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# Strengthening Access to Customary Justice in the Appellate Court of Cameroon: Examination of the Administration of Customary Appeals from a Practice-Based Perspective

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**Abstract:** This paper appraises the administration of customary appeals in the appellate court of Cameroon with emphasis on the common law jurisdictions of the Northwest and Southwest regions. It argues, among others, for the professionalization of customary justice institutions and the creation of a distinct customary court of appeal in the territory. It maintains that the hierarchy of courts, a precursor to the administration of appeals from trial to appellate courts, is indispensable for the expedient administration of justice. The paper identifies momentous problems in the execution of customary appeals including the over-reliance on procedural rules at the appellate court, rules which are neither tenable nor applicable at the trial customary court. To this end, customary appeals are rarely prosecuted on the merit of substantive customary rules and are often dismissed for non-compliance with procedural rules, an outcome which denies customary justice to litigants at the appellate courts. Addressing some of these concerns, the paper champions for a customary appeal process reliant on substantive rather than procedural justice if the aspirations of customary litigants are to be satisfactorily fulfilled.

**Keywords:** Customary Court, Customary Law, Customary Appeals, Customary Justice, and Customary Court of Appeal,

## INTRODUCTION

The need for an efficient and effective administration of justice is implicated in the hierarchy of courts which facilitates the processing of appeals from inferior to superior courts in the court system. This arrangement is not only desirable but also expedient. Judges like other human beings are not infallible and so appeals, therefore, provide avenues for correction of errors in judgments as far as possible. Also, the possibility that a decision by an inferior court may be scrutinised on appeal by a higher court, at the instance of an aggrieved party … is by itself a safeguard against injustice by acting as a curb against capriciousness or arbitrariness.[1]

Oputa JSC in *Oredoyin v. Arowolo*[2] described an appeal as an invitation to a higher court to find out whether on proper consideration of the facts placed before it, and the applicable law, the lower court arrived at a correct decision.

Like other trial courts, the decision of customary courts can be challenged on appeal by either party to the action in the same way as every other judgment. It cannot be otherwise as

[1] *Per Irikefe J.S.C in Rabiu v. State (1980) 8-11 S.C. 130 at 175-176*

[2] *(1989, 4 NWLR, pt. 114, 172 at 211)*

Asuagbor C.J, as she then was, categorically affirmed in *Dr. Halle Ekane v. Halle Nee Nzame Cecilia Eloe*[3] that access to the Court of Appeal is cardinal and foundational in Cameroon. The learned Chief Justice held that the process of appeal is a constitutional right so fundamental that the judicial process will be meaningless without it.

An appeal has been defined essentially as "a complaint to a superior court of an injustice done by an inferior one"[4]. Usually, on the entertainment of the appeal by the superior court, it affects the rights, privileges, and benefits of the parties to the action. Appeals are therefore against decisions of courts, with decisions used generally to include judgments, orders, rulings, acts, or recommendations. Generally, an appeal must involve a specific complaint or complaints against issues of law or fact raised and determined by the lower court. As a rule, a court of appeal will not entertain, without leave of court, an appeal on an issue not heard and determined at the trial court. This point was confirmed in *Pastor Angus Egbouho & others v. Emmanuel Adindu & others*[5] when Nana JCA castigated the appellants for attempting to argue issues in two grounds of appeal which were not raised at the trial of the main matter in the lower court.

The judge declined to entertain these grounds and dismissed them although the issues forming these grounds of appeal were canvassed in an interlocutory proceeding of the main matter.[6] The situation would clearly have been decided differently had the appellant applied and been granted leave to argue the issues not raised at the lower court. Usually, an appeal court will exercise the discretion to grant such an application particularly in the interests of justice. A party who disagrees with the decision of a court has the right to appeal against it except where the decision is that of the Supreme Court from which no further appeal lies at the national level. However, it must be stressed that appeals do not lie as of right in all situations under the legal system operating in the country. Clearly, there are instances where, although an injustice may be perceived to have been done, the party concerned can only appeal with the leave of court.[7] It is worth noting that, procedurally speaking, where a party fails or decides not to appeal against any decision of a court of law, he is deemed to have accepted the decision. The corollary of this principle is the indisputable conclusion that a party is absolutely bound by a decision not appealed against, no matter how outrageously wrong the decision might be. This is both trite law and the obvious dictate of civilized behavior.

A single uniform appeal process operates in Cameroon where appeals emanating from customary courts and courts of statutory orientation (common and civil law courts) are processed similarly and, consequently, are subjected to similar standards. Customary courts are the successors of the native courts that hitherto existed prior to colonialism with the mandate to adjudicate on issues bordering on the customs and traditions of the people. Contrarily, courts of civil and common law orientations are products of the country's colonial heritage and have the mandate to enforce these laws, in addition to customary laws. The proceedings before the two categories of courts are dissimilar with technical procedural rules applicable before statutory courts which are inapplicable in customary courts. Nonetheless, the single uniform appeal process ensures that customary appeals are subjected to similar technical procedural rules as those emanating from the other courts, a development that has forestalled the realization of customary justice in the appeal process.

