

REVISITING THE CASE OF UKEJE V UKEJE VIZ A VIZ IGBO CUSTOMARY INHERITANCE

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Abstract

Indeed, there is no doubt that, women in Igbo land and all over the world have been suffering age long discrimination as regards inheritance and in other facets of life. This impedes their development and general wellbeing. This practice did not begin with colonization of Africa, since her indigenous people had their own established culture, customs, practices and way of life which regulated relationships among these communities including the right to inheritance. This paper focuses on Igbo customary inheritance by revisiting the case of Ukeje v Ukeje wherein, the Supreme Court gave a ruling that any customary law that denies the right of female children from inheriting their late father's property is null and void. This is due to the fact that gender discrimination and prohibition of women's right of inheritance is the order of the day under the Igbo customary law due to some factors which include; illiteracy, lack of females' zeal and opportunities to fight for their right, non-codification of customary laws, amongst others. So, this paper centres on the need to eschew discrimination and guarantee females' (daughters) right of inheritance in Nigeria, especially under the Igbo customary law, through the quickest possible means that is effective and legitimate. It examines the nature of inheritance practiced in Igbo customs and traditions and made a comparison with other customs. This will be done by a critical analysis of the celebrated case of Ukeje v Ukeje and other judicial decisions, legislative interventions, contributions by authors and researches (of which mine is one) in order to bridge this gender gap. The researcher realizes the fact that our legislations and recent judicial decisions have sought to scrap this obnoxious custom in the Igbo society; using the comparative and analytical methods. Therefore, there is a need for strict enforcement of our laws, the need for enlightenment of women in the society and the need for new laws and new directions for improved status of women.

Introduction

Inheritance has been, since the existence of man upon the earth. It so means that in Africa and particularly among the Igbo community in Nigeria, inheritance did not just begin with colonization. So, even before the colonization of Nigeria, her indigenous people had their own established culture, customs, practices and way of life which regulated relationships among these communities, including that of inheritance. The Igbo custom of inheritance classifies property into three categories which are: land, commercially valuable trees and plants and moveable property (household articles, livestock, money and debt).

Customary law on inheritance appears to be patrilineal and favours only the male offspring of a deceased person. So, when a man dies intestate, the largest share of his personal land devolves to the eldest son, with other sons sharing the rest equally. If the deceased does not have a son, it devolves to his brothers to be shared according to seniority. Although Igbo

women are by and large excluded from inheritance, some localities permit female children to inherit their father's compound in joint tenancy with their brothers, but the eldest brother remains in control of the property.¹ In localities where the Nrachi ceremony is performed, a daughter may inherit her father's compound, land and house/s.² These show the discriminatory nature of the rules of Igbo customary inheritance and how it conflicts with statutory laws. This age long discrimination has remained acceptable as it did in the past on a number of occasions. In *Ugboma V Ibeneme*,³ the court held that women were not entitled to inherit land or any other real property from their father. Also, in *Udensi V Mogbo*,⁴ it was established that where an Igbo man dies without a male child to succeed him, his female children have no rights of inheritance.

However, presently, the Supreme Court, in the celebrated case of *Ukeje V Ukeje*,⁵ which this work tends to focus on, invalidated the rule on Igbo customary inheritance. In *Mojekwu V Mojekwu*,⁶ which case was decided few months after the case of *Akinnubi V Akinnubi*,⁷ Niki tobi J.C.A, held that the *oli-ekpe* custom of Nnewi is repugnant to natural justice, equity and good conscience. One can then ask: Can the discrimination against women as regards inheritance in Igbo custom be stopped? Can the conflict and acrimony which the customary law of inheritance among heirs be solved? Are they laws that condemn these Igbo customs and restore the rights of women to inheritance? The examination of the status of women viz a viz the rights of inheritance under customary law and its discriminatory nature against women by revisiting the case of *Ukeje V Ukeje* and other case laws and examining the legality or otherwise of the decisions of the court viz a viz Igbo customary inheritance and examination of laws, conventions, protocols that rule out discrimination in all its forms; will be used as a guide in finding answers to the above posers.

The Concept of Customary Law

In the pre-colonial days, customary law existed and was administered by the family heads and other elders. In some areas, the place of the council of elders was supplemented by a secret or title society. Disputes occurring within the family or kindred were often settled by the family or kindred head with the assistance of the elders, while minor disputes between parties belonging to different families might be settled by the heads and elders of the respective families. During the colonial era, customary laws still existed. The colonial legal system permitted natives to operate their native law custom as far as they are not repugnant to natural justice, equity and good conscience, and also not incompatible with the relevant statute. Natives were allowed to administer their own laws and customs and arrangements were made through traditional leaders to ensure that disputes involving natives and non- natives were referred to the governor.

Customary law consists of the indigenous customs of traditional communities. It is a rule or body of rules regulating rights and imposing correlative duties, obtained and fortified by established usage, which is appropriate and applicable to any particular cause, matter, dispute, issue or question.⁸ Niki Tobi JSC defined it as 'the customs, rules and traditions which governs the relationship of members of a community'. Obaseki JSC in *Oyewumi v Ogunesan*,⁹ defined it as 'the organic or living law of the indigenous people of Nigeria, regulating their lives and transactions'. Okany defined it as 'a body of customs and traditions which regulate the various kinds of relationships between members of the community'.¹⁰ For customary law to be applicable, it must have some basic features. These features were encapsulated in the dictum of Bairamian FJ in *Owoniyin v Omotosho*, when he discussed customary law as a mirror of acceptable usage.

First, it must be the prevailing law in the community in which is to be applied. Speed AG, stated, that, a rule of customary law, though having its root in the past, must still be amenable to the present conditions and lifestyle of the people and would not qualify, if it is only a relic of by-gone days.¹¹ Secondly, a customary law must be flexible, i.e. it must have the capacity to adjust to changing circumstances, thereby absorbing the strain of dynamism to comply with the demands of

¹ Bolaji, 'A Comparative Study of Women's Right of Inheritance under Islamic and Customary Law' (2015) <http://tycomputer.com.ng/807-2.html> accessed on 14 December 2016.

