Strengthening the Place of the Customary Court in Nigeria: Imperative for Enhanced Justice Delivery

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Abstract

Customary Courts are practically the lowest courts in the hierarchy of courts in Nigeria. They are not established by the Constitution of the Federal Republic of Nigeria. Rather they are inferior court established by laws enacted by the Houses of Assembly of the relevant state to handle disputes at the grass root. This court is vested with coercive and judicial powers to carry out her functions and duties in the dispensation of justice. This court is also vested with jurisdiction to perform certain duties in the delivery of justice system. The plank of this article is to interrogate the jurisdiction and powers of the customary court to ascertain if the extant powers, jurisdiction and work environment of the Customary Court in Nigeria is adequate to enable her perform her functions optimally. This article adopted the doctrinal method of research with narrative and descriptive approach. Primary sources of data like the Constitution, Statutes and Case Laws were consulted and accessed in the course of this work. Secondary sources of data such as journal articles, books and internet materials were also appraised in the course of this work. The paper found that there is a need to strengthen the place of the Customary Courts in Nigeria to enhance her justice delivery capacity. The work identified the challenges and prospects of the court in addressing this issue. The paper recommended the amendment of certain laws and court rules to enhance the jurisdiction of the Customary Court in Nigeria, reduction of the cost of litigation, resort to Alternative Dispute Resolution (ADR) methods, decongestion of the court dockets reorientation of the court judges and staff and the improvement of their welfare package as some of the ways to strengthen the place of the Customary Courts in Nigeria.

Key words: Customary Court, Justice, Justice Delivery, Nigeria

1. Introduction

Customary courts are practically the lowest courts in the hierarchy of court system in Nigeria. They are the lowest court among the courts designated as inferior courts. They are established by laws of various Houses of Assembly of the States of the Federation. They are established to handle disputes at the grassroots level of the 3rd tier of Government. They are established pursuant to the powers conferred on the House of Assembly of a state by of the Federation.

However, section **6(4)** of the Constitution leaves its creation to discretion of the states. Customary courts system has become a living institution in the country called Nigeria, having regards to the approval accorded to it in the Constitution.[1] The nature, essence and functions of customary court were reiterated in the decision of the Supreme Court of Nigeria in the case of *Erhunmwunse v Ehanire*[2] where the Court stated that:

> Customary courts however are not superior courts of records. No pleading is filed in them either. Accordingly, the technical rules and or procedure which governs the trials of action in the superior courts of record are not strictly applied in those courts. Trials are conducted in a summary manner and the only opportunity a defendant has to project his case is by oral evidence. In this connection, it cannot be over emphasized that the form of action in customary court must not be stressed

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[1] *Ibid*

[2] [2003] FWLR 9Pt. 170) 1511 at 1525-1524

> when the issue involved is clear. The law is long settled that it is the substance of such actions that is the determinant factor.

The above dictum of the Supreme Court shows the numerous advantages inherent in ventilating one's grievance at the customary court. It also shows that customary court by its very nature is a court that is mostly concerned with substantial justice and not technical justice. The nature and essence of a customary court portray the need to strengthen the customary court system to enhance an effective and efficient justice delivery in Nigeria.

Since the goal of this paper is to achieve enhanced justice delivery, it is crucial that the paper conducts conceptual clarification of the word Justice. "Justice" in its ordinary meaning connotes fairness, just, equitable. Justice may also mean the ethical and philosophical idea that people are to be treated impartially, fairly, properly and reasonably by the law and by arbiters of the law, that law is to ensure that no harm befalls another and that where harm is alleged, a remedial action is taken. Justice is a concept of moral righteousness based on ethics, rationality, natural law, religion or equity. It is also the act of being just and or fair. Justice delivery on the other hand appear to be the dispensation of fairness, equity, just, rightness in cases brought before a court of law for determination. It is a basic principle of justice that it should be delivered without delay.[3]Magna Carta stated that:

"To no one will we refuse or delay right or justice[4], justice delayed is justice denied, especially to victims of crimes[5].

