The Legality of Resolving Land Disputes through Customary Arbitration in Nigeria

Uzo Frank-Igwe*
and
Grace C. Okara**

Abstract

Prior to the advent of colonial administration in Nigeria, the entity currently known as Nigeria was occupied by approximately 250 independent groups. These groups had their Distinct Customary Laws which they used in the administration of disputes. Hence, customary arbitration was and still remains a widely accepted option for settling disputes in Nigeria. Although, this method of adjudication is principally governed by Native Law and Custom, it is permitted by the constitution of the Federal Republic of Nigeria and recognized by Nigerian Courts. The paper adopted the doctrinal research methodology, examined the legality of resolving land disputes through customary arbitration (including oath taking) in Nigeria. It further analysed the historical evolution of customary law in Nigeria, the recognition of Customary arbitration and practices, and the grant of customary arbitration award based on oath taking. The paper which was hinged on the position of the Supreme Court in ***Umeadi v Chibunze*** *submitted that the resolving of land disputes through customary arbitration including juju invocation remains a valid practice in the resolution in land disputes of Nigeria.*

Keywords: Arbitration, Customary Arbitration, Oath-Taking, Land Disputes, Nigeria

1. Introduction

As a phenomenon, dispute has become an integral part of human existence, and dispute

* LLB; BL; LLM; Lecturer, Faculty of Law, Department of Private and Property Law, Rivers State University, Nkpolu-Oroworukwo, Port Harcourt.
** LLB; BL; LLM; Lecturer, Faculty of Law, Department of Private and Property Law, Rivers State University, Nkpolu-Oroworukwo, Port Harcourt; GSM: +234 8137519322; Email:goodtime.okara3@ust.edu.ng.

resolution has also become an essential requirement for peaceful co-existence of members of a given society. It provides opportunity for the examination of alternative pay-offs in a situation of positioned disagreements, and restores normalcy in a society by facilitating discussions and placing parties in dispute institutions in which they can choose alternative positive decision to resolve differences. Dispute exists on many different levels including international, intra-group, inter-group, interpersonal, and intrapersonal. It does also exist in relation to different subject matters namely, ideational or beliefs, values, material resources, emotions, roles and responsibilities.[1] Dispute varies in terms of the social contexts in which they are located, and the traditional societies had always found solution to such conflicts by way of arbitration, subject to the native Laws and Customs of the particular society, with a view to engendering social harmony and equilibrium.

The practice of disputes settlement using the process of arbitration is as old as the existence of the Nigerian society. Arbitration had existed in the various indigenous communities in Nigeria long before the advent of the British legal system of court litigation into the country.[2] It was part of the customary norms of Nigerian society.[3] Before the colonial era, customary law operated freely in its area of influence as a complete and independent legal system. There was also in existence a separate, independent and organised dispute resolution system based on the individual customary law of each community. This system of dispute resolution is generally referred to as Customary Arbitration and Customary Arbitration Tribunal constituted by elders of that community to administer it. The Tribunals derive their authority from the custom and tradition of the community which are accepted by members as binding on them.[4] Thus, it is pertinent to state that the belief that arbitration is of recent development in Nigeria is misleading.[5] There exists a voyage of decided cases validating the existence of arbitration prior to colonialism.

Great Britain in the course of colonizing Nigeria brought the adversarial system as a way of settling disputes. However, this system has been plagued with certain defects such as technical procedures, unwarranted delays in the dispensation of justice, cost inefficiency etc, thus discouraging disputants to settle their differences through litigation. This brought about

[1] L. J. Foster, 'An Appraisal of Customary Arbitration Practice in Nigeria: The Ogoni Perspective' [2017] 2[1] *Journal of Law and Global Policy*, 45.
[2] P. Dele, *What is Alternative Dispute Resolution* (Lagos: Dee Sege Nigeria Ltd, 2005), 11.
[3] C. I. Umeche, 'Customary Arbitration and the Plea of Estoppel under Nigerian Law' [2009] 32[2] *Commonwealth Bulletin*, 293.
[4] *Ibid.*
[5] A. T. Bello, 'Customary and Modern Arbitration in Nigeria: A Recycle of Old Frontiers' [2014] 2[1] *Journal of Research and Development*, 50.

