**BARTHOLOMEW MBAGWU**

**V.**

**EVANGELIST MATHIAS OHALETE & ANOR.**

IN THE COURT OF APPEAL OF NIGERIA

ON FRIDAY, THE 13TH DAY OF MARCH, 2020

CA/OW/170/2015

**LEX (2020) - CA/OW/170/2015**

**OTHER CITATIONS**

3PLR/2020/5 (CA)

(2020) LPELR-49543(CA)

**BEFORE THEIR LORDSHIPS**

AYOBODE OLUJIMI LOKULO-SODIPE, JSC

ITA GEORGE MBABA, JSC

IBRAHIM ALI ANDENYANGTSO, JSC

**BETWEEN**

BARTHOLOMEW MBAGWU - Appellant(s)

AND

1. EVANGELIST MATHIAS OHALETE

2. GODWIN OHALETE - Respondent(s)

**ORIGINATING COURT**

1. TRIAL COURT:- Customary Court

2. LOWER APPELLATE COURRT – Customary

**REPRESENTATION**

KINGSLEY ELEGALAM O. (who scripted the Address), with him, L.E. OSUIWU ESQ (Who argued it) - For Appellant(s)

AND

CHIEF E.O. ONYEMA (who scripted the Address), with him, C.J. OGUZIE (who argued it) - for 1st Respondent - For Respondent(s)

**ISSUES FROM THE CAUSE(S) OF ACTION**

CUSTOMARY LAW – CUSTOMARY COURT OF APPEAL:- Jurisdiction of over customary law appeals – Appeal arising therefrom to Court of Appeal – Whether must be restricted to issues of customary law canvassed from the Customary Court of Appeal

CUSTOMARY LAW – CUSTOMARY COURT OF APPEAL:- Dispute as to title to land based on customary law fought before a Customary Court – Appeal arising therefrom based on evaluation of evidence led by parties – Proper forum for same - Extent of jurisdiction granted to the Court of Appeal over decisions of the Customary Court of Appeal

CONSTITUTIONAL LAW – JUDICIARY – COURT OF APPEAL:- Jurisdiction to hear appeals from the Customary Court of Appeal – Basis of - Section 245(1) of the 1999 Constitution, as amended – Need for the ground(s) of appeal or the issue(s) thereof to be based on question of customary law – Effect of failure thereto

REAL ESTATE AND PROPERTY LAW – LAND:- Title to land based on customary law – Case when fought before a Customary Court as trial court – Appeal arising therefrom to the Customary Court of Appeal – Nature of issues that can be canvassed thereat – Appeal progressing to the Court of Appeal – Extent of jurisdiction granted to the Court of Appeal over decisions of the Customary Court of Appeal

**PRACTICE AND PROCEDURE ISSUES**

APPEAL – MOTION TO ARGUE FRESH ISSUES:- Burden of proof appellant must discharge – Where fresh issue(s) relates to a decision of Customary Court not raised before the Customary Court of Appeal – Whether can be competently canvassed before the Court of Appeal on further appeal

APPEAL - APPEAL FROM CUSTOMARY COURT OF APPEAL:- Rule that appeals from the Customary Court of Appeal must relate to questions of customary law only – Duty of Court of Appeal thereto – Basis - Whether the Court of Appeal can hear appeals over issues emanating directly from the ruling of a Customary Court of a State

APPEAL - FRESH POINT(S) ON APPEAL:- Issues for determination not based on decision of court complained against– Competency of - Whether an appellant can be allowed to raise on appeal issues neither considered in the judgment appealed against nor flowing from the ratio of the said judgment

COURT – APPELLATE PROCEEDINGS:- Duty of Appellate Court to look at proposed grounds of appeal in an application for leave (or extension of time to appeal) or in an application to amend notice of appeal or file additional grounds of appeal – Purpose of

EVIDENCE:- Evaluation of evidence by Customary Court – Whether can found a valid ground of appeal at the Customary Court of Appeal

JURISDICTION:- Court of Appeal – Jurisdiction to hear appeal over decision(s) of a Customary Court – Extent of - Whether has jurisdiction to entertain any issue not connected with customary law arising from a decision of a Customary Court of Appeal

JURISDICTION:- Application to introduce an issue of jurisdiction for the first time on appeal – Where forum is Court of Appeal and decision complained against flows from the Customary Court of Appeal – Competency of

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

Appellant/Applicant filed a motion on 9/6/2016 before the Court of Appeal seeking, among others, for an Order granting leave to the applicant to file and argue fresh issues of customary law which were not raised at the Customary Court of Appeal below from where the appeal emanated. The motion was couched thus:

1) For leave to file and argue fresh issues of customary law not raised at the Court below; and

2) Deeming the fresh issues of customary law contained in the notice of appeal, dated 15th day of September (sic) already filed and served, as having been properly filed and served.

