CORPORATE SOCIAL RESPONSIBILITY AND SUSTAINABLE BUSINESS PRACTICES: LEGAL PERSPECTIVE OF THE NIGERIAN OIL AND GAS INDUSTRY.

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BENIN CITY

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BEING A LONG ESSAY SUBMITTED TO THE FACULTY OF LAW, UNIVERSITY OF BENIN, IN PARTIAL FULFILLMENT OF THE REQUIREMENT FOR THE AWARD OF BACHELOR OF LAWS (LL.B) DEGREE

MAY, 2024
CERTIFICATION

I, **Favour Jesu-Simime OGHENEVOMEERO** with Matriculation Number, **LAW1805994** hereby certify that, with the exception of references to the works and opinions of other writers duly acknowledged herein, this entire project is a product of my personal research and findings. It has, neither in whole or in part, been presented for another degree elsewhere.

Favour Jesu-Simime OGHENEVOMEERO

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APPROVAL

We certify that this project work was researched, written, and completed by **Favour Jesu-Simime OGHENEVOMEERO** with Matriculation Number, **LAW1805994**, in partial fulfillment of the requirements for the award of degree of Bachelor of Laws (LL.B) of the University of Benin.

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DEDICATION

This project is dedicated to Almighty God, the giver of life who in his infinite mercies has preserved me and given me grace to see this work to its completion.

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LIST OF STATUTES

Associated Gas Re-Injection Act (2004) Cap. (A25), LFN.

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Environmental Impact Assessment Act (2004) Cap E12 LFN

Federal Ministry of Environment (Establishment) Act, 1999

Land Use Act 1978

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Nigerian Oil and Gas Industry Content Development Act (2010).

Oil Pipelines Act, Chapter 338, Laws of the Federation of Nigeria 1990.

Petroleum Industry Act (2021).

Petroleum Profits Tax Act Cap 13, LFN 2004

The National Environmental Standard Regulation and Enforcement Agency (Establishment Act) 2007 (Act No. 25).

LIST OF CASES

LIST OF ABBREVIATIONS

CSR	Corporate Social Responsibility
EIA	Environmental Impact Assessment
IGHF	Integrated Gas Handling Facility
NDDC	Niger Delta Development Company
NOGICD *Act*	National Oil and Gas Industry Content Development Act
NPDC	Nigerian Petroleum Development Company
PIA	Petroleum Industry Act
SDG	Sustainable Development Goals
SPDC	Shell Petroleum Development

TABLE OF CONTENTS

ABSTRACT

Corporate social responsibility and sustainable business practices in the Nigerian oil and gas industry refer to what the acceptable standards of business practice in the Nigerian petroleum industry are, with particular focus on issues like gas flaring and oil spillage inter alia. It also contemplates to what extent oil companies are socially responsible to the host communities i.e. communities within which upstream and downstream activities generally occur.

The petroleum industry is regulated by a litany of statutes, laws and regulations. This complex tapestry of legislation determine the social responsibilities, outlines the duties and liabilities of persons in the industry and effectively dictates what the preferred business practices are within the industry.

This work examines the social responsibilities of oil companies in Nigeria. It also analyzes the legal framework for corporate social responsibility in Nigeria, setting forth a legal view of what business practices fall in line with relevant and recent legislation including but not limited to the ***Petroleum Industry Act (2021).*** It also tackles the issue of implementation of integration of corporate social responsibility and sustainable business practices in the oil and gas industry.

CHAPTER ONE

CONCEPT OF CORPORATE SOCIAL RESPONSIBILITY IN THE NIGERIAN OIL AND GAS INDUSTRY

1.1. Introduction

The reality of business operations of oil companies in Nigeria, dictate that in line with the stakeholder theory of corporate social responsibility, the actual stakeholders of a company extend past its members and shareholders. A stakeholder is any party that has an interest in a company and can either affect or be affected by the business. According to Prof. E. M. Dodd, stakeholders in a typical corporation include its shareowners, employees, customers and suppliers and the communities/general public. This assertion is supported by the numerous scholars such as J. Post, L. Preston and S. Sachs who assert that the concept of stakeholders includes shareholders, employees, lenders, unions, suppliers, governments, regulatory authorities and local communities.

It is therefore stands that host communities of oil companies have an inalienable interest in the activities of these companies by virtue of the environmental, social and economic effects that the business operations of oil companies have on the host communities. Consequently, host communities of oil companies are stakeholders in the businesses of oil companies operating in their communities. This dynamic creates a delicate relationship between companies and their host communities; a relationship if which not properly maintained could easily sour and lead to negative repercussions for both parties.

There is the need for there to be what is often called the diligent distribution of justice. The menace of land grabbing has now become , as it were, increasingly disturbing in recent years, the exploitation of the class system in the state to deprive the poor from the little they have been able to earn for themselves while the rich enrich themselves from such endeavors is a big menace that certainly needs urgent attention from the various level of rulership from the villages to the towns and down to the cities, there are a plethora of these cases which are in need of urgent resolution.

Native arbitration by the Benin monarchy led by the Oba of Benin and his council chiefs can become a well-accepted alternative to the Nigerian courts which are already overburdened and seemingly already at its limit. The alternative of native arbitration which is not so new to the Benin people as it was already an age long tradition which was inhibited by the modern form of governance although, native arbitration has already been widely accepted by the Benin people, according to many have turned to native arbitration, a forum famed for being convenient, cheap, also expeditious; and opportunity is afforded disputants more freely in the proceedings. Local chiefs even go ahead to urge disputants to withdraw their suits for amicable out of court settlement. In some instances two disputants can have a matter in court on land ownership and declaration of title, both of the disputants then agree to bring the matter before the Oba's council, there is usually the assumption for the plaintiff to withdraw the matter from court because of the belief the plaintiff has in the arbitration process, However it is wiser to stay the proceedings pending the outcome of the arbitration, so that when the efforts fail then litigation can resume, there has to be the defining elements of native arbitration, whether such proceedings are just negotiated settlements or real arbitration proceedings in which real judicial functions are exercised with power backed by the government.

Also accordingly, at what point can a disputant pull out of the arbitration proceeding or is there a point of no return in which a disputant would be estopped from enforcing his or her rights Res Judicata.

Although also there are have been other institutions who engage in overseeing arbitration proceedings regarding land disputes like religious bodies, like churches, mosques, and the likes; the holy Bible in the letters of Paul even urges Christian to refrain from bringing fellow Christians before a judge. The issue however is the legitimacy of the

results of the actions of such proceedings, the police also engage in some form of dispute resolution exercise in the course of their duty, it is within the discretion of the police to either choose to charge an offender or where it is within his ability to ensue peace between the disputants. In the case of Ajao v Ashiru, the court emphasized the role of the police in such issues are "Ministerial and not judicial" because of the absence of a fair judicial forum which then allows the parties to reject such conclusions.

It is against this background that it is sought to critically examine in this study, what are the intricacies which may not be understood by the general public on the manner of the customary arbitration practiced by the Benin Monarchy, the research will try to bring to the fore, a clear understanding of the concept of native arbitration in simple terms.

1.2 Statement of Problem

Land matters are often full of technicalities and maneuvres, it is a major cause for a lot of court cases, as a result of the heaviness of the docket, delay and expenses involved in prosecuting a suit from start to finish, It has become increasingly difficult for lay persons especially when the other party happens to have some form of might behind them and in the form of self-help forcefully takes possession extra-judicially.

This long essay exposes to the light an alternative procedure, which can prove more efficient, an institution which is higher than any individual which can choose to submit to it, whose integrity is trusted among the people to curb this tide of oppression cases in land issues, what other options are available are available to the victims, should they just stand hands akimbo and watch the so called land grabbers fritter away their lands?

It is these agitating questions that this work seeks to answer, the researcher wants to show the potency of native arbitration in the Benin Council, as well as recommend

improvements and grant better protection to the victims of land grabbing, the research will seek to proffer solution to the problem of the non-efficiency of the Nigerian courts as regards land matters with native arbitration in Benin as a reliable alternative.

1.3 Aims and Objective of the Study

The Nigerian judicial system has as it were proven unable to adequately provide for the need for justice, justice delayed is justice denied, and any delay no matter how minute will invariably adversely affect the enjoyment of rights and remedies of the land owner while the other party enjoys unlawful possession.

