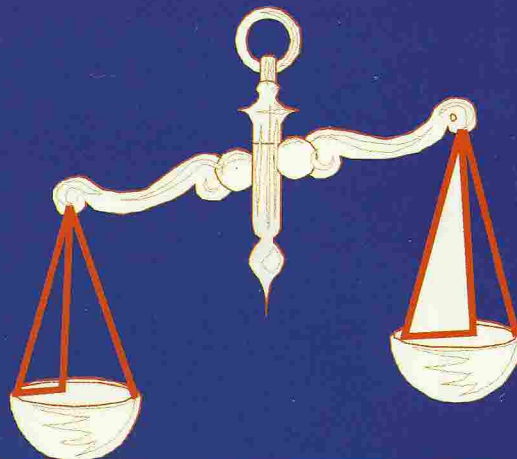


PROCEDURE FOR COMMENCING CASES IN CUSTOMARY COURTS IN ENUGU STATE, NIGERIA



A Training Manual for the project 'Raising Awareness
for the Utilization of Customary Courts in Five
Communities in Enugu State'.

The Communities are: Ogui Nike, Ozalla, Maryland, Nike-Uno and Obioma.

Published by:



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Justice for All, Nigeria

WINET Informative Series 3

Procedure for Commencing Cases in
Customary Courts
in Enugu State

A Training Manual for the project 'Raising Awareness for the Utilization of Customary Courts in Five Communities in Enugu State'. *The communities are Ogui-Nike, Ozalla, Maryland, Nike-Uno and Obioma.*

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Introduction

In Enugu State, there are One hundred and forty-two (142) customary courts established by Customary Courts Law CAP 32, Laws of Enugu State, 2004 (as amended in 2011 & Customary Courts Rules 2011). The courts serve all communities in the seventeen (17) local government areas of the State. Though women and men in these areas have matters to resolve, they are not adequately approaching the customary courts for the purpose.

One of the challenges for the communities is that some citizens who have cases, whose rights are violated or those disinherited do not utilize the customary court as a place to seek redress. This is because they are not familiar with the workings of the customary court system. They have also not been mobilized to appreciate and adequately utilize the customary court.

Against this background, WINET carried out a survey on Utilization of Customary Courts in Five communities in Enugu State from July to December 2012. They are: Ogui-Nike, Ozalla, Maryland, Nike-Uno and Obioma communities. The study was to determine the level of usage of customary courts by the people of these communities and find out whether they are willing to utilize them.

Findings from the research show that many of the people are aware of the existence of customary courts in their communities and some of them take cases to the courts. However, many of them still take matters to either the traditional rulers or other institutions such as the kindred meetings because they are not familiar with the workings of the customary courts.

Recommendations by researchers include that there is need to carry out a project to raise awareness for the utilization of customary courts in the five communities. It was also recommended that a pamphlet on the procedure for commencing cases in customary courts in Enugu State be published because there is no such document available now.

In response to the findings and recommendations from the evidence based research, Women Information Network (WINET) designed a project entitled 'Raising Awareness for the Utilization of Customary Courts in Five Communities in Enugu State' and Justice for All (J4A) Nigeria has found the project worthy of its funding support.

This pamphlet entitled 'Procedure for Commencing Cases in Customary Courts in Enugu State' was compiled as a training manual for the project communities and other stakeholders in Enugu State.

