



IFE JURIS REVIEW

Journal of Contemporary Legal and Allied Issues,
Published by the Department of Jurisprudence and Private Law,
Faculty of Law, Obafemi Awolowo University, Ile-Ife, Nigeria.
IFJR, 2017 Vol. 11 (2) (May - August) ISSN: 0794-1048

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SUCCESSION AND THE RIGHTS OF FEMALE CHILDREN AND WIDOWS AGAINST MALE COUNTERPARTS UNDER CUSTOMARY LAW IN SOUTHERN NIGERIA

*Adepoju Adebisi Anthony **

ABSTRACT

The patterns of inheritance and succession, particularly under intestate estate under customary law in Nigeria, have almost as many variations as there are ethnic groups in the country, and many of the variations are discriminatory in practice. The law of succession and inheritance reflects Nigeria's plural legal system. Indigenous customary law developed rules of inheritance for intestacy through the traditional canon of descent, as adapted over the years to changes in the society and the rule of natural justice as applied by the courts. Rather than trying to cover all the patterns of succession, this paper examines a few of the succession patterns, with particular reference to the discriminatory aspects under customary law. The study concluded that even though customary laws differ from place to place, some principles of customary Law seem to repeat themselves in the different cultures. Intrinsic in almost all customary laws is the principle that men are superior to women and as such women are subject to men. Following this notion, women are viewed as belonging first to their fathers and subsequently to their husbands. Therefore, women are denied many rights including the right to inherit property and others from their fathers and husbands, the right to own property since they are themselves chattels to be inherited. Finally the study concluded that this is contrary to the principle of non discrimination as enshrined in section 42 of the 1999 Constitution which provides that no person should be discriminated against only on ground of sex, race, religion etc.

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INTRODUCTION

Customary laws consisted established patterns of behavior which could be objectivity verified within a particular social setting which developed in particular communities and developed the force of law when they became the undisputed rule by which certain entitlements are attached. Intestate succession in Nigeria is governed by different rules. It systematically project the applicable laws in a situation where a person died without making any will or any pronouncement as regards the properties left behind by the deceased persons. In Nigeria, there is no uniformity of applicable laws relating to the rights of beneficiaries under customary law.

It was however found that there was no simple set of customary laws of inheritance in Nigeria but varied from one locality to another or from one tribe to another. It was also revealed that many rules of customary laws relating to inheritance such as Igiogbe of Benin, Oli-Ekpe of Igbo land and Ori-ojori in Yoruba land as well as Islamic rules of inheritance in varying degrees discriminated against women and gave credence to male children than female ones.

Even though customary laws differed from place to place, some principles of customary law seem to repeat themselves in the different cultures. Intrinsic in almost all customary laws is the principle that men are superior to women and as such women are subject to men. Following this believe, women are viewed as belonging first to their fathers and subsequently to their husbands.

This paper however, examines the various rules of inheritance under customary laws of Yoruba, Igbo and Benin people as well as Islamic provisions for inheritance. The paper also appraised the inheritance rights of widows in the above mentioned area under customary rules in Nigeria and in conjunction with constitutional provisions, Judicial decisions and international treaties and conventions such as the convention on the elimination of all forms of discrimination against women and others.

INTESTATE SUCCESSION

Intestate succession basically involves the application of three systems of law. These are (a) the Common Law (b) the Administration of Estate Laws of the various States and Customary Law.¹ The crucial question is how does one determine the applicable laws to be applied in cases of intestates' succession? According to Prof. Itse Sagay (SAN)² the factor, which determines which system is to apply in every case, is the type of marriage contracted by the intestate person.

Thus, if a person contracts a Christian (monogamous) marriage outside Nigeria, the common law of England governs the distribution of his estate, if he contracts a statutory (Act) marriage in Nigeria, then if he dies domiciled in Lagos or any of the states comprising the old Western Region, then the Administration of Estate Law³ will govern. If he contracts a statutory marriage, but dies domiciled in any of the States comprising the former Northern or Eastern Regions, which are yet to enact their own law on non- customary succession, then the common law will also govern the distribution of his estate.⁴ Furthermore, if the intestate person was an indigenous Nigerian and he did not contract a Christian or Act marriage, or even if he did, and no issue or spouse of such a marriage survived him, his estate will be distributed in accordance with the relevant customary law. If the intestate was a Muslim, then Islamic law would govern.⁵ Also, where a person who is subject to customary law or Islamic law dies intestate, it is his personal law that will apply to the distribution of his immovable property and not the *lex situs*".⁶

¹ Customary Law in the context includes Muslim law. See also *Zaidan v Zaidan* (1974) 4 UILR 283.

² I. E Sagay, *Nigerian Law of Succession Principles, Cases, Statutes and Commentaries*, (1st ed, 2006, Malthouse Press Limited) at 73

³ Cap. 1 1959 Laws of Western Nigeria presently comprises states like Oyo, Ogun, Osun, Ekiti, Ondo and Lagos States.

⁴ See *Administrator – General v. Egbuna and Others*. 18 NLR 1

⁵ I. E. Sagay, *Nigerian Law of Succession Principles, Cases Statutes and Commentaries*, (1st ed, 2006, Malthouse Press Limited) at 73.

⁶ See *Zaidan v. Zaidan* (1974) 4 UILR 283 and section 13 of the Bendel State High Court Law.

SUCCESSION UNDER CUSTOMARY LAW

Basically succession under customary law is intestate succession. It is applicable to the estate of a person who is subject to customary law, contracted a statutory or Christian marriage and dies without being survived by a spouse or a child of that marriage. In Nigeria, there is no uniformity of rules of succession under customary law. The reasons for this state of affairs are not farfetched. There are so many ethnic groups in Nigeria, each with its own peculiar characteristics even within a larger ethnic classification. In some parts of Nigeria, for example among the Yoruba speaking ethnic groups in the southwest, succession is based on the concept of family property. While on the other hand, among the Edo people in the present day Edo State, former Mid-Western Nigeria, the concept of male succession prevails with little modifications. How does one determine the correct law to apply in cases of intestate succession under customary law? Essentially, the deceased customary law is the appropriate law to be applied in such situation.

