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Analysing the Efficacy of Customary Arbitration for Settlement of Land Disputes in Nigeria

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Abstract

A number of cases in court with respect to the recognition and enforcement of customary arbitration awards relate to land disputes. Customary arbitration awards and the resort to traditional oath taking seem to be one of the ways by which title to land is established, particularly under customary law. The courts in Nigeria have been very active on the resolution of land disputes even after the conduct of customary arbitration. This is probably due to the uncertainty emanating from whether a customary arbitration award can be deemed to be final, binding or enforceable where a party decides to reject the award. Relevant judicial decisions however show that the perceived confusion or uncertainty over the efficacy of customary arbitral award is lack of understanding of the peculiar facts and decision in each case. This article adopts the doctrinal research methodology by relying mainly on relevant judicial decisions and literature to analyze the efficacy of customary arbitration as a dispute resolution mechanism for settlement of land dispute in Nigeria. It finds that a customary arbitration award estops another party from reiterating the same issue in court.

Keywords: Customary Arbitration; Customary Conciliation; Customary Litigation; Customary Law; Land Disputes; Oath Taking.

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1. Introduction

The significant importance of land as a scarce and essential material source of wealth for the sustenance of lives as a factor of production such as buildings, agriculture, mining, hydro-electrical power and development of infrastructure has generated considerable interest and passion within the society. This has been aggravated by urbanization leading to intense pressure on land, as a result of several factors such as high population, climate change, natural disasters and large-scale economic globalization. Different land uses compete for the scarcely available land.[1] Consequently, disputes that could likely arise due to competing interest may cause negative effects on economic, social, spatial and ecological developments.

Most communities utilize arbitration as alternative dispute resolution mechanism and as much as possible try to avoid litigation due to it disadvantages such as undue delay, technicalities, lack of confidentiality and huge financial cost among others. There are plethora of authorities where the courts have recognized customary arbitration as a dispute resolution mechanism, including settlement of land disputes. The cases of *Agu v. Ikewibe*[2]*and* Utong *v. Utong*[3] and a host of other cases, are examples of land disputes where the courts recognized resolution by customary arbitration. But in *Okpuruwu v. Okpokam*,[4] the Court of Appeal held that customary arbitration is unknown to the Nigerian legal system and that

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[1]Eric Lambin and Patrick Meyfroidt, '*Global Land Use Change, Economic Globalization, and the Looming Land Scarcity'*, <https://www.pnas.org/doi/10.1073/pnas.1100480108#t01> accessed 30 April 2022.

[2](1991) 3 NWLR (Part 180) 385.

[3] (2013) LPELR -20201 (CA).

[4](1988) 4 NWLR (Part 90) 554.

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the concept is, at most, a concept in a mistaken circumstance. The view of Ogunjede JCAstated the correct position of the law when he held that the position of the majority was a misconception by the earlier judges who saw arbitration as a rival body to the regular court but that such attitude has since changed in favour of according recognition to customary arbitration awards in court[5].

In *Onwu v. Nka,*[6] the court held that the *Attah Igala* was conferred with power by the Igala traditional council to mediate and to pronounce ruling which are his prerogatives under Igala Land Tenure Law and its customary practices.

The focus of this article is on land disputes which are a regular type of dispute referred to customary arbitration. Disagreement over ownership and boundaries of land is a common phenomenon in many communities. Apart from issues arising from assignment, compensation or use and occupation of land, adverse claims over ownership of land could also involve dispute over administration of a deceased's estate or property under intestacy, trespass, customary allotment of site, family or locality farmland sharing, etc.

Customary arbitration is essentially a native arrangement conducted by selected elders of the community who are vast in the customary law of the people and take decisions, which are mainly designed or aimed at bringing amicable settlement, stability and social equilibrium to the people and their immediate society or environment.[7] In*Agu v. Ikewibe,*[8] Kabiri-Whyte, JSC defined 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 chiefs or elders of their community, and the agreement to be bound by such decision or freedom to resile where unfavourable.[9]

[5] See also *Odonigi v. Oyeleke* (2001) 6 NWLR (Part 708) 12 SC.
[6] (1996) 40 – 41 LRCN 1303 at 1322.
[7] Niki Tobi, JSC in *Ufomba v. Ahucahoagu* (2003) 4 SC (Pt11) 65 at 90.
[8] (1991) 3 NWLR (Part 180) 385.
[9] See also *Ohiaeri v. Akabeze* (1992) LPELR-2360(SC), T. O. Elias, *The Nature of African Customary Law,* (Manchester University Press, 1956), 212.