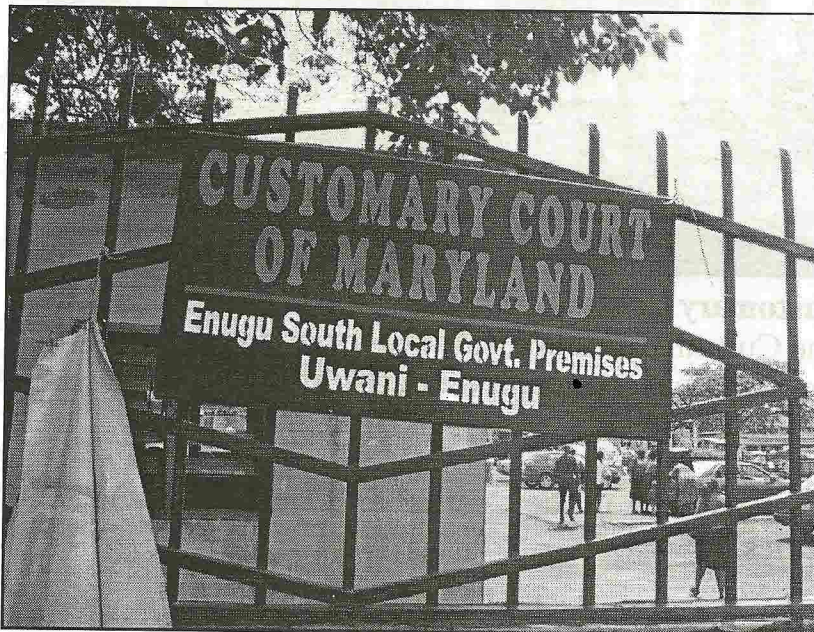
Miriam Menkiti
Executive Director
WINET

CHAPTER ONE

The Judiciary in Nigeria

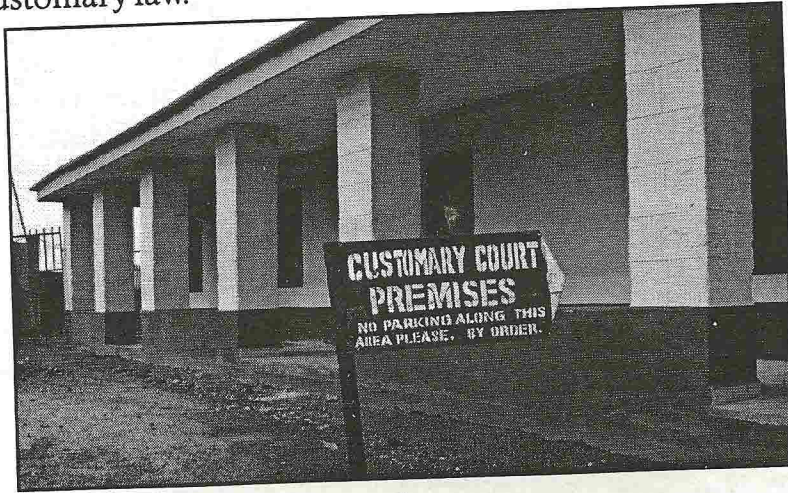
The Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides for the three arms of Government namely, the Legislature, the Executive and the Judiciary. By Section 6 of the Constitution, the judicial powers of the Federation are vested in the Judiciary, which is the third arm of government.

The judiciary is the arm of government, whose duty is to construe, interpret and apply the law. It consists of a system of courts, which is set up in a hierarchical order, one of which is the Customary Court and its appellate court, the Customary Court of Appeal.



What is a Customary Court?

A **Customary Court** is a court that administers the customary laws of the area in which it is situated over persons who are subject to the customary laws of that area. It handles both civil and criminal cases. For example, it handles land cases in the rural areas, divorce cases, custody of children in customary marriages and other matters including those relating to inheritance and succession under customary law.



Customary Court of Appeal

The Customary Court of Appeal hears and determines civil appeals from customary courts involving questions of customary law.

Key Personnel in the Customary Court System and their Duties

Chairman

The Chairman is in charge of the court. He presides over cases and he delivers judgement.

Members

In the absence of the Chairman, any of the members who the Chairman gives authority to deliver judgement can do so if he and the other members agree on it.

Registrar

The registrar prepares the summary of any case before the court sits. He/She also prepares orders made by the court which is given to the Chairman to sign while he/she countersigns. The registrar collects revenue and pays it into the bank.

The Clerk

The clerk calls up cases when the court is in session. He/She informs the court about available dates for adjournment and interprets cases.

Process Clerk

The process clerk registers every case that comes to a customary court.

Some Terms used in Customary Courts**Who is a Plaintiff?**

A Plaintiff is the person/party who brings a civil matter to the customary court.

Who is a Defendant?

A defendant is a person against whom an action is brought. A defendant comes to court to answer to a case against him/her.

Who is a Bailiff?

According to The New Webster's Dictionary of the English Language, International Edition (Revised and Updated 1994), a bailiff is a court officer who keeps order in court. The bailiff is a messenger of the court. He serves court notices and carries out execution of court order in company of armed policemen.