The law, that is, the deceased customary law will be applicable even though the deceased died outside his ethnic group or leaves properties outside his hometown. It is also important to note that while it is true that with respect to land matters generally, the customary law of the place where the land is situated is applicable, with respect to inheritance, the appropriate customary law is the customary law of the deceased.⁷ Before the Supreme Court decision in *Olowu v. Olowu*⁸ it was a generally accepted principle of law in Nigeria that a person carried his customary law with him. Therefore, it was not legally possible for a Nigeria to change his ethnic group and acquire another ethnic identity, irrespective of the number. Thus in *Osuagwu v. Soldier*⁹ where the court was faced with a situation of whether to apply Islamic law which was the *lex situs* and *lex loci*, or to apply Ibo customary law which was the personal law of the parties to the resolution of a dispute between two Ibo men who were living in Kano, the court resolved in the interest of justice to apply the Ibo customary law in the resolution of the conflict. Consequently, the court held as follows:

⁷See *Tapa v Kuka* (1945) 18 NLR 5, *Zaidan v Zaidan* (1974) 4 UILR 283.

⁸(1985) 3 NWLR (Pt. 13) 372

⁹(1959) NWLR 39

... we suggest that where the law of the court is the law prevailing in the area but a different law binds the parties, as where two Ibos appear as parties in the Muslim court in an area where Muslim law prevails, the native court will... in the interest of justice... be reluctant to administer the law prevailing the interest of justice... choose to administer the law which is binding between the parties".¹⁰

In *Yinusa v. Adesubokan*¹¹ Bello J. (as he then was) held that duration is immaterial when considering whether a settler and his descendants have merged with the natives of the place of settlement. The test is whether it can be established that as a result of the settlement, the settler has merged with the native, and has subsequently adopted their ways of live and custom. He continued as follows:

... subject to any statutory provision to the contrary, it appears... that mere settlement in a place, unless it has been for such a long time that the settler and his descendants have merged with the natives of the place of settlement and have adopted their ways of life and custom, would not render the settler or his descendants subject to the native law and custom of the place of settlement.

Bello J's view received judicial recognition/consideration by the Supreme Court in *Olowu v. Olowu*¹² here the court was urge to consider whether it was possible for a person to change his personal customary law of origin in favour of that of his adopted place of settlement. The facts of the case were that: the deceased, Adeyinka Ayinde Olowu, was a Yoruba man by birth from Ijesha. He had lived most of his life in Benin City. He married Benin women who bore him all his children who were the plaintiffs and defendants in this case. In 1942 the deceased applied to the Omo N'oba of Benin (the traditional Ruler of Benin) to be "naturalized" as a Benin citizen his application was granted and as a result of that, his status as a Benin man, he was able to acquire a lot of landed properties both in Benin City and elsewhere in old Bendel State. The deceased died in

¹⁰ *Ibid* at p 41

¹¹(1968) NNLR 97

¹² (1958) 3 NWLR (pt 13) 372.

1960 without making a will. The defendants, two of his children were granted Letters of Administration to administer the deceased's estate. First defendant distributed the estate in accordance with the Benin Customary Law, but the other children, the plaintiffs and the second defendants were dissatisfied with the mode of distribution, they claimed that the estate ought to have been distributed in accordance with Ijesha Customary Law rather than by Benin Customary Law. The plaintiffs applied to the High Court for an order setting aside the distribution according to Benin customary Law, and for a Declaration that Ijesha Customary Law was the applicable law.

They failed in the High Court and at the High Court it was held that Benin Customary Law was the applicable law. They appealed to the Court of Appeal. The Court of Appeal affirmed the decision of the High Court and dismissed the appeal, wherein they further appealed to the Supreme Court. In a well considered judgment, five Justices of the Supreme Court unanimously dismissed the appeal and confirmed the decision of the High Court on the ground that although the deceased was a man of Yoruba extraction, he had spent most of his life in Benin City, "naturalized" as a Benin and acquired considerable properties in Benin City. On the strength of this evidence, the Supreme Court held that his personal law and therefore the law governing the distribution of his estate at his death, was Benin Customary Law, not his personal law of origin, which was Ijesha (Yoruba) Customary Law. Coker JSC in his lead judgment observed that in the light of the facts of the case, the deceased in effect relinquished his Yoruba cultural heritage and acquired Bini status. Accordingly, he said:

It follows therefore that by virtue of his change, his personal law changed to Benin Customary Law; distribution of his estate on intestacy must necessary be governed by Benin Customary Law. He married Benin women who had children for him, he carried on various business activities in and around Benin City. He found also that the change of his status endowed him with the rights and privileges of a Bini indigene and his change in status accords with Benin customary law. Unless this finding is reversed, Coker held the view that the trial Judge was right in saying that the applicable customary law for the

*distribution of the estate was in line with that of the Benin Native Law and Custom.*¹³

The legal effect of this judgment is that it makes it possible for any Nigerian to change his personal law of origin in preference for another one which he acquires as a result of acculturation/assimilation.

BENEFICIARIES UNDER CUSTOMARY LAW

Unlike the situation under the Administration of Estate Laws, children are the exclusive beneficiaries to the estate of a deceased person under customary law. Some tribes do not discriminate between the gender of the children of the deceased. For example, among the Yoruba speaking tribes in the south-western Nigeria, there is no distinction between males and females in the distribution of their father's estate.¹⁴ However, in Edo State, the patrilineal system is generally practiced. Therefore in most cases, the eldest son inherits certain properties of the deceased exclusively, while the other children are entitled to the distribution of the remaining estate. The practice is common to most tribes in Edo State, and also amongst the Urhobo and Itsekiri in neighbouring Delta State. Under this system, it is a well-established principle of customary law that the deceased eldest son is entitled to inherit the house where the deceased lived and died. This house amongst the Benin is referred to as the "Igiogbe".