This project aims at examining the elements of native arbitration in Benin in relation to its unique land tenure system for the overall benefit of justice, in that research this research is set to achieve the following objectives:

(1) To examine the land tenure system in Benin before 1978 and presently, the changes made and how it can affect the citizens in the administration of the different dispensations of land tenure systems in Benin.

(2) To expound the elements of native arbitration by the Benin council, its proceedings, methods and manner of remedies available to disputants, the sources of its legitimacy and how it complements the court system and not necessarily replaces it

(3) To identify and suggest further alternative actions that could be utilized to afford additional protection to disputants and this age long native institution from those seeking to hijack it.

1.4 Justification of Study

There is dire need to find alternative remedies to stem the oppression of the citizens in view of the current challenges, complexities and realities in land issues. The present status quo is unbearable and inadequate and native arbitration appears to be under-utilized, when it can offer so much more.

The study is intended to bring to the fore, the efficacious benefits afforded to the citizens under native arbitration. The outcome of the research will be useful to legal academics, students of law, legal researchers, native arbitrators as well as the general public who are interested in native arbitration.

1.5 Scope and Limitations of the Research

The research is limited to the land use act 1978, a number of seasoned authors on customary land law, of the likes of Professor Emeka Chianu, E.S Nwauche, Barrister Oaikhena, Barrister Okogeri and Professor Aigbovo. Including a host of law reports on the topic to accomplish a scholarly contribution to the subject.

1.6 Research Methodology

Given the nature of this legal research, the research methodology to be used is to be doctrinal, as it involves mainly the use of the library, the primary source of material for this research are statutes while the secondary sources are law texts, journals, law reports, pamphlets, the internet and hopefully a live native arbitration proceedings.

1.7 Definition of Terms

This will serve as a guide for the understanding of keywords which will eventually become re-occurent in this study, to proffer the appropriate context and perspective necessary for the readers. This terms include the following:

- **Native arbitration:** A procedure where disputes may be resolved out of court using a neutral third party which is a native authority. The process is similar to court and arbitration uses the same rules of procedures and evidence although less formal and more quickly.

- **Land-Grabbing:** Land grabbing is the contentious issue of large scale land acquisitions: the buying or leasing of large pieces of land by domestic and transnational companies, government and individuals. Merriam-Webster dictionary defines land-grabbing as a "usually swift acquisition of property (such as land or patent rights) often by fraud or force.

- **Land tenure system:** Land tenure is the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land. Land tenure is an institution, i.e., rules invented by societies to regulate behavior. Rules of tenure define how property rights to land are allocated within the society. They define how access is granted to rights to use, control and transfer land, as well as associated responsibilities and restraints. In simpler terms, land tenure systems determine who can use what resources for how long, and under what conditions www.fao.org.

- **Res-judicata:** Latin for meaning has already been judicially decided, where a final judgment has been rendered on the merits of an action and no other court may hear an appeal. Also known as Claim preclusion.

- **Disputants:** Participants in a dispute.

- **Alternate Dispute Resolution:** The process of resolving a dispute, usually in a manner that is alternative to court room process. It is a method where legal disputes may be heard and decided privately and not via litigation in a court of law, usually in two forms: (1) mediation and (2) arbitration. These private forums for settling disputes are usually more expeditious and less costly than court room litigation.

- **Conciliation:** This is another form of alternative dispute resolution where a neutral third party will listen to the argument presented by both opposing parties and render a non-binding suggestion of how to resolve the conflict.

- **Judicial forum:** An adjudicatory proceedings which has judicial backing and approval, the judgment from the proceedings is recognized in the court system and will be declared res judicata.

- **Benin Monarchy:** The Benin monarchy is headed by the Oba of Benin, who is the traditional ruler, trustee and custodian of the culture of the Edo people, he is the head of the Benin traditional council

1.8 Chapter Overview

this chapter focuses on the general introduction of this study, the statement of problem, the study ought tackle, an insight to the aim and objective of the study, a justification of the study as well as the scope and limitations of the study, therein is also contained the methodology employed to accomplish this study and a brief definition of terms section to guide the reader on understanding key concepts to be analyzed in the study.

CHAPTER TWO

2.0 LITERATURE REVIEW

2.1 Land Tenure System in Benin

Land tenure is the relationship, whether legally or customarily defined among people as individuals with respect to land. Land tenure is an institution, organized set of practices, rules invented b, rules invented by society to regulate behavior. The land tenure system defines how property rights to land are to be allocated within the societies. They define how access is granted, right to use, control and transfer land, as well as associated responsibilities and restraint. In simple terms land tenure system determines who can use what resources, for how long and under what conditions.

Land tenure can be social, political, economic and cultural, Land tenure relationships may be well defined and enforceable in a court of justice or through customary structures In the community, and they may be rigged with ambiguities which often lead to exploitation, however either way, there must be a watchman of the land tenure system for the sake of fairness and justice..

Tenure etymologically comes from the Latin word "*Tenere*" which means "To hold", understanding the land tenure system in Benin is a complex task, the rights which make up the land tenure includes; the rights of access to land, since these rights are different for the owner, a paying tenant, a customary tenant, and a trespasser, the rights to control the products from the land , the state rights over land resources, the owner's rights, tenants and customary tenants especially in agricultural resources, there is also the right of succession, who does the land passes to in the event of the passing of the deceased, the

transfer of land and rights to determine changes in land use and more importantly obligations to maintain the land.

2.2 Categorization of Land tenure

Land tenure is often categorized as:

- **Leasehold land tenure system:** In the leasehold land tenure system, a person (tenant) is given temporary ownership of a plot of land by the owner in the form of a title, allowing the tenant temporary access to the land during the lease time, but it cannot be used as a collateral for loans.
- **Tenants at government will:** Tenants at government will is a scheme in which the federal government of Nigeria distributes land to farmers. The land is inexpensive to purchase, but it cannot be used as collateral for loans.
- **Gift tenure system:** The voluntary transfer of ownership rights is known as the gift tenure system, the new proprietor might use this sort of land ownership for a loan. The new owner is entitled to all the advantages of land ownership, the new owner's status can however be reversed by a court judgment under this type of property tenure.
- **Freehold tenure system:** In this situation, an individual or a group pay a set amount of money in exchange for the right to own a piece of land. It can be costly to obtain land under this tenure system, the land can be utilized to obtain loans from a financial institution, which is an advantage.
- **Inheritance tenure system:** The transfer of land ownership rights to a successor following the primary's owner's death is known as an inheritance land tenure system. The next of kin of the land owner, in Benin tradition, the first son (Omo-Odion) of the primary owner, takes the land in which his father died on, with the proviso of

giving him a befitting burial, the main downside of this land tenure system is that the beneficiary and other family members may have disagreements over the land allotments.

- **Rent tenure system:** In a rent tenure system, a tenant pays a set sum to the landlord for the privilege of utilizing the land for a set length of time. In comparison to a leasehold arrangement, the rent period is comparatively short, although this structure hinders tenant from making long term plans.
- **Communal land tenure system:** The communal land tenure system elevates the community as the land ruling authority. The basis for land sharing or ownership is decided by the community leader, this approach promotes large scale farming, but it cannot be utilized as a loan security.

2.3 Benin Land Tenure System

The land tenure system practiced in Benin, is the communal land tenure system, where land is vested originally in the community of which is headed by the Odionwere, Enogie, or the Oba. Who is the chief ruler of the Benin Kingdom? All communal land tenure system vary according to the custom of the community, different communities have different customs and values, their land tenure system will the surely vary, and can be identified by their name as a people for example, the Yoruba land tenure system, the Igbo land tenure system or the Benin land tenure system.

Before the advent of the British government in 1861, from time immemorial, the Benin people have had a peculiar land tenure system which form of their traditions and customs, although the system is an intriguing one, the people uphold it with reverence.

Prior to the promulgation of the land Use Act in March 1978, the title to Benin land was vested in the Oba of Benin, In Akhionbare v Omoregie, the supreme court held that the ownership of land is under the Oba and therefore claim for the declaration of title to land by an individual or community which is inconsistent with this recognized customary law and therefore not maintainable. It was further held that the customary law of Benin governs ownership of land in Benin as all land is owned by the Oba of Benin.

