An Overview of the Frontiers of Customary Arbitration under the Idoma Native Law and Customs

Charity Ene Unogwu*

Chukwudi Victor Odeome**

Abstract

Modern arbitral process seems to have lost the simplicity that arbitration enjoyed. It has become more complex, more legalistic, and more institutionalized just like litigation which it seeks to alternate. Despite these shortcomings, customary arbitration which predates modern arbitration with fewer technicalities seems to have been relegated to the background. The inconsistent court judgments on the validity or otherwise of customary arbitration including recognition and enforcement of customary arbitration make the problem even worse. Also, the position of the Supreme Court on customary arbitration is a sharp contrast to modern arbitration regulated by the Act[1] or contained in an agreement especially commercial agreement wherein once an award is made it is final and binding and parties have no right to rescind the gentle man agreement having subscribed thereto is more challenging. This article intends to promote customary arbitration as a preferable alternative to litigation and other adjudicatory procedures in Nigeria, especially the customary arbitration being practiced under the Idoma native law and Customs. The methodology adopted in this research is doctrinal as both primary and secondary data as well as internet sources were consulted. An overview of the Customary Arbitration under the idoma native law and customs revealed that courts in the communities where this customary arbitration is being practiced are hardly congested. And the idoma people are more interested in settling disputes under the Idoma customary arbitral panel than before the regular courts. This article recommends that the grassroots or other communities in Nigeria should be encouraged to adopt similar method of dispute resolution to decongest the regular courts and to facilitate fast and easy access to justice.

Keywords: Customary, Arbitration, Native Laws, Customs.

1. INTRODUCTION:

Customary Arbitration in the context of Idoma Native law and customs refers to the traditional dispute resolution mechanism where parties submit their disputes to a neutral third party usually a respected community head or elder for resolution.

According to Daibu, most communities' referral of disputes to one or more laymen, elders, age groups, and heads of the communities for decision has deep roots in the Nigerian customary practice. He stated further that before the advent of colonialism in Nigeria, customary arbitration operated freely in various communities as a complete and independent legal system[2]

The practice of settling disputes through the process of arbitration is never a new phenomenon in Nigeria, Africa, like it has been with man from creation. Arbitration had been with the various indigenous communities in Nigeria before the introduction of the British legal system of court litigation into the country[3]. It is a means of settling dispute between two or more parties to maintain harmony, peace, and tranquility in the society. Emiola[4] views arbitration, in the context of African Judicial System, as a process whereby a neutral person is requested to mediate in a dispute between

* **Charity Ene Unogwu,** Faculty of Law, Veritas University, Abuja, Nigeria. Tel: +2348069601956, 08055953450, Email: Unogwuc@Veritas.Edu.Ng.

** **Chukwudi Victor Odeome,** PhD, Faculty of Law, Veritas University, Abuja, Nigeria. Tel. +2348065655005. Email: Vicodeome@Yahoo.Com

[1] Arbitration and Conciliation Act. Cap A18 LFN 2004.

[2] A.A Daibu, "The Recent Odyssey of Customary Law Arbitration & Conc tedious process of litigation iliation in Nigeria's Apex Court"(1998), Abia State University Law Journal (2002). P.70

[3] Gadzama, 2004

[4] 2011

one person and another, or between one community and another. In idoma Native law and customs, customary arbitration plays a crucial role in resolving disputes to promote social harmony and maintain community cohesion.

1.1 CONCEPTUAL CLARIFICATION:

1.1.1. CUSTOM

Custom is defined as a traditional and widely accepted way of behaving or doing something that is specific to a particular society, place or time[5].

In other words, custom is a frequent repetition of the same behavior, way of behavior common to many, in ordinary manner, habitual practice or usage, or method of doing, living or behaving among a specific people.

The Black's Law dictionary defines custom as a practice that by its common adoption, long unvarying habit has come to have the force of law. It also defines customary law as law consisting of customs that are accepted as legal requirements or obligatory rules of conduct, practices and beliefs that are so vital and intrinsic part of a social and economic system that they are treated as if they were laws.[6]

Customary law can also be described as usage or practice of the people which by common adoption and acquiescence and by lone and unvarying habit have become compulsory and have acquired the force of a law with respect to the place or the subject-matter to which it relates[7]

The Nigerian Evidence Act defines custom as a rule which in a particular district, has from long usage, obtained the force of Law.[8] It is impossible to define a custom adequately without emphasizing the two essential attributes that differentiate customs from all other legal conceptions[9]. One is the necessity of the existence of a custom actually or presumptively over a long period of time, and secondly, the confinement of all customs to a definite limited locality[10]. It is not possible to have a custom in one place to do something in another place. All customs must be local and confined to a particular place[11] The Supreme Court of Nigeria defined custom or customary law in the case of **Olubodun v Lawal[12],** as a set of rules of conduct applying to persons and things in a particular locality. It went further to state that it is of the characteristics of a custom or customary law that it must be recognized and adhered to by the inhabitants of the community to make it binding.

