'the right of a person or community lawfully using or occupying land in accordance with customary law and includes a customary right of occupancy granted by a Local Government under this Act. '[34]

For a better appreciation of the issue, it is necessary to observe that under the Land Use Act, 1978, two types of rights of occupancy were thereby created. These comprise of statutory right of occupancy and customary right of occupancy. What emerges therefore is that the jurisdiction applies only to matters affecting land, the right of occupancy over which is granted by a Local Government or deemed to be granted by it according to the provisions of Column 1 Roll 1 Third Schedule (Table 2) of Abia State Customary Courts, Law. Thus, where the entire Local Government Area is designated as urban area, the Customary Courts in that Local Government Area do not have jurisdiction over land causes and matters no matter how remote the Local Government Area is.[35]

Thus, in exercise of her authority as provided under section 3 LUA ,Abia State Government has by Legal Notice[36]declared some places as urban area. The implication of this declaration is that most Customary Courts in the rural areas have been dispossessed of their jurisdictions over all land matters under their territorial jurisdictions. These lands are mainstay for most litigations in the rural communities, (even those that are basically issues of customary law such as devolution of estate and customary inheritance, among the heirs of a deceased intestate or community lands), are not litigated in the customary courts in those areas. Consequently, the simplicity and less stressful means of procuring justice through the customary courts for which, it is over the years known for, are no longer available to the rural people.

---

[34]LUA S.51(1)

[35] By the provisions of Designation of Areas Public Notice Urban Order 1998 in Vol. 7 Abia State Gazette No 3 of 18/6/98,the entire Umuahia North and South Local Government Areas are declared Urban Areas.

[36]*Ibid.*

For instance in the case of *State v Customary Court Osisioma District Holden at Okpuala Aro Abia State*[37], the issue before the Customary Court of Appeal Umuahia, was to determine whether the Customary Court sitting at Okpuala Aro was right in striking off a land matter before it for lack of jurisdiction. The customary court had declined jurisdiction on the presumption that the said land the subject matter situated in a rural area is in a place designated as urban area. After due consideration as to whether the name of the community was mentioned in the Legal Notice as Urban Area, the Court held that where the order is specific as to areas so designated as Urban area, it follows that all other areas not clearly stated in the said order are presumed to be non-urban areas. The Customary Court of Appeal held that the said Customary Court was wrong in declining jurisdiction and ordered relisting of the matter in the customary court**.**

In Samuel Nwosu and 2 Ors.vUgwuzorEgbufor Nwosu and 8 Ors,[38]the Customary Court of Appeal, Umuahia held:

> If a customary court is hearing a suit in relation to rural land and while so seized of the matter, the Governor makes an Order pursuant to section 3 of the Land Use Act, declaring the land, the subject matter of the pending suit an Urban Area, the trial court on the date the order comes into force, immediately ceases to have jurisdiction to entertain the suit. The jurisdiction in respect of proceedings affecting such land becomes vested in the High Court.

Thus, a close look on the lists of areas designated as urban areas in the Abia State Legal Notice, shows that more than 75 per cent of the land area of the state is designated as urban area. The implication of this is that most land causes and matters in the rural areas under the jurisdiction of the customary courts could not proceed for want of jurisdiction. The State High Courts would be highly congested, and the implication is that land matters before the High Courts would last for more than 3 years before judgment may be entered. Such elaborate and extensive designation of local communities as urban areas would leave rural litigants at the mercy of legal practitioners at the High Courts, bugged with unfamiliar technicalities and long adjournments. It becomes worrisome for indigent citizens at the rural communities to access justice at a reasonable cost and comfort. The consequence of this designation of places as urban area is that sometimes, the litigants would jettison or shun the fact that the land the subject matter of action before the customary court is in urban areas as per the provision of the Urban Area Designation Order particularly, where title to land is

[37]Motion No. CCA/UM/M/39/2008, unreported.

