



LAGOS STATE UNIVERSITY



Lagos State and its environs

GENERAL STUDIES

BOOK OF READINGS

VOL. 2

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CHAPTER **Twenty-seven**

HISTORICAL DEVELOPMENT OF NIGERIA'S LEGAL SYSTEM FROM COLONIALISM TO PRESENT

GBADEBO ANTHONY OLAGUNJU

Introduction

The Nigerian legal system, which encompasses all the laws in Nigeria together with their system of application in and before our courts, has a chequered history. The incursion of the British and their other fellow adventurers into the shores of Africa on Colonialist mission brought with it some pains, as well as some gains. In Nigeria, as well as in other African Countries, these adventurers brought with them their laws, which eventually were used to supplant the customs and practices of the indigenous peoples under their rule.

The resultant effect of the above was that an alien culture began to grow gradually alongside the application of some of these newly introduced laws. One of such cultures for example was the mode of dressing which necessary became formal, white collar and all that. In fact up till today, no legal practitioner can appear in any court of record in Nigeria without donning his wig and gown. Not only that, even our system of governance changed, and the mode in which those laws to be applied in the courts also changed. In other words, apart from the inherited laws, subsequent laws that were to be applied by the courts had to be passed following the patterns of the British system. In other words, not only the Judiciary was affected by the incursion of the colonialists, the executive, the legislature, and in fact the whole pattern of Nigerian life from religion to culture was touched.

Today, the system of law applicable in our courts is the common law patterned after the British system. As we shall soon see, before the advent of the British, this was not so as each community then in existence within the entity now labelled Nigeria had its own system of governance cum application/enforcement of laws. Little wonder today that clashes are inevitable in some areas in Nigeria as a result of conflict because of duality in the application of law in those areas.

is the intention of this work to briefly examine the system of law, which guided the administration of the Nigerian societies before the advent of colonial rule, and hereafter trace the history of the Nigerian legal system from the inception of British administration in Nigeria up till today.

How has the introduction of the British common law helped the growth of the Nigerian society, especially in the dispensation of justice? Do we still need the relics of the British common law system today; in view of the fact that Nigeria has parted ways with the Parliamentary system under which the common law was introduced, and has now embraced the Presidential system, which is closely related to that of America. These and many more are some of the issues this paper will examine.

The Legal System Before the Arrival of the Europeans on the Shore of the Entity Called Nigeria

Historical records abound that prior to the coming of the Europeans in the 19th century, each of the territories constituting the entity now called Nigeria had a system of administration of justice. Even though not as sophisticated as that of the Europeans, the administration was patterned along the indigenous ways of the people. In spite of this however, as noted by Niki Tobi:

It was designed to ensure stability of Society and maintenance of the social equilibrium. The most important objective was to promote communal welfare by reconciling the divergent interest of the different peoples.

Among the Hausas and the Yorubas where the Obaship and the Emirship style of governance had taken firm roots, the administration of justice was even more organized, with the Oba or Emir serving as the fountain of justice. There were other institutions assisting the Oba or Emir in the dispensation of justice. Thus in the North, we had such institutions as the *Waziri* who was next to the Emir; the *Alkali* or Chief Justice who was charged directly with the administration of justice; and the *Dogaris* or Policemen who assist the *Alkalis* in the enforcement of the law.

In Yorubaland, we had the Oba and his itinerary of Chiefs comprising the *Otun*, the *Osi*, and the *Balogun* etc. all surrounding the Oba and assisting him in deliberations concerning the community. When sitting in Court, the Oba may sit alone or with a number of these chiefs for consultation in the dispensation of justice, although the final decision was his and he was not bound to follow any of the pieces of advice offered by his chiefs. Usually judgment was final in such case(s) and there was no right of appeal, although in certain special circumstances, a trial may be re-opened by the same authority if fresh evidence becomes available, with a view to be just and fair in the end.

family unit with the head(s) of the family assuming the position of judge(s) or arbitrator(s). In republican societies like Igboland, a continued extension of this is further seen in the larger community where the elders constitute themselves into Courts for the purposes of dispensation of justice. Thus Eweluka noted:

In republican areas, like Igboland, the government of each autonomous community - a town or clan was literally in the hands of all the adult male members, though in practice controlled and directed by the elders and, in some cases, titled men. A case could be heard first, by the male members of the family or families concerned; from their decision an appeal usually went to an association of all the male members of the village concerned and thence to the association of all the male members of a forum. In practice, disputes were usually entrusted to the elders to settle, except where special reasons existed to demand that a particular case should be heard or determined by all the male members of a family, village or town.

