



OATH-TAKING IN PROOF OF TITLE TO LAND: UNRAVELING THE SUPREME COURT CONUNDRUM

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ABSTRACT

*Oath-taking in proof of title to land presents a genuine Supreme Court conundrum: is it every invocation of native arbitration by oath-taking that binds the parties and ousts the orthodox methods of proving title to land in Nigeria, or does its binding effect depend on conditions the apex court has not always articulated with equal clarity across its decisions? This paper sets out to unravel that conundrum. It is no longer news that proof of title to land in Nigeria is traditionally established by any one of the five ways enunciated in *Idundun v. Okumagba*. The paper juxtaposes the decision in *Odoemelam v Ojiavo & Ors*, alongside that of *Umeadi v Chibunze*, on the one hand, both of which uphold the binding effect of a voluntarily submitted and completed customary arbitration by oath-taking on proof of title, against the decision in *Anyimba v Onovo*, read alongside *Idundun v Okumagba*, on the other hand, both of which insist on strict, tangible proof before any departure from the orthodox methods of proving title is countenanced. The paper, adopting the doctrinal research methodology, interrogates the various opinions of the Law Lords in the four cases and the ratio decidendi for arriving at their conclusions. In order to effectively analyze, identify and possibly justify the ratio as highlighted earlier, the paper undertakes a conceptual clarification of land, oath-taking, proof, and the conundrum they together generate, before X-raying the doctrine of estoppel per rem judicatam and the five ways of proving title as settled in *Idundun v Okumagba*. The paper ended with the finding that the Supreme Court conundrum is more apparent than real, and the conclusion that it is not every invocation of native arbitration by oath-taking that binds the parties or ousts the orthodox methods of proving title, and suggested some recommendations for reform to wit: that courts should demand strict and tangible proof of the actual completion of any customary oath-taking before according it binding effect, and that the Evidence Act 2011 be amended to codify the evidential threshold required to establish a completed customary arbitration.*

KEYWORDS: Conundrum, Land, Oath-Taking, Proof.

1. INTRODUCTION

Oath-taking in proof of title to land occupies an uneasy place in Nigerian jurisprudence, one which, on a cursory reading of the authorities, presents what may fairly be styled a Supreme Court conundrum. Proof of title to land remains one of the most litigated aspects of land law in Nigeria. For a party to succeed in a claim for declaration of title to land, he must establish his root of title by any one of the five ways recognized by law, namely traditional evidence, production of title documents, acts of ownership, acts of long possession, and possession of adjacent land.



In *Idundun v Okumagba*¹, the court held that a claimant need only establish his root of title by any one of the five ways, and not all five cumulatively. Beyond these orthodox methods, however, a considerable volume of land disputes in Nigeria, particularly among the Igbo of South-Eastern Nigeria, has historically been settled not in the ordinary courts but through native or customary arbitration, frequently by way of oath-taking before a deity or juju believed by the disputants to possess supernatural power to vindicate the innocent and punish the guilty. Where parties voluntarily submit to such a process and it is duly completed, they are bound by its outcome. Where, however, oath-taking is merely invoked, or a judgment is made conditional upon a future oath that is never shown to have been taken, the position of the law is markedly different, and the orthodox methods of proof remain fully applicable. It is against this backdrop that the concepts central to this discourse, namely land, oath-taking, proof, and the Supreme Court conundrum they generate when read together, are clarified in the section that follows, before the decisions under review are juxtaposed, unraveled, and reconciled.

