An Appraisal of Customary Arbitration Practice in Nigeria: The Ogoni Perspective

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Abstract
Disputes are indispensible in human societies, generally, especially due to the fact of competing interests among individuals in these societies. Yet, there exists the ardent need for members of the society to co-exist harmoniously. Such harmonious setting can only be achieved where certain mechanisms are duly institutionalized for resolution of disputes arising from competing interests of individual members of the society. One of such mechanisms for dispute resolution especially within the traditional setting, it has been argued, is customary arbitration as against the tortuous recourse to litigation in the regular courts. This paper attempts to examine the practice of customary arbitration as a valid and respectable mechanism for dispute resolution in Nigeria, and particularly, in the traditional Ogoni society of Rivers State. The study uses both primary and secondary sources of data collection such as oral interviews conducted personally by the researcher, field experience and published works in the disciplines of sociology, anthropology, Law, religion, history and culture. It adopts as its theoretical framework, Ralf Dahrendorf's Open Model which strikes a balance between the two extremes of the Consensus Model and the Conflict or Pluralist Model, as the most relevant approach consistent with the idea of dispute resolution and the achievement of societal harmony and equilibrium which are the cardinal objectives of traditional/customary arbitration. Although there are presently various windows of Alternative Dispute Resolution established in some states of Nigeria, yet there still exists the challenge of its non-adoption especially in those states that are yet to appreciate the establishment of multi-door Courts in their jurisdictions. The work therefore canvasses and further reifies the need for Nigeria to institutionalize this traditional mode of dispute settlement, especially in civil matters, due to its simplicity and informality.

Keywords: *Alternative Dispute Resolution, Customary Arbitration, Ralf Dahrendorf, Jurisdiction.*

Introduction:

One of the basic functions of law in human societies is to establish a formal mechanism for settlement of disputes. Such institutions are usually in the form of law Courts, judicial and administrative tribunals etc. Law also seeks to provide appropriate remedies where a party has suffered due to the action or in action of another. The living Law of society, according to Eugen Ehrlich[1], has to be sought outside the confines of formal legal materials, but in society itself.

Human societies can be broadly classified as: underdeveloped or community-based, and developed or complex. In the former, social relations tend to be fairly permanent. Indeed, the continued existence of the community group depends upon the continued closeness of the societal ties and consequently where disputes arise in such groups, the type of dispute settlement

is often based on compromise. Since the affected parties do anticipate future relations, there is always the spirit of reciprocity. This is also applicable in contemporary commercial spheres in relation to settlement of commercial disputes.

As a phenomenon, dispute has become an integral part of human existence, and dispute resolution has also become an essential requirement for peaceful co-existence of members of a given society. It provides opportunity for the examination of alternative pay-offs in a situation of positioned disagreements, and restores normalcy in a society by facilitating discussions and placing parties in dispute institutions in which they can choose alternative positive decision to resolve differences. Dispute exists on many different levels including international, intra-group, inter-group, interpersonal, and intrapersonal. It does also exist in relation to different subject matters namely, ideational or beliefs, values, material resources, emotions, roles and responsibilities. Dispute varies in terms of the social contexts in which they are located, and the traditional societies had always found solution to such conflicts by way of arbitration, subject to the native Laws and Customs of the particular society, with a view to engendering social harmony and equilibrium.

The practice of dispute settlement through the process of arbitration is never a new phenomenon among the various peoples in Nigeria as it has been with man from creation. Arbitration had been with the indigenous communities in Nigeria before the advent and the introduction of English legal system of Court litigation into the Country[2]. The invasion of the indigenous organized system of dispute resolution and the gradual and deliberate attempts of the colonialists had succeeded in relegating this customary system of dispute resolution to a Second-Class status, if not totally jettisoned for Court litigation in dispute settlement. The present work, however, examines customary arbitration practice in Nigeria as applicable to the people of Ogoni in Rivers State. The study becomes relevant in view of the currency and global acceptance of alternative dispute resolution mechanism and the need to maintain standards and canons of practice across culture areas or jurisdictions. The study considers the following: the introduction, the nature of traditional Ogoni society, the nature of customary arbitration in Nigeria, the legal status and tests of validity of customary arbitration in Nigeria, an appraisal of customary arbitration among the Ogoni people of Rivers State, Nigeria and, finally, its conclusion.