The rules of customary law of inheritance in Igbo, Benin and Yoruba people of Nigeria are examined below.

¹³See I.E. Sagay, "The Dawn of legal Acculturation in Nigeria – A Significant Development in Law and National Integration: *Olowu v. Olowu*" (Autumn 1986) Vol.30, No. 2 Journal of African Law, at 179-189. See also I.E. Sagay, *Nigerian Law of Succession Principles, Cases Statutes and Commentaries*, (2006, Malthouse Press) at 260-261.

¹⁴ See *Andrew v. Agbebi* (1931) 5 NLR 47.

IGBO CUSTOMARY LAW OF INHERITANCE

The Igbo people are concentrated in five Eastern States of Nigeria. These States are Abia, Anambra, Ebonyi, Enugu and Imo.¹⁵ Generally, the Igbo people of these states speak a common language though with local dialectical variations but to a large extent they have similar social systems.¹⁶

Seasoned authors/scholars¹⁷ have written extensively on the customary law of inheritance of Igbos. The work of these authors/scholars examined the general rules of Igbo customary law of inheritance and some variations of the general rules. In examining the Igbo customary law of inheritance, placed reliance mainly on the Customary Law Manual¹⁸ of the laws of Anambra and Imo States.

TYPES OF PROPERTY TO BE INHERITED AND PERSONS WHO CAN INHERIT UNDER IGBO CUSTOMARY LAW

Under the Igbo customary law practice, the eldest son inherits his father's compound exclusively in some Igbo Communities¹⁹. In practice, however, he gives part of the land to other sons at their request for building purposes. A man's compound is inherited by all his sons as a corporate body with the eldest son acting as a caretaker.²⁰ In Ohafia Division,²¹ a man's compound is inherited by sons and daughters in joint tenancy. Where a man is not survived by any son, his compound is inherited by his eldest surviving brother of full blood. In the absence

¹⁵1999 Constitution of the Federal Republic of Nigeria (as amended), *CAP C.23 Laws of the Federation of Nigeria 2004*. First Schedule Section 3.

¹⁶ Green M. M., *Igbo Village Affairs* (Frank Cass 1964): Nsugbe Phillip .O, *Ohaffia - A Matrilineal Ibo People* (Oxford University Press, London, 1974)

¹⁷Okoro Nwakamma, *The Customary Laws of Succession in Eastern Nigeria and the Statutory and Judicial Rules Governing their Application* (Sweet and Maxwell. London. 1966); S. N. C. Obi, *The Ibo Law of Property* (Butterworth & Co. London. (1963); C. K. Meek, *Law and Authority in Nigerian Tribe: A study in Indirect Rule* (Oxford University Press Oxford 1950); G. T. Basden, *Nigeria Ibos* (Frank Cass & Co. London. 1966).

¹⁸ *Ibid*.

¹⁹*Customary Law Manual Ibid; P 100*. The communities are in Aguata, Idemili; Diiala, Ogbaru which are Local Government Areas of Anambra State; Mbaitoli, Ikeduru, Orlu, Mbano, Oguta, Okigwe are in Imo State; Igbo-Eze, Nsukka, Ezeogu are in Enugu State

²⁰ *Ibid*, p. 100. The communities are in Aba, Northern Ngwa, Ukwu and Umuahia, Ishielu of Abia State; Abakaliki; Afikpo in Ebonyi State, Onitsha in Anambra State

²¹*Ibid*, page 100. Ohafia is in Abia State

of a full brother, the compound is inherited by the deceased father. There is a local variation with regard to the above practice. In Anambra, Ezzikwo and Mbatoli/Ikeduru Divisions²² where a man is not survived by any son his compound is inherited by his father and in the absence of father, the deceased compound will be inherited by his eldest surviving brother of full blood. For instance where Oli-Ekpe customary rule of inheritance operates, a widow or daughter is not permitted to inherit the property of her deceased husband or father, the case of Mojekwu²³.

However, the practice is that a man's land and houses other than his compound are inherited by his son or sons as a corporate body. In the absence of any surviving son, the land and house are inherited by the eldest full brother and, in the absence of full brothers, the land and houses are inherited by the deceased father²⁴. There are local variations with regard to this customary practice in some communities²⁵ where lands and houses although inherited by the eldest son exclusively, the heir has an obligation to give part of lands and houses to the other sons for their residential and farming needs. In the meantime, the customary law manual does not specify a fixed portion which the eldest son has to give to his younger brothers. Therefore, it appears that what the other sons of a deceased get is at the discretion of the eldest son. It is evident from the foregoing that a deceased man's lands and houses are inherited mainly by his paternal relations.

According to Customary Law Manual, *nrachi* is the practice whereby a daughter whose father has no son is retained unmarried in the father's compound with a view to her having a male child in the father's name. If unmarried, she has the right to conceive a child for any man of her choice. The children she has are the children of her father whether the father is dead or alive.

Customary Law of the Igbo permits separate ownership of land on the one hand and economic plants and trees growing on such land on the other hand. Thus, while the land itself is the property of one person, economic plants and trees growing on it are the property of another person or the community at large or vice versa²⁶. This is so whether or not the relationship of landlord and tenant

²²*ibid*, page 100. Anambra is in Anambra State; Mbatoli and Ikeduru are in Imo State

²³ (1997) 7 NWLR at p. 283

²⁴*ibid*. Customary Law Manual p 100.

²⁵*ibid*, page 101, Enugu, and Igbo-Eze are in Enugu State; Nnewi is in Anambra State and Owerri is in Imo State.