2. CONCEPTUAL CLARIFICATION

2.1 Conundrum

A "conundrum" is ordinarily defined as a confusing and difficult problem, or a question having only a conjectural answer. The conundrum with which this paper is concerned is doctrinal: whether customary oath-taking is capable, as a matter of Nigerian land law, of overriding or displacing the orthodox five ways of proving title settled in *Idundun v Okumagba*,² and if so, under what conditions. The apparent conundrum arises because, read in isolation, *Odoemelam v Ojiavo*³ and *Umeadi v Chibunze*⁴ appear to subordinate the orthodox methods of proof to the outcome of oath-taking, whereas *Anyimba v Onovo*⁵ and *Idundun v Okumagba*⁶ appear to insist on the primacy of the orthodox methods over any unproved customary process. This paper contends that the conundrum is more apparent than real, and that the four decisions, properly construed, resolve into a single coherent doctrinal position, turning on whether the customary process was voluntarily submitted to and proved to have been completed.

2.2 Land

Black's Law Dictionary defines "land" as an area of the earth's surface, extending downward to the centre of the earth and upward to the sky, including things naturally attached, such as trees and

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¹ [1976] 1 NMLR 200.

² *ibid.*

³ [2026] 11 NWLR (Pt 2052) 397 (SC).

⁴ [2020] 10 NWLR (Pt 1733) 405 (SC).

⁵ [2026] 2 NWLR (Pt 2029) 478 (SC).

⁶ [1976] 1 NMLR 200.



minerals.⁷ This common law conception is reflected in the Latin maxim *quicquid plantatur solo, solo cedit*, meaning that whatever is affixed to the soil becomes part of it, a principle applied by Nigerian courts in determining the extent of what passes with a grant of land.⁸ Land is an immovable and indestructible three-dimensional area, comprising not only the surface of the earth but also the space above it and the ground beneath it, together with everything growing on or permanently affixed to it.⁹ The Nigerian Supreme Court has given judicial content to this definition, holding that “land” in its ordinary sense means any ground, soil, or earth the solid part of the earth’s surface as distinguished from the sea.¹⁰ As real property, land extends to everything that grows on it and the right to minerals beneath it, as well as the air space above it, and may (though not necessarily) include improvements such as buildings.¹¹ By statute, section 51 of the Act,¹² defines land to include buildings, works and things attached to the land or permanently fastened to anything attached to the land, thus adopting a broader, fixture-inclusive definition for purposes of Nigerian land administration.¹³ For the purposes of this paper, land is used in its ordinary juridical sense, as denoting the corporeal subject-matter over which the parties in each of the four cases under review contested rights of ownership and possession.

2.3 Oath-Taking

Oath-taking, in the customary law sense relevant to this discourse, is to be distinguished from the statutory oath contemplated under the Oaths Act, which governs judicial and official oaths administered in the ordinary courts and public offices. Customary oath-taking, by contrast, is a mode of native arbitration whereby disputants submit a question of fact, frequently ownership of land, to a deity, shrine, or society believed to possess supernatural power to vindicate the innocent and punish the guilty, upon terms agreed in advance between the parties.

The Supreme Court, in *Agu v Ikewibe*,¹⁴ laid down the conditions for a valid and binding customary arbitration, namely that the parties voluntarily submitted the dispute to arbitration by a body recognized by native law and custom competent to arbitrate on it; that they agreed, expressly or by implication, to be bound by the decision or accepted the decision at the time it was made; and that the arbitration was conducted in accordance with the custom of the parties' community. It is this doctrinal foundation that underlies the treatment of oath-taking as potentially binding in *Odoemelam v Ojiavo*¹⁵ and *Umeadi v Chibunze*,¹⁶ discussed below.

⁷ B A Garner, *Black's Law Dictionary* (9th edn, West 2009) 953.

⁸ *Kyari v Alkali* [2001] 11 NWLR (Pt. 724) 412.

⁹ C I G Agwor and U Frank-Igwe, "An Appraisal of Valuation and Assessment of Compensation for Compulsory Acquisition of Land under the Nigerian Property Jurisprudence" [2024] *Journal of Private and Property Law*, Rivers State University 62, 66.

¹⁰ *Salami v Gbodoolu* (1997) 4 NWLR (pt 499) 277.

¹¹ Agwor and Frank-Igwe (n 4) 66.