This paper provides an appraisal of the appeal process in Cameroon with particular attention on customary appeals in the common law jurisdictions of Cameroon, adopting a purely practice-based perspective.[8] It highlights contradictions and shortcomings in the processing of customary appeals at the appellate courts, a realization that clamors for a distinctive customary appeal process.

## Overview of the Structure of the Court System in Cameroon

All courts in Cameroon are a creation of law. Section 3 of Law on Judicial Organisation of 2006 (Law No. 2006 of 29th December 2006), as amended identifies the following courts: Supreme Court; Special Criminal Court; Court of Appeal; Lower Court of Administrative Litigation; Lower Audit Court; Military Court; High Court; and Customary Court. There are other courts provided for in the Constitution of Cameroon.[9] Proceedings before the said courts are conducted with the help of separate rules of courts.

[3] *(Suit No. CASWP/5m/2010: unreported)*
[4] *Saunders 1972. p. 22.*
[5] *(Suit No CASWP/23/23/2008: unreported)*
[6] *Interlocutory proceedings are court hearings that focus on a specific matter related to a trial during the life cycle of the case. It focuses on the rights of the parties regarding the trial including issues such as applications for extension of time, ordering a party to follow the court's directives or applications for temporary relief before the final decision.*
[7] *Tomtec Nig Ltd v. F.H.A (2010) ALL FWLR 403*
[8] *The Common law jurisdictions are the Northwest and Southwest Regions.*
[9] *Law No 96/06 of 18 January 1996 (as amended).*

The courts have been classified into courts of ordinary jurisdiction and courts with special jurisdiction. Courts of ordinary jurisdiction can be further classified into courts of original jurisdiction and courts with appellate jurisdiction. Some of these courts exercise both civil and criminal jurisdiction whereas others exercise only criminal jurisdiction. The courts exercising criminal jurisdiction may conveniently be divided into court of special criminal jurisdiction and courts of general criminal jurisdiction. Courts of special criminal jurisdiction exercise jurisdiction over a particular class of offenders or types of offences and the courts of general criminal jurisdiction on the other hand are courts that have jurisdiction over different classes of offenders and in respect of different types of offences. The court of general criminal jurisdiction may further be sub divided into courts of original general criminal jurisdiction and courts of appellate general criminal jurisdiction.

Courts of original general criminal jurisdiction are courts of first instance and the High Court. The courts of appellate general criminal jurisdiction are courts that can exercise jurisdiction in criminal causes or matters only on appeal. Criminal proceedings cannot be instituted in such courts at first instance.[10]

By virtue of section 289 of the Criminal Procedure Code (CPC) the "Court of First Instance" shall have jurisdiction to try simple offences and misdemeanors as defined in section 21(1)(b) and (c) of the Penal Code, 1966. By virtue of section 407 of the CPC the High Court shall have jurisdiction to try felonies and, where applicable, related misdemeanors and simple offences. For the purposes of this article, we shall pay attention to the courts with ordinary jurisdiction which are the Customary Court, Court of First Instance (Magistrate Court), High Court, Court of Appeal, and the Supreme Court.[11]

## Courts with Ordinary Jurisdiction

Jurisdiction refers to a court's power to hear and determine legal disputes. When a legal body holds jurisdiction, it has the authority to administer justice within that jurisdiction. In the court system, there are three primary types of jurisdictions: subject matter, territorial, and *in personam* jurisdictions.[12] Some of these courts have original jurisdiction while others have appellate jurisdiction. In common law systems, original jurisdiction of a court is the power to hear a case at first instance without the ability to re-hearing the case as opposed to appellate jurisdiction, when a higher court has the power to review a trial court's decision.

The courts with ordinary jurisdiction are the Customary Court, Court of First Instance, High Court, Court of Appeal, and the Supreme Court.

*Customary (and Alkali) Courts*

Section 3 of the Judicial Organization Ordinance, 2006 (as amended) recognizes Customary Court. Section 2 of the repealed Judicial Organization Ordinance, 1972, provides that the procedure before Customary Court shall be laid down by special texts. Paradoxically, no law has attempted to enact any provisions on the composition, jurisdiction and procedure before these courts.

