

LAWS AND PRACTICES RELATING TO WOMENS' INHERITANCE RIGHTS IN NIGERIA: AN OVERVIEW

Introductory Brief On Nigeria Legal System

The Nigerian legal system can best be described as a hotchpotch of Nigerian legislation, English law, customary law (including Islamic law) and judicial precedents.¹ Nigerian legislation consists of statutes and subsidiary legislation. Statutes consist of Ordinances, Acts, Laws, Decrees and Edicts.

The judicature re-established under the Constitution is made up of Federal Courts and State Courts. The Federal Courts consist of the Supreme Court of Nigeria, the Court of Appeal and the Federal High Court. The State Courts include, High Courts, Sharia Court of Appeal and Customary Court of Appeal. The various states have, under applicable state laws, established magistrate courts and customary courts. Customary courts are the lowest in hierarchy of courts, manned by non-lawyers. Formerly, lawyers had no right of appearance in customary courts, but this has now changed. But in the customary court of appeal presided over by legal personnel, lawyers can make formal appearance.

Being a federal state, all the three levels of government in Nigeria namely, federal, state and local government councils have powers to make laws. Whereas the federal law applies throughout the country, the state law is limited to the territorial jurisdiction of the state. A situation where each of the 36 states of Nigeria has power to make her own laws and to apply local customs within the state legal system which may vary from one

¹ Nigerian colonial experience left her with a plural-legal system. All the African States formerly under British administration share a common experience with regard to their legal and judicial systems. See Joy Ezeilo, "Genderizing the Judiciary in Commonwealth Africa" a paper presented at an International Conference on Gendering the Millennium, 11 – 13 September, 1998, University of Dundee, U.K.

geographical area to another within the same state, is nothing but complex.

The complex interaction of this multi-tiered legal structure which function, simultaneously, in conjunction with very significant informal social controls based on gender, ethnicity and religion affects the status of women particularly in marriage.

The influence of received English law on customary law is very prominent in the area of personal laws (marriage and inheritance). Laws governing the marriage relationship in Nigeria tend to impact dramatically on women's legal position and status in many respects including domicile, property rights and legal competence.² Invariably, a woman's right to property depends on the type of marriage she contracted. There are two types that are recognized under the law: statutory marriages and customary marriages, which include marriages under Islamic law. Therefore, any discourse on women's inheritance rights in Nigeria must be done in the light of diversity of the legal system.

Inheritance – Laws And Practice

Inheritance, which means the entry of living persons into the possession of a dead person's property,³ can be discussed under two major headings: -

- (a) Inheritance under the General Law – Received English Law and local statutes (testate and intestate inheritance).
- (b) Inheritance Under Customary Law (Wills and Intestate)

Basically, the law recognizes two kinds of disposition of property on death – testate and intestate inheritance. The rules

² Emiola A., *The Principles of African Customary Law* (Emiola Publishers, Ogbomoso, Nigeria, 1997) p. 122

³ *Towards a Restatement of Nigerian Customary Laws*, published by the Federal Ministry of Justice, Lagos, Nigeria, 1991, p. 136. See also Nwogugu, E.I. *Family Law in Nigeria*, (Heinemann Educational Books Nigeria, 1990).

respecting the latter are of greatest significance to Nigerian women.

Testate Inheritance/Succession

Nigerian law on testate inheritance/succession includes: The Wills Amendment Act, 1937 and the Wills Amendment Act, 1852, regarded as statutes of general application, which were in force in England on January 1, 1900. Also, the Wills (Soldiers and Sailors) Act, 1918 which deals with the formal validity of Wills.

In some states of the federation of Nigeria, the Wills Law, CAP 133, Laws of Western Nigeria applies.⁴ This 1958 law is essentially a re-enactment of the above mentioned laws on Wills. However, section 3(1) of the Wills Law, 1958 contains a provision not contained in the other Laws mentioned above to the effect that:

“The real or personal estate which cannot be disposed by the applicable customary law, cannot be disposed by will”.