¹² LUA 1978, s 12.

¹³ *ibid*, s 51.

¹⁴ [1991] 3 NWLR (Pt 180) 385.

¹⁵ [2026] 11 NWLR (Pt 2052) 397 (SC).

¹⁶ [2020] 10 NWLR (Pt 1733) 405 (SC).



2.4 Proof

"Proof" is defined generally as the establishment of a fact by evidence to the satisfaction of a court.¹⁷ Under Nigerian law, sections 131 to 134 of the *Evidence Act 2011* govern the burden and standard of proof, with section 131 in particular providing that whoever desires a court to give judgment as to any legal right dependent on the existence of facts must prove that those facts exist.¹⁸ Proof of title to land is accordingly not established by mere assertion, but by evidence, whether adduced through the five orthodox methods settled in *Idundun v. Okumagba*,¹⁹ or, in appropriate circumstances, through a completed and proved customary process.

3. The Effect of Voluntary Submission to Customary Arbitration on the Five Ways of Proving Title

Where parties to a land dispute voluntarily submit to customary arbitration resulting in oath-taking, and agree to be bound by its outcome, the ordinary common law principles governing proof of title to land cease to apply as between them.²⁰ The effect of such submission is both enabling and displacing: it enables the customary process to conclusively settle the question of ownership, and it displaces, for that purpose, the five orthodox ways of proof, however cogent a party's traditional evidence might otherwise have been. It has been held that oath-taking, though subjective, unverifiable and unreliable as a method of proof, nonetheless overrides even objectively stronger evidence of genealogical root of title once a party has voluntarily submitted to it. This effect is, however, not automatic upon the mere invocation of customary arbitration. It is only where the process is shown to have voluntarily commenced and to have been carried through to completion that it can bind the parties or displace the orthodox methods of proof.

4. REQUIREMENT OF PROOF OF ACTUAL COMPLETION OF THE CUSTOMARY OATH-TAKING

The law requires that before a customary oath-taking can be relied upon either to prove ownership or to found a plea of estoppel *per rem judicatam*, its actual completion must be established by tangible and specific evidence.²¹ Statutorily and by judicial pronouncement, a party relying on oath-taking must show the identity of the shrine or deity, the officiating priest or society, the terms of the oath, the witnesses present, and, where applicable, the performance of any purification or declaration-of-innocence ceremony. Where a judgment merely provides that a party shall hold certain land unless the other party swears to an oath, and no evidence exists that such oath was ever administered, the judgment is not conclusive of title; it remains, at best, an interlocutory or conditional pronouncement, incapable either of vesting ownership or of founding a plea of res

¹⁷ Garner (n 1) 1329.

¹⁸ Evidence Act 2011, s 131-134.

¹⁹ [1976] 1 NMLR 200.

²⁰ *Odoemelam v Ojiavo & Ors* [2026] 11 NWLR (Pt. 2052) 397 (SC); *Umeadi v Chibunze* [2020] 10 NWLR (Pt 1733) 405 (SC).

²¹ *Anyimba v Onovo* [2026] 2 NWLR (Pt 2029) 478 (SC), per Okoro, JSC.



judicata against a subsequent action. The implication of the foregoing is that proof of completion of the customary process is a condition precedent to its being accorded binding legal effect.

5. THE DECISION IN *ODOEMELAM V OJIAVO & ORS* [2026] 11 NWLR (PT 2052) 397 AND *UMEADI V CHIBUNZE* [2020] 10 NWLR (PT 1733) 405

It is trite law that where parties voluntarily submit a land dispute to customary arbitration by oath-taking, and the process is duly completed, they are bound by the outcome notwithstanding the comparative strength of either party's traditional evidence. This is the common thread running through both *Odoemelam v Ojiavo & Ors* and *Umeadi v Chibunze*, and the two decisions are best read together, as they flow from and reinforce the same doctrinal position.

