



THE JURISPRUDENCE OF PROVING LAND OWNERSHIP THROUGH OATH TAKING

Uzodinma Frank-Igwe*
Etheldred E. Woha**

ABSTRACT

Oath-taking was a method used in certain regions of Nigeria to extract the truth from anyone involved in conflicts, including parties and witnesses, according to the traditional law and customs. It was praised as a method to determine absolute truth, as it entails making a solemn declaration before a deity believed to possess the power to impose supernatural consequences that are rapid and often deadly, in case the person taking the oath tells a lie or distorts the truth. The awe-inspiring nature of this deity frequently motivated those taking oaths to express the truth without any deviation. Therefore, proponents argue that the Nigerian Courts should recognise this approach as a valid means of establishing land ownership through Oath-taking. There have been differing viewpoints regarding the importance and legal implications of traditional oaths. This article examines the rationale or otherwise of admitting evidence adduced from oath-taking as a method to determine land ownership.

Keywords: Oath taking, Custom, Customary arbitration.

INTRODUCTION

When we use the term "land" in everyday language, we are referring to the physical surface of the earth, including soil and solid ground.”¹ Nevertheless, within the African traditional context, land holds a profound significance and worth. The significance of land goes far beyond its economic value or practical utility. It is regarded as a sacred inheritance from previous generations, a precious resource for the present, and a legacy for countless future generations.² Land encompasses a wide range of dimensions, including ecological, cultural, cosmological,

* Uzodinma Frank-Igwe, is a Lecturer with the Department of Private and Property Law, Faculty of Law, Rivers State University, Port Harcourt. He can be reached at frank-igwe.uzodinma@ust.edu.ng

**Etheldred E. Woha, is a Lecturer with the Department of Private and Property Law, Faculty of Law, Rivers State University, Port Harcourt. She can be reached at etheldred.woha1@ust.edu.ng.

* LL.M, LL.B, BL, Lecturer, Department of Private and Property Law, Rivers State University, Nkpolu, Port Harcourt. Email: ufrankigwe@yahoo.com

** LL.M (RSU), LL.B (ABU Zaria) BL, Lecturer, Department of Private and Property Law, Faculty of Law, Rivers State University, Port Harcourt. Email- Etheldred.woha1@ust.edu.ng.

¹ *Salami v Gbodoolu* [1997] 4NWLR (Part 499),277 at 287.

² *Amodu Tijani v. Secretary, Southern Nigeria* [1921] 2 A.C. 399



social, and spiritual aspects. Seen as the permanent resting place of ancestors, with a spiritual significance.

It is undeniable that land is often the centre of numerous interests and rights, leading to frequent conflicts. Explaining these concepts can be challenging, especially when land is governed by native customary tenure, as both individuals and groups hold rights and interests in it. Frequently, there is a conflict between these rights and interests.³ The courts have dealt with numerous cases involving the establishment of land ownership and have developed methods for proving ownership, as demonstrated in the case of *Idundun v Okumagba*.⁴ In this Supreme Court case, the methods for establishing land ownership in Nigeria were discussed. These methods include providing traditional evidence, presenting a document of grant or title, demonstrating acts of possession and ownership over a significant period, showing long possession and enjoyment of the land, and proving possession of connected or adjacent land that suggests the owner is likely the owner of the disputed land.⁵ Umezulike also included two additional methods for establishing land ownership: the presence of family graves on the land and the occupation of the land for a period of twelve (12) years or longer.⁶ It can be argued that Oath-taking is considered a form of evidence based on tradition. This article explores the process of oath-taking in customary arbitration and its significance as a method of establishing proof of land ownership.

The word "oath" refers to a serious pledge to a sacred person or object that one will be obligated to keep a promise or that one's assertion is true.⁷ Therefore, it is obvious that taking an oath is a commitment made in front of a higher power. T. O Elias explained that the process entails the oath taker appearing before a council of elders, who would carefully word the oath in a certain manner. The oath taker then solemnly swears in line with the council's instructions, specifically addressing the infraction or issue in question.⁸ Oath-taking is a practice that is not limited to Nigerian customary adjudication. It has become a part of the Nigerian judicial

³Olusegun Onakoya, Family Head Versus Family Members: Legal Issues in Management of Family Land Under Yoruba Customary Law [2015] (39) *Journal of Law, Policy and Globalization*.

⁴*Idundun & Ors v Okumagba & Ors* (1976) 9-10 SC 227. 246-250

⁵ *Ibid.*

⁶ I.A Umezulike, *A B C of Contemporary Land Law in Nigeria* (Snaap Press Nig Ltd, 2013).

⁷ B A Garner, *Blacks Law Dictionary* (8th edition, West Publishing Co) 413

⁸ T.O Elias, *The Nature of African Customary Law* (Manchester University Publishing Press) 110



process due to the influence of English laws, which have a long history of development and acceptance of individuals with religious beliefs that prevent them from swearing oaths.⁹

It is crucial to acknowledge that there are individuals who prioritise speaking the truth consistently, aligning with the teachings of the Holy Bible that emphasise the importance of honesty.¹⁰ These individuals refrain from adopting inconsistent principles and oppose the act of making solemn promises to testify in court, which they do not practise in their everyday lives. Individuals who oppose military service on moral or religious grounds are referred to as Quakers. They have the option to make a solemn declaration instead of taking an oath, as outlined in the Quakers Act of 1695 and the English Oaths Act of 1978. The necessity of such a right is demonstrated by the case *R v. William Brayn*.¹¹

