

## Law, legal theory and practice of customary arbitration in Nigeria

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### Abstract

One of the commonest modes of settling disputes in Nigerian indigenous communities is customary arbitration. Through customary arbitration, it is possible to reach a compromise solution. There are however, legal issues such as the freedom to resile from the process, and whether a party must exhaust appeal avenues which appear to reduce the efficiency of customary arbitration as a toll for settling disputes among indigenous Nigerians. Through the doctrinal research method, this article has found that the efficacy of this indigenous mode of resolving disputes is being threatened by the fact that the awards can be binding only after a signification of acceptance by the parties. Consequently, a party who voluntarily submitted his dispute to customary arbitrators is free to resile at any stage of the proceedings even after the awards have been made and he is at the loosing end. Similarly, it is difficult for the principle of *res judicata* to apply upon the awards of customary arbitration where a party can simply abandon the process and resort to the court upon his dissatisfaction with the awards. As a way forward, the article has taken the position that for customary arbitration to serve as a viable tool for amicable resolution of disputes in indigenous Nigerian communities, parties who voluntarily submit their dispute to customary arbitration must not be allowed to abandon the pursuit of the avenues open to them and resort to judicial proceedings. Again, parties must be deemed to have agreed to be bound by the awards once they voluntarily submit their dispute to customary arbitrators. Only then will customary arbitration be properly placed as an instrument for amicable resolution of disputes in indigenous Nigerian communities.

**Keywords:** arbitration, customary, law, legal, theory

### 1. Introduction

Arbitration has been defined by both judicial authorities and legal authors. In *C.N. Onuselogu Ent. Ltd. V. Afribank Nig. Ltd* <sup>[1]</sup> arbitration was defined as where two or more persons agree that a dispute or more potential dispute between them shall be resolved and decided in a legally binding way by one or more impartial persons in a judicial manner upon evidence put before him or them. The Black's Law Dictionary also defines arbitration as the process of having a dispute settled by a person or group not involved in the dispute <sup>[2]</sup>.

The above definitions of arbitration have not essential broken grounds in appreciating the difference between arbitration and the orthodox judicial system. For our present purposes, therefore, arbitration may be defined as the voluntary submission of a dispute between two or more persons to a body of arbitrators whose proceedings and decision are those of a non-judicial body for settlement or determination.

A more accepted definition of customary arbitration was given in *Utomba V. Achuchaogu* <sup>[3]</sup> by Niki Tobi, JSC. Where he defined customary arbitration as a native arrangement by selected elders of the community who are vast in the customary law of the people and take decisions, which are mainly designed or aimed at bringing some amicable settlements, stability and social equilibrium to the and immediate society or environment.

Customary arbitration has also been defined as an arbitration in dispute founded on voluntary submissions of the parties to the decision of the arbitrators who are either the chiefs or elders of their community and the agreement to

be bound by such decision or freedom to resile where unfavourable <sup>[4]</sup>. Simply put, customary arbitration means arbitration conducted in accordance with the customs and beliefs that are accepted within a community.

Arbitration has become a popular tool for amicable resolution of disputes in both customary and purely commercial circles in Nigeria. This is largely due to the increasing or prohibitive cost of orthodox litigation as a form of dispute resolution which also involves substantial waste of time and energy. Moreover, there appears to be a growing realisation among the populace of the fact that litigation breeds and heightens bad blood among members of the same community or trade, in most cases in view of the "winner takes it all" syndrome. Under such circumstances, the African culture of everyone being his brother's keeper is completely lost while communal clashes become the order of the day.

There are basically two forms of arbitrations known to the Nigerian legal system. First, is the traditional or native arbitration commonly known and called customary arbitration. Secondly, we have the orthodox arbitration conducted under the Act <sup>[5]</sup>. The traditional or customary arbitration is the focus of this article.