[38] (2011) 2 ASCCALR 153

not in issue[39] In this respect, what the parties desire is legally documented devolution of inheritance to the parties concerned. This approach is contrary to the law that parties cannot by agreement and acquiescence confer jurisdiction on a trial customary court where none exists.**[40]**However, once the parties are satisfied with the court's decision, they would seem to abide by it until the contrary is raised. The congestion of cases as noted above is the aftermath of the decisions of the Supreme Court in the cases of *Bakin Salati v Telle Shehu*[41] and *Adisa v Olayiwola*[42] **w**ith respect to the jurisdiction of Customary Courts in places designated as urban area regarding the rights of occupancy which are covered under section 39 (1) of the Land Use Act 1978**[43].**

Thus, in *Bakin Salati v Telle Shehu* (Supra), by Suit No.MAC.9/79 filed in the Muslim Area Court of Makurdi, Benue State, the respondent in this appeal sued the appellant and two others "seeking court assistance for revocation of sale of Plot No.3, Bank Road Makurdi done contrary to Islamic principle of contract of sale" The action in the case was filed in the Muslim Area Court on 28th January 1980, that is long after Makurdi had become an urban area on 24th November 1978 consequent upon the Legal Notice**[44]** issued by the then Military Governor of Benue State. The matter was tried at the Muslim Area Court based on the Islamic law of contract of sale and gave judgement to the plaintiff. Appeal to the High Court of Benue State overturned the judgement of the Area Court. Further appeal to the Court of Appeal, Jos Division by the plaintiff restored the judgement of the trial Area court. On further appeal by the defendant to the Supreme Court the issue of lack of jurisdiction of the trial court was raised. At the hearing of this appeal, the defendant/appellant counsel contended that "the decision of the Court of Appeal is erroneous in law, in that it purports to confirm the judgment of the Muslim Area Court which court had no jurisdiction to try the claim, the subject matter of this appeal, having regard to Sections 34(1)(2)(3) and 39(1)(a) of the Land Use Act.

The Supreme Court observed that the issue of lack of jurisdiction was raised first on appeal at the High Court when in the court records, the defendant/ appellant in his two grounds of appeal ,one of which is that the subject matter in controversy is a plot of land covered by the certificate of occupancy in an urban area -Makurdi and by section 39 of the Land Use Act, the jurisdiction of the said Moslem Court is ousted."

---

[39] For example, matters relating to devolution of inheritance and assets sharing mostly require the assistance of the court as a guide and legalize the devolution process.

[40]*N.A.B. Kotoyo v Mrs. F.M. Saraki & Anor.* (1994) 7 SCNJ 524,558

[41](1986) I, NWLR (Pt. 15) 198,

[42](2000) 6 SC (Pt. 2) 47,

[43] (Cap L5 LFN) 2010

[44] Land Use Designation of Urban Area Order, 1978,No 6 of 1978 deemed to have come into operation on the 24th day of November 1978, made pursuant to s.3 LUA 1978

The issue of the jurisdiction of the trial Court was not considered by the appellate High Court which had the opportunity to do so, although the appeal was allowed on another ground.

In considering the motion, the Supreme Court per Nnamani JSC citing the following cases[45] in approval, observed thus:

> The attitude of this Court has been that it will not allow a party on appeal to raise a question not raised in the Court of trial or grant leave to a party to argue new grounds not canvassed in the lower courts except where the new grounds involve substantial points of law substantive or procedural which need to be allowed to prevent an obvious miscarriage of justice.

Thus, in granting the application the Supreme Court took cognisance of the law in that the new matter being one of jurisdiction could be raised at any stage of the proceedings. In his argument the appellant counsel attacked on the competence of the Muslim Area Court Makurdi to try the matter between the parties. He relied on sections 1, 3, 34(1) (2) and (3), 31 of the Land Use Act. 1978, pursuant to which provisions, land in each state is vested in the Military Governor of that State who has the authority to designate areas of the State urban areas; Land in such an area could be the subject of a statutory right of occupancy. The High Court had exclusive original jurisdiction with respect to any proceedings over such lands. He also referred to the "Land Use Designation of Urban Area Order 1978" published as B.S.L.N. No.6 of 1978 under which Makurdi was designated an Urban Area-with effect from 24th November. 1978.

He further submitted that No.3, Bank Road, Makurdi being the subject of a statutory grant of right of occupancy deemed to be granted by the Military Governor, any matter concerning that statutory right of occupancy (such as here there is a question of revocation of sale of that plot) must be tried by the High Court and not the Muslim Area Court. Accordingly, the judgment of the Muslim Area Court was a nullity and the subsequent proceedings before the judgments of the High Court and the Court of Appeal were also null and void.

