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CHANGE AND CONTINUITY IN JUDICIAL PRACTICE OF PLATEAU STATE CUSTOMARY COURT OF APPEAL 1980 – 2023

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Abstract

Before the Colonization of Nigeria and the eventual establishment of the British system of justice administration, all the ethnic nationalities in the area had evolved their own unique and divergent traditional methods of dispute resolution. However, the introduction of the British Legal system imposed the English common law doctrine on the people throughout the era of Colonialism. This was subsequently adopted by Nigeria soon after independence. Consequently, the Nigerian Legal system, as constituted today, is a mixture of the English common law and customary law. In discussing the court's activities, this paper raises the following overarching question: What compelling reasons influenced the establishment of the Customary Court of Appeal in Plateau State? How did the activities of the court impact the administration of justice in the state? What challenges, if any, did the court encounter in administering justice within the period under review? The essay relies on both primary and secondary data in its methodology. The findings revealed that, apart from bringing justice closer to the doorstep of litigants, its establishment has further helped decongest the traffic of appeals to the High Court of Justice and has also impacted land matters that would have led to loss of lives and properties. Further findings revealed that one major challenge that has bedevilled the system's smooth running has been the lack of financial autonomy, which has hampered the court's performance of its statutory functions.

Keywords: Change; Continuity, Judicial Institutions, Customary Court of Appeal, Plateau State.

Introduction

This paper examines changes and continuities in the activities of the Plateau State Customary Court of Appeal, Jos, from its establishment in 1980 to 2023. It argues that colonialism imposed the English Common Law doctrine alongside the establishment of native court systems in Nigeria. Thus, the imposition of this law and its practice direction in the native courts altered and brought change in the people's traditional judicial practice. It further contends that a powerful form of justice administration prevailed among all Nigerian peoples in pre-colonial times, and any deviation invokes the wrath of the gods and the ancestors. The principles for ascertaining rights and wrongs amongst pre-colonial societies were based on fair hearing and the administration of justice. It is upon this system of judicial administration that the traditional laws of the ethnic nationalities in Nigeria were established until the advent of the British colonial administration in the area. This development culminated in the changes affecting people's judicial systems to date.

Although the colonial administration established native courts, those courts operated by native chiefs were given too much power, which led to attendant problems, such as the chiefs' brutality towards their subjects. Again, most of these chiefs, apart from becoming too powerful, became corrupt by exploiting their subjects and litigants alike. This form of corruption and extortion still rears its ugly head in the courts and the justice administration system in Nigeria. Thus, it is safe to say that the structure and powers of the colonial courts' system laid the foundation for the current state of corrupt practices among judicial officers and judicial staff generally in the country and further accounts for the kind and magnitude of corruption that has bedevilled not only the Nigerian courts but the whole nation today. Consequently, this paper adopts a historical research design and examines the establishment, structure and composition of the

customary court of Appeal Jos. It also highlights the changes that took place and the procedures adopted by the court to fulfil the cardinal reasons for its establishment, which were to create room for speedy dispensation of justice and secondly, tos decongest the rate of traffic in appeals that hitherto had been to the High Court of Justice, where delay in justice administration had been the order of the day. The 1980 date is chosen because it marks the formal establishment of the court, while the 2023 exit period marks the latest composition of the court under the headship of Justice Blessing L. Dalyop and the appointment of Justice T. T. Jekkei into the system as a co-judge that same year to meet up with the statutory requirement with regards to the composition or membership of the court.

Conceptualising Indigenous Judicial Systems and Customary Law

Deep in the minds of Western scholars and their African Eurocentric opinion holders, African societies south of the Sahara were primitive and unintelligent.[1]. Under this assumption, Africans were incapable of evolving any form of institution designed to maintain law and order. Therefore, lawlessness reigned supreme among African societies. Where such existed, it was described as obsolete, unwritten and uninteresting.[2]. It was the above assumption that blindfolded the British to impose an alien legal system on all the ethnic nationalities in Nigeria following colonial conquest.

We cannot deny that even the English common law, which today forms the basis of Nigeria's legal system, was once unwritten, which points to the fact that at every stage in a given society, there is a beginning. Although no society is static, the process of change is gradual and

[1] O. O. Okpeh, Ochai, "A study on an aspect of the National Question". MA dissertation Department of History University of Jos, 1994, pp 102 – 129.
[2] E. J. Changwark, "A Review of Pre-colonial Administration of Justice in the Low Land Division of Plateau Province", in *Mandyeng Journal of Central Nigeria Studies, Early Rains,* 2011, pp 11 – 27.

usually determined by the society's functional environment. Rooted in the pre-colonial Nigerian judicial system was the reinforcement of norms instituted by the supernatural authority and sanctions of the invisible being (God) and the intermediary roles of the ancestors. Hence, to secure and legitimise ethical norms,[3] the chief priest and elders, as well as the various agents of divinities, had consistently served as the primary motivators of justice, loyalty and obedience across all the pre-colonial ethnic nationalities in Nigeria. Dispute resolution centres were spread across the land, and everyone was free to seek redress for disputes. Most activities featured at these centres were trial by ordeal or the drinking of the sasswood. Cases tried at these centres also included witchcraft, land disputes, paternity or otherwise and custody of children under native law and custom[4].