Another major characteristic of customary law is that it is largely unwritten. To emphasize the unwritten nature of customary law, the Court stated that it is a well-established principle of Law that documentary evidence is unknown to native law and custom. In **Owoniyin v Omotosho**[13] the Court described customary law as a mirror of accepted usage.

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[5] https// www.yourdictionary.com accessed on 13th December, 2021
[6] B.A. Garner, (2024). Black's law Dictionary (12th .ed) Thomson Reuters.
[7] Vibhute (n 5)
[8] Section 258 (1) Evidence Act, 2011.
[9] John B. Saunders, Words and Phrases Legally defined. 2nd Ed. (Butterworths 1969) p. 392
[10] Ibid p. 392
[11] R v. Ecclesfield (1818) 1 B & ALD, per Lord Ellenborough C.J. at p. 360, cited in Words and Phrases Legally Defined 2nd Ed. (Butterworths 1969) p.393.
[12] (2009) 35 NSCQR 1325
[13] (1961) All NLR 304 The Supreme Court also adopted the definition in Ziaden v. Mohssen (1973) 11 SC 1 and Kindly v. Military Governor of Gongola State (1988) 2 NWLR (pt77) 445

With the extensive explanations of what custom is, it is almost unnecessary to define customary law, since the definition of custom and customary law are interwoven. However, a further clarification may be necessary for the purpose this very research.

1.1.2 CUSTOMARY LAW

Customary law is the norms, traditions and rules of behavior of the people. It is a law propelled by the view, beliefs, philosophies and value system of the people. In traditional societies, customary laws were largely unchallenged saved by compelling innovations that re-channeled aspects of the practices of the people and subsequently altered its traditions[14].

The most acceptable and comprehensive definition of customary law is the one given by the Supreme Court in *Nwaigwe v Okere*[15]**,** which goes thus:

> *Habit has acquired to some extent, element of compulsion, and forces of law which reference to the community. And because of the element of compulsion which it has acquired over the years by constant, consisting and community usage, it attracts sanctions of different kinds and is enforceable. Putting in more simplistic form, the customs, rules, relations, ethos and cultures which govern the relationship of members of a community are generally regarded as customary law of the people.*[16]

According to Black's Law Dictionary, common law is the body of law derived from judicial decisions, rather than from statutes or constitutions.[17] The common law is inarticulate until it is expressed in a judgment, just like the customary law in Nigeria which is not coded in any specific legislation. It is the court's decision upon it that gives it validity or force of law. Therefore historically, it can be said that the common law of England and Nigerian Customary law enjoy the same origin and history and none is superior to the other. This position finds support in **Nwaigwe v Okere**[18] where Onnoghen JSC, as he then was read the lead judgment which emphasized that we should not forget that English law also includes English common law which does not enjoy a higher legal status than our customary law.[19]

Conclusively, Custom or customary law is a particular rule or body of rules that have been in existence either actually or presumptively from time immemorial and has obtained the force of law in a particular locality.

1.1.3 ARBITRATION

Arbitration has existed for as long as the society itself. Before the advent of statutory based arbitration as we have it now, arbitration has existed, and still exists in its customary and common law form[20]

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[14] Elaija Akwu, Nature of Customary & Common Arbitration, https://independent.academia.edu/ElijahAkwu accessed on 8th January, 2020.
[15] (2008) 34 NSCOR 1325
[16] Per Niki Tobi J.S.C.
[17] Vibhute (n 6)
[18] Vibhute (n 11)
[19] Walter S.N. Onnoghen J.S.C.
[20] Elaija Akwu, Nature of Customary & Common Arbitration, https://independent.academia.edu/ElijahAkwu accessed on 8th January, 2020.

An arbitration is the reference of a dispute or difference between not less than two parties for determination after hearing both sides in a judicial manner, by a person or persons other than a court of competent jurisdiction[21]

In other words, arbitration is an arrangement or agreement between the parties out of the terms of an Act of Parliament or some other instrument of statutory force where they are not otherwise defined by law, the subject matter of the reference and the authority of the arbitrator in references arising out of an agreement between the parties[22].

Arbitration is defined by Orojo J.O and Ajomo M. A[23]. as a procedure for the settlement of disputes under which the parties agree to be bound by the decision an arbitrator whose decision is in general, final and legally binding on the both parties.[24]

Arbitration is seen by Halsbury's law of England as the process by which a dispute or difference between two or more parties as to their mutual legal rights and liabilities is referred to and determined judicially and with binding effect by the application of law by one or more persons (the arbitral tribunal) instead of by a court of law[25].

if it appears from the terms of the agreement by which a matter is submitted to a person's decision, that the intention of the parties was that he should hold a judicial inquiry, and hear the respective evidence laid before him then the case is one of an arbitration.