Further, testate inheritance in some states in Eastern Nigeria is governed by the Succession Law Edict, 1987.⁵

The provisions of part 4 of the 1987 Edict are similar to those in the Wills Act, 1832 and Wills Law, 1958. It is important to note that these laws apply in respect of the spouses of a statutory marriage and their children. No disability is placed on widows with regard to inheritance under a testamentary disposition. They are not treated differently from other beneficiaries with regard to their general right of inheritance as their counterparts in England. The provisions of these laws,

⁴ These States are Western and Mid-Western States: Lagos, Oyo, Ogun, Ondo, Osun, Ekiti, Edo and Delta.

⁵ The States are Anambra and Enugu States – two of the Igbo speaking states.

however, do not extend to widows who contracted customary law marriages.⁶

Intestate Inheritance-Eastern States

In general, section 36 of the Marriage Act governs the intestate inheritance/succession in the Eastern States, predominantly Igbos, for persons married under the Marriage Act.

The Act provides that:

- (1) Where any person who is subject to customary law contracts a marriage in accordance with the provisions of this ordinance, and such person dies intestate, subsequently to the commencement of this ordinance, leaving a widow or husband, or any issue of such marriage; and also where any person who is the issue of any such marriage as aforesaid dies intestate subsequently to the commencement of this ordinance:

The personal property of such intestate and also any real property of which the said intestate might have disposed by will, shall be distributed in accordance with the provisions of the law of England relating to the distribution of personal estates of intestates, any customary law to the contrary notwithstanding; provided that:

⁶ For example, section 69. The Matrimonial Causes Act, Cap. 220 Laws of the Federation of Nigeria 1990, defines “*marriage*” for the purposes of the application of the Act to exclude marriage entered into according to Muslim rites or other customary law. Similarly, the court held in *Amadi v. Nwosu*, [1992] 5 N.W.L.R. 278, that the Married Women’s Property Act 1882 (a statute of general application in Nigeria) is inapplicable to marriages contracted and governed by customary law. The effect of that decision is that the capacity of women subject to customary law to acquire, hold and dispose of property depends on customary law.

- (a) where by the law of England any portion of the estate of such intestate would become a portion of the casual hereditary revenues of the crown, such portion shall be distributed in accordance with the provisions of customary law, and shall not become a portion of the said casual hereditary revenues; and
 - (b) real property, the succession to which cannot by customary law be affected by testamentary disposition, shall descend in accordance with such provisions of such customary law, anything herein to the contrary notwithstanding.
- (2) Before the registrar of marriages issues his certificate in the case of any intended marriage, either party to which is a person subject to customary law, he shall explain to both parties the effect of these provisions as to the succession to property as affected by marriage.

The Controversy

It has been very controversial whether the Marriage Act applies to other parts of Nigeria outside Lagos in view of section 36(3), which limits the application of the section to “the colony only”. Some writers have interpreted this sub-section restrictively to mean the colony of Lagos, which was the only part of Nigeria known during the colonial administration as a colony in the strict constitutional sense.⁷ According to them, if section 36 was intended to apply to the whole country, there would have been no need for the inclusion of sub-section (3) as the Marriage Act of which section 36 was but a part applied to Nigeria.

⁷ See (1) Kasumu and Salacuse, *Nigerian Family Law*, (London: Butterworths, 1966), p. 262; (2) Obi, S.N.C., *Modern Family Law in Southern Nigeria*, (London: Sweet and Maxwell, 1966) p. 342 (3) Nwogugu E.I., *Family Law in Nigeria* op. cit., p. 390.

In effect, there is still confusion with respect to intestate succession of persons married under the Act. In response to this problem, some states in the Eastern States namely Anambra, Enugu and Ebonyi States have adopted the Succession Law Edict. This legislation deals with inheritance/succession to real and personal estate on intestacy.

Section 120 of the Administration and Succession (Estate of Deceased Persons) Law, 1987 prescribed detailed rules of distribution of real and personal estate on intestacy:

- 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 on 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 marries, whichever 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-marriage, 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 in equal shares absolutely or failing children, on trust for the children of the intestate’s children in equal shares absolutely.