² Ibid p.158 < <http://www.loc.gov/law/foreign-news/article.>> accessed on 14 December 2016.

³ (1967) FNLR 251.

⁴ [1976] 2 NWLR (pt.203).

⁵ (2014) SC LPELR – 22724.

⁶ [1997] 7 NWLR (pt.512) 283.

⁷ [1997] 2 NWLR (pt. 486) 144.

⁸ Customary Courts Law Cap 49 Revised Laws of Anambra State of Nigeria 1979, S.2.

⁹ [1990] 3NWLR (pt137) 207.

¹⁰ J Okany, *The Role of Customary Courts in Nigeria* (Enugu: Fourth Dimension Publishing Co. Ltd, 1984) p.39.

¹¹ *Lewis v Bankole* (1908) 1 NLR 81 at 83.

a developing society. Kingdon CJ in *Balogun v Oshodi*,¹² stated that, 'I am aware that native law & custom are living things and may change.' Third, customary law is generally unwritten. It used to be presumed that any transaction in writing was unknown to customary law. This was based on the fact that, the members of the community at that time were largely illiterates and any person who took the initiative to put the transaction in writing was given the benefit of English law. So, Professor Anthony Allet, in his, *Essays in African law*, appraised the unwritten nature of customary law, thus: "The law is unwritten" Other features include: Acceptability i.e. it must be regarded as obligatory by the people as it is the acceptance of such a rule that makes it binding. Also, customary law is not uniform as it differs from one tribe to the other.

Therefore, customary law is a law that emanates from the customs, traditions and ways of life of a distinct group of people, which is acceptable to them and regulates their conduct. Customary law has evolved from different sources which back it up. Since it is largely unwritten, dynamic, oral in nature, informal and tends to promote a return to community harmony rather than retribution, it can be deemed to be derived from several sources.¹³ The primary sources of customary law are stories, songs and ceremonies of indigenous people. Its principles are enunciated in the rich stories, ceremonies and traditions while stories express the law, since they represent the accumulated wisdom and experience of earlier conflict resolution. Another source is custom and norms, which refers to the people's way of life, traditions, beliefs and ethics, which they have held for a long time. Third, legislation; though, this is not a primary source of customary law, it is a secondary source, as it gives a legal backing to the force of customary law. The Constitution of the Federal Republic of Nigeria, provided for the establishment of the customary court and the customary court of appeal under Ss.265-S.269. Also, the Evidence Act has broadly defined custom.

It also makes provision for the proof of customary law in various courts, the facts of which the court must take judicial notice under s. 72 and s. 79; and they include customary law. We also, have precedent as a source of customary law. These are the decisions made by various courts on matters of custom, which are now regarded as customary law and may be called upon for it to be judicially noticed in subsequent cases by the court. Commission reports, also recommends some things that boost the existence of customary law. For example, the 1883 Commission Report and South African Native Affairs commission 1903-5,¹⁴ made specific recommendations with regards to land tenure rules. In Nigeria, four separate commissions of Enquiry for the regions and colony were set up by the Governor in 1948. Its recommendations helped in the forming of a new legislation which replaced the 1993 Ordinances. We also have textbooks and journals fully based on customary law and the comments therein, can be a source of customary law, especially when it is deemed that the writer is knowledgeable of such customs and traditions.

For every rule of customary law to be valid, it must satisfy the following criteria:

Repugnancy

This means that, it must not be repugnant to natural justice, equity and good conscience. This validity test in Nigeria could be said to emerge from the decision in the case of *Eleko v Government of Nigeria*.¹⁵

Incompatibility

For a rule of customary law to be valid and enforceable, it must not be incompatible, either directly or by implication with any law for the time being in force. When a situation is governed exclusively by any law at that particular time, then, customary law is to give way for such law to take effect.¹⁶

Public Policy Test

S.14 (3) of the Evidence Act provides that a custom shall not be enforced if it is contrary to public policy. Public policy means decisions that will ensure the security and welfare of the individual and the state in general. Customary law by virtue of S.16 (1) Evidence Act may be established by: proof, witnesses, expert evidence, books and judicial notice of a customary

¹² (1929) 10 NLR 36 at 57.

¹³ T Brendan, 'Why Customary Law Matters', A PhD thesis presented at Irish Centre For Human Rights, National University of Ireland Galway in September, 2011, p. 37.

¹⁴ <http://www.ru.ac.za/academic/faculties/law> accessed on 5 March 2017.

¹⁵ (1980) 3 NILR 14.

¹⁶ *Adebusokan v Yinusa* (1971) All NLR 227.

law by virtue of S.14 (2) E.A. However, in customary courts, strict proof of an alleged rule of customary law would be unnecessary especially where a matter is presided over by persons indigenous to, or otherwise, conversant with the law. This is because, judges of this category of courts are deemed to know the native law and customs.¹⁷ This presumption is, however, rebuttable.

Customary law occupies a very important position in the Nigerian legal system since it is one of the sources of the Nigerian law. Also, customary courts have been established under S.265-269, CFRN, 1999. An appeal from such court can lie to the High Court, Court of Appeal and Supreme Court. Just as other laws apply to different people and jurisdictions, customary law is applicable to persons who are indigenes or natives of a particular geographical expression to which customary law relates. It applies to laws and statutes that take its source, use and effect from customary law. The existence of customary law in the Nigerian legal system is very significant and its relevance is so overwhelming. It is not only a source of Nigerian law; it also serves the purpose of defining the root of the Nigerian legal system. It performs the role of protecting the traditional knowledge and traditional cultural expressions. It is also, the fundamental legal basis or source of law for indigenous people, legal communities and an element in establishing their collective and individual rights.

