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Stultification Of The Jurisdiction Of Customary Court Of Appeal In Nigeria: The Need To Jettison Restrictive Judicial Interpretation Of Section 282(1) Of The 1999 Constitution Of Federal Republic Of Nigeria (As Amended)

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ABSTRACT

The Customary Court of Appeal in Nigeria was established primarily to aid the special development of customary law and to help decongest the appellate load of the High Court particularly in relation to appeals bordering on issues of Customary Law and emanating from the Customary Courts. Sections 267 and 282(1) of the 1999 Constitution of the Federal Republic of Nigeria vest both appellate and supervisory jurisdiction in civil matters involving questions of customary law in the Customary Court of Appeal. A careful examination of decisions of the Court of Appeal and the Supreme Court bordering on the interpretation of the phrase 'questions of customary law' shows that the jurisdiction of the Customary Court of Appeal has been narrowed and stultified. This paper examines the jurisdiction of the Customary Court of Appeal with particular reference to Section 282(1) of the 1999 Constitution as amended and argues that the line of interpretations adopted by the Court of Appeal and Supreme Court do not promote the general purpose underlying the provision. The paper suggests the need to jettison the restrictive interpretative approach of the provision and adopt a more liberal interpretation in order to effectively convey the purpose of the provision. The aim being to allow the Customary Court of Appeal to entertain all issues arising from appeals on claims based on customary law without unnecessary emphasis on how the grounds of appeal are formulated.

Keywords: Jurisdiction, Customary Court of Appeal, Stultification, Restrictive Judicial Interpretation.

1. INTRODUCTION

It is trite law that in determining whether a court, be it trial or appellate, has Jurisdiction, to entertain a suit brought before it, recourse has to be made to the statute establishing the court and the subject matter of the suit. The Jurisdiction of a court connotes the limits imposed on its power to hear and determine the issues between the parties.[1] It is the authority which a court has to decide matters that are litigated before it and take cognizance of matters presented in a formal way for its decision.[2]This is referred to as substantive or subject matter Jurisdiction and it is conferred on the court by statutes or by the constitution. Substantive Jurisdiction cannot be waived or conferred on court by acquiescence of the parties; or capable of expansion by the general or inherent powers of the court.[3] It is the claim of the plaintiff before the court that has to be examined in order to ascertain whether a particular case is within the Jurisdiction conferred on the court or not.[4] Jurisdiction may also be territorial or geographical. It could also be divisional Jurisdiction. The local venue for commencing an action is

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[1]D. I. Efevwerhan; Principles of Civil Procedure in Nigeria, 2nd edn. (Snaap Press Ltd, Enugu, 2013), P.16

[2]*Mobil v. LASEPA* (2003) 104 LRCN 240 at 262, Per Ayoola, JSC

[3] *Gombe v. P.W* (Nig) Ltd. (1995) 7SCNJ 19, see also *Ndayako v. Dantoro* (2004) 13 NWLR (Pt 889)188

[4] *Edjerode v. Ikine* (2001) 12 SCNJ 184; *Abu v. Odugbo* (2001) 7SCNJ 262

based on rules of court.[5] Failure to commence at the appropriate judicial division of a court that has Jurisdiction is not fatal and may be waived.[6] However , state or territorial Jurisdiction is fatal to the case if it is commenced in the court of another state outside the territorial Jurisdiction of the court.[7] Such Jurisdiction is fundamental and cannot be waived by parties.[8] Jurisdiction, being a fundamental issue, can be challenged at any stage, even on appeal.[9] When raised the first time on appeal, leave of the appellate court must however be sought and obtained.[10] The court may also raise the issue of Jurisdiction *suo motu* because of its fundamental nature; but it must afford the parties opportunity to be heard on it.[11] It is Jurisdiction that makes a court relevant.

