

AN APPRAISAL OF CUSTOMARY SUCCESSION IN THE WESTERN AND EASTERN PART OF NIGERIA

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ABSTRACT

*Death is inevitable in life. When a man dies, his properties devolve to his successors either by a will or under his personal law of succession. Customary laws embody the customs practiced by the people in a particular community which is binding on them. Intestate succession under customary law among Western (Yoruba) and Eastern (Igbo) parts of Nigeria are full of discrimination especially against widows and female children. The discrimination is minimal under the Western customary law of succession in which female children are allowed to inherit their fathers' properties but the widows are not allowed to inherit their deceased husbands' properties. The customary law of succession in Eastern part of Nigeria does not allow female and widows to inherit properties of the deceased since primogeniture practice is predominant among them in which properties are inherited only by male children and the first son usually take the largest share. However, this position has been reversed by the Nigeria Supreme Court's decision in the case of *Ukeje v. Ukeje* (2014) II NWLR (PT 1418) 384; 408, where the court held that female children can inherit their father's property with their male siblings under the Igbo customary law of succession in accordance with section 42(2) of the constitution. This paper therefore seeks to appraise analysis between the Western and Eastern customary law of succession in Nigeria. This work adopts doctrinal method of research with the use of online journals, articles, textbooks, newspapers and decided cases as secondary sources of data. Hence this paper concludes that decision of the Nigerian Supreme Court in the case of *Ukeje v. Ukeje* supra, has brought a new era to the Eastern customary law of succession which now allows female children to inherit their fathers' property and makes it similar to Western customary law of succession in Nigeria.*

Keywords: Appraisal, Succession, Customary Law, Discrimination, Intestate.

INTRODUCTION

The concept of customary law succession is primordial in Africa since our societies are prevalently polygamous with much influence from our extended family systems. Before the introduction of English Will into our legal system, customary succession has been predominant.ⁱ It influenced the method of distributing properties after the demise of the owners, this varies from one society to another. The Customary Law of succession provides for transmission of rights and duties of the deceased person in respect of his estate to his heirs and other beneficiaries in a customary way usually by intestacyⁱⁱ which includes nun-cupative will, also known as death bed declaration.ⁱⁱⁱ

It must be pointed out that the term succession and inheritance are different. While inheritance is an estate or property that a man inherits and can be transferred to his heirs in the same way on his death in intestacy, succession includes; the devolution of title to land by Will as well as accession to office and dignity.^{iv} Succession also involve transmission of rights and obligations of the deceased person in respect of his estate to his heirs and successors.^v This paper discusses comparative analysis of customary succession in Western and Eastern parts of Nigeria with particular reference to Yoruba and Igbo language speaking people. This work will further examine the effect of the customary law of succession on the right of women, and daughters of the deceased, the rights of illegitimate children under the customary law of succession and the right of adopted Children. The paper also discusses the provision of Section 42 (1) and (2) and the decision of the Supreme Court in the recent case of **Ukeje v. Ukeje**^{vi} where discrimination against female children was declared repugnance against natural justice, equity and unconstitutional to rebut the old repugnancy practice of customary succession against women in the Eastern part of Nigeria.

NATURE OF SUCCESSION IN NIGERIA

The law of succession in Nigeria can be divided into 3 major categories namely; testate, intestate and partial testate succession depending on the circumstances surrounding the life and practices of the deceased person. Thus, while testate succession means the deceased person made an English Will before his demise, intestate succession on the other hand happens when a deceased person did not make any will before his death. And partial testate means the deceased made an English Will on some of his properties while others will be subjected to his personal law^{vii}

The estate of a person who died testate will be distributed according to the dictates of his Will^{viii} provided the Will is valid, whereas with respect to a person who died intestate, there are options which are usually available for such. On this note, it is important to point out the factors which guide intestate succession as opined by Sagay^{ix};

- i. if the person who died intestate was an indigenous Nigerian and didn't contract a Christian or Act marriage, or even if he did, where no issue or spouse by such a marriage survived him, his estate will be distributed in accordance with the relevant customary law.
- ii. if the person who died was a Muslim, Islamic law would govern his estate.
- iii. where a person who is subject to customary law or Islamic law dies intestate, his personal law will apply to the distribution of his property and not *lex situs*.^x It can be inferred from the above illustration that the law that governs the marriage contracted and one's personal law determine how the estate of a person who dies intestate would be distributed. Furthermore, the intestate succession can further be divided into two that is intestate succession (Non Customary) and succession under customary law.^{xi} Thus, for the purpose of this work our focus will be on succession under customary law

SUCCESSION IN NIGERIA UNDER CUSTOMARY LAW

Customary law succession is usually intestate, it is subsumed under the customary law which embodies the norms, customs and values as practiced by the people which they regard as acceptable and binding on them. Thus, succession under the customary law, is not in

accordance with the Statute or Common law but in line with the prevalent traditions, customs and practices of the local people who are subject to it.^{xii} It can be stated that the law of succession in Nigeria reflect our plural legal system which brought about the state of absence of a uniformity of rules of succession under customary law. This is because; there are many ethnic groups in Nigeria with peculiar features respectively. In addition to that, the mode of devolution could be patrilineal^{xiii}, matrilineal^{xiv} or bilinear^{xv}.