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Problems often arise where the other party is not willing to participate or submit to arbitration. At times, one of the parties may resile or withdraw midstream and some even reject the award after it has been made.The point whether or not a party has the right to resile after an award is made is immersed in conflicting decisions of the appellate courts. While the majority of the Supreme Court in *Agu v. Ikewibe*[10] (Nnaemeka-Agu, JSC dissenting) recognized a party's right to resile, the majority of the selfsame Supreme Court in *Egesimba v. Onuzuruike*[11] excluded the right to resile.

There is no doubt that arbitration and other alternative dispute resolution methods are ordinarily consensual in nature, since they are based on the agreement of the parties, but under native customary law, the elders may have a recognized judicial function and may, in fact, be a tribunal before which natives can bring their disputes for judicial decision.[12] This is why it may be safe to regard such tribunals as native courts. But as we shall see later, awards arising from customary law arbitration are not usually recognized or enforced by the courts unless it can be proven that the parties voluntarily submitted to arbitration.
The scope of this article is however limited to efficacy of customary arbitration as a method of settling land dispute in Nigeria. This article adopts a doctrinal approach by relying on relevant judicial decisions and literature. After appreciating the importance of land and the interest it generates which often lead to intractable dispute it identifies types and effects of land disputes in the society. It discusses the nature of customary arbitration as a dispute resolution mechanism and analyses judicial attitude to settlement of land dispute in Nigeria in order to determine the efficacy of customary arbitration in the resolution of land disputes.

2. Nature of Customary Arbitration in Nigeria

Elders are traditionally regarded as experienced, expert custodians of knowledge, diplomacy and the judicial system of their specific society or group. They play

[10] (1991) 3 NWLR (Part 180) 385.
[11](2002) LPELR-1043(SC) (Niki Tobi, JSC) Cf*Oline v Obodo* (1958) 3 FSC 84and *Ofomata v Anoka* (1974) 4 ECSLR 251.

[12]*Kwasi v. Larbi*, (1952) 13 WACA 76.

strategic roles in settlement of disputes, especially in the rural areas where access to the court is limited by geographical, educational and mostly financial factors. Also, members of the same community often bring their disputes before independent persons who are usually heads of families, elders, chiefs or even friends, for resolution. Some of the cases are sent to the paramount chief for review if the earlier tribunal is unable to settle the disputes. Some paramount rulers adjudicate civil and criminal matters among members of their communities as courts such that, anybody summoned before them must appear. They can impose fines as deemed appropriate under the relevant customary law rules. This may be described as customary litigation as opposed to customary law arbitration which is distinguishable from customary conciliation.[13] A traditional ruler can also function as arbitrator, conciliator or mediator depending on what the parties have agreed and or the circumstances of each case. The ruler acts as an arbitrator where the parties agree, either expressly or impliedly, to be bound by the decision of the ruler. Where the parties merely intend to attempt to negotiate for settlement, then the decision of the ruler or any third person must be accepted by the parties before it can be binding and enforceable.

The courts in Nigeria have held that a valid customary arbitration must fulfill the following conditions for it to be accorded recognition:

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

One major criticism for applying customary law in the resolution of certain disputes, including land disputes, is that, unlike in western arbitration where parties get to choose the arbitrators, and the applicable law to the arbitration, or

[13] Andrew Chukwuemerie, *Studies and Materials in International Commercial Arbitration*, (Port Harcourt: Lawhouse Books, 2002),at 210 – 227 .

even circumscribe their rights and duties under the law by contract, in customary arbitration, parties do not get to choose the particular rule of custom that will apply to their case. The dispute is determined in line with the custom and traditions of the people, without necessarily given special consideration to the peculiar circumstances of the case. This feature of customary arbitration perhaps persuaded Akanbi, Adulrauf and Daibu to hold the opinion that party autonomy and reduction of state interference are a distinguishing factor between western arbitration and customary arbitration.[14]