The motion arose from an appeal brought by the applicant against the decision of a Customary Court of Appeal upholding the decision of a Customary Court which awarded title over a set of contested land tracts to the respondent. However, on close inspection, the motion was exposed as one seeking to introduce and argue fresh issues bordering on the evaluation of evidence by the trial Customary Court and an issue of customary law not canvassed before the Customary of Appeal thereby allowing that Court to give a decision thereon.

DECISION(S) APPEALED AGAINST

1. Trial customary court upheld the claims as to customary law title of the Respondents over the contested portions of land; and

2. Customary Court of Appeal, on appeal, upheld the decision of the Customary Court.

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANT:*

1) Whether in the circumstances of this case, this Court can grant leave to the Appellant/Applicant to file and argue fresh issues of customary law, not raised at the Court below.

2) Whether in the circumstances of this case, this Court can grant leave to Appellant/Applicant to amend his notice of appeal filed on the 23rd day of September 2014.

3) Whether in the circumstances of this case, this Court can grant leave to the appellant/applicant to amend his notice of appeal filed on the 23rd day of September 2014 by adding additional grounds of appeal.

*BY RESPONDENTS*

1) Whether, in the circumstances of this case, the Appellant/Applicant is entitled to be granted leave to raise and argue the issues raised in grounds 1, 2 and 3 of the Appellants Notice of Appeal filed on 23/9/16 (sic).

2) Whether, in the circumstances of this case, the Appellant/Applicant is entitled to be granted leave to file and argue the additional grounds of appeal, numbered as Grounds 10,11 and 12 in the proposed Amended Notice of Appeal?

*AS ADOPTED BY COURT*

[Court adopted the two issues presented by Responded but treated them together].

**MAIN JUDGMENT**

ITA GEORGE MBABA, J.C.A. (Delivering the Lead Ruling):

Appellant/Applicant filed a motion on 9/6/2016, seeking the following orders:

1) An Order granting leave to the applicant to file and argue fresh issues of customary law not raised at the Court below.

2) An order of Court deeming fresh issues of customary law contained in the notice of Appeal dated 15th day of September already filed and served as having been properly filed and served.

3) An order of Court granting leave to the appellant to further raise and argue fresh issues of customary law not raised at the Court below.

4) An Order of Court deeming fresh issues of customary law as contained in the amended notice of appeal already filed and served as having been properly filed and served.

5) An Order of Court granting to the Appellant to further raise and argue fresh issues that touch on jurisdiction not raised at the Court below.

6) An Order of Court deeming fresh issues that touch on jurisdiction as contained in the amended notice of Appeal already filed and served as having been properly filed and served.

7) An Order of Court granting leave to the appellant to amend the original notice of appeal dated 15th day of September, 2014 in the way and manner set out and underlined on the proposed amended notice of appeal annexed hereto as Exhibit A.

9) An Order of Court granting leave to the Appellant to amend the original notice of appeal dated 15th day of September, 2014 and filed on 23rd day of September, 2014 by adding additional grounds of appeal as set out and underlined on the proposed amended notice of appeal annexed hereto as Exhibit A.

10) An Order of Court deeming the amended notice of appeal already filed and served as having been properly filed and served.