Generally, when a deceased dies intestate, the applicable law to his estate is his own personal law that is, his customary law. It is believed that a person carries his customary law with him anywhere he goes.^{xvi} This position was further established in the case of **Osugwu v. Soldier**^{xvii} where the court applied the Igbo customary law to the real properties of the parties in dispute who were Ibo men but living in Kano. It was posited by the court that, although, the law of the place where the property is situate, *lex situs* and *lex loci* should be applicable^{xviii} but the parties have their personal laws which should prevail in the interest of justice. It is appropriate to state that, the length of duration one has stayed outside his home town is immaterial to change ones personal law. This was established in the case of **Yinusa v. Adebisokun**.^{xix} However, the court will have a different view in a situation where the deceased has adopted and subjected himself under the customary law of the place he lived before his death. In this situation, it can be assumed that the deceased has relinquished his own customary law and adopted the customary law of his new place and this was the position of the court in the locus clasicus case of **Adeniyi Oluwu & Ors v. Olabowale Oluwu & Ors**^{xx} where the court held that Bini Customary Law should be applicable to the estate of the deceased who was a Yoruba man born at Ijesha. While he was alive, he had naturalized himself under the Bini customary law which he held as his personal law to govern his estate after his death. It is believed that from the above decisions, one can change his personal law to the one he prefers provided he is accepted by the society where he lives. At this juncture, it is imperative to examine customary succession under the Western part of Nigeria.

CUSTOMARY SUCCESSION IN THE WESTERN PART OF NIGERIA

The area known as South Western Nigeria consists of 6 states namely; Lagos, Ogun, Oyo, Ekiti, Ondo and Osun.^{xxi} It is crystal clear that all these 6 state are Yoruba speaking states. As

a result, this aspect deals with the Yoruba customary law of succession. The concept on succession under Yoruba customary law has passed centuries and such has been established and accepted as predominant way of sharing the estate of a deceased person who was subject to Yoruba customary law and custom. Although it is observed that there are little variation in the sub-ethics cultural groups for example among the Ijesha, Ilaje and Idanre people they practice belineal mode of succession, while among the Ijebus it is partrilineal (although women can inherit as well).^{xxii} It is believed among the Yoruba's that succession and inheritance must pass through full blood relation and under this, priority is given to the children of the deceased^{xxiii} than the extended family except on a rare occasion where the deceased has made it known that part of his estate should go to his family members especially where Will is involved as decided in the case of **Sogbesan v. Adebisi**.^{xxiv}

As a general rule under the Yoruba custom, though it appears patriarchal in nature but both male and female children are entitled to succeed the deceased as joint owners^{xxv} of the property under the management of the Eldest son in the family known as Dawodu who assumes the responsibilities to maintain, manage the property and hold it in trust for the benefit of other family members and he has no single right to sell the property except with the consent of other principal members of the family.^{xxvi} However, where the family head alienate the family property without the consent of other principal members of the family, the alienation is voidable^{xxvii}. On the contrary, where the principal members of the family alienate the family property without the consent of the family land, the alienation is void abinitio^{xxviii}.

One of the remarkable features of customary law of succession in Yoruba land is that male and female children possess equal right to their deceased father's inheritance^{xxix} and issue of sex and age do not affect the method of distribution of the properties.^{xxx} These position has been received judicial favour in the case of **Salami v Salami**^{xxxi}. In **Ricardo v. Abal**,^{xxxii} the court held that not only does a female child has inheritance rights under Yoruba customary law of succession but went further to hold that when a man dies leaving two houses and two children male and female, if the female is older she has a choice to choose first which of the houses she prefers.

It is worthy of note to state that there are two major method of distribution of properties under Yoruba customary law of succession depending on the number of wives married by the deceased.^{xxxiii} If the deceased married a wife and all his children are from the same women, it

poses no challenge but where the man had wives and all of them had children for him, then the distribution will either be per stripes (Idi Igi)^{xxxiv} or per capital (Ori Ojori).^{xxxv}

It is submitted that the mode of distribution by Ori Ojori is fairer to Idi-igi and this will prevent dispute in the family. The concept of Idi-igi is derived from the fact that the mothers metaphorically represented the branches from which the children came from but this can bring unfairness in a situation where by one of the wives had a child and another had about seven. Although, it has been pronounced by courts that the Idi Igi mode of distribution is not repugnant to natural justice because it is a long time practice and well accepted by the people as held in the case of **Taiwo v. Lawani**.^{xxxvi} However, this decision can be reviewed more so this case had been decided long time ago. Besides, since the wives of the deceased cannot inherit any property, the concept of the mothers or wives as a branch should not be used as a yardstick. The children are the beneficiary and they should be treated alike with equal proportion entitled to in their father's properties. In addition, the test of universality and acceptance of customary law cannot be used to perpetrate injustice and unfairness. The Judicial committee of the Privy Council in the case of **Dawodu v. Danmole**^{xxxvii} held that the prevalent Yoruba custom of deceased intestate property distribution is Idi-Igi (Per stirpes) rather than Ori-ojori (per capita) was not repugnant to natural justice equity and good conscience.

Furthermore, it must be pointed out that the Yoruba customary law of succession does not permit the wife or wives of the deceased to inherit the property left behind except such property has been given to the wife as an outright gift during his life time with substantial prove otherwise such gift will revert to his children or his family members as decided in the case of **Sogunro-Davies v. Sogunro-Davies**^{xxxviii}. Furthermore, Jibowu F. J. in the case of **Suberu v. Suberu**^{xxxix} held that devolution of property follows the blood and the wife is also treated like a chattel which can also be inherited. The men too have no right to inherit their deceased wives' properties. The right of the female to inherit real property has always been protected by state legislature under the former Western State^{xl}.