Regarding the case, William Brayn was alleged to have taken Ambros Galloway's horse. Brayn entered a plea of not guilty. Based on the account of a witness, it was reported that Ambros Galloway was the owner of the horse. Based on the account of another witness, it was reported that Ambros Galloway acquired it from Brayn. Galloway was unable to testify because, being a Quaker, he refused to swear "for the sake of conscience." The court instructed the jury to acquit Brayn based on insufficient evidence, while the Quaker was sentenced to prison as a consequence of committing a felony by refusing to take an oath to testify for the King.¹²

According to Matthew 5:34-37, certain Christians, who may not necessarily be Quakers, decline to make solemn promises. It is worth mentioning that the English system, similar to the Nigerian court procedure, recognises and accommodates those who are unwilling to take oaths owing to their religious views.¹³ This is contained in the Nigerian Oaths Act which states that,

Any person who objects to the taking of an oath and desires to make an affirmation in lieu thereof, may do so without being questioned as to the grounds of such objection or desire, or otherwise, and in any such case the form of the required oath shall be varied by the substitution for the words or swearing, the words, "I solemnly, sincerely, and truthfully affirm that"; and such other consequential variations of form as may be necessary shall thereupon be made.¹⁴

⁹ Oaths Act of 1963

¹⁰ The Holy Bible, James 5:12

¹¹ *R v. William Brayn* (1678)

¹² The Proceedings of the Old Baileys London's Central Criminal Court 1674 to 1913 <<https://www.oldbaileyonline.org/browse.jsp?id=t16781211e-37&div=t16781211e-37>> accessed 11/01/2023.

¹³ S.4 of the Oaths Act of 1963

¹⁴ S.8



One may question whether swearing under oath alone is enough to ensure the veracity of a statement and if complete adherence to the oath is always observed. According to the Criminal Code, anyone who knowingly provides false testimony in a judicial proceeding, either to initiate the proceeding or during it, regarding a matter that is important to a question being discussed or will be discussed in that proceeding, is considered guilty of perjury. The relevance of the testimony does not depend on whether it is given under oath or any other legally authorised penalty.¹⁵

There are many levels of punishment for the act of perjury. According to the Nigerian Criminal Code, if someone commits perjury intending to get another person convicted for a crime that carries a punishment of death or life imprisonment, they can be sentenced to fourteen years in jail.¹⁶ Nonetheless, it is necessary to initiate a distinct trial to determine the culpability or innocence of the individual who committed perjury before reaching a verdict of guilt or acquittal. Typically, this process is lengthy, arduous, and costly, which is a drawback compared to the customary oath-taking. Umezulike characterises the traditional oath-taking as dynamic and consequential, contrasting it with the oaths taken by witnesses and public officials in public courts, which he views as reverent and unassertive.¹⁷

Customary Oathtaking

Before exploring the act of oath-taking within customary law, it is necessary to address certain contextual matters, such as the definition of custom. Are the terms "customs" and "customary law" synonymous? Is it possible for a culture that was once tolerated to become deemed unacceptable? Is it necessary for an act to be performed by the entire group to be classified as a custom? Custom is defined as the established or common usage of a specific group of individuals.¹⁸ The Evidence Act defines Customs as a rule that has acquired the force of law in a particular district due to its long usage.¹⁹ Customary law refers to the legal system that encompasses the established norms, customs, and behavioural regulations of a particular community. The law is driven by the collective vision, beliefs, philosophies, and value system of the population.

¹⁵ S.117

¹⁶ S.118

¹⁷ I.A Umezulike, *A B C of Contemporary Land Law in Nigeria* (2013, Snaap Press Nig Ltd) 38.

¹⁸ O N Ogbu, *Modern Nigerian Legal System* (2002, Cidjap Press) 75.

¹⁹ Evidence Act; *Agbai v Okagbue* (1991) NWLR (pt204) 391 at 416.



Similarly, it is described as the oral tradition and historical knowledge of a community that has developed alongside the community's progress and finally become an inherent aspect of their culture. It refers to a customary behaviour or tradition that has been widely accepted and followed for a long time, to the point where it is considered mandatory and has the same legal weight as an actual law, specifically concerning a particular location or topic.²⁰

Osita Nnamani²¹ differentiates between customs and customary law, using the case of *Ojisua v. Aiyebilehin*²² as an example. In this case, Niki Tobi(JCA) (at that time) made a contrast, stating that customs just represent general usage and practice, while customary law goes beyond that by having the authority of law.²³ Hence, it is inadequate to assert that a prolonged habitual practice constitutes customary law; rather, it must be acknowledged and adhered to by the populace to acquire the status of customary law. Therefore, it is important to consider long-standing established usage and acceptability as the primary indicators of custom. Acceptance is an essential prerequisite for establishing the validity of a custom. For a custom to be considered reliable, it must be demonstrated that the people in a specific place at a given period genuinely accepted and recognised the existence of that culture. Therefore, custom is commonly described as a reflection of widely accepted practices.²⁴

However, one may question if the act of swearing an oath was genuinely embraced by the majority of individuals in all regions. It is rather somewhat more realistic to ascertain in each specific case whether the parties involved in the dispute believed and agreed to resolve their disagreement by oath-taking and willingly agreed to be obligated by this customary practice. This assumes that such a procedure meets the criteria of being a usual practice and is considered genuine. The court uses certain criteria to assess the legitimacy of a custom. These criteria include the requirement that the custom aligns with principles of natural justice, equity, and good conscience and that it does not conflict with societal norms and values. Furthermore, it must adhere to the existing legislation without any contradictions.²⁵