In most Nigerian societies, the formulation of laws in pre-colonial times was centred on the chief priest and his council members. Such laws become binding on the people only when the village assembly has approved.[5]. Obedience to the law was enforced through custom and religion as well as an established pattern of sanctions.[6] The laws formulated forbid members of the society from committing murder, adultery, stealing, abduction, rape, fighting, assault, encroaching on another man's land and engaging in witchcraft.[7]

[3] I. C. Elizu, "African Traditional Religion and the Promotion of Community Living", *www.Africanworldnet/afrel/community.html*, (Accessed 9th December, /2023.
[4] D. N Ajiji,. *Colonialism and Intergroup Relations in the Central Nigeria Highlands: The Afrizere Story*, Aboki Publishers, Makurdi. 2010, p.147
[5] G. O. Olofu, and D. N. Ajiji, "Traditional Justice Practices in Bekwarra and the Challenge of Colonialism" in *Lapai Journal of Humanities, a* Journal of the Department of History and International Studies, Ibrahim Badamasi Babangida University Lapai, Niger State 2015, p.185.
[6] D. Omagu, *A wind of change: Bekwarra in an age of Globalization*, Aboki Publishers, Makurdi, Nigeria, 2012, p.160.
[7] Z. Omotola, "Human Rights in Africa: A Cultural Ideological and Legal Examination, in *Hasting International and Comparative Law Review No. 12,* 1989, p. 379.

Reward usually comes in the form of punishment, however varied according to how the crime was adjudged. Sometimes they were regarded as an offence against the community, the chief priest, the family, and the age grade[8]. Penalties awarded by the law were deemed sufficient as a deterrent to others, as every crime committed was thought unpleasant to the people's ancestors and the gods of the land. Thus, customary laws were strictly adhered to and observed by all for fear that any deviation might invoke the wrath of the gods and the ancestors[9]. By tradition, judicial procedures for any crime committed do not begin until sufficient evidence has been obtained or established by popular rumour, self-confession, or refusal to submit to ordeal[10]. The above is an indication that traditional justice practices amongst Nigerian ethnic societies in pre-colonial times were inherently fair and flexible, but not entirely flowless[11] and indeed, it formed the character of the judicial and other social functions of the African societies that helped to hold the people together and enabled them to behave and act as one[12]. The above characteristics provided the basic norms of social control, basic standards of behaviour acceptable to all members of the community, and, as well, a traditional code of conduct, thereby strengthening their ancestral unity[13].

Customary law consists of customs accepted by members of a community as binding among them[14]. In Nigeria, customary law is classified into two: the Native ethnic or non-Muslim law, which is largely unwritten, and the Muslim law, which is religious in nature and essentially wholly written. However, we shall be concerned here only with the first class of customary law,

[8] Olofu and Ajiji, "Traditional Justice system" p. 185
[9] Olofu and Ajiji, 186.
[10] Godwin Olofu Ogbeche, "A Socio-Political History of the Bekwarra People, 1900 – 1960, M A dissertation, Department of History University of Abuja, 2010, p. 35.
[11] O. Omagu, *The History of the Bekwarra People of the upper Cross River, 1808 – 1900*, Ushie Publishers, Calabar 1987 p. 28.
[12] D. Omagu, *A wind of change: Bekwarra in….*, 261
[13] Omagu, *A wind of…. p. 260*
[14] A. O. Obilade, *the Nigerian Legal System*, Spectrum Law Series, Ibadan, 2011, p. 83.

namely, indigenous customary law. The latter is not indigenous but was introduced to the people as part of Islam. Consequently, our entire discussion will be based on indigenous customary law, which is controversial. This can be traced to the fact that there are as many different sets of customary laws as there are ethnic groups in Nigeria. This diversity of customary law systems is a significant obstacle to the uniformity of such systems across states. It should be noted, however, that in many respects the ethnic customary law of an area is similar to that of another area where the indigenous people in both regions belong to the same ethnic society[15] or where they share certain things in common.

Ezejiofor defines the customary law of a community as a body of customs and traditions that regulate the various kinds of relationships between members of the community in their traditional setting[16]. A custom is a rule in a particular area that, by long existence and usage, has attained the force of law. A custom to achieve a status of being a law must have existed since time immemorial. It must also have existed without interruption, and people must have been observing the custom because they felt bound to do so, not merely as a social or ceremonial matter, which are not sources of legal rights or duties. It has also been noted that the observance of the custom must not have been out of force or violence[17]. Customary law imposes rights, responsibilities and liabilities recognised by the community[18]. Customary law has the force of sanction. This is because rights and duties are embedded in customary law, and when there is a breach, the appropriate remedies follow in the form of penalties or forfeiture[19]. It would have been clear from the above

[15] Obilade, The *Nigeria legal……., p. 83*
[16] lecture notes, on Nigeria Legal system, Department of Civil Law, Faculty of Law Ahmadu Bello University (ABU) Zaria, 1990.
[17] Lecture notes, Department of civil Law.
[18] See Channel J. in Moult vs. Halliday (1898) 1 QB 125 at 129.
[19] Lecture notes on Nigeria Legal system

submissions on native ethnic customary law that one of the features of this type of customary law is its acceptance as an obligation by the community. It is recognised as law by the members of the ethnic group[20]. It is a mirror of accepted usage[21]. Another feature of this type of law is its flexibility. Its rules change over time, particularly as they reflect changing social and economic conditions[22]. Various statutory provisions allow for the application of customary law, among which is S.35 of the High Court Law, Northern States Cap 40 1963. The essential provisions of all these laws are to the effect that the High Court and Area courts shall observe and enforce customary law. In the context of this work, the observance and enforcement of customary law refers or relates to every customary law which is applicable by the customary court of Appeal and is not repugnant to natural justice equity and good conscience nor incompatible either directly or by implication with any law for the time being in force and nothing shall deprive any person of the benefit of customary law. Importantly, too, no such custom as is sought to be enforced shall be contrary to public policy[23].

Domesticating British Common Law in Nigeria

Before the 19th century, British and other foreign merchants had established commercial intercourse with the indigenous people on the coast of West Africa, such as Lagos, Benin, Bonny, Brass, New Calabar (Now Degema) and old Calabar (Now Calabar), which areas later formed part of Nigeria. Attempts by the indigenous courts in those areas to settle trading disputes between foreigners and indigenous people proved abortive, as the customary system was unfamiliar to the

[20] Eshugbaye Eleko vs. Government of Nigeria (1931) Ac. 662 at 663.
[21] Awoniyi vs. Omotosho (1963) 1 All NLR 304 at 309.
[22] Alta vs. Arepo (1963) WNLR 95.
[23] S. 14 (3) of *the Evidence Act 1960*.