What is a civil case?

A civil case is a case instituted to enforce, redress or protect private rights.

What is a criminal case?

A criminal case is a case by which a person who committed a crime is brought to trial and either not found guilty or found guilty and sentenced.

What is an Address?

An address is a written statement prepared by a lawyer arguing a case in a law court containing the facts of the case, the issues involved, the relevant laws and arguments in support of the lawyer's case.

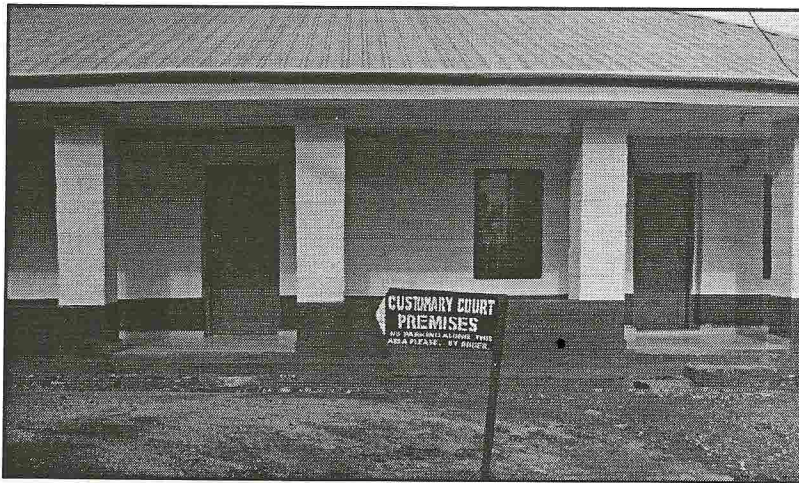
CHAPTER TWO

PROCEDURE FOR COMMENCING CASES IN CUSTOMARY COURTS IN ENUGU STATE, NIGERIA

Step One

Identifying that one has a case to take to the Customary Court

If an individual or a group feels aggrieved over a matter and identifies the need to take up the case, the person or group may decide to take the case to a customary court. Any case brought to the customary court is reported to the registrar of the court who takes the information brought by the plaintiff.



Step Two

Plaintiff meets with Customary Court Registrar

The plaintiff meets with the customary court registrar and files a claim which contains the summary of his/her

demand. He/She files a case in claim in court on the payment of a prescribed fee for civil cases.

Where the plaintiff is represented by a legal practitioner, his/her counsel (lawyer) files the claim. The particulars of the claim shall be signed by the plaintiff or his/her legal practitioner and shall provide an address at which he/she will accept service as well as telephone number. The claim must be served on the defendant. A criminal case is brought by the police or the government and the complainant does not pay a fee.

Step Three

Registrar prepares for the Case

After filing of the documents and on the payment of the prescribed fees, the Registrar shall enter the claim in the Civil Cause Book stating the names and places of residence or business of the parties as well as the substance of the action intended to be brought.

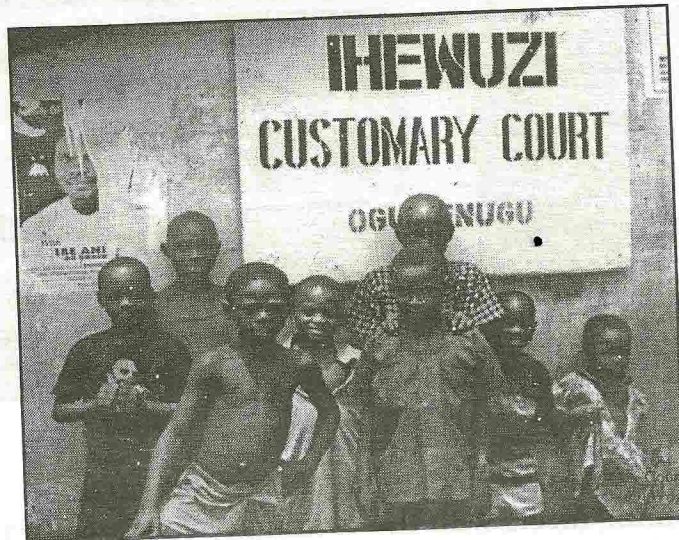


PHOTO: COURTESY J4A NEWSLETTER

Step Four

Registrar hands over the Suit to the Bailiff

After the preparation of the summons, the registrar now hands it over to the bailiff of the court, who will effect service on the defendant/ respondent or accused person within five days of the receipt of the summons and hearing shall commence not less than five days after service of the summons. The defendant/respondent or accused person will be in court to answer the charge against him/her.