The Nature of Traditional Ogoni Society:

Traditional Ogoni society is organized and structured into social classes and categories. Overshadowing the society is the class known as “pia bee bue” (the rulers and administrators of the community) which comprises the “Gbenemene” (the King or Paramount ruler), “pia Kanee” (the elders), “pia Kabaari” (the chiefs), and “pia zuaguru” (the Lieutenants). Below this class of “pia bee bue” is the general class known as “pia-kebue” (the commoners or masses). Kpone-Tonwe (2003)[3] identifies other categories within this class of “pia kebue” as follows: “pia gbara” (the elite or gentlemen), “pia kune nee” (the Commoners or ordinary free men), “pia Kporowa” (the unmarried poor), “pia zooro” (the slaves), and “pia saa nee” (the strangers/settlers).

From the foregoing, therefore, we notice that the social category called “pia gbara” (the gentlemen) are the closest to the class of “pia bee bue” (the rulers/administrators of the community). As a matter of fact, it is from the category of “pia gbara” that candidates for the class of “pia bee bue” are recruited. As well indicated by Kpone-Tonwe, the tittle “pia gbara” is the first social title among the Ogoni, and it applies only to every young man who has undergone, performed, and completed the traditional training and discipline called “yaage” (the traditional rite of bearing arms). Accordingly, a man or youth who has performed the “yaage” is

by custom allowed to wear an insignia publicly at any time. This insignia is made of a short decorated two-edged sword called "kobeege" which is packed in a sheath and worn on the waist by a leather belt. The "kobeege" serves a dual purpose namely, as a weapon or defence mechanism and an indication of the bearer's social status. At the traditional setting, all the young men, from adolescence to full adulthood, are expected to undergo the "yaage" traditional training before they can be recognized in the society.[4] The above notwithstanding, it has been observed that boys below early adulthood have been made to perform the rites of "yaage" by some parents obviously due to their anxiety to have their sons elevated above the social categories of "kune nee" (ordinary citizens or commoners) while they are still alive.

Traditionally, various villages of Ogoni were politically autonomous. In other words, there was the absence of an overriding centralized political authority. The absence of a central authority presupposed that political authority rested, to a very large extent, at the level of the individual village, although a slight difference existed in the Gokana group. The function of the council of chiefs and elders was to formulate policies limited to the corporate interests of the particular community. On crucial issues, the head-chiefs and their elders were expected to seek the will of the people in a general assembly at the village square ("eete bue") where all able-bodied men had the opportunity of airing their views. In addition, the council ensured that traditional rites were duly performed for the general welfare of the people. In doing so, they believed that supernatural powers would punish offenders or evil men and women just as they would reward those who act in conformity with the injunction of the divinities.[5] This perhaps explains why the traditional rulers pour libation and recite incantations to condemn evil, as custodians of the people's culture and upholders of the sanctity of the truth.

Traditional Ogoni society operated a system whereby the various communities or villages had a council of chiefs and elders who settled cases between individuals and groups. These chiefs and elders tried to be impartial judges, opinion leaders, and people of impeccable character. They endeavoured to discharge their functions without fear or favour, and it was not very common to hear of cases involving bribery of chiefs or elders.[6] The traditional institutions and value system in Ogoni were well-organized such that the system emphasized all those values and ideas that encouraged healthy growth of collective bargain for the problems of the community. The people practiced the principles of impartiality, mutuality, the vindication of innocence, and good neighborliness as an integral part of civic education. For example, the principle of impartiality pre-supposed that it was expected that the traditional rulers were impartial in their offices and principalities as they adhered strictly to the rules of natural justice. Some of the traditional rulers had an aura of dignity, composure, self-control, self-discipline, and self-knowledge, and remained neutral in the conflicts they managed.

On the other hand, the principle of mutuality served adequately in traditional Ogoni society. The sense of mutual obligation led to the identification with the wishes and aspirations of others and, of course, a feeling of mutual protection. Furthermore, the presence of a deep feeling of neighborliness formed an integral part of good citizenship. In a crisis situation, an individual knew, certainly, that he could count on others around him for support. The idea of being one's own brother's keeper was an important tenet in the system. The spirit of brotherhood, of brotherliness, of unity and of love which the traditional system imposed were derived from a belief in common ideas and faith. Above all, love was the essence that bound the people together.