Law No 79/04 of 29 June 1979, which detached Customary Courts from the Ministry of Interior (Territorial administration) and attached them to the Ministry of Justice, is equally silent on this issue as it goes on to provide in its section 3(1) as follows: "the organization, functioning of Customary and Alkali Courts, and the procedure applicable before such courts shall be fixed by a separate law." Section 3(2) provides that: on a transitional basis, and pending the publication of the law referred to in the presiding subsection, previous instruments not at variance with the present law shall be applicable with the following reserves:

(a) the judgments delivered by the Customary and Alkali Court may be subject to appeal before the Court of Appeal under the same conditions and within the same time limit as judgments delivered in civil matters by the court of First Instance;

(b) The composition of the Court of Appeal deciding on the judgment of the Customary and Alkali Courts shall be supplemented by two assessors, sitting in an advisory capacity representing the customs of the parties;

(c) The assessors shall be selected from among the Customary and Alkali Court members who did not deal with the case at the trial court;

(d) Decisions rendered by the Court of Appeal on judgments delivered by Customary and Alkali Courts may be appealed before the appeal court according to the procedure and the time limits governing civil judgments delivered by the Court of Appeal".[13]

[10] *Except in few cases like rehabilitation proceedings, see section 683 and 686 of the CPC.*
[11] *Section 288(2) of the CPC*
[12] *Fon Doh Gwayim III & 9 Ors v. The People of Cameroon, Suit No BCA/5/C/2006: reported in (2012) 1 CCLR Part 15 at 46.*
[13] *See also section 22 of Law No 2006/015 of 29th December 2006 as amended*

Section 31 of the Judicial Organization Ordinance, 2006, states: the organization of Traditional Courts and procedure to follow before them with the exception of the criminal jurisdiction of Customary and Alkali Courts shall for the time being be maintained.

From the above legislation, it is obvious that promises have been made but no new legislation has been adopted on the organization and procedures to follow before Customary and Alkali Courts. It thus follows that legislation in use during the colonial period continues to apply in this court. Further, appeals from customary courts are subjected to similar conditions as those from any other court before the Court of Appeal. It therefore calls to reason that the law applicable in Customary and Alkali Courts is the Customary Courts Ordinance (Cap 142 of the Revised Laws of the Federation of Nigeria 1948) and the Koran respectively.

*Courts of First Instance*

By virtue of Section 15 of the Law on Judicial Organization 2006, a court of First Instance shall be established in each sub-division. However, for service purposes, its area of jurisdiction may cover several sub-divisions by decree of the President of the Republic. The Court of First Instance is situated in the chief town of the sub-divisions. However, the court may hear matters outside its seat; such hearings will be referred to as "circuit courts."[14]

It has the mandate to hear matters where the damages claimed does not exceed ten million FCFA. In criminal matters, the Court of First Instance has jurisdiction to try simple offences and misdemeanors as defined by Section 21(1) of the Penal Code.[15] The material jurisdiction of the Court of First Instance in criminal matters is determined by the offence of which the accused person is charged. The Court of First Instance has no material limit with regards to civil claims in criminal suits.[16] The interest of the young person requires that he/she is not exposed to publicity during his/her criminal prosecution. It is for this reason that a special court called the juvenile court is constituted to try young offenders. Although Cameroon does not have specially designated juvenile courts, section 713 of the Criminal Procedure Code converts the Court of First Instance into a juvenile court with jurisdiction to try all felonies, misdemeanors and simple offences committed by children and young persons.

The High Court

The High Court has jurisdiction to hear matters or proceedings relating to the status of persons, civil status, marriage, divorce, adoption, and inheritance. It equally hears matters where the quantum of damages claimed exceeds ten million FCFA. The jurisdiction of this court is territorial and limited to the geographical confines of the chief town of each division. The High Court has jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation, or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment, or other liability in respect of an offence committed by any person.[17]

As far as the enforcement of customary law is concerned, it is always subjected to section 27(1) of the Southern Cameroons High Courts Law 1955 which mandates it to apply customary law. Based on this provision, the High Court and the Customary Court share concurrent jurisdiction to entertain customary law matters. However, customary courts are limited to handle matters whose claim do not exceed 69.200 FCFA.[18] All matters with a quantum of claim above 69.200 FCFA must in so far as it touches on the interpretation of customary law be taken to the High Court for adjudication.

## Courts with Special Jurisdiction

These courts include the Court of Appeal and the Supreme Court.

*Court of Appeal*

This is next to the Supreme Court in the hierarchy of courts. It is established by section 3 of the Law on Judicial Organization as read with article 37(2) of the Constitution. The Court of Appeal is established in each region. However, for service purposes, its area of jurisdiction may cover several regions by decree of the President of the Republic.[19] The Court of Appeal shall be situated in the chief town of the region.