And for such order or further orders

The application was supported by the following grounds:

a) Recently after perusing the appellants notice of appeal, it was discovered by the appellants Counsel that he inadvertently omitted seeking the leave of the Court before filing fresh issues which were not raised at the Court below and which said fresh issues are contained in the notice of appeal, filed on 23rd day of September 2014.

b) That since the fresh issues have already been filed, it requires the leave of this Court to regularize them for the purpose of arguing them in this appeal.

c) Also recently, after perusing the appellants notice of appeal, it was further discovered by the appellants Counsel that certain material facts which bother on custom of the parties in this appeal were inadvertently omitted from the appellants notice of appeal, filed on 23rd day of September, 2014.

d) Also certain material facts which bother on the issue of jurisdiction of the trial customary Court were also inadvertently omitted from the appellants notice of appeal, filed on 23rd days of September, 2014.

e) By the case of Nwaigwe V. Okere (2008) 12 NWLR (Pt.1105) PG 445 at 477 PARA C F, issue of jurisdiction of the Court to entertain matters brought before it is of universal application and applies to Customary Court.

f) By the case of Nwaigwe V. Okere (Supra). Issue of jurisdiction of customary Court to hear and determine a matter can therefore be raised in a matter brought before a customary Court.

g) Ground 4 of the grounds of appeal raises the issue of locus standi and leave of this Court is necessary to file and argue the same.

The application was also supported by affidavit of several paragraphs, - (1), (2), (3), (a) - (n), 4, 5 and 6, and one Exhibit (Exhibit A).

The 1st Respondent, filed a counter affidavit to oppose the application and parties were ordered to file written addresses to articulate their arguments. Appellant/Applicant filed his written Address on 9/6/2016, while the 1st Respondent filed his on 2/5/18 (and same was deemed duly filed on 4/3/19).

Reply on points of law was filed on 20/5/18, and was also deemed duly filed, on 4/3/19.

Arguing the motion, Appellants Counsel, Kingsley Elegalam O. Esq., applied to withdraw the prayers 3,4,5,6 and 7 on the motion papers and urged us to strike out the same. What therefore remained of the motion, were the prayers for Order:

1) For leave to file and argue fresh issues of customary law not raised at the Court below; and

2) Deeming the fresh issues of customary law contained in the notice of appeal, dated 15th day of September (sic) already filed and served, as having been properly filed and served.

Counsel raised three issues for the determination of the Application, namely:

1) Whether in the circumstances of this case, this Court can grant leave to the Appellant/Applicant to file and argue fresh issues of customary law, not raised at the Court below.

2) Whether in the circumstances of this case, this Court can grant leave to Appellant/Applicant to amend his notice of appeal filed on the 23rd day of September 2014.

3) Whether in the circumstances of this case, this Court can grant leave to the appellant/applicant to amend his notice of appeal filed on the 23rd day of September 2014 by adding additional grounds of appeal.

Counsel answered all the posers in the affirmative. On the issue 1, Counsel referred us to grounds 1, 2 and 3 of the notice of appeal, filed on 23/9/2014, which picked quarrel with the manner the trial customary Court evaluated the evidence before it, to conclude that appellant did not prove his title to the land in dispute. He argued:

From the record of appeal before this Court, it does not admit, of any doubt that evidence was copiously led before the trial customary Court by both the appellant, and the respondent on the issues contained in the grounds 1, 2 and 3 herein above stated, which we are seeking the leave of this Honourable Court to file and argue. In other words, no further evidence is required to be led before this Honourable Court in order to argue them. (Paragraph 4.05 of the Address).

He argued that the grounds 1 and 3, together with their particulars, raised the issue of the appellant being the only son of Mbagwu (whose lands are being disputed) and therefore, Mbagwus heir who is entitled to inherent Mbagwus Ishiobi, that is, the dwelling house and other lands belonging to Mbagwu, under native law and custom of Dikenafeiyi Autonomous Community where the parties come from.

Counsel relied the case of Alawiye V. Ogunsanya (2013) All FWLR (Pt.668) 800 as to what Appellant/Applicant is required to do to raise fresh issue on appeal, not raised at the trial Court - namely: obtain the leave of the appellant Court; ensure the fresh points sought to be raised involve issue of substantive law, or procedural law which need to be allowed to prevent an obvious miscarriage of justice, and to show that no further evidence is required to resolve the issues for determination. He also relied Omotosho V. Ojo (2008) All FWLR (Pt.408) 389 at 399.

On issues 2 and 3, which Counsel argued, together, he said that this Court has the requisite discretion to grant leave for Appellant to amend his notice of appeal, filed on 23/9/14 to incorporate the fresh issues, as set out in Exhibit A. He argued that the reason for the amendment sought are stated in Paragraphs 3(d), 3(e), 3(f), 3(g), 3(h) and 3(i) of the affidavit in support, which trace to the inadvertence and/or mistake of Counsel who prepared the notice of appeal, filed on 23/9/14; he said that the mistake of Counsel should not be visited on the appellant (litigant). He relied on Opekun V. Sadiq (2003)5 NWLR (Pt.814) 475 at 489.