²⁶ *Ibi*, Customary Law Manual p 110

exists between the owner of the land and economic plants and trees growing on it. In this situation, inheritance of the land is different from inheritance of the economic trees. The land and economic trees are inherited by the heirs of their respective owners.²⁷

Two methods of distribution of the property of a deceased person are recognized under Igbo Customary Law.²⁸ The two methods are *per stirpe*²⁹ and *per capita*.³⁰ *Per stirpe* is used where a man is survived by children of two or more wives. In this case, the property is divided among the number of wives who have sons for the deceased. The property is then sub-divided among the sons of each wife. Each mother with a child/children forms one *usekwu*. On the other hand, *per capita* is used where a man is survived by children of only one wife. The property is divided among the number of the children.

In many Igbo communities of Aba, Abakaliki, Afikpo, Aguta, Anambra, Arochukwu, Agwu, Bende, Enugu, Ettiti and Ezeagu Divisions, Abacha, Abatete, Nkpor, Oba, Obosi, Ogidi, Ojoto, Oraukwu, Uke, Umudioka and Umuoji towns in Idemili Division, Itchi clan of Igbo-Eze Division, Mgbo, Igbo Ano, Igbo Ato and Orri clans of Ishielu Division, Isi-Uzo, Mbaitoli/Ikeduru and Mbaro Division, Nri clan and Abagana town in Njikoka Division, Nkanu, Nkwerre, Nenwi (excluding Anaedo), Oguta, Ohafia, Okigwe and Onitsha Divisions, Ezumba, Alamiri and Mbanano clans of Oru Division, Owerri, Udi (excluding Umuneke and Ojebe-Ogene clans) Northern Ngwa, Nsukka (excluding Nsukka and Ogurugu towns/ and Umuahia Divisions, the distribution of the property is done *per stirpe* when there are more than one wife (i.e. the property is divided into the number of *usekwu* that have sons). The property is then divided *per capita* among the individuals' sons in each *usekwu*. Distribution *per capita* does not necessarily mean that the property is equally distributed. However, where a deceased has children by only one wife, the distribution of his property is done *per capita* among the children. There are local variations in some communities. In Ezzikwo Division, Akwa-Ukwu Alor, Aloka

²⁷*Ibid.*

²⁸ *Per stirpe* is the distribution of property according to the number of women of the deceased who have sons for him. *Usekwu* means children born by each wife of a man who has two or more wives. See p 99 *Customary Law Manual*

²⁹ *Per capita* is the distribution of property equally among those who are entitled to inherit it.

³⁰ *Ibid* Customary Law Manual & P. 139.

Etiti, Ezioweke, Nnobi, Nnokwa and Umunachi towns in idemili Division, Ekete-Ekelu, clan of Igbo-Eze Division, Ihiala Division, Effmm, Ezzagu and Agba clans of Ishielu Division, (excluding Nri and Abagana), Nsukka town in Nsukka Division, Nnenasa, Orsu-Mbanato and Odida-Anyanwu clans of Oru Division, Umuneke and Ojebe-Ogene clans of Udi Division, Ukwa Division nd Ogurugu town in Uzo-Uwani Division , the distribution of the property is done per capita among the heirs irrespective of whether the heirs were born by the same or different mothers. However,³¹ this does not necessarily mean that the property is equally distributed.

In addition, there are variations in other communities. In Onitsha Division, the distribution of landed property is done per stripe while the distribution of moveable property is done per capita. In Anaedo clan of Nnewi Division, the eldest son inherits the whole property.

In a polygamous family, however, the eldest son distributes the property per stripe at his discretion. In Enugu, Ezeike and Etehe clans of Igbo-Eze Division, the eldest son is the sole heir. In Ogbaru Division, the eldest son inherits the property exclusively though in practice, he sometimes shares the property out with his other brothers.³² Where the distribution of the property is done per capita, the sons take their shares in order of seniority. As regards the distribution per stripe, each *usekwu* takes its shares in order in which the eldest sons in them were born. This means that the *usekwu* with the eldest son will take first. The eldest son in each *usekwu* receives the share for his *usekwu* on behalf of himself and his brothers.

A variation of distribution per stripe is found in Nnewi and Ogbaru where the various *usekwu* with sons take in order in which their mothers were married in the family. This means that the son of the first wife takes first irrespective of his age.³³ Where relations of a deceased man inherit a property jointly, the distribution is done in order of priority. Priority, according to Customary Law Manual it means the order in which different persons or classes inherit a deceased person's estate to the exclusion of others according to the degree of their respective relationship with the deceased.

³¹*bid.* Customary Law Manual at P. 139

³² *Ibid.*

³³ *Ibid.* p 139-140

The order of inheritance of economic plants and trees is as follows. A man's economic plants and trees are inherited by his sons, failing sons, brothers of the full blood, failing them, the father, failing him, brothers of the half blood, failing them, the eldest nearest paternal male relation. There are however local variations. In Enugu, Ezeagu, Ezzikwo, Nkewerre, Okigwe and Udi Divisions and in Ndeni and Agudo clans of Aguata Division, in the absence of sons, the father inherits, failing father, full brothers, half brothers and nearest paternal male relations take in that order. In Aguata Division (excluding Ndeni and Agudo clans) and Owerri Division, in the absence of sons and full brothers, half brothers take, failing them, the father takes, failing father, the nearest paternal male relation takes. In Anedo clan of Nnewi Division, the eldest son of a deceased man inherits all his economic plants and trees³⁴. In Mbanesi clan of the same division, a deceased man's economic plants and trees are inherited by all his sons but the eldest son takes two shares on distribution.³⁵