What is important to point out at this stage, is that the dispensation of justice in all these traditional settings did not follow the pattern of the British system type of Court with all its formality and paraphernalia of trials - such as a modern Courtroom setting, the dock or witness box, the registrar/court clerk table, the judge wielding the hammer, and counsel to parties who play the role of legal gladiators. Far from the above picture, what you will rather see is a simple local setting either within the family compound, or the community hall/square, or in some instances within the precincts of the Oba's palace himself. In whatever case however, justice was dispensed.

The Laws Applicable in the Indigenous Courts and the Attitude of the British to those Laws on Arrival in 1862

Prior to the formal arrival of the British in the nineteenth century, the coast of West Africa generally witnessed and enjoyed trading activities between indigenous traders, British and other foreign merchants. These trading coastal posts which later encompassed part of Nigeria included Lagos, Benin, Bonny, Brass, New Calabar (presently Degema) and Old Calabar (presently Calabar). Whenever disputes arose between any of these traders, the indigenous courts attempted the settlement of those disputes, which usually was met with frustration and consequent objection on the part of the British and other foreign traders who find the customary court system practiced in those courts very strange. The latter being different from the common law, a type of unwritten law in use in their own country. As a result of the above, these foreign litigants never believed that they could get justice from those indigenous courts. It was in an apparent move to forestall this that the British Government appointed

the indigenous traders. The first of such Consuls was appointed in 1849, and his territorial jurisdiction covered the entire coastal areas extending from Dahomey (present day Republic of Benin) to the Cameroons. These areas later on formed part of Nigeria.

In order to deal with trading disputes arising out of business transactions between British and indigenous traders, the Consuls established courts known as Consular Courts. To complement these courts, the foreign traders jointly with the indigenous traders also established their own courts known as the equity courts in the coastal areas of Benin, Bonny, Brass, New Calabar, Old Calabar and other coastal areas outside Lagos. The latter court based their decisions on general notions of justice. As noted by Obilade, this court was a very popular court.

The establishment of the equity court and the consular courts had no authority of the British Government, however in 1872 a British Order in Council provided for the reorganisation of the equity courts and the formal establishment of the consular courts. The Order formally put both courts under the control of the Consul.

Introduction of British Common Law into the Colony of Lagos

In 1861, Lagos was formally ceded to the British Crown under a treaty of Cession, and by the following year, the colony had been annexed as a settlement under the British Administration with the establishment of a court there. By Ordinance No. 3 of 1863, the British Administration introduced English law into the Colony with effect from March 4, 1863. In the same year, the first Supreme Court having both civil and criminal jurisdictions was established for the Colony. Three years later, the Government of the West African Settlements, comprising the settlements of Lagos, the Gold Coast, Sierra Leone and Gambia was formed by the British Administration. The new government then established courts for Lagos among which were: the Court of Civil and Criminal Justice which replaced the Supreme Court aforesaid; and the West African Court of Appeal. The judges of the latter Court were in fact the judges of the Supreme Court of Sierra Leone. Appeals from the highest court sitting in each of the British settlements (e.g. The Court of Civil and Criminal Justice in the case of Lagos) lay to the West African Court of Appeal. And from here to Judicial Committee of the Privy Council in England. It needs to be mentioned that besides the above, a number of other courts, and also trial by jury in criminal cases were established/introduced in Lagos around this period.