Section 683 of the Criminal Procedure Code accord jurisdiction to the court of appeal to entertain at first instance applications for rehabilitation. The jurisdiction of the Court of Appeal to hear civil appeals from the courts, whose jurisdictions are lower, is categorized into three. The first category is appeals from the Court of First Instance.[20] The second category is

*[14] This is what operates in Bonge sub-division. The Court of First Instance Kumba hears cases in Bonge as a circuit court. The intention of the legislation is to ensure that justice is brought closer to the people.*
*[15] See section 289 of the Criminal Procedure Code.*
*[16] See section 385 of the Criminal Procedure Code.*
*[17] Section 18(1) (b) of the 2006 Law (as amended) on Judicial Organization*
*[18] See section 8 of the Customary Court Ordinance Cap 142 of 1948*
*[19] Section 19 of Law No 2006/015 of 29 December 2006 as amended*
*[20] See section 22 of the Law on Judicial Organization.*

appeals from the High Court.[21] The third category is the appeals from Customary Courts.[22] Unlike in other jurisdictions, such as Nigeria, where there is a distinct Customary Court of Appeal, the situation is different in Cameroon as the Court of Appeal has jurisdiction to hear all appeals, customary and non-customary, emanating from all inferior ordinary courts.

*Supreme Court*

This is the highest in the hierarchy of courts. The Supreme Court was established by section 3 of the Judicial Organization Ordinance, 2006, (as amended), as read with article 38 of the Constitution.

The Supreme Court is vested with appellate jurisdiction. It receives appeals from the Regional Courts of Appeal on all matters including those touching on customary law. The Supreme Court is empowered to exclusively hear matters on disputes that relate to any question of law or fact that affect any legal rights between parties. No appeal can go to the Supreme Court from any other court without first passing through the Court of Appeal. By its very nature as the apex court in Cameroon its decisions are final and binding on all other courts that are subject to the doctrine of judicial precedent.[23]

## Corresponding Legislation Regulating Courts Procedures in Cameroon

All courts of record in Cameroon but for the Customary Court basically exercise criminal and civil jurisdiction either conjunctively, or in few cases disjunctively.[24] The main laws regulating the conduct of civil and criminal proceedings are the Federal Supreme Court Rules 1961 (applicable at the Court of Appeal); Supreme Court Civil Procedure Rules Cap 211, 1948 (applicable at the High Court of the common law jurisdictions); the Magistrates Court Rules 1955 and Customary Court Ordinance Cap 148 (both applicable in Customary Court of the common law jurisdictions); the Constitution; statutes enacted by the legislature which include the law on Judicial Organization; Judicial Authority; and the Practice Directives.[25] Section 5 of the Law on Judicial organization provides that the institution of proceedings and procedure to be followed before the courts shall be laid down by laws governing procedure.

Most of these rules are authoritative in regulating the conduct, processes, and procedures that are applicable in the various courts, procedures which, save of those applicable in the Customary Court as sanctioned by the Customary Court Ordinance Cap 148, complemented by the Customary Court Manual, are highly technical in nature. In the case of appellate courts, these rules also regulate the processing of appeals and articulate the standards required in the procedures. Customary trials which to a large extent are immune from such technical rules, are nonetheless subjected to them during the appeal process as practice dictates. The consequence, as will be demonstrated, is fatal to the administration of customary justice in the appellate courts.

## Defects in Processing Customary Appeals

The appeal process in ordinary courts is the province of the Court of Appeal and the Supreme Court. Practice and the law dictate that dissatisfied litigants are not precluded from seeking further redress before a superior court when they are convinced that the findings of the trial court were erroneous in its interpretation of the facts or its application of the law. Upon arriving at this conclusion, and subject to fulfilling the requirements of appeal, the case proceeds to the Court of Appeal, and on further appeal to the Supreme Court. At these appellate levels of adjudication, a purely customary trial, previously immune from technical procedural rules at trial court, is exposed to 'extraneous' rules and standards unknown in customary trials.[26] Moreover, at the appellate courts, the competence of the justices in native law and customs militate against the effective enforcement of customary justice.

*Justices Administering Customary Appeals*

According to section 20(2) (a) and (b) of the Law of Judicial Organization the Court of Appeal shall be organized into benches and shall be composed, depending on the needs of the service: of one or more benches for motions and urgent applications; for the enforcement of decisions; for civil and commercial matters; for labour matters; for Traditional Law matters; for felonies; for misdemeanours and simple offences; and for inquiry control. Notwithstanding the provision above, sub-section (c) provides that the President of the Court of Appeal may, by an order, merge two or more benches.

The composition of the Courts is found in Section 20 of the same law while the qualifications for appointments of judges are found in section 37 of the Constitution. Both section 37 of the Constitution and section 20 of the Law on Judicial

[21] *Ibid*
[22] *Ibid*
[23] *See section 38 of the 1996 constitution of Cameroon as amended.*
[24] *Section 31 of Law No 2006/015 of 29 December 2006 as amended oust customary court of its criminal jurisdiction.*
[25] *Practice directions are directions issued by the head of a superior court or the chief justice of a jurisdiction prescribing details of how certain procedures may be complied with. It is usually made when there is a lacuna in the rules.*
[26] *Kiye 2021. p. 97-115.*

Organization, 2006, failed to state the prescribed qualifications for the appointment of judges sitting on customary matters. The inference to be drawn is that such judges do not require any expert knowledge on customary law. Unlike in other jurisdictions, such as Nigeria, where extensive knowledge and expertise are conditions required for judgeship in customary matters.[27] In Cameroon, there is no clear standard for the appointment of appellate judges. Quite apart from the fact that there is no distinction between the judges sitting on customary matters and those sitting to adjudicate on all other civil and criminal matters, the President of the Republic who appoints members of this court pays no regard as to whether the appointed judges have knowledge of Customary Law or are versed with the custom of the people, they are called upon to serve.