The order of inheritance of farm produce among relations is as follows. In Bende, Idemili, Igbo - Eze, Ihiala, Isheielu, Nkanu, Onitsha, Oru, Ukwu and Umuahia Divisions, sons inherit, failing sons, brothers of the full blood inherit, failing them, the father inherits, failing father, paternal half brothers inherit, failing them the eldest nearest male paternal relation inherits. In Agudo, Enugu-Uno and Ndeni clans of Aguata Division, Anambra, Awgu, Enugu, Ezeagu, Ezzikwo, Isi-Uzo, Mbano, Nkwere, Nnewi, Ogbaru, Oguta Okigwe, and Udi Divisions, sons inherit, failing sons, the father inherits, failing father, brothers of the full blood inherit, failing them, paternal half brothers inherit, failing them, the eldest nearest male paternal relation inherits.³⁶

In Aba, Abakaliki, Arochukwu, Mbaise, Mbaito/Ikeduru, Njikoka, Northern Ngwu, Nsukka and Owerri Divisions, sons inherit, failing sons, brothers of the full blood inherit, failing them, the father, failing father, the eldest nearest male paternal relations inherit. In Afikpo and Edda clan of Afikpo Division, the male children in a polygamous family or the eldest child in a monogamous family will share the yams with the maternal brothers of the deceased. Other farm produce are

³⁴*ibid.* Customary Law Manual at p.112

³⁵*ibid*

³⁶*ibid.* p 117-118

inherited by the nearest maternal sisters e.g. sisters of the same mothers daughters of the sisters etc. in Ohafia Division, farm produce is shared by all maternal relations (including widows if married from outside) and the children of the deceased, the children taking precedence during the distribution.³⁷

Customary law inheritance is predominantly patrilineal, and is governed by the principle of primogeniture in the sense that on the death intestate of a man, his eldest son succeeds to his estate. consequently, he assumes his deceased father's status as the head of the family, and is thus entitled to farm the compound or the immediate surroundings,³⁸ and any special property which his father enjoyed while alive- this includes the rights to occupy his deceased father's dwelling house. In practice, he may choose to live in his own house and then choose which of his brothers should occupy their deceased father's house,³⁹ and who amongst them may get a share of such land for erecting a building⁴⁰. Although the eldest son inherits his deceased father's personal property, he holds his landed property as trustee beneficiary for his brothers and himself.⁴¹ In other words, he has a right of control over his father's lands and must use them for the benefit of his younger brothers. Thus Okoro⁴² stated as follows:

It is often said that the eldest son succeeds to his father's estate, but what is meant is that, as the head of the family, he succeeds to the estate nor exclusively, but for himself and his junior brothers.

And in *Uboma & ors v. Ibeneme & ors*,⁴³ Egbuna J. held that among the Igbos, land is inherited by all the sons of the deceased as family property and that the eldest son, as the new head of the family, is only a "caretaker", in this case, the learned Judge rejected the evidence of the so-called expert witness who testified that the oldest son, among the Igbos, inherited all his father's estate to the exclusion of his brothers and could dispose of them by sale without the brothers' consent.

³⁷ *bid*

³⁸ The Customary Law Manual, op cit p. 100

³⁹ N. Okoro op cit (1966), p 119.

⁴⁰ The Customary Law Manual, op cit. p 100.

⁴¹ *Ejiamike v Ejiamike* (1972) op. cit p. 100

⁴² N. Okoro op cit p 119

⁴³ (1967) FNLR 251.

Having thus inherited this exclusive status from his father, the son also inherits his late father's responsibilities and obligations towards his dependants.⁴⁴ Where, on the other hand, the deceased is not survived by male issue his compound is inherited by his surviving brothers of the full blood; failing a full brother, the estate devolves on the deceased's father. However, according to the manual, exceptions to this rule may be found in the Igbo communities of Ezikwo, Anambra and Mbaitoli/Ikeduru. Prior to the compilation of the manual, Okoro summed up the situation thus:

*...the brother of a deceased man without male issue have a right of succession which takes precedence over that of the brothers of the deceased's father and in most societies, the full brothers have a claim prior to that of their father. It is true that there are variations on this principle in some societies, but these variations arise from the conflicting claims of fathers are against full brothers. In some societies, the father has only a life interest which entitled him to make use of some of his deceased son's property, but the true successors are the full brothers of the deceased. In some societies the father has no rights whatsoever.*⁴⁵

It is clear from these variations that it is difficult to find a general underlying principle of customary succession in this area. This is because, as explained earlier, customary law varies according to locality; and this is supported in The Manual compiled by the Government, and calls to mind the statement that: "legal historians have not found any universally common origin of the law of succession, nor does that branch of the law seem to have developed in different systems along uniform lines".⁴⁶

It is evident from our discussion of the Igbo customary law of inheritance that many Igbo communities favor male children and male relations like fathers and brothers more than daughters and other female relations like wives, mothers and sisters. Besides, the eldest son is given precedence over other sons. The

⁴⁴ F.M Mufsud Customary Land Law in Africa (1967) p 77.

⁴⁵ N. Okoro op cit pp 133- 134; see also M. M. Green Land Tenure in an Ibo Village (1941) , p 13; Basden, Niger Ibos (1938) p. 268.

⁴⁶ Parry D. H The Law of Succession (1953) London, pp. 1-2

variations in very few communities where widows, wives, sister and daughters are allowed to inherit even where they were given opportunities to inherit, the quantity permitted to be inherited cannot be compared with their male counterparts and where sons are allowed to inherit property jointly irrespective of their seniority in their families are few.

In this connection, this customary law of inheritance is not only discriminatory against women but also against sons of a man who due to circumstances beyond their control were not born first in their families. This discrimination is not only unfair but also unconstitutional as it violates the provisions of the 1999 Constitution of the Federal Republic of Nigeria (as amended).⁴⁷ There is no fixed ratio for the sharing of the estate among the heirs. The share of the eldest son which is usually larger than that of any of his younger brothers is determined on the basis of what the administrators think reasonable considering the size of the estate and the number of the heirs.⁴⁸

The reason for giving the eldest son special right of inheritance and other male relations of a deceased man the right of inheritance as against his widow(s) and daughter children is that by the custom, the heir are under obligation to cater for the needs of the widow(s) and children of the deceased. While this reason could be plausible in the past when there were well established extended families, it is no longer so in modern times when the heirs in many cases cater for members of their own nucleus families thereby neglecting their duties to the family of the deceased.