In African traditional societies, customary practices were rarely questioned except by significant changes that redirected certain components of the activities and thereby modified

²⁰ *Aku v Aneku*

²¹ O N Ogbu, *Modern Nigerian Legal System* (Cidjap Press, 2002)

²² (2001)11NWLR pt 7730 44 at 52

²³ *Umeadi v Chibunze* (2020)10 NWLR (pt.1733)405

²⁴ *Owoniye v Omotosho* (1961)1ALLNLR 304 at 309

²⁵ Section 18(3) of Evidence Act Cap E 14 Laws of the Federation of Nigeria, 2011.



the traditions.²⁶ Religion and colonisation were significant factors that greatly influenced customs in Nigeria, leading to significant changes in the customary adjudication system.²⁷ Customary adjudication refers to the traditional method of resolving conflicts in Nigeria before the introduction of English laws and courts. This system was used to handle disputes of all kinds. The resolution styles exhibited regional and communal variations. The process of British colonisation did not lead to the complete eradication of Nigerian customary law and local-level systems for resolving conflicts, such as customary arbitration.²⁸

However, colonialist-introduced legal institutions eventually surpassed traditional ones, and customary law was only enforced within the bounds set by these new systems.²⁹ This condition rendered customary arbitration somewhat ineffective to the extent of conformity to certain conditions, as a customary arbitral ruling would lack validity and enforceability if it failed to adhere to the rules established by the courts.³⁰ The criteria for accepting customary arbitration have been delineated in several legal cases. A case in point is the case of *Ohieri v. Akabeze*³¹ For the award from customary arbitration to be recognised by a court of law, certain conditions must be met. It must be demonstrated that the parties willingly agreed to participate in the arbitration process, that they agreed to be legally bound by the decision made by the arbitrators, that the arbitration was conducted following the customs agreed upon by the parties, that the arbitrators made their decision public, and that the parties accepted the award.³² In a more recent case, Okoro JCA stated that for an arbitration decision to be legally binding, the following must be present: (1) the parties' free and informed consent to the arbitration process; (2) the parties' explicit or implicit understanding that the arbitrator's decision will be final and binding; (3) the arbitration process must have followed the parties' established norms and practices; and (4) the arbitrators must have issued a decision and made it public.³³

²⁶ A. J. Njoh, *Tradition, Culture And Development In Africa: Historical Lessons For Modern Development Planning*. (Routledge, 2016).

²⁷ Y. I. Arowosaiye, 'Eurocentric influence and misconception of the Islamic and Customary Criminal Justice System in Nigeria' *Africa Nazarene University Law Journal* [2016] (4)(2): 36-62.

²⁸ V.C. Igbokwe "Law and Practice of Customary Arbitration in Nigeria: *Agu v. Ikewibe* and Applicable Law Issues Revisited." [1997] (41) (2) *Journal of African law* 201

²⁹ See generally Tobi N, *Sources of Nigerian Law* (MIJ Professional Publishers, Lagos 1996)

³⁰ M M. Akanbi and others, Customary Arbitration in Nigeria: A Review of Extant Judicial Parameters and the Need for Paradigm Shift [2016] *Journal of Sustainable Development Law and Policy*.

³¹ (1992)2NWLR (pt.22).

³² *Philip Njoku v. Felix Ekeocha* (1972) ECSR 199 at 205.

³³ *Awonusi v. Awonusi* (2007) All FWLR 1642 at 1662.



Although it was not specifically stated as a necessity in the aforementioned case, the parties must agree to be bound by the arbitration ruling in *Achor v. Adejoh*,³⁴ as decided by the Court of Appeal per Aboki JCA. Enforcement and compliance will be challenging in the absence of voluntary engagement and acceptance of conventional arbitration.³⁵ Furthermore, it has been held that where matters in dispute between parties are thoroughly examined by the arbitrators during a meeting conducted under native law and custom, and a final decision is reached. This decision holds legal weight and can be enforced by the Supreme Court.³⁶ It can be said that the parties' voluntary acceptance of the decision of the arbitrators who are usually the chief or elders of the community is an essential requirement during a customary arbitration.³⁷

When assessing the voluntary nature of oath-taking in customary arbitration, it is important to consider the potential ambiguity of the process, which is usually initiated through a complaint and subsequent summons.³⁸ Assessing the degree of voluntariness in a summons becomes difficult when the summoned person is not given information about their right to decide whether or not to attend. It is established that if either party involved in a customary arbitration hearing is compelled to attend a council of chiefs or elders under the threat of punishment, any outcome achieved cannot be considered as compliant with a legally recognised customary arbitration process. This is because there is a lack of voluntary compliance.³⁹

To gain clarity regarding oath-taking, it is crucial to examine the procedure for oath-taking in customary arbitration. However, it is essential to note that the fundamental objective of any adjudication system is to uphold justice. Often, the truth may be indeterminable just through factual evidence. This is the reason why evidence, although presented, may not always lead to a certain conclusion. Therefore, the standard of proof in civil trials relies on the balance of probability or the preponderance of evidence,⁴⁰ Meaning judgment is awarded to one of the parties with a more compelling argument. The courts will impartially assess the evidence

³⁴(2009) LCN/3295 (CA).

³⁵ *Agala v. Okusun* (2010) 10NWLR(pt1202) 412 at 448.

³⁶ *Assampong v. Amuaku*(1932) 1 WACA.192.