Apart from customary matters, the constitutionally vested jurisdiction of the Court of Appeal covers all civil, labour, and criminal cases. In the absence of them having any specific knowledge of customary law, judges are to be assisted by customary assessors. Assessors are not appointed on a pensionary bases nor are they entitled to any financial benefit. The assessors have no contractual obligation to appear in court in discharge of a duty as an expert. Their absences affect the quality of the judgments as the judges may be left wanting on a particular custom, which is an impediment to achieving customary justice.

Some of these observations also reflect practices in the Supreme Court, the highest appellate court. Judges manning the Supreme Court are neither obliged to have competence in customary law nor are they required to acquire training in it. Therefore, at the appellate courts, unlike the trial customary court, the customary competence of judges remains in doubt.

*Application of Technical Procedural Rules*

Quite apart from the lack of competence of appellate judges, resort to technical rules as defined by the Rules of Court have paralyzed the functioning of appellate courts in dealing with customary appeals. Procedural rules guiding practice at the appellate courts in civil trials still applies to customary appeals. This is inappropriate taking into consideration the nature of customary law. Strict procedural rules must be jettisoned from the jurisdiction of the superior courts sitting to hear and to determine appeals from the Customary Court. The application of English rules of practice in determining customary law, much divorced from traditional customary practices, undermines access to customary justice in many respects.

It is puzzling that the Court of Appeal has constantly held that in determining whether questions of customary law are raised, it is mandatory to file a well-grounded ground of appeal with particulars of error committed by the trial Customary Court. This is expected to be done even when advocates are prohibited by the rules of court from appearing before the Customary Court. The ground of appeal is an originating process because it initiates the cause that the appellate court determines. To succeed, a lawyer is expected to be circumspect in couching it because the success of the appeal depends largely on the framing of the grounds of appeal. Ironically, lawyers are not expected to appear before Customary Court to be able to appreciate the facts and the particulars of errors committed by the court for the purpose of framing and filing the notice and ground of appeal that meet the standards required by the Court of Appeal.

Mbeng JCA had in *Guinness Cameroun v. Winter Transport*[28] noted that the grounds of appeal are complaints which are levelled on issues of fact and law or procedure in the case and which, if upheld, will lead to the appeal being allowed. There are clear rules which must be followed in the drafting of grounds of appeal for the Court of Appeal and Supreme Court. This being the case therefore, it is clearly incompetent for an appellant who has filed only an omnibus ground to seek to enforce or introduce arguments on matters of customary law.[29]

[27] *Section 247 (1) of the 1999 Constitution of the Federal Republic of Nigeria provides that "For the purpose of exercising any jurisdiction conferred upon it by this Constitution or any other law, the Court of Appeal shall be duly constituted if it consists of not less than three Justices of the Court of Appeal and in the case of Appeals from – (a) a Sharia Court of Appeal if consists of not less than three Justices of the Court of Appeal learned in Islamic personal law, and (b) a Customary Court of Appeal, if it consists of not less than three Justices of the Court of Appeal learned in Customary Law." Section 288 (1) further provide as follows: "In exercising his powers under the foregoing provisions of this Charter in respect of appointment to the Court of Appeal, the President shall have regard to the need to ensure that there are among the holders of such offices persons learned in Islamic law." Moreover, section 288 (2) (b) provides that "For purposes of subsection 1 of this section – a person shall be deemed to be learned in Customary law if he is a legal Practitioner in Nigeria and has been so qualified for a period of not less than fifteen years in the case of a Justice of the Supreme Court or not less than twelve years in the case of a Justice of the Court of Appeal and has in either case and in the opinion of the National Judicial Council considerable Knowledge of and experience in the practice of customary law."*

[28] *(Suit No CASWP/44/2006: unreported)*

[29] *Nana JCA had, based on this, held in Blassius Njanjo v. Manondo Alice Ekama Wilson (Suit No CASWP/15/2008) that the omnibus ground of appeal is an attack on the findings of fact by the trial court and exclusively involves an examination of questions of fact. This ground of appeal, according to this ruling, implies that the judgment of the trial judge cannot be supported by the weight of evidence*

It is difficult to fathom why all issues of fact have been jettisoned. This is more worrisome in the case of the omnibus ground of appeal. The Court of Appeal has, on several occasions, held that an omnibus ground of appeal which complains that a judgment is against the weight of evidence deals purely with facts and has no connection with customary law. It is disturbing why strict rules of procedure are set to apply in cases of customary appeal when advocates who are trained in observing rules of procedure are not allowed to appear before customary courts. This violates the right to access to the court especially within the context of customary justice.