If the defendant fails to appear in the court on the fixed date the registrar will prepare a fresh hearing notice (a reminder to the defendant).

In criminal cases, criminal summons is issued by the Chairman of the court requiring an accused person to appear before the court at a certain time and place to answer the charges against him/her.

Step 5

Failure to Appear in Court

Failure by an accused to obey the criminal summons can make the court to order for a bench warrant (warrant of arrest). The registrar of the court will write a letter to the Divisional Police Officer (DPO) of a station covering the jurisdiction of the court asking him for armed policemen who will now assist the court in executing the bench warrant (this applies only in criminal cases).

Step Six

Arrest and detention of accused

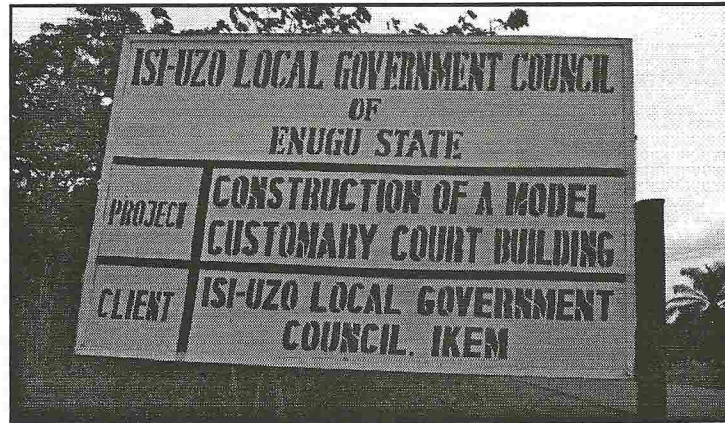
When the police have arrested an accused for disobeying the criminal summons issued by the court, they detain and bring

the person to the court on the fixed date.

Step Seven

If an accused fails to appear in court

The court will now try the person for contempt of court (prepare a charge called failure to appear before the court) against the accused person, if the person pleads guilty he/she will be fined, if not the case will now go on till its final determination.



Step Eight

Defendant files defence

The defendant/respondent on receiving of the claim may file a defence but, not a statement of defence before the date for hearing. If the defendant also has a counter claim he pays for the counter claim and he is issued a receipt. The counter claim is filed at the Registry within six days of service of the summons on him.

Step Nine

The Plaintiff testifies

The plaintiff commences the proceedings by testifying in chief. At the end of his/her testimony; he/she is cross

examined by the defendant, or his lawyer and also re-examined where necessary by the court or the plaintiff's legal practitioner.

Step Ten

Plaintiff calls witnesses

At the end of the plaintiff's evidence in chief, the court informs the plaintiff of his rights to call witnesses if any. The plaintiff now invites his/her witnesses.

Step Eleven

Witnesses Testify

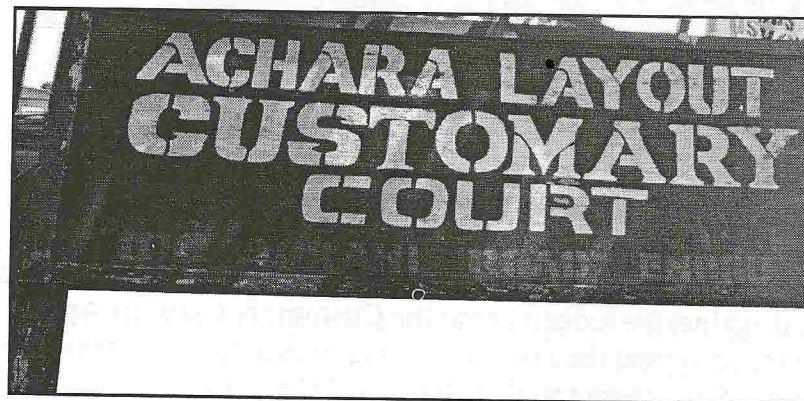
Each witness testifies in chief and he/she is cross examined by the defendant or his lawyer and re-examined by the court and or the plaintiff or his lawyer

Step Twelve

Defendants Testify

At the end of the plaintiff's case, the court informs the defendant of his/her right to defend him/her self.