In *Odoemelam's* case, the appellant and the respondents each pleaded and led evidence of traditional history tracing their root of title to a piece of land known as Uzota or Ihi Nkwota.²² In addition, the appellant pleaded that his father had pledged part of the land to one Pius Anwuruoku, and that upon a dispute arising as to redemption, the parties submitted the question to native arbitration by oath-taking, on terms that whoever died within one year of taking the oath would be deemed to have been in the wrong. One Chibuzor Ojiavo took the oath in place of Pius Anwuruoku and survived the stipulated period; the Okonko Society which administered the oath accordingly awarded the land to him.

At the trial court, the matter was determined solely by comparing the genealogical evidence of both sides, without reference to the pleaded arbitration, and judgment was entered against the appellant. On appeal, the Court of Appeal in fact found the appellant's evidence of traditional history to be more consistent and credible than that of the respondents, yet still dismissed the appeal, resting its decision on the binding effect of the earlier oath-taking. The Supreme Court affirmed this position and held thus:

Where parties to a dispute over title to land voluntarily submit to customary arbitration resulting in oath-taking and agree to be bound by its outcome, the ordinary common law principles for proving title to land no longer apply. As subjective, unverifiable, irrational and unreliable as oath-taking is as a means of proving ownership of land under customary law, established case law accepts it as overriding an obviously verifiable, better and objective means of proof such as evidence of genealogical history of root of title.²³

The apex court further held that the appellant's later repudiation of the outcome, and his unsuccessful attempt to reopen the matter before a Customary Court whose decision was

²² *Odoemelam v Ojiavo & Ors* [2026] 11 NWLR (Pt 2052) 397, 398 (SC).

²³ *ibid.*



subsequently quashed on certiorari, did not relieve him of the consequences of his earlier voluntary submission.

Flowing directly in line with this position, the Supreme Court in *Umeadi v. Chibunze*²⁴ had earlier held that parties who believe in the efficacy of a juju and voluntarily submit to oath-taking to settle a land dispute are bound by the result. The court in that case emphasized that once parties are so bound, it is the customary rules governing the oath, and not the ordinary common law rules of proof of title, that determine ownership between the parties. Read together, therefore, Odoemelam and Umeadi establish, as one continuous doctrinal position, that a completed and voluntarily submitted customary arbitration by oath-taking supersedes and displaces the orthodox methods of proving title, however credible a party's countervailing traditional evidence might otherwise be.

6. THE DECISION IN *ANYIMBA V ONOVO* (2026) 2 NWLR (PT 2029) 478 AND *IDUNDUN V OKUMAGBA* (1976) 1 NMLR 200

Contrary to the position established in Odoemelam and Umeadi, the decisions in *Anyimba v Onovo* and *Idundun v Okumagba* flow together on a different, though related, doctrinal footing: that the orthodox methods of proving title remain the applicable and exclusive standard wherever customary oath-taking is merely invoked, incomplete, or unproved, and that a court will not lightly permit a party to circumvent those orthodox methods on the strength of an unproved customary process.

*Idundun v Okumagba*²⁵ is the foundational authority in this regard. It was in that case that the Supreme Court, called upon to settle the proper approach to proof of title to land, laid down the five ways by which ownership may be established, namely traditional evidence, production of title documents, acts of ownership, acts of long possession, and possession of connected or adjacent land, holding that a claimant need only establish his case by any one of the five, and not all five cumulatively. The importance of *Idundun*, for present purposes, lies in its insistence that ownership of land is, as a general rule, to be established only by these recognized and verifiable methods, rather than by any less rigorous or less verifiable process.

It is this same insistence on rigour and verifiability that finds fuller expression in *Anyimba v Onovo*. In the case under review, a native court had in 1940 entered judgment in favour of the appellants' father, awarding him certain items and one piece of land, unless the defendants swore over that piece of land. The defendants never in fact swore any oath, yet remained in undisturbed possession of the land for over sixty years. In 2005, the appellant, a grandson of the original plaintiff, sued to enforce the 1940 judgment; the respondents pleaded that the judgment operated as *res judicata* and *estoppel per rem judicatam* against the action. The Court of Appeal upheld this plea, but the

²⁴ [2020] 10 NWLR (Pt 1733) 405 (SC).