British and other foreign traders.[24] The British government therefore appointed consuls and established consular courts in 1849, essentially to regulate trade and address disputes between British and indigenous merchants.[25] Equity courts were also established jointly by foreign and indigenous traders in coastal areas outside Lagos to settle trade disputes.[26] In 1862, the British Administration made Lagos a British Colony and established a court there under Ordinance No. 3 of 1863, and also established a supreme court through the Supreme Court Ordinance that same year.[27]

The introduction of English Law into the British colony of Lagos marked a turning point in Nigeria's legal system. Although the reception of English Law was affected by local legislation, it should be noted that the bill was passed not by an indigenous body but by the British Administration. It is worthy of note that, although the three classes of English Law received during this period – the Common Law, Equity, and English Statutes – are, more than one century after the first reception, still sources of Nigerian Law.[28] By the end of the period, the combined effects of the reception of English Law, the establishment of English–type courts, and the relegation of local Laws and customs were already being felt. It was the emergence of a new society consisting of indigenous people who had embraced English culture and therefore tended to prefer the English way of life to the traditional pattern. Such people entered into commercial relations governed by English Law. The existence of that society marked the beginning of the cultural conflict now evident in many parts of the country.[29]

[24] Obilade, *The Nigeria Legal System*, 18.
[25] Obilade *The Nigeria Legal*…… p. 18
[26] Obilade, *The Nigeria legal*…
[27] *Supreme court Ordinance No. 11* of 1863
[28] Obilade, *The Nigeria Legal*…….. p. 20
[29] O. Adewoye *Prelude to the Legal Profession in Lagos 1861 – 1880*, (1970) J. A. L 98 at p. 101

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Chronological Evolution of Customary Court and its Practice in Nigeria 1900-1913

With respect to the protectorate of southern Nigeria, the British Administration established courts there by statute essentially for the administration of customary law, the law hitherto administered by the indigenous courts. The Native Courts Proclamation 1900 established "Native Courts," and the Native Courts Proclamation 1901, which replaced it, provided that the civil and criminal jurisdiction of a statutory native court in a district was to be exclusive of any jurisdiction by any traditional authority.[30] The Native Courts and Native Court Councils established two classes of native courts. A Minor Court was to consist of such several members as the High Commissioner might appoint. In addition to its civil jurisdiction in other matters, it had the power to entertain cases involving ownership or possession of land under customary law. The composition and functions of the statutory courts deserve comment at this juncture. A Native council, which purported to be a court for the indigenous people, was presided over by a white man, the District Commissioner and the other members of the Court were people appointed at the will of the High Commissioner. The Native councils and Minor courts performed not only judicial functions but also legislative and Executive functions.[31]

In 1906, the colony and protectorate of Lagos and the protectorate of Southern Nigeria were amalgamated to form the colony and protectorate of Southern Nigeria. A new native courts enactment, the Native Court Proclamation 1906[32] It was made for the new territory. Many of its provisions were the same as the provisions of the Native Courts' Proclamation 1901. But there were some critical differences. For instance, the 1906 proclamation provided, among other things,

[30] *Supreme Court Ordinance* No. 12 of 1901,
[31] Obilade, *The Nigeria Legal……*. p.24
[32] *Supreme court Ordinance No. 7 of 1906*

that the members of every native court were to include the Divisional commissioner, the travelling commissioner, the District commissioner and the Assistant District commissioner.[33]

The Native court system of the colony and protectorate of southern Nigeria, like that of the protectorate, was defective in many respects. More white people were ex officio members of the native courts. It was reported that local chiefs who served on the native councils abused their powers. It was also said that native court clerks often received bribes and that they even tried cases. Such abuse was no doubt facilitated by the widespread illiteracy among the members of the indigenous community. Indeed, notwithstanding the provisions of the Native Courts Proclamation 1906, the native courts system was a failure[34].

With respect to the protectorate of Northern Nigeria, Native courts were established by a separate proclamation, the Native Courts Proclamation of 1900[35]. In general, a native court was to consist of one or more persons appointed by a head chief or emir, with the approval of the Resident. A native court administered customary law not repugnant to natural justice and humanity. The Native Courts Proclamation 1906[36] Reformed the court system. It provided for the establishment of two kinds of native courts, namely, the Alkali's court and the Judicial Council. An Alkali's court was to consist of an Alkali as president, with whom other persons might sit as co-judges or as assessors. A judicial council was to consist of an emir, a chief or a district headman as president, with whom other persons might sit as co-judges or as assessors.[37].

[33] Obilade, *The Nigeria legal system……. p25*

[34] Obilade, *The Nigeria legal system*
[35] Supreme court *Ordinance No. 5* of 1900
[36] Supreme court *Ordinance* No. 1 of 1906
[37] *Supreme court Ordinance No. 5 of 1900*
[37] *Supreme court Ordinance No. 1 of 1906*, Obilade, *the Nigeria……* p.27

The Native Courts Ordinance 1918[38] Provided for the establishment of native courts in the country. They were established by warrant. There were four classes of native courts, namely Grades A, B, C and D. Grade A had the highest jurisdiction and Grade D had the lowest. All courts had civil and criminal jurisdiction.[39].

The Native Courts Ordinance 1933 increased the jurisdiction of the Native Courts. The ordinance also provided for a complicated system of appeal. The resident was empowered to establish a Chief Alkali's court, or a native court presided over by a head chief or a court comprising at least three chiefs or headmen, in a Division, as a court of appeal for native courts in the province. Appeals lie from the decisions of a native court sitting as a court of first instance to the court designated "Native Court of Appeal" or to a native court designated Final Native Court of Appeal[40].