CUSTOMARY LAW OF SUCCESSION IN THE EASTERN PART OF NIGERIA

The Eastern part of Nigeria majorly comprises of five states which are Abia, Anambra, Ebonyi, Enugu and Imo state.^{xli} It is believed that these five states are Igbo language speaking states, with this fact, it is suggested that Igbo customary law of succession is applicable or in operation in the Eastern States respectively and that will be the focus of this paper under this sub-heading.

Under the Igbo customary law of succession, patrilineal mode of succession is generally obtainable and due to sub-ethno cultural differences, some communities in Eastern part of Nigeria practice bilinear succession where women have full legal capacity to own land and transmit their right to others either by intervivors or after death.^{xlii} Primogeniture practice is the major principle of succession under the Igbo customary law of succession under this practice, only the Eldest male child known as Okpala dio-okpala or diokpa is reckoned with and approved to inherit the estate of the deceased person being the head of the family.^{xliii} The rationale behind this primogeniture practice under the Igbo customary law of succession is to keep the property in the lineage of the deceased because it is believed that the female will get married and go to her husband house and thus female are not allowed to inherit under Igbo custom. This was the position of the court in the case of **Mojekwu v. Mojekwu**^{xliv} where the deceased died without a male child but had two female children surviving him. However, his (deceased) male nephew argued that the female children cannot inherit the estate of their father under the Nnewi customary law. The court of Appeal rejected the position and held that any laws that discriminate against the female are repugnant. However, on further appeal to the Supreme Court, position of the Court of Appeal was overruled, the held that the nephew has the right to take over the deceased estate.

It is pertinent to state that the only way to circumvent this primogeniture practice against female children is for her to practice **Nrachi**^{xlv} or **Idigbe**.^{xlvi} This is a practice by a daughter of a deceased who had much properties to remain unmarried in order to raise male children in her father's house who will continue the lineage of her father and bears her deceased father's name. Under the Igbo customary law, the eldest son is entitled to special property and he enjoys the properties to the exclusion of his brothers. He has the discretion to either allow or disallow his younger brothers and sisters to live with him in house where the deceased lived and died. He also has right to land within the compound premises and other movable properties belonging

to their father, such as his dresses, he wore to special occasions, walking stick, Ofo and other objects of worship.^{xlvi}

Previously, under the Igbo customary law, neither the daughters nor the wife of the deceased has the right in the estate left by the deceased as decided by the court in the case of **Ugboma V Ibeneme**^{xlviii} where the court held that in accordance with the custom of the deceased home under Anambra Local Government Area, woman are not entitled to inherit land from their father but she can be maintained by the head of the family. Although, a widow is allowed to continue living in her deceased husband's house until she re-married subject to good behavior or if not remarry till her demise subject largely to good characters.

CONTRIBUTION OF THE APEX COURT ON CUSTOMARY SUCCESSION UNDER IGBO CUSTOMARY LAW

In the recent time, the apex courts in Nigeria, particularly the Supreme Court has made a landmark decision in Igbo customary law of succession which deprives a female child and widow the right to inherit her deceased father's and husband's property either solely or with her male siblings. A cursory perusal of Section 42 sub (1) and (2) of the 1999 Nigerian Constitution as (amended) prohibit any form of discrimination or restriction by issue of sex, origin, religion or political opinion. Sub section (2) further buttresses the fact that no citizen of Nigeria shall be subjected to any disability or deprivation merely by reasoning of the circumstances of his birth. This provision above has visited the gender discrimination among women at all levels.

International Contribution on Discrimination against Women

The international organization under United Nation Organization and non-governmental organization (NGO) have at various times raised eyebrow about discrimination against women at all level. Article 1 of CEDAW^{xlix} which defines discrimination against women as any distinction, exclusion or restriction made in the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their

status of equality of men and women of human right and fundamental freedom in the political, economic, social or cultural, civil or any other field.

Furthermore, Article 2 of CEDAW further states that partner to the convention is enjoyed to condemn any form of discrimination against women. Although, Nigeria is a party state to the convention but unfortunately, we have not domesticated CEDAW Articles in accordance with section 12 of the 1999 constitution as amended.¹

Supreme Court Decision against Discrimination

Flowing from the above, the Supreme Court has deviated from its earlier decision in the case of **Mojekwu v. Mojekwu**^{li} where it held that a female child cannot inherit his deceased father's estate in the Supreme Court's celebrated case of **Lous Chiture Ukeje & Anor v Cladys Ada Ukeje**.^{lii} In that case the daughter of the deceased Cladys sued the deceased's wife and son Lous Chituru at the Lagos High Court, where she claimed that she was entitled to be among the administrators of her father's estate after her father died intestate in 1981. The trial court found that she was entitled being a daughter of the deceased. The wife and son of the deceased appeal to the Court of Appeal in Lagos and the Court of Appeal affirmed the decision of the trial court still being dissatisfied, they appeal to the Supreme Court. At the Supreme Court, Bode Rhodes-Vivour, JSC affirmed the position of the lower courts and held that a female can inherit her deceased father's estate under Igbo customary law in line with the position of Section 42(1) and (2) of the 1999 Constitution as amended which frowns against any act of discrimination. In addition to this, in the case of **Anekwe v. Nweke**,^{liii} The Supreme Court of Nigeria held that any culture that disinherits a daughter from her father's estate or wife from husband's property by the reasoning of God instituted gender differential should be punitively and decisively dealt with. The Court added further that for a widow of a man to be thrown out of her matrimonial home, where she lived all her life with her late husband and children by her late husband's brothers on the ground that she has no male child, is indeed very barbaric, worrying and flesh skinning. It is submitted that these Supreme Court's decisions have broken a long time barrier of discrimination against female children and widows to inherit and benefit from the estate of the deceased father and husband respectively. Sequel to this, it is opined that Igbo customary law of succession is now relatively close to the Yoruba customary law of succession.