concerns of reforming customary arbitration by enacting relevant statutes and rules that will serve as a 'legal backing' for arbitration, hence making it possible for disputes to be settled in a flexible, time efficient and cost effective manner.[6]

Traditionally, oath taking is a common feature of resolving dispute. As a commonly accepted method of dispute resolution in Africa, it does not only bind the parties but are recognized as a pivotal part of customary law arbitration. While this method was used for purposes of obtaining evidence in society, there was also room for the right to fair hearing as currently understood and discussed in domestic and international legal jurisdictions. Accordingly, in the light of the Supreme Court's decision in ***Umeadi v Chibunze***,[7] this paper seeks to examine the legality of resolving land disputes through customary arbitration (including juju invocation).

2. Historical Evolution of Customary Law Arbitration in Nigeria

Customary arbitration can be described as a procedure for settling disputes conducted in accordance with the customs and traditions of the people. However, through decided cases, one will be able to grasp and fully understand the meaning and dynamics of customary arbitration. In the case of ***Ohiaeri v Akabueze***,[8] the Supreme Court adopted the definition of customary arbitration as proffered by the same Court in the case of ***Agu v Ikewibe***[9] as:

> *An arbitration in dispute founded on the voluntary submission 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.*

In ***Ufomba v Ahucahoagu***,[10] customary arbitration was described as:

> *A customary arbitration is essentially a native arrangement by selected elders of the community who are vast in the customary law of the people and takes decision, which are mainly designed or aimed at bringing some amicable*

[6] *Ibid.*
[7] [2020] 10 NWLR (Pt. 1733), 405.
[8] [1992] NWLR (Pt. 221) 1, 7.
[9] [1991] NWLR (Pt. 180) 385.
[10] [2003] 4 SC (Pt II) 65, 90.

> *settlement, stability and social equilibrium to the people and their immediate society or environment.*

It is upon this back drop that it has been argued that one of the many African customary modes of settling disputes is to refer the dispute to the family head or an elder or elders of the community for a compromise solution based on the subsequent acceptance by both parties of the suggested award, which becomes binding only after such signification of its acceptance, and from which either party is free to resile at any stage of the proceedings.

Flowing from the above stated, it is evidently clear that customary arbitration involves the voluntary submission of disputants, absent of any written agreement to arbitration in which the arbitral panel shall consist of chiefs and elders who have unrivaled knowledge in customary law and tradition, resolve the disputes between the parties. Decisions emanating from customary arbitration are enforced by the Courts.

Additionally, Karibi Whyte JSC in ***Egesimba v Onuzurike***[11] was of the view that:

> *Where a body of men be they chiefs or otherwise, acts 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 decision, such decision has the same authority as the judgment of judicial body and will be binding on the parties and thus create an estoppel.*

Nonetheless, the case of ***Okpuruwu v. Okpokam***[12] is notably instructive as it rejects the existence of customary arbitration in Nigeria. Uwaifo JCA stated *inter alia:*

> *To talk of customary arbitration having a binding force as a judgment in this country is therefore somewhat a misnomer and certainly a misconception. Of course, to say that a decision by such a body creates res judicata is erroneous…I do not know of any community in Nigeria which regards the settlement by arbitration between disputing parties as part of*

[11]T. O. Elias, *The Nature of African Customary Law* (England: Manchester University Press, 1956), 212.
[12][1988] 4 NWLR (Pt. 90) 554.

> *its 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 a disinterested third party for settlement. That seems more of a common device for peace and good neighbourliness rather than a feature of native law and custom, unless there is any unknown to me which carries with it 'judicial function' or authority as in Akan laws and customs…*

Hence, it suffices to state that the status of customary arbitral awards is such that once the conditions for the validity of customary arbitration are satisfied, the arbitration would be treated as a judicial proceeding and could operate as an *estoppel per rem judicatam*.[13]

3. Recognition of Customary Arbitration and Practices

A customary arbitration is arbitration under native law and custom, that is based on the voluntary submission of the parties to the decision of arbitrators who are either the Chiefs, elders of their community, or religious leaders such as Imam or Pastor, and the parties are bound by such decision.[14] Disputes that may be referred to customary arbitration include: personal disagreements, religious crisis, political, ethnic, marital disputes, chieftaincy matters, land and community boundary dispute.