Counsel stated the propriety of amendment of notice of appeal, that it can be done at any stage of the proceeding, and relied on the case of Alawiye V. Ogunsanya (supra).

Replying, the 1st Respondents Counsel, Chief E.O. Onyema, stated two issues for the determination of the application, as follows:

1) Whether, in the circumstances of this case, the Appellant/Applicant is entitled to be granted leave to raise and argue the issues raised in grounds 1, 2 and 3 of the Appellants Notice of Appeal filed on 23/9/16 (sic).

2) Whether, in the circumstances of this case, the Appellant/Applicant is entitled to be granted leave to file and argue the additional grounds of appeal, numbered as Grounds 10,11 and 12 in the proposed Amended Notice of Appeal?

Arguing the issue one, Counsel said the Customary Court had resolved the suit No.CC/SM/30/2006, filed by 1st Respondent, for him and awarded title to the five parcels of land in dispute to him, while dismissing suit No.CC/5M/57/2010 (cross action by the Appellant); that Appellant had challenged that decision at the lower Court (Customary Court of Appeal) on four grounds, namely:

a) The trial Court did not apply the fair hearing rule

b) The trial Court was biased against the Defendant/Appellant

c) The Ohalete family members constituted Judges in their own case.

d) The Court did not observe the Rule of fair hearing.

Counsel argued that apart from the four grounds stated above, which Appellant alleged some error and failed to establish, he did not fault the judgment of the trial Customary Court on any other ground; that the law is trite that where there is an appeal on some points only, against a decision or judgment, the appeal stands or falls on those points appealed against only, while the other point or decisions not appealed remain unchallenged and are deemed to have been accepted or conceded as being correct. He relied on Michael Vs State (2008)13 NWLR (Pt.1104)361; MFA V. Inongha (2014) LPELR 22010 (SC).

Counsel said a perusal of the grounds 1, 2 and 3 (which Appellant sought to introduce as fresh issues) shows that the said grounds are not founded on the decision of the lower Court, but on the decision of the Trial customary Court, not appeal against at the lower Court. Thus, he said the said grounds 1, 2 and 3 are incompetent; that before leave can be granted to raise a fresh issue on appeal, the said issue must be competent. He stated the grounds of the incompetence of the said grounds as follows:

1) The Court of Appeal has no jurisdiction to entertain Appeal, directly, from the decision of the trial Customary Court, but against the decision of the Customary Court of Appeal See Section 245 of the 1999 Constitution of the Federal Republic of Nigeria, as amended. He argued that grounds 1, 2 and 3 of the Notice of appeal are inviting this Court (Court of Appeal) to sit, directly, on appeal over the decision of the trial Customary Court; that no leave can be validly granted to raise grounds of appeal (or issues) which this Court, has no jurisdiction to entertain. He relied on KLM Royal Dutch Airlines V. Aloma (2017) LPELR 42588 (S.C.). He added that Appeal Court cannot entertain a ground of appeal which does not challenge or relate to the ratio of the decision of the judgment appealed against. He relied on Co-operative & Commerce Bank Plc V. Ekperi (2007)145 LRCN 571 @ 580; Mercantile Bank Ltd V. Nwobodo (2005) 139 LRCN 2269.

Counsel further argued that, even where competent ground of appeal is formulated and proposed, it is settled law that an appeal Court will not lightly entertain an application to raise point of law for the first time before it, and that the discretion to grant leave to raise such fresh issues, on appeal, is exercised cautiously and strictly, and only in special circumstances. He relied on Bankole V. Pelu (1991)11-12 SC 116 at 137; A.G. Oyo State V. Fairlakes Hotel Ltd (1988)12 SC (Pt.1)4 at 22; Uor V. Loko (1988) LPELR 3423 SC.