The need to enhance justice, delivery is to make the justice system more efficient and effective so as to ensure that parties before a court of law get fair treatment, obtain commensurate recompense equivalent to the injury which they have suffered. It is also to ensure that parties ventilate their grievances timeously without unreasonable delay that may render whatever result they may obtain from court otiose or academic. The question now becomes, what is the place of customary court in the whole gamut of justice delivery system? The word "place" presupposes in this very contest, the positions, the status, where customary court stands in the justice delivery system. In a contextual connotation, it means the role of customary court in ensuring an enhanced justice delivery in Nigeria as whole.

From the foregoing conceptual clarification, the purpose of this paper is to answer the following questions. First, where does the customary courts come in the quest for ensuring an enhanced justice delivery? And secondly, what can be done to customary court to reposition the court for an enhanced justice delivery? It is important to say at this juncture that we cannot really grab the place of customary court for enhanced justice delivery without first considering their jurisdiction in Nigeria.

This will enable us to know the place of customary court in the justice delivery system and also help us find out what the inhibiting factors that prevent an enhanced justice delivery as well as the necessary steps to be taken to strengthen the customary court towards enhanced justice delivery in Nigeria.

[3]E Aringe, Towards Effective Justice Delivery system in Nigeria, Guardian Newspaper, 22nd March 2022 available at http://guardian.ng> assessed on the 27th July 2024 at 1:00 pm.
[4]*Supra*
[5] *Supra*

2. Jurisdiction of Customary Courts in Nigeria

The word jurisdiction is defined literally as the official power to make legal decisions and judgments[6] by law courts. It can further be defined as the power or authority of a court of law or tribunal to adjudicate a matter and deliver abiding judgment[7]. It is the authority/power a court has to adjudicate upon cases within the territory of such court.[8]Jurisdiction is fundamental and critical as a court's adjudicating powers, without which all a court undertakes in a matter is a sheer waste of time and a nullity. The importance of jurisdiction was summarized by the Supreme Court in the case of *Ogbuji v Amadi.*[9] According to the Supreme Court, the importance of jurisdiction in any adjudication cannot be over-emphasized. It is often described as the life wire of the adjudication process. Without it, every step taken in the case amounts to a nullity, no matter how well conducted and no matter how erudite the decision emanating there from. Consequently, without the necessary jurisdiction, a court cannot make any valid order[10].

The jurisdiction of a court to adjudicate in any cause or matter is conferred on it and circumscribed by the constitution and/or statute that created it. No court in the land is authorized to grant to itself or be granted by parties the power to hear a matter when it is not endowed with it. If that court ventures without the vires, the entire proceedings and the judgment no matter how brilliantly conducted comes to naught, as it is a nullity[11].For purposes of considering jurisdiction of customary courts in Nigeria, this paper will use Anambra, Lagos and Rivers States as case studies to examine the jurisdiction of customary courts in Nigeria.

2.1 Jurisdiction of Customary Court in Anambra State

Customary Courts exercise both civil and criminal jurisdiction depending on its area of jurisdiction as provided under the Customary Courts Laws of Anambra, Lagos and Rivers States. This paper will focus on jurisdiction of customary courts in Nigeria using Customary Courts Laws of Anambra, Lagos and Rivers States as case studies.

2.1.1 Civil Jurisdiction of Customary Court in Anambra State

Under the Customary Courts Law of Anambra State, 2010[12]Customary Courts are established to exercise civil jurisdiction in the following areas:

i. Land causes and land matters is unlimited.

ii. Matrimonial causes and other matters between persons married under the customary law is unlimited.

iii. Debt, demand or damages claimed between persons married under customary law is unlimited.

iv. Custody of children and other causes and matters relating to marriage under customary law is unlimited.