A customary arbitration is arbitration in disputes common among Africans and is founded on voluntary submission of parties to the decision of arbitrators who are usually family heads, chiefs or elders of their communities. However, the practice of customary arbitration in Nigeria may vary from one community to another. Among the Tiv community of Benue state, the hierarchy of arbitration ranges from the village head or tax collector who is the lowest in the

hierarchy to the Tiv Traditional Council which is the highest authority in the land.

The commonest disputes submitted to customary arbitration are land disputes probably due to the fact the elders or chiefs who are custodians of the peoples culture and history are assumed to be better equipped to resolve these disputes. In both Tiv and Idoma communities of Benue state, most land disputes that eventually end up in court are usually subjected to customary arbitration prior to the institution of such actions in court. This antecedence brings to light the importance of this discourse.

The most important issue for present purposes is whether a party who submitted his dispute to customary arbitration must exhaust the hierarchy of traditional or customary arbitration. This forms the crux of this article. In addition, ancillary legal issues like whether customary arbitration violates Section 6(6) of the Constitution of the Federal Republic of Nigeria, and whether customary arbitration, if successfully pleaded and established can operate as estoppel are also discussed for a proper and wholistic grasp of the place of customary arbitration in Nigerian legal jurisprudence.

The paper begins with an introduction which also briefly clarifies the concept of arbitration. Ingredients of a valid customary arbitration have examined. The paper then turns attention to emerging legal issues in the theory and practice of customary arbitration in Nigeria like the vexed issues of whether or not a party who voluntarily submits his dispute to customary arbitration can rightly abandon the process and resort to the court without exhausting the arbitration hierarchy, whether or not a party who has submitted himself to customary arbitration must accept the awards before they can be binding and whether if successfully pleaded, and established, customary arbitration can operate as estoppel. It finally advocates the way forward for customary arbitration to serve as a tool for amicable resolution of disputes among natives in Nigeria.

## 2. Ingredients and Preconditions for A Valid Customary Arbitration

Over the years, the courts have through judicial decisions propounded the tests for or ingredient of a valid customary arbitration. In *Okoye V. Obiaso* <sup>[6]</sup>, the court held that a party can prove the existence of a customary arbitration by pleading and establishing the following:

- a. that there has been a voluntary submission of the matter in dispute to an arbitration of one or more persons;
- b. that it was agreed by the parties either expressly or by implication, that the decision of the arbitration will be accepted as final and binding;
- c. that the said arbitration was in accordance with the custom of the parties or their trade or business;
- d. that the arbitrators reached a decision and published their award; and
- e. that the award was accepted at the time it was made.

There are a Pretoria of judicial authorities that have reproduced or adopted these tests or ingredients <sup>[8]</sup>. Compliance with the first two ingredients appears to be by conduct of the parties. Where a dispute is submitted to customary arbitrators by one of the parties, the other party has the right to refuse to appear before the arbitrators. Under such circumstances, the arbitrators will have no jurisdiction over the dispute. Consequently, a party that voluntarily

submits himself to a customary arbitration must by implication or conduct be presumed to have agreed that the awards will be accepted and binding.

The third ingredient or test for a valid customary arbitration which is to the effect that the arbitrators must have reached a decision and published their award is usually complied with through written minutes of arbitration, though in some cases the proceedings are not written but the awards pronounced at the arbitration meeting.

In all the cases mentioned above <sup>[9]</sup>, the additional ingredients or test for a valid customary arbitration which is that “the decision or award was accepted at the time it was made” has the capacity to impeach on the efficacy of customary arbitration as a tool for amicable resolution of disputes in the community. This is under the backdrop of the fact that even in courts, it is rare for litigants to accept in good faith any judgment against them. If the liberty to reject an arbitral award has the effect of rendering such an arbitration invalid or unenforceable as adumbrated in the above cases, then, the whole essence of such an exercise stands the risk of being defeated.