Finally, the traditional rulers had the responsibility to protect all citizens within their jurisdictions. The principles of fairness and adherence to the rules of natural justice meant that

both the weak and strong, or the poor and rich received fair treatment. Perhaps it was a way of reifying this need for impartiality that impelled many villages of Ogoni to take their cases for adjudication to the oracles and the "Amanikpo" group. In all these, the vindication of innocence was accorded high premium under the traditional system. It is however noteworthy that traditional Ogoni society tolerated the presence of their chiefs, kings, and elders especially because those who occupied these positions at the time were embodiment of virtue, culture, and wisdom. They were impartial judges, opinion leaders and people of impeccable character, having observed the traditional training in discipline as prescribed by the culture mores of the people.

The Nature of Customary Arbitration in Nigeria

Arbitration as a mechanism of settlement of dispute has been with Nigerians from time immemorial, as it has been with mankind from the beginning of creation. The existence of this means of dispute resolution is based on the fact that conflicts and controversies are, from time immemorial, inevitably a daily occurrence in society. They exist in the form of personal disagreements, religious crises, political, ethnic, marital disputes, chieftaincy matters, land and community boundary disputes, and even economic conflict, and are settled one way or the other through an organized traditional dispute resolution mechanism like arbitration. Historically, therefore, arbitration and other mechanisms are adopted in the process of dispute resolution in most ethnic groups in Nigeria, as in other communities in African countries. Thus, arbitration is a traditional arrangement in Nigeria for resolution of dispute, by way of abiding by the judgment of selected persons in the community, on disputed matters, as opposed to reference to the regular court for litigation. This situation is aptly captured in the words of Ezediaro[7] as follows:

> Arbitration as a method of settling dispute is a tradition of long standing in Nigeria. Referral of a dispute to one or more laymen for decision has deep roots in the customary law of many Nigerian communities. Such method of dispute resolution was only reasonable, 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.

As earlier indicated above, the jurisprudential history of customary arbitration in Nigeria as a mechanism for dispute management, and dispute resolution extends far back into the pre-colonial era and this was recognised by the western styled judicial institutions of the colonial government. Among the earliest examples of judicial recognition accorded the concept of customary arbitration were the decisions in the Gold Coast (presently-day Ghana) by the West African Court of Appeal (WACA) which became binding on Nigerian courts and still form part of Nigerian case law.[8]

The West African Court of Appeal (WACA) in the case of **ASSAMPSONG V. AMUAKA and Ors.** [9] held that:

> Where matters in dispute between parties are by mutual consent, investigated by arbitrators at a meeting held in accordance with native law and custom and a decision given, it is binding on the parties and the Supreme Court will enforce such decision.

The same position was adopted by the court in a long string of authorities including **FOLI V. AKESE,**[10] **KWASI V. LARBE**,[11] and **ABINABINA V. ENYIMADU**.[12] This line of authorities was followed by the Nigerian courts in a long string of decisions including **IYANG**

V. ESSIEN,[13] **NJOKU V. FELIX EKEOCHA,**[14] **MBAGWU V. AGOCHUKWU,**[15] and **IDIKA V. ERISI.**[16] However, the above tide was changed in late 1980s when the Court of Appeal denied the existence of customary law in Nigeria. In the case of **OKPURUWA V. EKPOKAM,**[17] **per Uwaifa, JCA** (as he then was), the court pronounced that:

> I do not know of any community in Nigeria which regards the settlement by arbitration between disputing parties as part of its native law and custom.

The above holding per Uwaifo, JCA found an ally in the earlier published opinion of Allot, A.N; a scholar in traditional African law who had suggested thus:

> The term arbitration…in the mouth of the African refers to all customary settlement of disputes other than by the regular courts. The aim of such a transaction is not the rigid decision of the dispute and the imposition of penalties, so much as reconciliation of the two parties and removal of the disturbance of the public peace.[18]

Following the above position of Allot and Uwaifo respectively, it does appear that they failed to take due cognizance of the various existing arbitration custom in Nigeria, one which is undoubtedly the Islamic customary arbitration. For example, in Arabic, the term "Tahkim" which is arbitration, is recognized in Islamic law and provided for by all its sources including the writings of all the major Islamic Schools of Thought, albeit with slight variations as to practice and procedures.[19]

