

CHAPTER 40-CUSTOMARY COURT OF APPEAL

A LAW TO ESTABLISH A CUSTOMARY COURT FOR THE HEARING OF APPEALS FROM THE
UPPER AREA COURT IN CIVIL PROCEEDINGS INVOLVING QUESTIONS OF CUSTOMARY LAW
AND FOR OTHER MATTERS CONNECTED THEREWITH

[1 January 1982]

PRELIMINARY

1. This Law may be cited as the Customary Court of Appeal Law.

2. In this Law, unless the context otherwise requires:—

"Attorney-General" means the Attorney General of the State;

"Cause" means any action, suit or other original proceedings between a plaintiff and a defendant;

"Chief Registrar" means the Chief Registrar of Court;

"Code of Conduct" refers to the Code of Conduct in the Fifth Schedule to the Nigerian Constitution of 1979;

"Consolidated Revenue Fund" means all revenues or other moneys raised or received by the Government of the State (not being revenue or other moneys allocated for specific purposes by law or by resolution of the House Assembly of the State);

"Constitution" means the Constitution of the Federal Republic of Nigeria 1979;

"Court" means the Customary Court of Appeal established under this Law;

"Customary Law" includes any religious observance, declaration, custom or usage governing relationships in a given locality, which does not form part of the received law of Nigeria or Islamic personal law;

"decision" includes judgement, decree or order;

"Deputy Chief Registrar" means the Deputy Chief Registrar of the Court;

"Governor" means the Governor of the State;

"High Court" means the High Court of the State;

"Judge" means a Judge of the Court and includes the President;

"Judicial Service Commission" means the Judicial Service Commission of the State;

"matter" includes any proceeding of a court not in a cause;

"National Assembly" means the National Assembly of Nigeria;

"President" means the President of the Court;

"Public Service of the State" means Public Service of the State as defined in Section 277 of the Nigerian Constitution of 1979;

"State" means the Gongola State of Nigeria;

"Upper Area Court" means any Upper Area Court of the State established under the Area Courts Law.

CONSTITUTION OF THE CUSTOMARY COURT OF APPEAL

3. There is hereby established a Customary Court of Appeal for the State to hear appeals from Upper Area Courts in respect of cases involving questions regarding Customary Law.

4. The Court shall be composed of a President and four Judges.

5. The Court shall be duly constituted for the purpose of exercising any jurisdiction conferred upon it by the Constitution and this Law if it consists of at least two judges of that Court.

6. No Judge shall be liable to be sued in any court for any act done or ordered by him in the exercise of the jurisdiction conferred by the Constitution or this, or any other, law, whether or not within the limits of his jurisdiction, provided that he, at the time of such act or order, in good faith believed himself to have jurisdiction to do or to order to be done the act in question.

7.—(1) The court shall have and use, as occasion may require, a seal bearing the inscription in the English or Hausa language: Court "Gongola State Customary Court of Appeal".

(2) The seal of the Court shall be kept by the Chief Registrar and duplicate thereof shall be kept by the Deputy Chief Registrar.

JURISDICTION AND LAW

8. —(1) Subject as otherwise provided in this Law the Court shall have jurisdiction to hear and determine appeals in respect of the State matters in cases involving questions regarding customary law from any decision of an Upper Area Court.

(2) For all the purposes of and incidental to the hearing and determination of any appeal, and the amendment, execution and enforcement of any judgement, order or decision made therein, the Court shall have all the powers, authority and jurisdiction of every Upper Area Court of which the judgement, order or decision is the subject of an appeal to the Court.

(3) The Court shall have jurisdiction to review cases reported to it by the Attorney-General or his representative.

9. The Court shall be competent to decide:—

(a) any question of customary law regarding a marriage concluded in accordance with that

law, including a question relating to the dissolution of such a marriage or a question that depends on such a marriage relating to family relationship, or the guardianship of an infant;

(b) where all the parties to the proceedings are subject to customary law regarding a marriage, including the dissolution of that marriage, or regarding family relationship, a foundling, or the guardianship of an infant;

(c) any question of customary law regarding a gift, will or succession where the endower or the testator or deceased person is subject to customary law;

(d) any question of customary law regarding an infant, prodigal or person of unsound mind who is subject to customary law or the maintenance or guardianship of a person who is mentally infirm; or

(e) where all the parties to the proceedings (whether or not they are subject to customary law) have by writing under their hand requested the court that heard the case in the first instance to determine that case in accordance with customary law, any other question.

10. The Court in the exercise of the jurisdiction vested in it by this law as regards both substantive law and practice and procedure, shall administer, observe and enforce the observance of, the principles and provisions of:-

- (a) customary law as interpreted at the place where the trial at first instance took place;
 - (b) this law;
 - (c) the Area Courts law and any other law affecting Area Courts
- in so far as it appertains to a cause or matter within section 9 of this Law; and
- (d) natural justice, equity and good conscience.

TRANSFER TO AND FROM HIGH COURT

11.—(1) On or at any time before the hearing of an appeal from any Upper Area Court, the Court, if it is of opinion that the appeal should properly have been brought before the High Court, may at any time or at any stage of the proceedings before final judgement, and either with or without application from any of the parties thereto, and with the consent in writing of the Chief Judge of the State, transfer such appeal to the High Court.