Inheritance in Nigeria

The concept of inheritance is as old as the history of mankind. This is because, people inherited certain things from their predecessors from time immemorial, and this paved way for the continuity of property and civilization.¹⁸ Inheritance is the practice of passing on property, titles, debts, rights and obligations upon the death of an individual. As such, the rules of inheritance differ among societies and have changed overtime. It only operates where private ownership of property exists as opposed to communal or family property which cannot be inherited.¹⁹ Generally, there are several modes of inheriting a deceased property. Though, under the customary law, the most common is the intestate succession. Testate succession occurs where a person made a will before his death and such person is said to have died testate. A will is a document made by a person to be used for sharing his property after his death. In nature, a will is ambulatory that is; it speaks from death and is made public only on the death of the testator who made the will.

However, where there is non-compliance but the intent to make a will can be inferred, it was held in *Apatire v Akanke*,²⁰ that the will is valid. Such condition include: that, the will must be in writing, the testator must sign at the foot or end of the will,²¹ the signing must be made in the presence of at least two witnesses present at the same time²² and such witnesses must acknowledge it. However, a person below the age capacity of 18 or 21 yrs cannot make a will. Also, a person of mental incapacity (a lunatic or of unsound mind) or physical incapacity (a blind person) cannot make a will, unless such blind person gives a clear instruction to his solicitor or if he is aware of the contents of the will.²³ Also, a will made by fraud, duress or undue influence, would not be valid. A customary law will is nuncupative, that is, it is usually unwritten as it is orally made in anticipation of death. This shows an exception to the rule that customary laws of inheritance govern only intestacy.

To become effective, the testator must possess full mental capacity at the time the will was made and the identity of the subject matter must be specific so as to be easily identified. Such item must be personally owned by the testator, as communal or family land cannot be disposed by a will.²⁴ However, a person may dispose a family property, if done with the consent of the family.²⁵ To become effective, the testator must possess full mental capacity at the time the will was made and the identity of the subject matter must be specific so as to be easily identified. Such item must be personally owned by the testator, as communal or family land cannot be disposed by a will.²⁶ However, a person may dispose a family property, if done with the consent of the family.²⁷ However, Nigerian courts have held that the reduction in writing of an essentially

¹⁷ *Gyang v Gyang* [1969] NWLR (pt.99) at 100.

¹⁸ U Pindiga, *Practical Guide to the Law of Succession (Mira'th) In the Sharia* (Tamaza: Publishing Co.Ltd. Kongo-Zaria,2001) p.4.

¹⁹ V.C Ikpeze, *Gender Dynamics of Inheritance Rights in Nigeria- Need for Women Empowerment* (Onitsha: Folmech Printing & Publishing Ltd, 2009) p.7.

²⁰ (1994) 17 NLR p. 49.

²¹ Wills Act (As amended) 1852, S.1.

²² *Ibid* s. 9.

²³ *Adebajo v Adebajo* (1971) 1 UILR, p.200.

²⁴ *Johnson v Macaulay* (1961) 1 All NLR 743.

²⁵ EI Nwogugu, *Family law in Nigeria* (3rd edn, Ibadan: HEBN Publishers Plc., 2014) p.405.

²⁶ *Johnson v Macaulay* (1961) 1 All NLR 743.

²⁷ Nwogugu, *opcit*, p.405.

customary law transaction does not alter its nature, as writing is no more than evidence of the transaction.²⁸ On the other hand, there is intestate succession which is the basis for customary law of inheritance. This occurs where a person dies without making a will. In Nigeria, where a person dies without making a will, his or her property may be distributed in accordance with customary law, Administration of Estate Law or common law rules of inheritance. The pattern of intestate succession under customary law has many variations according to the ethnic group and most of them are discriminatory in nature and practice.²⁹

Hausa Custom

This custom majorly constitutes the Hausa and the Fulani. Though it is influenced by the Islamic law under the Sharia system, which is both religious as well as a way of life; there is however, the effect of native custom *simpliciter*. So, a northerner who is not a Muslim is bound by the indigenous native custom. Therefore, daughters get only half of the shares due to the sons; and wives, get only half of what normally will be due to the husbands on intestacy. The Kaduna court of appeal, in *Mohamadu v Mohammed*,³⁰ held that daughters are entitled to inherit half of what the sons are to inherit under Islamic law (known as the Zakari formula),³¹ unlike the pre-Islamic days where the females inherit nothing.

The Yoruba Custom

Here, the administration of the deceased estate rests squarely on the eldest son, called the Dawodu. Where there is no son or the son is too young, it would be shifted to the eldest female child. However, the female child must be a gentle and honourable person as was stated in *Lewis v Bankole*. Presently, the accepted Yoruba custom is that the children of the deceased, inherit equally whether male or female as held in *Salami v Salami*,³² where the court held that, the plaintiff, who was a daughter of the deceased has right to inherit and her right cannot be affected by her sex, absence or minority and the Dawodu, was not entitled to a greater share than the other children. In some parts of Yoruba like Abeokuta and Ilesha areas, the children will take 2/3 while 1/3 will go to other relations. In Ado-ekiti, it is divided into three equal parts: 1/3 to the children; 1/3 to the wife and 1/3 to other relations. It has been posited that this may be the best mode of inheritance if really practiced and where there is a childless marriage, 1/2 should go to the widow.³³ Where a deceased is married to more than one wife, the children may inherit per stripes, according to the number of wives with children. Also, there is the *ori-ojori* method, where the estate is distributed according to the number of children or per capita. Finally, a widow, cannot inherit as she is being regarded as a part of the deceased's estate to be administered and inherited by his family. However, she is not prevented from suing as the next friend of the legitimate infant heirs of her deceased husband.³⁴

The Bini Custom

This applies to Nigerian citizens who have the Edo state origin. The practice is that, the eldest son is entitled to succeed to all the estates of his deceased father to the exclusion of other children by the principle of primogeniture. However, until the eldest son performs the second burial rites of his father, such estate would not be vested in him. Rather, he holds it in trust for himself and his brothers. So, on his death, his surviving immediate younger brother would take over the estate as a trustee for himself and his brothers and on performing the burial rites of his father, succeeds to the *igiogbe* as held in *Abudu v Eguaken*.³⁵ The *igiogbe* is the principal home where the deceased lived, died and was buried as it is not merely a piece of land.³⁶ The Bini customary law is similar to that of the Urhobo and Esan communities which is based on primogeniture. The eldest son, however, has an obligation to cater for his young siblings including the girls, until they get married.³⁷

²⁸ *Rotibi v Savage* (1944) 17 NLR 77.