Oputa JSC in the case of H.N.O Awoyegbe & Anor v Chief H.E Ogbeide, regarded the fact that the Oba is the trustee of Bini land as a notorious fact which any court of law can take judicial notice of, he stated the law succinctly as follows:

> *The Oba of Benin is the only authority competent under Bini customary law to make allocation or grant of Bini lands in or outside Benin city, for under the selfsame law all Bini lands are communal property of the entire Bini people and the legal estate in such lands is vested and resides in the Oba as trustee for the people.*

2.4 Procedure for Obtaining Grants from the Oba of Benin prior to 1978

A Bini man or woman (including other persons) that desire for land to build must apply for it to the Oba of Benin through the appropriate ward plot allotment committee in which the land is situated. The committee makes recommendations of the application to the Oba. The committee caries out an inspection of the site in order ascertain its location and in order to be able to recommend to the Oba whether the plot desired should be granted to the applicants, whether it is free of disputes. Upon receipt of such recommendation the Oba gives his approval to the applicant who thus becomes the beneficial owner thereof in accordance with the Benin customs and traditions. The Oba

signifies his approval by writing “Approved” on the body of the application, followed by his signature on the grantee’s written application, immediately transfer to the purchaser or grantee of the plot of land in question is perfected. This approval remains valid until it is set aside by the Oba of Benin, when its proven subsequently by evidence that a prior approval for the same land has given by the Oba, but not when made unilaterally, that is in the absence of the partners concerned. In this case, the Oba of Benin invites the parties affected by the conflicting grants to appear before him, where his decision must be communicated to the ward allocation committee where the conflicting grants emanated.

In the case of Arase v Arase, where the respondent claimed he inherited the land in dispute in accordance with Benin native law and customs from his father, the late chief Arase. The appellant claimed to have purchased the land from one Osazevbide Ediae, who also claimed to have inherited the land in dispute from his late father who according to the respondent was permitted by Chief Arase to live in the land in the capacity of a servant of chief Arase, Uyi Arase never made a grant of the land to Ediae nor did Chief Arase make any to Osazevide’s father.

The house later became a subject to a controversy between Uyi Arase and Ediae. Who claimed ownership of it, giving rise to a customary court proceedings, the sum of the trial court’s decision was , However on 1st February 1952, Ediae Osazevide applied to the Oba of Benin through the ward G, plot allotment committee for an appeal to survey the land in dispute, the Oba gave his approval, 17th July 1954 , Uyi Arase sent a petition to the Benin council opposing Ediae’s application. The “Ikorede” Benin council resolved on 1st May 1954, that the land in dispute is the property of late chief Arase, Uyi Arase’s father and the property had been inherited by Uyi under the Benin customary law, Uyi Arase applied to the plot allotment committee for approval to survey, the committee

recommended the application for the Oba's approval with the following endorsement recommended for approval on the face of the Ikorede judgment. The Oba later endorsed his approval, while litigation in court Raged on the matter, Mr. Osazevibe Ediae entered agreement to sell to sell the house to madam Arase, once the case was resolved in his favour and Uyi Arase still was not aware of the sale. According to **Idigbe JSC:**

> *"alternatively, it may be said that when the ward plot allotment committee after the inquiry and the resolution in exhibit D recommended Uyi Arase application, exhibit A on the face of the Ikorede judgement of 1st May 1954 and the Oba endorsed his approval on the said recommendation, he impliedly set aside the earlier approval*".

Another contention on the matter is that a grant cannot be vitiated just because one of the parties was granted approval earlier than the other, the Oba's approval should depend on a show of a better title, when both parties appear before the Oba at his palace to prove their case. Under native arbitration in the Benin customary land tenure system and the court of law, the fundamental practices for proving a case are similar and must be strictly adhered to diligently, Justice Fatayi Williams JSC in the case of Mogaji & ors. V Odofin & ors (1978) puts succinctly that before a judge reaches a decision , he must first put the totality of the testimony adduced by both parties on an imaginary scale and weigh them together, this is what is meant when it is said that a civil case is decided on a balance of probabilities, therefore in determining a case, the judge (which also applies to an arbitrator) will naturally have regard to the following:

(a) Whether the evidence is admissible.

(b) Whether it is relevant.

(c) Whether it is credible.

(d) Whether it is conclusive.

(e) Whether it is more probable than that given by the other party.

The Supreme Court adduced from the following criteria that the learned trial judge failed to adhere to these fundamental rules in deciding the case in hand.

In early times, the Oba divided Benin into quarters, which were headed by chiefs appointed by him and later about 1947, created ward councils whose duties were to recommend to the Oba, applications for plots of land. The said ward councils were replaced with building plots allotment committee whose main function was to receive and recommend application for building plots to the Oba for approval, however before such application can be forwarded to the Oba, the committee must ensure that the land is not encumbered in any way by inspecting the same, the supreme court in Okeaya v Aguebor is handy in analyzing this established principle governing the acquisition of land under Benin customary law, for a valid grant of land under Benin customary law. Due proof of all the compliance with the preliminary steps leading to the Oba's approval as well as the approval itself are all important as the approval itself, mere production of deed of conveyance and the issuance of a certificate of occupancy without due proof of prior title of the person from whom the title is derived cannot confer on the title holder , this was the decision in LT Col Mrs. B.A Finnih v J.O Imade SC|160|87 delivered on 24th January 1992, lead judgement by Bahalakin JSC, the grant must be proved and the site must be inspected by the plot allotment committee, in Okeaya v Aguebor supra it was held that the grant by the Oba of Benin in accordance with Bini customary law was not proven and the site must be inspected by the plot allotment committee, in Okeaya v Aguebor it was held that the grant by the Oba of Benin in accordance with Bini customary law was not followed and the respondent who had brought the matter at the

lower court failed. The criteria in receiving approval from the Oba of Benin on land matters was judicially noticed, in other words, there was no longer need to tender proof to validate the power of the Benin Monarch in land allocation matters, The principles governing the acquisition of valid title under Bini customary law have been established in a long line of cases, in Okeaya v Aguebor, the principles were stated as follows:

(a) All lands in Benin division are vested in the Oba of Benin who is the trustee or legal owner thereof on behalf of the people of Benin who are beneficiaries in respect thereof.

(b) In respect of Benin City itself, the Oba of Benin had by 1961 appointed ward allotment committee in respect of 12 wards into which the city had been divided shortly before this for the purpose of plot allocation.

(c) Whereas any grantee of land in Benin City before 1961, might not be able to produce approval in respect thereof reduced by the Oba of Benin in to writing, such a grantee after this period must be able to produce such evidence.

(d) One of the several functions of a ward plot allotment committee is to recommend plot applications to the Oba for approval.

(e) An applicant for land in Benin City from 1961 has to direct his application in writing to the ward allotment committee of his choice.

(f) The ward plot allotment committee upon receipt of the application would delegate some of their members to carry out an inspection of the land acquired within the area of their ward and they in turn would report back to the committee on their inspection, “the purpose of their inspection” being to ascertain if it is free from dispute or has not been previously granted to someone.

(g) Upon being satisfied about the exact locations, the dimensions and the fact that the desired plot is dispute 'free' the ward plot allotment committee would endorse the application with the above facts and forward it to the Oba of Benin as recommended.

(h) The Oba of Benin would as a rule accord his approval in writing to a recommended application and an applicant whose application is approved by the Oba of Benin becomes the beneficial owner of the land as approved for him.

(i) An approval once given remain valid until set aside by the Oba of Benin when evidence is subsequently produced of a prior approval for the same land. The second approval being bona fide and in ignorance of the existence of the earlier one.

(j) It is contrary to Bini custom to set aside an approval made in error upon an ex parte application by one of the affected parties in other words, to set aside an approval made in error, the two parties affected by the conflicting grants must be present before the Oba at the same time and his decision must be communicated to the ward allotment committee from which the two conflicting recommendations had emanated.

The Oba registers his approval by writing "approved" on the body of the application, followed by the signature and date. The holding of the court in Aigbe v Edokpolor strengthens the conclusion that a grant of land by the Oba of Benin becomes effective from the date the Oba appends his signature of approved application for land.

2.5 Land Tenure in Benin After 1978

The year 1978 is remembered as a turning point in the administration of land through-out Nigeria and by all means Benin City. The powers exercised by customary land tenure

system prior to 1978 was reverted to the state governor, ordinarily in Benin City all lands were vested in the Oba of Benin as custodian and trustee of the land in the Benin kingdom, however as a result of the enactment of the Land Use Act, a federal statute regulating land matters reverts all the land in the state to the state governor, thus Section 1 of the Land Use Act(which herein after will be referred to as LUA) provided for the vesting of all land in each state in the governor.