Ayoola JSC in *Egesimba v. Onuzurike* stated that where a party asserts that there is no valid customary arbitration, it is his duty to raise the issue at the earliest possible time. According to him, once there is the slightest evidence of the probability of a valid arbitration, it must be resolved in favour of the party relying on it. In *Eke v. Okwaranyia*,[15] it was stated that where parties to a dispute voluntarily submit their dispute to a customary body of persons for adjudication and agreed to be bound by the decision of the body on the issues in controversy, and the dispute is heard in judicial manner and a decision is reached, the law takes the view that the parties to the dispute had chosen their forum rather than the courts. The parties are thereby bound by the decision and the successful party can plead the decision as an estoppel.[16]

Customary arbitration, according to Nwauche, refers to arbitration conducted by third persons other than chiefs, elders etc, vested with traditional judicial functions.[17]It has been said that customary arbitration is part of the common law of Nigeria for the reason that it is not part of customary law and neither is it contemplated under the Arbitration and Conciliation Act. In an attempt to resolve the different requirements for recognition and enforcement of customary arbitral

[14] Muhammed Mustapha Akanbi and Lukman Adebisi Abdulrauf and Abdulrazaq Adelodun Daibu**,'**Customary arbitration in Nigeria: a review of extant judicial parameters and the need for paradigm shift'*Journal of Sustainable Development Law and Policy* **(**2016) 6(1)199 <DOI:10.4314/jsdlp.v6i1.9>accessed 30 April 2022.

[15] (2001) 4 SC (Pt. II) 71.

[16]*Ezike & Ors v. Egbuaba* [2008] 11 NWLR [Pt 1099] 627 at 651; *Achor v. Adejoh* [2010] 6 NWLR [Pt 1191] 537.

[17] E.S. Nwauche, 'Customary Law Arbitration and Customary Arbitration in Nigeria', *NLPJ*,(1993)3, 63 – 72.

award, Nwauche draws a distinction between customary law arbitration and customary arbitration when he submits that customary law is a complete body of law which must pass through the repugnancy, impartiality and public policy test before the court can determine the scope and content of the customary law and its substantive aspect.

The effect of this distinction is that it is the relevant customary law alleged and established by the court that should be used in determining whether, for instance, a party can withdraw midstream or reject the award after it has been made or whether a person summoned by a traditional authority can be said to have voluntarily submitted to arbitration.

The aggrieved party usually pays a fee to the tribunal when making a complaint. The tribunal would, thereafter, inform the respondent who will also have to pay a fee if he is ready to contest the claim against him. Either party can give evidence and also call witnesses. The tribunal may also have to visit the *locus*, where appropriate, or even summon witnesses which they consider crucial to the case of the parties.

Nwauche disagrees with Ubangwu[18] on the difference between where the arbitrators are elders, chiefs and other traditional bodies vested with judicial powers as opposed to where the arbitrators possessed no authority recognized by customary law such as Councilors of a District Council[19] or a group of interested persons who possessed no authority recognized under native law and custom.[20] Ubangwu argues that the distinction between chiefs and elders on one hand and other people who conduct arbitration is that the former have recognized judicial functions while the latter can be described as peace settlement or conciliation. According to Nwauche, an arbitration conducted by persons other than authorized chiefs is customary arbitration and not conciliation. If that is the case, it appears that the distinction made between customary law arbitration and customary arbitration, is without a difference in the sense that the overriding factor, as Nwauche correctly argues, it is difficult to argue that the decision of customary arbitration should not be recognized by the courts because the parties cannot

[18] Ubangwu, 'Is Customary Arbitration Part of Nigerian Juris?' *GRBPL*(1980)7(2) 62,64
[19] *Inyang v. Essien* (1957) 2 FSC 39.
[20] *Ekwueme v. Zakari* [1972] 2 ECSLR.

relate the source of their power to any customary law since the power of the arbitration lies in the fact that the parties have voluntarily submitted their disputes to the arbitrators, agreed expressly or by implication, beforehand, that they would accept the award, whatever it may be; that there was an award published by the arbitrators; that none of the parties withdrew from the arbitral process before an award was made and that the parties accepted the award.[21]

While calling for recognition of what he termed to be customary arbitration for simple, less formal and non-litigious arbitral system, Nwauche, regrettably, did not call for the recognition of award arising therefrom as binding and enforceable by the court even if it is not accepted by the losing party. The popular view is that where the parties submit their disputes for settlement by arbitration in accordance with the native customary law and if the other party did not withdraw from the arbitration before it was completed, the award of the arbitration will never be binding on the parties.[22]