According to Bello T.A,[26] Arbitration is the process of resolving a dispute between at least two parties who through an agreement, agree to submit their dispute to arbitration, appoints a third party who shall decide on their dispute and such decision shall be final and binding on the parties. He stated further that, Customary Arbitration which involves an arbitral proceeding conducted under the generally acceptable norms, customs and traditions of the people in a particular community has been widely contested through a plethora of cases of its existence in Nigerian jurisprudence.

Bello argued further that;

> *"Customary Arbitration has been with various indigenous communities in Nigeria prior to the introduction of litigation. 'It is imperative to assert that the belief that Arbitration is of recent development in Nigeria is misleading. There exists a plethora of decided cases validating the existence of arbitration prior to colonialism''*[27]

Another author who researched on customary arbitration is Ibrahim Imam[28]. He opined that the practice of disputes settlement through the process of arbitration is never a new phenomenon in Nigeria like it has been with man from creation. Customary Arbitration had been with various

[21] John B. Saunders, Words and Prases Legally Defined, 2nd Ed. (Butter worths 1969) p. 107
[22] Ibid at p 108
[23] J.O. Orojo and M.A. Ajomo (1991) Law and Practice of arbitration and Conciliation in Nigeria, Lagos Mbeyi and Associates (Nig.) Ltd.
[24] J.O. Orojo and M.A. Ajomo (1991) Law and Practice of arbitration and Conciliation in Nigeria, Lagos Mbeyi and Associates (Nig.) Ltd.
[25] Halsbury Law of England, (1991) 4th Ed. Butterworths, p. 601, 332.
[26] , Customary and Modern Arbitration in Nigeria: a
Recycle of old Frontiers, Journal of Research and Development vol. 2, NO. 1, 2014
[27] Ibid at page 50.
[28] The legal regime of customary Arbitration in nigeria

indigenous communities in Nigeria before the advent of the colonial litigation. Bello added further that owing to the evolution of the world and certain shortcomings associated with customary arbitration, modern arbitration took the stage in bid to making arbitration an essential alternative in resolving disputes. Through the enactment of statutes, rules, regulations and establishment of arbitration Centres in Nigeria, modern arbitration recycled customary arbitration for the benefit of mankind[29]. Ibrahim further reiterated that the invasion of the indigenous organized system of disputes resolution and the gradual and deliberate attempts by the colonialist had succeeded in relegating the customary system of disputes resolution to a second class status if not totally jettison for court litigation system in dispute settlement[30].On the legality of customary arbitration, Imam[31], said that, Nigeria have a well set of established and sophisticated mode of administering justice before the introduction of court litigation as a means of dispute settlement. One of such method is arbitration mechanism, designed to ensure stability and peaceful coexistence of people in society and the maintenance of the rule of law and equality among citizenry.

Additionally, Rene David[32] defined arbitration as a device whereby the settlement of a question, which is of interest for two or more persons, is entrusted to one or more other persons. The arbitrator or arbitrators – who derive their powers from a private agreement, not from the authorities of a State, and who are to proceed and decide the case on the basis of such agreement.

He went further to defined Arbitration as a consensual procedure in which there is a form of Intervention by a neutral third party in dispute between two others[33].

Ladan[34], posits that most indigenous systems of customary law in Africa knew, recognized and resort to traditional arbitration before neighbors or elders of a clan or tribe. The author stated further that Nigerian courts recognize and enforce the results of customary arbitration. He cited the case of Nwoke v Okere[35], where the Supreme Court held that customary arbitration constitutes estoppel per rem judicatam, if the subject matter, parties and cause of action are the same in the arbitration as in the court action.

Allot[36] on his part observed that arbitration as known to English law, is not part of customary law and that the so-called customary arbitration is nothing but mere negotiation of settlement.[37] T. O. Elias[38] on the other hand, observed that customary arbitration is one of the many African customary modes of referring a dispute to the family head or an elder of the community for a compromise solution based upon subsequent acceptance by both parties of the suggested award, which either party is free to resile at any stage of the proceedings up to that point[39] It must be pointed out at this juncture that where it is proved to the satisfaction of the court and if selection of the arbitrator was

[29] Temitayo Adesina Bello, Customary and Modern Arbitration in Nigeria: a
Recycle of old Frontiers, Journal of Research and Development vol. 2, NO. 1, 2014
[30] Ibrahim Imam Esq. Lecturer, Department of Public Law, Faculty of Law, University of Ilorin
[31] Ibid
[32] David Rene , *Arbitration in International Trade*, Netherlands: (1985): Kluwer Law and Taxation Publishers p.50
[33] Ibid
[34] M.T.; Ladan, "Alternative Dispute Resolution in Nigeria: Benefits, Processes and Enforcement", Current Themes in Nigerian Law at p. 248.
[35] 5 (1994)5 NWLR 169
[36] Allot, A.N. (1960). Essays in African Law. Butterworth, London, England, P.125
[37] Allot, Ibid at P.126
[38] T. O. Elias, Customary Law in Nigeria through the Cases, (2000) Spectrum Books, Ibadan
[39] Taslim Olawale Elias *The Nature of African Customary Law*, (1956): England: Manchester University Press, p. 212. waAaw.easybrowsing.comwww.easybrowsing.com

done in accordance with customary law, the decision will be binding on the parties and can be enforced, through the court, by the successful party. It will not lie in the mouth of the other party to repudiate the arrangement at this stage.[40] Thus, where two parties to a dispute voluntarily submit their dispute to the arbitrators, the decision shall be binding on the parties.