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[6]ML Munir, An overview of the jurisdiction of Area/Sharia/Customary Courts, a paper presented at the Virtual National Workshop, organised by the National Judicial Institute, Abuja on the 20th -22nd April, 2022.
[7]*Ibid.*
[8] *Ikechukwu v Nwoye* [2013] 56 NSCQR (pt2) 991; *Mohammed Abacha v Federal Republic of Nigeria* [2014] 57 NSCQR (pt 1) 99
[9] [2022] 5 NWLR (Pt 1822) 99.
[10] *Utih v. Onoyivwe* [1991] 1 NWLR (pt 166) 166; *Shitta-Bey v. A-G Fed* [1998] 10 NWLR (pt 570) 392.
[11] *Jev v Iyortyom* [2014] 14 NWLR (pt 1428) 575; *Mamman v State* [2022] 14 NWLR (pt 1851) 409-596.
[12] s.12(1)(2) of the first schedule column 1.

v. Causes and matters relating to inheritance upon intestacy under the customary law and grant of power or authority to any person to administer the estate of an intestate under the customary law is up to ₦1,000,000.

vi. Civil actions in contracts and torts at common law and at customary law is up to ₦1, 000,000.

The above jurisdiction shows that a small volume of cases and subject matters that can be handled by customary courts thereby leaving a large number of cases for the other higher courts. This will no doubt clog the wheels of an enhanced justice delivery system within the state.

However, the jurisdiction of the Customary Court to entertain land matters which is described as "unlimited" in the schedule to the Customary Court Law of Anambra State, 2010, is an affront on the legislative powers of the National Assembly. The land use Act in section 39(1) states:

"The High Court shall have exclusive original jurisdiction in respect of the following proceedings (a) proceedings in respect of any land the subject of a Statutory Right of Occupancy granted by the Governor or deemed to be granted by him under the Act and for the purpose of this paragraph, proceedings includes proceedings for a declaration of title to a statutory right of Occupancy (b) Proceedings to determine any question as to the person entitle to compensation payable for improvements on the land under the Act".

The implication of the above stated provision of section 39(1) of the Land Use Act, is that the High Court has exclusive jurisdiction in respect of lands which are in urban areas which are the subject matter of Statutory Rights of Occupancy. In the light of that the Customary Court cannot have unlimited jurisdiction in land matters. The provisions of section 12 and the schedule to the Customary Courts Law will naturally kowtow to the provisions of the Land Use Act, moreso, when the Land Use Act has become part of the 1999 Constitution[13]

The Customary Court can however hear and determine issues of inheritance to land as against issue of declaration of title to land for even landed properties in the urban areas. The Court of Appeal in *Moneke & Anor v. Okonkwo*[14] held that section 24(b) of the Land Use Act provides that the devolution of the right of an occupier upon death shall in the case of statutory right of occupancy (unless any non-customary law or other customary law applies) be regulated by the customary law of the deceased occupier at the time of his death relating to the distribution of property of like nature to a right of occupancy" In interpreting section 24(b) of the Land Use Act the court further held that even when a land is subject to a statutory right of occupancy to his/her heir or successor upon death shall be regulated by a Customary Law of the deceased owner/occupier. A distinction has to be made between the issue of declaration of title to land and devolution of rights of owner/occupier of land subject of statutory right of occupancy at the time death" in the former, the Customary Court lacks the requisite vires, but in the latter, he has the vires[15]

2.1.2 Criminal Jurisdiction of Customary Court in Anambra State

Customary courts in Anambra State have jurisdiction to hear and determine criminal causes and matters on breaches of local government bye-laws and other offences committed in contravention of

[13] See S 1; and 4(5) of the 1999 Constitution
[14] (2017) LPELR-435223 (CA) P. 107
[15] *Moneke & Anor v. Okonkwo , Supra, Okoye v. Obikwelu* AWCC/131/2022 delivered on 1st August, 2023

any written law punishable by 14 days imprisonment or 12 months imprisonment or a fine not exceeding fifty thousand (₦50,000).[16]

Customary courts also have criminal jurisdiction to hear and determine criminal causes and matters on stealing of farm produce or livestock the market value of which does not exceed One Hundred and Fifty Thousand Naira and the penalty is Twelve (12) months imprisonment or (₦50,000) fine[17].

Section 58(1) of the customary courts law of Anambra State makes it an offence for a person to sit as a member of customary court without due authority; the law provides that such a person shall be liable on conviction before the high court to imprisonment for 12 months or to a fine of ₦100,000 or to both such imprisonment and fine.