COMPARATIVE ANALYSIS BETWEEN THE YORUBA AND IGBO CUSTOMARY LAW OF SUCCESSIONS

It is pertinent to note at this juncture, the comparative analysis of both customary laws under discussion. There are two angles to the comparative analysis that is, similarities and differences between the concepts of customary laws in Igbo and Yorubaland respectively.

Similarities between Yoruba and Igbo Customary Laws of succession

Prior to the recent decision in the case of **Ukeje v. Ukeje**^{liv} and **Anekwe v. Nweke**,^{lv} there were many differences between the two customary laws of succession. In view of this, the similarities between the two customary laws are identified as below;

- i. The Yoruba customary law of succession allows both male and female children of a deceased to inherit. This position is now applicable to Igbo customary law of succession after the decision of the Supreme Court in the case of **Ukeje v. Ukeje**^{lvi} which allows female children to inherit their parents' property like their male counterparts.
- ii. Under the Igbo and Yoruba customary law, the eldest male or son of the family is recognized as the family head who administer and manage the family property as a trustee for the beneficiaries including himself as Dawodu and Okpala respectively.
- iii. The right of the widow to continue living in the house of the deceased husband is guaranteed by both Yoruba and Igbo customary law of succession where the widows remained unmarried.
- iv. Widows are not allowed to inherit from her deceased husband properties or estate under Yoruba and Igbo customary laws of succession.
- v. The patrilineal method of devolution of properties under inheritance is applicable to both Yoruba and Igbo customary law of succession.
- vi. Only the people related by blood can inherit the deceased properties under the Yoruba and Igbo customary law of succession respectively.

- vii. Under both Igbo and Yoruba customary laws of succession, the family of the deceased wife is entitled to inherit the wife's real property which she acquired before marriage in the absence of any child to inherit same.
- viii. The children are allowed to inherit from both parents under Yoruba and Igbo customary law of succession
- ix. Both customs law of succession regards woman as a chattel that can be inherited.

Having said this, it is pertinent to point out some differences between the Yoruba and Igbo customary law of succession.

Differences between Yoruba and Igbo Customary Law of succession

- i. Under the Igbo customary law, the practice of Nrachi is strange to the Yoruba customary law of succession. Although, it is believed that with the decision of the Supreme Court in Ukeje's case the practice of 'Nrachi' will soon be eradicated.
- ii. Under the Yoruba customary law of succession, where the deceased had many wives before his death, his estate will be divided either by per stripes (Idi-igi) or per capital (Ori-Ojori) however this concept is unknown under the Igbo customary law of succession
- iii. The eldest son of the deceased under the Yoruba customary law of succession does not exclusively own where the deceased lived and died and he has no superior right above others to sell. This position might be different under the Igbo customary law of succession. Although the female children are now allowed to inherit but it appears the building where the deceased died is ceded to the eldest son of the family.
- iv. The Yoruba customary law of succession promotes joint ownership of property since it is believed that land belongs to a group of people and cannot be individually owned. The position and the concept of joint ownership is not totally appreciated under the Igbo customary law of succession.
- v. In some part of the Eastern part of the country the husband is allowed to inherit the properties acquired by the wife after the marriage upon her death whereas,

under Yoruba custom, the husband is not allowed to inherit his wife at best, the properties of the wife will revert to her family members upon her demise.

It is crystal clear that the recent decision of the Supreme Court in Ukeje's case has made a great impact in the Igbo customary law of succession in Nigeria and to this extent, it has opened a wide gate for Nigerian female children to contest their inheritance right whenever it is trampled upon.

VICTIMS OF DISCRIMINATION UNDER THE CUSTOMARY LAW OF SUCCESSION

The widow

Generally, under the customary law, a widow is not entitled to inherit property of her deceased husband, because it is believed that devolution of property follows the blood **Sogunro Davies v. Sagunro Davies & Ors.**^{lvii} Thus, difficulty often arises where the widow has been in possession of a property allocated to her husband before his death is challenged and required to vacate the place by her deceased's husband family members. It has been held by the court that unless there is clear evidence and adequate prove by the widow that her deceased husband gave a real property to her in his life time, any property in her possession after the death of her husband will revert to her deceased husband's family. Several courts decisions have established the fact that under customary law of succession, the right of a widow to her deceased husband's property is limited only to occupation.

In **Nezianya v. Olagbue**^{lviii}, the court held that, under Onitsha Native Law; a woman cannot assume ownership of her deceased husband's properties or alienate it as if she is the owner although she is entitled to deal with the property by occupying the building or part of it but subject to good behavior. In addition to this, in **Oloko v. Giwa**^{lix} the court held that the effect of the allocated property by the deceased husband to the wife was not to confer title or ownership to the wife. Furthermore, in **Caulcrick v. Harding**^{lx} the court held that the husband was not entitled to succeed to the property of the wife under customary law and vice-versa.