³⁷ O K Edu, Effect of Customary Arbitral Awards on Substantive Litigation: Setting Matters Straight

³⁸ A. Emiola, *The Principles of African Customary Law* (Emiola Publishers, 1977) 34-45; M M. Akanbi and others, Customary Arbitration in Nigeria: A Review of Extant Judicial Parameters and the Need for Paradigm Shift [2016] *Journal of Sustainable Development Law and Policy*.

³⁹ *Adeyeri v Atanda* (1995) 5 SCNJ 157.

⁴⁰ *Osuji v. Ekeocha* (2009) ALL FWLR (Pt.490) 614; *Amukomowo v. Audu*(1985) 1NWLR (Pt.3) 530.



presented and determine the outcome based on a balanced evaluation, granting justice to the party with stronger proof, as shown by the tilting of the metaphorical scale of justice.

Nevertheless, it is critical to emphasise that the law functions as a unifying force that establishes justice and order, facilitating the resolution of disputes and safeguarding the collective interests of humanity in a systematic fashion. This eliminates the necessity for relying on unregulated methods or self-help approaches, which could potentially lead to disorder and anarchy.⁴¹ It is important to recognise that Law has developed as a substitute for private feuds and vengeance, as well as a complement to informal social processes through which individuals and groups resolve conflicts. It offers a formalised method of resolving conflicts based on legal rights and responsibilities.⁴²

Guides such as the rule of law and processes act as safeguards to ensure the achievement of justice. Plato asserted that the governance by law is more desirable than the governance by a single person.⁴³ The rule of law embodies the innate desire for justice. In order for the principle of justice to prevail over power, individuals must be bound by the law. Furthermore, the law must fulfil four indispensable prerequisites. Firstly, it is imperative to establish a high level of certainty for individuals to confidently depend on it, thereby garnering their support for its implementation and verification. Furthermore, it is crucial that individuals possess knowledge regarding their rights and responsibilities, and that these are upheld by unbiased and morally upright judges who inspire public confidence.⁴⁴

Based on the previous argument, it can be inferred that customary law is dynamic and developing. Therefore, it is conceivable that a rule of customary law, once accepted by the people, may become outdated and cease to be acknowledged, accepted, and followed by the people, or simply altered. Indeed, it is possible to provide evidence in court to argue that a previously acknowledged customary law is no longer valid.⁴⁵ Herein lies the question, was oath taking ever custom, if it was, would it still be regarded as custom? To answer the proceeding question it is important to address the nature of Oath taking under Customary Law.

Nature and Procedure of Oath-Taking Under Customary Law

⁴¹ O N Ogbu. (n19) 2.

⁴² O N Ogbu (n19) 8.

⁴³ E Baker, *The Political thought of Plato and Aristotle* (London,1906) 7.

⁴⁴ A Denning, *The Changing Law* (2012, Universal Law Publishing)3.

⁴⁵ *Danmole v Dawodu* (1958) 3 FSC 46; *Adeniji v Adeniji* (1972)1ALLNRL 298.



In a recent ruling, the Supreme Court, in the case of *Umeadi v Chibunze*,⁴⁶ upheld the Customary Law practices, specifically regarding the use of oaths to establish land title or ownership. Bear in mind that the courts do not leap into the arena, but rather make decisions based on the cases presented to them. It can be said that the primary purpose of this court proceedings was to ascertain whether proper procedures were adhered to, rather than to contest the legality or validity of oath-taking under customary law.

Academic study provides the opportunity to comprehensively examine and assess the legitimacy of oath-taking as a trustworthy means of establishing ownership of land from several perspectives. To accomplish this, it is imperative to have a comprehensive understanding of the concept of oath-taking as it pertains to customary law. Oath taking by Nigerian indigenous customs can be defined as a solemn declaration or affirmation made with the risk of divine punishment for deliberate falsehood.⁴⁷ Under ancient cultural traditions, valued entities were often deities. Taking an oath under traditional customs involves making a solemn promise before a deity possessing mystical or superhuman abilities, capable of swiftly and immediately delivering retributive punishment to those found guilty. According to reports, women and children were prohibited from participating in vows that had harmful or damaging intentions.⁴⁸

Unlike oaths made under English law, which constitute perjury and require a separate trial, lying under oath according to native custom is considered to immediately invoke the anger of the gods. This is why advocates support its recognition as dependable proof. Customary oaths and common law oaths differ in their purpose and nature. In customary processes, taking an oath is analogous to a religious supplication to the gods, rather than a method of confirming or guaranteeing the truthfulness of the oath. Conversely, in common law, every witness is obligated to take an oath.⁴⁹ In customary adjudication, oaths were not simply ceremonial acts performed to provide testimony. While the specific practices varied, oath-taking was a serious

⁴⁶ (2020)10NWLR (pt.1733)405.

⁴⁷ S. C. Nwankwo, *Understanding Religions Ethics: An Exercise in Afriocentric Ethicalism* (Rainbow Printing Press, 2017).

⁴⁸ A A Oba, Juju Oaths in Customary Law Arbitration and their Legal Validity in Nigerian Courts [2008] 52(1) *Journal of African Law*, 149.