Counsel also relied on Ejiofodomi V. Okonkwo (1982)11 SC 74, to say that the practice of allowing for raising of fresh issues on appeal cannot be used as a ploy to pursue an appeal by installments, otherwise not only will there be uncertainty, at each appellate stage, as to the extent of a Courts decision that is being appealed against, there will also, consequently, be no end to litigation. He argued that, in this case, Appellant has appealed against the judgment of the trial Customary Court, upon certain grounds, but, after losing the appeal on those grounds, now decides not to challenge the propriety of the decision of the Appeal Court on those grounds he canvassed, but rather chooses to raise before the next Appeal Courts, new grounds of appeal against the decision of the trial Court. He relied on the case of Adegoke Motors Ltd V. Adesanya (1989) LPELR - 97 SC, where it was stated:

There is of course a total bar against new points designed to establish a case different from the one considered in the Court below.

Counsel also said that leave to raise fresh issues will be refused, if the fresh point could have, with reasonable diligence, been raised at the Court below, but was not. See Bankole V. Pelu (supra) at 138 -139.

He added that Appellant had more than ample opportunity to raise before the Customary Court of Appeal the grounds of appeal sought to be raised now for the first time; that he even applied and was granted leave to add eight(8) additional grounds of appeal to the original Notice of Appeal at the lower Court.

He urged us to resolve the issue against Appellant.

On issue 2, whether Appellant was entitled [to] be granted leave to file and argue the additional grounds of appeal, numbered 10, 11 and 12 as proposed, in the circumstances of this case, Counsel answered in the negative and said that those grounds did not raise any question of customary law, as they rather raised issues of evaluation of evidence and ascription of probative value to evidence by the Lower Court, which are not issues of customary law. He relied on the case of Okorie V. Chukwu (2014) LPELR- 23744 CA.

Counsel urged us to resolve the issue against the Appellant and to dismiss the Appeal.

Appellants Reply on points of law appears to be a rehash of the entire argument by the Appellant in support of the Application, which is not permitted.

RESOLUTION OF THE ISSUES

I think the two issues by the 1st Respondent have captured the essence of the application better and the same rather rephrased the 3 issues by the Appellant, giving same more pungent. I shall, however, take the two issues together.

Is Appellant entitled to grant of leave to raise and argue fresh issues as shown in grounds 1, 2 and 3 of the Notice of Appeal filed on 23/9/2014 and/or proposed in grounds 10, 11 and 12 of the Appellants notice of Appeal, filed 9/6/2016, along with this motion, as Exhibit A?

Appellant had expressly admitted that the issues which he wants to introduce into the appeal, by way of additional grounds of appeal or fresh issues were not raised at the Court below, and that his Counsel discovered that he inadvertently omitted seeking the leave the of Court before filing the fresh issues which were not raised in the Court below, in the notice of appeal, filed on 23rd day of September, 2014." (See paragraph (a) of the grounds for the motion).

I think the above admission completely defeated the whole essence of this application, as Appellant cannot be allowed to raise any issue(s) on appeal, which was not considered in the judgment appealed against, and was not an issue flowing from or related to the ratio decidendi in the said judgment of the lower Court. See Gwede V. INEC (2014) LPELR 23763 SC.

In any event, the law is settled that for an issue to be valid and competent for consideration by the Court, it must arise from a complaint against the decision/judgment on appeal. Where an issue raised in a brief of argument of either the appellant or respondent(s) does not arise from any of the grounds of appeal, as in the instant case, the issue is incompetent and liable to be struck out. See Seagull Oil Ltd Vs Mon Pulo Ltd (2011)5 NWLR (Pt.525) at 540 per Onnoghen JSC (as he then was - later CJN).

In the case of Enyinnaya V. Otikpo & Anor (2015) LPELR 25529 CA, it was held:

Of course, the law is trite that issue for determination of appeal must arise or derive from the grounds of appeal, which must, in turn, flow from or be located in the judgment appealed against. Obosi V. NIPOST (2013) LPELR - 21397 CA.

See also Oguzie & Ors V. Oguzie (2016) LPELR - 41086 CA, and Nwagbo V. Mba (2016) LPELR - 41045 CA, where my Lord Yakubu JCA, (of blessed memory) said:

“For the law is that an issue for determination, for it to be competent, must flow from a ground of appeal. Hence an issue for determination cannot be formulated in vacuo or from the air. Therefore, just like a ground of appeal must be predicated upon a ratio decidendi in the judgment appealed against, so also an issue for determination must be birthed by a ground of appeal, from which it flows. Khaled Chami V. United Bank for Africa Plc (2010) 2, SPDC V. Tigbara Edamkue & Ors (2009) 7 SCNJ 124; NPA Plc V. Beecham Pharmaceutical Ltd & Anor (2013) 25 WRN 38 at 61 62."