The respondent contended that from the cause of action and the entire circumstance of the case what was in dispute concerned a contract or agreement for the sale of the house in dispute made between Muslims. It was his view that since all that was involved was enforcement by specific performance of a contract or agreement for the sale of a house, a consideration of the provisions of the Land Use Act 1978 did not arise. He was

[45] *K. Akpene v Barclays Bank of Nigeria Limited and Anor*. (1977) 1 SC47*; Agnes Deborah Ejiofodomi v H.C. Okonkwo* (1982) 11 SC. 74

reinforced in his view by the fact that the question of the Appellant having a certificate of occupancy was never raised before the trial Area Court. No certificate of occupancy was tendered by the Appellant in the High Court and efforts to do so in the Court of Appeal failed. The Respondent further contended that the Land Use Act 1978 did not apply because the issue in the suit was not the revocation of title under a Certificate of Occupancy but revocation of Sale under Islamic Law. He contended that the applicable law is Area Court Edict No.4 of 1968 Sections 20 and 21. He also referred to Section 61 of the Area Court Edict on procedure.

Thus, after due consideration of the submissions of the parties to the appeal the Supreme Court unanimously allowing the appeal held, ….. by the combined effect of B.S.L.N. No.6 of 1978, and Sections 34(1)(2) and 39(1)(a) of the Land Use Act 1978, it is only the High Court of Benue State had jurisdiction to entertain the suit between the parties herein. The judgments of the lower courts were declared null and void.

Thus, this judgement of the Supreme Court points to the fact that whatever the nature of the proceeding in respect of land that is subject of statutory right of occupancy in an urban area granted by the Governor or deemed to be granted, is under the jurisdiction of the High Court of a State. Thus, by implication and by virtue of provisions of section 41 of LUA, the Area Courts in the Northern States as well as the Customary Courts in Abia State and other equivalent courts in Southern Nigeria, from the coming into force of the Land Use Act, can only exercise jurisdiction over land which are subject to customary rights of occupancy granted by local governments. They have no jurisdiction over lands in urban area or places designated as such, no matter the nature of transaction that had taken place between the parties and the law of personal status regulating the affairs of the parties in dispute.

To worsen the fate of the customary courts over their jurisdiction on the lands in local communities and/or non-urban areas, the Supreme Court was also called to interpret the provisions of Land Use Act with respect to the non-use of the word "exclusive**"** in section 41of the Act as it was used in section 39(1). This issue came up in the High Court of Benue State in the case *of Ejigbor v. Oto*[46] which decided that the combined effect of section 236 of the 1979 constitution[47] and section 41 of the Land Use Act is to confer concurrent or coordinate jurisdiction on the High Courts of a State and the Area courts or Customary Courts in respect of proceedings relating to lands subject to customary rights of occupancy granted by the Local Governments. Learned Jurist, Niki Tobi JCA (as he then was) in his book[48] was not comfortable with this decision of the High Court, and had this to say

[46](1985) HCNLR 883

[47](Now S. 272 1999 as amended)

[48]Cases and Materials in Nigerian Land Law p.240

> There is no provision in the Land Use Act justifying the co-ordinate or concurrent jurisdiction as decided by the learned trial judge. Certainly, the expression "other court of equivalent jurisdiction in section 41" cannot be construed to include the High Court. That court is not a court of equivalent jurisdiction with either an Area Court or a Customary Court… section 236 (1) of the constitution which provides for the unlimited jurisdiction of the High Court cannot be so widely interpreted to cover original jurisdiction of the High Court in respect of a land which is subject to Customary right of occupancy. Such an interpretation will certainly do violence to the general intention and intendment of section 236 (1) of the 1979 constitution.