⁴⁹ Elias, *The Nature of African Customary Law*, 229–32; and Okany, *The Role of Customary Courts in Nigeria*, 5–6.



matter as it entailed calling upon a local deity to impose severe punishment on witnesses, potentially resulting in death.⁵⁰

Unlike the oaths administered in public courts, where perjury could result in a legally defined punishment, oaths within the native system were solemn ceremonies typically accompanied by language that evoked disaster and mortality. These words are employed to solemnly promise that an individual will uphold their obligations as outlined in the agreement. While different people have different views on the specifics of the oath-taking process, Nwankwo outlined four main reasons why the Igbo swear to something: first, to establish the veracity of what is being said; second, to keep peace amongst people; third, to protect the confidentiality of an organisation or institution; and fourth, to sort out criminals.”⁵¹ According to Nwankwo, when the seriousness of an offence surpasses the human capacity to resolve it, the accused appeals to divine spiritual forces to receive either absolution or punishment.⁵² Such rituals employ mortality and well-being as guarantees to protect the agreements. According to Ikeora, individuals who took oaths submitted directly to the preternatural tribunal to resolve disputes presented before the deity.⁵³

Regarding the process of rendering a verdict, Nwakibye explains that oath-taking rituals are designed as follows: "Typically, a designated time is allocated during which the party committing the offence is anticipated to either pass away from illness or be struck by divine wrath, thereby attesting to his identity as the guilty party."⁵⁴ Regarding the verdict, it is asserted that it is commonly held that the determination of culpability or innocence of an oath taker is contingent upon the accused's demise or onset of illness within the designated time frame.⁵⁵ A person staking his life in defence of his right was regarded as the utmost appeal to conscience under native law and customs.⁵⁶

In *Bennedict Iwuchuwu v Christiana Ojiriyeke and Anor*
HOW/55/71 (unreported) Anya J, held ‘it seems to me right also to

⁵⁰ I.A Umezulike, *A B C of Contemporary Land Law in Nigeria* (2013, Snaap Press Nig Ltd)38.

⁵¹ S. C. Nwankwo, *Understanding Religions Ethics: An Exercise in Afriocentric Ethicalism* (Rainbow Printing Press, 2017).

⁵² (n 51).

⁵³ M. Ikeora, The Role of African Traditional Religion and Juju in Human Trafficking; Implication for Anti Trafficking [2016] 17(1) *Journal of International Women's Studies*.

⁵⁴ G C Nwakoby, *The Law and Practice of Commercial Arbitration in Nigeria* (Iyke Ventures Production, 2004).

⁵⁵ I K Oraegbunam, The principle and Practice of Justice in Traditional Igbo Jurisprudence. [2009] (6) *New Journal of African Studies*.

⁵⁶ A A Oba, Juju Oaths in Customary Law Arbitration and Their Legal Validity in Nigerian Courts, [2008] 52 (1) *Journal of African Law*, 139–158.



hold that the swearing on juju by natives who traditionally resort to juju swearing in order to determine the ownership of land shall vest the land in the person who swears to the ownership provided he survives the oath and this creates an estoppel by way of res judicata in favour of such person'

In customary arbitration cases, it is intriguing that causation is separated from the death or sickness of an oath taker. It is perplexing how one can logically or rationally connect the health and fitness of an individual during the period of taking oaths to their innocence or the subsequent disaster resulting from a false oath. The absence of any reference to a medical assessment to verify the physical condition and suitability of the individuals before taking the oath is notable. It is important to note that traditional communities attribute any form of misfortune that occurs after swearing an oath to the oath itself.⁵⁷

Umezulike explained that in a land dispute, the process of establishing evidence to prove ownership of land involved referring the matter to a native tribunal or panel consisting of a council of elders. The suggestion to take an oath was made only after it was established that the evidence provided by the parties involved in the dispute was inconclusive. Upon taking an oath, accompanied by a solemn declaration of the consequences that would befall the party who deceives, the individual who emerges unharmed or unaffected at the end of the specified term is granted ownership or authority.⁵⁸

Oaths are commonly utilised in circumstances where the identity of the perpetrator is unknown or when there is inadequate evidence to support a claim's culpability or veracity.⁵⁹ The use of the oath obviates the need to assess the oral testimony of the parties and witnesses. When oaths are given, the outcome is merely referred to as "swearing."⁶⁰ This is possibly the reason why taking an oath is only done after all other evidence has been exhausted and found to be inconclusive.⁶¹

The courts have recognised the validity of oath-taking as a means of evidence in cases where the parties willingly agreed to this customary form of arbitration.⁶² Hence consent is inimical to the acceptance of oath-taking as a valid form of evidence.⁶³ One might question if oath-taking

⁵⁷Ibid.

⁵⁸ I.A Umezulike, *A B C of Contemporary Land Law in Nigeria* (2013, Snaap Press Nig Ltd)38.

⁵⁹ Elias (n9) 229–32; and Okany, *The Role of Customary Courts in Nigeria*, above at note 2 at 5–6

⁶⁰ A A Oba, *Juju Oaths in Customary Law Arbitration and Their Legal Validity in Nigerian Courts*, [2008] 52 (1) *Journal of African Law*, 139–158.

⁶¹I.A Umezulike, *A B C of Contemporary Land Law in Nigeria* (2013, Snaap Press Nig Ltd)38

⁶² *Philip Njoku v. Felix Ekeocha* (1972) ECSLR 199 at 205

⁶³ *Agala v. Okusun* (2010) 10NWLR (pt1202) 412 at 448.



should be considered a valid method of proving ownership of land according to native law and custom. That is whether the procedure or process of oath-taking adheres to the necessary conditions for its validity, without conflicting with principles of natural justice, equity and good conscience, and without contradicting public policy.⁶⁴

Before aligning the method for oath-taking with relevant laws that it may violate, it is crucial to understand the justification for the judicial endorsement of customary arbitration, which encompasses oath-taking. Sections 315(3) and (4)(b) of the Constitution acknowledge customary law as an "existing law" and hence affirm the legitimacy of customary arbitration, as it is derived from customary law. The Arbitration and Conciliation Act has bolstered the credibility of customary arbitration by offering further assistance.⁶⁵ Nevertheless, Section 35 (b) of the Act stipulates that arbitration must adhere to the provisions of other legislations.⁶⁶ Therefore, if the act of taking an oath does not adhere to other legal requirements, it will be considered unlawful.