Section 59 of the same law confers criminal jurisdiction on the customary court to hear and determine cases of assaults, obstruction and molestation of any person acting in execution of his duty under the Customary Court Law of Anambra State or only a person who aids or incents any person to so assault or obstruct such person carrying out his duties under the Customary Court Law and such a person shall be guilty of an offence and liable on conviction to a fine of ₦100,000 or to imprisonment. Sections 60-68 of the same law confers criminal jurisdiction on the customary court to hear and determine cases like demanding unauthorized fees and fine, corruption, contempt of court, refusal to give evidence, giving false evidence, perverting course of justice, dismissal of servant for giving evidence and falsification of records and returns. Most of the above offences are mainly to protect and preserve the status of the court as a court.

2.2 Jurisdiction of Customary Court in Lagos State

2.2.1 Civil Jurisdiction of Customary Court in Lagos State

Customary courts in Lagos State have civil jurisdiction as provided under section 22(1) and Part 1 of the First Schedule of the Lagos State Customary Court Law, 2011 to exercise unlimited jurisdiction in matrimonial causes and other matters between persons married under customary law or arising from or connected with a union contracted under customary law and related matters. Customary courts in Lagos State have unlimited jurisdiction in suits relating to the guardianship and custody of children under the customary law[18].

Also customary courts in Lagos State have jurisdiction in causes and matter relating to inheritance upon intestacy and the administration of intestate estates under customary law provided that the customary court shall not have jurisdiction where the value of the property or claim exceed Five Hundred Thousand naira (₦500,000)[19]. Finally customary courts of Lagos have civil jurisdiction in other causes and matters as conferred under any bye-law passed by a local government provided the claim does not exceed Five Hundred Thousand Naira (₦500,000).[20]

2.2.2 Criminal Jurisdiction of Customary Court in Lagos State

Customary courts in Lagos State have criminal jurisdiction for summary trial of offences created under a bye-law of a local government and may impose the punishment provided by the bye-law for that offence on conviction.[21] Customary courts in Lagos State also have criminal jurisdiction to

[16] Customary Courts Law, 2010 of Anambra State S.12 first schedule column 2.
[17] *Ibid*
[18] Lagos State Customary Courts Law, 2011 S.22. First Schedule, Part 1
[19] *Ibid*
[20] *Ibid*
[21] Lagos State Customary Court (Amendment) Law 2018 S. 22A(1)(2) &(3) first schedule part 2

impose the punishment authorized by law in respect of contempt of court committed in the face of the court.[22] Notwithstanding the provisions of any law, the court shall not exercise jurisdiction save as provided for in this law[23]

The fine which a customary court in Lagos State may impose in respect of any offence shall not exceed in the case of:

a. An individual, Fifty Thousand Naira (₦50,000); and
b. A corporate offender, Five Hundred Thousand Naira (₦500,000) only.

Also, the penalty which a customary court in Lagos State may impose shall not exceed one (1) month imprisonment or six (6) weeks community service.[24]

2.3 Jurisdiction of Customary Court in Rivers State

2.3.1 Civil Jurisdiction of Customary Court in Rivers State

Civil jurisdictions of customary courts in Rivers State. The Rivers State customary courts law No. 3 2014 confers unlimited jurisdiction to customary courts in River state on land causes and land matters i.e., causes and matters relating to the customary right of occupancy, occupation or possession of land in non-urban areas.[25] The customary courts in Rivers State have unlimited jurisdiction on matrimonial causes in respect of marriage under the customary law[26]. The customary courts in Rivers State have unlimited jurisdiction on debt, demand or damages claimed between persons married under customary law or arising from marriage under customary law[27]. The customary courts in Rivers State have unlimited jurisdiction on custody of children, chieftaincy causes and matters, matters relating to inheritance upon intestacy under customary law and grant of power or authority to a person to administer the estate of an intestate under customary law and at customary[28]. Still under civil jurisdiction of customary courts in Rivers State, the law provides that civil actions in contracts and torts at common law and at customary law is up to Five Million Naira (₦5,000,000).