Arbitration is a step higher than mediation in conflict management and conflicting parties to a dispute may agree to settle for arbitration as a non-violent means of resolving their dispute. Once that is the case, such parties no more have control over the matter as compared to parties that choose mediation or other means of conflict management. Arbitration is similar to mediation, and close to adjudication but different from both[41]. With respect to customary arbitration, he explained that Customary Arbitration basically involves the voluntary arbitration of disputes by the parties to a non-judicial body for settlement in accordance with customary law. In fact, customary arbitration has remained one of the outstanding methods of setting civil disputes in Ibibioland. In pre-colonial time, every village in Ibibioland had a body of elders that arbitrated on local disputes such as matrimonial cases dealing with the payment or refund of dowries and compensation for adultery. They also imposed fines for breaches of town laws such as failing to clean the village paths or squares, or steeping cassava at water places set aside for drawing of drinking water.

1. 1. 4 CUSTOMARY ARBITRATION

Customary Arbitration is a process where disputes are amicably settled between parties who have voluntarily submitted themselves to the decision of community elders or traditional rulers that are recognized for that purpose.

It is a method of referring a dispute to the family head or elder of the community for resolution based upon subsequent acceptance by both parties of the suggested award which becomes binding only after such signification of its acceptance from which either party is free to resile at any stage of the proceedings[42]

The Supreme Court emphasized the freedom of a party to resile in customary arbitration in *Agu v Ikewibe*[43] where it held thus:

> *I venture to regard customary law arbitration as an arbitration in dispute founded on the voluntary submission of the parties to the decision of the arbitrators who are either the chiefs or elders of their community and the agreement to be bound by such decision or freedom to resile where unfavourable*[44].

In similar way, customary arbitration was described in **Philip Njoku V. Felix Ekeocha**[45]

> *thus; where a body of men, be they chiefs or otherwise, act as arbitrators over a dispute between the parties, their decision shall have binding effect if it is shown firstly that both parties submitted to the arbitration. Secondly, that the parties accepted the terms of the arbitration and thirdly that they agreed to be bound by the decision, such decision has the same authority as the judgment of a judicial, body and will be binding on the parties and thus create an estoppel.*[46]

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[40] Ibid at 213.
[41] Best, American Journal of social issues and Humanities Vol. 4, Issue 1, January 2014.
[42] T. O. Elias, Nature of African Customary Law, (Manchester, Manchester University press, 1956) p. 212
[43] (1991)3 NWLR (pt 180) 385
[44] Per Karibi White, JSC at p. 407
[45] (1972) 2, ECSLR, 199
[46] Per Ikpeazu J. at p. 215

Furthermore, Customary Arbitration has been described as a method of dispute resolution conducted in accordance with the customs and traditions of the people.[47]

Same position was succinctly opined by Ezediaro thus:

> *Arbitration as a method of setting dispute is a tradition of long standing in Nigeria. Referral of a dispute to one or more levy men for decision has deep roots in the customary law of many Nigerian communities was only reasonable one, for the wise men or the chiefs who were the only accessible judicial authorities. This tradition still persists in certain villages and communities, despite the centralized legal system and the attendant efforts at modernizing and reform of legal system.*[48]

1.1.3 VALIDITY OF CUSTOMARY ARBITRATION

The question that readily comes to mind at this juncture is what constitutes a valid customary arbitration for the purpose of res judicata?

As observed by Udofa (2001)[49], there seems to be no consensus and certainty as to the actual ingredients of valid customary arbitration in Nigeria. The courts' treatment of customary arbitration for the purpose of *res judicata* has neither been consistent nor satisfactory. The Supreme Court in the case of (*Egesimba v. Onuzuarike*[50] laid down two different sets of requirements that:

(a) The arbitrators reach a decision and publish it, i.e. for a customary arbitration to be valid and binding; the arbitrators must reach a decision and announce the award or judgment. Where no decision was reached and published, the arbitration will be regarded as inconclusive and not binding. The decision or award must be clearly stated, précised, final and unconditional.

(b) Acceptance of decision or freedom to reject it.