THE BENIN CUSTOMARY LAW OF INHERITANCE

The Benin people are one of the ethnic tribes in Nigeria. They are concentrated in five local government areas of Edo State, South-South Nigeria. These local governments are Oredo, Orhionmwon, Ovia South West, Ovia North East and Uhunmwonde. The Benin people form the core of the Benin kingdom which at the height of its power comprised other Edo-speaking groups from Esan, Etsako, Owan and Akoko Edo to the North East and Urhobo, Isoko to the South-East.

⁴⁷ Section 41(2) of the Constitution provides that no citizen of Nigeria shall be subjected to any disability or restrictions and depravity based on sex, ethnicity by circumstance of his birth

⁴⁸ Okoro Nwainma *The Customary Laws of Succession in Eastern Nigeria* (Sweet and Maxwell London 1966) P 124.

They are called Edo-speaking people because their language sprang from the same source.

They are believed to have spoken the same language. The variations came through migration, wars and linguistic interference.⁴⁹

To some extent the Benin customary law of inheritance has been collated and stated in a handbook⁵⁰ by the Benin Traditional Council on the authority of the Oba of Benin who is the custodian of the Benin customary law. The primogeniture rule is one of the main rules of the Benin Court.⁵² Our courts have therefore taken judicial notice on the rule in accordance with section 17 of the Evidence Act 2011.⁵²

Other rules of inheritance of Benin customary law stated in the handbook are yet to be proved and established before our superior courts as required by the Evidence Act 2011⁵³ because the rules have not been contested in courts. However since the handbook was prepared by the Benin Traditional Council on the authority of the Oba of Benin whom the Benin people owe great allegiance, it is conceivable to suggest that the handbook, like the customary law manual of the Igbo, should be accepted by our courts in line with section 70 of the Evidence Act 2011.⁵⁴ Section 70 of the Evidence Act allows the courts to rely on any book or manuscript recognized by a community in deciding issues relating to customary law of such a community.

Historical accounts of the Benin people show that the rule of primogeniture of the Benin customary law of inheritance was introduced by the first Oba (King)

⁴⁹Igbinokpogie John, M. B. Lawal and Ekhaton John, *The Benin Kingdom Historical and Environmental Perspectives*, (Institute for Benin Studies Nigeria 1998).

⁵⁰ *A Handbook on some Benin Customs and Usages* (Eweka Court the Palace Benin-City) Nigeria 1996

⁵¹*Ogiamien .v. Ogiamien* (1967) NMLR 245 at page 247, where the Court said 'It is common ground that according to Benin custom the eldest son succeeds to all the property of the father to the exclusion of other children... We can only say that it is not unknown in some other highly civilized countries of the world'

⁵²Evidence Act 2011.

⁵³*Ibid.*

⁵⁴*Ibid.*

of Benin, Oba Eweka I who ruled about 1200 A.D.⁵⁵ Oba Eweka I established that the eldest son customary law of inheritance whereby the eldest son of a deceased person inherits all his property to the exclusion of other children. This rule is stated in the handbook and has been affirmed by the Supreme child of the Oba would succeed him on the throne and also inherit his estate to the exclusion of other children provided he had solely performed the funeral rites of his father. However, the eldest son had the obligation to take care of the wives and other children of his father.

The Benin people adopted this rule of inheritance as a mark of respect and honour for their Oba. Hence, when a Benin man dies intestate, his eldest surviving male child inherits his entire property to the exclusion of other children after he had performed the customary funeral rites of his father. The eldest son who inherits the property to the exclusion of other children is under obligation to take care of his deceased father's other children. The failure of some eldest son over the years, to take care of other children after inheriting the property of their deceased fathers to the exclusion of other children led to acrimony and serious conflicts between the eldest son and other male children of the other wives of the deceased. Consequently, there was general discontent amongst the people with the primogeniture rule. The people modified the rule to permit the children of the other wives of a deceased person to inherit his estate. This led to the evolution of the Urho system of inheritance,⁵⁶ *urho* literally means per stripe. Per stripe means the property of a deceased Benin man will be distributed according to the number of his wives who have children for him. The properties distributed are for the children and not for the wives. Under the *urho* system the eldest son is entitled to a lion's share of the estate which is usually his main or principal dwelling house called *Igiogbe*. Although the eldest son is still given precedence over other children, the modification of the primogeniture rule by the *urho* system which entitles all the children of the deceased to inherit his property is more equitable than the primogeniture rule which entitles only the eldest son to inherit the estate. The *urho* system is also stated in the handbook on some Benin Customs and Usages.⁵⁷ With the evolution of the *urho* system of inheritance, the burden of the full burial

⁵⁵Osamuade Efe Sophia, *The Igiogbe Controversies in the Bini Customary Law of Succession: Judicial Review* (Praise Communications Press Nigeria 2003) Eghareoba Jacob, *A short History of Benin* (Ibadan University Press Nigeria, 1968) R.T. Bradbury, *Benin Studies* (Oxford University Press 1973).

⁵⁶Osamuade Efe Sophia, *op. cit.* p 3

⁵⁷Handbook on Some Benin Customs and Usages, *op. cit.* at p 13

ceremony of his deceased father solely born by the eldest surviving son is no longer the practice. The full burial ceremony is now jointly performed by all his children.⁵⁸

There are two broad rules of inheritance under the Benin customary law depending on whether the deceased was a hereditary traditional title holder, a non-hereditary traditional title holder and an ordinary person. According to the handbook, the customary law of inheritance as regards the estate of a non-hereditary traditional title holder and an ordinary person is that the *Igiogbe*, that is, the house in which the deceased lived and died (and sometimes where he was buried) is inherited by the eldest son. However, custom enjoins the eldest son to accommodate his brothers and sisters provided they are of good behaviour until they are able to build their own houses and move out or, if women, until they get married.