## Addressing the Defective Customary Appeal Process

The customary appeal process in Cameroon is fraught with difficulties that require to be addressed if access to customary justice is to be guaranteed for all at the appellate courts. Three possible approaches are contemplated in this paper: the flexible interpretation of technical procedural rules in customary appeals, developing the competence of appellate judges sitting on customary appeals, and creating a distinctive customary court of appeal.

*Flexible Interpretation of Technical Procedural Rules*

The administration of customary appeals in the superior appellate courts raises inescapable questions: can Customary Courts administer rules of common law? Is strict adherence to procedural law necessary in customary trials? Would substantial justice be seen to be done when there is strict observance of procedural rules at the appellate court? And should appeals from Customary Court be set aside where there was no miscarriage of justice at the trial court but for procedural lapses? The answers to most of these questions are obvious – customary appeals should be prosecuted based on the substance of the law itself rather than on procedures extraneous to it.

Customary Courts in Cameroon are survivals of the old Native Courts to which rules of the common law and other technicalities are unknown and foreign. They provide for a quick, simple and an inexpensive form of determining matters before them. The major consideration was the dispensation of substantial justice. With the suppression of Native Courts which were replaced by Customary Courts and the limitation of their jurisdiction in civil and criminal matters, part of the law still to be administered in these courts is customary law. This is reflected by the fact that the Customary Court Ordinance Cap 142, 1948 made no mention of common law and therefore the strict procedural rules applicable in Common Law courts should not be extended to customary courts. It matters not whether the matter is on appeal, the law to be applied in that court is set out in the Customary Court Ordinance Cap 142 which unfortunately is not the case in practice since the Court of Appeal is guided by a single rule of procedure which is the Federal Supreme Court Rules, 1961, rules which have no place in customary trials. Great latitude must always be given to proceedings in customary courts and too much adherence should not be given to matters of procedure in such courts; it is always necessary to look at the evidence to ascertain what was in fact or substantially in issue between the parties.

The strict application of rules of procedure and issues of technicalities in customary appeal cases which has restricted access to justice at the Appeal Court can best be illustrated by decided cases. In *Ekume Green v. H.R.H. Njoke Johnson Njumbe*[30] the Court of Appeal entertaining a customary appeal held that the grounds of appeal filed were vague and disclosed no reasonable ground of appeal. It was the considered view of the court that a ground of appeal that alleges an error in law must have the particulars and the nature of the error either incorporated in it or stated separately and clearly. The portion of the judgment, ruling, decision or other pronouncement of the Court in which the error is found must therefore be stated. Failure to fulfil these requirements, the appeal will fail on procedural grounds.

Similarly, it was held in *Tatang Augustine v. Mukum Azagh*[31] that a court of law has no jurisdiction to open a new case for the parties and award to a party an unclaimed relief. This reasoning is fraught with problems. Advocates do not appear before Customary Court and the rules guiding proceedings require that they should be summarily done to facilitate the process. It is disturbing why the strict rules guiding the filing and arguing of appeals will be the same in both customary and ordinary appeals.

The cases above suggest that a decision in a case based on purely customary law will be dismissed on appeal if the grounds of appeal (a technical subject required to be filed by professionals) is not well formulated with particulars of errors. This is a complete twist of the reasons behind the creation of Customary Court that is expected to be less expensive, simple, expedient, and closer to the people. The reliance on technical rules in customary matters is a barrier to access to justice and

*adduced by the successful party leading to the inference that the conclusion reached by the trial judge based on the accepted evidence cannot be justified in line with the decision in Anyaoke v. Adi (Suit No CASWP/44/2006: unreported).*

[30] *(Suit No. CASWR/CC/08/2012: unreported)*
[31] *(Suit No. CASWP/96/2007: reported in CCLR, part 18)*

causes hardship because the appellant would have suffered incalculable injustice because he cannot reverse the situation at the appellate courts due to these technicalities.

The common law jurisdiction practices the sacred principle of *stare decisis* by which precedents are authoritative and binding. Consequently, the interpretations of the Court of Appeal are authoritative and binding on the lower courts. The decision of the Court of Appeal can only be questioned by the Supreme Court which, if appealed against, will only add to the financial burden of the litigants. Apart from the Supreme Court, only legislation *ad hominem* can alter it.[32] However, it is trite that the Court of Appeal, if it deems it necessary and legally expedient, can overrule its previous decisions.[33] This is why it is hoped that the Court of Appeal will take a second look at the interpretation it gives in customary appeals at the earliest opportunity.