Examining the justification for the courts' endorsement of oath-taking is crucial. In the case of *Ofori & Ors v Anoka & Ors*,⁶⁷ Justice Agbakoba concluded that oath-taking is a well-established and acknowledged method of providing evidence in specific customary legal systems. An oath can be taken outside of a court setting, but when used as a method of judicial evidence, it possesses a secretive and respectful characteristic. The seriousness of the oath chosen by the parties involved and the severe consequences that await those who break the oath by lying serve as deterrents in this traditional judicial process. These aspects make it suitable for both rural and urban indigenous courts. In his opinion, swearing an oath is not illegal, although it may go against Christian ethics.

It has also been stated that “When parties want to be legally bound by traditional arbitration that involves taking an oath, the usual common law rules regarding the evidence required to prove ownership of land no longer have to be followed. In this scenario, the verification of ownership or title to land will be determined according to the regulations established by traditional arbitration, which involves the administration of oaths. During arbitration

⁶⁴ Section 18(3) of Evidence Act Cap E 14 Laws of the Federation of Nigeria, 2011.

⁶⁵ Cap A18 Laws of the Federation of Nigeria 2004.

⁶⁶ Cap A18 Laws of the Federation of Nigeria 2004.

⁶⁷ [1974] 251; 254 [1974] 4 ECSR 51.



proceedings governed by customary law, the relevant legal framework is customary law rather than the common law principles known for their distinct clarity and rigidity.’⁶⁸

Oba supports the idea that modern courts should acknowledge the unique nature of customary law arbitrations determined by juju oaths. Once oaths are invoked, the matter is surrendered to a higher power; it is no longer subject to human judgment. Once the courts have made a decision, neither the parties nor the courts can revisit the matter or back out of the process.⁶⁹ This is a perilous viewpoint that has the potential to rapidly deteriorate, as parties ought not to be permitted to consent to an unlawful activity. This constitutes a social contract theory deviation and a prescription for anarchy. Regardless, ought an illegality to be permitted to persist? Given the assumption that the life of the party who is lying is in fact what is negotiated during oath-taking, does the party in error possess the authority to bargain for his own life? Does this not violate the provisions of the criminal code which criminalizes Suicides?⁷⁰

Furthermore, is a deity who takes the life of the erring party not in contravention of S. 33 of the Constitution? As in Nigeria, it is a fundamental right that all individuals possess the ability to live, and intentional deprivation of life shall not occur except in the context of carrying out the sentence imposed by a court for a criminal offence of which they have been convicted.⁷¹

The fact that the party willingly agreed to the oath should not serve as a defence, as individuals do not possess the right to end their own lives. It is important to acknowledge that this perspective goes against the principles of social contract theory and suggests a return to a time when strength determined what was considered acceptable. There are certain circumstances where individuals should have the freedom to be held accountable for their choices, but suggesting that humans should negotiate matters of life and death is reminiscent of a bygone era. It is acknowledged that there have been positive reviews for traditional oaths, highlighting their efficiency, cost-effectiveness, and effectiveness.⁷²

It is respectfully asserted that customary law, which was predominantly undocumented and unrecorded, could not have been considered effective in the absence of statistical data or a standardised method for measuring its efficacy. Also, a system that lacks transparency and

⁶⁸ *Onyenge v Ebere* (2004) 6 SCNJ 126.

⁶⁹ A A Oba, Juju Oaths in Customary Law Arbitration and their Legal Validity in Nigerian Courts, [2008] (52) 1 *Journal of African Law* 157.

⁷⁰ S.326 of the Criminal Code

⁷¹ S.33 Constitution of the Federal Republic of Nigeria.

⁷² *Onyenge v Ebere* (2004) 6 SCNJ 126 143.



potentially lacks fairness should not be permitted due to its perceived efficiency and affordability, while disregarding any complexities.

There has been significant debate among legal experts and scholars regarding the continued significance of traditional oath-taking in Nigeria. For instance, in *Nwoke v Okere*,⁷³ Justice Kutigi of the Supreme Court strongly criticised the practice of traditional oath-taking. In this case, Justice Kutigi said, among other things, "that even though the effects may be real in the end, its activities, methods, and procedure would appear to belong to the realm of the unknown." The worst of it all is that, unlike the lawsuit we are now following, a Juju decision or judgment is not appealable.⁷⁴ In addition, Nwakoby expressed his strong disapproval of the traditional practice of oath-taking, describing it as outdated, uncivilised, and illegal. He emphasised that this practice goes against Nigerian jurisprudence and is rooted in superstition and spirituality.⁷⁵

Furthermore, it has been asserted that conventional oath-taking is extremely archaic and constitutes a "denial of the right to a fair hearing against individuals who, on account of religious convictions or personal philosophies/conditions," abstain from its use.⁷⁶ This is what appears to have transpired in the case of *Ume v Okoronkwo*,⁷⁷ where Native arbitrators in this court mandated that the defendants swear to a juju that they would have to provide. Upon the defendants' eventual failure to present any juju, the arbitrators ruled that the plaintiffs were the rightful proprietors of the disputed land. This decision was upheld by the Supreme Court.