It is pertinent to note that arbitration as a concept in dispute resolution has been assimilated by Islamic law and these Islamic law scholars point to a couple of passages in the Noble Qur'an as the basis for the recognition of arbitration by Islamic law. For example, it is declared in the Qur'an as follows:

> If you fear a breach between them twain (the man and his wife), appoint (two) arbitrators one from his family and the other from hers, if they both wish for peace, Allah will cause them reconciliation.[20]

Notwithstanding, the above, however, the Supreme Court had subsequently, in a string of decisions, namely **AGU V. IKEWIBE**,[21] **OJIBAH V. OJIBAH**,[22] **OKERE V. NWOKE,**[23] etc. had confirmed the existence of customary arbitration in Nigeria. Thus, in **ODINIGI V. OYELEKE,**[24] the Supreme Court held that:

> The decision of the Court of Appeal in **OKPURUWA V. EKPOKAM (1988) 4 NWLR** pt. 90 p. 554 that our legal system does not recognize the practice of elders or natives constituting themselves as customary arbitration to make binding decisions between parties in respect of land or other disputes cannot in all cases be correct.

In defining customary arbitration Karibi-Whyte, JSC in **OHIAERI V. AKABUEZE**[25] had said that:

> Customary arbitration is an arbitration in dispute founded on the voluntary submission of the parties to the decision of the arbitrators who are either the chief, or elders of the community, and the agreement to be bound by such decision or freedom to resile where unfavorable.

One very important feature of customary arbitration is that the agreement to conduct it is essentially oral, and the arbitral proceedings and decisions are usually not written and therefore do not come within the provisions of the Act. Unlike the arbitration under the Act which is irrevocable except by agreement of the parties or by leave of the court or a judge, customary arbitration agreement is not irrevocable. It could be revoked by the parties anytime before the constitution of the tribunal and before the commencement of the arbitral proceedings.

In spite of its informality, its unwritten nature, and the fact that it is not practiced in accordance with a structured body of rules or laws, customary arbitration still remains one of the dispute resolution methods of the Nigerian rural folks from ancient time to date. Sometimes while those who assume jurisdiction or authority as arbitrators are usually elders, chiefs and prominent leaders in the communities, there are times when traditional institutions such as traditional rulers in their council or established bodies that are vested with adjudicatory authority over rural dwellers perform this task. Although customary arbitration is largely unwritten, writing or documentation is no longer alien to customary transactions. In present times, it is possible for customary law arbitration agreement to be in writing and thus falling under the Act and the definitions accorded such terms as party, tribunal, commercial etc. in the Act may not ipso facto exclude customary arbitration where it is not expressly excluded. Parties to a customary arbitration agreement, if they so desire, can avail themselves of the practices and procedures under the Act. Where this happens, the victorious party may seek to enforce the award made at the tribunal in a court of law.

It has been argued, and it is also important to note that a decision or an award of a customary arbitration, though binding on the parties and their privies, is not a judgment of a court of law, and therefore its decisions cannot be equated with those of court of law capable of creating judicial precedent. Thus in **UFOMBA V. AHUCAHOAGU**,[26] Niki Tobi, JSC noted that:

> A customary arbitration does not qualify, as a court of law within the constitution. It is not even an inferior court outside the constitution, as for example, the magistrate court. Apart from the fact that the members of the body are not learned in the law, it is a notorious fact that the procedure adopted in adjudication is simple, and clearly outside the technical procedure of courts of law. This apart, the decisions they give do not qualify as judgments in our jurisprudence and therefore, cannot pass the test of judicial precedent. Decisions of magistrate courts in Nigeria do not come within the purview of *Stare Decisis*, not to talk of decisions of native or customary arbitration. A customary arbitration is essentially a native arrangement by selected elders of the communities who are versed in the customary law of the people and take decisions, which are mainly designed or aimed at bringing some amicable settlement, stability, and social equilibrium to the people and their immediate society or environment. Native or customary arbitration is only a convenient forum for the settlement of native disputes and cannot be raised to the status of a court of law.

Customary arbitration, from the foregoing, therefore, lacks intrinsic force, and it cannot be enforced like the judgment of the regular court until it is pronounced upon by competent judicial authority. Where this is done, it can create *estoppel per rem judicatam or issue estoppel,*

especially when it is specifically pleaded and proved in subsequent proceedings before the court, involving the parties to the arbitration or their privies.