Despite the conflicting judicial decisions on the ingredients of customary arbitration, the courts are *ad idem* on the point that voluntary submission of the matter in dispute to arbitration. This shows that customary arbitration is consensual. Yet, since customary law arbitration is ordinarily oral in nature, it is often difficult to draw the line between the attendance of a party whose intention was merely to explain himself or give his version of the dispute, or where his intention was to submit himself to the investigation and decision of a chief, elder or other persons.[23] It is the duty of the court to ascertain from the facts whether a party participated in customary arbitration merely to explain himself or whether his intention was to state his case for the determination of the native body or tribunal. Most parties appear before the tribunal because they are duty bound to do so. It is a question of fact in each case to be determined from the conduct of the parties based on the surrounding circumstances.[24] It has been held that the mere presence of a party before the native tribunal is no conclusive proof of

[21] Nwauche n17.
[22] *Kwasi v. Larbi*(1952) 13 WACA 76.
[23] Austin Amissah, 'Ghana' in Eugene Cotram and Austin Amissah (eds), *Arbitration in Africa* (Kluwer Law International, Hague, 1996) 114.
[24] *Yaw v. Amobie* (1958) 3 WALR 406; *Asare v. DomeorSerwah II* (1962) 2 GLR 176 SC.

submission to arbitration.[25] However, a party who provided drinks and food during the arbitration of their case was held as proof of acceptance to the tribunal's invitation.[26]

Customary law arbitration is also a very informal process with no laid down written rule regulating the procedure unlike arbitration under the Arbitration and Conciliation Act[27] which must be based on a written agreement of the parties and which provides for sufficient machineries to enforce the agreement. Whereas section 26 of the ACA sets out the formal requirements of award, award arising from customary law arbitration is informal and may be oral provided it can be proved and details of the award clearly ascertained, final and enforceable, even though it is desirable that the awards be reduced to writing in this modern age.
Generally, an award is conclusive as between parties to the arbitration and persons claiming through them, as regards the issues with which it deals. It creates new rights between the parties, and in most cases supersedes their previous rights in relation to the matters referred.[28] Even under customary law arbitration, a valid award will create estoppel and operate as *res judicata* between the parties and their privies with regard to the matters with which the award relates. The Supreme Court has held that:

> It is quite immaterial whether a tribunal which pronounces a decision relied upon as ground of estoppel is a court or not or whether it is what has been denominated by custom or statute or by a Supreme Court or not, or whether it is known by the names of a court at all. It is enough if the alleged judicial tribunal can properly be described as a person or otherwise in accordance with the law of England or in the case of a foreign tribunal, the law or the particular foreign statute, whether he or they be invested with permanent jurisdiction to determine a cause or a certain class or as when submitted to be clothed by the State or the disputants with

[25] *Nyemsenihwe& Anor v. Afibiyesan* (1977) 1 GLR 27.
[26] *Mgbabu v. Asochukwu* (1973) ECLR (Part1) 90.
[27] Cap A18, Laws of the Federation of Nigeria, 2004 (hereinafter referred to as "ACA").
[28] David St. John Sutton and Judith Gill, *Russell on Arbitration*, (22nd edn.) (Sweet & Maxwell Ltd., 2003)146.

> merely the temporary authority to adjudicate on the particular dispute or group of dispute.[29]

The principle of *res judicata* applies where a final judicial decision having competent jurisdiction over the matter in litigation and over the parties, thereto, disposes once and for all of the matter decided so that they cannot afterward be raised for the re-litigation between the parties or privies".[30]

3. Analyses of Relevant Judicial Decision in Nigeria

The courts in Nigeria have been very active on the resolution of land disputes even after the conduct of customary arbitration. This is probably due to the uncertainty emanating from whether a customary arbitration award can be deemed to be final, binding or enforceable where a party decides to reject the award. Relevant judicial decisions however show that the perceived confusion or uncertainty over the efficacy of customary arbitral award is lack of understanding of the peculiar facts and decision in each case.

There is no unanimity on the customary law applicable to the settlement of land disputes as this varies from one community to another. Therefore the history, tradition, identity and ownership of land are factors to be considered in each case. The issue can also be whether the arbitrators have the authority to adjudicate on a land dispute or whether the parties voluntarily submitted to the jurisdiction of the tribunal. Where this is confirmed, the issue turns on whether the decision of the tribunal is certain and capable of being enforced.