The rationale behind this is that if parties have agreed to be legally bound by a customary arbitral decision, they are not allowed to retract their agreement once a decision has been made. It is intriguing that the absence of producing a juju would be interpreted as a tacit retraction. Regardless, of how straightforward is it to acquire a juju, that the outcome would depend on whether or not it is produced. Given these unexplainable conditions shrouding this customary evidence, it is crucial to evaluate the legitimacy of oath-taking. One important question is whether the juju/deity may be considered a legitimate judicial authority. Arbitration involves

⁷³ (1992) 2 N.W.L.R. (Part 249) 561.

⁷⁴ Olubayo Oluduro, 'Customary Arbitration in Nigeria: Development and Prospects' [2011] 19 (2) *African Journal of International and Comparative Law*. 325.

⁷⁵ G. C Nwakoby, *The Law and Practice of Commercial Arbitration in Nigeria*. (Iyke Ventures Production, 2004).

⁷⁶ E O Ekhatior, *Traditional Oath-Taking as an Anti-Corruption Strategy in Nigeria*. <https://www.researchgate.net/publication/327544962_Traditional_Oath-Taking_as_an_Anti-Corruption_Strategy_in_Nigeria>accessed Jan 30 2023.

⁷⁷ *Ume v Okoronkwo* [1996] 12 SCNJ 404.



resolving conflicts between two or more individuals by the intervention of a neutral and authorised mediator, who is mutually agreed upon by the parties involved.⁷⁸ Under customary oath-taking, the assent of the parties is the simplest criterion to satisfy; nevertheless, since a juju is not a person, it is exceedingly challenging, if not impossible, to ascertain its neutrality.⁷⁹ How therefore can the parties contest the juju's or deity's neutrality and independence?

In *Inyang v. Essien*,⁸⁰ it was determined that for a customary arbitral award to be recognised by the court, the tribunal must consist of individuals with judicial authority. In certain other cases, the courts have consistently emphasised the importance of deferring to elders or chiefs as a necessary condition for the legitimacy of customary arbitration. Under none of these circumstances has the deity been referred to as an elder or principal. Justice Kutigi made an intriguing observation in the Supreme Court case *Marcus Nwoke and Ors v Ahiwe Okere and Ors*⁸¹ regarding the role of the true arbiter in customary arbitrations that involve oath-taking. In this case, a group of elders from the community was entrusted with settling a land dispute. The respondents swore to a juju presented by the appellants attesting to their ownership of the land. A year was adjourned for the oath to become effective.

According to Igbo custom, the elders certified that the respondents had fulfilled their end of the oath on the rescheduled day and that they were now the rightful owners of the land. The High Court rejected the claim made by the respondents, while the Court of Appeal confirmed the validity of the oath, stating that, the respondents were prevented by their actions from denying that the appellants were declared owners of the land, as the appellants had outlasted the oath for more than a year. The appellant, driven by a strong conviction, decided to take the oath on the 'Ala Obibi' juju provided by the third defendant, fully aware of the potential dangers involved. They believed that this traditional practice would bring resolution to the dispute.

What is intended to highlight here is Justice Kutigi's comment. He said...

...the elders did not possess the power of life and death. Only the juju had that power. As it turned out the respondents did not die. It was not their time to die! They were still all alive on the 'judgment date'. The elders again witnessed their survival on the day as set out in Exhibit C so one can safely say that the elders were never

⁷⁸F C Amadi, Oath-taking in customary arbitration in Nigeria: Some Reflections on the Supreme Court Decision in *Umeadi v. Chibunze* 2020.

⁷⁹S. 8(3) of the Arbitration and Conciliation Act.

⁸⁰(1957) 2 FSC 39.

⁸¹[1994] 5 NWLR (pt 343) 159.



arbitrators in the real sense of the word. They were merely witnesses to the oath-taking ceremony as well as the survival ceremony. The arbitrator in my view was the 'Ala Obibi' juju which they believed had the power of life and death. My own belief is that nobody died because it was not yet time for anyone to have died. Enough of that.''⁸²

It is crucial to inquire once more whether a juju can serve as an arbitrator. Based on my assessment, the juju or deity fails to meet the standards of an authentic arbitrator, as the involved parties are unable to exercise the rights granted to them by the Arbitration Act.

Furthermore, if the parties were compelled to speak the absolute truth out of dread of the invocation. If fear is the factor that induces truthful compliance, then the question arises as to whether an individual fears that which they do not believe. Furthermore, do discordant indigenous factions share a common belief in indigenous deities? The answer is obviously in the negative. Additionally, one is perplexed as to how these deities execute their judgements. Do they adhere to a prescribed protocol or guideline? Do they adhere to precedents? Are they capable of differentiating between cases? Since the parties were obligated to vow before a deity, can it be said that justice has been served in a case where these questions remain unanswered?

In Justice Kutugis' additional critique, he emphasised the perils associated with the consideration of traditional oathtaking, asserting that: The 'juju' method, despite its apparent affordability and speed, had its drawbacks. As an illustration, it is not permissible to place a 'juju' in the witness box for any reason. The activities, methods, and procedures of this subject seem to exist in a realm of mystery, despite the tangible effects they produce. It is unfortunate that a 'juju' 'judgement' or 'decision' cannot be appealed, unlike the ongoing suit we are observing. Until the 'juju' becomes comprehensible to everyone, it will be challenging to enforce its 'decisions' in a court of law. We have made significant progress since the days of the oracle!''⁸³

From a legal standpoint, it is evident that the act of taking an oath based on native law and custom would be viewed sceptically. Some authorities have rejected it and refused to recognise it as legally valid, dismissing it as a regressive return to outdated superstitious beliefs.⁸⁴

⁸² [1994] 5 NWLR (pt 343) 159 at 172.