In *Oline v. Obodo*[51], the Federal Supreme Court held that: "Where the parties submitted their dispute for settlement by arbitration in accordance with native law and one party withdraw from the arbitrators before it was completed, the award of the arbitration was nevertheless binding on all parties. "In the present case there is a finding of fact against the appellant that they attended the arbitration and that they be bound by the award of the arbitrators".

2.1. LEGAL FRAMEWORK FOR CUSTOMARY ARBITRATION IN NIGERIA.

2.1. 1. CONSTITUTION.

The Constitution[52] as the Ground Norm in Nigeria is not silent on customary arbitration.

Section 315(3) and 4(b) of the 1999 constitution of the federal republic of Nigeria (as amended) recognizes customary law as an "existing law"

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[47] A. T.Bello, Customary and Modern Arbitration in Nigeria, A recycle of old frontiers, Published in Journal of Research and Development, Vol. 2, No. 1, 2014, p. 50.

[48] S. O. Ezdiaro, 'Guarantee and Incentives for Foreign Investment in Nigeria" The International Lawyer, Vol.5, No. 4, October 1971, p. 770 at 775.

[49] http://www.lawpavilionpersonal.com/ accessed on 20th February, 2020

[50] **(2002) LCN/2877(SC)**

[51] (1958)22, SCNLR 298

[52] Federal Republic of Nigeria, 1999

> *"an existing law" means any law and include any rule of law or any enactment or instrument whatsoever which is in force immediately before the date when this section comes into force on which having been passed or made before that date comes into force after that date"*[53]

It must be emphasized here that customary law is by virtue of S. 315(3) 4(b) of the constitution an existing law; and customary arbitration is part of customary law. This provision of the law by implication has given judicial notice and validity to customary arbitration since it is derived from customary law.

2.1.2 JUDICIAL PRECEDENTS ON CUSTOMARY ARBITRATION.

The courts since the colonial era have recognized customary arbitration, as was the case before West African Court of Appeal. In the case of Inyang V. Essien[54] and Assampong V. Amuaku[55] the decision in Caribbean trading and Fiderily Corporation V. NNPC[56] where learned Justice of court of appeal held that the practice of dispute settlement through arbitration process is as old as the Nigerian society, confirms the wide acceptance and recognition of customary arbitration. He held thus:

> *"English is English; Nigerian is Nigerian; the English are the English; also the Nigerians are Nigerians. Theirs are theirs, ours are ours, theirs are not ours; ours are not theirs;*[57]

It is clear from the decisions of courts that customary arbitration is not the same as regular courts as being contemplated by S.6 of the 1999 Constitution CFRN.

The provision of section 6 of the CFRN merely differentiates courts as judicial bodies from non-judicial bodies that part take in dispute resolution.

In the case of *Awosile v Sotunbo*[58] the provision of section 6 was clarified thus:

> *"under S. 6 of the CFRN 1979 (as well as 1999) the judicial powers of the federal republic of Nigeria are rested in the courts and not non-judicial bodies. The court held further that, the option whether to have a dispute settled by courts or non-judicial bodies is open to parties to either go through the machinery of the courts or to submit to non-judicial bodies such as arbitration"*[59]

The Supreme Court further confirms the constitutionality and validity of customary Arbitration in the celebrated case of Agu v. Ikewibe[60] where the appellant's counsel purportedly relied on the decision in Okpuruwu V. Okpokam contending that the Nigerian legal system does not recognize customary arbitration practice. The Supreme Court held thus:

> *"….. there seems to be some misconception about some of the provisions of the constitution of 1979 and the freedom between disputing parties to settle their differences in the manner acceptable to them. It is clearly unarguable that the*

[53] S. 315 (4) (b), constitution of FRN 1999
[54] (1957) 2 FSC 39
[55](1932)1 WACA 192
[56] (1992) 7 NWLR (Pt. 252) 161, 179.
[57] Per Niki Tobi JCA as he then was P. 179.
[58] (1992) 5 NWLR (Pt. 243) P. 514
[59] CFRN 1979 & 1999
[60] (1991) 3NWLR (pt. 180) 385

> *judicial power of the constitution in S. 6 (1) is by S. 6 (5) rested in the courts named in that section, not so a customary arbitration…… it is well accepted that one of the African customary modes of settling dispute is to refer the dispute to the family head, or an elder or elders of the community for a compromise solution based upon the subsequent acceptance by both parties of the suggested award, which become binding only after such signification of its acceptance and from which either party is free to resile at any stage of the proceedings up to that point. This is a common method of settling disputes in all indigenous Nigerian societies*[61].

Customary Arbitration has been subject of several courts decisions which is also parts of the legal framework. The courts continue to give recognition to customary arbitration practice and customary law in the case of *Okere v. Nwoke*[62] where the court held that Customary arbitration is the prevailing practice of arbitral process of arbitration governed by rules of Customary Law. The court further emphasized that the practice of Chiefs and elders of the community settling disputes between members of their community is recognized by the Nigerian Legal System and is not in conflict with the exercise of the judicial powers of the Constitution.