²⁹ R Onuoha, 'Discriminatory Property Inheritance under Customary Law in Nigeria: NGOs to the Rescue' (2008) Vol.10 No. 2, *The International Journal of Not-For-Profit Law*, 79.

³⁰ [2002] NWLR (pt. 708) 104.

³¹ Holy Quran Chapter 4 verse 11-14 quoted from: M Fagboogbe, 'Gender Discrimination Challenge For The 21st Century' (2002) Vol. IV issue 2, *Lagos State University, Law Journal*, 167.

³² (1957) WRNLR 10.

³³ Ikpeze *opcit*, p.148.

³⁴ *Suberu v Sunmonu* (1957) 2 FSC 33 p.62, Per Onu JSC.

³⁵ [2003] 14 NWLR (pt.840) p.311.

³⁶ *Uwaifo v Uwaifo* [2005] 3NWLR (pt.913) 479; *Imade v Itabo* [1998] 4NWLR (pt.544) p.20.

³⁷ <http://nigeriavillagesquare.com> accessed on 22 April 2017.

The Itsekiri Custom

Here, all children are entitled to inherit. However, in *Oke v Oke*,³⁸ the first son, inherits the house where the father lived, absolutely. The children can inherit by sharing equally without any distinction, or the male children having larger shares against the female children, or sharing the estate in the order of seniority, whereby the older ones get larger shares.

The Igala/Idoma Custom

Only the sons are entitled to inherit their father's estate. Where there is no son, close male relatives will succeed. The sons are duty bound and expected to provide for the disfavoured daughters. However, daughters can share in the economic trees planted on family land.

The Ijaw Custom

Here, the children including the daughters can inherit, depending on the type of marriage contracted by the parents. Among the ijaws of Okirika, Kalabari and Nembe, the marriage could be the iya (big-dowry), where the male children inherit their father's property. Where there is no male child, the father's brothers inherit. If the woman acquired any property during the marriage, her children inherit equally. In the iya marriage, the children and their mother belong to their father's family. On the other hand, there is the igwa (small dowry) marriage, where the children cannot inherit from their father but from their mother, maternal uncles and relations jointly. This is because, the children and their mother, belong to their mother's family. However, the mother's premarital property goes to her siblings.

Intestate Succession under Igbo Customary Law

The cardinal principle of the Igbo customary law of inheritance is the concept of primogeniture as it is predominantly, patrilineal. Inheritance is through the eldest son in the family known as the 'okpala' or 'diokpa'. In a nuclear family, inheritance is through the eldest male child of the deceased. In extended families, it is through the eldest son of the ancestor, irrespective of the fact that the okpala, may in fact be younger in age to other members of the extended family.³⁹ Such first sons inherit absolutely to the exclusion of other children. This is because the okpala has the status of family head. Such status may be acquired by birth or subsequently. The first male child of the deceased is the okpala. But where an okpala dies while his father is alive, the status will devolve on the next male son of the father but if he dies after his father has died, the okpala's first son inherits the property.

A female cannot be the family head no matter her seniority in the family. By some modifications, the other male siblings may acquire land as held in *Ejiamike v Ejiamike*.⁴⁰ Females do not possess the right to inherit, that is, daughters, wives and sisters cannot inherit, especially, landed properties. This was held in *Ugboma v Ibeneme*.⁴¹ The rule that a daughter is not entitled to inherit her father's estate is partly mitigated by her right to be maintained by the person who inherits her father's estate until she marries or becomes financially independent or dies. Also, some Igbo communities practice the nrachi custom, which enables a father who has no male issue to keep back one of his daughters from marriage. She is expected to bear children at home, through arranged parameters in the hope of producing a male child who will succeed the father. All the children born by her are regarded as legitimate children of the father. However, this custom was held to be obnoxious and abominable.⁴² There is also the nkuchi system. Where the wife of a man who dies without a male child, is asked to remain in the husband's house and get pregnant through any means. Any male child born by the woman will belong to the husband's family and will be legitimate to inherit his property.

Properties That Are Inherited

Inheritable items may be categorized into tangible and intangible items. Tangible items can be touched and they include lands, landed property, shares, and liquid cash. Intangibles are not palpable. For example, interest, intellectual property,

³⁸ (1974)1 All NLR 443.

³⁹Nwogugu opcit, p.416-417.

⁴⁰ (1972) 2ENLR p.11.

⁴¹ (1967)ENLR 251.

⁴² [2008] 10NWLR (pt.1094) 1 CA.

goodwill. Inheritable items may be corporeal, that is, having physical existence or incorporeal, that is, no physical existence. The most controversial inheritable item is land. Inheritance rights cannot be discussed outside land. Land ownership that is most common under the Igbo customary law, is the communal ownership, family ownership and individual ownership. A landed property includes economic trees, buildings, and erections and so on. Also, personal effects such as clothes, shoes, cash and others can be inherited. On the other hand, such deceased father can acquire a land by: first settlement on a virgin land;⁴³ conquest; long possession;⁴⁴ purchase;⁴⁵ gift or grant; government allocation⁴⁶ and inheritance.

Therefore, where a person inherits any of the properties, he is said to own them and has the power of possession of the property; power to enjoy the property as he pleases, though, it may be detrimental to him;⁴⁷ power of alienation, that is, to sell or give to another, subject to the provisions of the Land Use Act, 1978. Finally, he has the power of devolution, which is, handing or passing down inherited property with reference to land to a successor or successors.