For sometimes now, there has been several appeals from the customary court of appeal to the Court of Appeal and Supreme Court necessitating the judicial interpretation of Section 282(1) bordering on the jurisdiction of the Customary Court of Appeal. The several judicial interpretations emanating from the Court of Appeal and Supreme Court tend to narrow or restrict the Jurisdiction of the Customary Court of Appeal. This development tends to make the court less relevant. There is the need for the appellate courts to adopt a more liberal and purposive approach in giving interpretation to the Jurisdiction of the Customary Court of Appeal. This will help to make the court more relevant, speed up the development of customary law in the nation and also help in decongesting the High Courts which are already overwhelmed with much cases than they can handle. The benefits accruing to a state that has established the Customary Court of Appeal is enormous. In the words of Anyafulude,[12] Customary Courts of Appeal helps to:

(i) Decongest the appellate load of the High Court
(ii) Customary Court of Appeal of a state supervises customary courts within its area of authority.
(iii) It affords a platform for closer and more efficient administration of customary courts thereby maximizing the benefits accruable by the establishment of the customary courts judicial system in the state.

The Customary Court of Appeal provides expertise in the training and retraining of members of Customary Courts thereby directly ensuring high standards in the practice and procedure of these courts, in the exercise of their civil and criminal Jurisdictions.

2. HISTORY OF THE CUSTOMARY COURT OF APPEAL IN NIGERIA.

Constitutional provision for the Customary Court of Appeal of a state came in for the first time in Nigeria with the 1979 Constitution.[13] This provision was carried over into the Abacha's unused 1989 Constitution[14] and was also adopted under the 1999 Constitution.[15] Prior to this constitutional recognition of the Customary Court of Appeal, the appellate jurisdiction over decisions of the customary courts was exercised by the High Courts.[16] A plaintiff thus initiates his action in the Customary Court and appeals lie to the High Courts on all questions tried in the customary Court.[17]For matters tried in Area Courts, appeals lie to the Upper Area Courts and thereafter to the Sharia Court of Appeal, on issues involving questions of Moslem law or to the High Courts in all other cases.[18] As it were, in the Northern states, where the Sharia Court of Appeal system operated, an

[5] D.I. Efevwerhan; (n1), P.17
[6] Ibid.
[7] Ibid.
[8] *International Nigerbuild Const. Co. Ltd. v Giwa* (2003) 13 NWLR (Pt 836) 69,
[9] *Nigeria Engineering works Ltd. v Denap Ltd*. (2001) 12 SCNJ 251
[10] *Oshatoba v. Olujitan* (2000) 2 SCNJ, 159
[11] *Dongtoe v. Civil Service Commission* (2001) SCNJ 131
[12] T. Anyafulade., Principles of Practice and procedure of court in Nigeria through the cases, 1st edn. (Mercele Press Nig, 2012) P. 560.
[13] Section 247(1)(2), 1979 Constitution
[14] Section 247(1)(2), 1999 Constitution
[15] Section 266(1)(2), 1999 Constitution
[16] See C.O. Okonkwo., (ed.) *Introduction to Nigerian Law,* (Sweet & Maxwell, London, 1980), PP. 95- 96. In a few jurisdictions and in particular instances, appeal lay to Magistrate Courts or to Area Customary Courts
[17] See for example, *Anambra State Customary Law, 1977;* Customary Law 1973 of Lagos State.
[18] C.O. Okonkwo., (n16.), PP. 100-101.

7 Ibid.

appellant had the right to choose whether to appeal to the Sharia Court of Appeal on limited issues of Moslem law or to appeal to the High Court on all other issues.[19] In practice however, a party cannot have two appeals pending in two appellate courts on different issues arising from the decision of a court of first instance.[20]
The Constitutional Drafting Committee for the 1979 Constitution, in recommending a unified jurisdiction system for the Federation except in matters of Islamic personal law did not consider the Customary Court of Appeal of a state as a necessity.[21] The committee only recommended a Sharia Court of Appeal for each state that wants to have it. The Federal Sharia court of appeal was also recommended in the draft proposed constitution in Section 184. In the opinion of the committee, appeals should go from Customary and Area courts to Upper Area Courts. But in Moslem personal cases, appeals should go from Sharia Court to the State Sharia Court of Appeal; thereafter to Federal Sharia Court of Appeal and finally to the Supreme Court. Further appeals from decisions of Customary Courts should go to the Federal Court of Appeal and finally to the Supreme Court.[22] What eventually sailed through from the recommendations of the Constitution Drafting Committee was the establishment of the Supreme Court,[23] the Federal Court of Appeal[24] (rather than a Federal Court of Appeal and a Federal Sharia Court of Appeal); the establishment of Sharia Court of Appeal for a state that so requires[25] and Customary Court of Appeal for a state that so requires[26] The Abacha unused 1989 Constitution maintained the same provision, save that the Federal Court of Appeal was re-named Court of Appeal. Under the 1999 Constitution, provision is made for the establishment of a Sharia Court of Appeal or a Customary Court of Appeal in each state of the Federation that desires to have them.[27] However, the establishment of the two courts is mandatory for the federal capital territory.[28]
The first Customary Court of Appeal that was established in Nigeria is the Plateau state Customary Court of Appeal which was established on 2nd October, 1979 by the Customary Court of Appeal Law of Plateau State.[29] Since then, Customary Court of Appeal have been established in the following state, to wit: Edo, Delta, Benue, Imo, Abia, Kaduna, Ebonyi, Nassarawa, Taraba, Rivers, Bayelsa and Ogun.[30] Sadly, though, Edo and Nassarawa State had recently scrapped the court and it's judges redeployed to the High Courts of the respective States.