⁸³ [1994] 5 NWLR (pt 343) 159 at 172–73.

⁸⁴ *Iwuchukwu v. Anyanwu* (1993) 8NWLR (Pt.311) 307.



“... a superior, nay, any reasonable and unbiased Court of Record, must be hesitant in accepting what amounted to a judgment by juju – an extra-judicial object – unless it is manifestly shown (and there is no such evidence ex facie from Exhibit C) that the party who swore the juju implicitly irretrievably and religiously believed in the excruciating and definitive potency and finality of the juju, and that, in addition, once the Oath is taken the party taking the oath had no means of thwarting or placating its Wrath – were the party to have deliberately and misleadingly sworn falsely on the oath ... for the oath to operate as an estoppel per rem judicatam, the form, nature and effect of the oath must be strictly proved ...”⁸⁵

The correct stance seems to be that a difference must be made between human-led arbitrations and those using juju. If the arbitrators determine that the parties must swear to a juju, the parties are entitled to accept or reject this result. However, as we shall see, once the dispute has been resolved through a juju and oaths have been administered, neither party can withdraw from the procedure; instead, they are obligated to await and acknowledge the "verdict" of the juju. Almost no community in the country would grant the parties the option to withdraw from the procedure after the administration of oaths. Unfortunately, the Supreme Court has not yet acknowledged this distinction.⁸⁶

CONCLUSION

It is hereby suggested that the act of taking an oath should not be the deciding factor in a lawsuit brought before public courts, especially where the dispute concerns ownership rights. However, in cases where both the parties involved in a legal dispute are followers of non-Christian religions and engage in idol worship, the court may consider the act and consequences of taking an oath according to their native religious practices as a significant piece of evidence that can greatly influence its conclusion. This is because Nigeria is not subject to a single body of customary law. Different groups each have their customary practices that are acceptable to and adaptable to their particular community.⁸⁷

It is important to note that traditions vary across different locations. Therefore, because of the discrepancy in the procedures and purposes of oaths, it can be concluded that the practice of oath-taking in customary arbitration differs from one area to another. This variation hinders a comprehensive knowledge of how it operates. Based on the preceding information, it is evident

⁸⁵ (2001) 7 SCNJ 583 at 604.

⁸⁶ A A Oba, Juju Oaths in Customary Law Arbitration and Their Legal Validity in Nigerian Courts , [2008] 52 (1) *Journal of African Law*, 139–158.

⁸⁷ (n86).



that these traditional oaths lack a consistent and universally accepted method of implementation and result, making them unpredictable and largely incomprehensible. The administering head priest has a significant amount of discretion and is not bound by a code of conduct. While these procedures are integral components of the traditional systems of evidence and have been acknowledged and upheld by the courts, the courts must assess whether oath-taking remains a customary practice among the people, taking into account the evolving nature of customs.

The courts should courageously eliminate repressive customs. Some of the customs that will be considered in legal proceedings have already been deemed incompatible with the principles of fairness, justice, and moral integrity by the court. Additionally, certain customs have changed over time and therefore cannot be applied, regardless of the relief sought by the parties involved.⁸⁸ Regarding the utilisation of oath-taking as evidence of ownership, it is crucial to acknowledge the significance of land according to indigenous legal and cultural practices, as well as the high value placed upon land. Additionally, it is important to recognise that land is passed down through generations, encompassing the past, present, and future. Should future generations be deprived of their cultural legacy due to the imposition of an unverifiable method of validating land ownership? It is respectfully proposed that the burden of proof for matters that extend beyond generations should be more demanding, and oaths should be legally enforceable and restricted to individuals' personal possessions and not estates.

Considering the aforementioned points, courts should refuse to accept the act of taking an oath without any hesitation. It is crucial to restrict the process of settling disputes and reaching a final decision to personal property only. Additionally, a more stringent standard of evidence should be applied when proving the ownership of sacred property such as Land, that is intended to be passed down through generations. That is precisely why the burden of proof in criminal trials is set at a high standard, known as "beyond reasonable doubt," while in civil proceedings it is based on a lower standard called "preponderance of evidence." When the consequences are significant, the level of evidence required should be correspondingly elevated. Posterity must judge that the past employed the use of a fair and reasonable standard of justice in matters of significance that transcend time.

⁸⁸ Mbiti, *African Religious and Philosophy* (Heineman London, 1969) 173.



Moreover, a culture that undermines the worth of human life is more likely to support or endorse drastic actions, such as death as a penalty for falsehood. Justice should strive to impose an appropriate penalty that is proportionate to the offence or injustice committed. Do not intend to employ excessive force to address a minor issue. Furthermore, it is unlawful for anyone to negotiate their own life.⁸⁹ It is recommended to investigate the illegality of oath-taking and contemplate its criminalization. This is because repulsive habits, such as oath-taking, were the primary reason for the colonial judicial system's dominance over native laws and customs.

Ultimately, the support for oath-taking should serve as a reminder to address the issues within the judicial and arbitral systems, which should be managed by skilled professionals. Without proper regulations and a fair legal system, individuals can easily devolve into a state of chaos, exhibiting the worst traits of humanity.⁹⁰ Swearing an oath can result in unfairness, as it may expose innocent individuals to a chain of perplexing

⁸⁹ CFRN, 1999 (as amended)

⁹⁰ Sabine, A History of Political Theory (Dryden Press, 1973) 78.