The Legal Status and Tests of Validity of Customary Arbitration in Nigeria.

Nigeria operates and recognizes a tripartite legal system, including customary law. Thus, the application of customary arbitration as part of customary mode of settlement of disputes is legally recognized in Nigeria as evidenced in a plethora of judicial decisions earlier indicated in this work, accepting customary arbitration in settlement of disputes and as binding on the parties where they voluntarily submit to it. It has earlier been indicated that customary arbitration is not regulated by the Arbitration and Conciliation Act neither is it based on contractual agreement which is governed by written agreement. It is, rather, a traditional agreement based on mutual

respect for norms of a particular society, especially in the southern part of Nigeria, or based on some religious obligation as an ordinance from Allah, as among the Muslims, that must be adhered to.

The legality of customary arbitration is Nigeria either under the native law and custom as applicable to the south, or Islamic law as applicable to the north, has been founded on some basic ingredients in order to make it have the desirable binding effect on the disputing parties. These ingredients or elements have been set out by the Nigerian Supreme Court. For example, in the case of **OKEREKE V. NWANKO,** [27] per Niki Tobi, JSC, it was submitted that the Nigerian law recognizes arbitration at customary level if the following conditions are satisfied;

a. If parties voluntarily submit their dispute to non-judicial body, that is, their elders or chiefs as the case may be, for determination.
b. The indication of the willingness of the parties to be bound by the decision of the non-judicial body, or a freedom to reject the decision where not satisfied.
c. That neither of the parties has resiled from the decision so pronounced.

In the light of the above therefore, if a customary arbitral tribunal meets and properly adheres to the above stated essential elements of a valid arbitration, an award made after hearing and taking of evidence from the parties to the dispute, become valid and binding. Similarly, the Supreme Court, citing the case of **OHIAERI V. AKABUEZE** (supra) in **OKEREKE V. NWANKO** (supra) stated the pre-conditions for the binding effect of a customary arbitration to include the following:

a. That there has 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 arbitration will be accepted as final and binding.
c. That the arbitration was in accordance with the custom of the parties or of their trade or business.
d. That the arbitrators reached a decision and published their award,
e. That the decision or award was accepted at the time it was made.

It can be rightly posited, therefore, that once the above requirements of a valid customary arbitration are observed, the decision or an award made therein remains valid and binding on parties to it. Notwithstanding, and of considerable significance is the fact that settlement of disputes in land matters, family disputes, matrimonial conflicts, Chieftaincy matters and religious crises form the bulk of disputes most often referred to customary arbitration for settlement.

An Appraisal of Customary Arbitration among the Ogoni People

Generally speaking, it would appear an over-generalization or overstatement to assert that traditional Ogoni society had all their Kings, chiefs and elders observing strict democratic principles in course of their administration. It would also not be unfounded to say that some of these Kings, chiefs and elders must have exercised or exhibited certain despotic propensities in their various enclaves. This, perhaps is what must have informed some parties in dispute to always take their case to the oracles or even to the spirit-world for settlement. Notwithstanding, it was expected that everyone was subject to the laws of the society, and although some chiefs might have been despots, they discreetly administered the laws which had developed with the people, from their use of common sense,and had progressed with the wisdom of the ages.

In traditional Ogoni society, the process of seeking redress in a matter is largely dependent upon the structural units or formations prevalent among the people. For example, among the people of Baen in Kenkhana district of Khana Local Government Area of the Ogoni nationality, there exists the single family unit known as "tor". This is headed by the "te tor", that is the "house-head" or "nuclear family-head". This is followed by a group of extended family kindred known as "be" which is headed by the "mene be" or "te be". A third unit or formation is that of "ga" consisting of the family lineage, and is headed by "mene ga". This is further followed by a formation known as "zogon" comprising different families from different "be" and "ga" but all resident within a clearly delineated portion or area within the village. This ward or constituency of different families called "zogon" is headed by the "mene zogon". The last formation in the hierarchy is the village or town itself called "buen" (among the Khana) or "bon" (among the Gokana) and it is headed by the "mene buen" or "mene bon" as the case may be.