In 1874, the British Administration established a separate single government for the settlements of Lagos and the Gold Coast, both known as the Gold Coast Colony. This removed the jurisdiction of the West African Court of Appeal over the new colony. Instead, in its place was established a Supreme Court for the colony of Lagos and the

territories in the neighbouring adjacent territories over which the British Government had jurisdiction. This court was divided into three arms namely: the Full Court (which takes appeal only); the Divisional Courts (having original and appellate jurisdiction) and the District Commissioners' Courts. Appeals from the decisions of the district commissioners' courts lay to the divisional courts, while the Full Court heard appeals from the decisions of the divisional courts.

The common law of England, the doctrines of equity and statutes of general application in force in England as at July 24, 1874 were applied by this court. In cases where there was conflict between common law and equity, equity was to prevail over the rules of common law. The statutes were also to be applied subject to local laws and circumstances. As pointed out by Obilade, 'if the circumstances which must be present before any such statute could be applied were absent in Lagos and in the other territories within the jurisdiction of the court, the statute was not applicable'. Explaining further, he argued that the Bankruptcy Act 1869 (32 & 33 Vict. c. 71) of England was not applicable in Lagos because the machinery for its application was not available.

Also applicable before the court, were local laws and customs, which were neither repugnant to natural justice, equity and good conscience nor incompatible with any local statute. It must be mentioned that the indigenous courts aforementioned continued to function alongside the Supreme Court. In fact their jurisdiction was recognized by the latter court in the case of *Oppon v. Ackinie*. In that case, the plaintiff, who was subject of a local chief, sued the latter for damages for unlawful imprisonment on the grounds that the chief's judicial powers had ceased by virtue of the application of the Supreme Court Ordinance 1876. The case of the plaintiff was upheld by the divisional court sitting as a court of appeal. The chief then appealed against that decision to the Full Court. The latter court in reversing the judgment of the divisional court, held that the wording of the Ordinance was not inconsistent with the view that the jurisdiction of the Supreme Court and that of the chiefs' courts were to be co-existent; and that the Ordinance did not in any way impair the pre-existing judicial powers of the local chiefs.

The Establishment of the Royal Niger Company

During the period under review (i.e. the Nineteenth century), a number of British firms carried on trading activities along the banks of the Niger River. These companies were later amalgamated and granted a Royal Charter under the name "National African Company" in 1886, and later renamed "Royal Niger Company". Under the Charter, the company had power to administer justice in territories where it was operating. In doing this, the company was to have careful regard to the "customs and laws of the class or tribe or nation" to which the parties belong, in the dispensation of justice. In pursuance of the charter, the company established some courts, which functioned until 1899 when the charter was revoked.

The Niger Coast Protectorate which was later renamed the Niger Coast Protectorate was established by the British Government. The protectorate comprised Benin, Brass, Bonny, Old Calabar and Opobo. By an Order in Council of 1899, a Consular General was appointed for the area. The Order also made provision for the establishment of consular courts with jurisdiction over all British subjects, and subjects of other European states who consented to the jurisdiction of the courts. The court also had jurisdiction over person (s) where the state, king or chief, government which he was a subject agreed or consented to the exercise of jurisdiction by British courts. The Supreme Court of Lagos exercised appellate jurisdiction over the decisions of these consular courts.

The Protectorates of Southern and Northern Nigeria

On 1st January 1900, the Protectorate of Southern Nigeria was formed comprising the Niger Coast Protectorate and the territories of the Royal Niger Company South of Idah. Under the Order establishing the Protectorate, a High Commissioner was to be appointed who was empowered to make laws for the Protectorate by Proclamation. By the Supreme Court Proclamation No.6 of 1900, the Commissioner indeed established a Supreme Court for the Protectorate in 1900. This Proclamation was *pari-materia* with that of the Supreme Court Ordinance of 1876 (for Lagos) earlier mentioned except that the effective date for the application of English Law (common law, equity et al.) was to be the law in force from January 1st 1900 instead of July 24, 1874.

Unlike previously, when indigenous courts were left to function, a Native Courts Proclamation No. 9 of 1900 was made establishing "Native Courts" where customary law was administered to the exclusion of any traditional authority or indigenous court. Out of this arose the minor courts and native councils, which were in fact presided over by white men, who performed not only judicial functions but also legislative and executive functions. This indeed was an aberration and led to allegations of corruption and high-handedness in those courts.