With effect from October 1, 1954, Nigeria became a Federation comprising three regions – the Northern, Western and Eastern Regions – and a federal territory (Lagos). The Western and Eastern Regions had statutory courts called "Customary Courts", and the Northern Region established a customary court of Appeal known as the Muslim Court of Appeal to hear appeals from the decisions of native courts in civil and criminal cases governed by Muslim law. A new customary court of appeal, the Sharia Court of Appeal, was established on September 30, 1960, to replace the Moslem court of Appeal.[41].

[38] *Supreme court Ordinance No.5 of 1918*
[39] Obilade, *The Nigeria……. p.29*
[40]Obilade *The Nigeria legal* …. p.31
[41] Obilade *The Nigeria legal ……. p.33.*

The Native Courts Law 1956[42] established the Northern Region Native courts as the first of four grades, but later of five grades, namely, A, A Limited, B, C, and D. Of the courts presided over by emirs or chiefs, some were classified as A courts and others as A limited courts. The Native court had civil and criminal jurisdiction. The Grade A court had unlimited Jurisdiction and powers, but any death sentence imposed by it was subject to confirmation by the Executive arm of Government. Appeals from some B courts and from Grades C and D lie to a court designated as the native court of appeal by the Resident. Appeals from Grade A and A limited courts, and from other Grade B courts, lie to the Muslim court of appeal in cases governed by Muslim law and to the High Court in different cases.[43]

The Sharia court of appeal law 1960[44] Established the Sharia court of appeal as a customary court to hear appeals from native courts in cases involving Muslim personal law. The principal law to be applied by the court was the Muslim law of the Maliki School. In cases not involving Muslim personal law, appeals lie to the High Court. The Native Courts (Amendment) Law 1960[45] Provided for the establishment of provincial courts in the region. Provincial courts were native courts having original and appellate jurisdiction and equivalent in status to Grade A limited. There was one in each province, and the judges were public officers in the region's public service. By virtue of the amending law, appeals from the decisions of Grades B, C and D courts in a province lie to the provincial court. Appeals from the decisions of Grade A and A limited courts and from provincial courts lie with the Sharia Court of Appeal in cases governed by Muslim personal law,

[42] *Supreme Court Ordinance No. 6 of 1956*
[43] Obilade, *The Nigeria Legal* ……. p.34
[44] *Supreme Court Ordinance No,16 of 1960*
[45] *Supreme Court Ordinance No. 10 of 1960*

and to the Native courts, the Appellate Division of the High Court established by the Northern Region High Court (Amendment) Law 1960[46] In all other cases.

In the Western Region, the customary court law[47] made in 1957 provided for the establishment of four grades of customary courts – A, B, C and D. All Grade A courts were to be presided over by Legal practitioners as well as any other specified Grade B. Appeals from all Grade A courts and Grade B courts presided by Legal practitioners lay to the High Court while Appeals lay from decisions of any customary court not presided over by a legal practitioner to a higher – grade customary court designated a customary court of appeal in relation to the lower – grade customary court if any.[48]

In the Eastern Region, the customary courts law of 1956[49] Provided for the establishment of customary courts in the Eastern Region. There were to be two divisions of the court: district courts (subdivided into Grade A and B) and county courts, which were to be the customary courts of appeal. By virtue of the customary court (Amendment Law) 1957[50] Appeals were to lie from a district court to a county court designated for the purpose. If there were no such county court, then appeals lay to a magistrate's court. The Native Courts Ordinance[51] Continued to apply as a transitional provision. Under the ordinance, there were two channels of appeal. By the first channel, appeals from the decisions of native courts lie to the magistrates' court, and further appeals lie to the High Court and, finally, to the Federal Supreme Court. Cases through the second channel went from Native Courts to the district officer, from whom the case went to the Resident,

[46] *Supreme Court Ordinance No. 14 of 1960*
[47] *Western Region of Nigeria Law 1959 cap 31*
[48] Obilade, *The Nigeria Legal……* p.36
[49] *Supreme Court Ordinance No. 21 0f 1926*
[50] *Supreme Court Ordinance No. 12 of 1957*
[51] *The Native Courts Ordinance, Nigeria Laws 1948, cap 142*

whose decisions could go on appeal to the Governor. The Chief Justice of the Region later replaced the Governor as an appellate authority for the native courts.[52]

October 1, 1960-January 16, 1966

Nigeria became an independent country within the Commonwealth on October 1, 1960.[53] The customary court systems were reformed, notably with respect to the control and supervision of the courts. In Northern Nigeria, native courts styled "Area courts" were established.[54] The judges of the court were public officers in the Region's public service and were therefore appointed by the Region's public service commission. The Area Courts thus constituted the second class of native courts whose judges were public officers in the Regional Public Service, the first being the Provincial courts established in 1960. All the other native courts were under the control of native authorities. In Western Nigeria, Grade D Customary courts were abolished by the Administrator of the Region in 1962 during an emergency administration which followed the declaration of a state of emergency with respect to the Region.[55] The legislature of the Region abolished the customary courts after the emergency period by the customary courts (Amendment) law.[56] That was the position of the legal system until January 15, 1966, when a military revolution occurred in the country.

January 17, 1966 – 1978

[52] *Native Courts (Interim Provision) Law No. 12 of 1960*
[53] *Nigeria Independence Act 1960 (8 & 9 Eliz. 2, c. 55)*
[54] *Native Courts (Amendment) Law No. 11 of 1963*
[55] *Customary Court Amendment Order 1963, W.N L No. 300* of 1962 paragraph 10.
[56] *Western Nigeria Customary Courts (Amendment) law No. 11 of 1964, ss 8 and 29*

With effect from April 1, 1966, all the native courts in the then Northern States were abolished. New courts known as Area courts were established by the respective Chief Justice of the States under the respective Area Court Edicts to replace the native courts. Judges of the courts are public officers in the public service of the appropriate state. They are under the control of the High Court.[57] The states also established Upper Area Courts to hear appeals from other grades of Area Courts. The Area Court Edicts applied in the then 10 Northern States by virtue of the States creation.