²⁵ [1976] 1 NMLR 200.



Supreme Court reversed it. The apex court, applying the settled test for finality of a judgment,²⁶ namely whether it finally disposes of the rights of the parties leaving nothing further to be judicially determined, held that a judgment expressly made conditional upon future oath-taking is not final, and is at best an interlocutory judgment contingent on fulfilment of the stated condition. The court held further thus:

It goes without saying that with regard to the land in dispute, the judgment of Mburubu Native Court rendered in 1940 cannot be pleaded as estoppel per rem judicatam/res judicata against subsequent proceedings, the judgment not being a final judgment in character. It was at best an interlocutory judgment contingent upon the condition stated therein, to wit: oath taking.²⁷

The Supreme Court was emphatic that because there was no evidence whatsoever on record that the oath was ever administered, no record of the shrine, the priest, the date, or the witnesses, the condition attached to the 1940 judgment was never fulfilled, and the judgment never crystallized into a final and conclusive determination of the parties' rights. It followed that the plea of res judicata could not succeed, since one of its essential preconditions, namely that the earlier decision be valid, subsisting and final, was not satisfied. The court, expressly invoking the authority of *Idundun v Okumagba*, reiterated that the orthodox five ways of proving title remained fully applicable, and that the respondents, having adduced no independent evidence under any of the five ways, could not rely on the mere pendency of an unproved oath to establish ownership of the land in dispute. Read together, therefore, Anyimba and Idundun establish, as one continuous doctrinal position, that the orthodox methods of proving title remain undisplaced wherever a customary process is merely invoked but not proved to have been completed.

7. COMPARATIVE PERSPECTIVE

Although there are, on the surface, two seemingly divergent lines of judicial pronouncement on the effect of customary oath-taking on proof of title, it is pertinent to note that the two pairs of decisions juxtaposed in this paper proceed from the same underlying principle, differing only in their factual premise. On the one side, *Odoemelam v Ojiavo* and *Umeadi v Chibunze* flow together to establish that where customary arbitration was voluntarily submitted to by the parties and was, on the evidence, actually carried through to completion, the Supreme Court will give full effect to its outcome, even at the expense of more credible traditional evidence. On the other side, *Anyimba v Onovo* and *Idundun v Okumagba* flow together to establish that where a customary process is merely invoked, or a native court judgment is made conditional upon a future oath which is never

²⁶ *Fadiora & Anor v Gbadebo & Anor* (1978) LPELR-1224 (SC), per Idigbe, JSC; *Bozson v Altrincham Urban District Council* (1903) 1 KB 547, 549-550, per Lord Alverstone CJ.

²⁷ *Anyimba v Onovo* (2026) 2 NWLR (Pt 2029) 478, 486 (SC), per Okoro, JSC.



shown to have been administered, the customary process, being incomplete and unproved, is denied any binding legal effect, and the orthodox five ways of proving title remain the exclusive standard.

Against the rule in *Odoemelam* and *Umeadi*, wherein the apex court held that a completed and voluntarily submitted oath-taking binds the parties and displaces the five orthodox ways of proving title, the later authorities of *Anyimba* and *Idundun* held strongly that an oath merely invoked, but neither undertaken nor proved, confers no right and cannot found a plea of *res judicata*, ownership in that circumstance remaining to be established, if at all, only by the five ways settled in *Idundun v Okumagba*. The two pairs of decisions, read side by side, are accordingly not contradictory but complementary, each addressing a different factual premise within a single, coherent doctrinal framework, and the conundrum identified in the conceptual clarification above is thereby resolved.