The Governor exercises sovereignty over all the land in the state, according to Professor Emeka Chianu in his book "LAW OF TRESSPASS TO LAND AND NUISANCE";

> "*sovereignty in the context is used to mean rights which have no rights behind it….. It is larger than ownership and possession*".

The rights of the governor in exercising his power over land matters can be said to be absolute over possessory rights or ownership rights, having the right to retrieve lands and transfer land already owned by John over to Peter, simply by granting certificate of occupancy from his office.

The extent to the Governors powers on land issues has been commonly questioned by academic scholars over time on the rights of the government and its agent to revert land already owned back to the government and then transferred to new individuals and corporations in the name of greater\ public benefit of the state. The form of rascality often carried out by government agents on the government's behalf in terrorizing land owners for their gain is unimaginable and overwhelming.

The difference between a man who has been given power for about 8 years, especially those who have little regard for posterity and an institution whose foremost responsibility

is to keep the integrity of generations before for the generations to come after, the difference in administration would be glaring.

The construction of words used in **Section 1 LUA "**vesting of all the lands**"** is a bit ambiguous because of the seeming variance with Section 44(1) of the constitution, which is the supreme body of law in the country which provides thus in part:

> "*No movable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired Compulsorily in any part of Nigeria except in the manner and purposes prescribed by a law that, among other things- (a)require the prompt payment of compensation therefore*".

The constitution rightly establishes the rights of citizens to own property, and such rights cannot be tampered with, except under the covering of the proviso, which holds:

> *'except in the manner and for the purpose prescribed by law that*,….'

Section 11 LUA, adds a little context on the exercise of the governors power over land, Section 11 gives the governor the right to enter land merely for the purpose of inspection and only at reasonable hours in the day time. This section considerably restricts the governors right to enter possession, hence the right he enjoys over land, is a right in reversion, the land owners have the right to use their land as they deem fit and alienate the same as long as they comply with the provisions of the act.

Via series of decisions, the supreme court has consistently held that the land Use Act does not devour all land rights, in J.M AINA & CO LTD V COMMISSIONER FOR LAND AND HOUSING [1982] 3 FED OF NLR 113, the defendant attempted to acquire

the plaintiff's land upon publication of the notice of acquisition in a newspaper instead of the methods prescribed by the act. Pursuant to this notice, the defendant demolished the plaintiff's wall fence. The plaintiff's claim for damages for trespass and injunction was successful, commenting on the effects of Section 1 LUA, Fakayode CJ made this remark;

> *"The plaintiff's land in dispute does not form part of the state governor's…. Property because the governor does not hold in the state for the benefit of the state. If he did, then every inch of land in the state, would have been state land and no private person could I such circumstances claim ownership of any land in the state. The question I have to ask myself is, does the….Governor…..hold plaintiff's land in dispute for the benefit of Oyo state? The obvious answer is no. The fact that the defendants are now [intending] to acquire plaintiff's land…. shows beyond reasonable doubt that the property in dispute was not vested in the governor".*

The governor does not have a present beneficial interest in any land, instead, he has a lordship over land, if the governor was to exercise a constitutional right as owner of all the land in the state with a beneficial interest, the country would have been practicing the communist system of government where the state is the sovereign owner of all resources in the state including land, however the right the governor exercises over land is at best incorporeal in nature, the common law position classifies the incorporeal substances as land, but it is not the physical land itself. In other words land rights are not only made of property rights, which includes the right of exclusive possession and use, it is also a constitutionally protected right, nothing compelling or substantial justifies the infringement of land right outside the four corners of a statute

The Supreme Court justice in the case of **OGUNOLA V EIYEKOLE** attempted to explain the overwhelming intricacies involved in the governor's role in land administration in a customary land tenure system of administration over land.

> "*land is still held under customary tenure even though dominium is in the governor. The pervasive of effects of the land use act is the diminution of the plenitude of powers of the holders of land. The character in which they hold remain substantially the same, thus an owner at customary law remains owner all the same even though he no longer is the ultimate owner*".

The section 1 of the LUA which has widely been misinterpreted provides thus:

> *"subject to the provisions of this act, all lands comprised in the territory of each state in the Federation are hereby vested in the governor of that state and such land shall be held in trust and administered for the use and benefit of all Nigerians in accordance with the provisions of the act".*

SECTION 48 of the same LUA further evinces the right of parties on the transfer of interest in land, it provides thus:

> *"all existing laws relating to the registration of title to, or interest in, land or the transfer of title to or any interest in land shall have effect subject to such modifications (whether by way of addition, alteration or omission)as will bring those laws into conformity with this act or its general intendment".*

The Section evinces the general intendment of the act which covers the transfer of title and interest in land, the practices of some legal practitioners, who often backdate land

documents to before 1978, especially in the transfer of title, because they are under the assumption that all land and their beneficial interest are vested in the governor, which is false, this same wrong interpretation of the act was peddled by the learned Professor Fabummi in his book equity and trust, that sale of land is illegal because land has been vested in the governor. The Supreme Court has been able to uphold a proper dissent against this view with a number of unambiguous interpretation of the land use act.

CHAPTER THREE

3.0 RESEARCH METHODOLOGY

3.1 Native Arbitration in Benin

Land matters in Benin are not without disputes, the practice of dispute resolution settlement through native arbitration processes is an ancient and cherished part of the Benin customs and traditions, As a result of the heaviness of dockets, the technicalities, expense and delay are a key feature of regular courts. Many have thus turned to native arbitration, a forum famed for being convenient, cheap and expeditious in native arbitration the disputants are afforded the opportunity to participate more freely in the proceedings.

The indigenous judicial system of the bini's has been developed over time as per, it is an ancient city dating thousands of years back, and arbitration has been a deciding tool in justice distribution right from pre-colonial era especially in civil cases i.e. where there was no victim or any sort of hurt done, native dispute resolution and arbitration has already proven successful.

Before the colonial era, customary law operated freely in the its area of influence as complete and effective judicial system, this system of dispute resolution is generally referred to as customary arbitration, the elders of the community constitute the members of the customary arbitration tribunal the tribunal derives it authority from the customs and traditions of the community which the indigenes accept as binding.

On the arrival of the British colonialists, there was a radical interference on the hitherto existing system of customary dispute resolution, they sought to impose their own judicial system and dispute resolution mechanism, there was a tussle originally between the

practice of the colonial judicial system and customary arbitration the colonial judicial system was not successful in extinguishing the customs and traditions especially here in Benin, customary arbitration still remains a mode of resolving disputes in contemporary indigenous communities of Nigeria Igbokwe noted that:

> *The British colonization of Nigeria, witnessed the interaction of English law with customary law, but with British colonization did not result in the complete obliteration of the customary laws in Nigeria and the local level dispute resolution mechanism such as customary arbitration.*

The judicial system introduced by the colonialists, however gained superiority over traditional judicial systems and customary law before only enforceable on their terms and conditions. This state of affairs dealt a fatal blow to customary arbitration, as a customary arbitral award would not be binding, if it is not in tandem with parameters of the courts.

There are two form of arbitration in Nigeria, firstly the customary arbitration and the second which was imported from the practice of general law in England, the latter has often been super-imposed by the courts the attitude of the Nigerian courts to subjugate customary arbitration is glaring. Unlike the flexibility of customary law English law tends to be more rigid and strictly contractual based on the agreement of the parties.

"English is English, Nigerian is Nigerian, the English are the English; so also Nigerians are Nigerians. Theirs are theirs, ours are ours; ours are not theirs "

Per Niki Tobi JCA (ahtw) in carribbean trading & fiderily corporation V NNPC.

In Benin, there has been a revitalization of the native judicial system, the Benin monarchy headed by the Oba of Benin, has made beautiful strides in ensuring that Bini native law and customs are rightly upheld, the Ikorede (Benin traditional council) continue to hold judicial sessions to decide on disputes from all people on Benin land, there has been a consistent track-record of justice delivery from the ancient tested and trusted Benin native law and customs most of which arise from land matters.

This chapter seeks to give a detailed framework of native arbitration in Benin, the source of judicial powers exercised by the Ikorede in these native arbitration proceedings and the validity and enforceability of native arbitration judgments. Ever since the colonial era, down to after 1978 when land was statutorily vested in the state Governor, the continued existence of native arbitration in Benin is owed to the majority of Edo people who are staunch believers in the native laws and customs, the family structures right down from the families in the village to Ogbe, there has been a jealousy of the benin people to never let go of the remains of their customs, the core of every Benin man is the reverence of his Monarch, the structure from the Okaigele (community youth leader) to the Odionwere (the oldest man in the community) next to the Enogie (dukes in charge of this communities) even indigenous religious head in this community, palace chiefs and the Oba, this structure accommodates every person to be catered for by leadership especially in disputes resolution cases.