However, there are steps that must be taken before a custom can be recognised. The courts of records have consistently held that the custom of a people remains unknown until the party has proved it and the courts have taken judicial notice of it. In *Okpuruwu v. Okpokam*[63] the court held that, a party seeking to rely on an aspect of customary law must by virtue of S. 14 of the Evidence Act specifically plead the existence of any such custom.

It must be emphasized that as much as the courts recognize a custom of a particular community, any custom which is in conflict with the constitution or repugnant to natural justice will declared unconstitutional or void. In *Ukeje V. Ukeje*[64] the supreme Court of Nigeria held that, the Igbo Customary Law which disentitles the female child from partaking in her deceased father's estate is in breach of section 42 (1) and (2) of the Constitution of the Federal Republic of Nigeria 1999, and therefore void.

3.1 CUSTOMARY ARBITRATION UNDER IDOMA NATIVE LAW AND CUSTOMS.

3.1.1. Customary arbitration practice under the Idoma Native law is generally the same with the practice in any other African or Nigerian setting. However, certain unique practices will be dwelt with in this research that makes the customary arbitration under the Idoma native law and customs very unique and perfectly functional. Prominent among which is the 'ALEKWU DEITY in IDOMA CUSTOM'.

3.1.2. "ALEKWU OATH TAKING" AND CUSTOMARY ARBITRATION IN IDOMA CUSTOM.

Alekwu is a traditional god of the Idoma Natives, popularly believed amongst the people to have the power to protect, reward and punish sons and daughters of the **land**. The **Idoma** believe that it could punish anyone who goes contrary to the morals, norms, cultures or traditions already laid down[65].

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[61] Per KARIBI-WHYTE. J.Sc
[62] (1991) 8 NWLR (Part 209)317
[63] (1988) 4 NWLR (pt. 90) 554
[64] (2014) 11 NWLR (pt 1418) 384
[65] Hope Abah https://www.dailytrust.com.ng/idomaland-where-the-gods-still-impose-penalties.html accessed on 15th/2/2023

Alekwu is gravely feared among the Idoma natives that many people use it to verify truth whenever there is any kind of disputes between the people.

According to According to Hope[66], 'Juju' is a spiritual belief system incorporating objects such as amulets, and spells used in religious practice, a part of witchcraft in West Africa. The term has been applied to traditional Africa religions[67].

The Idoma custom believes strongly on the efficacy of 'Alekwu'. People have used this means to settle very difficult cases, such as marital conflicts, land and any form of disputes at all among the Idoma natives.

It is believed that anyone who takes the "Alekwu Oath" Falsely will die. And as usual with humans, nobody deliberately wants to die, so whenever there is a threat of 'Alekwu Oath', in any dispute, the truth must be revealed and matter settled amicably.

In most cases a mere threat of 'Alekwu' sends fear into any body involved in a crime or adultery. The person involves begs for settlement or own up and confesses to the crime immediately. This view is a well-established truth and custom of the Idomas and is being confirmed thus:

"The efficacy or efficiency of 'Alekwu' is not in doubt in Idoma land. It is nonetheless notably revered and its advantages incredibly extolled. Indigenes resort to 'Alekwu's shrine as the ultimate arbiter to settle scores or disputes when it turns out and to be very controversial"[68]

Hear what an Idoma writer has said:

> *"The practice of 'Alekwu Oath' is never obsolete. it is very much practiced up to date whenever there is a dispute, that elders cannot handle by themselves, Alekwu is resorted to as the final arbiter, in spite of westernization, the 'Alekwu' is still held in high esteem among the Idomas".*[69]

To be precise, 'Alekwu is a traditional divine force of the Idoma people, particularly accepted by the generality of the Idoma natives to have the ability of compensating the innocent and punishing the guilty. They believe that it could rebuff any person who believes contrary or goes in opposition to the ethics and society values in the land. In all parts of the Idoma kingdom, the long history of 'Alekwu' in dispute settlement as regards crime, social injustice, and all societal ill is well acknowledged[70]

It is a known fact that any person that faces the wrath of the 'Alekwu' in consequence of an offence faces the penalty of death. It will start by a strange sickness which will usually defy any medical remedy.

"As a rule, help for such guilty parties starts by admission of the violation or offence committed against the deity and after wards the apology procedure is followed and the spirit of the ancestors conciliated, by purging the wrong doer of the amassed blame. In ability of the guilty to do that

[66] Ibid
[67] https//enm.wikipedia.org accessed on 15th /1/2023
[68] Steemit school on discord. https//discord.99/pgwrzbn. Accessed on 15th January, 2020.
[69] https://www.dailytrust.com.ng/idomaland-where-the-gods-still-impose-penalties.html accessed on 15th/2/2020
[70] Steemit school on discord. https//discord.99/pgwrzbn. Accessed on 15th January, 2020.

results to the sudden death of the individual concerned".[71] This sound so archaic, but its efficacy in settling any dispute among the people is with mathematical precision.

