

CHAPTER ONE

MEANING AND SCOPE OF CUSTOMARY LAW

Before looking at the meaning of Customary Law. Let's know what custom means. In the case of **OKONKWO V LUCKY OKAGBUE ORS**¹ the court defines "Custom" as follows,

"A particular way of behavior which because it has long been established among members of a social group or tribe, can develop and acquire the force of law, it be approved by consent of those who follows it".

From the above dictum of the presiding Judge, it can be seen that custom has been in existence from time immemorial, here it means "a long time ago". A custom is also a tradition, a way of behavior of the people. Human conduct is governed daily by certain custom which the people recognized and accepted by themselves.

A custom is not necessary customary law until requirement are made. For a custom to become a customary law, it must have the force of law. In other words, it must bind on the people which it is applied. It must have a force of law. It should be noted and I believe that all customary law advocate will agree with me also that the existence and long life of custom is the strength of acceptance by the local populace, as was in the case of **Eshugbayi Eleko v. Govt Of Nigeria**² furthermore, customs also refers

(1994) 9 NWLR pt 368 30 1, at pg 345, shabu Aku v us man amaka (1991) 8 NWLR (pt 209) 280 at pp. 292, 294.

(1931) Ac 662 At 673.

The practice or usage "**Which by common adoption and unvarying habit has become compulsory and has acquired the force of law with respect to the place or subject matter which it relates**"³.

Now that we have already known what custom is, I will like us to go further by explaining what customary law is.

The supreme court in the case of **Kharie Zaidan Fatima Khalil Mohssen**⁴ Define customary law as follows:-

"It is a system of law not being the common law (England), and not being a law enacted by a competent legislature and binding within Nigeria as between the parties subject to it sway".

According to Obaseki J.S.C^{5a} customary law is the organic or living law of the indigenous people of Nigeria regulating their lives and transaction. It is organic in that it is not static. It is regulatory in that it controls the lives and transaction of the community subject to it. Custom is a mirror of the culture of the people and it imports justice to the lives of all those subject to it that is why it is referred to as "**A mirror of accepted usage**".

Section 2 of the customary court of appeal law of the old Plateau State^{5b} defines customary law as the rules of conduct which governs legal relationship as established by custom and usage. *In*

FRCR (1978) 26.

1973 1 All NLR 86 at lot.

Bilewu Oyewumi v. Amos Awaoda Ogusesan (1990) N W L R.

Laws of the old Plateau State Appeal Court.

lewis v. Bankole (1908) 1 NLR 81 at 100⁶ customary law has been stated to be the unwritten customary law recognized as law by the members of an ethnic group. If these definitions are anything to go by, Muslim law cannot be customary law. It is a fact that Muslim law is written in the Holy Koran. It is only by virtue of some specific provision in a law such as ***section 2 of the high court law cap.49, law Northern Nigeria 1963***⁷ which provides that native law and custom include Muslim law that Muslim law is regarded as a native law and custom.

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