3. JURISDICTION OF THE CUSTOMARY COURT OF APPEAL.

The Customary Court of Appeal is one of the superior courts of records established by the Constitution of the Federal Republic of Nigeria. But unlike the High Courts its establishment by a state is optional. The Customary Court of Appeal is established under section 280 of the constitution for any state of the Federation that requires it; and compulsorily under section 265 of the constitution for the Federal Capital Territory, Abuja. The constitution of the Federal Republic of Nigeria 1999 provides for the Jurisdiction of the Customary Court of Appeal of a state in Section 282 as follows:

(1) A customary court of Appeal of a state shall exercise appellate and supervisory Jurisdiction in civil proceedings involving questions of customary law.[31]
(2) For the purpose of this section, a Customary Court of Appeal of a state shall exercise such Jurisdiction and decide such questions as may be prescribed by the House of Assembly of the state for which it is established.[32]

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[19] Ibid.
[20] This will constitute an abuse of court process: See *Okafor v. A.G. Anambra State* (1991) 6 NWLR (Pt. 200) 659 esp. at P. 681 Per Karibi-Whyte, J.S.C; *N.V. v. Scheep v. M. v. 'S. Araz' (2001)* F.WLR (Pt. 34) 543 esp. at PP. 589-590 C-B.
[21] Report of the Constitution Draft Committee, Vol. 1 Federal Ministry of Information, Lagos, 1976 P. xxxv.
[22] Ibid, P. xxxiv.
[23] *Report of the Constitution Draft Committee*, Vol. 2, Federal Ministry of Information, Lagos, 1976, P. 101
[24] Section 210, 1979 Constitution of Nigeria
[25] Section 217, 1979 Constitution of Nigeria
[26] Section 240, 1979 Constitution of Nigeria
[27] Sections 275 and 280 of the 1999 Constitution
[28] Sections 220 and 265 of the 1999 Constitution
[29] Available at www.https//edojudiciary.gov.org, accessed 26/6/2020
[30] Ibid.
[31] Section 281(1) of the 1999 Constitution of Federal Republic of Nigeria
[32] Section 282(2) of the 1999 Constitution of Federal Republic of Nigeria

Similarly Section 267 provides for the jurisdiction of the Customary Court of Appeal of the Federal Capital Territory as follows:

> The Customary Court of Appeal of the Federal Capital Territory, Abuja shall, in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of customary law.[33]

A close examination of section 282 (1) and (2) above reveals that the Customary Court of Appeal is vested with both appellate and supervisory Jurisdiction in civil matters involving questions of Customary Law. The implication is that it can hear regular appeals and also handle supervisory matters which do not necessarily come to it by way of normal appeals. Such matters include application for writs of certiorari, prohibition, mandamus and habeas corpus which are classified as prerogative writs. It can therefore be stated that jurisdiction of the Customary Court of Appeal is constitutionally provided for but may be enlarged by the National Assembly with respect to the Federal Capital Territory Customary Court of Appeal or by the state Houses of Assembly with respect to the Customary Court of Appeal of a State. Customary Court of Appeal is an appellate court and its decisions subject to appeals to the Court of Appeal.[34]