Persons who can Inherit

Under the Igbo customary law, certain persons are disentitled to inherit. However, some have the right to inherit like, a husband, upon the demise of his wife, a husband can inherit absolutely his wife's properties obtained by her while married. Also, male children have a right to inheritance under the Igbo custom but female children cannot inherit anything from their father's estate as anything acquired by them, is temporary; pending when they get married or die. Direct siblings and other relations such as direct brothers of a deceased can inherit especially where he has no child to succeed him. In extended families also, the eldest male inherits the property of a deceased who died intestate. At this point, it is worthy to note that, as a general rule, a widow and female children of the deceased under Igbo customary law are not entitled as of right to succeed to the personal or real estate of their deceased husband and father respectively. This was supported by the Supreme Court, per Ademola CJN in *Nezianya v Okagbue*.⁴⁸ However, a widow is entitled to some rights therein. First, she is entitled to live as a member of her late husband's family in her late husband's compound, until she remarries or dies.

The husband's heir has no power to dispose of the matrimonial home, occupied by the widow. Also, she is to be shown a portion of her late husband's land or family land annually for farming purposes according to her farming needs. She also has a right to be maintained by the person who inherits her husband's estate. However, where a widow has no son, she may be expelled from her husband's compound and other lands.⁴⁹

Some persons lack the capacity to inherit under the Igbo customary law. They include: persons regarded as illegitimate children of the deceased; an osu, where up to 1956, the osu system made it possible for any person regarded as an osu not to have a right to inherit the property of a non-osu. So, a male osu, cannot inherit the estate of a deceased ancestor who is not an osu. Though, this system has been abolished,⁵⁰ and adherence to its ways was made an offence,⁵¹ some Igbo communities still practice it. Also, murderers cannot inherit. This is where a person intentionally causes the death of another, he is generally denied the right to succeed the estate of the victim. So, where a son kills his father, he forfeits the right to inherit part of the late father's estate.⁵² Strangers also, have no right with respect to intestate estate. However, they may acquire the right to use and possess family land if integrated over long periods into a family.

Methods of Distribution of Property

In Igbo customary law, these two modes of distribution of the intestate estate are recognized- per stripes and per capita. Distribution per stripes normally takes place in polygamous families. In such a case, it is distributed into as many shares as the number of wives with sons- usoekwu. The respective sons (usoekwu), take in the order in which the eldest sons in them

⁴³ *Omoniye v Omotosho* (1962) NLR p.34.

⁴⁴ *Awo v Cookey Gam* (1913) 2NLR p.100.

⁴⁵ *Mojekwu v Iwuchukwu* (2005) 1 FWLR 249.

⁴⁶ *Nwokocha v Governor, Anambra state* (1984) 6SC.p. 362.

⁴⁷ *Abraham v Olorunfunmi* [1993] 1NWL (pt.156) 32.

⁴⁸ (1963) All NLR 352

⁴⁹ SN Obi *The Customary Law Manual* (Enugu: Government Printer, 1997) p.23

⁵⁰ Abolition of Osu System Law, Cap 1, Laws of Anambra State, 1991; Cap 1 Laws Of Enugu State, 2004.

⁵¹ *Ebiriukwu v Ohanyerenwa* (1959) 4FSC 212.

⁵² Nwogugu, opcit, 430.

were born. The share for each *usoekwu* is received by the eldest son on behalf of himself and his brothers. On the other hand, in the case of distribution per capita, the estate is distributed among the individual sons in a monogamous family.

Summary of the Facts of *Ukeje V Ukeje* and the Various Decisions

On the 27th of December, 1981, one Lazarus Ogbonnaya Ukeje, a native of Umuahia in Abia state (then Imo state), who lived all his life in Lagos state died intestate. He acquired real property in Lagos state and for most of his life; he was resident in Lagos state. The deceased was married to Mrs. Chituru Ukeje and the marriage produced four children. Upon his death, his wife, Chituru and his son, Lazarus Ukeje, obtained letters of administration for and over the deceased estate. Being aware of this development, Mrs Gladys Ada Ukeje (daughter of the deceased), filed an action in Lagos High Court as plaintiff. Wherein she claimed *inter alia*, that she is the daughter of the deceased, that he acknowledged her paternity during his lifetime and that she is entitled to partake in the sharing of her late father's estate. She sought an injunction restraining the defendants from administering the estate of the Ukeje and that the inventory account and letters of administration be granted to her (the plaintiff) and the 2nd defendant (the son).

Apart from her testimony on oath and that of her mother to prove that she is the daughter of the deceased, she tendered the following documents- her birth certificate by which it was shown that her birth was registered in Lagos in 1952, showing the deceased as one of her parents, a passport Guarantor's form filed by the deceased in which he acknowledged that he was the father of the plaintiff and photographs. The defendants opposed her assertion of being a daughter of the late Ukeje and challenged the validity of the birth certificate and photographs. Thirteen witnesses gave evidence for the defence and thirty documents were admitted as exhibits. The trial court per Fafiade J. ruled in favour of the plaintiff and frowned at such Igbo customary rule of inheritance as highly discriminatory. That, it denies women, right to property as contrary to section 39 (1) and (2)⁵³ CFRN, 1979. Unsatisfied with the judgement of the Lagos High court, the defendants brought an appeal before the Court of Appeal. Delivering the lead judgement, Galadima JCA, did not waste time in affirming the decision of the trial court and restated thus: 'I have held the opinion that any Igbo native law and custom which disentitled a female from sharing from her deceased father's estate, is void as it conflicts with the provisions of the CFRN'.

The following issues were raised:

- a. On whether the Constitution by virtue of Section 39 (2), prohibits any disadvantage by virtue of circumstance of birth - the court held that, though the trial court did not make a finding as to whether the plaintiff's (now respondent) mother was married to the deceased or not, such finding was still irrelevant because the circumstances of birth, should not constitute a disadvantage to her in view of the clear provisions of Section 39 (2).
- b. On constitutionality of Igbo native law and custom disentitling females from sharing in their deceased father's estate, it was held that the Igbo native law and custom which disentitles a female, whether born in or out of wedlock, from sharing in her father's estate is void as it conflicts with S. 39(1) & (2) (now S.42(1) & (2)).