Other landed properties of the deceased are distributed among the other children according to *urho* in order of seniority, that is, according to the number of the wives of the deceased. Each wife with children forms an *urho*. Where the property is distributed according to *urho*, the male children take precedence over the female children. The eldest son who has inherited the *Igiogbe* is still entitled to a share in the other landed properties. Similarly, all other moveable properties are distributed among all the children starting with the eldest son. If the eldest child of the deceased person is a female, custom allows her with the consent of family elders and the other children to be given a reasonable share of the property on the ground that she is the most senior of the children. Where the deceased has one house with many rooms, custom allows the rooms to be shared among the children proportionately in order of seniority with the consent of the eldest son and family elders. This is allowed so as to unite the children.⁵⁹

As regards inheritance of the property of a hereditary traditional title holder, the eldest surviving son is solely responsible for his burial ceremony though the other children may contribute to assist him. It is the eldest son who performs all the ceremonies. After the eldest son has performed the final burial ceremony, he succeeds to his father's traditional title and inherits all his property to the exclusion of the other children. Morally, custom expects him to give part of the

⁵⁸ *bid*, page 9; Osamuade Efe Sophia *op. cit* at p 4

⁵⁹ Handbook on Some Benin Customs and Usages *op. cit* p 11-13

property to his brothers and sisters. In addition, customs expects him to accommodate his other brothers and sisters provided they behave well towards him. Where there is no male child to succeed to the hereditary title, a brother or any male paternal relation of the deceased succeeds to the title after due confirmation by the Oba. The deceased's properties will be shared among his female children.⁶⁰

However, there have been judicial decisions on women's right of inheritance as a wife or as a daughter under Igbo Customary law of some communities. In *Nezianya v. Okagbue*⁶¹ and *Nzekwu v. Nzekwu*,⁶² the Supreme Court held that under Igbo customary law of Onitsha which does not give a wife the right to inherit the property of her deceased husband, a widow has the right only to occupy her deceased husband's property with the consent of her husband's family or subject to her good behaviour. She cannot lay claim to be the owner of the property or alienate it.

In view of the fact that the Supreme Court is the highest court in the country and its decisions are binding on all other courts, this decision of the court that a widow does not have the right of inheritance under Igbo customary law of Onitsha could impliedly mean that a widow does not have the right of inheritance under a customary law in the area.

YORUBA CUSTOMARY LAW OF INHERITANCE

Yoruba people inhabit mainly the South-western part of Nigeria. They are found in Edo, Lagos, Ogun, Oyo, Osun, Ondo Ekiti States and part of Edo State, as well as parts of Kwara State. Although the Yoruba people speak a common language and are united to a large extent by a common culture, there are local dialectical variations in the language. There are more Muslims in Yorubaland than in any of the other parts of Southern Nigeria. Although Sharia Courts and Islamic legal system are yet to be established in Yorubaland in order to facilitate the application of

⁶⁰*ibid*, p 15.

⁶¹(1963) 1 A11N. L. R352.

⁶²(1989)2NWLR(P.T 104)373.

Islamic personal law on matrimonial and succession matters as provided for by the Constitution.⁶³ As a result, some pious Muslims who are aware of Islamic law of inheritance do request Muslim clerics/scholars who are knowledgeable about Islamic law of inheritance to distribute the property of their deceased Muslim relations according to Islamic law.

However, many Yoruba Muslims probably for some reasons, their custom still apply customary law of inheritance in the distribution of the property of their deceased Muslim relatives. Therefore, unlike the Igbo and Benin, people, many Yoruba Muslims are torn between their customary laws of inheritance and Islamic law. In this connection, having discussed Islamic law of inheritance earlier on, it is appropriate to discuss the Yoruba customary law of inheritance.

In view of the fact that culture and custom are dynamic and change with the socio-economic development of the society, over the centuries, the right of the siblings to inherit the property of a deceased person almost to the exclusion of his children became obsolete. Thus, the rule that the children of a deceased person should inherit his property was introduced. This rule which was initiated by the Yoruba people of Ibadan was later and gradually adopted throughout Yoruba land.

The rule of the customary law of inheritance of the Yoruba that the property of a person who died intestate is inherited by his surviving children has been confirmed by many judicial decisions. In *Adeseye v. Taiwo*⁶⁴ the appellants as plaintiffs in the High Court sought an order of Court to join them in the scheme of distribution for equal shares with the defendants (respondents) in the proceeds of sale of a property. The appellants claimed to be blood relations of Chief Taiwo, deceased and owner of the property in question through one Ajayi the deceased's mother's sister. The respondents were the daughters and grandchildren of the deceased. The appellants' claim was dismissed on the ground that only children of the deceased could succeed to his estate. The appellants appealed to the Federal

⁶³1999 Constitution of the Federal Republic of Nigeria, Section 275(1) of the Constitution allows any State to establish a Sharia Court of Appeal for the State. By Section 277(2) such Sharia Court of Appeal has jurisdiction to deal with matters involving Islamic Personal Law on Marriage, Succession etc.

⁶⁴(1956) SCNLR 265; *Gbadamosi Rabiu v. Silifatu Abasi* (1996) 7SC NJ 53; at page 55 *Amodu v. Obayomi* (1992) 5 NWLR (Pt 242) 503 at p 506.