The argument of the learned jurist in this respect was aimed at preserving or protecting the interest of the Customary Courts or Area Courts' jurisdiction. The jurist foresaw what would be the fate of these lower court's jurisdiction when he said "*certainly such interpretation would do violence to the general intention and intendment of the provision of section 236 (1) of the 1979 constitution*. (emphasis mine). That outburst of Justice Niki Tobi (of blessed memory) could not withhold the charge or attack on the customary right of occupancy, as the Supreme Court was called upon to overrule itself in the case of *Oyeniran v Agbetola*[49] which decision was against the decision in the Benue State High Court judgment in *Ejigbor v Oto* (supra). In that case, the plaintiffs sued the defendants in the High Court of Oyo State claiming a declaration that they by customary occupation are entitled to the customary right of occupancy' of a farmland, damages for trespass and injunction. The High Court granted all the reliefs sought. The defendants, for the first time on their appeal to the Court of Appeal questioned the jurisdiction of the High Court to try the action. They contended that by virtue of sections 39 and 41 of the Act, the High Court lacked jurisdiction to try the action. The Court of Appeal rejected the contention, they being of the view that since the word 'exclusive' had been omitted in section 41 of the Act it would be wrong for them to supply the missing word and that section 236 of the 1979 Constitution had granted unlimited jurisdiction to the High Court of a State. In the event, they dismissed the appeal. The same question was raised on the further appeal to the Supreme Court. This court (Wali, Kutigi, Ogwuegbu, Mohammed and Onu JJ.SC.) allowed the appeal and struck out the suit on the ground that the High Court had no jurisdiction to try the proceedings.

However, the contentions about con-current jurisdictional issue between the High Courts and the Area Customary Courts in respect of customary rights of occupancy was

[49] (1997) 5 NWLR (Pt.504)122

put to rest in the case of *Adisa v Oyinwola*[50] at the Supreme Court. In this case at the High Court, the plaintiff claims against the defendant, in his personal capacity, a declaration of customary right of occupancy to a piece of land described as 'land of Ikolaba of Igbetti', situate at Kishi in Oyo State, damages for trespass and injunction. Adesina, J., on 2nd July 1985 entered judgment for the plaintiff, granted the declaration sought, awarded damages against the defendant for trespass and restrained him from committing further acts of trespass on the land. The defendant's appeal to the Court of Appeal was dismissed on 21st June 1988. On further appeal to the Supreme court, one of the grounds of appeal in the appellant's brief, raised the jurisdictional question for the first time: 'Whether the Court below was not in error in failing to see that the trial court lacks jurisdiction over claims as formulated by the plaintiff having regard to the provisions of the Land Use Act, particularly sections 39 and 41 thereof?'

It was argued in the appellant's brief of argument that having regard to the provisions of the Act just quoted and some previous decisions of this court, the court below should have seen, as the trial judge also ought to have seen, that the High Court had no jurisdiction to entertain the action. The previous decisions on which reliance was placed were: *Salati v Shehu*[51]; *Sadikwu v Dalori*[52]; and, *Oyeniran and Ors. vEgbetola and Anor*[53]

For their part, the plaintiffs by their respondents' brief of argument, argued that 'the High Court, the Area and Customary Courts have unfettered concurrent jurisdiction to entertain proceedings dealing with a customary right of occupancy under section 41 of the Land Use Act, 1978.' It was submitted that if it was the intention of the legislature that only Area courts or Customary Courts should have original jurisdiction in respect of customary right of occupancy, the legislators would have clearly said so by the inclusion of the word 'exclusive' in section 41 as it did in section 39. To hold otherwise, it was submitted, would be to import into that section what was clearly not the intention of the legislature. It was argued that to interpret section 41 as granting exclusive jurisdiction to the courts mentioned in that section would curtail the "unlimited jurisdiction" granted to the High Court of a State by section 236(1)[54] of the 1979 Constitution and that any such construction would render section 41 void by reason of inconsistency with the said provisions of the 1979 Constitution. Finally, learned counsel for the plaintiffs urged this court to review and over-rule the three decisions relied on by the defendant as they were given 'oblivious of the provisions of

[50] (2000)6 SC (Pt.20) 47; (2000) 10 NWLR (Pt. 674) 116
[51] (1986) All NLR 53, 76
[52] (1996) 4 SCNJ 20; (1996) 5 NWLR (Part 447) 151
[53] (1997) 5 SCNJ 94; (1997) 5 NWLR (Part 504) 12
[54] Equivalent of s.272(1)of the 1999 Constitution as amended.

section 236(1) of the 1979 Constitution as amended by the Constitution (Suspension and Modification) Decree No. 107 of 1993.