3.2 Arbitration and Negotiated Settlements

Arbitration is always regarded as a contract with sacred obligations to fulfill its term the person who arbitrate in a dispute should exercise a judicial function, not merely an intervention to make peace between the disputants. Many institutions such as religious clerics; pastors, imams etc., police officers, especially groups where some form of

fiduciary relationship has been established. There will be some form of dispute resolution practiced because dispute is surely inevitable in a gathering of people, as far as people continue to exist dispute will remain, however the exercise of a judicial function is the hallmark of an arbitration proceedings to be valid and enforceable the parties must firstly have willingly submitted themselves to persons who hold judicial powers. The coercive nature of the atmospheres in police Stations makes it difficult for the parties to properly ventilate their grievances emotional blackmail in some religious organizations cannot qualify as a fair judicial atmosphere and whatever is agreed upon in these forums cannot be held binding on the parties.

In the case of Ibe v Ikewibe, Nnaemeka Agu JSC gave a notable dissent on the distinction between a negotiated settlement and native arbitration, which in his opinion lie in the fact that members of the latter are persons who exercise judicial functions by native law while members of the former are no. notwithstanding the fine contribution there are many cases where parties voluntarily submit their disputes to a person or persons, who are not members of any customarily recognized body for judicial purposes and yet the court uphold their rewards. Justice Oputa (AHTW) expressed a similar view to Nnaemeka Agu JSC in Ibe v Ikewibe but proceeded to add that an attempt at settlement would constitute Res Judicata, if the parties agreed at the end to be bound by the decision.

The view of the learned justice Uche in Obaji v Okpo is instructive on this matter, where he proposed that where evidence shows that the dispute went before the elders or a chief and his councillors, who gave a decision in accordance with native customary law, the decision if satisfactorily proven, will operate as Res Judicata without more.

In another view, where there is submission to a person or persons having no customary law judicial function, that is not by office, the sort of body whom the people usually refer their disputes, the court will apply strictly the three characteristics of customary native arbitration to see whether the decision of that body was an arbitral decision or a negotiated settlement or an attempt to reach a compromise.

In the case of Osu v Igiri, the elders got one of the disputants to concede certain portions of his land to the other for the matter to be settled out of court, this was reduced into writing, shortly after the plaintiff disregarded the agreement and entered the land he had conceded, the supreme court held that the document did not constitute Res Judicata and upon one party transgressing the content its effect was at an end. In the words of Belgore JSC:

> *"the meeting at which the parties met leading to [the document]cannot be regarded as tribunal or even arbitration and [the document] cannot be regarded as a strict legal document".*

According to G. Ezejiofor, the dichotomy between arbitration and negotiated settlement should be discarded when there is evidence the parties voluntarily submitted their dispute for resolution.

In deed the distinction between mediation conciliation arbitration or negotiated settlements with reference to native dispute may be a reflection of lawyers overly nice concern for terminologies, percipient judges now how to disregard labels of the parties and choose and re-label the arrangement according to its true character.

3.3 Legal Status of Customary Law in Nigeria

Customary arbitration as an indigenous dispute resolution concept has gone through a tortious journey from the Nigerian court system, different up's and down's, acceptance and reflection, the attack on the integrity of traditional institutions, the initial acceptance, subsequent denial and a reconfirmation of its validity in Nigeria. The practice of settling disputes by indigenous people was recognized by the British colonial judicial institution as far back as 1932, where customary arbitration was given judicial recognition, in the Ghanaian case *Assampong v Amuaku,* where the court held that:

> *"……. Where matters, in the disputes between parties are, by mutual consent investigated by the arbitrators at a meeting held in accordance with native law and customs and a decision given, it is binding on the parties and the Supreme Court will enforce such decisions".*

The court decision in the cases *Inyang v Essien*, where an indigenous court first approved customary arbitration in our jurisdiction, Njoku v Felix Ekeocha, Idika v Esiri, surprisingly the validity of customary arbitration was denied in the appeal court case of *Okpuruwu v Okpokam,* where Uwaifo JCA held that:

> *I do not know of any community in Nigeria, which regards the settlement by arbitration between disputing parties of native law and custom, it may be in practical life, when there is a dispute in any community, the parties involved may sometimes refer to disinterested third parties for settlement that seems more of a common device for peace and good neighbourliness rather than a feature of native law and custom….. I do not also know, how such a custom, if any, or more correctly, such practice, to get a third party to intervene and decide a dispute can elevate such a decision to the status of a judgment with binding force and yet fit into our judicial system.*

This position by justice Uwaifo JCA, respectfully, who ought to be a Benin man abreast with both governmental legislations and indigenous native law and custom practiced at least in his home state, Uwaifo JCA dicta ought to be condemned at every instance by the legal practitioners, he failed to avert his mind to other plethora of decisions by the court which recognized customary arbitration.

Interestingly Oguntade JCA, in the same case of Okpuruwu v okpokam, although concurred with the lead judgement, held a different opinion as to the validity of customary arbitration as a recognized indigenous method of dispute resolution in Nigeria, he disagreed with the opinion in the lead judgment that customary arbitration does not exist.

In 1991, the supreme court took advantage of the opportunity to assert the legal status of customary arbitration the supreme court judgment did set the record straight, in *Agu v Ikewibe,* the supreme court held per Karibi-Whyte JSC held that:

> *It is well accepted that one of the many African customary modes of settling disputes is to refer the dispute to family head or an elder or elders of the community for a compromise to the solution based upon the subsequent acceptance by both parties of the suggested award which either party is free to resile at any stage of the proceedings up to that point. This is a common method of settling disputes in all indigenous Nigerian societies.*

As a corollary, it is established that customary arbitration is an accepted form of dispute resolution in Nigeria, and its validity is derived from the customs and norms of the indigenous community and by the constitution of Nigeria. Sections 315(3) and (4)(b) of the constitution recognize customary law as an 'existing law' and by implication upholds the validity of customary arbitration since it is derived from customary law. The

arbitration and Conciliation Act in Section 35(b) acknowledges arbitration "in accordance with the provision of other laws" recent decisions of the court further established the existence and binding nature of customary arbitration in Nigeria.

CHAPTER FOUR

4.0 ELEMENTS FOR THE PRACTICE OF CUSTOMARY ARBITRATION IN BENIN

Upon the acceptance of customary arbitration by the courts, there still remains the contention on the elements accepted on the practice of customary arbitration and enforcing the awards received from this proceedings, customary arbitration are usually expressed to be conclusive and unimpeachable, except such awards is set aside by any of the recognized grounds such as the inability of the awards to satisfy the yardsticks laid out by modern courts.

The modern courts have not proven consistent in establishing the elements of a valid customary arbitration proceedings, conflicting decisions and confusing scenarios have characterized decision of the court in this matters, even members of the bench on a court case will refuse to reach a consensus on the ingredients necessary for customary arbitration to be successful.

The appeal court per Okoro JCA in the case of Awonusi v Awonusi stated that there are four basic ingredients necessary for a binding customary law proceedings and they include:

(i) Voluntary submission.

(ii) Express or implied Agreement by the parties on the acceptance of the award as binding.

(iii) That the arbitration proceedings was in accordance with the custom of the parties

(iv) That the arbitrators reached a decision and published their awards.

The court in Achor v Adejoh added an extra element per Aboki JCA on the acceptance of the decision by the parties after the award has been made, this position has been disputed severely because of how comfortable it is for the party who was not favored by the award. The court held that the elements to a valid arbitration include the following:

(a) Submission of both parties to the arbitration.

(b) The arbitration must be recognized by both parties.

(c) The parties must agree to be bound by the decision.

The Supreme Court has asserted its position on the elements of a valid customary arbitration proceedings in the case of Okoye v Obiaso:

(a) Voluntary submission of the dispute to the arbitrator.

(b) Express or implied agreement to accept the reward as binding and final.

(c) That the arbitration proceeding was in accordance with the tradition of the parties.

(d) That the arbitrators reached a decision and published their award.

(e) That the decision was accepted at the time it was made.