Before 1972 when the Customary and Alkali Courts were still functioning under the West Cameroon Ministry of Local Government, appeals from the courts went to the Customary Courts of Appeal. From Customary Courts of Appeal, a further appeal lay before the District Officer. Thereafter, appeals went to the Senior Divisional Officer of the Division in which the courts were situated. From there further appeals went before the Prime Minister of West Cameroon. As cases hardly went beyond the Prime Minister's Court it was generally assumed that the Prime minister was the final appellate jurisdiction in customary law matters.

This was not the legal position. Under section 54 of the Southern Cameroon Constitution Order in Council 1960 all courts other than the Supreme Court, the High Court and the Court Martial were subordinate courts. The Prime Minister's Court was therefore a subordinate court and appeal from it lay to a superior court. Having regards to section 54 (supra) a party who was not satisfied with the decision of the Prime Minister sitting as a Customary Court of Appeal had a right to appeal to the High Court. From Ordinance No 72/21 of 19th October 1972, the procedure changed and all appeals from Customary and Alkali Courts went directly to the Court of Appeal of the Province, and further appeal to the Supreme Court.

Before now the appellate courts were manned by men learned in common law with the result that the congestion in the High Court made the judges pay very little attention to appeals from Customary Courts. This mischief was, therefore, to be remedied by providing the Customary Court with their own chamber, the Customary Bench of the Court of Appeal, to cater exclusively for customary claims.[34]

However, the interpretation given to the Rules of Court on the content of grounds of appeal which must carry with it a well-founded particular of errors (from a court supposedly manned by lay men in the absence of lawyers) has restricted access to justice. Consequently, the mischief that led to the establishment of the Customary Court Bench persists. The Court of Appeal should suppress the mischief and advance the remedy. Customary Courts are manned by lay men. Appeals against decisions of such courts are supposed to lie before Customary Courts of Appeal composed of a panel of at least three Judges who should have considerate experience in the practice of customary law, which is not the case. Rather, the judges are expected to sit with customary assessors who do not have compelling obligation since they are not on any financial support from the government for services rendered. The judges have been adjudged incompetent to hear appeals from Customary Court that have tried claims based on customary law on technical reason that the grounds of appeal do not *ex facie* raise any particulars of error or questions of customary law.

To satisfy the intension of the legislators, in order not to frustrate genuine appeals and to eliminate a possible legal impasse in the legal system, the Court of Appeal should at the earliest opportunity, give a more liberal and less restrictive interpretation to the Rules of Court with regards to Customary Appeals. This approach would shut the present "floodgate" of preliminary objections usually made by lawyers for the respondents to the non-respect of the technical rules in drafting notices and particulars of grounds of appeal, which objection now appears to be overwhelming the court.

It is obvious that the standard for the application of customary law before the Customary Division of the Court of Appeal and Customary Courts are different. While advocates are not allowed to appear before the Customary Court and the application of the Evidence Ordinance before this court is prohibited, that cannot be said to be the case with the appellate courts where lawyers do appear, and the rules contained in the Evidence Ordinance are applicable. It is difficult to understand the rationale behind the refusal of the appearance of lawyers and the exclusion of Evidence Ordinance before customary courts when the same cannot be done with the other state courts.

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*[32] These were the views expressed by Kayode Eso J.S.C (as he then was) in Architect Registration Council of Nigeria (No. 4) in Re: O.C. Majoroh v. Prof. M.A. Fassassi, (1987) 3 N.W.L.R (Pt. 59) P.42 at 46r. 7*

*[33] See Alhaji Nurudeen Olufumise v. Mrs. Abiola Labinjoh Falana SC 137/1987 delivered on the Friday 27th of April 1990.*

*[34] See section 21 of Law No 2006/015 of 29th December 2006 as amended on the law on Judicial Organization.*

*Strengthening the Capacity of Appellate Judges*

In a laudable attempt to develop customary laws, and by implication enhance the status of customary courts, the Court of Appeal is conferred jurisdiction to entertain appeals from customary courts. The appellate court has, in customary court matters, infused new life into the entire customary courts system. The Customary Court is a living institution having regards to the approval accorded it in the Constitution and in the Law on Judicial Organization., 2006. In spite of these, it is sad to note that the current structure of the Court of Appeal does not help improve on the quality of justice in customary matters. In other common law jurisdictions such as Nigeria, the appellate courts have been known "to give life even to dead bones of legislation," whereas the Cameroonian Courts of Appeal have constantly interpreted the relevant sections of the procedural laws spelling out the jurisdiction of the Customary Court in a restrictive manner.[35]

The practice that obtains in Nigeria where the competence of appellate judges in customary trials is guaranteed at law should be a starting point to boasting professionalism in customary trials. In Nigeria, to qualify as a judge sitting on customary appeal matters, the candidate must have been a legal practitioner for over twelve years and must have considerable knowledge and experience in the practice of customary law. Further, the constitutional provisions prescribing the qualification for the appointment of the President and other judges of the Court of Appeal or the Supreme Court are twofold: that the judge must have practiced for at least twelve years (in the case of the Court of Appeal) and fifteen years (in the case of the Supreme Court) coupled with "considerable knowledge and experience in the practice of customary law"[36].

