

IN THE CUSTOMARY COURT OF APPEAL
EDO STATE OF NIGERIA
HOLDEN AT BENIN CITY

ON TUESDAY, THE 9TH DAY OF NOVEMBER, 2010

BEFORE THEIR LORDSHIPS

MARY NEKPEN ASEMOTA	-	JUDGE (PRESIDED)
PETER AKHIMIE AKHIHIERO	-	JUDGE
OHIMAI OVBIAGELE	-	JUDGE

APPEAL NO. CCA/22A/2009

B E T W E E N

BARRISTER MOSES E. EIGBE í í í APPELLANT/APPLICANT

A N D

MADAM ISEKHUAMON ABIODE í í RESPONDENT/RESPONDENT

R U L I N G

READ BY HON. JUSTICE MARY NEKPEN ASEMOTA

The appellant/applicant by way of a motion on notice dated the 17th day of June, 2010 and filed same day, prayed the Court for the following orders:

- õ1. Extension of time within which the Appellant/Applicant may file his Additional Grounds of Appeal, the time allowed by the Rules of this Honourable Court, having elapsed.
2. Granting leave to the Appellant/Applicant to file and argue his Additional Grounds of Appeal as formulated and hereby annexed to

the Affidavit in support of this motion and marked Exhibit ÷Aø

3. An Order deeming the Additional Grounds of Appeal as formulated and marked Exhibit ÷Aø as being properly filed and served, the appropriate filing fee having been paid. í í ..ö

5 The motion was supported by a fourteen-paragraph affidavit and a further affidavit dated 5th July, 2010, containing ten paragraphs deposed to by the applicant.

10 Moving the motion, the applicant M. E. Eigbe Esq., who appeared for himself, submitted that in paragraphs 3, 4 and 5 of the affidavit in support of the motion, he has shown that his failure to file the additional grounds of appeal early enough was not deliberate. He referred to paragraph 12 of the affidavit and contended that the respondent would not be prejudiced by the application.

15 Counsel further submitted that he has a constitutional right of appeal against the decision of the trial court. He referred to paragraph 7 of the affidavit and submitted that he has good and arguable grounds of appeal.

Counsel sought leave of the court to make use of the further affidavit filed on the 5th day of July, 2010 with the additional grounds of appeal attached as Exhibit ÷Aø

20 O. Irehovbude Esq., counsel for the respondent opposed the application. He stated that although he did not file a counter affidavit, he has a right to reply on points of law.

Counsel submitted that the procedure in statutes are meant to be followed and that the additional grounds of appeal attached to the motion have not disclosed good and arguable grounds of appeal. He contended that the grounds merely disclosed facts and procedure and that it offends section 282(1) of the 1999 Constitution which creates this Court. It was Counsel's submission that the grounds of appeal did not raise issues of customary law.

On the meaning of issues of customary law, counsel referred to the cases of:

- (1) Pam v. Gwom (2000) 74 LRCN 22 at 26 ratio 5.
- (2) Tiza v. Begha (2005) 129 LRCN 1833 at 1838 ratio 5.

He submitted that this appeal is therefore incompetent and the powers of this Court not having been extended by any enactment, it is incompetent to hear this appeal.

Finally, counsel referred to Order 7 rule 5 of the Customary Court of Appeal Rules, 2000 and urged this Court to strike out the grounds of appeal as incompetent.

In his reply, M.E. Eigbe Esq., referred to section 282(1) of the Constitution of the Federal Republic of Nigeria 1999 and submitted that by virtue of that section, this Court is empowered to determine matters that border on customary law and facts especially when the two areas of law and facts are mixed as in the instant appeal.

He submitted that this Court has the competence to determine the appeal

and that the authorities cited by the learned counsel for the respondent/respondent will become tenable where the applicant fails to comply with the procedure of filing an appeal before this Court.

We have carefully considered the motion, the affidavit in support of motion as well as the submissions of learned counsel. The main thrust of the argument of learned counsel for the respondent is that the grounds of appeal are incompetent before this Court because they do not involve issues of customary law. In other words that they are complaints of error of law/facts and not issues of customary law which are cognizance in this Court.

A careful examination of the grounds of appeal show that the complaints or grounds of appeal are essentially against the application of the law to the evidence adduced before the trial court. It must be reiterated that evaluation of evidence is known to all courts, including customary courts. See the unreported decisions of this Court in the cases of Chief Peter Abalume Osigbemhe & 2 ors v. Alhaji Dirisu Ugonoh, Suit no. CCA/14A/2005 delivered on 22/11/2006 and Christopher Ehighaukhuo v. Emmanuel Ehighaukhuo Suit no. CCA/2/M/2002 delivered on 30/05/2003.

This Court has in a number of its decisions stated and restated that customary law is a matter of fact to be proved by evidence. Therefore, customary law and the procedure for establishing the facts are interwoven. It is not

practicable to formulate a ground of appeal or an issue of customary law without having regard to the facts that are necessary to prove the customary law in question. Section 282(1) of the Constitution of the Federal Republic of Nigeria, 1999 cannot be construed otherwise. See Appeal No. CCA/25A/2006 Obokhai Oratokhai & anor v. Madam D. O. Imiere & anor (unreported) a judgment of this Court delivered on the 25th day of February, 2008 at page 11.

We therefore hold that the grounds of appeal are competent before this Court. The objection of learned counsel for the respondent fails and it is dismissed.

Accordingly, the appellant/applicant's application is hereby granted as follows:

1. Time is hereby extended till today for the appellant/applicant to file his additional grounds of appeal, the time allowed by the rules of this Court, having expired.
2. Leave is hereby granted to the appellant/applicant to file and argue his additional grounds of appeal as formulated and annexed to the affidavit in support of this motion as Exhibit "A"
3. The said additional grounds of appeal as formulated and marked as Exhibit "A" are deemed properly filed and served, the appropriate

filing fees, having been paid.

We make no order as to costs.

HON. JUSTICE M. N. ASEMOTA

HON. JUSTICE P. A. AKHIHIERO

HON. JUSTICE O. OVBIAGELE

M. E. Eigbe Esq., í í í í í Counsel for the Appellant/Applicant

O. Irehovbude Esq., í í í ... í Counsel for the Respondent/ Respondent