The inconsistencies in the decisions of the court has in my opinion shown the growth of customary arbitration and its acceptance in the Nigerian court system. All of these elements laid out in these Supreme Court decision must be present in any arbitration proceedings for the award dispensed by such proceeding to be upheld, this means that the criteria laid out in this Supreme Court decision must exist concurrently. In the case of *Duruaku Eke & Ors v Udeozor Okwaranyiai & Ors,* the Supreme Court per Uwaifo JSC, after laying down the judicial parameter went ahead to state:

> *I think anything short of these conditions will make any customary arbitration award risky to enforce. In fact, it is*

better to say that unless the conditions are fulfilled, the arbitration awards are unenforceable.

4.1 Voluntary Submission

Voluntary submission in under customary arbitration is a very technical, since customary arbitration has more technical features indigenous to the people who practice the same tradition, a typical customary arbitral process in Nigeria begins by a complaint by an aggrieved party submitted to the appropriate authority after which the other party is summoned or invited. This controversy to this method of instituting arbitration action is whether "a submission after a summons can be termed as a submission"?

The complaint must be submitted to a body or person recognized to as having judicial authority under the custom of the parties, the Oba of Benin is the highest traditional ruler in Benin and has been judicially noticed to exercise his powers in settling disputes through arbitration. The party seeking to rely on an award from an arbitration proceeding must convince the court that the body was competent having judicial authority to dispense such rewards.

The case of *Inyang v Essien* is instructive on the relevance of the judicial authority in an arbitration proceeding the requirements for a recognized judicial authority has remained vague due to the lack of court decisions on relevant judicial authority, Voluntary submission implies that a party entered into the arbitration agreement based on his own freewill without external influence or force whatsoever, the private agreement of the parties is viewed as sacred.

Unfortunately the courts in some other cases have continued to pronounce the submission to elders or chiefs as a valid requirement for the validity of customary

arbitration, it is humbly submitted that the same problem of the generalization of the criteria still applies here, in clear term Ladipo submits that:

> *With respect, it is posited that the position is a generalization, which is Incongruous with the fact and realities of some arbitral customs. This is particularly the case in arbitration based an oath taken before priests, Arbitration before age groups, women, groups, trade and business groups. The tribunals in the foregoing arbitral customs are obviously not constituted of elders and chiefs.*

The awarded party has to establish by evidence that such acts to show expressly or implicitly done to acknowledge the competence of the body (arbitration body) like presenting drinks or kolanut, in Benin custom, the presenting of gift to the Oba, no matter the amount or quality is a general custom to seek the presence of the Oba for a courtesy visit or to seek his counsel or to settle disputes among parties.

Where oral testimony is relied on to prove the arbitration award, the party who seeks to rely on the proceeding must clearly testify that the parties voluntarily agreed to be bound by the award. In *Ekwueme v Zakari*, the plaintiff who pleaded Res judicata based on an arbitral proceeding merely establishes that the parties each testified before the panel. The panel report did not indicate that the parties agreed to be bound by the decision of the proceedings. Araka J, held that the panel was not a proper arbitral panel since no evidence showed that the parties agreed to be bound by the award. Nnaemeka-Agu JSC in a compelling dissent opined that a summons by the panel extended to the party denying the award of the arbitral proceedings cannot be referred to as 'Voluntary'. It is often a difficult task to get the other party to submit to an arbitral proceeding, especially when he presumes impartiality or feels the odd are against him, when the opposing party

is summoned, he reasonably only submits to the judicial authority of the arbitral panel, when he is convinced of the panel to be impartial, fair and trustworthy.

That way it is said that both parties voluntarily submitted the dispute for resolution, in some cases, a person in authority can unilaterally summon disputants and resolve the dispute on account that it disturbs public peace. if the parties voluntarily accepts the resolution the decision should not be any less effective because they did not choose the arbitrators themselves.

4.2 Prior Agreement to be bound by the Arbitrator's Award

There is a raging controversy on the rights of the parties to resile from the arbitration proceeding, different views on what point, the parties are free to resile and the point of no return in an arbitration proceeding. The renowned Professor Nwakoby wrote" the correct legal position is that party to an arbitration agreement under customary law cannot withdraw midstream". This view was in contrast to the view by Dr. Elias, where he expressed that "either party is free to resile at any stage of the proceedings up to" an award and signification of its acceptance.

The decision in *Nwanaforo v Onunuekiti* brings to bare another dimension in this case, the defendant took the dispute before a youth association to which the both defendant belonged. The association co-opted some chiefs and elders and the award was that the plaintiff should give the defendant juju to swear that the land in dispute was under pledge. On whether this resolution constituted an arbitration award, Uche J. held that it was not because the association did not have judicial authority, and there was no evidence that the parties agreed to be bound by the award ante and post the award. According to his lordship, where voluntary submission has been established and there also exists an agreement to abide by the award before the proceedings has been concluded, as the

parties were appearing before a body which has no judicial function by custom. Before this non-customary judicial tribunal there must be an acceptance after the decision is pronounced.

There is also the argument that if a litigant in a regular court process midstream, could apply to have his\her matter transferred from one judge to another on the likelihood of bias, the parties of a native arbitration proceeding should be entitled to same. The decision in *Nwankpa v Nwogu* the arbitrator (the town king) perceived that the parties would be unwillingly to respect the arbitration proceeding, resigned and urged the parties to go to court.

Okekeifere is another bright scholar who is against the right of disputants to resile he suggests that the disputants have the unalienable rights to resile in a mediatory proceedings, while such rights cannot be exercised in an arbitration proceeding, often in an arbitration proceeding there is the heavyweight disputant whom the arbitrators are likely to play to the gallery for and the lightweight who may not be able to compete in showering the arbitrators with gifts and all that, or in a state like Edo where there are different tribes from all around the country who live and do business, some may feel they might be cheated when the arbitrator is a kinsman with the other disputant even after voluntary submission has been established. The arbitral process must have been conducted in accordance with native custom of the parties or their trade.

The certainty of the law in any dispute resolution process is fundamental to justice, the validity of customary law rests on the assurance by the parties that the law to be applied in the arbitral process is such law which they have witnessed to have been exercised and practiced by the people, In the Benin customs, the Oba of Benin is the holder of all the verities of the Benin people, he is the chief defender of the Benin people and their

customs which has been preserved and honored for thousands of years before by the ancestors.

However there has been an argument that all that is needed for proper arbitral process is the agreement of the parties, and native law is seldom necessary where the disputants have agreed to a non-judicial body to arbitrate on the dispute however where the arbitrator is a local chief, it should be presumed that native law was followed. The onus therefore rests on the other disputant seeking to impugn the award from the arbitral process to prove that native law and customs was not followed or that the agreement of the parties on what law which ought to be followed was not adhered to strictly. The excesses of traditional ruler in seeking for favors and material gains have been a clear self-sabotaging factor in the advancing of customary arbitration as a befitting dispute resolution mechanism in the Benin. The sort of power the supreme court attributed to traditional rulers in the 90's has waned significantly, Ademola CJN gave an insightful Dicta on the need for customs to be flexible to take account of the current need of the people in the case of *Apoesho v Awodiya.*

4.3 Publication of Customary Arbitral Award

Publication of awards has proven too often as a ground to challenge an arbitral award, awards from customary arbitral proceedings must be declared publicly. Many persons often resorts to arbitration for its privacy and confidentiality, hence many are not open to the announcing of arbitral awards to persons who do not have any interest in the matter.

For customary arbitration in Benin City, bulk of these native arbitrators are aged persons, between the age of 50 – 100 years old and are likely uneducated, hence the necessity of writing may be difficult, it is unfair to assert that the absence of writing should bar a

party from relying on an award witnessed by persons who can give sound evidence to testify to the fact.

The need for recording arbitration proceedings and awards has proven advantageous, and as the bane of illiteracy steadily wanes, the practice of recording arbitration proceedings has become widely accepted even in native arbitration proceedings, according to professor Chianu; a clever legal practitioner can plead estoppel by record when the proceedings are recorded.

This decision in *Okwaranyia v Eke,* where the witness in the case who was also the arbitrator, wrote the award and signed, the record bore no date and was not signed by any other person, the appeal court disregarded the document because the court was of the opinion that it was tyrannical for the arbitrator to also be the recorder such process are likely to be partial and in favor of a party.