The following are the conditions governing customary arbitration,[15] namely:

a. That there had 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 arbitrator(s) would 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 arbitrator(s) arrived at a decision and published their award; and
e. That the decision or award was accepted at the time it was made.[16]

The resultant effect is that a customary arbitration which is duly pleaded and proven can

[13](n 9), 385.
[14]*Okoye v Obiaso*[2010] 8 NWLR (Pt. 1195), 145.
[15]*Egesimba v Onuzuruike*[2002] 15 NWLR (Pt. 791), 466.
[16]*Awosile v Sotunbo* [1992] 5 NWLR (Pt. 243) 514 SC; *Uzoewulu v Ezeaka* [2000] 14 NWLR (Pt.688), 447.

operate as estoppel in that, like that arising from a valid judicial decision; it deprives the court of jurisdiction to adjudicate in the matter again.[17] Hence, where disputes or matters in difference between two or more parties are by consent of the disputants submitted to a domestic forum, inclusive of arbitration or a body of persons who may be invested with judicial authority to hear and determine such disputes in accordance with customary law and general usage and a decision is duly given, it is as conclusive and unimpeachable, unless and until set aside on any of the recognized grounds as the decision of any constituted court of law.[18]

4. Customary Arbitration in the Pre-Colonial Era

Customary arbitration was a predominant method of resolving disputes in pre-colonial Nigeria. Unlike the traditional Court system, this system provides a flexible, simple and seemingly informal method of administering disputes in pre-colonial Nigeria.[19] The customary arbitration process was initiated when an aggrieved party "Claimant" expressed his grievance to a neutral and respected elder.[20] Elders were assumed to be very knowledgeable in the customs of the community. They were also assumed to be men of integrity, great wisdom and vast experience. Parties in a dispute were therefore expected to trust and tap from the rich wealth of knowledge and experience possessed by these elders.[21]

The elder(s) selected by the Claimant was therefore expected to call the other party ("respondent") against whom an accusation had been made. The respondent at this point has the option to choose if he wanted the dispute to be administered by the elder selected by the Claimant. If he chose to submit to the elder's jurisdiction, all the parties involved will be expected to agree on a date, place and time for the hearing of the case. Where the respondent disagreed with the claimant's choice, both parties were expected to agree on a suitable elder. Like in contemporary dispute resolution mechanism, customary arbitrators were expected to accord parties a fair hearing.[22]

An important feature of the pre-colonial arbitration system was the swearing of oaths. In Nigeria and indeed Africa, swearing of oath involves recourse to the power of a supernatural being. Swearing on a dreaded juju is the commonest form of traditional oaths.[23] Generally,

[17] *Okereke v Nwankwo*[2003] 9 NWLR (Pt. 826), 592; *Nwankpa&Ors v Nwogu&Ors* [2006] 2 NWLR (Pt. 964), 251.
[18] *Achor v Adejoh* [2010] 6 NWLR (Pt. 1191), 537.
[19] *Agu v Ikewibe* [19991] NWLR (Pt. 180), 385.
[20] Anthony I. Idigbe, 'Court Control of Arbitral Process' <www.Nigerianlawguru.com>accessed 2 January, 2022.
[21] *Okereke v Nwankwo*[2003] 9 NWLR (Pt. 826), 592.
[22] *Uzoewulu v Ezeaka* [2000] 14 NWLR (Pt.688), 447.

the oaths are made in such a way that the swearer invokes on himself a conditional curse, by telling the juju to punish him if he lies. It is believed that anyone who swears falsely will die or be smitten with grave misfortune within a specified period of taking the oath. If misfortune befalls him within the prescribed period, the property reverts to the other party. If he survives, he retains the property as he is deemed to have told the truth.[24]

Parties usually abide by the decision of the arbitrators. This is as a result of a deep rooted respect for tradition and religion. It was believed that there were serious repercussions when an individual went against tradition by disobeying the words of an elder.[25]