2.3.2 Criminal Jurisdiction of Customary Court in Rivers State

The criminal jurisdictions of customary courts in Rivers State are provided in section 6(2) of the Rivers State Customary Courts Law No.3 2014, second schedule column 1 and 2. The law provided the following offences, penalty, and limits of jurisdiction of customary courts in Rivers State to includes:

[22] *Ibid*
[23] *Ibid* s. 41 (1)(2)first schedule part 2
[24] *Ibid*
[25] Rivers State Customary Courts Law, 2014 S. 6(1) and First Schedule Column 1 &2
[26] *Ibid*
[27] *Ibid*
[28] *Ibid*

Section 6 (2) Criminal Causes and Matters

(Column 1) **Offences**	**(Column 2)** **Limits of Jurisdiction of Customary Court**
1. Adjudicating without Authority (s.60)	A fine of N50,000 or 12 months imprisonment or both.
2. Interference with persons acting this law (s.61)	A fine of N50,000 or 12 months imprisonment or both.
3. Exaction of fees or fines in excess of those authorized (s.62)	A fine of N50,000 or 12 months imprisonment or both.
4. Corruption by Chairmen, members, officers persons imprisonment or both.	A fine of N100,000 or 7 years and other servants of Customary court (s.63)
5. Willful default in performance of duty (s.64)	A fine of N20,000 or 2 months imprisonment or both
6. Giving false evidence (s.65)	A fine of N50,000 or 18 months imprisonment or both.
7. Rendering false return (s.66)	A fine of N50,000 or 18 month imprisonment or both.
8. Refusal to give evidence and insulting behaviour (s.67)	A fine of N10,000 or 1 month imprisonment or both.
9. Refusal to obey summons of Customary Court (s.68)	A fine of N5,000 or in default of payment, to a term of imprisonment for 14 days.
10. Causing person to refrain, delay, etc. from giving Evidence (s.69)	A fine of N50,000 or 6 months imprisonment or both.
11. Victimization of servant etc. (s.70)	A fine of N20,000 or 2 months imprisonment or both.
12. Acts prejudicial to process of judgement (s.71)	A fine of N100,000 or 5 years imprisonment or both.
13. Falsification of record of proceedings (s.72)	A fine of N100,000 or 7 years imprisonment or both.
14. Breach of local government bye-laws of the statutory corporations	As provided in the bye-laws.
15. Offences created by any written law punishable by imprisonment not exceeding 5 years or a fine not exceeding twenty thousand naira.	A fine not exceeding N20,000 or not more than 5 years imprisonment.
16. Stealing of farm produce, livestock, aquatic food products or fishing implements of the value N10.00 (ten naira)	A fine not exceeding N20,000 or not more than 5 years imprisonment
17. Assault fighting and breach of the peace	A fine not exceeding N20,000 or not more than 5 year imprisonment.

3. Factors Inhibiting Enhanced Justice Delivery by Customary Court in Nigeria

To strengthen customary court for enhanced justice delivery, there are issues that must be addressed in the customary court system which if successfully addressed will reposition the customary court for enhanced justice delivery in Nigeria. These factors are:

a. Dilapidated Customary Court Rooms

Effective justice delivery may hardly be achieved where presidents and members of the customary courts operate in dilapidated court rooms. Some of the court rooms are not in the best shape, inadequate facilities for a conducive work environment. The government has made efforts to address this issue but more work is needed to repair dilapidated courtrooms especially as it concerns the Customary Court.

b. Absence of Information Technology (IT) Court System

At the customary court level, there is no presence of information technological instruments. As in most courts in Nigeria, this issue has impeded the course of enhanced justice delivery in so many ways as the Customary court members still write in long hand like their counterparts in the inferior and superior courts of record. In these days of online law reports, none exists for these courts to be abreast with the trending information technology system in justice delivery.