There are also cases where the award dispensed in the proceedings are different from the award written and published in favor of a party, in *Aniekan v Aniekan*, the written record of the proceedings favored **Lydia john Bassey Aniekan,** but the person who sought to rely on the award was **Lilian John Bassey Aniekan,** the court held that they were not the same person, the lack of diligence on the side of the writer caused the problem, this decision in **Aniekan v Aniekan** cannot be viewed any other way aside from harsh, judges should interpret arbitral judgments with broad-minds taking into consideration the fact that this arbitrators and recorders may not have education sophisticated as the judges.

4.4 Acceptance of Arbitral Awards

This final element of customary arbitration has proven to be controversial, the acceptance of the awards at the time it was made evinces that parties can withdraw their consent to participate in the arbitration after the award has been made, hence a party is free to resile from an arbitration proceeding he finds unfavorably disposed towards him,

Professor Chianu classifies this right to reject the award into firstly the right to reject the award right at the time it is pronounced, and the right to reject an award a short while after a party has unconditionally accepted it, the question now would be how long would qualify as 'shortly after'. The *Egbe v Duru case* where the disputant refused an award from the elders, and the refusal was upheld by the court. the extreme practice of this rule undermines the arbitration process allowing any of the parties to lay waste the holding of an arbitral committee even when the custom was rightly applied, to my mind a disputant should not be able to resile from a valid arbitral proceeding where it has been established that the other elements of a valid arbitral proceeding was followed and there was no trace of unfairness and partiality.

Ezejiofor is of the opinion that this particular element identified by the Supreme court may be inconsistent with the customary practices of several indigenous communities in the country since Nigeria is a multi-ethnic society and the different ethnic group have their own custom which needs to be taken into consideration, he goes further to state the view that, the alternate view that enables a party to reject an award after it has been made is contradictory and retrogressive, the fact that many parties still end up in regular courts to enforce arbitration awards is awry, the court holds the jurisdiction to query an award which infringes on the principle of natural justice and public policy, recent court positions support this view held by Ezejiofor, in the case of *Awonusi v Awonusi*, in a

dispute concerning family land, which was before the Ewusi- in council, where the appellant as defendant before the lower court sought to resile by refusing to abide by the decision of the council, the appeal court per Fabiyi JCA (AHTW):

> *Where arbitration under customary law is pronounced valid and binding, it would be repugnant to good sense and equity to allow the losing party to reject or resile from the decision of the arbitrators to which he has previously agreed.*

Uwaifo JCA stated that where a party signs the written proceeding of native arbitration he is deemed to have accepted the result and in subsequent lititgation between the same parties his opponent can rely on the document to prove his title to land.

Aniagolu J, urged that an arbitration award would not be binding where the arbitrators committed a fundamental error in their proceedings or there is otherwise unsupportable on some valid grounds. The party seeking to impeach the arbitral award must prove the award is bad and unfair.

Customary arbitration has its own peculiarities around the country, for instance, disputants cannot resile from an Islamic arbitral proceeding in northern Nigeria, and the act of enforcing arbitral award in regular courts is not a problem of customary arbitration in the north. The strength of an arbitral award is on the validity of the proceedings, if the elements are sufficiently satisfied, no party should be allowed to resile.

4.5 Cases where the Benin Native Arbitration have been upheld or Impeached by the Court

The practice of native arbitration as a lower form of dispute resolution compared to the regular courts will continue to limit the potency of native administration, however there

can be no denying the need to regulate the practice of some of these customs which not be appreciable for public decency and in line with the constitution. There of course has to be some form of oversight on customary proceedings, the avenue of checking an arbitral award in the modern courts for this reason may not be a terrible idea after all.

In the Benin native law and custom where the Oba of Benin acts as an arbitrator with the Ikorede, the Benin traditional council, the integrity of this role played by the Oba and the Ikorede has been preserved for generations and will only be corrupted by greed and personal gain.

In the case of Akpasubi v Umweni, where the Oba of Benin awarded half the land to a third party who had no interest whatsoever in the case, the supreme court reversed him even though the plaintiff had accepted the award in the Oba's presence. The plaintiff had agreed to yield half of his land to the defendant after the hearing by the Oba of Benin, but his challenge of the award a week after gave him back his entire land, the Supreme Court held that the award was not binding on him

Cases like this show the need for a clear recourse to the court is needed, where the party feels like he has been violated by the arbitration proceeding, even the award had been accepted, a 'short while' after which the party, who still feels that the arbitral process was carried out wrongly, either no in accordance to the established custom or the elements of native arbitration were present or a manner of injustice or unfairness had been done, he has the right to reinstitute such case in a regular court.

Pa John Ayegidi & Ors. v His Holiness Harrison Okao JP (OHEN-OSA) & Ors, presided by Hon Justice Akhihiero, for the facts of the case, the appellants community Utekon, summoned the respondents community Ukpoke to the Oba's palace claiming the

Ukpoke community is not an independent community but a camp under Utekon community.

The Oba of Benin adjudicated on the matter and decided that Ukpoke and Utekon community are separate communities. The appellants were dissatisfied with the Oba's decision and went ahead to file a case in an area customary court, the court dismissed the claim of the appellants and granted the respondents counter claim the appellant appealed the appellants argued that the plot allocation committee for the allocation of lands in Benin city by the Oba of Benin was inaugurated in 1961, and there was no committee known as the plot allotment committee in Benin division the appellants also argued that the court having rejected the customary arbitration panel's report should not have turned around to use the evidence of the chairman of the customary arbitration committee to resolve any issue in the case, this were among the particulars of misdirection stated in the appeal, the learned counsel in his brief of argument identified a solo issue for determination as follows: "whether having regard to the evidence and the entire circumstances of this case the appellants appeal is meritorious and ought to be allowed".

He submitted that the lower court was in grave error when having held that customary arbitration did not pass the test of customary arbitration, still went ahead to emphasize the role of the Oba of Benin as the custodian of Benin customs and traditions according to him, the position was not in dispute in the suit and the court should have restricted itself to the case made by the parties before it.

The case emphasizes on the disregard and contempt, with which the court treats customary arbitration as a mechanism of dispute resolution, the parties in this case are disputing for the title of the land in Ukpoke community, and are willing to abandon the ruling of the Oba of Benin to get 'higher justice' from the regular courts where it favors

them. In the end it is for both the courts and customary arbitration to strengthen their institution since they are all tools for the disputants to satisfy their interests.

In the case of Ogiemwonyi v Ogiemwonyi, where the claimants Thomas Ogbomo Ogiemwonyi and Mrs. Odion Ogbomo instituted an action to challenge the rights of Madam Enoghayin and Miss Otasowie Ogiemwonyi, who were the wife and daughter of the deceased to the disputed property and his burial.

Justice H.A Courage Ogbebor, of the state high court declared that the late Washington Osaretin Ogiemwonyi was the eldest son of his father and having performed the burial rites of his late father exclusively inherited the Igiogbe, the court ordered that the defendants immediately bur their husband\father in conjunction with the Ogiemwonyi family as they desired.

Unsastified with court's decision, which was not status barred, aggrieved members of the family summoned the widow and eldest daughter of the deceased to the Palace of the Oba of Benin over dispute of Inheritance and burial rites of the family patriarch, the chairman of the committee set up by the Palace was led by Chief Stanley Esere, the Obamwonyi of Benin, joined by other palace chief including Chief Oghafua Oyeoba, the Oyeoba of Benin and Chief Ero, the Edobayeokhae of Benin. The committee first established that the eldest son of the family who was the deceased and exclusively his eldest child after his demise and final burial rites had been concluded.

The committee ordered that the defendants to take possession of the property without hindrance and berated the family members for mistreating the widow and staying away from the family Patriarch's burial, and for the fact that the claimants had collected rent from the property for 3 years in advance without recourse to the welfare of the widow

and children, describing the action as the height of cruelty and sacrilege in Benin Customs and traditions

Cases like this where the claimants did not get justice from the regular court, and then go ahead to summon the other party in the Oba's palace are few, simply because of the rights of the other party to plead Res Judicata, that case had already been decided by a court with proper jurisdiction, the belief of the indigenes on the integrity of our traditional institution, to submit to an arbitration proceeding in the palace, when the defendant can simply plead res Judicata is commendable, however the palace remains revered for keeping its head tall in keeping the integrity of the adjudication process of the palace, trusting that justice will be served to all whom go there to seek justice and fairness.

Now also, I have not yet identified a case, where unlike in Ogiemwonyi v Ogiemwonyi, the arbitral proceeding reaches a decision contrary to the decision of the regular court where the matter had already been decided on, the party favored in the regular court has the right to plead Res Judicata before and after the arbitral proceeding even if he submits to it.