Before the creation of states in 1967, the customary court Edict of 1966[58] Had been made by the military Governor of Mid-Western State to replace the customary courts law.[59] It established a single grade customary courts with minimal jurisdiction and powers. However, customary courts were abolished in the state in March 1973, only to be re-established subsequently. The Eastern Nigeria Customary Courts Edict of 1966[60] Was in force in the Central-Eastern, Southeastern, and Riverine States at the creation of the States in 1967. The Edict provided for the establishment of two types of customary courts, namely, district courts and customary courts of appeal. The South Eastern State customary courts Edict 1969[61] Also provided for two classes of customer courts-district courts and customary courts of appeal.

1979 – 2016

[57] Obilade, *The Nigeria…… p.49*
[58] *Mid-western Nigeria Customary Court Edict No. 38 of 1966*
[59] *Western Nigeria Customary Courts Edict of 1959, cap 31.*
[60] *Eastern Nigeria Customary Courts Edict No. 9 of 1966*
[61] *Eastern Nigeria Customary Courts Edict No. 9 of 1969 (S.E.S.)*

In the Northern States, by virtue of the provisions of the various Area Courts Edicts of the states, the upper area court was no longer an appellate court. Although not repealed, it now serves the functions exercised by any other area court. Thus, by the provisions of the 1979 constitution, any state desirous of a customary court of Appeal as an appellate court to hear appeals from the area courts can establish the same. That was the position in Plateau State, which again is the subject of this research, for it was since proclaimed in 1979 and inaugurated in 1980.

In states other than the North, many provisions of the customary court Edicts relating to customary courts of appeal have been suspended, and other provisions have been modified to replace the courts of appeal with magistrate courts. By and large, the customary courts of Appeal are much more pronounced in the Northern States, particularly in the North Central.

Establishment, Structure and Composition of the Plateau State Customary Court of Appeal

Located at No. 14 Kano Road, Jos, the Plateau State customary court of appeal, as a pioneer of all other customary courts of appeal across Nigeria, was established under the provisions of the constitution of the Federal Republic of Nigeria 1979, via the customary court of appeal law of 2nd October, 1979.[62] The customary court of appeal is a superior court of record, just like the state High Court or the Sharia court of appeal. Its primary function is the adjudication of appeals from Area courts, including upper Area courts, in respect of cases involving questions of customary law.[63] It is presided over by the president, who presides as the head of the court, as well as supervises the administrative affairs of the court.

[62] See S.1 of the *Plateau State Customary Court of Appeal Edict, Laws and Rules 1979*
[63] See S.3 (1) of the *Customary court of Appeal Edict…….*

Apart from the president, there are also other associate Judges. Since its establishment in Plateau State, it has been blessed with five honourable presidents and their associates or co-judges. Hon. Justice Yusuf Yakubu was the pioneer president from 1980 to 1997. His associate judges were Hon Justice I. S. Gofwen, Justice S. G. Pam, Justice M.B. Garba, Justice J. H. Dandaura and Justice G. A. Sha. Following the creation of Nasarawa State from the defunct Plateau State, which moved Justice Yakubu to the new state, Hon Justice Gabriel Adamu Sha became the new president of the court from 1997 – 2012. His co-judges were Justice L. C. Miner, Justice J. A. Kyentu, Justice Sabo Buge, Justice Daniel G. Gotep and Justice A. I. Sagai. Justice Julia Asabe Kyentu was appointed president from 2012 to 2020. Her associate judges were Hon Justice A. I. Sagai, Justice P. S. Dapit, Justice D. D. Gopep, Justice Blessing L. Dalyop and Justice Jacob Azi Atsen. Following Kyentu's retirement from the higher bench in 2020, Justice P. S. Dapit became president from 2020 – 2021. Hon Justice Dapit's co-judges were Justice Blessing L. Dalyop, Justice Jacob Azi Atsen, Justice V. J. Dadom and Justice P. N. Njar. Justice Blessing L. Dalyop assumed the duties of president in 2021. By 2023, Justice T. T. Jekkei was appointed as a judge of the court. Consequently, the current composition of co-judges under Justice Dalyop is Hon Justice Jacob A. Atsen, Justice V. J. Dadom, Justice P. N. Njar, Justice E. S. Munlang, Justice G. E. Dashe, and Justice T. T. Jekkei.[64]

The president is the head of the court and carries the general supervision of the administration through the office of the chief registrar (CR). In Plateau State, the customary court of appeal is divided into court 1 and court 2 to ensure the speedy dispensation of justice. Court 1 is presided over by the president, while the next judge in the seniority hierarchy presides over

[64] Interview with Pauline Nanlep Njar, Female, 52 years old, Chief Registrar, Customary Court of Appeal, Jos, 20th May, 2017

Court 2. Currently, the president (Justice Dalyop) presides over panel 1, while Hon. Justice Jacob Azi Atsen presides over panel 2.[65]

The chief registrar is the court's administrative head and serves as the chief accounting officer. Her office is the melting pot of the court's administration, and its activities revolve around the Customary Court of Appeal. The deputy chief registrar and the director of finance and supplies also assist the chief registrar since the establishment of the CCA in Plateau State, Bar. L. C. Supen was the pioneer Chief Registrar, 1979 – 1992, followed by Bar. Thomas D. Sambo, 1992 – 2004, Bar. Colastica Eneche 2004 – 2010, Bar. Patrick Dapit 2010 – 2013, Bar. Nanpon Dadi 2013 – 2015 (now Justice) in the High Court Division, Bar. Pauline Nanlep Njar 2015 – 2020, Bar. T. T. Jekkei 2020 – 2021. Currently, Bar. T. N. Kparbong is the chief registrar.[66]