c. Limited Jurisdictional Competence

The Jurisdiction granted to customary court in Nigeria are so limited that the customary court are not perceived as a serious place for legal business. This in turn created excess work load on the Magistrate Courts and High Courts. There is need to revisit the jurisdiction of customary court to increase the jurisdiction of the court in monetary claim and expand the jurisdiction to cover some of the cases that overburden the magistrate courts and the high courts.

d. Inadequate Welfare/ Remuneration

The President and members of the customary court bench do not earn the welfare/ remuneration commensurate to their status as legal practitioners elevated to customary court bench. Many of the customary court presidents do not have government provided official vehicles to assist them in carrying out their duties effectively and efficiently.in order to ensure effective justice delivery. Inadequate welfare and remuneration no doubt impede the delivery of justice in customary courts in Nigeria. This is because a good or favourable condition of service is a critical variable in enhancing the effectiveness of staff in the Nigerian public service. On the contrary, unfavourable conditions of service will bring about inadequate motivation and all these put together will attract low performance ineffectiveness, absenteeism, low labour turnover and sabotage (like pilfering, image laundering, bribery and corruption) from staff. Improvement in the welfare of the customary court presidents and members will definitely encourage effective and efficient justice delivery in the grassroots. Effective justice delivery and doing of substantial justice anchored on precedence and merit devoid of technicalities at the customary courts will win the confidence of the people and create boldness in the judiciary.

e. Inadequate Continuing Legal Education, Training, and Re-Training of Customary Court Presidents, Members and Staff

Inadequate continuing legal education, training, and re-training of Customary Court Presidents, members and staff is one of the factors inhibiting enhanced justice delivery by Customary Courts

in Nigeria. This also contribute to delay in justice delivery at the customary court level thereby impeding enhanced justice delivery in the customary court. The major areas of concern where customary court members need constant continuing legal education are:

i. **Alternative Dispute Resolution (ADR):** The members of customary court need to be updated and further educated on the various ADR mechanisms and the development and distinction between each of them. The different ADR mechanisms include Arbitration, Mediation, Conciliation, Negotiation, and Settlement. If they appreciate the distinction between each of them, they would be able to understand and appreciate the ADR awards that are brought before them and the bindingness and enforceability or otherwise of them.
ii. **Basic Rules of Evidence:** Even though customary courts are not strictly bound by the rules of evidence, they should at least appreciate the rules of evidence and identify the evidence before them. They should use the ones applicable in the determination of the case before them.
iii. **Evaluation of Evidence:** Having assembled the array of evidence in cases before them, Customary Court presidents should be tutored on evaluation of evidence to know which way the evidence tilts on the imaginary scale. Improper evaluation of evidence by a trial court, including customary court is enough to make the appellate court upturn a judgment delivered by the lower court.

f. **Poor Public Perception of Customary Courts**

Because customary courts are not equipped and repositioned within the localities, the public do not perceive customary courts as a serious place for legal business. This make many prospective litigants take even minutest cases to magistrate courts and high courts even when the customary courts would have been less expensive, less technical, fast, nearer, faster and more convenient for them. The expectation being that with customary courts in place, justice can be attained timeously by litigants in these courts as against what is obtainable in other conventional common law superior and inferior courts. In the pursuit of the attainment of these laudable objectives, the forms, practice and procedure as well as the technicalities that are prevalent in these other courts were largely eradicated from customary courts. The reason for this is not far-fetched. The anticipated patronage of these courts was expected to come from litigants drawn from a largely illiterate and un-informed communal milieu.

The nature, essence and functions of customary courts were succinctly captured by Iguh JSC in the celebrated case of *Erhunmwunse v. Ehanire*[29]. In this case, His Lordship stated thus:

> Customary courts, however, are not superior courts of record. No pleadings are filed in them either. Accordingly, the technical rules and/or procedure which govern the trial of actions in the superior courts of record are not stringently applied in those courts. Trials are conducted in a summary manner and the only opportunity a defendant has to project his case is by oral evidence, when he and his witnesses testify before the court in his own defence. In this connection, it cannot be overemphasized that the form of an action in customary courts must not be stressed where the issue involved is clear. The law is long settled that it is the substance of such actions that is the determinant factor.