Of course, Appellant has admitted that the fresh issues for which he seeks leave to appeal against, as shown in the grounds 1, 2 and 3 of the Appeal or in the grounds 10, 11 and 12 of the proposed Amended Notice of Appeal (Exhibit A) were not raised at the Court below"; that his counsel inadvertently omitted to raise the said issues in the grounds of appeal at the Court below. He argued that the Court should not punish Appellant for the mistake of his counsel; that the said issues/grounds derived from or related to the judgment of the trial Customary Court!

Appellant therefore appears to be seeking this Court to sit on appeal directly over the decision of the trial Customary Court, having not canvassed those grounds/issues he wants raise now at the Lower Court (Customary Court of Appeal) to be tested, thereat. We have stated several times that this Court (Court of Appeal) has no direct jurisdiction over decision of trial Customary Courts or such other inferior Courts, until such decisions of such Courts are tested at the Customary Court of Appeal or the High Court (as the case maybe) and a party, still not satisfied, raises an appeal in this Court over the area of his dissatisfaction. See the case of Anyalenkeya V. Anya & Ors (2016) LPELR 40218 CA:

This Court (Court of Appeal) has no direct jurisdiction over the decisions of the Customary Court. We stated this clearly in the case of Enyinnaya V. Otikpo & Anor (2015) LPELR 25529 CA.

Our jurisdiction is over the way the Customary Court of Appeal resolved the issues and matter arising for consideration at the trial Customary Court, and so whatever complaint the Respondent had against the decision of the trial Customary Court, should have been raised and canvassed at the Customary Court of Appeal and, where the latter failed to handle it to the satisfaction of the Respondents, then can appeal, therefore be canvassed before us at the Court of Appeal. This Court has no direct jurisdiction over the decision of the Customary Court, Magistrates Court or District Court, until the same goes through the mill (High Court or Customary Court of Appeal) and appeal therefrom, comes to us. Therefore, to that extent that issue 1 by the Respondents is a stranger to the ground one of the appeal, the same is hereby struck out, for incompetence. See Ossai V. FRN (2013)13 WRN 87; AhmadDazomo V. Saleh Musa (2013) LPELR 20761 CA; 2014 All FWLR Pt.743) 1866.

It should also be noted, that the law requires the Appellate Court to look at the proposed grounds of appeal in an application for leave (or extension of time to appeal) or in an application to amend notice of appeal or file additional grounds of appeal. This is to be sure that the proposed ground(s) is worth the trouble of granting the leave or order sought; that it disclose good and arguable ground of appeal. See Ogembe V. Usman & Ors (2011) LPELR - 8155 (SC); C.P.C. V. Nyako & Ors (2011) LPELR 23009(SC).

Of course, in appeals from the Customary Court of Appeal to this Court (Court of Appeal), the ground(s) of the appeal or the issue(s) thereof must be on question of customary law, to lie an appeal. See Section 245(1) of the 1999 Constitution, as amended, as interpreted by myriads of cases. Pam V. Gwom (2000) LPELR 2896 SC; Okorie V. Chukwu (2014) LPELR 23744 CA; Enyinnaya V. Otikpo (supra); Onyeme & Anor V. Onumaegbu & Anor (2016) LPELR 41092 CA.

In Anozie V. Emerenini & Anor (2016) LPELR 40968 CA, it was held; relying on Enyinnaya Vs Otikpo (supra):

I find it difficult to locate the complaint of the Appellant, which, in the main, is a quarrel with the evaluation of evidence, within the rights of the Appellant to appeal under Section 245 (1) of the 1999 Constitution, which confines right of appeal to questions of customary law Issues relating to fair hearing, evaluation of evidence, doctrine of estoppels etc, are never issues bordering on question(s) of Customary law. See Duru V. Okoro (2015) LPELR 24483 CA. Such issues cannot, properly, invoke the jurisdiction of this Court, as valid grounds of appeal from a decision of the Customary Court of Appeal to this Court (the Court of Appeal).