For instance, the subject matter of arbitration could relate to the determination of specific size of family land or it may concern the ascertainment of the owner of a piece of land either according to tradition or as a result of transfer or purchase. The traditional court-in-council is equivalent to any "other tribunal" within the meaning of Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).[31] Therefore it is the duty of the arbitral tribunal to hear the

[29]*Agu v. Ikewibe*n2.
[30]*Ibid*.
[31]Hereinafter referred to as "CFRN". See *Okechukwu Obianwu v. Mr Emmanuel Ikem Obianwu* (2017) JELR 37630 (CA).

case of the parties before rendering an award. The burden of proof is on the person that alleges that his rights have been trampled upon.

The courts have been given recognition and enforcement to awards arising from customary arbitration for the settlement of land dispute in Nigeria.[32]In *Chukwu v. Okoh*,[33]the defendant continued to manage and administer the deceased's estate without regard to the interest of the plaintiff who is the sole beneficiary of the said estate. The defendant sold the parcel of land when the plaintiff was a minor and made him sign the document evidencing the transaction but refused to account for the proceeds.The defendant constructed No.11 Umuchu Street from the proceeds of the estate and had told the members of the larger family when confronted that he was building it for the plaintiff.

Upon attainment of majority, the plaintiff requested the defendant to give him account of his deceased father's estate and handover same to him as is customary amongst Amechi Awkunanaw people, but the defendant refused. The parties voluntarily submitted the matter to the Umunnukwu larger family of Amechi Awkunanaw for customary arbitration which directed after hearing both sides that the defendant render accounts of his management of the said estate to the plaintiff and the handover same to him, but the defendant failed or refused to carry out the directives of the said larger family. The courts upheld the decision of the arbitrators and therefore ordered the enforcement of the award.

As already mentioned, it was held in *Onwu v.Nka*[34] that the *Attah Igala* was conferred with power by the Igala traditional council to mediate and to pronounce ruling which are his prerogatives under Igala Land Tenure Law and its customary practices, and that the *Attah Igala*, is by Igala tradition, the owner and custodian of all Igala land and invariably the grantor of land to all chiefs.

The act of oath taking has become a regular feature in the resolution of land dispute by customary arbitration and has produced different results. In *Ofomata v. Anoka*,[35]the court refused to enforce the customary arbitration award which it

[32] See *Nwanosike v. Udenze* (2016) LPELR-40505(CA).
[33] (2016) LPELR-42117(CA)
[34] (1996) 40 – 41 LRCN 1303 at 1322.
[35](1974) 4 ECSLR 251.

considered was not final and binding because it was contingent upon the taking of an oath which never took place. On the other hand, the fifth requirement that the decision or award must be acceptable at the time it was made before it could be enforced, was not upheld in *Onyege v. Ebere*[36] because the parties agreed to oath taking and the Supreme Court, per Niki Tobi, JSC, stated that the appellants who were instrumental to the exercise of the oath taking cannot resile from it.[37] According to the court, "a man staking his life to assert his right is the highest appeal to conscience.[38] In *Ume v. Okoronkwo,*[39] the court also affirmed oath taking as one of the methods of establishing the truth of a matter under customary law and accepted by two parties.

In *Umeadi v Chibunze*[40]the court held that 'where parties who believe in the efficacy of a juju resort to oath-taking to settle a dispute they are bound by the result and so the common law principles in respect of proof of title to land no longer applies since the proof of ownership of title to land will be based on the rules set out by the traditional arbitration resulting to oath-taking.'
The words of Kutigi JSC in *Nwore & Ors v. Okorie & Ors*[41] however explain judicial attitude to invocation of "juju" in customary law arbitration when he stated that:

> Both sides in the contested suit called as their witnesses, natural and real human beings, to say what they knew about the land. All the witnesses were available for cross-examination and re-examination on their testimonies. This was as it should have been under the law. The 'juju' method, as cheap and quick as it might appear to have been, had its own disadvantages. For example, you cannot put a 'juju' in the witness box for any purpose. Its activities, method and procedure would appear to belong to the realm of the unknown even though the effects may be real in the

[36] (2004) 6 SCNJ 126.
[37]See *Oparaji v. Ohanu* (1999) 6 SC (Pt41) or (1999) 9 NWLR [Pt 618] 290 at 304; Nwauche, n17.
[38]*Obaji & Ors. v. Okpo & Ors*. (1975) 1 MSL R 258.
[39] (1996) 43 LRCN 2068; *Egesimba v. Igwegou Ezeugo* (1992) 6 NWLR [Pt 249] 561 at 576.
[40] (2020) LPELR-49566(SC)
[41] (1994) 5 NWLR [Pt 543] 159 at 173.