[29] *Ibid.*

g. **Corruption**

Corruption is one of the biggest problems facing every sector in Nigeria and the customary court system is not an exception. A lot of dangers are inherent in having a corrupt person in the bench both at Customary Court, Magistrate Court, High Court and all others. This is because a corrupt judge is a dangerous weapon to the society. According to **Uwais CJN** as he then was:[30]

> A corrupt judge is more harmful to society than a man who ran amok with a dagger in a crowded street. The latter can be restrained physically, but a corrupt judge deliberately destroys the moral foundation of society and causes incalculable distress to individuals through abusing his office while still being referred to as honourable.

Corroborating the dangerous nature of a corrupt judge **Oputa JSC** as he then was stated that:

> No one should go to the bench to amass wealth, for money corrupts and pollutes not only the challenges of justices but also the very stream itself.[31] It is a calamity to have a corrupt judge. The passing away of a great advocate does not pose such public danger as the appearance of a corrupt judge on the bench, for in the latter instance, the public interest is bound to suffer and elegant justice mocked, debased, depreciated and auctioned. When justice is bought and sold, there is no more hope for society. What our society need is an honest, trusted and trustworthy judiciary.

It is important to point out here that even though the quoted paragraphs literarily referred to judges, they are referring to all persons with authority to decide case between parties in a judicial manner. In order words, presidents and members of customary court are inclusive. Corruption is a disease to justice delivery. Corruption also involves failure to adhere to Code of Conduct for Judicial Officers[32], The code contains 15 Rules and a long preamble, which constitutes an integral part of the code. In fact, according to the Code of Conduct for judicial officers of the Federal Republic of Nigeria, the preamble to the code shall be construed as an integral part of the code and its provisions shall be as enforceable as the provisions of the specific rules in the code. The code as adopted came into force on the 24th February 2016 and its provisions constitutes the minimum standard of conduct to be observed by each and every judicial officer.

The code of conduct above stated applies to all categories of judicial officers throughout the federation as defined in the code and violation of any of the rules contained therein shall constitute judicial misconduct and or, misbehaviour and shall attract disciplinary action. The code requires that a judge should avoid any dishonest, immoral, or inappropriate behaviours. A judge should avoid breaching the laws of the land, this is because if he does, then public confidence in the integrity of the entire judicial system will be eroded especially when the same judge may be called upon to try those who contravene the same law another day.

A judge is also enjoined to maintain professional secrecy and avoid discussing any confidential information which he may acquire in the course of his duties with anybody including his family.

Any social relationship that may give members of the public an impression that he will not be impartial in deciding cases should be avoided by a judge. Impartiality is a cardinal requirement;

[30] Uwais (JSC as he then was) valedictory speech reproduced in (2015) SCNJ at p.20
[31] M.I Anushiem, O. Mbanugo and C.N. Arinze Umobi, "Criminal Trial of Judges and imperative for Judicial Independence" (2017) *AFJCLJ* vol.2 page 113
[32] *Ibid*

thus, a judge must show clearly that in respect to or in connection with proceedings in his court, he shall remain impartial. A judge is required to harbor no prejudice, passion or personal feelings against any party while deliberating over cases submitted to him for adjudication. He is required to evaluate facts as presented to him by the parties in a balanced manner without any predilection. He must hold the balance of the scale of justice evenly. It is as a result of this fundamental requirement of impartiality that it is often said that justice must not be only done but must manifestly and undoubtedly be seen to be done.[33]

A judge is therefore required to either disqualify himself or disclose on record where he feels he is in doubt of his impartiality in a case he is handling. Therefore, where he discloses the reason why he feels he should not hear the case and the parties still want him to proceed with the case, none of them will rely on the said reason to impugn his decision.[34]

4. Conclusion and Recommendations

4.1 Conclusion

This paper concluded that the establishment of a customary court system of adjudication in Nigeria has been largely promoted and applauded as a simple, affordable, quick and grassroots friendly system of adjudication. The customary court system was established primarily because of a dire need to bring justice closer to the people. The system has shed its condescending and neo-colonial tag as 'native courts' where it draws its historic origin to become an efficient and well-established system of justice. However, steady increase in the population of Nigeria has made customary courts in Nigeria seem to have failed to achieve the purpose for which it was created. This increase in population has also made it imperative to expand the jurisdiction of customary court to enable justice to be closer to the people without having to undergo the cost and rigorous procedures of the superior court of records. That primary objective of the judiciary which is to ensure that justice is done no matter where it emanated from has not been fully achieved with the current state of customary court system using Anambra, Lagos and Rivers States as case studies.