However, in earlier cases <sup>[10]</sup>, the tests or ingredients of a valid customary arbitration appear to have excluded the requirement for acceptance of the awards by parties. This is more reasonable than the latter cases <sup>[11]</sup>. The fact that a party has voluntarily submitted a dispute to an arbitration panel is an implied consent that the awards even if not accepted, shall be binding with the only option of appealing to a higher level of arbitration as is the case in the judicial system.

The West African Court of Appeal (WACA) in *Assampong V. Amuaka* <sup>[12]</sup> had taken a better stand on the tests for valid customary arbitration in the following words:

...Where matters in dispute between parties are, by mutual consent investigated by the arbitrators at a meeting held in accordance with native law and custom and a decision given, it is binding on the parties and the Supreme Court will enforce such decision.

It is surprising and shocking that a judgment of the 1930s recognised an award of customary arbitration under conditions similar to those of a court judgment but 21<sup>st</sup> century judgments have now made nonsense of awards of a customary arbitration by subjecting same to such validity tests capable of providing escape routes for dissatisfied parties <sup>[13]</sup>. It was in recognition of the danger posed by the right to resile from arbitration or reject arbitration awards after same have been published that the West African Court of Appeal (WACA) had rejected such a requirement for a valid customary arbitration. In *AmabeneKobinaFoli V. OheneObeng Akese* <sup>[14]</sup>, the court referred to an arbitrator the question whether certain land belonged to one of the parties. The arbitrator partitioned the land and awarded part to each of the parties. The court as per Deane, C.J. stated the general principle of arbitration thus:

In submission to arbitration, the general rule is that as the parties choose their own arbitrator to be the judge in the dispute between them, they cannot when the award is good on its face, object to his decision, either upon the law or the facts.

The court further quoted with approval the case of *Fuller V. Fenwick* <sup>[15]</sup>, which rejected the contention that it was open to a party to object to an award by the arbitrator where such award has been published. In *Fuller V. Fenwick* <sup>[16]</sup>, the court held as follows:

If this case had gone on in the usual course, the law would have been determined by a single judge and the facts by a jury. The parties have thought fit to withdraw the case from this form of trial and have thought that an arbitrator was more proper to decide matters of fact than a jury and could more conveniently dispose of matters of law than a judge on account of the expense of contesting before a court an intricate point of law. The courts therefore treat a reference as an agreement by the parties to leave matters both of law and fact to the arbitrator and to consider his award final unless there is something upon the face of it which is inconsistent.

In *Larbi V. Kwasi* <sup>[17]</sup>, the WACA followed the decision in *OamanheneKobinaFoli V. Ohene Akese* <sup>[18]</sup> and held the award was binding, and that it was repugnant to good sense to allow the losing party to reject the decision of the arbitrators to whom he had previously agreed.

In all, the requirement of acceptance of an award of customary arbitrators before the entire arbitration could be valid, is a practice not known in civilised societies and capable of frustrating the entire process of resolving disputes in a non-judicial manner. Though the courts appear to have justified the entire requirements for a valid arbitration on the ground that it is a common feature of customary arbitration is a closely knit community that some of the arbitrators if not all, not only have prior knowledge of the facts of the dispute, but also have their prejudices and varying interest in the matter, and are therefore sometimes judges in their own cause and are likely to pre-judge the issue <sup>[19]</sup>, it must be noted that even the regular courts, particularly Area Courts presided over by learned judges are not free from such abuses. Moreover, an aggrieved party to customary arbitration has the opportunity to approach a higher level of arbitration. Again, in *Taylor Woodrow of Nigerian Ltd. V. Suddesche Week Gmba* <sup>[20]</sup>, the Supreme Court of Nigeria held that “the general rule regarding arbitration is that parties to a transaction choose their arbitrator for better for worse to be the judge both as to decision of law and decision of fact in the dispute between them. Thus, none of them can, when the award is prima facie good on the face of it, object to his decision either upon law or the fact simply because the award is not in his favour”. Though in customary arbitration, once a party takes his case to a particular panel of arbitrators, the other party has no hand in choosing his arbitrators, he has a right to refuse to submit himself to them. Hence, it is hereby submitted that where he chooses to submit himself he should be bound by the decisions.