It appears that a widow is prevented by the customary law to administer the estate of her deceased husband. In **Ejiamaike v. Ejiamaike**,^{lxi} the Court held that a widow under Onitsha Customary law is prohibited to administer the estate of her late husband especially where there is an Okpala who is not a minor. A similar decision was reached by the court in **Aileru & Ors v. Anibi**^{lxii} where the court held that under Yoruba native law and custom a woman cannot administer the estate of her deceased husband.

From the above, it appears that the decision of the court is harsh against the widows on inheritance. Although in these cases cited above on properties allocation, the properties were family properties. However, on the contrary, the question that needs an answer is, should the widows continue to enjoy the properties left for her and her children by her late husband at the mercy of her in-laws? It appears that even where the property is solely owned by her late husband, the widow will not be allowed on the ground that she is not related by blood to her deceased husband. It is submitted that allowing a widow to live at the mercy of her late husband's family members is a clear picture of discrimination. It is not in doubt that the widow during the life time of her late husband contributed to the estate left behind for her, thus to subject such a widow to leave her late husband house with nothing is flesh cutting and more pathetic where the widow has no child.

That the widows are relegated under customary law of succession is worrisome. It appears the customary law in the Eastern part of Nigeria allows a man to inherit the property acquired by his wife after marriage upon her death. This was the position of the court in **Nwugege v. Adigwe & Ors**^{lxiii}, the court held that under the Igbo Customary law, any property a woman acquired before marriage goes to her family, but movable property acquired before marriage and taken with her to her husband's house belongs to her husband or his family and the properties acquired by a married woman after her marriage goes to her husband upon her death.

It is submitted that this decision is repugnant to natural justice, the customs which allows the husband to inherit the wife and not vice-versa is discriminatory. It is opined that most of the decisions held by the Court years back on inheritance are influenced by the patriarchal nature of dominance and the erroneous belief that women are part of men's properties upon marriage. It is submitted that customary law on inheritance especially those involving women should be contested in Court to bring about a better justice system. For instance, a High Court in Akure allowed a widow to be appointed as part of the administrators in **Re Joseph Asaboro**^{lxiv}. It is

suggested that women should be bold to test the law on some discriminatory customary laws for a review just as it was done in the case of **Ukeje v Ukeje**.^{lxv}

An Illegitimate Child

An illegitimate child is a child born out of lawful wedlock, or by another woman who is unmarried or who has legally dissolved her marriage before the birth of the child. It is clear that under the statutory marriage, an illegitimate child is not entitled to right of inheritance. An illegitimate child especially under the Yoruba custom is usually referred to as “Omo Ale”.^{lxvi} Also in Igbo language, an illegitimate child can be referred to as “Ime Nkpuke”.^{lxvii} Under Customary Law, (although not generally applicable) an illegitimate child can be made legitimate once the natural and biological father accepts paternity and acknowledges or recognizes the child as his own child. This may be by various conducts or actions such as by paying maintenance fee on the child, payment of the child’s school fees, where he has introduced the child to other people as his own even without any subsequent marriage between the father and the mother of the illegitimate child. In addition, it appears that an illegitimate child will be legitimated where the putative father eventually marries the mother of the illegitimate child. Thus, in **Adeyemi v. Bamidele**^{lxviii} the court held that a child born outside a wedlock will be legitimate if his paternity is acknowledged by the putative father.

The challenge attributed to an illegitimate child in succession related matters is when the mother of an illegitimate child proposes that the illegitimate child has equal right with the legitimate one especially during the distribution of estate of the child supposedly putative father. Most of the times this becomes a subject of litigation.^{lxix} The law is clear that an illegitimate child has no right of inheritance under succession unless such a child was acknowledged by the putative father before his death. Thus, in **Onwudinjo v. Onwudinjo**^{lxx}, the court rejected a claim of an illegitimate child who has no convincing evidence that during the life time of his putative father he acknowledged his paternity. The question that requires an answers is should the technicalities of law deprive an illegitimate child who resembles the deceased the right of inheritance because the paternity was not acknowledged and should of an illegitimate child be deprived from inheritance because of the circumstance of his birth?

It is submitted that a child who is innocent should not be made to suffer by the circumstance of his birth. It is understood that, the child has no contribution to the estate of the deceased father unlike other legitimate children who might have worked and contributed immensely to their father's estate before his death. In addition, it is opined that where an illegitimate child is allowed as a matter of fact, it will open a flood gate of frivolous assertion of paternity after the demise of the alleged putative father especially if the alleged father is rich and many doctored evidence may be pushed forward to reap where some women did not sow. Nevertheless, with respect to Section 42 sub sections (1) and (2) of the 1999 Constitution as amended, an illegitimate child should not be discriminated against. It is however suggested that, the mother of the illegitimate child should bring to the notice of the putative father about the existence of the illegitimate child as soon as possible for proper acknowledgement. Besides, where doubt arises, proper and convincing evidence should be put forward usually through DNA test to rescue an innocent child who came to the world out of wedlock.