4.2 Recommendations

This paper made the following recommendations.

i. There is Need to Amend Relevant Laws and Rules of Courts to Ensure More Affordable, Less Technical and More Accessible Justice Delivery:

Prominent among its laudable features, is that the customary court is mostly devoid of strict rules, practice, procedure and technicalities of superior courts of record and what may be referred to as conventional common law courts. Indeed, this is its fulcrum. The system takes great pride in this aforesaid simplicity and attraction to the common man in an available, affordable and pedestrian manner.

ii. Decongestion of the High Court's Dockets for Speedier Justice Delivery:

Despite the crucial roles of the judiciary, the judicial process is often painstakingly slow and leaves much to be desired. This has occasioned loss of confidence in using the courts. It is instructive that

[33] ***The Admin & Exec of The Estate of Abacha Vs. Eke-Spiff & Ors*** **(2009) LPELR 3152 (Sc)**.

[34] Even though some may hold the view that Customary Court judges are not judicial officers, because the court is not a direct creation of the constitution, this view may not hold water in this context because for the purposes of the code of conduct, judges of the Customary Courts are deemed to be judicial officers. This is because the code in its explanations section, after listing the judicial officers who the code applies to, and who are referred to "Judicial Officer" for the purposes of the code of conduct, went to State "……. and includes the holder of a similar office in any inferior court whatsoever"

an effective judicial system is critical to inspire a sustainable environment of economic and social stability and the rule of law, in which other critical sectors can flourish.

iii. Reorientation of Members of the Customary Court on the Judicial Ethics, Etiquette and Best Practices

In other to ensure a high degree of moral value, a code of conduct for judicial officers of the Federal Republic of Nigeria was put in place in 1998 and was revised in February 2016.

iv. Proper and Continuous Education, Orientation and Capacity Building for Customary Court Presidents:

This is an important factor towards the enhancement of justice delivery in customary courts in Nigeria. Enhancement of justice delivery in customary courts in Nigeria **adequate provision of continuing education** for all customary court presidents and members by undertaking, organizing, conducting and facilitating study courses, lectures, seminars, workshops, conferences and other programs relating to judicial education.

v. Enhancement of Remuneration, Condition of Service and Overall Welfare of Customary Court presidents and members:

Healthy working condition is not only the concern of customary court but a crucial factor that the government should pay attention to welfare of members of customary courts in order to ensure increased and sustained work effectiveness. Customary Court president and members should be encouraged to research widely before rendering judgments.

vi. Provision and Access to Online Law Reports for the Customary Courts

The judiciary should provide the Customary Courts with access to online Law reports, statutes and law books. This would afford them the enablement to render more researched judgment and rulings.

vii. Increase in the Subject Matter and Monetary Jurisdiction of the Customary Court

In view of all that has been said above, it is further recommended that the subject matter and monetary value jurisdiction be upgraded. It is recommended that the monetary jurisdiction of Customary courts in Nigeria be raised to ₦5,000,000 (Five Million Naira). This view is advanced especially now that the value of $1 is above ₦1, 500. Leaving the said monetary jurisdiction of Customary courts in Nigeria at anything below ₦5,000,000 (Five Million Naira) would greatly limit the inflow of causes that would come to the courts.

viii. Setting up of a Mini ADR/Multi-door Court System for Matters and Causes Coming up Before the Customary Court

This is the nearest court to the people. Many disputes come to court for reasons of ego and because there are no impartial interventions at the village level. The multi-door court system had since been established at the High Court level. This can be replicated at the Customary Court level, with members drawn from the locality, who are in a better position to even understand the customs and ways of the people.