In Cameroon, the composition of the courts is found in Section 20 of the Law on Judicial Organization, 2006, while the qualifications for appointments are to be found in Section 37 of the Constitution. It is important to stress that both section 37 of the Constitution and Section 20 of the Law on Judicial Organization failed to state the prescribed qualifications for the appointment of judges sitting on customary matters. The implication being that it is not a requirement for judges of the court to be either versed in or knowledgeable in customary law. There is a need to strengthen the customary capacity of appellate judges if they are to effectively administer customary law in these courts.

*A Distinct Appellate Court for Customary Trials*

With the cumbersome and complicated procedures in filing appeals to the regular and existing Court of Appeal, riddled with its complex court practices, the paper raises the need for the creation of a distinct court of appeal to administer customary appeals. If established, the customary court of appeal will exercise appellate and supervisory jurisdiction in civil proceedings involving questions of customary law. This will decongest the already crowded Court of Appeal that exercises appellate jurisdiction over all matters emanating from the various courts within the region.

The principle to be adopted by the new appellate court in interpreting the records of proceedings of a trial customary court should be founded on looking at the substance, rather than the form, of the case. In other words, greater latitude must be given, and broad interpretation placed on such proceedings. This is not the case that currently obtains at the current Court of Appeal where judges are not opportune to observe and interpret the rules contained in customs but are bound to observe due process as outlined by the rules of court in arriving at justice, an observation that often leads to the rejection of customary appeals. This point of view was captured in *Ogundele v. Agiri*[37]where the court held that in dealing with customary matters at the appellate court, it is not the form of an action in a native tribunal that must be stressed where the issues involved is otherwise clear; it is the substance of such a claim that is the determinant factor. Further, proceedings in the native court should be scrutinized to ascertain the subject matter of the case and the issues raised, and that it is permissible to look at the claim, findings, and even the evidence given in the native tribunal to find out what real issues were, in dealing with the proceedings from native courts.

Within this context, the appellate court must not be unduly strict about matters of procedure as the whole object of such trials is that the real dispute between the parties should be adjudicated upon. If native courts acted in good faith, listening fairly to both sides and gave opportunity to the parties to present their case and correct or contradict any relevant prejudice to their view, they cannot be accused of offending the rules of natural justice

[35] *In Golok v. Diyalpwan (1990) 3 NWLR (Pt. 139) 411, the Supreme Court of Nigeria held Sustaining a ground of appeal that complained about the applicable customary law. The court did so irrespective of the fact that the rules guiding the filing of grounds of appeal was flouted since issues of law was jointly argued under the omnibus grounds. The notice of appeal complained about procedure, weight of evidence and other ancillary matters which required strict observance of the rules, but since the appeal emanated from a Customary court, the rules were relax in view of placing substantial justice over technicalities.*

[36] *See section 266 (3)(a) of the 1999 Constitution of the Federal Republic of Nigeria as amended.*

[37] *(2010, All FWLR, part 507 at 1)*

and their decisions ought not to be quashed without evidence to the contrary.

Like in the situation in Nigeria, the Distinct Court of Appeal for customary issues should not unduly rely on technical rules in accessing the court. Indeed, law is an inherently technical subject, and this technicality is manifested in the various rules and procedures in place, however such rules of technicalities should not apply in the customary court of appeal which should continue to treat appeals bordering on customary law in a summarily substance-based manner rather than adopting a strict procedurally and technical approach.

## CONCLUSION

The structure of the court system in Cameroon, founded on the hierarchy of courts, guarantees the expeditious administration of justice as dissatisfied litigants can challenge erroneous decisions before appellate courts. This privilege, implicated with the right to access to justice, is guaranteed to every Cameroonian before the courts. However, the prevailing practices at the appellate courts, the Courts of Appeal and the Supreme Court, have undermined access to customary justice. The rules of practice among the various courts are dissimilar with technical procedural rules applicable in civil and common law courts as opposed to the non-procedural approach of customary courts. Despite the divergence in applicable rules, appeals from customary courts are subjected to the processes of appellate courts, an outcome that frustrates the attainment of substantive customary justice. The limited capacity of appellate judges on customary issues further compounds the problem. It is therefore incumbent upon appellate judges to overcome their rigid approach to interpreting rules of court to accommodate purely customary trials. The creation of a distinct appeal court for customary trials divorced from strict technical rules of court in the administration of justice is worth considering. In the absence of these measures, recourse to customary justice at the appellate courts would remain a distant cry to many Cameroonians for years to come.

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