8. SUMMARY OF FINDINGS

Having unraveled the Supreme Court conundrum on the place of oath-taking in proof of title to land, this paper makes the following findings:

1. That the five orthodox ways of proving title to land, as settled in *Idundun v Okumagba*, remain the general and exclusive standard for proof of ownership of land in Nigeria, save where displaced by a voluntarily submitted and completed customary arbitration.
2. That oath-taking, though not one of the five orthodox ways, is not thereby unknown to law; rather, it operates on a distinct doctrinal plane as a customary mechanism capable, in appropriate circumstances, of conclusively settling the question of ownership as between consenting disputants.
3. That where parties voluntarily submit to customary arbitration by oath-taking and the process is proved to have been completed, as in *Odoemelam v Ojiavo* and *Umeadi v Chibunze*, the outcome binds the parties and displaces the orthodox methods of proof, however credible a party's countervailing traditional evidence might otherwise be.
4. That where oath-taking is merely invoked, or a judgment is made conditional upon a future oath never shown to have been administered, as in *Anyimba v Onovo*, the customary process remains incomplete and unproved, confers no right, cannot found a plea of estoppel per rem judicatam, and leaves the orthodox five ways of proving title, as reaffirmed in *Idundun v Okumagba*, fully applicable.
5. That the apparent Supreme Court conundrum identified at the outset of this paper is, upon closer doctrinal scrutiny, more apparent than real: the four decisions reviewed are not in conflict but are complementary applications of a single organizing principle, namely that voluntary submission coupled with proof of actual completion is the condition precedent upon which customary oath-taking is accorded binding legal effect.



9. CONCLUSION

In unravelling the Supreme Court conundrum surrounding oath-taking in proof of title to land, it is observed that in matters of customary arbitration by oath-taking, the voluntary character of the parties' submission, and, crucially, tangible proof that the process was carried through to completion, must be respected, as it is only upon proof of both elements that the outcome of the customary process can be said to bind the parties or oust the orthodox methods of proving title. A close examination of the decision in *Odoemelam v Ojiavo* and *Umeadi v Chibunze*, juxtaposed against the decision in *Anyimba v Onovo* and *Idundun v Okumagba*, reveals that it was never the intendment of the courts to hold that mere invocation of oath-taking, without more, extinguishes a party's right to rely on the five ways of proving title settled in *Idundun v Okumagba*. Rather, the consistent doctrinal thread running through all four cases is that voluntary submission, coupled with proof of actual completion, is the condition precedent upon which the customary process is accorded any binding legal effect; absent such proof, the orthodox methods of proving title remain, as always, the applicable standard. What at first appeared to be a Supreme Court conundrum is, in the final analysis, a single coherent doctrine viewed from two factual vantage points.

10. RECOMMENDATIONS

The foregoing analysis of the rule in the cases reviewed reveals certain inadequacies in the current evidential framework that call for reform. Three recommendations are hereby proffered.

1. Codification of the evidential threshold for proof of completed customary arbitration: The Evidence Act 2011 should be amended to expressly provide the minimum particulars that a party relying on customary oath-taking must plead and prove, to wit, the identity of the shrine or deity, the officiating priest or society, the terms of the oath, and the witnesses present, in line with the position established in *Odoemelam v Ojiavo* and *Umeadi v Chibunze*.
2. Courts should treat conditional native court judgments as inconclusive until the condition is proved fulfilled: Trial courts called upon to enforce or apply old native court judgments made conditional upon future oath-taking should, following *Anyimba v Onovo*, demand affirmative proof that the condition was in fact fulfilled before treating such judgments as final or as capable of founding a plea of *res judicata*.
3. Judicial sensitization and continuing education: There is need for periodic judicial workshops, particularly for judges of the High Courts and Customary Courts in areas where oath-taking remains a living custom, to sensitize them on the doctrinal distinction between a merely invoked and a proved and completed customary arbitration, so as to ensure consistency in the application of the rule across cases.