An Adopted Child

Adoption is prevalent under the English law and usually practiced by parties under statutory marriage or those who subjected themselves under the English law. Under the customary law, adoption is not prevalent and the status of an adopted child is dicey in the view of some scholars, thus, while some opined that the adopted child does not have equal right with the legitimate children,^{lxxi} others have posited that they share equal rights provided the adoption process is legally and validly carried out.^{lxxii}

It appears the law favours the opinion of Nwogugu,^{lxxiii} that an adopted child has equal right with the illegitimate child even in succession. Thus, the validity of the adoption process will determine the stand and the position of the court. It is believed that adoption process permanently severed the relationship of the natural parent from the adopted child and all the rights of the natural parents on the adopted child will be extinguished, thereby conferring all the duties and rights of natural parents on the adopter to the benefit of the Adoptee. Thus, in **Administrator General v. Tuwase**,^{lxxiv} the court allowed an adopted child of the deceased, a Yoruba woman to inherit her estate together with her descendants. It is submitted that regardless of whether adoption was procured under customary law or under the English law, the right of succession should not be a barrier for adopted children because anybody who has

adopted a child has placed himself or herself in the position of natural parent and must treat the adopted child like his or her own biological or legitimate child.

Child Right Act Impact

It is submitted that this view is supported by the provision of Child's Right Act^{lxxv} which provides that an adoption order being made comprises of all rights, duties, obligations and liabilities, including any other order under the personal law applicable to the parents of the child or any other person in relation to the future custody, maintenance supervision and education of the child, all religious rights, right to appoint a guardian and to consent or give notice of dissent to marriage, shall be extinguished; and shall vest in, and be exercisable by and enforceable against the Adopter. Section 141 sub-sections (3) and (4) provide that for the purpose of the devolution of the property on the intestacy of the adopter, an adopted child shall be treated as a child born to the adopter and that in a disposition of property made after the date of an adoption order, reference whether express or implied to child or children of the adopter shall unless the contrary intention appears be considered as including a reference to the adopted child.^{lxxvi}

Furthermore, the Court of Appeal was recently faced with the an issue whether an adopted child can be deprived of inheriting and sharing of the estate of a deceased adopter in the case of **Aduba & Ors v. Aduba**^{lxxvii} the respondent in the case was received and accepted by the parents of the appellants in 1972 when the respondent was five years old from the Ministry of Health and Social Welfare. The respondent was absorbed and treated as a child of the family, trained and nurtured by Aduba and Felicia as their son. He grew up with other children, including the appellant into adult-hood and married in 1990. His status was not challenged as a member of the family while the parents were alive. After the death of Aduba Ohagwam Nwaemere and his wife, Felicia Aduba, the appellants came up with the idea that the respondent was not a member of late Aduba Nwaemere family. The court held that the respondent was entitled to share and inherit the estate of Aduba Nwaemere being the adopted parents who treated the respondent like their son and a member of the family. The Court of Appeal added that it will be inequitable and unconscionable to say that the respondent who was adopted, bears Aduba as his surname and raised together with the appellants is not a member of the

family after the demise of their parents and such attitude is against the provision of Section 42 subsection (1) and (2) of the 1999 Constitution as (amended).

It is crystal clear that under the English law and our respective legislations in Nigeria, when an adoption is legally and validity processed and secured, whether under the Act or customarily, the adopted child has the legal right to inherit in the estate of the adopter just like the legitimate children of the adopter. However, the question that needs an answer is whether adopted children can inherit from his biological or natural father?

It is obvious to state that adopted child cannot automatically claim the right of inheritance from his biological parents. Adoption is a process where by a person assumes the parenting of another, usually a child, from the person's biological or legal parents and in so doing, permanently transfer all rights and responsibilities, along with filiations from the biological parent or parents to the adopter. Thus, the above expression of adoption reveals that the natural tie between the natural parents and the adopted child has been cut off. However, since our law allows a testator to give his estate to whosoever he or she wishes, it appears that nothing will preclude an adopted child to inherit from his or her biological parents where such inheritance is specified in a Will or is bequeathed to the adopted child as a gift from his natural parent.

CONCLUSION

Customary law of succession is predominantly viewed under the Igbo and Yoruba customary laws of succession which operates when a person died intestate. It is a general rule that the personal law of a person governs his estate when he dies intestate. The distance and the number of years one has spent in another jurisdiction will not change his personal law except such a person decide to neutralize himself in the new society, fulfill all necessary obligations and has accepted the customary law of the new place to be his personal law as seen the case of **Olowu v. Olowu**.^{lxxviii}

Under the Yoruba customary law of succession, the children of the deceased have equal rights regardless of their sex. This gives a female child the legal right to inherit from her deceased father's estate. However, the widows are not allowed to inherit their deceased husbands' properties on the ground that they are regarded as chattels and besides, the customary law of

succession allows only those related by blood to inherit the deceased, although the woman can be granted a stay. The husband too has no right to inherit his wife except her personal properties.