Also on 1st January 1900, the Protectorate of Northern Nigeria comprising territories of the Royal Niger Company north of Idah was established by the British Government. A Commissioner was similarly appointed to make laws for the Protectorate also by Proclamation. Thus by Protectorate Courts Proclamation No. 1 of 1900, a Supreme Court, Provincial courts and Cantonment courts were established. Native courts were also established by the Native Courts Proclamation No. 5 of 1900. This was replaced by the Native courts Proclamation No. 1 of 1906, which established two kinds of Native Courts- the Alkali Court and the Judicial Council.

Amalgamation of the Courts

On January 1st, 1914 both the Colony and Protectorate of Southern Nigeria, and the Protectorate of Northern Nigeria were merged together (amalgamated) to form one political entity. Three types of Court thus emerged from this union namely: the Supreme Court, the Provincial courts and the Native courts.

By 1933, a reform of these courts was due and so the Protectorate Courts Ordinance No. 45 of 1933 established a High Court and Magistrates' Courts for the country. The Provincial courts were then abolished. Legal Practitioners could thenceforth appear in the High and Magistrates' Courts.

The Court System After Independence to Present

On October 1st 1960, Nigeria became independent, with its own federal Constitution and power to make laws for the good order and the running of its government. Under the Constitution, the Judicial Committee of the Privy Council in England remained the highest court for Nigeria. There was a Federal Supreme Court consisting of the Chief Justice of the Federation and federal justices. Lagos continued to have a High Court and Magistrates' courts. Each Region then Constituting the federating unit (East, West and North) had a High Court, Magistrates' courts and Customary courts.

By 1963, Nigeria became a republic with the adoption of a republican Constitution, which abolished the monarchical rule of Britain over Nigeria. Thus the Judicial Committee of the Privy Council ceased to be a court for Nigeria. The Federal Supreme Court was also abolished, and in its place, a new court to be known and called the Supreme Court of Nigeria was established as the highest court for Nigeria.

This was the position of the Nigerian legal system until January 15, 1966 when the military intervened in politics and truncated the democratic system of governance in the country, replacing it with autocracy. Since then, a lot of changes and reforms, both positive and negative has occurred to the court system in Nigeria. The Federal High Courts were established under the military in 1976, as well as the Court of Appeal, which takes appeal from the High Courts, ranking next to the Supreme Court in order of Hierarchy. Ad hoc Tribunals set up by the military also joined the bandwagon of "courts" in this era. In most instances, judgements of these tribunals cannot be appealed against, except to be considered by the 'Supreme Military Council' (or the 'Armed Forces Revolutionary Council' as the case may be). Decrees and edicts became the grundnorm overriding constitutional provisions in many instances.

Today after the return to democratic rule, the legal system has once again been constitutionally restored under the 1999 constitution, with the Supreme Court serving as the highest court of the land. Followed by the Court of Appeal, the High Courts, and Magistrates' Courts in that order.

Conclusion

In this paper, we have tried to look at the lives of the indigenous people inhabiting the areas which later on constituted Nigeria and the type of laws that governed their existence before the advent of the British. We tried to look at the attitudes of the British to these laws on their arrival on the shores of these indigenous people, and how they successfully supplanted the peoples' indigenous laws and system of adjudication of disputes with their own system. We also examined how this latter system continued to pervade the entire legal life of the new Nigerian nation from amalgamation to independence, and from independence through military intervention in politics to the present democratic dispensation.

One final comment that may need to be said is that even though the British legal system has come to stay in Nigeria, we should be very careful in allowing the system to erode our customary law. Common law itself, developed from the customs and practices of the people in England. Not only this, the system as inherited should be respected by the people in authority. A situation where judgment is passed by the courts, which is fundamentally recognized by the Constitution, and such judgment is flouted with ignominy by the people in authority, especially the executive that is supposed to be the bastion of justice, will ultimately lead to anarchy.