The deputy chief registrar of the CCA, Jos (Mr Venchak Simon Gaba), was appointed in 2017. He doubled as the director of litigation, deputised for the chief Registrar, and further liaised between the litigation officer and the office of the president before his eventual elevation to the higher bench of the Federal Capital Territory. He was succeeded by Bar. T.T. Jekkei, who in the course of time became the court's chief registrar and was subsequently appointed as one of the judges of the court in 2021. The current deputy chief registrar of the CCA is Bar. Joseph Chollom.[67]

The staff strength of the Plateau State customary court currently stands at 73. The general administration of the court is divided into three: administration, finance, and litigation. The chief registrar heads the General administration; litigation is handled by the deputy chief registrar, while the director of finance and supplies heads finance. All three major sections also have their subunits.

[65] interview with Pauline Njar,
[66] Interview with Pauline Njar
[67] Interview with Pauline Njar,

In the office of the general administration, headed by the chief registrar, are the audit unit, general welfare of staff and anything administrative, open and secret registries, security, and drivers.[68]

The litigation department has sub-units, including the process office, litigation officers, and record compilation for the Court of Appeal. The Finance/Accounts department has a salary section, store, purchasing, expenditure and revenue. Also, there are other key heads of sections, such as the staff officer, the head of internal audit, the store officers, and the maintenance unit or officers.[69]

Modus Operandi/Process of the Customary Legal System from Lower Courts to the Customary Court of Appeal and other Appellate Courts

Under the Plateau State Customary Court of Appeal Law, 1979, the court shall be deemed constituted for hearing appeals under that law if it consists of three Judges.[70] The jurisdiction of the Plateau State Customary Court of Appeal relates to questions of customary law. "Customary Law" means the rule of conduct which governs legal relationships as established by custom and usage and not forming part of the common law of England nor formally enacted by the Plateau State House of Assembly, but includes any declaration or modification of customary law under the Local Government Edict, but does not include Islamic personal Law.[71]

Accordingly, any question of customary law regarding marriage concluded in accordance with that law, including a question relating to the dissolution of a marriage or a question that depends on such a marriage and refers to family relationships or guardianship of an infant.[72] The

[68] Interview with Pauline Njar
[69] Interview Pauline Njar
[70] S.4 (3) of the Customary Court of Appeal law 1979
[71] S.2 paragraph 7 of the Customary Court of Appeal law 1979
[72] S.4. 1(a) of the C. C. A. law 1979.

customary court of appeal can hear inheritance and land matters. Therefore, the court in exercise of the jurisdiction vested on it by this law as regards both substantive and practice and procedure shall administer, observe and enforce the observance of the principles and provision of (a) the Area Court Edict; (b) the Area Court Edict and any other law affecting the area court in so far as it pertains to a cause or matter involving customary law. (c) Natural justice, equity and good conscience.[73]

The department of litigation is the nucleus of the customary court of appeal's activities. Cases from the lower courts below on appeal come straight to the Registry of litigation. The Registrar in the litigation registry is responsible for receiving such cases. A case may be filed by the litigant himself, through his counsel, or by anyone whom the litigant has delegated to file the case on his behalf within 30 days to appeal against the decision of the lower court in question. Another means is to file an appeal by way of motion if the litigant could not file his appeal within the time frame of 30 days, so long as he has genuine or cogent reasons for not filing his appeal within time.[74]

Currently, there are five Registrars in the litigation Registry, each with their own duty schedule, and all schedules revolve around the litigation department. After receiving and registering an appeal, the litigation officer issues the litigant the Notice of Appeal form to fill out. But if counsel is representing him, it is the counsel's duty to file the Notice and grounds of appeal within time, after which he will return to the lower court and obtain the record of proceedings. Subsequently, he will file a motion to file additional grounds of appeal. When the motion is heard and disposed of, he can now file his additional grounds of appeal and shall be expected within 30

[73] S.13 (a) (b) and (c) of the Customary Court of Appeal law 1979
[74] Interview with Samson Joseph Sambo, Male, 47 years old, Litigation Officer, Customary Court of Appeal, Jos, 19th May, 2017.

days to file his written brief of argument. If he also files his notice of appeal and notice of grounds of appeal within time, from that day, the 30 days start running within which he could file his written brief of argument. If he does not file the written brief within those 30 days, the matter is struck out.[75] If, however, after 30 days of a case being struck out and no motion to relist is made within 30 days, the matter is automatically dismissed and can never be heard again by the court. One thing worthy of note here is that an appellant, after filing his briefs of argument, has 30 days within which to respond. If the Respondent fails to respond within the stipulated days (30 days), then the Honourable court will use its discretion to go ahead and give judgments in the absence or non-filing of the Respondent's briefs of argument, notwithstanding.[76] It is now left to the Court of Appeal to determine the matter if he approaches it. The Court of Appeal has its own rules, but as far as the customary Court of Appeal is concerned, the matter had been finally laid to rest.[77]

The litigation Department, as we noted earlier, also has sub-units such as the process office and the compilation of records for the Court of Appeal. The officers staffing these units comprised the Bailiff, process and court clerk. Each of these plays a significant role in the smooth running of the daily litigation activities of the customary court of Appeal.[78]

The Role of the Bailiff

The primary role of the Bailiff before the customary court of Appeal basically is to serve litigants with duly issued court processes in respect to the matters before it. First and foremost, it is the responsibility of the Bailiff to serve the Respondent with the Notice of Appeal to put him on notice