In traditional Ogoni society, various disputes are normally resolved through the process of customary arbitration. The process commences with an aggrieved person suing another at the house of the "mene be" or "mene ga", all depending on the nature and complexity of the case. Elderly members of the "be" or "ga" versed in customary jurisprudence, usually, form the jury. From there, more serious or unacceptable conducted cases may be appealed at the "mene zogon's" house, which is a higher "court". If the case is not still resolved, it is then appealed at the house of the village or town head. The house is called "tor buen" and it usually consists of all the chiefs in the town or village. The council of chief's "court" is presided over by the "mene buen" who is the village or town head. Some categories of death and murder suits considered extra-judicial are publicly tried and conducted at the Village or town square as "eete buen". Here the council of chiefs constitutes the jury while the "mene buen" is the chief justice, as this "public court" is considered the highest "court" of the land.

Besides these "normal courts" identified above, there are also some jury houses used as courtrooms. The Ogoni people believe in the efficacy of jujus and that these jujus have powers of divination and can punish their victims, and are therefore dreaded in the land.

In cases of serious allegations, deputations are made to the shrine of these jujus where the matter has been forwarded for adjudication with the juju Priest or Priestess presiding as the judge in a "possessed" state. Similarly, aggrieved persons could also go to the juju shrines to invoke the "forces" against their enemies. A suspect could also be adjured to own up the truth of a theft, adultery, murder or such other allegations at the juju shrines. Notwithstanding the Ogoni people have an inbuilt system of checking the excesses of people who might wish to abuse the power of the jujus. Usually, when a juju priest has completed an assignment, he would demand a compensation which, if either delayed or defaulted, could result in the sickness or death of a

member of the family of the person who has invoked the juju, or the untimely death of the complainant himself . A convict who defaults may also suffer similar or worse fate.

In yet another dimension, an aggrieved person may summon a person in the house of any of the numerous cultural societies such as the dreadful "Amanikpo" cultural society popularly known as "zim" or "lokpo" among the Khana and Gokana groups respectively, for adjudication. The leaders and elders of such organization usually act as the jury in this situation. It is the general belief in traditional Ogoni society that the highest law enforcement agency is the Amanikpo cultural society (zim). The Amanikpo may be sent to a person who is indebted to another, or to the community or to someone accused of stealing or who has refused to take part in any organized community work, in order to extract the debt or mandatory fine as the case may be.

From the foregoing therefore, it is observed that two principle methods of seeking or establishing the truth are adopted in traditional Ogoni society. These include divination by which a juju is contacted to reveal the truth in a case, and by swearing to a juju oath (de yor) as may be deemed applicable to particular cases. But the principle of oath-taking remains the same namely, either the defendant swears to the oath given by the plaintiff or vice versa. The underlying fact is that the person who swears to the oath must die after a stipulated period of time under the said oath, or come to any other overt harm as may be decided upon by the jury; but, this can only happen to the guilty party and not the innocent party. Parties are not expected to resile from the arbitral award having submitted themselves to the arbitration process, but when a party does, the outcome is not vitiated but rather held binding on that other party who resiles at the point of publication of the award. This very situation tends to agree with the contemporary position of the Nigerian courts regarding customary arbitration whereby it has been held that parties cannot resile from the arbital award having submitted themselves in the very first place to arbitration under the native law and custom or under the Islamic sharia law.[28]

CONCLUSION AND RECOMMENDATIONS

As it has earlier been indicated in this work, the jurisprudential history of customary arbitration in Nigeria as a mechanism for dispute management and dispute resolution extends far back into the pre-colonial era and this was recognized by the western-styled judicial institutions of the colonial government in the case of **ASSAMPSONG V. AMUAKU & Ors** [29] amongst others.

It has also been observed and established by writers [30] that court litigation system in the resolution of disputes has the disadvantages of being time-consuming, expensive, less friendly to mention but a few. These have accounted for the global acceptance of the option of arbitration, for instance, because it is part of the community, and being the customary method of administration of justice, customary arbitration has the advantages of being quicker, less technical, and procedurally less cumbersome. It is more friendly in nature and preserves personal relationship in the community as there is no requirement to hire a legal representation to stand for the feuding parties. Additionally, customary arbitration is more susceptible to be respected and submitted to because of the tendency or an obligation to respect customs and traditions, and the fear of sanctions especially in Islamic law under which acceptance of arbitration is considered a religious obligation. It is important to note, however, that despite the foregoing advantages of customary arbitration, some short-comings have equally been observed. These include the fact that the inherited English legal system appears to have eroded its application in dispute settlement. It is therefore very common for any person whose right has been, is being, or

likely to be infringed upon to say that he/she would go to the conventional court. Consequently, recourse to customary arbitration has been low.