4 JUDICIAL INTERPRETATION OF THE JURISDICTION OF CUSTOMARY COURT OF APPEAL

Inspite of the enormous benefit derived from the establishment of the Customary Court of Appeal in states that have established them, a trend has emerged that tends to challenge the very existence of the Customary Court of Appeal system which if not urgently reversed can question the very existence of the court as a superior court of record in Nigeria. Section 282(1) which had earlier been reproduced in this paper deals with the jurisdiction of the Customary Court of Appeal. A close scrutiny of the section shows that no reference is made to grounds of appeal therein. Shockingly, both the Court of Appeal and the Supreme Court have consistently held that in determining whether questions of customary law is raised in any matter before the Customary Court of Appeal, it is the grounds of appeal alone that must be specifically examined or considered. They have consistently maintained that it is immaterial whether the subject matter of the case which gave rise to the appeal border purely on issues of customary law, such as; Customary Land Law, Succession under Customary Law, Customary Law marriage etc. They have also maintained that, it is immaterial that the matter on appeal emanated from a trial Customary Court.

The very first attempt to deal with this issue was in the case of ***Barhang Golok v. Mamhok Diyalpwan***[35] In that case, the appellant appealed to the Court of Appeal on a decision of the Plateau State Customary Court and filed four grounds of appeal. The respondent at the court of appeal filed a notice of preliminary objection challenging the jurisdiction of the Court of Appeal to hear the appeal pursuant to section 224(1) of the 1979 constitution which is currently section 245 of the 1999 Constitution.

The Section provides as follows:

> An appeal shall lie from the decision of the Customary Court of Appeal to the Court of Appeal as of 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.[36]

The Court of Appeal ruled that grounds 1 and 2 raised purely questions of fact and not customary law and were therefore incompetent and proceeded to strike them out. On a further appeal to the Supreme Court, it held that the omnibus ground which dealt purely with facts is not a question of customary law. In ***Hirnor v. Yongo,***[37]the Supreme Court confirmed the decision in *Golok's case* when it stated that the decision in that case 'provides

[33] Section 267 of the 1999 Constitution
[34] Section 245 of the 1999 Constitution
[35] (1990) 3 NWLR (Pt. 139) P. 411
[36] S. 224(1) of the 1979 Constitution, Section 245 of the 1999 Constitution
[37] (2003) 9 NWLR (Pt. 824) 77, 102

some considerable leeway for an insightful counsel to skillfully draw up competent grounds of appeal to meet appropriate grievances within the limitation of the relevant constitutional provision'. That insight is to omit an omnibus ground of appeal.[38] Consistent with *Golok*, the means of determining a question of customary law lies in the manner in which the grounds of appeal are couched and not the subject matter of the appealed decision of a customary court.[39]

Another pronounce case in point is the Decision of the Court of Appeal in **CCA *Edo State v.Aguele***.[40] In that case, the 1st respondent, the husband of the 2nd respondent, filed a divorce petition against the 2nd respondent before the Esan South East Area Customary Court, Ubiaja, Edo State. The 2nd respondent raised a preliminary objection to entertain the petition, claiming that the marriage between her and the 1st respondent was contracted under Isoko native law and custom. According to her, the Ubiaja Area Customary Court lacked the territorial Jurisdiction to determine the divorce petition. The 1st respondent filed a counter-affidavit to the said preliminary objection, which was served on the 2nd respondent on the date slated for the hearing of the preliminary objection. The 2nd respondent asked that she be given 48 hours to react to the counter-affidavit as there were some averments therein which she needed to reply to. The court refused the application, heard the preliminary objection and ruled in favour of the 1st respondent. Dissatisfied with the ruling of the Area Court, the 2nd respondent appealed to the Customary Court of Appeal, Edo State, the appellant herein. The Customary Court of Appeal gave Judgement in favour of the 2nd respondent by declaring the ruling of the trial court a nullity, and ordered hearing denovo of the divorce before the Area Court.