The practice of customary arbitration is highly effective among the Idoma natives, this is due to the high believe in the power of 'Alekwu' to punish any evil doer. The Idomas prefer to resort to this medium of settlement of dispute much more than the regular courts. Because they believe justice could be denied or wrong persons could be punished for an offence they did not commit due to its technicalities.

The pertinent question to be asked here is, whether the use of 'Alekwu' among the Idoma natives can be said to have complied with the essential ingredient of customary arbitration? Especially, the ingredient of voluntary submission of dispute to arbitration**.** It is a very vital element of customary arbitration which can determine the validity or otherwise of an award. *In Ekwueme v. Zakari*[72] it was held that there was no arbitration because the panties did not voluntarily submit the dispute to the panel, nor did they agree to be bound by its decision.

In Idoma customary arbitration, once a dispute arises and one of the parties report the matter to the elders, the second party cannot refuse to appear before the arbitral panel, the question is whether an award harvested from such a process can be valid to be used as an estoppel against the losing party? Throughout this research, such a case has not been seen. Probably because of the Idoma natives' reverence for the 'Alekwu' and elders who purportedly act on its behalf.

3.2. ENFORCEMENT OF AWARD UNDER THE IDOMA NATIVE LAW AND CUSTOMS.

The Council of elders who act as arbitral panel in Idoma customary arbitration always give award just like any other adjudicatory bodies. Such award must be complied with or the person faces a punitive measure such as ceasing of landed properties or ostracization.

3.2.1. OSTRACISATION AS A TOOL FOR ENFORCEMENT OF CUSTOMARY ARBITRATION UNDER THE IDOMA NATIVE LAW.

Ostracization means to exclude, by general consent, from society, friendship, conversation, privileges, the ostracized on grounds of offence or as a punishment or penalty for a guilty person. In customary arbitration practice under the Idoma Native customs, this is another method of enforcing an arbitral award against the guilty party especially if compliance is being evaded.

Whenever there is an arbitration process between two parties or two family members under the Idoma Native custom, the council of elders or chiefs will be constituted after receiving a complaint from any of the parties. If the party against whom the complaint is registered fails to appear or refuses to comply with the award after the arbitral proceedings, the ostracization method is used to compel the party to attend the hearing session or to comply with the award given against the party.

The Order to Ostracize is usually given against not only the offender but the entire family of the offender. As soon as this order is given, the other members of the family will ensure that the matter is settled amicably.

[71] Hope Abah https://www.dailytrust.com.ng/idomaland-where-the-gods-still-impose-penalties.html accessed on 15th/2/2020
[72] (1972) 2 E.C.S.L.R.631

Example of an Ostracization Order includes, exclusion of the entire family members from participating in the affairs of the community, banning from fetching water from the general stream, avoidance of the family in the event of death of their members etc.

The above practices of dispute resolution under the Idoma Native law and Customs make customary arbitration very effective among the Idoma Natives.

3.2.2 USE OF OATH TO VERIFY TRUTH. Swearing or oath-taking is commonly used by various ethnic groups in Nigeria and in other part of Africa. It is used by the Idoma Natives to verify truth or enforce arbitration awards. People who are connected by the bond of friendship, trade, custom or tradition often resort to this method by which they swear before a juju that 'such and such occurrence or event was not done by them' in the presence of the elders of the community. For instance, among the Idoma Natives, Swearing to **'**Alekwu**'** is a common practice in the process of dispute settlement to verify truth. This is important since the essence of the arbitral process is to determine the true position of the matter before the elders. A condition is usually attached to the oath-taking exercise to the effect that whoever dies or falls under a severe attack or threat of death among the parties before the expiration of certain number of days or months, actually lied and consequently is the guilty one or not the owner of the property in dispute. The question however is whether the courts will accept that procedure as a valid settlement to serve as Estoppel per Res Judicata?.

The Nigerian courts are however not averse to customary arbitration decided by oath-taking having held in some cases that the outcome of such exercise is binding on the parties. In the case of *Chukwu Obaji & 2 Ors. v Nwali Okpo & Ors*[73]

> *it was held that in that part of the country, "the swearing on juju is very much in vogue even in these days among native population. This is native jurisprudence showing a belief which regulates the rural life of the people, a man staking his life to assert his right is the highest appeal to conscience. A decision of the elders embodying this is pure and simple arbitration by native customary law…" The court later went on to decide that swearing on juju to determine the ownership of the land in dispute and the survival of the binding period of the plaintiffs' representative operate as res-judicata in favour of the plaintiffs against the defendant. In a similar case, the Supreme Court described the forum where the oath was taken as one which, by custom, was invested with judicial aura*[74].