[75] Interview with Samson Joseph Sambo.
[76] Interview with Samson Joseph Sambo,
[77] Interview with Samson Joseph Sambo
[78] Interview with Samson Joseph Sambo

that there is an appeal against the decision of the lower court. When a date is issued for the hearing of the appeal, he will go and serve the Respondent with the hearing notice, additional grounds of appeal, as well as the appellant's brief of argument. On the appointed day, they will come to court and hear what the Appellant has to say. Subsequently, the Respondent will be given 30 days to file his briefs of argument in response to the Appellant's briefs of argument. It is the duty of the Bailiff to go and serve the Appellant with the Respondent's brief of argument.[79] There are other processes that the Bailiff also effect service on litigants, e.g., Motion on Notice, Exparte Motion, Hearing Notices, Reply/or brief argument. The appellant typically files this reply upon the Respondent's brief of argument if the Respondent raises new issues in his brief of argument. In a nutshell, it is the duty and obligation of the Bailiff to go and serve the other party with any process filed in the Registry of the Plateau State Customary Court of Appeal by any party.[80]

The activities of the Bailiffs are not limited to the service of processes alone. Still, they, in conjunction with other categories of staff of lower courts and security agents, enforce judgments by way of the writ of FAFAE, particularly with the Bailiffs of the lower courts that determined the matter earlier, to implement judgments such as the delivery of custody or the transfer of ownership and inheritance. This they do, along with law enforcement officers such as men of the Nigerian Police Force. They do this irrespective of whether the customary court of Appeal affirms or nullifies the judgment of the Lower court.[81]

The Role of the Clerks of Court

[79] Interview with Luka Barry, Male, 44 years old, Chief Bailiff/Clerk of court, Customary Court of Appeal, Jos, 19th May, 2017
[80] Interview with Luka Barry.
[81] Interview with Luka Barry

The clerks of court also play a vital role in the adjudication process before the state customary court of Appeal. It is the responsibility of the clerks to prepare the cause list for the judges. The Plateau State Court of Appeal, as we noted earlier, is a multi-member court, and as such, its members must appear on the cause list for cases coming up. It is also their duty to arrange the case files for that day's sitting or court session. Usually, before the court starts sitting, the clerks will organise the case files and place them where each Judge will sit, and he must have all such files in respect of all the cases coming up that day.[82]

When the court starts sitting, the court clerk will call the cases as counsel picks them up. Two clerks usually sit at once during each court session. One of them translates/interprets, while the other adds minutes or minutes' adjournments to the case files and orders issued by the court. If there is a judgment to be delivered, it is the duty of the clerks to arrange for the files of such cases to come up first so that judgment can be heard or taken before the court continues with its remaining cases slated for hearing. The same thing applies to Rulings. Rulings must be taken before other matters are heard. The clerks typically inform the Registrar of any other orders made by the Honourable Court. After the court session, the clerks are responsible for returning the case files to the Judges' chamber.[83]

The Role of the Process Clerks

Before the Plateau State Customary Court of Appeal, the process clerks are responsible for filing or keeping disposed files in the process office. They are also responsible for keeping and recording disposed files from the process office. Importantly, they also sort out already disposed of files

[82] Interview with Chancnan Mainer, Male, 42 years old, Clerk of Court, Customary Court of Appeal, Jos 19/05/017
[83] Interview with Chancnan Mainer.

whenever the Honourable court needs them. Again, they sort out disposed files when litigants or their counsel need them.[84]

Determination of Appeals by Judges

Upon an appeal filed at the registry of the court and the registrar of the court having minute the file to the president of the court for direction, the president may, after studying the file, fix a date for hearing or give any further directive that might be necessary for the just determination of the appeal. Before then, the court's registry ensures that sufficient copies of every filed process are made available to all judges of the court and to litigants or their lawyers. When the president fixes a date for the hearing of an appeal, the registry of the court must also ensure that all the necessary court processes and hearing notice are served on the litigants or their lawyers and the proof of service of the processes must be filed in the court's file accompanied by an affidavit of personal service duly served by the bailiff of the court.

The Plateau State Customary Court of Appeal usually maintains two panels, each headed by the court president. The president presides over court 1, and the next judge in hierarchy presides over court 2. Each panel consists of a quorum of three Judges.[85] The president decides which appeal is heard by which of the panels. When an appeal is determined by either panel, copies of the judgment are circulated to all the judges of the court to ensure uniformity in their decisions. To ensure the quick dispensation of justice, the rules of court of the Plateau State Customary Court of Appeal provide for brief writing, and this has, no doubt, fast-tracked the hearing of appeals filed before it. The decision of either panel is the decision of the entire court, because it is one court,

[84] Interview with Ayo Inkus, Male, Process Clerk/Bailiff, Customary Court of Appeal, Jos
[85] Interview with Justice Jacob Azi Atsen, Male, Customary Court of Appeal, Jos, 20th May, 2017

though two panels. The two panels are not supposed to give conflicting choices. Once the decision of either of the panels is delivered, having been read to the litigants or through their counsels if they are represented, the appeal is laid to rest, except that any aggrieved party may proceed on further appeal to the Federal Court of Appeal.[86]

Achievements of the Plateau State Customary Court of Appeal

The Plateau State Customary Court of Appeal has done well in handling matters that have come before it as an appellate court for adjudication—most of the cases it has dealt with border on land matters, particularly during the rainy seasons. A high volume of cases always commenced with the onset of the rains and would remain so until September. This is probably the case because it is done to restrain the successful party that obtained judgment in the lower court. Thus, the aggrieved party would run to the court to stop him from reaping the fruits of his judgment at the lower court.[87] Statistical figures show that cases filed before the court related to land matters range between 4 per week and about 100 annually. There is also serious traffic in matters other than land issues, such as custody of children, marriages, and inheritance under native law and custom, which come to the court for determination. At least 2–3 such cases are filed weekly.[88] It does not take more than a year to dispose of a matter. On average, from January 2017 to date, the CCA has successfully disposed of at least 250 such cases, including those struck out for want of prosecution.[89]

From the year 1980, when the court was inaugurated, to 2023, it has received about 8,000Appeals from lower courts and has successfully disposed of not less than 7,600. Thus, the

[86] Interview with JusticeJacob Atsen.
[87] Interview with Samson Joseph Sambo..
[88] Interview with Samson Joseph Sambo
[89] Interview with Samson Joseph Sambo

CCA has been able to reduce the workload that would otherwise have gone to the High Court of Justice for adjudication, which would have equally affected the delay in justice.[90].