However, after due consideration to the arguments of the counsel of the parties and the *amicus curiae* invited by the court, the Supreme Court in *Adisa v Oyinwola* per Ayoola JSC [55] held thus: **"**In my judgement the decision of this court in *Oyeniran v. Egbetola* (supra) was erroneous and made per incuriam… I hold that the court had jurisdiction to try the proceeding and resolve the jurisdictional issue against the defendant"[56].

In corroborating the jurists' decision about the position of the law regarding customary right of occupancy, Mohammed JSC at page 88 said: "I am quite satisfied that the High Court of a state has jurisdiction in respect of proceedings dealing with land which is subject to both Statutory Rights of Occupancy granted by the Governor and Customary Right of Occupancy granted by the Local Government".

Thus, the battle seem to be over the result of this Supreme Court decision is that while a State High Court has exclusive original jurisdiction over lands in urban area by virtue of section 39(1) of the LUA, it shares concurrent jurisdiction in respect of lands the subject of customary rights of occupancy provided for under section 41 LUA,with the Area and Customary Courts or other courts of equivalent jurisdiction. This is by virtue of its own entrenched unlimited jurisdiction under section 236(1) of 1979 Constitution now 272(1) CFRN1999 as amended.

The decision was followed in the case of *Sule Sanni v Durojaiye Ademiluji*[57] In their considered judgement the Supreme Court, per Niki Tobi, JSC regarding the issue of jurisdiction of the trial court and justifying the extended jurisdiction of the High Court held thus:

> The position of the law is that the High Courts in the States also have jurisdiction over matters involving customary rights of occupancy, a jurisdiction which was hitherto vested only in the customary courts and by extension, Area Courts. The decision of this court is correct and solid. *It has taken care of situations in States that do not have Customary Court, Area Court and courts of like and similar jurisdiction. (emphasis mine).* Before Adisa, the position of the law was most unfair to States that did not have Customary Courts, Area Courts and courts of like jurisdiction. Adisa has taken care of the situation and since all States have

[55] (2000)6 SC (Pt.20) 47at p. 70; (2000) 10 NWLR(Pt. 674) 116.

[56] At p.70

[57](2003) 4 SC 145

> High Courts, the problem created by Oyeniran and the group of cases is no more.

This decision of the Supreme Court has rippling effect and jeopardizes on the administration of justice in the customary courts particularly those located in places designated as urban area in the state. First, the customary courts cannot adjudicate into causes and matters relating to inheritance and administration of estate of intestate deceased person which involves land located in places designated as urban area no matter how remote the urban area. The application of this provision has shut off litigants from accessing customary courts even when the subject matter of the land is devolution of family inheritance which is common in the non-urban or rural areas. Secondly, each time there is a contention over such subject matter, the parties are slammed with jurisdictional problem of the customary court despite the fact the land in question is located far away from urban development.

Thus, in the case of *Chief Peter Ezeugo v Mr. Raphael Amanze and Anor*[58]**.** The plaintiff's case was for a declaration that the decision of Ubakala Clan Council of Ndi Eze (Traditional Rulers) between the plaintiff and the defendants is valid and binding on the parties and a declaration that Ubakala Clan Council of Ndi Eze Umuahia South is competent to exercise appellate jurisdiction over any civil matter brought before the council by an aggrieved party within the Ubakala Clan Council.

The crux of the matter was that the defendants summoned the plaintiff before the Council of Amuzu Autonomous Community over a piece of land the plaintiff held for more than fifty years by their ancestors which was earmarked for traditional cleansing over an age-long dispute resolution. The Eze in Council, after the traditional arbitration awarded in favour of the defendant. The plaintiff objected to decision of the Eze in Council of Amuzu people and appealed to the Council of Ndi Eze of Ubakala Clan raising the issues of noncompliance with the fundamental right of fair hearing and that the award was against the weight of evidence. The Eze of Amuzu Autonomous Community is a member of the Ndi Eze Traditional Rulers Council of Ubakala Clan. The defendants refused to submit to the Council of Ndi Eze of Ubakala Clan and did not participate in the appeal. The Council of Ndi Eze Ubakala Clan gave judgment in favour of the plaintiff. The defendants refused to comply with the decision of the appellate body. The Plaintiff filed this action thus, in the customary court for a declaratory judgment that Ndi Eze Ubakala Clan has the right to arbitrate into the appeal from the judgment of an Eze in Council who is a member of the clan. The defendants replied that the customary court has no jurisdiction to entertain the matter because the land, the subject matter of the case is in a place designated as urban area. The court in its wisdom in the interlocutory application ruled that the court has