3.3 CONDITIONS FOR BINDINGNESS OR ENFORCEMENT OF CUSTOMARY ARBITRATION

Under Nigerian law, for a customary arbitration award to be enforced, there must be consent by both parties to submit to arbitration and an agreement to be bound by the award which shall be regarded between the parties as final. The award must also be fair and not contrary to justice, equity and good conscience[75].

Once customary arbitration passes the validity test by complying with the essential ingredients for a valid customary arbitration, and the award debtor fails to comply ordinarily, such an award can be enforced in the regular courts.

[73](1978) Imo State Law Report 258
[74]*Uzowulu v Ezeaka* (2000) All FWLR (Pt. 46) 932
[75] https://asykobi.blogspot.com/2017/02/customary-arbitration-in-nigeria.html. Accessed 27th/ 2/2020

Besides the enforcement through the regular courts, awards rendered through customary arbitration can be enforced in a traditional way according to the customs of the people.

To plead and prove the existence of customary arbitration before a court of law, it must be shown that the arbitration process complied with the essential ingredients and the customary arbitration must not fall under issues that are not arbitrable in Nigeria. Example is criminal matters. In *Ege-Simba v. Onwuruike*[76] The Supreme Court held that:

> *Where a body of men be they chiefs or otherwise, acts as arbitrators over disputes between parties, their decision shall have binding effect, if it is shown that the parties submitted to arbitration, accepted the terms of arbitration and agreed to be bound by them"*

Customary arbitration is valid and binding under Nigerian law if the process satisfies the following-:

(a) The parties voluntarily submit their disputes to a non-judicial body, to wit their elders or chiefs as the case may be for determination.

(b) The indication or the willingness of the parties to be bound or freedom to reject the decision where not satisfied;

(c) Neither of the parties has resiled from the decision so pronounced;

(d) The decision was in accordance with the custom of the people or of their trade or business; and

(e) The arbitration reached a decision and published their award[77]

Thus it is a *sine qua non* that parties must have agreed to be bound by the decision of the non-judicial body. An attempted negotiated settlement of a dispute before a body of persons who do not ordinarily adjudicate over disputes in a particular community would not amount to customary arbitration.[78]

4. 1. CONCLUSION:

Customary Arbitration has been a key player in the resolution of disputes, as an alternative to courts of law. It is cheap, easy, convenient, simple, and informal. The main objective of any system of justice is to achieve a peaceful and harmonious resolution of any dispute in the society and this is not different in the case of customary arbitration. For, it aims at maintaining societal equilibrium whenever it is observed that the ethos and values of the society are being eroded. The feuding parties are normally brought together through compromise and concession so that the arbitrators can make reparation for whatever wrong that has been committed[79] thereby establishing peaceful co-existence in the community.

Dispute resolution under customary arbitration is not one in which the winner takes all as it is the case under the adversarial system or litigation. Rather, it is a system designed to bring about reconciliation among the parties and restore equilibrium in the society. For instance, once two

[76] (2002), 15 NWLR (Part221) 23 at 24.
[77] A. A. Kolajo: *Customary Law in Nigeria Through the Cases*, Ibadan, Spectrum, 2000, p 219; *Eke v Okwaranyia* [2001] F WLR (pt 51)
[78] *Odonigi v Oyeleke* [2001] FWLR (pt 42) 172; 190-191
[79] http://kadint.net/our-journal.html Accessed 27th/2/2020

business partners or friends find themselves in the regular courts over any matter in issue between them, it is most likely to disintegrate them permanently. This is usually not the same under customary arbitration.

The research showed that prior to colonialization of Nigeria, each community had its own way of resolving disputes according to their various customary laws. However, the advent of colonialism brought with it many long lasting effects on the people which include arbitration. It is interesting to note that arbitration is a necessity in view of the fact that disputes are likely to occur in the course of human interaction and arbitration has been a way of resolving these disputes. Suffice to say that the importance of arbitration cannot be overemphasized. The practice of arbitration has always been a more economical and friendly method of resolving disputes both in traditional and modern settings.

The introduction of modern rules of arbitration and other alternative dispute methods and the establishment of the regular courts have not suppressed the burning desire of feuding parties in traditional communities to pursue traditional approaches to resolving their conflicts through customary arbitration. Disputants still find customary arbitration closer to them and more accessible, quick and cheap, leading to enormous savings in time and money for rural populations. It is satisfactory and reliable in resolving most matters such as family, land disputes and other civil or domestic matters. Indeed, the majority of people in Nigeria, particularly in the local communities, as a matter of fact and in practice resolve their disputes through the customary arbitration process. They are often motivated by the need to preserve friendliness and neighborliness by the elimination of grievances and creating a win–win situation. It is submitted that customary arbitration exists in our society both at the rural and urban areas and should be recognized and recommended without much ado, once it passes the necessary tests of natural justice equity and fairness. More attention should e given to customary arbitration to reduce the current congestions in our courts.