> end. The worst of it all is that a 'juju' 'judgment' or 'decision' is not subject to an appeal like the one we are all witnessing now in this suit. So that unless and until the 'juju' descends to the level on which we can all understand its workings, it will be difficult to enforce its 'decision' in a law court. We have come a long way from the oracle.[42]

Yet, the resort to oath taking before juju and shrines may be criticized as unconstitutional and repugnant to natural justice, equity and good conscience and not compatible with statute. It seeks assistance of diabolic or unseen spirits/powers to kill or harm/vindicate one who takes the oath and should therefore not be administered. Additionally the process of oath taking in customary arbitration to resolve land dispute is devoid of rational or legal effort and speculative to achieve the desired result.

4. Conclusion

Customary arbitration has been a veritable tool in the settlement of land disputes. This article demonstrates that the seeming confusion usually associated with the bindingness of customary arbitration can be attributed to the inability of practitioners to appreciate the difference between customary litigation, customary arbitration and customary conciliation. While an award arising from customary litigation or customary arbitration remains final and binding and therefore enforceable, the decision resulting from customary conciliation becomes enforceable if it is accepted by the parties. The recognition of oath taking on the settlement of land disputes by the courts in Nigeria is to the extent that both parties voluntarily agreed to participate in the oath taking and to be bound by its outcome. This should not be taking to mean that others who refuse to circumscribe to oath taking could be coerced nor could it be said that oath taking dispenses with the requirement for proof of declaration of title generally as being misconstrued by many.

The mandatory requirement that an agreement to arbitrate should be in writing under section 1 of the ACA is not applicable to customary arbitration even

[42] *Ibid.*

though it may be desirable for parties in this modern time to reduce the agreement to arbitrate and the award arising out of the arbitration to writing.[43]

Chukwuemerie[44] argues that customary law arbitration can be used for settlement of modern complex transactions such as oil and gas, when it is properly adapted to the highly commercialized age of the present millennium as the UNCITRAL Model Law, and statutes based on it, recognize customary law arbitration and that foreign customary award may now even be enforceable under the New York Convention. After drawing similarities between customary law arbitration and arbitration under the ACA, he submit that customary law arbitration can be conducted under the ACA and an award arising there from is enforceable under the ACA, even though the definition of 'court' under the ACA did not include customary courts.[45]

The establishment of a permanent arbitral institute in Africa for international customary law arbitration that will have on its list or panel, knowledgeable Africans in African customary law arbitration has also been recommended in line with the establishment of Cairo Centre for International Commercial Arbitration with branches located in different countries under the African Union.[46]

Apart from the courts, customary law arbitration has been given legislative backing in Kogi State and in Uganda.[47] For instance, according to section 61(2), Area Courts Law of Kogi State, "nothing shall be deemed to prohibit any person from adjudicating as an arbiter upon any civil matter in dispute where the parties have agreed to submit the dispute". This is a welcome enthronement of the practice of customary law arbitration.

5. Recommendations

In the lights of the foregoing, this article recommends that the courts in Nigerian should always note the fine distinctions between customary litigation, customary

[43]*Oline v. Obodo* (1958) 3 FSC 84.
[44]Chukwuemerie, n13. See alsoAndrew I., Chukwuemerie, *New Dimension in Commercial and Oil and Gas Laws* (Chenglo, Enugu Ltd., 2007) 301, 304.
[45] Chukwuemerie, *New Dimension in Commercial and Oil and Gas Laws*Ibid.
[46]*Ibid*, 318 – 319.
[47]Area Courts Law of Kogi State, section 61(2).

arbitration and customary conciliationbefore giving effect to an award in order to avoid the usual confusion between the effects of an award arising from customary arbitration and negotiated settlement. Also, judicial decisions should unequivocally declare the unconstitutionality and repugnancy of using oath-taking in determining the rights of parties to a land disputes.

In order to ensure certainty in the content of a customary arbitration award, the parties should endeavour to as much as possible reduce their agreement to customary arbitration and the award arising thereof published by their arbitral tribunal into writing. It is equally desirable to give legislative backing to customary arbitration. To reflect the diversity in the native law and customs of various communities. Furthermore, the Supreme Court should whenever the opportunity presents itself clarify its decision in *Umeadi*on the essential requirements for proof of ownership of land in the court.