Customary arbitration, like most of the customary laws, is not yet codified except Islamic arbitration which has its laws contained in the Noble Qur'an. This has become disadvantageous to its application in Nigeria. Furthermore, award under a customary arbitration cannot be enforced except upon an application, by a party, to court, for it. This situation truly negates the advantage of customary arbitration being quicker and less expensive. It is equally instructive to note that one of the striking short-comings of the binding effect of customary arbitration is the freedom parties enjoy to discountenance the decision of the arbitration or reject the arbitral award made where a particular party has been dissatisfied. Thus, the position of the Supreme Court in **AWOSIBE V. SOTUNBO** [31] which was delivered by Nnaemeka Agu,JSC (as he then was) and subsequently accepted in **OKEREKE V. NWANKO**[32] per Edozie, JSC regarding the non bindingness of arbitral award on the parties in the respective cases is, without doubt, a sharp contrast to modern arbitration as regulated by the Act[33] or as contained in modern commercial agreements wherein once an award is made, it is final and binding on the parties who thereafter have no right to rescind the gentleman agreement having duly subscribed to same. This was the position of the Supreme Court per Katsima Alu, JSC (as he then was) in the case of **RAS PAL GAS LTD V. FCDA**[34] where it was held that:

> A valid award on a voluntary reference no doubt operates between the parties as a final and conclusive judgment upon all matters referred. It should be remembered that when parties decided to take their matter to arbitration, they are simply opting for an alternative mode of dispute resolution. It must be emphazied that the parties have a choice to either go to court or refer the matter in dispute to an arbitrator for resolution.

The voluntary nature of the arbitration agreement which is validly conducted limits the jurisdiction of the court to either setting aside of an arbitral award or remitting same to arbitration for reconsideration,[35] as opposed to the court attitude to customary arbitration where a party to a customary arbitration may abandon the arbitral decision.

From the generality of the foregoing discourse, we have been able to reify the fact that customary arbitration in Nigeria includes the native laws and customs of the various ethnic nationalities and communities with their peculiar characteristics varying from one community to the other in the southern part of Nigeria, and Islamic customary arbitration applicable in the predominantly muslim communities in the northern part of Nigeria. It has also been shown that customary arbitration enjoys the force of law if it meets the essential universal requirements cutting across the two application systems in Nigeria, that is, native law and custom and Islamic law, namely: its being voluntary, submission of the disputing parties to the arbitration, and acceptance of final award of the arbitral tribunal or body.

Arbitration has become a globalized phenomenon in the world today as it is fondly resorted to, especially in the settlement of disputes arising from both domestic and international commercial agreements. This accounts for the need to re-visit arbitration under Nigerian customary law as well as establishing how it can be adopted as a veritable tool in settlement of disputes instead of court litigation. It is hereby submitted that if customary arbitration is properly well-developed, it could be of tremendous assistance in solving a number of conflicts and

disputes within the Nigerian polity especially the Niger-Delta militia and Boko Haram insurgencies.

It is very important to stress the need for the enlightenment of Nigerians on the relevance of this old and long, well-established customary system of arbitration in dispute resolution as it is capable of assisting in reducing and de-congesting the bulk-work of the judiciary especially trivial issues or disputes which can ordinarily be resolved at village or community level but are oftentimes taken to court. Finally, it is equally suggested that customary arbitration be included in the various windows of Alternative Dispute Resolution (ADR) especially in those state in Nigeria that have established multi-door courts.[36] while others are enjoined to respond to this age-long practice accordingly.

FOOT NOTES

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15. (1973) 3 ECSLR pg 90
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34 (2001) 6 NACQR (pt.1) 560 at 573
35 SOVIA V. SONUBI (2003) 3 NSCQR 381 AT 389
36 Lagos, Kano and Kwara States, as well as the FCT, Abuja have established the multi-door courts for ADR.