The appellants further filed an appeal to the Supreme Court. Wherein the Supreme Court, revisited the age long constitutional issue on women's right to freedom from discrimination to property. Rhodes JSC, delivering the lead judgement, affirmed the decisions of the both earlier courts. On the authenticity of the birth certificate, the court applied the presumption in section 114 (1) of the Evidence Act, 2011 and found that, a birth certificate is conclusive proof that the person's name therein was born on the date stated, and the parents are those spelt out in that document. Once the authorized government official appends his signature and stamps on the document and such authentication is not contested by the adverse party, the presumption of regularity will be ascribed to it. However, the appellants failed to prove that the birth certificate was not authentic. Also, the court was of the view that the paternity of the plaintiff/ respondent was the main issue in the appeal. On that, it was decided that, the birth certificate is decisive in setting such an issue and other documents, has helped the court. The court explained that the earlier courts correctly found that such Igbo custom is void and conflicts with the provisions of the constitution and thus, remained inviolate. He dismissed the appeal for lack of merit. In conclusion, the learned justice stated that:

No matter the circumstances of a female child, such a child is entitled to an inheritance from her late father's estate. Consequently, the Igbo customary law which disentitles a female child from partaking in the sharing of her deceased

⁵³ Now CFRN, 1999, section 42 (1) & (2).

father's estate is in breach of section 42 (2) of the constitution, a fundamental rights provision guaranteed to every Nigerian. The said discriminatory customary law is void as it conflicts with section 42(1) and (2) of the constitution.

It is worthy of note, that the inheritance right of the daughter recognized by the Supreme Court relays to both real and personal property.

Legal Frameworks on Inheritance

International Legal Frameworks that strikes away discrimination include:

- a. Universal Declaration of Human Right, 1948.⁵⁴ – Art. 1 provides that, all human beings are born free and equal in dignity and right. Art. 2 also provide that, everyone is entitled to all rights and freedoms set forth in this declaration without distinction of any kind.
- b. International Covenant on Civil and Political Rights (ICCPR), 1966⁵⁵- the Covenant urged state parties to recognize the inherent dignity, equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world. It also provides that, state parties to the covenant should undertake to ensure the equal rights of men and women to the enjoyment of all civil and political rights set forth in the present covenant.⁵⁶
- c. The *International* Covenant on Economic, Social and Cultural Rights (ICESCR), 1966⁵⁷ - Art. 2 provides that state parties should undertake to guarantee that rights will be exercised without discrimination of any kind as to race, colour, sex, religion, political or other opinion, national or social origin, property, birth or other status.
- d. Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), 1979⁵⁸ - Art. 2, calls on state parties to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and to this end, urges them to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.

Regional Instruments

- a. African Charter on Human and Peoples Right (ACHPR), 1981⁵⁹ - Art. 2 and 3 affirm the equality of women and men, their equal right to the enjoyment of the rights affirmed in the charter, their human right to equal right under law and to equal treatment by the law. Art. 18(3) and 29 are the most directly relevant to the issue of inheritance rights for women. Art. 18(3) provide that, the state shall ensure the elimination of any discrimination against women and also the protection of the rights of women stipulated in International Declarations and Conventions.

National Instruments

- a. The Constitution.⁶⁰- In Nigeria, the Constitution, being the GRUNDNORM of all other laws has provided for inheritance/succession in the Residual List. The Constitution provides that, “The constitution is supreme and its provision binding on all authorities and persons throughout the Federal Republic of Nigeria, and any other law inconsistent with the provisions of the constitution, shall to the extent of the inconsistency be void”.⁶¹ Besides, section 42 of the CFRN (as amended) provides for the right of freedom from discrimination. Sub-section (2) of the above section confers on children born outside wedlock, freedom from discrimination and the right of inheritance under intestacy whether under statute or customary law.

Administration and Succession (Estate of Deceased Persons) Law, 1987.

This law applies to the Eastern states of Nigeria, namely, Anambra, Enugu and Ebonyi States and covers the estates of persons who are married under the Act. It covers issues of inheritance and succession to both real and personal estates of

⁵⁴ Adopted by UN General Assembly Resolution 217 A (III) of 10th December, 1948.

⁵⁵ Adopted by the UNGA Resolution A (XXI) of 16th December, 1966.

⁵⁶ Article 2.

⁵⁷ Adopted by the UNGA Resolution on 16th December, 1966.

⁵⁸ Adopted by Resolution 34/180 on 18th December, 1979.

⁵⁹ Adopted on 17th June, 1981.

⁶⁰ Constitution of the Federal Republic of Nigeria, 1999 (As amended).

⁶¹ *Ibid*, S. 1 and 3.

persons who dies intestate. This law prescribed detailed rules for the distribution of real and personal property of an intestate. Section 120, provide that:

a. If the intestate leaves a husband or wife but no children, parents or brothers or sisters of the whole blood, the residuary estate shall be held in trust for the surviving spouse absolutely. However, where the surviving spouse is the wife and the intestate leaves brothers or sisters of the half blood, the wife's interest will be for her life or until she remarries which ever first occurs. Thereafter the residue of her interest shall go to the intestate's brothers and sisters absolutely in equal shares. The children of a deceased brother or sister will take the share to which his parent would have been entitled if alive.

b. Where the intestate leaves a husband or wife as well as children's children (whether or not he also leaves parents or brothers or children of brothers and sisters), the residuary estate shall be held on trust as to the value of one-third thereof for the surviving spouse. The interest of such spouse shall be absolute in the case of a husband, and in respect of a wife, for her life or until re-marries, whichever first occurs. The remainder of the estate together with any residue on the cesser of the wife's interest shall be held on trust for the children of the intestates' children in equal shares absolutely.