The defendant then testifies in chief. He/she is cross examined by the plaintiff or his/her lawyer and re-examined by his/her counsel or the court if the need arises.



Step Thirteen**Defendant calls witnesses**

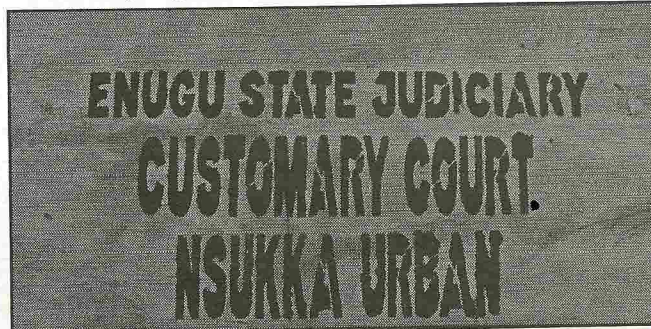
The court now informs the defendant of his/ her right to call witnesses. The defendant then calls his/her witnesses if any. Each witness testifies in chief, is cross examined by the plaintiff or his/her legal practitioner and re- examined by the defendant or his/her legal practitioner.

Step Fourteen**Court calls witnesses if necessary**

The customary court has powers to call any witness if it deems it fit to clarify any ambiguity raised by the evidence of parties. In such a case, the witness must not be intended to fill the gap in the evidence of either parties, but rather help the court in arriving at justice.

Step Fifteen**Judgement is delivered**

At the conclusion of the evidence and the address by counsel where one or both parties are represented, the customary court will deliver its judgement and makes orders where necessary.

**Step Sixteen****Appeal**

If any of the parties is not satisfied with the judgement, it can appeal against the judgement to the Customary Court of Appeal. A notice of appeal shall be given not later than three months after delivery of judgment sought to be appealed against.

CHAPTER THREE

CUSTOMARY COURTS IN ENUGU STATE, AREAS COVERED AND THEIR SITTING DAYS

This Chapter presents a table of all the customary courts in Enugu State and the areas covered by them. The courts are listed according to the Senatorial zones. This is adapted from Customary Courts Law, Cap 32, Laws of Enugu State, 2004 (as amended in 2011) and Customary Courts Rules 2011 (Page 47-60). WINET compiled and included the sitting days of the courts.

S/N	LOCAL GOVERNMENT AREA	LOCATION OF COURT	AREAS COVERED	SITTING DAYS
1.	Awgu Local Government Area	Isu-Awa/ltuku/Agbudu	Umuamene, Enugu Obinagu, Egedu Amaokolo, Umukuru, Ugwunabo, Amata, Okwe-na- Achara, Ofeiyi Umunevonta, Umuowo, Umuoyiba, Agbudu- Ibite, Enugu Agbudu, Owellede	Monday, Tuesday and Wednesday
2.	- do-	Ugbo Customary Court	Ugbo- Okpala, Ugbonabo and Ngene Ugbo	Tuesday, Wednesday and Friday
3.	- do-	Amoli Customary Court	Amoli, Enyimba Odume, Ifite, Akpoka	Monday, Wednesday and Friday
4.	- do-	Owelli Customary Court	Owelli, Ogugu, Ogbaku	Monday, Tuesday and Thursday
5.	- do-	Anike Customary Court	Ezinese, Mgbidi, Mmaku	Monday, Tuesday and Wednesday
6.	- do-	Awgunta/Ezere/Nkwe Customary Court	Nkwe, Ezere and Awgunta	Monday, Wednesday and Friday
7.	- do-	Nenwenta/ Ugwueme Customary Court	Ugwueme and Nenwenta	Tuesday, Wednesday and Friday
8.	- do-	Mbanano Customary Court	Awgu Town, Mgbowo, Town, Ezineri- Mgbidi	Monday, Tuesday and Thursday