Aggrieved by the decision of the appellant, the 1st respondent initiated another action before the High Court of Edo State by originating summons to quash the decision of the appellant. The appellant raised a preliminary objection to the Jurisdiction of the High Court to hear and determine the matter. The High Court overruled the objection and held that the action was competent. Dissatisfied with the ruling, the appellant Customary Court of Appeal, Edo, appealed to the court of Appeal, where it contended that the trial court erred in law when it held that it had Jurisdiction to entertain the suit. It contended that the observance of fair hearing as provided in section 36 (1) of the 1999 constitution by operation of law forms part of the proceedings of the Area/Customary Court of a State, irrespective of whether the proceedings is a civil proceedings that raised Questions of Customary law or not. In determining the appeal, the Court of Appeal considered the provisions of section 245 (1) and 282(1) & (2) of the Constitution of the Federal Republic of Nigeria 1999 and held as follows:

i. Appeals generally are creations of statute, and failure to comply with the statutory requirements prescribed by the relevant laws under which such appeals may be competent and properly before the court will deprive an appellate court of Jurisdiction to entertain the appeal. In the instant case, section 282 of the 1999 constitution provides that appeals from Customary Courts can only go to the Customary Court of Appeal on questions of customary law. The grounds of appeal from which the Customary Court of Appeal could derive its Jurisdiction must therefore, relate to Customary law.

ii. Section 282 (2) of the 1999 constitution prescribes that a Customary Court of Appeal of a State shall exercise appellate and supervisory Jurisdiction in Civil Proceedings involving questions of Customary law and such other matters as may be prescribed by the House of Assembly of the State in which the Customary Court of Appeal is established. In the instant case, there was no law by the House of Assembly of Bendel State conferring Jurisdiction on the Customary Court of Appeal, Edo State to decide matters on such other questions other than customary law. It follows, therefore, that the court could only decide on such matters of customary law that comes before it on appeal from the various Customary Courts.

iii. For an appeal to be competent before the Customary Court of Appeal, the grounds of appeal must relate to and raise questions of customary law. It is not the subject matter of the action in the trial court that confers Jurisdiction on the Customary Court of Appeal. It is rather the ground of appeal from the

[38] E. Nwauche., Civil Questions involving Customary Law as the Basis of Appellate Jurisdiction in Nigeria, Act a Universitatis Danubius, Juridica, Vol. 11, No. 1 (2015).

[39] Ibid.

[40] (2006) 12 NWLR (Pt. 996), P. 545

iv. decision of the Area/Customary Court that will confer the necessary Jurisdiction on the Customary Court of Appeal. In the instant case, grounds one to three in the appeal to the Customary Court of Appeal from the trial court are all related to questions of fair hearing and the service of process on the respondent before the trial Court. None of them is related to the Questions of Customary law. In the circumstance, the appeal from the Esan South-East Area Customary Court to the Customary Court of Appeal, Edo State was incompetent.

v. Where a Customary Court of Appeal proceeds to hear and determine grounds of Appeal other than on customary law, it acts without the Jurisdiction to do so and such decision, no matter how well conducted, will be a nullity.

Some of the cases where the narrow and restrictive interpretation were adopted include: ***Pam v. Gwom***,[41] ***Subor v. Asamakeme,***[42] ***Nwaigwe v. Okere***[43]and many others. All these cases decided that where an appeal from a trial customary court complains about the applicable customary law in some grounds while some other grounds complain about procedure, weight of evidence, and other ancillary matters, only the grounds of appeal complaining about the applicable Customary law would be cognizable in the Customary Court of Appeal while the other grounds would be cognizable in the High Court.

Certain salient Questions that need to be resolve here are; whether it is the ground of appeal that must raise questions of customary law or civil proceedings before the Court? Is the phrase 'Civil Proceedings involving questions of customary law as stated in the constitution' the same as 'ground of Appeal involving questions of Customary Law?' What is the actual meaning of Civil Proceedings and what is the meaning of ground of Appeal? How can a ground of appeal confer jurisdiction on a court? Is ground of appeal mentioned in Section 282(1) of the 1999 Constitution?

5. IS THERE ANY DISTINCTION BETWEEN CIVIL PROCEEDINGS AND GROUNDS OF APPEAL?

Flowing from the many decisions of the Court of Appeal and the Supreme Court, on this issue, it is clear that the most problematic aspect in the interpretation of section 282 (1) is the apparent confusion between civil proceedings involving questions of customary law with ground(s) of appeal involving question of customary law. It is clear that while Section 282 (1) expressly made mention of civil proceedings, it did not make any reference to grounds of Appeal. But what the appellate Courts had done in several of its decisions is to interpret civil proceedings as synonymous with grounds of appeal.

a) What is a Civil Proceeding?