### 3. Emerging Legal Issues in Customary Arbitration

The practice of customary arbitration in Nigeria has given rise to a variety of legal issues which have been canvassed in courts. These issues form the subject of the ensuing discussion.

**3.1** The first issue for present purposes is whether a party who submitted his dispute to customary arbitration must exhaust the hierarchy of arbitration. In this regard, the case of *MbaihangeveIorjime V. IorkoughShamkyura & IOr* <sup>[21]</sup>, has been one of the most celebrated cases decided on this area of the law. In this case, the respondents as plaintiffs sued the appellant at the Grade II Area Court Tsemker, holden at KotiYough claiming a portion of farm land situate and lying at Pilaja-Mbatyam, Ute in Vandeikyia Local

Government Area of Benue. The dispute had been referred for customary arbitration by elders of the kindred who resolved the dispute in favour of the respondents. The appellants appealed to the Clan Head who partitioned the land into two parts and gave one part to each of the parties. The respondents were dissatisfied with the decision of the Clan Head and so sued the appellant before the court. The trial court in its judgment awarded the disputed land to the respondents. The appellant was dissatisfied with the decision of the trial court and appealed to the Customary Court of Appeal, holden at Makurdi. Allowing the appeal, the Customary Court of Appeal as per Utsaha, J. held that:

Before the Clan Head, the decision was to apportion the land between the parties. By the decision of the Kindred Head, the respondents were satisfied when the decision was in their favour. On the other hand, when the Clan Head reviewed the decision reached by the Kindred Head and reached the decision of apportion the land between the parties, the appellant was satisfied while the respondents were not. One would normally have expected the respondents to have appealed to the next higher level of traditional arbitration. From our experience in these traditional arbitrations, such appeals go from the lowest level, which may be at sub-kindred level to the highest level which is the Tiv Traditional Council. In the instant case, on appeal, the next level of appeal was the TerUkum, the immediate level of traditional rulership. Rather than take that step, the respondents decided to sue.

The court further held as follows:

The question of a party not exhausting the avenues available to him but resorting to judicial proceedings is entirely a different matter, and it appears to us that to do so will amount to that party blowing hot and cold, which may not be acceptable.

This judgment did not proceed on appeal. However, Ikpambese <sup>[22]</sup> has argued that since the right of appeal is conferred by statute and that since there is no statute which has expressly conferred the right of appeal there is no such right in customary arbitration. It is however hereby submitted with due respect that customary arbitration is not governed by statutory provisions and the right of appeal can only be conferred by customary law.

Ikpambese has further opined that the decision in *MbaihangeveIorjime V. Iorkough Shamkyura* <sup>[23]</sup> to the effect that a party who submitted his dispute to customary arbitration must exhaust the hierarchy of arbitration offends Section 6(6) of the Constitution of the Federal Republic of Nigeria, 1999. Section 6(6) <sup>[24]</sup> states as follows:

The judicial powers vested in accordance with the foregoing provisions of this section –

- a. shall extend, notwithstanding anything to the contrary in this constitution, to all inherent powers and sanctions of a court of law;
- b. shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person;
- c. shall not, except as otherwise provided by this constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directives Principles of State Policy set out in Chapter

II of this Constitution;

- d. shall not as from the date when this section comes into force, extend to any action or proceedings relating to any existing law made on or after 15<sup>th</sup> January, 1986 determining any issue or question as to the competence of any authority or person to make any such work.

It is this provision that according to Ikpambese, has been breached by the above judgment. However, with due respect, it is hereby further submitted that the judgment of the court above does not offend Section 6(6) of the Nigerian Constitution which gives citizens free access to court but only seeks to give meaning to the whole process of customary arbitration. The courts have even held that Preaction Notice is not in breach of this right of free access to the court <sup>[25]</sup>. IN arbitration conducted in line with the Arbitration and Conciliation Act, where parties to an agreement make provision for arbitration before an action can be instituted in court, any aggrieved party must first seek the remedy available in the arbitration <sup>[26]</sup>. It is therefore difficult to justify the position of Ikpambese on this issue in respect of customary arbitration.