It is somewhat beautiful to see parties put in their trust in both dispute resolution mechanism of both the court and customary arbitration but conflicting judgments between both must be completely avoided to stop unwanted chaos and violent conflicts between disputants.

CHAPTER FIVE

5.0 SUMMARY AND CONCLUSION

5.1 Summary

We have in this work tried to examine the unique Benin land tenure system as well as the dispute resolution mechanism of customary arbitration in modern Benin as a valid judicial system and the role of the Benin Monarchy in dispute resolution. Which has us led to the analysis of several court decisions, The unwritten nature of customary law discourages codification hence only the constitution and the arbitration and conciliation Act as legislations notices the validity of customary law.

Customary arbitration all over Africa, not only in Benin city has experienced a revitalization, there appears to have been a renaissance of customary arbitration mechanisms, customary arbitration has become viable to fill the pitfalls of regular courts\ judicial system, including congestion of cases in court, limited resources of litigants, paucity of legal practitioners among others. Many scholars have argued against the bad effects of litigation on litigants in Nigeria.

5.2 Findings

As we have shown in this work, customary arbitration has a host of advantages over civil litigation:

(1) Customary arbitration is faster.

(2) The parties' familiarity with the process, makes them more comfortable with the process.

(3) Customary arbitration is cost effective.

(4) Customary arbitration is less bureaucratic and less adversarial.

(5) The indigenous acceptance and participation of the indigenes makes it encouraging.

(6) Customary arbitration remains closer to the people and does not go against the constitution.

There have been cases where an arbitrator veers of the spirit of the constitution, the regular court can intervene to impugn such decisions. There should be such a fusion between the applications of the law in customary issues so that it will become a waste of time to re-institute or summon the other party because they both will dispense similar decisions.

It is clear that the Benin traditional structure will remain for many more years, the role it has played and will continue to play headed by the Oba of BENIN, the acknowledgement of customary arbitration in the constitution, and the arbitration and conciliation act, plus acknowledgement by the court has established the fact that customary arbitration remains present. Customary arbitration should be given a prescribed role and properly integrated in to the judicial system of the state.

The United Nations Commission on Legal Empowerment of the poor underscored the importance of the reliance on informal or traditional dispute resolution measures which the citizens are acquainted with thereby enhancing justice.

Many scholars have argued that there has now been a mixture between the British colonial arbitration and customary arbitration, all over the world the pillars of justice remain the same, there must surely be a point of intersection if truly the aim of both is the dispensation of justice, however the basics f customary arbitration in Benin must remain and the traditions of the people must be jealously preserved. Benin native

arbitration is very commendable in its structure, it is cost effective, consistent, quick, with les procedures and prevent animosity between the parties even after the binding decision has been reached.

5.3 Recommendations

Howeve, it is not to assert that customary arbitration is foolproof and without any fault whatsoever, there are still too many avenues for customary arbitration to record improvements.

Oath-taking:

Oath-taking to determine the veracity of evidence in native arbitration proceedings is a common practice in Benin, recently the supreme court in Umeadi v Chibunze, the supreme court established the validity of oath-taking in the facts of the case the respondent Chibunze stated that the land in question belonged to the Umuofuonye kindred to which they and the applicant belonged to, In 1940, one Emmanuel Uba from Umuogbocha kindred trespassed the land, the Egbeagu village intervened and invited the both kindred for customary arbitration, the Egbeagu village decided that Umuogbocha kindred should bring juju and place on the land in dispute for the Umuofuonye to swear by removing the juju.

The parties o the customary arbitration agreed to oath-taking with an intention that the intention that the outcome will be binding. Traditional oath-taking has suffered lots of criticism because of its perceived spiritual implications by people of other religious inclinations, if traditional oath-taking is not forced on the parties and does not include human rights violations of the oath-taker, oath-taking should be accessible and honored

by arbitrators and disputants alike. Section 38 CFRN recognizes the freedom of religion of all citizens.

There is also the use of oath-taking to scare people from claiming native arbitral awards, like in the case of Umeadi v chibunze, traditional oaths has been exploited to silence victims of human-trafficking, hence in 2018, the Oba of Benin Oba Ewuare reversed the traditional oaths undertaken by victims of human trafficking. The bias traditionalist often hold for oath-taking can cloud their judgments especially in cases where Oath-taking can work injustice, the declaration of the Oba in reversing bad-oaths is commendable, ensuring the native oath-taking where the people the people are very superstitious should not be exploited to carry out injustice.

The need for the court to view all customary law as Peculiar:

The Nigerian courts sometimes view customary law as a single set of rules, every Nigerian community have different set of customary rules, even here in Edo State, not disregarding the unity of the other tribes, there are still tribes and the set of customary law used to determine inheritance and succession in Benin may not be applicable in Auchi, Ubiaja or Ekpoma.

The geographical limit of customary law and customary arbitration should be understood by all its peculiarities. It should not be subject to a validity test by reference to other customary laws or even modern colonial arbitration style the attempt to fuse customary arbitration with foreign arbitration by the court should be avoided, only the parameters needed to endure justice, fairness and equity in a proceedings, however the basics of arbitration indigenous to the Bini people must be left untouched.

There should be better recording of Arbitral proceedings:

The core of every judicial system is the certainty of the proceedings based on what has been recorded before, the growth of the British judicial system can be undeniably attributed to the recording of court decision for more than 500 years ago, the ancient Benin Kingdom has existed for thousands of years, yet there has not been any form of proper recording of adjudicatory processes except that which was handed down to our generation through oral tradition. The disadvantage of oral tradition is the fact that it mostly can be abridged or altered without any form of confirmation.

The Finality of an Arbitral Award should rest on the adherence to due Process:

The party that seeks to enforce an arbitral award has the burden to prove that the elements of customary arbitration have been duly followed, pleas like estoppel by record, Res judicata, should be granted when this elements of customary arbitration has established for an arbitral decision to be binding as viewed as already decided upon, although there is room for appeal in such cases in higher courts there must be no vitiating element in the process that may affect the submission of the parties.

5.4 Conclusion

In conclusion, this paper has sought to examine the Benin Land Tenure system and the practice of customary arbitration in Benin administered by Benin monarchy, it has discussed the allocation of land in Benin before 1978, and the validity of the customary arbitration system in Benin.

The practice of customary arbitration in Benin has been established as a dispute resolution mechanism in Benin with its wide range of acceptance by the indigenes and

the judicial notice of the validity of the customary law by the Supreme Court per Karibi-Whyte JSC in Agu v Ikewibe in the lead judgment on the case.

There has been a common resort to indigenous systems in the state to bridge the gap between the government and the citizens, the vigilante network in the state is another innovation in the security framework of the state, the indigenous security network has proven its naysayers wrong the input and resolve of the men of the vigilante network along with the administration by the state government is commendable in this regard.

However, just as an indigenous solution has proven efficacious for crime-fighting especially with the administration of the state government which has turned a number of former criminals into men keeping the peace in their communities, giving them a purpose, so also customary arbitration should also be given a chance to integrated into the dispute resolution mechanism of the state.

There has already been a long-standing distrust between the people of the state and the machinery of government like the police and also the judiciary, integrating customary arbitration as a form of dispute resolution in the state may help restore the trust which ought to exist between the government and the people.

The artworks which has been returned to Benin is going shed a brighter spotlight on Benin, its customs and traditions remain the pillars holding the Benin monarchy at its peak height, going back on these customs and traditions will portend a disaster for the Benin Kingdom, Another issue is the issue of politics and pride which can cause strife between the state government and the Benin monarchy, unnecessary striving between both institutions will not be in the overall interest of the people especially when the state judicial structure holds the unfettered discretion to disregard and overrule the decisions of the arbitral committee thereby delaying or disrupting the dispensation justice.

In the integration of customary arbitration into the judicial system of the state, the regular court will need to exercise proper oversight function, the oversight of the state on the vigilante network can be sampled, although the individuals who head these arbitration proceedings are highly respected persons, without any spite, unlike members of the vigilante group who are made up of mostly ordinary members of the society. The government must carry out these oversight functions properly to ensure that customary law mirrors the true intent of the constitution in our smaller societies.

From the foregoing, it is clear that the practice of customary arbitration in Benin as an alternative dispute resolution mechanism is possible, adequate measures have to be installed to achieve the practice of customary arbitration in the capacity in which it can perform at. In the light of decided cases native arbitration is not a Façade and it can be realizable.