Black's law Dictionary (8th edition) defines 'Proceedings' as:

> The regular and orderly Progression of a law suit including all acts and events between the time of commencement and the entry of Judgement.[44]

It may also mean the business conducted by a court or other official body; a hearing. The usage of the phrase 'civil proceedings involving question of customary law' as used in Section 282(1) is very clear. A civil proceeding in law is one that has nothing to do with a criminal action. So, civil proceedings involving question of customary law will have to do with a proceeding to determine an issue relating to customary law and practice. So, once the proceedings involve questions of customary law, the proceedings automatically come within the ambit of S. 282(1) of the constitution. Proceedings that may involve questions of customary law can include; dissolution of Customary marriage, Custody of children from a Customary marriage, Inheritance under Customary law, declaration of Customary right of occupancy etc. The intendment of the constitution is that once the proceedings involve questions of Customary law, the Customary Court of Appeal will be competent to

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[41](2002) 2 NWLR (Pt. 644) at 3353

[42] (1997) 4 NWLR (Pt. 502) 617

[43] (2008) 13 NWLR (Pt. 1105), P. 446

[44] B. A. Granner., Black's Law Dictionary, (8th edn.) (Thomson West publishing, USA), P. 1241

assume Jurisdiction and determine the appeal. What the constitution envisages is that the Customary Court of Appeal can consider all the grounds of appeal filed in respect of such proceedings and the issues arising therefrom. So, if a ground of appeal complained against border on service of process or fair hearing as enshrined in Section 36 of the constitution, the Customary court of Appeal can competently assume Jurisdiction provided it is emanating from a proceeding bordering on questions of customary law.
What the Court of Appeal and Supreme Court has done over the years is to emphasize the nature of the grounds of appeal rather than the entire civil proceedings. Thus in ***Nwaigwe v. Okere***,[45] It was held that the Customary Court of Appeal cannot competently entertain an omnibus ground of appeal as this does not raise questions of customary law. The Supreme Court did not pay any attention to the civil proceedings from where this ground of appeal was formulated. The Supreme Court considered the omnibus ground independent of the proceedings from which it evolved.[46] It also considered competence from the respective grounds of appeal rather than civil proceedings.[47]

b) What is a ground(s) of Appeal?

A ground of appeal is defined as the allegation of error of law or fact made by an appellant as the defect in the Judgement appealed against and on which it is relied upon to set it aside.[48] The grounds of appeal are thus the reasons why the decision on appeal is considered by the aggrieved to be wrong.[49] The purpose is to isolate and accentuate for attack the basis of the reasoning of the decision challenged.[50] A ground of appeal must be fixed and circumscribed within a particular issue in controversy.[51]An appeal against a decision resolving the issues one way must necessarily deal with the issues in controversy. In any suit, there must be issues in controversy between the parties which call for determination.[52]A ground of appeal should therefore be based on an issue in controversy and arise from the Judgement on appeal; it should constitute a challenge to the ratio of the decision.[53] If the grounds of appeal are derived from matters outside those relating to the decision, they are incompetent.[54]
So, if a ground of appeal emanates from a civil proceeding involving questions of customary law, whether it touches on customary law or not, the customary court of Appeal can assume Jurisdiction. A situation where the grounds of appeal is detached from the civil proceedings from which it emanates is wrong and not the intendment of Section 282(1) of the constitution of the Federal Republic of Nigeria 1999.