5. Customary Arbitration in Modern Nigeria

In post-colonial Nigeria, there were initial doubts about the existence of customary arbitration.[26] This was the position in ***Okpuruwu v Okpokam***,[27] wherein a majority panel of the Court of Appeal held that, customary arbitration was not a recognized practice in Nigeria. However, Honourable Justice Oguntade JCA (as he then was) in his judgment held that he found himself:

> *Unable to accept the proposition that there is no concept known as customary arbitration in our jurisprudence… I do not think it is contrary to public policy and not in accordance with natural justice, equity and good conscience for parties to a dispute to submit to the adjudication of a third party in whom the disputants have confidence both as to impartiality and competence. The orthodox arbitration which has been accepted as part of the general law also operates on such principles of voluntary submission to the adjudication of a third party. I am unable to accept that native arbitration in any way derogates from the exercise by the regular Courts of the powers vested in them by the 1979 (now 1999) Constitution of Nigeria.*

[23] *Okere v Nwoke* [1991] 8 NWLR (Pt. 209), 317, 342.
[24] *Okere v Nwoke* [1991] 8 NWLR (Pt. 209), 317, 342.
[25] (n 20).
[26] C. Obianyo, 'The Practice of Customary Arbitration in the Modern Nigeria Legal System' [2015] 10[1] *Journal of Arbitration,* 163-165.
[27] (n 12).

Unfortunately, notwithstanding the correct submission made by Honourable Justice Oguntade, the majority decision of the Court in ***Okpuruwu v. Okpokam***[28] remained the law, until the decision of the Supreme Court in the *Locus Classicus* case of ***Agu v. Ikweibe***.[29] The dispute in ***Agu v. Ikweibe,***[30] was whether a disagreement over title to land had been validly resolved by customary arbitrators consisting of village elders. Counsel to the appellant relied substantially on the earlier decision in ***Okpuruwu v. Okpokam,***[31] and again submitted that customary arbitration was contrary to Section 6 (1) and (5) of the 1979 Constitution, which according to him vested all forms of Judicial Power in the Courts. The summary of the respondent's argument on the other hand was that the said customary arbitration proceeding and award were valid. The High Court dismissed the respondent's attempt to enforce the customary arbitration, after which the matter went on appeal. The Court of Appeal overruled the decision of the High Court and upheld the customary arbitration proceedings between the parties. The appellant being dissatisfied with the decision, appealed to the Supreme Court. The Supreme Court rejected the appellant's argument and overruled the decision of the Court of Appeal in ***Okpuruwu v. Okpokam***.[32] The Court by this decision put to rest the controversy surrounding the existence of customary arbitration and emphasized its place both under Nigeria Customary Law and within the Nigerian legal system. The decision laid the foundation for the development of a modern customary arbitration practice. The decision changed the status of the customary arbitration practice from an unregulated practice to one now regulated by the Nigeria Courts. For a customary arbitration to be legally binding in modern Nigeria, parties are required to approach a competent Court of Law for an enforcement order.[33]

Thus it is safe to say that customary arbitration is one of the modes of settlement of disputes recognized under the Nigeria Law, particularly where the object of dispute is such that falls within the domain of customary law. In submission to arbitration, the general rule is that as the parties choose their own arbitrator to be the judge in the disputes between them, they cannot when the award is good on its force, object to its decision, either upon the law or the facts.[34] Going forward, the binding effect of customary arbitration derives from the fact that

[28](n 12).
[29][1991] 3 NWLR (Pt. 180) 385.
[30]*Ibid.*
[31](n 12).
[32]*Ibid.*
[33]Abdulsalam O. Ajetunmobi, *Alternative Dispute Resolution in Nigeria: Law, Theory and Practice* (Princeton and Associates Publishing Company Limited, 2017), 112.
[34]*Okala v Udah* [2019] 9 NWLR (Pt. 1678), 562, 575-576.

parties who have right to have their disputes voluntary decided, have, without prompting opted for a decision by a non-judicial body, the decision of which they have held themselves to be bound by, neither of them can be allowed both in law and equity, to resile from the position they have willingly created.[35] In other words, where two parties to a dispute voluntarily submit an issue in controversy to an arbitration according to customary law and agree expressly or by implication that the decision of such arbitration would be accepted as final and binding, then once the arbitrators reach a decision, it would no longer be open to either party to subsequently back out of or resile from the decision so pronounced.[36] Where arbitration under customary law is pronounced valid and binding, it would be repugnant to good sense and equity to allow the losing party resile from the decision of the arbitration to which he had previously agreed.[37] It was against this backdrop that the Supreme Court in the case of ***Okala v Udah***[38] held *inter alia*:

> *...the respondent had pleaded the decision of the Ibaa Council of Traditional Rulers...the contention of the appellant that it did not constitute an estoppel per rem judicatam and could not be held to be binding on the appellant was wrong. The appellant had admitted unequivocally the fact of the said native arbitration, which he sought desperately to resile from. Thus, the decision of the Ibaa Council of Traditional Rulers is binding on the appellant and constitutes an estoppel per rem judicatam as far as the issue in dispute is concerned.*[39]

Nonetheless, it is worthy of note to state that for a customary arbitration to constitute an *estoppel per rem judicatam,* the parties must have voluntarily submitted their dispute to the native arbitration panel for determination, there must have been an agreement by the parties either expressly or impliedly that the decision of the arbitrators would be accepted as final and binding, the said arbitration must be in accordance with the customs of the parties or their trade/ business, the arbitrators must have reached a decision or award which was accepted at the time it was made.[40] Whenever there is a short fall in any of the above conditions

[35] *Ibid.,* 576.
[36] *Eke v Okwaranyia* [2010] 8 NWLR (Pt.1195), 145.
[37] *Yusuf v State* [2011] 18 NWLR (Pt. 1279), 853; *Afolabi v Western Steel Works Ltd* [2012] 17 NWLR (Pt. 1329), 286.
[38] (n 34).
[30] (n 34),576-577, paras H-A.
[40] *Akinyemi v Odu'a Investment Company Limited* [2012] 17 NWLR (Pt. 1329), 209

precedent, a customary arbitration will be inefficacious.[41]

6. Customary Arbitration Award Based on Oath Taking

Oath taking is an acceptable practice under the customary law and is a common feature of resolving disputes in Africa. It was frequently adopted in the settling of land matters in the hinterland.[42] In ***Onyenga & Ors v Ebere***,[43] the Supreme Court affirmed the practice of oath taking in customary arbitration wherein the Court stated thus:

> *Oath taking is a valid process under customary law arbitration and it is one of the methods known to customary law for establishing the truth of a matter…where two parties to a dispute voluntarily agree to the resolution of the dispute by oath taking in accordance with customary law, neither of them can therefore resile from the exercise of oath taking.*

It is actually an established view that oath taking is part of our customary law arbitration practice but the relevant question which the courts have not answered is the certainty of the practice in terms of efficiency of the oath or the juju used in the exercise. As in the case of ***Onyenga & Ors v Ebere***,[44] the first shrine was rejected by the respondent for obvious reason of uncertainty and bias on the part of the juju priest. Even the efficacy of the second juju which was used was not verified by anybody as there exists no instrument for testing same. We must agree as it is widely known that oath taking involves spirituality and the supervening of minor gods.[45] This thesis strongly argues that it is obviously wrong to leave the determination of issues of rights and interest of citizens in the unseen hands of gods. It is not in doubt that under the native law of Nigerian people, disputants in certain circumstance consent to oath taking as the means of settling their dispute. In such circumstance, time is often given within which the offending party is expected to either be killed by the gods or be sick so as to confirm that he is the offending party. If after the time given for the offending party to die and he failed to die the other party would not be allowed by the court to resile from the settlement and reopen the matter.[46]

---

[41] *Ordu v Elewa* [2018] 17 NWLR (Pt. 1649) 515, 530, 546.
[42] *Charles Ume v Godfrey Okonkwo&Anor* [1996] 12 SCNJ, 404.
[43] [2004] 13 NWLR (Pt. 889), 20, 24.
[44] *Ibid.*
[45] G. C. Nwakoby, 'Customary Law Arbitration Practice: Validity of Arbitral Awards Based on Oath Taking' [2010] *Capital Law Journal*, 1-21.
[46] *Iwuchukwu v Anyanwu* [1993] 8 NWLR (Pt. 311), 307, 323.