- c) If the intestate leaves a husband or wife as well as one or more of the following – a parent, a brother or sister of the whole blood or children of a brother or sister of the whole blood, but does not leave a child, two thirds of the residuary estate shall be held on trust for the surviving spouse. In the case of a husband, the interest shall be absolute while for a wife, it will last for her life or until her re-marriage, whichever first occurs. The remaining one-third of the estate together with any residue on cesser of the wife's interest shall be held on trust for the brothers of the whole blood in equal shares absolutely. In the absence of brothers of the whole blood or their children, the portion will be for parents absolutely.
- d) Where the intestate leaves children or children of deceased children but no husband or wife, two thirds of the residue of the intestate's estate shall be held on trust for the children of the intestate equally. Of the remaining one third, one sixth shall be held on trust for the parents and the other one-sixth for brothers and sisters.
- e) If the intestate leaves no husband or wife and no children or children of deceased children, but leaves both parents, two-thirds of the residuary estate of the intestate shall be held on trust for the parents in equal shares absolutely. The other one third shall be held on trust for brothers and sisters, if any, in equal shares absolutely. If no brothers and sisters survive, their share shall go to the parents.
- f) Where the intestate leaves no husband or wife and no issue, but leaves one parent, two-thirds of the residuary of the intestate's estate shall be held on trust for the surviving father or mother. One-third of the value of the estate will be held on

trust for brothers and sisters in equal shares absolutely. If there are no brothers and sisters, their shares will go to the surviving father or mother.

- g) If the intestate leaves no husband or wife and no issue and no parent, the residuary estate of the intestate shall be held on trust for the following persons living at the death of the intestate and in the following order and manner:
 - (i) First, upon trust for the full brothers and sisters of the intestate. But if no person takes an absolutely vested interest under such trusts, then
 - (ii) Secondly, on trust for the half-brothers and half-sisters of the intestate. If no person takes an absolutely vested interest under such trusts, then
 - (iii) Thirdly, on trust for the grandparents of the intestate, in equal shares. If there is no member of this class, then
 - (iv) Fourthly, on trust for the uncles and aunts of the intestate but if no person takes an absolutely vested interest under such trust, then
 - (v) Fifthly, on trust for the uncles and aunts of the intestate.
- h) In default of any person taking an absolute interest under the foregoing provisions, the residuary estate shall belong to the head of the family of which the deceased was a member. Such a head of family shall, out of the whole of the property devolving on him, provide for the dependants, whether kindred or not, of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision.

Western States (including Mid-Western States)

The relevant law in regard to death intestate of a person married under the Marriage Act is the Administration of Estates Law 1959. It is important to note that, under the 1959 law, provisions of that law do not apply where the distribution, inheritance and succession of any estate is governed by customary law. This is because under the Administration of Estates Law 1959, the distribution of intestate estate applies only where persons are married in accordance with the Marriage Act.⁸ Section 49 provides in detail for devolution of real and personal property on intestacy.

According to section 49(5):

“Where any person who is subject to customary law contracts a marriage in accordance with the provisions of the Marriage Ordinance and such person dies intestate after the commencement of this law leaving a widow or husband or any issue of such marriage, any property of which the said intestate might have disposed by will shall be distributed in accordance with the provisions of this law, any customary law to the contrary notwithstanding provided that:

- (a) where by virtue of paragraph (f) of subsection (1) of this section the residuary estate would belong to the state as *bona vacantia*, such residuary estate shall be distributed in accordance with customary law and shall not belong to the state; and
- (b) any real property, the succession to which cannot by customary law be affected by testamentary disposition, shall descend in accordance with customary law, anything herein to the contrary notwithstanding.”

⁸. The case of *Zaidan v. Mohsons* [1973] All N.L.R. 86 illustrates these points.