6. WHAT IS THE EXACT MEANING OF THE PHRASE 'QUESTIONS INVOLVING CUSTOMARY LAW?'.

In ***Usman v. Umaru***,[55] The Supreme Court held however that the Jurisdiction of the Customary Court of Appeal is limited to questions involving customary law. It is important to emphasize that it is the 'proceedings' and not the 'decision' or 'ground of appeal' that must raise questions of Customary law.[56] A decision is part of the proceedings of a Court.[57] In ***Pam v. Gwom***[58] Ayoola JSC stated the principles to be considered in determining whether or not a 'decision' is in respect of Questions of Customary law. His lordship stated as follows:

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[45] (2008) 34 NSCOR, 1325
[46] T. Anyafulude., (n12), P. 571
[47] Ibid.
[48] *Metal Construction (W.A.) Ltd v. Migliore* (1990) NWLR (Pt. 152) 299.
[49] *Saraki v. Kotoye* (1992) 11/12 SCNJ 26 at 42
[50] Saraki v. Kotaye *(supra)*
[51] Fidelis Nwadialo; Civil Procedure in Nigeria, 2000, University of Lagos Press, 2nd edn., P. 805.
[52] Ibid
[53] Ibid.
[54] *Atoyebi v. Governor, Oyo State* (1994) 5 SCNJ 62
[55] (1992) 7 SCNJ 388
[56] T. Anyafulude., (n12) P. 571
[57] Ibid.
[58] *Pam v. Gwom Supra*

> 'I venture to think that a decision is in respect of a question of customary law when the controversy involves a determination of what the relevant customary law is and the application of customary law so ascertained to the Question in controversy. Where the parties are in agreement as to what the applicable customary law is and the Customary Court of Appeal does not need to resolve any dispute as to what the applicable customary law is, no decision as to any question of customary law arises. However, where notwithstanding the agreement of the parties as to the applicable customary law, there is a dispute as to the extent and manner in which such applicable customary law determines and regulates the right, obligation or relationship of the parties, having regard to facts established in the case, a resolution of such dispute can, in my opinion, be regarded as a decision with respect to a question of customary law. Where the decision of the Customary Court of Appeal turns purely on facts or on question of customary law, notwithstanding that the applicable law is customary. Applying the test stated above to the present case, it is evident in regard to the grounds of appeal before the Court of Appeal that grounds 1 thereof, which complains that the Judgement of the Customary Court of Appeal is against the weight of evidence, grounds 2 and 3 thereof, which in substance complained of misdirection of the court as regards the nature of transaction between the parties; ground 5 which putting the best construction one can on it, remained meaningless, and ground 6 which raises the question of the nullity of the proceedings having regard to the constitution of the trial court, do not relate to the decision of the Customary Court of Appeal in respect of any question of Customary law.[59]

Assuming without conceding that the views of the court are correct, from which proceedings is the Questions of Customary Law emanating? Going by the reasoning of the court in this case, most appeals coming from the Customary Courts will be bifurcated. It is worrisome, because a single appeal cannot be heard by two appellate courts. That is, partly by the Customary Court of Appeal and partly by the High Court. The appellant would be in a dilemma as to where and how to pursue his appeal fully. If he goes to either court, he would only get half or part judgement.[60] The Supreme Court warned against this scenario in ***Alhaji Umaru Abba Tukur v. Government of Gongola State***,[61] where it held that it was improper to approach a court that is competent to determine only some of the issues. It went on to stress that, 'there should be no room for half, judgement in any matter brought before either court.'

CONCLUSION

The controversy surrounding the Jurisdiction of the Customary Court of Appeal can be addressed if the Court of Appeal and the Supreme Court can take a second look at the actual purport and intendment of Section 282 (1) of the constitution of Federal Republic of Nigeria 1999. The focus of section 282(1) is on civil proceedings involving questions of customary law and not grounds of appeal involving questions of customary law. It is succinct and clear that grounds of appeal emanates out of the decision of a court on a particular issue which arises out of a proceeding. To single out a ground of appeal as the basis for ousting the Jurisdiction of the Customary Court of Appeal clearly runs fowl to the constitution. We therefore suggest a more purposive interpretation of this section by the higher courts so as not to stultify and restrict the jurisdiction of the court. This in our opinion will be in tandem with the intendment of the constitution. The proper thing should be that all appeals from the Customary Court in respect of a customary law matter should go to the Customary Court of Appeal where all complaints about the applicable customary law and other ancillary matters like procedure, misdirection and weight of evidence can be effectively and exhaustively dealt with.

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[59] *Supra*

[60] Available at www.https://edojudiciary.gov.ng, accessed 26/6/2020

[61] (1989) 4 NWLR (Pt. 117), 517