(2) The power of transfer under this section shall be exercised by means of an order under the hand of the President and the seal of the Court.

12. Notwithstanding anything contained in any rules made under section 21 of this Law to the contrary, no appeal transferred to the Court by the High Court shall be questioned on the ground that it has not been entered within the time prescribed for entering appeals to the Court.

Sessions in the Court.

13. The Court shall hold sessions from time to time and at such places as provided by order made under section 14.

14. The President may from time to time by order provide for all or any of the following matters:—

- (a) the appointment of the places within the State at which sessions of the Court are to be held;
- (b) the appointment of the dates for holding sessions within the State and the alteration of any such dates by such authority and in such manner as may be specified in an order made under this section where by reason of the pressure of business or other unforeseen cause it is expedient to alter the date so appointed;
- (c) carrying into effect as may seem necessary to the President any order made under this section and, without prejudice to the generality of the foregoing power, the attendance, jurisdiction, authority and duty of the Deputy Chief Registrar, interpreters, and officers, the use of any prison, and the transmission of documents and exhibits; and
- (d) any matters which appear to the President to be necessary or proper for carrying into effect any order made under this section.

15. —(1) If at any time it appears to the President that there is no business or no substantial amount of business to be transacted at a session then about to be held at any place and that having regard to all the circumstances of the case it is desirable that an order should be made under this section, he may by order direct that sessions shall not on that particular occasion be held at that place and where any such order is made then, notwithstanding any order made under section 14, sessions shall not on that occasion be held at the place specified in the order.

(2) There may be included in an order made under this section provision for any matters (including any of the matters mentioned in paragraph (c) of section 14 for which it appears to be necessary or proper to make provision with a view to giving full effect to the order.

16. —(1) Legal practitioners may appear to act for or assist any party before the Court.

(2) In any proceedings before it the Court may permit the appearance on behalf of any party to such proceedings of:—

- (a) the husband, wife, guardian, servant, master, or any inmate of the household of any party, who shall give satisfactory proof that he or she has authority in that behalf; or

(b) a relative of any person who is interested in the administration of the estate of a person who was subject to the jurisdiction of an Upper Area Court.

17. There shall be a Chief Registrar, Deputy Chief Registrar and such other officers as may be deemed necessary who shall of the Court, perform such duties in execution of the powers and authorities of the court as may from time to time be assigned by rules of court, or subject thereto, by any special order of the President.

18. If any office of the Court, employed to execute an order, wilfully or by neglect or omission loses the opportunity of executing it, then on complaint of the person aggrieved, and proof of the fact alleged, the Court may, if it thinks fit, order the officer to pay the damages sustained by the person complaining thereof, and the order shall be enforced as an order directing payment of money.

19. No officer of the Court or other persons bound to execute any warrant or order issued by the Court shall be liable in any action for damages in respect of the execution of such warrant or order unless it be proved that he executed the same in an unlawful manner.

20. No officer of the Court shall or may directly or indirectly or by the intervention of an agent or otherwise purchase any property sold in execution, and in the event of any such person purchasing or being interested in the purchase of any property sold in execution such purchase shall be entirely void.

(2) Notwithstanding the provisions of subsection (1) nothing herein contained shall prevent any such person from purchasing by leave of the court any property sold in execution which it may be necessary for him to purchase in order to protect the interests of himself, his wife or child.

21. The President may make rules of court providing for any or all of the following matters:-

(a) prescribing and providing for:-

(i) the fees which may be charged in the Court;

(ii) the reduction of such fees in any particular case or class of cases and the manner in which and the persons by whom such reduction may be made;

(b) subject to the provisions of section 10, the practice and procedure of the Court;

- (c) the carrying into execution of the decrees or orders of the Court;
- (d) the execution of the warrants and the service of the process of the Court;
- (e) regulating the payment of allowances and travelling expenses of witnesses;
- (f) regulating any matters relating to the costs of proceedings in the Court;
- (g) defining, so far as conveniently may be defined by general rules, the duties of the several officers of the Court;
- (h) securing the due administration of estates;
- (i) regulating and prescribing the procedure on appeals from any Upper Area Court;
- (j) requiring and regulating the filing of accounts of the administration of estates;
- (k) ascertaining the values of estates;
- (l) regulating the sittings of the Court subject to the provision of sections 13, 14 and 15;
- (m) prescribing what part of the business which may be transacted and of the jurisdiction which may be exercised by Judges of the Court may be transacted or exercised by the Chief Registrar, other officers of the Court, and providing that any interlocutory application to be made in connection with or for the purpose of any appeal or proposed appeal to be heard by the Court shall be heard and disposed of before a single Judge;
- (n) prescribing forms to be used for the process and procedure of the Court; and
- (o) generally for carrying into effect the provisions of this Law.

22. All customary law proceedings instituted, commenced or taken in accordance with rules or practice of the High Court in respect of any cause pending at the date of the coming into force of this law, shall be valid and effectual as though they had been instituted, commenced or taken in accordance with the provisions of this Law and such proceedings shall continue before the Court in accordance with the provisions of this Law.