There is need to observe that by specifically referring to marriages celebrated in accordance with the provisions of the Marriage Act, the law excludes monogamous marriages celebrated outside Nigeria and customary law marriages, whether contracted within or outside Nigeria.⁹

Law And Practice

With respect to intestate succession in Nigeria, there is a wide gap between law and practice. The existing laws with regard to intestacy of persons married under the Act are hardly enforced. The position in practice is that when a man dies intestate, the tendency or the usual practice in most Igbo-speaking states of Eastern Region is to subject all his estate—both realty and personally – to customary laws of intestate succession. Needless to say, these customary laws are very discriminatory against women.

The probate divisions of the High Court would hardly grant a woman alone letters of Administration. It must be jointly with the male children of over 21 years or a near male relative of the deceased husband.

Inheritance Under Customary Law

It is significant to observe that lives the of a majority of Nigerians are governed by customary laws. Not surprisingly about 80% of disposition of property are settled under customary law. The fact that many states do not have appropriate laws to deal with intestate succession has also increased the application of customary laws in distribution of real and personal property.

Since customary laws are generally heavily weighted against women, their rights of inheritance suffer unduly in the face of systematic gender discriminatory and oppressive rules.

⁹. See Nwogugu E.I., *Family Law in Nigeria*, op.cit., p.386.

Inheritance under customary law, including Islamic law,¹⁰ could be testate and intestate. Although our focus is intestate inheritance, which usually generates problems, I will like to briefly restate the position with regard to testate inheritance under customary laws.

Testate Inheritance

Wills are not unknown under customary law in Nigeria. They can be oral – nuncupative wills or written wills. Customary written wills usually evoke controversy especially as to whether they must comply with the provisions of the Wills Act 1837 or Wills Law 1958 already mentioned. Again, there is also a problem of the exact effect of such a document.

Under the Maliki School of Moslem law applicable in Nigeria, a testator may dispose of part of his estate by Will. However, a Moslem testator can bequeath only one-third of his estate to persons other than those who would traditionally be his heirs.¹¹ The remaining two-thirds devolves on his traditional heirs. There is also no requirement of writing or of signing and witnessing as in the case of statutory law. Professor Nwogugu is of the opinion that if the Will is in writing but does not comply with the requirements of the Wills Act, it would be treated as valid under customary law.¹²

Intestate Inheritance

Since customary laws and practices governing intestate inheritance vary from one ethnic group to another, it becomes necessary to discuss this topic in relation to three major ethnic groups in Nigeria: Igbo, Yoruba, Hausa (predominantly Islamic communities).

¹⁰ Section 2 of the Native Courts Law, 1956 defined customary law to include Islamic Law of Sharia.

¹¹ *Adesunbokan v. Yunusa* [1968] N.N.L.R. 79.

¹² Nwogugu, E.I. *op.cit.*, pp.397 – 398.

Igbo Customary Law Of Inheritance

In the vast majority of Igbo communities, the family grouping is strictly patrilineal.¹³ Thus, inheritance is based on the principle of primogeniture; that is, succession by the eldest son, known as “Okpala” or “Diokpa”.¹⁴ Where the deceased is a polygamist and has many sons from several wives, the eldest sons of each of the wives may take part in sharing of the intestate. However, daughters and wives have no right to succession to their father’s movable and immovable property.

As has been stated:

“Personal property including wives and slaves descends to the eldest son as heir, or failing a son, to the oldest brother or male relative”.¹⁵

Basically, wives do not inherit because of the customary notion that women are property and, therefore, object of inheritance themselves. A long line of authorities has firmly established this principle. In *Nezianya v. Okagbue*,¹⁶ the Supreme Court of Nigeria, held that:

“Under the native law and custom of Onitsha, a widow’s possession of her deceased husband’s property is not that of a stranger and however long it is, it is not adverse to her husband’s family and does not make her owner; she cannot deal with the property without the consent of his

¹³ There are few cases of matrilineal communities in which the right of succession is through mothers or females. It has also been observed that – no Nigerian system fits into this purist form of matrilineal inheritance. *Towards A Restatement* See Professor Uche, “*The Matrilineal System of Inheritance – The Nigerian Model*” in Nigerian customary Law *op.cit.*, p. 174 – 186.