[58]Suit No. CC/IC/18/2019, Customary Court of Umuahia South L.G,A. holden at Isi Court

jurisdiction to entertain the matter because the application was for a declaration that the council of Ndi Eze being a constituted body for the communities in the Local Government Council has the right to arbitrate over any civil appeal brought before it against the decision of the Eze in council of any community under its jurisdiction. Thus, this is a typical example of the effect of sections 3 and 39 of the Land Use Act. The members in the communities still believe in their customary right of ownership which can be arbitrated by the local councils and the customary courts.

The resultant effects are the bases of fears of Justice Niki Tobi's comment in response to the issue of concurrent jurisdiction which was mentioned in the case of *Ejigbor vs Oto. respectfully thus:* "*certainly, such interpretation would do violence to the general intention and intendment of the provision of section 236 (1) of the 1979 constitution"*.[59] The implication of the concurrent jurisdiction of the High Court and Customary Court over the customary rights of occupancy in Abia State with large area of land declared urban areas is noticeable in the volume of cases particularly civil matters pending before the High Court of Abia State, of which land causes and matters constitute the majority of the cases due to the agrarian nature of the State economy. For example, in 2014/2015 legal year, there were a total of 7,829 pending civil cases at the beginning of the year. 486 cases were filed within the year, and a total number of 959 cases were disposed of within the year, representing 11.53% of the sum of the cases before the High Court whereas 88.47% of the total were pending as at 31st July 2015. This could be clearly seen in the table below.

Table 3. Return of Civil Cases in Abia State High Court*

		2014/2015	2015/2016	2016/2017
1	Total number of cases pending at the beginning of the legal year.	7,829	7356	
2	Total number of cases filed within the legal year.	486	1220	
3	Total number of cases disposed of in the legal year.	959	482	
4	Total number of cases pending at the ending of legal year.	7,356	8094	
5	Percentage of total number of cases disposed of in the legal year (%)	11.53	5.62	
6	Percentage of pending cases at the end of legal year (%)	88.47	94.38	

[59] *Supra* f.n. 84

*Adapted from the Appendix 1 of the opening of 2014/2015, 2015/2016, 2016/2017 Legal year of Abia State Judiciary programme of events. (2016/2017 records were not available at the time of the compilation).

The table above shows that many cases are pending before the Abia State High Court compared to that from the Customary courts shown in Table 1 above. Some of these cases would have been disposed of at the customary courts, but for the designation of more than 75% of the State land area of about 6,320 square kilometers[60] as urban area which expanded the workload of the High Courts in dispute resolutions.

It is pertinent to say that the legislatures at the time of promulgating the LUA did not think of the incomparable judicial onslaught the omission of the use of the word 'exclusive' would create in explaining the jurisdiction of customary court in land matters the subject of customary rights of occupancy in section 41 LUA as it is in the S.39 LUA and the aftermath consequences. We respectfully submit that omission may have been deliberate considering the composition of most Customary Courts and Area Courts benches then whereby majorities were laymen. It would not have been reasonable to vest that much power on presumably lower courts constituted by judges with little or no legal education to adjudicate on matters that are clothed with much legal principles. Since in majority of the States today, Area courts and Customary Courts judges heading the courts are generally trained legal practitioners, it is imperative that the jurisdiction of these courts be enhanced to reduce the backlog of cases pending before the High Courts.