Again, customary law which includes customary arbitration was saved by Section 315(1) and (3) of the 1999 Constitution of the Federal Republic of Nigeria. Section 315 <sup>[27]</sup> states that:

1. Subject to the provision of this constitution, an existing law shall have effect with such modifications as may be necessary to bring in into conformity with the provisions of this constitution and shall be deemed to be –
  - a. an Act of the National Assembly to the extent that it is a law with respect to any matter on which the National Assembly is empowered by this constitution to make law; and
  - b. a law made by the House of Assembly to the extent that it is a law with respect to any matter on which a House of Assembly is empowered by the constitution to make laws.
2. Nothing in this constitution shall be construed as affecting the power of a court of law or any tribunal established by law or any tribunal established by law to declare invalid any provision of an existing law on the ground of inconsistency with the provision of any other law, that is to say –
  - a. any other existing law;
  - b. any law of the House of Assembly;
  - c. an Act of the National Assembly; or
  - d. any provision of the constitution.

Thus, the practice of chiefs and elders of the community settling disputes between members of their communities is both recognised by our legal system and is not in conflict with the exercise of the judicial functions in accordance with Native Law and Custom, and the authority to adjudicate upon disputes among their community have always been recognized <sup>[28]</sup>. The provisions of Section 6(1) and (5) of the 1999 Constitution have not altered the judicial system. Consequently, the judgment in *MbahangeveIorjime V. IorkoughShamkyura* is not in conflict with Section 6(6) of the 1999 Constitution.

Conversely, customary arbitration was held to be alien to Native Law and Customary Law in Nigeria communities in *Okpuruwu V. Okpokam* <sup>[29]</sup>. In the words of the court as per

Uwaifo, JCA:

I do not know of any community in Nigeria, which regards the settlement by arbitration between disputing parties as part of native law and custom. It may be that in practical life, when there is a dispute in any community, the parties involved may sometimes decide to refer it to disinterested party 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...

Be that as it may, it is instructive to note that most land cases that come to court today had earlier been subject of customary arbitration, though the practice may vary from one community to another.

Further, the principle that dissatisfied party must exhaust the hierarchy of customary arbitration before resorting to court can also be justified on the ground that it serves as estoppel by way of *res judicata* <sup>[30]</sup>. Parties are under obligation to exhaust the hierarchy of customary arbitration. Resort to court could therefore be in a situation where the awards are made in favour of a party and he approaches the court for enforcement. This submission finds support in the recent Supreme Court judgment of Iguh JSC when he observed in *Joseph Onwu & 11Ors V. Ezekiel Nka & 2Ors* <sup>[31]</sup> that:

The law is settled that where disputes or matters in difference between two or more parties are by consent of the disputants submitted to a domestic forum, inclusive of arbitrators or a body of persons who may be vested with judicial authority to hear and determine such disputes and matters for investigation in accordance with customary law and general usages and a decision is duly given, it is as conclusive and unimpeachable (unless and until set aside on any of the recognised grounds) as the decision of any constituted court of the land, such a decision is consequently binding on the parties and the courts will enforce it.

**3.2** The next issue to be considered for this discourse is whether if customary arbitration is successfully pleaded and established, can operate as estoppel. It has been an established principle that a decision by a court of competent jurisdiction creates an estoppel per *rem judicata* but an award by a customary arbitration will have the same effect or consequence if certain pre-conditional are satisfied <sup>[32]</sup>. These conditions are the conditions earlier adumbrated in *Okoye V. Obiase* <sup>[33]</sup> as ingredients for a valid customary arbitration.