¹⁴ Bini rules of inheritance in Mid-Western Nigeria are similar to those of the Igbos. See the following cases *Ogiamen v. Ogiamen* [1967] N.M.L.R. 245; [1967] 1 ALL N.L.R. 191; also the recent case of *Chief Saka Lawal – Osuala and 4 others v. Lydia Modupe Lawal Osuala & 5 others* [1993] 2 NWLR p. 158.

¹⁵ Obi, S. N.C. *The Ibo Law of Property*, *op.cit.*, pp. 187 – 188.

¹⁶ [1963] All N.L.R. 358 S.C

family. She cannot by the effluxion of time claim the property as her own, if the family does not give their consent, she cannot it would appear, deal with the property. She has, however, the right to occupy the building or part of it, but this is subject to good behaviour. Further, the court stated that no equity arose in the widow's favour through her long possession, it having been acquired by her qua member of her husband's family with consent (actual or implied) of his family".

The Supreme Court again, and after more than 20 years, has passed and reaffirmed the above decision in *Nzekwu v. Nzekwu*¹⁷ and maintained that the interest of the widow in the house is possessory and not proprietary so that she cannot dispose of it.

Daughters, like wives, do not inherit under Igbo customary law. The only situation where a daughter can inherit is where, for example, she chooses to remain unmarried in her father's house with a view to raising children in the father's home. This is known as "*nrachi*" or "*Idegbe*" institution. It usually happens when a man left on death a substantial estate, but no surviving sons or other male issue of the lineage to inherit it. The idea behind this practice is to save the lineage from extinction. The daughter, as an "*idegbe*" or "*nrachi*" is entitled to inherit both movable and immovable property of her deceased father's estate. The legal interest vests in her until she gives birth to her own children. However, if she bears sons and daughters, the sons and not the daughters, will succeed her in accordance with the rule of primogeniture.

In respect of an unmarried daughter who is not an "*idegbe*", her estate is inherited by full brothers; in default, fathers. If there is no surviving father or brother, the half-brother will inherit but a sister or half-sister can never inherit.¹⁸

¹⁷. [1989] 2 NWLR 373.

¹⁸. See note. 15 above p. 185.

In a situation where a wife pre-deceased her husband, succession is as follows: the sons will inherit, failing sons, husband. The wife's property like money, cattle, yams and other important chattel goes to the sons or husband as the case may be, while the daughter inherits what is regarded as feminine properties, for example, jewellery, domestic utensils, dresses, cocoyam and livestock (fowls).

The Changing Tide – Mojekwu V. Mojekwu¹⁹

This recent case seems to have changed the tide with respect to women's right to property. The Court of Appeal held unconstitutional and contrary to democratic values an age long Igbo customary law under which males and not females inherit their father's property. According to Justice Niki Tobi, who delivered the lead judgment:

All human beings – male and female are born freely, without any inhibition on grounds of sex; and that is constitutional. Any form of societal discrimination on ground of sex, apart from being unconstitutional, is antithetic to a civil society built on the tenets 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 parents. Although the scientific world disagrees with the divine truth, 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 against a particular sex is to say the least an affront to the Almighty God Himself. Let nobody do such a thing. On my part, I have no difficulty in holding

¹⁹. [1997] 7 NWLR p. 283 Judgment of Court of Appeal of Nigeria sitting in Enugu. Delivered on April 10, 1997.

that “Oli-Ekpe” custom of Nnewi is repugnant to natural justice, equity and good conscience.²⁰

This case is currently before the Supreme Court on appeal. Until the Supreme Court pronounces on the matter and overrules its previous decisions, we need not jubilate.

Yoruba Customary Law

Generally, under the Yoruba customary law, it is the children of the deceased, whether male or female, who are entitled to succeed to the deceased father’s property on his death intestate to the exclusion of other relations.²¹ The property is shared among the children, either equally per capita (“ori-jori”) or per stipes (“*idi-igi*”) where the deceased man has more than one wife. In *Sule v. Ajisehiri*,²² it was held that the partition must be equally between those entitled regardless of sex. Thus, the defendant’s claim that being a male he was entitled to a larger share was rejected.