The position of a female child under Yoruba customary law of inheritance was completely different because the Igbo customary law of inheritance which was primogenital and totally disallowed female children to inherit the deceased father's estate. However, this act of discrimination against female children to inherit their fathers' property has been revisited by the Supreme Court in the cases of **Ukeje v. Ukeje**^{lxxxix} and **Anekwe v Nweke**^{lxxx} where the Supreme court of Nigeria categorically stated that a female child is entitled to inherit from her deceased father's property under Igbo customary law and this has broaden the interpretation of Section 42 (1) and (2) of the 1999 Constitution as amended which prohibit discrimination in any form. This work has considered the similarities and differences between the Eastern and Western Customary Laws of succession by way of comparative analysis. It is submitted that, as a result of the recent cases delivered by the Supreme Court such as **Ukeje** and **Anekwe's** cases, which allows female children to inherit from her deceased father's estate has placed the customary laws of succession of the Western and Eastern Nigeria side by side with much similarities as against what was in operation before the reversion of the Supreme Court decision in the case of **Mojekwu v. Mojekwu**.^{lxxxi}

Furthermore, the right of succession by an illegitimate children under customary law was examined and it is submitted that where the putative father has acknowledged the paternity of the illegitimate child through some actions or attributes such as paying the school fees and maintenance of the child, the child has right to the devolution of the estate upon the demised of the putative father. In addition, an adopted child whose adoption process is legally and validly obtained is qualified to partake in the devolution of the estate of the adopter upon his demise both under customary and English law. It is also submitted that an adopted child has no automatic right to inherit from his biological parents except such gifts are made by Will or bequeath to him by his parents.

RECOMMENDATION

- i. This work recommends that there should be appropriate mechanisms which can aid the force of law on appropriate distribution of inheritance between the male and female children without superiority or inferiority complex respectively.
- ii. Adequate provisions should be made for enforcement of widows' right under the Igbo and Yoruba customary law in Nigeria. This will promote justice and raise the hope of widows in the devolution of properties acquired before the demise of their husbands.

ENDNOTES

ⁱ Babatunde Oni 'Discriminatory property inheritance Right under the Yoruba and Igbo Customary Law in Nigeria: the need for Reforms' *IOSR Journal of Humanities and Social Science*, Vol. 19, Issue 2, 2014 at page 30. Available online at www.iosrjournals.org Accessed on 20/06/2022.

ⁱⁱ Intestacy succession when a person dies without writing a Will and his estate is shared or distributed according to his personal law.

ⁱⁱⁱ Ibid. African Communities had them own laid down rules and established culture and customs governing their affairs, inheritance and succession.

^{iv} Emiola A. 'African Customary Law' (Emiola Publishers limited, Ogbomosho, Nigeria. 2011) P 177

^v Babatunde Oni "The rights of women to inheritance under Nigeria Law: An evaluation" (2008) 2 Nigerian journal of African Law Pg 40

^{vi} Ukeje v Ukeje (2014) II NWLR (PT 1418) 384; 408

^{vii} Titus Adekunle; 'Succession and Inheritance law in Nigeria: Resolving the Discrimination Proprietary Rights of Widows and Children' (search for the citizen). Available online at https://www.academia.edu/35665674/succession_and_inheritance_law_in_nigeria_resolving_the_discriminatory_proprietary_rights_of_widows_and_children. Accessed 23/06/2022.

^{viii} A will or testament is a legal document by which a person, the testator, expresses their wishes as to how their property is to be distributed at death, and names one or more persons, the executor, to manage the estate until its final distribution

^{ix} I. E. Sagay, Nigeria Law of Succession principles, cases, Statutes and commentaries (Malthouse Press Limited, 1st edition, 2006) Pg. 73.

^x Zaidan v Zaidan (1974) 4UILR. 283

^{xi} P. O. Itua "Legitimacy, Legitimacy and Succession in Nigeria: An Appraisal of section 42 (2) of the Constitution of the Federal Republic of Nigeria 1999 as amended on the rights of inheritance. Journal of law and Conflict Resolution Vol. 4(3), Pp 34-35

^{xii} Bello M. A. Principle and practice of Succession under Customary Law. A paper presented by Hon. Justice Moses. A. Bello, President Customary Court of Appeal at FCT Judiciary dated 24/06/2022.

^{xiii} This is a method of devolution of property under customary law of succession where children inherit from their father side only and if a man dies without a child his properties revert to his lineage.

^{xiv} This is a method of devolution of property under customary law of succession where children inherit from their mother side only and if a woman dies without a child her properties revert to her lineage to the exclusion of her husband's children or his lineage.

^{xv} This is a method of devolution of property under customary law of succession where children inherit from both parents. See also B. E Koffreh.; A review of Customary Law of inheritance and succession amongst the Efik and Qua Communities in Cross River State, Nigeria. An Article in International Journal of Research, Vol. 5 issue 15, May 2018 Pg. 1473.

^{xvi} Tapa v. Kuka (1945) 18 NLR 5.