It is worthy of note that the international laws and treaties are not justiceable in our Nigerian courts unless it has been adopted and domesticated into our law by an Act of the National Assembly.⁶² These laws aforementioned are relevant as they have reporting obligations of state parties included in them. That is, states must submit periodic reports on the status and progress made in meeting their specific obligations under the treaties. For redress of violation of women's inheritance rights on the basis of the human rights provision described above, there is the relevant principle that, before matters can be brought before the quasi-judicial bodies of the international organizations of the UN and OAU, domestic remedies must have been exhausted. That means that ordinarily speaking, recourse must first of all, be made for redress under National law before the National courts. In *Abacha v Fawehinmi*,⁶³ recourse was made to the Constitution first. Then, the African charter was sought when found that the particular provision of the Constitution relied upon was non- justiceable.

Judicial Intervention on Igbo Customary Inheritance

The following cases upheld the Igbo customary inheritance rules:

In *Ugboma v Ibeneme*,⁶⁴ the sale of family landed property by the eldest son of the family following the death intestate of their father was challenged by his brother and his six sisters. The court maintained the view that, in line with the general Igbo custom applicable to the parties, women were not entitled to inherit land or any other real property from their father who died intestate. As a result, the court declared that the female plaintiffs had no locus standi to institute the action. In *Udensi v Mogbo*,⁶⁵ it was established that where an Igbo man dies without a male child to succeed him, his female children have no right of inheritance. In the instant case, the court invoked the *Oli-ekpe* custom which allows the eldest nearest paternal male relation of the deceased property owner to inherit his property.

However, these pronouncements attracted criticisms from prominent jurists like Karibi-whyte JSC who observed that, 'Igbo customary laws are gender discriminatory, very illiberal towards women's right'. Similarly, unmarried daughters have been disinherited under Igbo customary law, as they enjoy limited inheritance rights. Anyogu stated that, 'a single girl upon her father's death is entitled to an equal basis as her brothers to share in her father's estate, which is not subject to customary law.'⁶⁶ This was the inevitable position Igbo daughters found themselves before the historic and pivotal cases of *Mojekwu v Mojekwu*,⁶⁷ *Ukeje v Ukeje* and others came up. The courts in these cases have pronounced against the customary succession practices that deny females the right of inheritance. In *Mojekwu* supra, the nephew of the deceased contented that, according to the Nnewi customary law of succession which is based on primogeniture, he was the one entitled to inherit the deceased estate, since he had no male issue. Though, he has two wives and daughters.

⁶² CFRN 1999, Section 12 (1); E Onyekpere(ed), *Manual on Gender Specific Rights Litigation and Protection Strategies* (Lagos: Shelter Rights Initiative Publishers, 1998) p.42.

⁶³ (2000) FWLR (pt.4) 533.

⁶⁴ (1967) FNL 251.

⁶⁵ (1976) 7 S.C. 1.

⁶⁶ FC Anyogu, *Access to Justice in Nigeria: A Gender Perspective* (2nd edn, Enugu: Ebenezer Production Ltd, 2013) p.319.

⁶⁷ [1997] 7 NWLR (pt.512) p.283.

The Court of Appeal gave judgement for the daughters and held that, such customs that discriminates is unconstitutional and repugnant to natural justice, equity and good conscience. Niki Tobi JCA as he then was, delivering the lead judgment, held:⁶⁸ All human beings male and female are born freely without any prohibition on the ground of sex and that is constitutional. Any form of societal discrimination on the ground of sex, apart from being unconstitutional, it is antithetic to a civil society built on the tenants of democracy, which we have freely chosen as a people. We need not travel all the way to Beijing to know that some of our customs including the Nnewi *Oli-ekpe* custom relied upon by the appellant are not consistent with our civilized world in which we all live today, including the appellant. In my humble view, it is the monopoly of God to determine the sex of a baby and not the parent. I believe that God, the creator of human beings is also the final authority of who should be male or female.

Accordingly, for a customary law to discriminate a particular sex is to say the least an affront to the Almighty God himself. On my part, I have no difficulty holding that *Oli-ekpe* custom of Nnewi is repugnant to natural justice, equity and good conscience. Similarly in *Obusez v Obusez*⁶⁹ under the Agbor customary law, a custom similar to that of the Igbos; the brothers of the deceased claimed that they are entitled to administer the estate of the deceased as against the widow and her infant children. Their claim was based on the customary law which deemed the widow as a chattel to be inherited. But the court held that, the widow is not a chattel and that since she applied for the Letters of Administration as next friend to the infant children, she is entitled. Flowing from these decisions and a host of other cases, it is obvious that customary law succession is gradually being removed from practices that are discriminatory in nature to more friendly practices.

Conclusion

From the foregoing discuss, it is undoubtedly clear that the issue of inheritance especially under the Igbo customary law does not conform to the qualities of a good law. The need to sensitize on inheritance rights under the Nigerian legal system can never be over emphasized. Customary law, though, it was generally accepted as at the time it was introduced, has failed the repugnancy test. As at the time of this work, the writer realized that, the rules of customary law in Igbo land especially as regards inheritance, is now lacking its general acceptability. Worst still, the Igbo customary law, unlike the Yoruba and Hausa rules of inheritance, has failed to grant any inheritance rights to female children. This has indeed led to a lot of social, economic and psychological effect on the female child and also, on the parents, especially where there is no male child in the family. Such discrimination has also led to an increase to the number of polygamous families, unrest and so many problems in the family.

The problem of gender inequality particularly under our customary laws across tribes and communities that make up the country is questionably sustained.⁷⁰ The inference is that, the basic positive impact of inheritance on one's life with reference to individual ownership, wealth acquisition, empowerment and development, which ultimately leads to national development, is impeded or denied. Hence, it perpetuates poverty.⁷¹ The legal and regulatory environment for women's rights to inheritance, are not sufficient and the few legislations that exist show lack of commitment to gender equity in inheritance rights. Since the laws and practices governing inheritance under customary law is very discriminatory, it constitutes a major obstacle to the achievement of equality of men and women. Most judicial decisions and legislative interventions are centred on widows of a deceased and paying less attention to the female children of the deceased. The Supreme Court has, in the case of *Ukeje V Ukeje*, advanced the cause of equality between male and female children in matters relating to intestate succession under Igbo customary law.⁷² As stated earlier, it is highly required that the full rights of females to succeed their late father's estate be declared fully.