In contrast, a wife has no right of inheritance in her deceased husband’s estate. Under customary law marriage, the widows form part of the estate of their husband. As Jibowu, F.J. observed in *Suberu v. Sunmonu*²³

“It is a well settled rule of native law and custom of the Yoruba people that a wife could not inherit her husband’s property since she herself is, like a chattel, to be inherited by a relative of her husband”.

Again, in *Sungunro – Davies v. Sungunro*,²⁴ Beckley J. said that the reason for depriving a wife of inheritance rights in the deceased husband’s estate was because devolution of property under native law and custom follows the blood.

²⁰ Ibid. See p. 305.

²¹ See Orojo, *Customary Court Manual*, Ondo State, 1980, p. 119.

²² 13 N.L.R. 146.

²³ (1957) 2 F.S.C. 31.

²⁴ (1929) 2 N.L.R. 79

Consequently, unless a property given to a wife is proved to be an outright gift it will pass on the husband’s death to the husband’s family. She has no right of inheritance whatsoever.²⁵

The Administration of Estate Law 1958 applicable to the whole Yorubaland, which gives spouse’s right to succeed to each other’s property, does not apply to persons subject to customary law.

Islamic Law of Inheritance

Succession rights under Islamic law are mathematically laid out in the Quar’an. Under the law, wives and daughters are entitled to participate in the sharing of the estate of their deceased husband or father. When there are children or other descendants, the widows portion is one-eighth of the deceased estate. If there are more than one widow, the one-eighth is shared equally amongst them. A woman without any child inherits one – quarter of the deceased husband’s estate.²⁶ The following are the primary heirs and their shares:

- a) Father, one-sixth ($\frac{1}{6}$)
- b) Grand father, one-sixth ($\frac{1}{6}$)
- c) Mother, one-sixth ($\frac{1}{6}$) with a child and one-third ($\frac{1}{3}$) without a child.
- d) Grandmother, one-sixth ($\frac{1}{6}$) with a child and one-third ($\frac{1}{3}$) without a child.
- e) Husband, one-fourth ($\frac{1}{4}$) with a child and one-half ($\frac{1}{2}$) without a child.
- f) Wife or wives, one-eighth ($\frac{1}{8}$) with a child and one-fourth ($\frac{1}{4}$) without a child.

²⁵ See generally, Justice Muri Okunola “*Relationship Between Islamic Law and Customary Law of Succession in Southern Nigeria*” in *Towards A Restatement of Nigerian Customary Law* op. cit., pp. 151 173. Also Obilade A.O. (ed.) *Women in Law*, (Published by Southern University Law Centre, and Faculty of Law, University of Lagos, 1993) Chps 7 and 13).

²⁶ *Ahmadu Sidi v. Abdulahi Sha’aban* [1992] 4 NWLR p. 113.

- g) Daughter, half ($\frac{1}{2}$) when alone, and two-third ($\frac{2}{3}$) if more than one son.
- h) Son's daughter, howsoever like above.
- i) Uterine brother or sister, one-sixth ($\frac{1}{6}$) if one, one-third ($\frac{1}{3}$) if more.
- j) Full sister, one-sixth ($\frac{1}{6}$) when alone, and two-third ($\frac{2}{3}$) if more.
- k) Consanguine sister, half ($\frac{1}{2}$) if one and two third ($\frac{2}{3}$) if more.²⁷

Addressing the Problem of Women's Inheritance Rights in Nigeria

There has not been any concerted action by women's movement towards enhancing inheritance rights of women in Nigeria. Their work has been disjunctive and as such, no desired national impact has been made. The reason for this may be partly because the status of women in Nigeria with respect to inheritance is not the same everywhere. Some women, particularly women married under the Act (statutory marriage), enjoy better inheritance rights and may not be bothered about the situation of other women subject to customary laws. A good example of this is a draft bill on Administration of Estate 1965, Laws of Eastern Nigeria,²⁸ which received so much criticisms from religious and women's organisations because it purportedly:

²⁷. Quar'an Chp. 4 verse 14, see Professor Yakubu "*Property Inheritance and Distribution of Estates under Customary Law*" in *Towards A Restatement of Nigerian Customary Laws* op. cit. pp. 144 – 145.