- xvii *Osugwu v. Soldier* (1959) NRNL 39
- xviii Section 24 (a) of the law use Act, 1978
- xix *Yinusa v. Adebuseku* (1968) NNLR 97
- xx *Adeniyi; Oluwu & Ors v. Olabowale Oluwu & Ors* (1985) 3 NWLR (P7. 13) 372
- xxi *Babatunde Oni* (FN 1) P 36
- xxii *Babatunde Oni* (FN 1) P 31
- xxiii *Sogunro-Davies V Sogunro-Davies*
- xxiv *Sogbesan V Adeniyi* (1992) 5 NWLR (Pg. 242) Pg. 503
- xxv The concept of land holding in Yoruba land is usually through the family. It is believed that one must be traced to a particular family and until the law is alienated it is automatic to own by the family members as decided in the case of *Omoiregun V Sadatu* (1888) Colonial Nigeria A.
- xxvi *Lewis V Bankole* (1909) I NKR
- xxvii See *Ekpendu v Erika* (1959) 4 FSC P. 79
- xxviii *Ibid*
- xxix *Okeola V Adeleke* (2004) 13 NWLR (Pg. 890) 30 where the court observed that where a person dies intestate, leaving children surviving him. In accordance with Yoruba customary court, all his real property devolved on his surviving children to the exclusion of other blood relations.
- xxx *Amusan V Olawunmi* (2002) 12 NWLR (Pg 780) in this case the court even upheld the right of a woman to be family head in Yoruba custom
- xxxi *Salami v Salami* (1924) 5 NLR 43 where the court held that the plaintiff's right to inherit
- xxxii *Ricardo v Abal* 1926 7 NLR 58
- xxxiii *Danmole v Dawodu* (1953) 3 3 FSC 46
- xxxiv A custom whereby the properties of the deceased are divided into the number of wives he married and the share given to each of the wife will further be distributed among her children.
- xxxv A custom where by the properties are derived among the children of the deceased equally irrespective of the number of wives married by the deceased. See A. O. Obilade. *The Nigerian legal system* (Sweet and Maxwell, London, 1979) 86-87
- xxxvi (1961) ANLR 733
- xxxvii *Danmole v. Dawodu* (Supra)
- xxxviii (1928) 8 NLR 79
- xxxix *Suberu v. Suberu* (1957) 12 FSC 33
- xl For instance, section 16 (4) of Oyo State Customary Court law, 2000 allows a female to be entitled to proceed derived from the sale of her deceased father's land. This was adopted from the Administration of Estate Law of defunct Western Region 1959.
- xli *Babatunde Oni* (FN 1) P 34
- lii Some of the communities are Afikpo and Bendel areas of Abia and Ebonyi states as well as Abriba and Ohafia communities. See Titus Adekunle (F 6).
- liiii E. I. Nwogugu; *Family Law in Nigeria* (HBBN Publisher, Ibadan, Nigeria; 2014) pg. 416
- liiv *Mojekwu V Mojekwu* (1999) 7 NWLR (Pg. 512) 283.
- liv *Nrachi* is a practice under Igbo customary law of succession where a woman marries another woman for the purpose of having a male child that will bear the former father's name. Previously, under Igbo customary law of succession female children were not allowed to inherit their father's properties with their male siblings. Thus, if a female child is the only survival of the family and she intend to keep her father's property, she will remain unmarried but produce a male child who will continue the lineage of her father's name.
- xlvi E. I. Nwogugu supra Pg 35
- xlvi *Nwakanma Okoro. The Customary Law of Succession in Eastern Nigeria and the Judicial Rule Governing their application* London: (Revised) Sweet and Maxwell (1966).
- xlvi *Ugbonna V Ibeneme* (1967) F.N.LR 251.
- xliv Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979. Available online at <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>. Accessed 28/06/2022.
- ¹ P. O. Itua (Supra) Pp. 41 -42
- li *Mojekwu v. Mojekwu* (Supra)
- lii *Ukeje v Ukeje* (2014) II NWLR (PT 1418) 384; 408
- liii *Anekwe v Nweke* (2014) 9 NWLR (PT 1412) 393, 421-422
- liv *Ukeje v Ukeje* (Supra)
- lv *Anekwe v Nweke* (Supra)
- lvi *Ukeje v Ukeje* (Supra)

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- lvii Sogunro Davies v. Sagunro Davies & Ors (Supra)
- lviii Neziyanya v Olagbue (1963) 1 All NLR 352.
- lix Oloko v Giwa (1939) 15 NLR 31 see also Dosumu V Dosumu (1954) 14 WACA 527;
- lx Caulcrick v. Harding (1926) 7 NLR 48,
- lxi Ejiamaike v. Ejiamaike (1972) 2 ECSNLR Pg 11
- lxii Aileru & Ors v Anibi (1952) 20 NLR 46
- lxiii Nwugege v Adigwe & Ors (1934) All NLR 134.
- lxiv Re Joseph Asaboro Suit No, AK/4/70 (unreported)
- lxv Ukeje v Ukeje (Supra)
- lxvi Omo ale means a child out of wedlock from a mistress
- lxvii Ime Nkpuke means pregnancy out of the matrimonial home. See also G.B.A Coker; Family Property among the Yoruba's (Sweet & Maxwell, London 2nd Edition; 1996) at pg. 266.
- lxviii Adeyemi v Bamidele (1968) 1 ALL NLR 31 PG 37
- lxix Babatunde Oni (n1) at pg 38.
- lxx Onwudinjo v Onwudinjo (1963) ALL NLR 235
- lxxi O. R. Akujobi; Laws and Real property in Nigeria; Essay in memory of Professor J. A. Omotola. (Revised Ed, 2008) pg 240
- lxxii E. I. Nwogugu Family Law in Nigeria, (HEBN Publishers plc, 3rd Edition, 2014) pg 345.
- lxxiii Ibid.
- lxxiv Administrator General v. Tuwase (1946) 18 NLR 83
- lxxv See Section 141 of the Child's Right Act, 2003
- lxxvi Section 141 sub-sections (3) and (4) of Child's Right Act, 2003.
- lxxvii 2018 LPELR-45756 (CA)
- lxxviii Olowu v. Olowu (Supra)
- lxxix Ukeje v. Ukeje (Supra)
- lxxx Anekwe v Nweke (Supra)
- lxxxi Mojekwu V Mojekwu (Supra)
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