Some factors have hindered the elimination of these obnoxious customary laws. They include;

⁶⁸ *Mojekwu v Mojekwu* [1997] 7 NWLR (pt.512) 283.

⁶⁹ [2001] 15 NWLR (pt. 736) p. 377.

⁷⁰ Ikpeze, opcit, p.226.

⁷¹ Ibid.

⁷² EI Nwogugu, 'Emancipation of Female Rights to Intestate Succession under Igbo Customary Law' (2014) Vol. 12 *The Nigerian Juridical Review, Faculty Of Law, University of Nigeria, Enugu Campus*, 11.

First; Cultural factors e.g. male superiority syndrome, which is deeply embedded or entrenched in Igbo culture. Also, Igbo culture appears to be too rigid and very resistant to change.

Secondly, Educational factors e.g. denial of girl-child education, has slowed down the eradication of these practices. Since knowledge is power.

Thirdly, Legal factors which include non-domestication of CEDAW and other important legislations on gender rights, also, serve as an impediment. Besides, a lot of lapses and gaps have been observed even in the enforcement of existing national laws on gender rights.

Finally, Attitudinal factors, has also been a serious restraint to this problem under discourse; most women especially in the rural areas in Igbo land, are very complacent on this issue and they appear to have accepted their subjugated position as normal, since Igbo culture itself approves it. Hence, they often shy away from seeking recourse to our courts of law, even where their rights are flagrantly violated in the name of culture.

The Supreme Court has taken a bold step in *Ukeje v Ukeje* to remove the impediments on the judicial protection of women's right to property in Igbo land. This is a commendable development since the Supreme Court plays the role of a watchdog and an apex court in Nigeria, and the last hope of the common woman. There is need for the Supreme Court to make more pronouncements in subsequent cases that are of similar object and to be consistent in its decisions on this subject. This will help in no small measure to consolidate the fight against women's discriminatory right to property and the crusade against the elimination of all forms of discrimination against women which is a global campaign.⁷³ Hopefully, *Ukeje's* case was a victory to women's right to property in Igbo society and has provided a fertile ground for favourable legal environment, effective judicial protection of women's right to property and gender equality in Nigeria. It is hoped that the victory in this case, will bring succour to the plight of women in this aspect of life, a victory that will transcend beyond the court room, a victory that will last and be sustainable and stand the test of time as a big boost to women's employability in the global economy.

Recommendations

Since the law of inheritance touches every individual in the society at large, it needs close attention. The law must be reformed to redress the loopholes, inadequacies, and the harsh consequences of some customary law applications.⁷⁴ A society can only be socially engineered in an effective way if the law is fair, just and humane. Customary law lacks most of the vital ingredients of a virile legal system. Moreover, many uncertainties exist in inheritance law, which create conflict and acrimony among contending interests.

The following recommendations are hereby submitted.

1. Codification of Customary Law- This is essential for a reliable legal system especially in a developing one like Nigeria. Such codification will bring about certainty. Also, a society's law commands respect and obedience where the individual knows the governing law, his rights and obligations, and the punishment for violating it. With such codification, the laws will be amenable to amendments to suit and adapt to the fast changing society.
2. Legislative Intervention – It is clear that an inter-play of many legal factors have militated against the elimination of these cultural practices. The non-domestication of most international instruments on women's right, has denied Nigerian women rights activists, a stronger and wider platform to agitate for the enforcement of women's right. For example, the CEDAW, over twenty five years ago was ratified by Nigeria, yet she has failed to domesticate it as part of the municipal law and the legal implication is that, by virtue of section 12, CFRN, 1999, it has no force of law in Nigeria. So, as a matter of urgency, gender based specific laws which will deal with gender based violence on the increase should be enacted.
3. Unification of Customary Law – This is pertinent as it will apply a single set of laws to all major tribes in Nigeria, eliminating the problem of uncertainty and inconsistency that multiple set of law impose. It means the assimilation of the customary laws of all major tribes in Nigeria so as to have one unified law.

⁷³ C Johnson, 'Inheritance Laws and Women's Property Rights, How Just?' a paper delivered at ECOWAS Centre Abuja in 2008, p.12.

⁷⁴ RA Onuoha, *opcit*, 15.

4. Option of Will – It is imperative for people to make wills before they die. This is to avoid situations where their estate will be governed by customary rules of inheritance. Through the will, one can dispose his property as he wishes.
5. The Role of Traditional Rulers in Uprooting These Cultural Practices – It is believed that the traditional rulers as custodians of the culture have a major role to play in this regard. They are nearer to the grassroots where these practices are more prevalent; they equally wield much influence on their subjects and therefore, can easily sensitize them on the need to stop these discriminatory practices.
6. Promoting the Role of the NGOs – Among other activities, NGOs have been educating, enlightening, and informing women and the society on the need to recognize and eliminate discriminatory gender practices in our customary law. NGOs such as Women in Nigeria (WIN), Women’s Aid Collective (WACOL), and Women Organization on gender issues have helped immeasurably.
7. Education and Enlightenment Programs: The mass media should devise effective awareness creating program in order to bring forth these practices and provide a way to jettison it. On the other hand, education; empowers, sensitizes and enlightens a girl child on her rights. So, the government should provide scholarships and other schemes that will help cut down the level of illiteracy in our society. Also, government should establish agencies that will hear complaints and intensify efforts to bring these discriminatory practices to an end.
8. The Role of the Judiciary – The judiciary which comprises of the lawyers and judges, is seen as the last hope of the common man or woman. So, they should have a multi- dimensional role to play in this crusade if an effective change is to be met.
9. Reduction of Filing Fees in our Courts: This is in order to enable these women bring up actions in court.⁷⁵

⁷⁵ BN Okpalaobi & A Iguh, ‘Nigerian Women and Right to Freedom From Discrimination’ in M Izunwa (ed), *Family in the Laws* (Anambra: Great M Print & Publishers, 2013) p.148.