The concurrent jurisdiction of the High Court and the Customary Court in the remaining land area is, with due respect subjecting litigants to court forum shopping.[61] Some litigants may, in order to intimidate and frustrate their indigent opponents, decide filing their land causes and matters at the High Court for a matter that would have been speedily disposed of in the customary court. Considering the backlog of cases pending before the High Court, it is respectfully submitted that land matters in which the issues before the court is not for declaration of tittle to land should be handled by customary courts whether they are in urban area or not under section 41LUA. With the increasing restructuring of most Customary Courts and Area Courts in Nigeria as observed in Abia State, the jurisdictional capacity in land matters in rural areas, needs to be exclusive to ease out the congestions in the State High Courts in land matters. This suggestion will motivate those states that do not have Customary Courts

[60]ChizobaIkenwahttp://nigerianinfopedia.com.ng//NigeriaLand size in sq. Kilometer accessed 5/10/2021

[61]Y Aboki, Jurisdiction: **"*The New Jurisdiction of Customary Courts in Land Matters*".** In Jamo, N. M. and Madaki A.M (Eds.) *Administration of justice in the Customary Courts in Nigeria, Problems and Prospects*. Legal Essays in honour of Hon. Justice Moses A.D. Bello OFR, President, Customary Court of Appeal, Abuja, a Publication of Private Law Dept. A.B.U. Zaria, pp. 146-173.

or Area Courts or courts of equivalent jurisdiction to establish them as pointed out by Niki Tobi, JSC *Sule Sanni v. Durojaiye Ademiluji*[62] that the absence of such grades of court being the reason to justify the concurrent jurisdiction of High Courts with Area or Customary courts in land causes and matters under section 41 LUA.

1.5 Conclusion

This paper in examining the jurisdictional issues in the customary courts of Abia State, noted that customary courts are courts of substantial justice whose functions depend on the authority granted it by the statute establishing it. To exercise its jurisdiction, the court's bench is composed by a panel of three judges with the chairman a legal practitioner and two lay members. The court's quorum is formed with the chairman and a member. Thus, this paper has made the following findings: Customary Courts in Abia State are not able to satisfy the legal needs on land matters of most people in rural areas because:

1. The State government's Legal Notice on Designation of Urban Areas, Public Notice Urban Order 1998 in Vol. 7 Abia State ,Gazette No 3 of 18/6/98, declared most of the rural communities of the State as urban, leaving the Local Government Councils with few areas where the Customary Courts could exercise its jurisdiction by virtue of S. 41 LUA which provides that customary courts have jurisdiction on land matters in non-urban areas subject of customary rights of occupancy granted by it or deemed to be granted.
2. The exclusive original jurisdiction of High Courts of the state, over statutory right of occupancy coupled with concurrent jurisdiction with the Customary Courts over the non-urban areas of the State subjects of customary rights of occupancy, have adverse effect on most land causes and matters being litigated in the High Courts by reason that the subject matter is likely located in a place designated as urban area.
3. The situation is borne out of the fact that most Customary Courts' bench at the time of promulgation of the Act was manned by laymen and therefore, they may have been considered incapable of handling serious causes and matters to the satisfaction of the people at the grassroot of the state, especially with increased social integration, economic and infrastructural development.
4. The consequences are that so many cases are piled up in the High Courts, begging for justice due to congestions. Consequently, few land matters are litigated in the Customary Courts of the State for lack of jurisdiction.
   - Individuals resort to court forum shopping, intimidation and oppressive litigation.
   - Indigent litigants who cannot pursue their matters at the High Court, could resort to self-help or conferring jurisdiction on the customary court by agreement to settle matters that do not involve proof of title to land.

[62] *Supra* at note 64

The situation could be salvaged by:- reviewing the provisions of the Land Use Act such that all customary courts of Abia State and indeed customary courts and area courts of other States of the federation now would exclusive jurisdiction over customary right of occupancy since they are now headed by legal practitioners as Chairmen or Alkalis as the titles apply, This will help decongest the High Courts of the States of land causes and matters particularly those connected or relating to succession and inheritance and make land litigations readily available to rural and indigent people of the States.

Recommendations

This paper recommends:

1. Amendment of the provisions of section 41 of the Land Use Act to the effect that Area and Customary Courts in Nigeria shall have exclusive jurisdiction over all lands the subject of customary rights of occupancy granted by the Local Government Councils whether or not the land is in urban area.
2. Amendment of the provisions of sections 39(1) LUA dealing with proceedings in respect of any land the subject of a statutory right of occupancy granted by the Governor or deemed to be granted by him under this Act, such that Customary Courts shall have jurisdiction over land matters in which the issues before the court are not for declaration of title to land situate in rural areas whether designated as urban area or not.