The CCA has also brought justice to litigants' doorsteps and drastically reduced the cost of litigation for them. It is essential to state again, as we have mentioned earlier, that the CCA, in consonance with S. 17(1) of the law establishing it, which allows it to hold sessions anywhere, has held sessions throughout the years in Pankshin, Lantang, and Shendam, to listen to appeals emanating from the rural areas. This has had a tremendous impact on the litigants.[91]

Challenges Bedevilling the Plateau State Customary Court of Appeal

The challenges confronting the Plateau State Customary Court of Appeal have primarily concerned its structure, practice, and resources. The structure of the judicial system in Plateau State and Nigeria in general leaves much to be desired. The state judiciary is divided into three divisions: the High Court of Justice, the Customary Court of Appeal, and the Sharia Court of Appeal. Each of these divisions is headed by a luminary known as the head of court. Thus, while the Chief Judge of the state presides over the high court division, the customary court of appeal and the sharia court of appeal are headed by the President and the Grand Khadi, respectively. Although all the three divisions of courts are superior Courts of record and are manned by Justices who are on the same hierarchy and possess same qualification, however, in practice there is severe stagnation of Customary court of Appeal judges and Khadis as the President or Grand Khadi who are heads of courts cannot become or be elevated to the office of the Chief Judge of Plateau state - the simple

[90] Interview with Samson Joseph Sambo
[91] Interview with Samson Joseph Sambo

reason being that they are heads of different institutions with different jurisdictions although within the same system.[92]

In practice, the challenge arises from the delay in transmitting lower court proceedings to the CCA. Thus, it causes undue delay in filing grounds of appeal, which, by extension, also affects the quick dispensation of justice or the determination of the matter. Again, there is the challenge posed by unnecessary delays in the filing of processes by counsels on time, such as briefs of argument or additional grounds of appeal, rendering it difficult for the matter to be determined in time. Most times, counsels do not file in their processes, for example, written briefs of argument, etc., until a matter is slated for judgment, just to arrest the delivery of judgment or delay final determination of the matter.[93]

The third major challenge that has bedevilled the system's smooth running has been the lack of financial autonomy or independence, which has hampered the court's ability to perform its statutory functions effectively. The result of this lack of financial independence has been an inadequate budget for stationery, electricity, computers, and furniture.[94] Most of the time, judgments are typed or printed outside or in business centres. Most of the furniture is not just there, or, at best, dilapidated, and as such does not befit the status of the occupants of the offices. The entire complex, an ancient structure from colonial times, needs a major renovation.

Conclusion

[92] Interview with Justice Jacob Atsen.
[93] Interview with Justice Jacob Atsen
[94] Interview with Pauline Njar,

This paper has briefly examined the changes and continuities in the activities of the Plateau State Customary Court of Appeal, Jos. It was discovered that a highly effective system of justice administration prevailed across all Nigerian ethnic societies in pre-colonial times, and their traditional justice practices were inherently fair and flexible. Above all, it shaped the character of the judicial and other social functions of African societies, helping to weld the people together and enabling them to act as one. These characteristics provided the basic norms of social control, basic standards of behaviour acceptable to all members of the community, and, as well, embraced the traditional code of conduct, thereby strengthening their ancestral unity. Again, it was discovered that the violent imposition of colonial institutions and systems, such as the doctrine of English Common law and the establishment of native court systems in Nigeria, altered the people's traditional judicial practice, culminating in the changes that have been effected in their judicial systems to date. The structure and powers of the colonial courts laid the foundation for the kind and magnitude of corruption that has bedevilled the Nigerian justice system to 2023.

It has also been shown in this study that the primary reason for the establishment of the Plateau State Customary Court of Appeal was not only to bring justice to the doorstep of the common man but also to ensure speedy dispensation of Justice. This mandate has been wonderfully achieved, as it has reduced the high flow of traffic to the High Court of Justice. These achievements would not have been possible without the style of leadership provided by management on the one hand, and the enthusiasm shown by both sectional and Unit heads, as well as the supporting staff of the court, in discharging the responsibilities saddled on them diligently to move the system forward.

Delays in both the transmission of lower courts' proceedings to the State Customary Court of Appeal and the timely filing of processes by counsel, such as briefs of argument or additional grounds of appeal, were identified as significant constraints that have affected the prompt dispensation of appeals by the State Customary Court of Appeal. Other challenges identified included the unavailability of resources such as overhead costs, stationery, an unreliable electricity supply, insufficient computers, and inadequate furniture. It is hoped that the government will consequently be alive to its responsibility to ensure that resources are made available to this great institution to enable it to discharge its statutory duty effectively. A situation where court Rulings and judgments are taken out for printing does not speak well of the system. This must be checked.

The stagnation of Customary Court of Appeal judges and their non-elevation to the office of the Chief Judge of the state were further identified as challenges being faced not only by Plateau state judges but also by other Customary Court of Appeal judges in states that have it. Thus, one is tempted to ask, is this an artificial phenomenon or what? If it is not an artificial problem but an issue arising from the Law or an edict establishing the court, can't such law be reviewed, amended or repealed in the interest of justice and fair play? Definitely, this law deserves urgent amendment or review.

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See s. 14 (3) of the Evidence Act 1960.

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