This calls for the reproduction of the grounds of appeal which Appellants seeks to raise as fresh issues and/or the proposed grounds of appeal, which Appellant seeks leave to introduce into this appeal, in the Exhibit A, attached to the Motion on Notice, that is, the proposed Amended Notice of Appeal of which grounds 10, 11 and 12 therein are said to be the additional grounds Appellant, seeks to raise in the appeal. They state as follows (without their particulars) As per Exhibit A:

10) The learned Justices of the Court below erred in law when they held that ground three which touched on customary law of Dikenaofeiyi Community where the parties in this appeal come from never related to the findings and judgment appealed against.

11) The decision of the Lower Court in respect of the interpretation of Exhibit E and other documents which the trial Court relied upon was outside the competence of the Lower Court so to do as a result the Lower Court erred in law in so doing.

12) The Trial Customary Court erred in law when it assumed jurisdiction and entertained, suit No.CC/SM/30/2006 when the said suit ought to have been brought in a representative capacity and not in a personal capacity.

In his argument, Appellant was not even harping on the said proposed additional grounds of appeal, but was arguing about the grounds 1, 2 and 3 of the Appeal, filed on 23/9/2014, whereof he sought leave to argue as fresh issues. The said 3 grounds are (without their particulars) were:

1) The trial Court erred in customary law when it held that the appellant did not prove his title to the land in dispute, when it was very clear from the evidence led before the Trial Court that the Appellant is the only son of Mbagwu and the person entitled to inherit Mbagwu under the native law and custom of Dikenaofeiyi Autonomous Community.

2) The trial Customary Court erred in law when it departed from the age long principle established in the case of Idundun V. Okumagba.

3) The trial Customary Court erred in law when it held that the 1st respondent was forced out of AlaIshiobi Ama and other lands in dispute in spite of the abundant evidence before the Trial Customary Court that the appellant is the only son of Mbagwu and the person entitled to inherit Mbagwu under the native law and custom of Dikenaofeiyi Autonomous Community. (See pages 333 to 335 of the Records of Appeal).

Even a casual look at those grounds 1- 3 of appeal, filed on 23/9/2014, and the proposed Amended grounds 10, 11 and 12 of the Appeal Exhibit A, would show that the said grounds are anything but questions of customary law, arising from the judgment appealed against. They are rather, in my view, attacks against the decision of the trial Customary Court (particularly the grounds 1 3 of the grounds of appeal, filed on 23/9/14 and ground 12 of the Exhibit A). And the grounds 10 and 11 of Exhibit A appear to be a quarrel against the way the Lower Court evaluated the evidence and or interpreted some documents. These are not questions of Customary Law (Enyinnaya V. Otikpo (supra); Anozie V. Emerenini (supra) and Duru V. Okoro (supra)).

I had earlier stated that this Court has no direct jurisdiction over the decisions of the Customary Court, and cannot be called upon to consider the error (or alleged error) made by the trial Customary Court in its judgment! See Anyalenkeya V. Anya (supra).

This application cannot therefore be granted in my view. It is hereby refused and dismissed, for lacking in merit.

Appellant/Applicant shall pay cost of this application assessed at Fifty Thousand Naira (N50,000.00) to the 1st Respondent.

**AYOBODE OLUJIMI LOKULO-SODIPE, J.C.A.**:

I agree.

**IBRAHIM ALI ANDENYANGTSO, J.C.A.:**

Having read in draft the judgment of my learned brother, I.G Mbaba JCA just delivered, I entirely agree with him that to grant this application by this Court will be tantamount to turning itself into the Customary Court of Appeal. In other words, this Court will be made to sit on appeal over the judgment of the Customary Court, a Court of first instance.

This Court has no such jurisdiction conferred on it by the Constitution, because its appellate power is to hear appeal from the Customary Court of Appeal of a State as enshrined in Section 245 (1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) which provides thus:

245. (1) An appeal shall lie from decision of a Customary Court of Appeal to the Court of Appeal as by right in any civil proceedings before the Customary Court of Appeal with respect to any question of customary law and such other matters as may be prescribed by an Act of the National Assembly.

It is clear that this Court cannot entertain appeal direct from the Customary Court of a State as the Appellant/Applicant would want to make this Court do in this case.

For the above reason and the fuller reasons given in the lead judgment of my Noble Lord, I. G. Mbaba JCA, I hereby refuse the application and same is accordingly dismissed.

I abide by the order of cost made in the lead judgment.