In *Ohiaeri V. Akabeze* <sup>[34]</sup>, the court held that where it is clearly averred by a party that there was a previous customary arbitration which was in his favour and that he will be relying on it as creating estoppel, it will be necessary for him to plead the ingredients projecting it as creating estoppel because not every decision of a customary arbitration, unlike that of a regular court can create an estoppel. In that case, the respondents therein, as plaintiffs in the High Court, representing the Otogbolu family sued the appellants as defendants for declaration of title to a piece or parcel of land, damages for trespass and an injunction. The appellants were sued in a representative capacity, as representing the Ohiaeri family. An important issue which arose at the trial was in relation to customary arbitration. The appellants claimed that the matter had been previously

adjudicated upon by the Oluoha and his cabinet and that the decision of the Oluoha and his cabinet was in their favour. At the conclusion of the trial, and after evaluating the evidence adduced, the trial judge was satisfied that the plaintiffs had not established their claim on the land. The learned trial judge also believed that the arbitration that had earlier looked into the dispute between the parties adjudged the defendants owners of the land. He accordingly dismissed the plaintiffs' claim.

The plaintiffs being dissatisfied with the trial court's decision appealed to the Court of Appeal. The Court of Appeal unanimously allowed the appeal of the respondents whereupon the appellants appealed to the Supreme Court. Unanimously dismissing the appeal, the Supreme Court held thus:

A defendant who intends to rely on a previous judgment as a plea of estoppel should normally use such words, not necessarily "estoppel" or "res judicata", which suggest that he is relying on the judgment as barring the plaintiff from relitigating the matter in controversy. It was in the past not sufficient simply to refer to a previous judgment between the parties in respect of the matter in controversy without averring the legal effect<sup>[35]</sup>.

For a customary arbitration to establish estoppel rem judicata, therefore, it must pass the validity tests. In Philip *Njoku V. Felix Ekeocha*<sup>[36]</sup>, the court, as per Ikpeazu, J. stressed the conditions for a customary arbitration to create estoppel in the following words:

Where a body of men, be they chiefs or otherwise; act as arbitrators over a dispute between two parties, their decision shall have binding effect, if it is shown firstly that both parties submitted to the arbitration. Secondly that the parties accepted the terms of the arbitration, and thirdly, that they agreed to be bound by the decision. Such decision has the same authority as the judgment of a judicial body and will be binding on the parties and thus create estoppel.

The problem, however, is the validity test which requires that the parties must have accepted the awards when they were made, as it is difficult for a losing party to concede defeat even in the court.

#### 4. Conclusion

Customary arbitration is a common traditional way of resolving conflicts in Nigerian indigenous communities. It has been found to be more convenient and preferable to orthodox court system due to overwhelming advantages such as minimal waste of time and resources. Over time, the courts have established or laid down preconditions for the enforcement of or valid customary arbitration. These conditions, however, have the effect of hampering the efficacy of customary arbitration as a tool for amicable resolution of disputes among indigenous Nigerians.

It has been argued that the practice of ensuring that a party who submitted himself to customary arbitration must exhaust the hierarchy of arbitration is a denial of citizen's right of access to the court. However, this article has shown that in order for the practice of customary arbitration to play any meaningful role as a tool for resolving disputes in Nigerian communities, a party that voluntarily submits his dispute to customary arbitrators must exhaust the hierarchy if dissatisfied with the awards. He cannot abandon the process and rush to the court.

Again, the practice of customary arbitration is not in conflict with Section 6(6) of the Constitution of the Federal

Republic of Nigeria, 1999 but is in accordance with native law and custom, and is a duly recognised system of adjudication among indigenous communities in Nigeria.

Finally, it is the position of this article that, if properly conducted, customary arbitration can establish res judicata per rem, the only snag being the requirement of acceptance of awards by the parties at the time the said awards were made.