²⁸. See Eastern Nigeria Gazette No. 66, Enugu 17 September 1965 Vol. 14. Following criticisms, the Bill was withdrawn to enable full consultations with these interested bodies. But the whole exercise was cut short by the military takeover in January 1966.

As Prof. Nwogugu, op. cit., rightly observed: The 1965 Bill would have been the most comprehensive and revolutionary effort to put the law on administration of estates on a rational basis.

- 1) defined a "wife" to mean "a wife of a marriage celebrated in accordance with Nigerian customary law including muslim law";
- 2) and it also acknowledged the right of an illegitimate child to inheritance.

The work of NGOs concerned with the promotion of women's rights in Nigeria has been mainly at the level of advocacy – creating awareness about the type of marriage that will give a woman better inheritance rights and encouraging men to make wills. This lop-sided type of advocacy that is not targeted at influencing laws and policies pertaining to inheritance rights have not improved in any way the status of women in Nigeria vis-à-vis inheritance rights.

The Nigerian government has not done well either. There is a clear lack of political will to effect any legislative changes particularly at Federal (National) level. All the recommendations of the Law Reform Commission relating to family and personal laws are yet to be promulgated into law that will ensure that all marriages recognised under the law enjoy equal status.

The Draft Bill on "Marriage Act" submitted to the Federal Government in October 1984²⁹ made recommendations for Registration of all types of marriages and also a scheme for intestate succession applicable not only to monogamous marriages but also to those marriages that are registered.

Furthermore, there is lack of economic and political will to use existing governmental structures – for example, Federal and State Ministries of Women Affairs and Social Justice and National Commission on Human Rights - to improve women's rights to inheritance.

Although the Constitution of the Federal Republic of Nigeria 1999, in section 42, prohibits discrimination on grounds of sex, item 62 of the Exclusive Legislative List precludes the federal government from legislating on the formation, annulment

²⁹. See *Law Reform* No. 2, November 1981, pp. 15 – 57 (published by the Nigerian Law Reform Commission, Lagos).

and dissolution of marriages contracted under Islamic and customary law, including matrimonial causes thereto. This leaves important issues that have enormous implications for women in Nigeria to various States that make up the federation to individually decide.

The Nigerian government has ratified the Convention on Elimination of All forms of Discrimination Against Women (CEDAW: 1979) without any reservation and also the African Charter on Human and Peoples Rights (1981),³⁰ which requires states to eliminate all forms of discrimination against women recognised in International Conventions and Declarations.³¹

Consequently, it is expected that the government should adopt appropriate legislation and actions aimed at modifying discriminatory laws, regulations, customs and practices against women.³²

As at now, there is no national committee charged with the supervision of implementation of CEDAW in Nigeria.

Specific Obstacles To Women's Inheritance Rights

a) Legal

Inadequate laws regulating administration of deceased estate particularly at federal level constitutes a major obstacle to women's inheritance rights.

Compounding this problem is also our legal system which gives rise to the operation of at least a tripartite system of laws that function simultaneously. The existing laws dealing with inheritance and succession are not entirely free from sexist biases.³³

³⁰. The Charter is now part of our domestic law by virtue of its incorporation – see CAP 10 Laws of the Federation of Nigeria, 1990.

³¹. Article 18(3) of the Charter

³². See in particular articles 2(f) and 16 of CEDAW.

³³. A reading of section 120(b) of the Administration and Succession (Estate of Deceased Persons) Law illustrates the gender biases in our laws.