It was against this back drop that the Supreme Court in the recent case of ***Umeadi v Chibunze,***[47] stated that where parties decide to be bound by traditional arbitration resulting in oath taking, common law principles in respect of proof of title to land no longer apply. In such situation, the proof of ownership or title to land will be based on the rules set by traditional arbitration resulting in oath taking. Thus, it was held in the instant case that it was wrong for the appellants who were instrument to the exercise of oath taking to resile from it. It was the basis of the above principle that Peter- Odili JSC stated *inter alia:*

> *Oath taking is a valid process under customary law arbitration and it is one of the methods known to customary law for establishing the truth of a matter. In the instant case, the respondents pleaded the customary arbitration of oath taking in paragraphs 5 and 6 of the amended statement of claim and went about proving the existence of the said custom which includes the fact that one man can take oath in Amansea. Further that a family member who defends family land by oath taking automatically becomes the exclusive owner of such family land...*[48]

Accordingly, it is imperative to state that oath taking involves unnecessary superstition, mystery, and spirituality. Thus, in our jurisprudence, superstition and spirituality are not recognized. They are not accorded any legal force. In oath taking, one is dealing with spiritual forces, deities and gods. These are unseen forces and their existence is based on mere faith and belief. The Courts had in ***Onwuanukpe v Onwuanukpe***[49] condemned this practice as not being arbitration. There is no test of efficacy of the oath taking. There have been cases of manipulation of the oath by the chief priest or even some elders of the community. There are situations where the antidotes of some oaths are known by some people in the community. In such cases, adverse claimants may enter into the land of other people and immediately thereafter submit themselves to oath taking knowing full well that antidotes of the oath taking exist.

Additionally, oath taking is a form of trial by ordeal which is both criminal and illegal. Customs are not static but dynamic. Thus, based on the current level of sophistication in our

[47][2020] 10 NWLR (Pt. 1733), 405, 429.
[48]*Ibid.,*445, para. H; 446-447, paras.G-E; *Iwu v Ogu* [2020] 9 NWLR (Pt. 1730), 608, 621.
[49][1993] 8 NWLR (Pt. 310), 186.

customary law, it will be repugnant to natural justice, equity and good conscience to still continue with this ancient practice which is fetish, barbaric, uncivilized, outdated and anachronistic. With utmost respect and reverence to the decision of the Supreme Court in ***Umeadi v Chibunze***,[50] it is the honest opinion of this thesis that Nigerian Courts should not recognize arbitration awards based on oath taking as oath taking has a lot of uncertainties surrounding it. Surely, *ndagbuiyi* (antidote to oath taking) has been in existence for years and is known to some elders in the villages. In the circumstances of these uncertainties, the Nigerian Courts must endeavor to take an award based on same with a pinch of salt.[51]

7. Sustaining a Plea of Estoppel in Customary Arbitration

The important questions being pursued here are: what is pleading? What is the purpose of pleading? And what should a good pleading of customary law arbitration contain? Pleading may be described as a formal written statement in a civil action served by each party (that is the plaintiff and the defendant on each other), containing the allegations of fact that the party proposes to prove at trial and stating the remedies that the party claims in the action. In its broad sense, pleading however refers not only to the writ of summons, originating summons or other originating processes used to commence an action in court; it also includes all other documents by which issues in controversy are comprehensively highlighted before the court by the disputing parties. The main object of pleading is to ascertain with as much certainty as possible the issues for determination, establish the various matters in disputes and those which are agreed between the parties.[52] Every pleading must therefore contain facts and not law, material facts only and not evidence by which the facts are to be proved and must allege the facts positively, precisely and briefly. However, it has been advocated by some exponents that pleadings must be sufficient, comprehensive and accurate.[53]

An arbitration award can constitute *estoppel* where the constituent elements of an *estoppel per rem judicatam* have been established but where the decision is conditional, the decision is not binding.[54] In a civil suit, a party may wish to rely on a previous customary law arbitration award, which was in that party's favour to raise the defence of *estoppel.* In such a situation, the customary law arbitration must be pleaded specifically. On the other hand, the