For customary arbitration to play its proper role as an instrument for amicably resolving disputes among indigenous Nigerians, therefore, the requirement of acceptance by parties at the time awards were made, for the entire process to be valid must be eliminated by the courts. The parties must be taken to have agreed that the awards will be binding once they voluntarily submit their dispute to customary arbitration.

Secondly, the parties to a customary arbitration must not be allowed to abandon the pursuit of appeal to the next hierarchy of arbitration if dissatisfied and instead resort to judicial proceedings. It is only then that the principle of estoppel by conduct can properly apply. Any party who is not satisfied with the decision of a lower level of arbitration must approach the next higher level or be assumed to have accepted the awards which are binding on him and liable to be enforced against him by the court. Only then can customary arbitration properly occupy the front seat in amicable resolution of disputes in indigenous Nigerian communities.

#### References

1. 1 NWLR (pt. 940) 577, 2005.
2. Bryan A. Garner, *Ibid* p. 933.
3. 8 NWLR (pt. 821) 37, 2003.
4. See *Okereke V. Nwankwo* 9 NWLR (pt. 626) 592, and *Agu V. Ikewibe* (1991) 3 NWLR (pt. 180) 385, 2003.
5. Arbitration and Conciliation Act Cap A18 Law of the Federation of Nigeria, 2004.
6. All FWLR (pt. 526) 489 at 492, 2010.
7. For e.g. *Igwego V. Ezeugo* 6 NWLR (pt. 249) 561; *Anyabuasi V. Ugwunze* (1995) 6 NWLR (pt. 401) 255; *Egestimba V. Onuzurike* (2000) FWLR (pt. 128) 1386; and *Ohiaeri V. Akabeze* (1992) 2 NWLR (pt. 221) 1 at 24, 1992.
8. *Ibid*.
9. See *Njoku V. Ekeocha* 2 E.C.S.L.R. 99; *Inyang V. Essien* (1957) S.C.N.L.R. 112; *Edika V. Erisi* (1988) 2 NWLR (pt. 78) 563, 1972.
10. See footnote 11.
11. WACA 192, 1932.
12. For, *Igwego V. Ezeugo* (supra), *Ohiaeri V. Akabeze* (supra) have all made it possible for a party who lost at customary arbitration to resile from the arbitration after an award has been made thereby make nonsense of the who exercise.
13. 1 WACA 1 at 2, 1930.
14. 16 L.J.C.R. 79, 1846.
15. Supra as per Paule J.
16. 13 WACA 81, 1950.
17. Supra.
18. *Ohiaeri V. Akabeze* (supra) at 24.
19. NWLR 140 at 155, 1993.
20. 1 Q.C.L.R.N. 138, 2002.
21. M.A. Ikpebese, Nigerian Land Law: Principles, Practice and Procedure Oracle Business Limited,

- Makurdi, 2010, p. 198.
22. Supra.
  23. The Constitution of the Federal Republic of Nigeria, (as amended), 1999.
  24. See *Anambra State Government V. Nwanko* 9 NWLR (pt. 418) 245, and *Gambari V. Gambari* (1990) 5 NWLR (pt. 152) 572, 1995.
  25. See *Bebeji Oil Allied Prod. Ltd. V. Pancosta Ltd.* (Vol. 31) WRN 163, lines 25-10, 2007.
  26. The Constitution of the Federal Republic of Nigeria (supra).
  27. See *Agu V. Ikewibe* 3 NWLR (pt. 181) 385; *Abasi V. Onido* (1998) 5 NWLR (pt. 548) 89; and *Awasi V. Sotumbo* (1992) 5 NWLR (pt. 243) 514, 1991.
  28. 4 NWLR (pt. 90) 554, 1988.
  29. See *Okereke V. Nwanko* (supra).
  30. 7 SCNJ 240 at 255, 1996.
  31. See the case of *Okereke V. Nwanko* (supra).
  32. Supra.
  33. Supra, pp. 24-25.
  34. See *Ohiaeri V. Akabeze* (supra).
  35. 2 E.C.S.L.R. 199, 1972.