Furthermore, there is gap between law and practice. For example, on intestacy customary law applies notwithstanding the fact that the parties have entered into statutory marriage.

b) Political Obstacles

Generally speaking, Nigerian women are politically marginalized. They lack access to power and decision-making positions through which meaningful changes can be realised. Government political appointments hardly favour women. They have always been tokens. For meaningful progress, women's political participation must be full and not mere tokenism.

c) Socio-Cultural Obstacles

Women's social status is still very low. This is mainly due to illiteracy, poverty and cultural practices, which treat women as mini persons, objects of inheritance rather than subjects of inheritance. The traditional, cultural and religious beliefs that women are inferior and subordinate to men tend to perpetuate widespread practices involving violence and very harmful to women. The discrimination in education of girls and boys is borne out of this patriarchal attitude including son preference ideology.

Frequent importation of native law and custom of inheritance to execution of wills of a testator duly made under the Wills Act results in hardship to even wives of statutory law marriage. For example, if a testator bequeaths his matrimonial home to his wife in perpetuity, objections are raised to the execution of that bequest on the ground that by native law and custom of Igbos, for example, a man's dwelling house (matrimonial home) belongs to his eldest son or to his male next-of-kin where he is not survived by any male issue.

c) **Economic Obstacles**

Women's economic status has further jeopardized their inheritance rights. Women, owing to several factors, lack access to means of production and since a woman's right to property is subject to varying traditional and cultural practices, her ability to secure credit is undermined.

Women in Nigeria perform multiple economic and household responsibilities in the face of systematic discrimination in accessing the basic technologies and resources which are required in order to function in an economically productive and efficient manner. This discrimination imposes considerable limits on women's capacity to participate in development. The role of women in Nigerian economy is largely unrecognised.

d) **Religion As An Obstacle**

Both religions practised in Nigeria – Christianity and Islam - militate against women's rights to inheritance. A woman is not viewed as man's equal, consequently both religions will hardly concede equality of share in inheritance. The varying systems of religion relegate woman to the background thereby reinforcing the inferiority of women.

Possible Response Strategies

Law Reform

Harmonisation of received English law, local statutes and customary laws, particularly in the area of family law – marriage and inheritance is very important. This has been done in Tanzania successfully. In fact, it was one of the first countries in Africa to attempt the unification of customary laws in its various tribes.

Kenya has made several attempts to solve the problem of multiplicity of personal laws but like Nigeria, it has not been successful. Although it is recognised that law is not a panacea for

all problems, it is a very useful beginning that can ensure that the different types of marriages enjoy social and legal parity of status.

Institutional Reform

Institutional reform to support legislative reforms is important. For example, specific legal aid for women; appeal office for discriminatory practices; gender specific data collection and dissemination facilities.

Literacy And Legal Education

Women's movements should intensify efforts that will bring about legal literacy. Mass literacy and legal education of the public should accompany reforms in law. This will enable women to become aware of channels of legal assistance and action.

Urgent Action Funds

An urgent action fund should be put in place to assist women globally in pursuit of their rights to equal dignity and freedom from sex discrimination. Such funds will support women to fight discriminatory inheritance laws and practices.

Gender Sensitive Training

Gender sensitive training of the judiciary and other law enforcement officers is important for effective elimination of discrimination against women, moreso, because judicial precedent forms part of the law.

Advocacy

NGOs and other women's organizations should be trained to engage in advocacy that will influence laws and policies.

Networking

The importance of networking amongst women's groups, locally, nationally and internationally can never be over-

emphasized. It is only through a concerted action that the desired *de jure* and *de facto* changes can be achieved.

Research

Conducting intensive and well-documented research into women's realities with respect to inheritance laws and practices will provide the much-needed information to embark on advocacy for change.

Conclusion

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. Also, the laws and practices governing inheritance and succession under customary law is very discriminatory and, therefore, constitute a major obstacle to the achievement of equality between men and women. Even the Islamic system that appears to be the most just under customary law does not give equal rights to inheritance to daughters and wives. Social justice demands that both forms of marriage should be given equal treatment, *moreso*, when both marriages are recognized under the law as valid. Nigerian government also is a signatory to CEDAW and should keep to its signatory obligation as a state party. In particular, section 2(f) which placed an obligation on the government "to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women" should be implemented. Similarly, the African Charter on Human and Peoples Rights in section 18 (3) stipulates that "the State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions". This also should be implemented.

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