[50](n 46).
[51]G. C. Nwakoby, The Law and Practice of Commercial Arbitration in Nigeria, (2nd edn, Enugu: Snaap Press Ltd, 2014), 24-26.
[52]*AdesojiAderemi v Joshua Adedipe* [1966] NMLR, 398.
[53]*James v Mid Motors Nigeria Co Ltd* [1978] 11 SC, 31, 63.
[54]*Ofomata v Anoka* [1974] 4 ESCLR, 251.

plea of *res judicata* is not open to a plaintiff in his statement of claim. This is because a successful plea of *estoppel per rem judicatam* ousts the jurisdiction of the court before which the issue is raised.[55] A plaintiff who is seeking a declaration of title over a parcel of land may plead a previous customary law arbitration award, if any, in his favour not as a *res judicata* but as a relevant fact to the issue in his present action and such award will be conclusive of the fact of which it decided.[56]

Fundamentally, it is sufficient for a party who wishes to rely on customary law arbitration to raise an *estoppel* in his favour to state that the dispute was the subject of arbitration in accordance with native law and custom, and that there was an award in his favour and that he relies on the arbitral award to raise an *estoppel* against the other party. At the trial of matter in Court, evidence will then be adduced to establish that there was actually valid customary law arbitration by proving the necessary ingredients.[57]

Where a customary law arbitration award qualifies to operate as *res judicata*, both parties shall be entitled to that plea either in the form of a sword or in its form as a shield. The burden of proof in all civil cases as in the case of customary law arbitration is on the party who alleges the affirmative and the party could be the plaintiff or the defendant, depending on the state of the pleadings. In other words, the burden of proof in a proceeding before the court of law lies on the person who would fail if no evidence was given on either side. The first burden is on the party who alleged the affirmative in the proceedings whilst the second burden (known as the evidential burden) lies on the adverse party to prove the negative.[58]

8. Concluding Remarks

It must be reiterated that customary law arbitration is a satisfactory Alternative Dispute Resolution (ADR) technique evolved by the natives themselves to tackle their ever growing human need and desire for the amicable resolution of disputes arising from time to time between them. This is usually done by an impartial tribunal having the confidence of and authority from the disputing parties in accordance with their trade, usage or native laws and customs. Illustratively, among the South East and South South part of Nigeria, this task was usually undertaken by the family head (that is the *Opara or Okpara or Onyishi* depending on the community involved) or the elders of the village, particularly from the extended family

[55] *Yoye v Olabode* [1974] 1 ANLR (Pt. 2) 118.
[56] *Ukaegbu v Ugoji* [1991] 6 NWLR (Pt. 196) 127.
[57] (n 53).
[58] *Onyenge v Ebere* [2004] 13 NWLR (Pt. 889) 20; *Okoye v Obiaso* [2010] LPELR-2501 (SC).

unit (that is the *Umunna* or the chief/Igwe/Eze of the community). Thus, it suffices to state that the practice of customary law arbitration predates Nigeria. It has been in practice among the 250 ethnic groups from time immemorial. However, with the birth of Nigeria as a sovereign entity, the introduction of English Law, erosion of indigenous institutions and culture by western civilization and culture, the penetration of Christianity, Islam and other religions into the nook and crannies of the nation, customary law arbitration did not vanish but doggedly continued to be in use by the communities that recognized it in the resolution of disputes.

Customary law arbitration system of adjudication adheres to the legal and constitutional requirement of fair hearing. The practice promotes access to justice for the poor, less privileged and the vulnerable in Nigeria's rural communities. Thus, customary law arbitration in Nigeria provides a desirable ADR option outside the adjudicatory system offered by Common Law, thereby reducing pressure on the Court System of Adjudication.

Thus, the Supreme Court in ***Umeadi v Chibunze***[59] recognize the position that oath taking is a valid process under customary law arbitration and it is one of the methods known to customary law for establishing the truth of a matter. Accordingly, this paper holds the position that where parties decide to be bound by traditional arbitration resulting in oath taking, Common Law Principles in respect of proof of title to land no longer apply. In such situation, the proof of ownership or title to land will be based on the rules set by traditional arbitration resulting in oath taking. In sum, it is trite to state that the resolving of land disputes through customary arbitration (including juju invocation) is a valid practice in the adjudicatory process of Nigeria.

[59][2020] 10 NWLR (Pt. 1733), 428, 429.