Supreme Court where the issue for determination was whether blood relations of a deceased Yoruba person, who was survived by children, could have a share of his real estate under the native law and custom of the Yoruba. The Federal Supreme Court held that the children of a deceased person could inherit his real property to the exclusion of other blood relations. The court stated thus: 'Under the Native Law and Custom of the Yorubas the real properties of a deceased person who had children surviving go to his children and not to his uncles, aunts and cousins'⁶⁵.

The real estate of a deceased person is inherited jointly by his children as family property with the eldest son surviving him as the head of the family called *Dawodu*, the estate could be a house where the deceased lived during his lifetime. It is pertinent to state that it is not necessary that the deceased should expressly provide that his real estate should be used as family property. This is because it is an established rule of Yoruba customary law of inheritance that on the death of a person intestate, his landed property automatically devolves to his immediate family (i.e. the children) as family property.

Although family property is in the realm of land law, a brief discussion of the concept is necessary because the concept of family property is a cardinal principle of the Yoruba customary law of inheritance. In *Usiobaifo v. Usiobaifo*⁶⁶ the Court of Appeal described the concept of family property as original to our indigenous society and the bedrock of our law⁶⁷.

A landed property which is inherited by all children as family property remains so until it is partitioned by the consent of all members of the family. The title of a family property is vested in the family of the founder as a corporate entity. The title is joint and indivisible. The individual member of the family has no separate claim of ownership to any part or whole of it. A family property is used for the benefit of the whole family. The management of the family property is under the control of the head of the family. In essence, the head of the family acts as a trustee or custodian for all the beneficiaries of the family property⁶⁸.

⁶⁵*Ibid*

⁶⁶ (2001)FWLR (Pt61) 1784

⁶⁷*Ibid*

⁶⁸*Ibid*

Individual members of the family do not have any separate rights to the property because all members have equal rights. Therefore, no member of the family can alienate or dispose of the family property without the consent of the other members of the family⁶⁹.

Method of Distribution of Property

There are two methods of distributing a deceased self-acquired property (other than that reserved as family property) under Yoruba customary law of inheritance. The two methods are called *Idi-Igi* (per stripe) and *Ori Ojori* (per capita). The *Idi-Igi* (per stripe) method is generally used where a deceased man had more than one wife. The property is divided into equal shares in accordance with the number of wives of the deceased with children. Each mother with children or a child forms a branch of the family or a stripe for the purpose of inheritance. The children of each wife have a share regardless of how many they are. The children of each wife then divide their share as they like among themselves. However, where the deceased had only one wife, his property is distributed equally among his children.

The second method is *Ori Ojori* i.e. distribution per capita. By this method, the distribution of the property among the children is equal. The difference between the two methods is that all the children get equal share under *Ori Ojori* (Per capita) while under *Idi-Igi* method, though the stripes get equal shares, the share of each child depends on the number of the children in each stripe. *Idi-Igi* (per stripe) method generally appears unfair because the number of children born by each wife is not considered. *Idi-igi* has been affirmed to be the generally acceptable methods of distribution in Yoruba land. If however, it is considered unjust in any given situation, then the involvement of the "Olori-ebi" is necessary and his decision is the final. Hence, under that method, only child of one mother has an equal share with many children of another mother. This method is inequitable. On the other hand, the equal treatment of all children under *Ori Ojori* (per capita) method is fair and equitable. This may also prevent dispute and envy in the family and preserve unity among the children.

⁶⁹ *Ibid*

An attempt made in the case of *Dawodu v. Danmole*⁷⁰ to get the court to declare *Idi-Igi* (per stripe) method as repugnant to the principle of natural justice, equity and good conscience did not succeed. In that case, the plaintiff/respondent claimed that the rents from the property of their deceased father who had four wives should be divided according to *Idi-Igi* (per stripe) method. Therefore the property should be divided into four parts according to the number of wives of the deceased with children. The defendants/appellants claimed that *Ori-Ojori* (per capita) method should be used to distribute the rents so that the rents should be divided into nine parts according to the number of the surviving children. The defendants/appellants also claimed that the *Idi-Igi* (per stripe) method of distribution was obsolete and that the new method was the *Ori Ojori* (per capita) method⁷¹.

The trial court held that the *Idi-Igi* (per stripe) method of distribution of property was not obsolete but held that the custom was repugnant to natural justice, equity and good conscience because it was contrary to the modern idea of basis for distribution which is the number of the children of an intestate. He therefore ordered the division of the rents into nine parts. On appeal, the Federal Supreme Court held that the relevant customary law was *Idi-Igi* (per stripe) and that the customary law was not contrary to natural justice, equity and good conscience⁷².

On further appeal to the Privy Council by the defendants/appellants, the Privy Council held thus:

Idi-Igi is the Yoruba Native Law and Custom whereby the estate of an intestate is distributed according to the number of mothers (wives of the intestate) of the children of such intestate; Idi-Igi is an integral part of the Yoruba Native Law and Custom relating to the distribution of intestate's estates; and is in force and observance, and has not been abrogated. Ori-Ojori, a Yoruba Native Law and Custom whereby the estate of such an intestate is distributed according to the number of his children, is a relatively modern method of distribution and may

⁷⁰ (1962) 1 ALL NLR 702; *Adeniji v. Adeniji* (1972) 1 ALL NLR 301; *Taiwo v. Lawani* (1961) ANLR 733; *Administrator General v. Olubamiwo* (1971) 1 All NLR 429

⁷¹ *Ibid*

⁷² *Ibid*

*be adopted only at the discretion of the head of the family for the avoidance of litigation; Idi-Igi in its application to the distribution of the estate of an intestate is not contrary to the principle of natural justice, equity, and good conscience*⁷³.

There is no doubt that both the *Idi-Igi* (per stripe) method of distribution of the estate of an intestate, that is, according to the number of wives (with children) and *Ori-Ojori* (per capita), that is, distribution equally among all children of an intestate are well recognized and used under the Yoruba customary law of inheritance. The method adopted by one community/family or the other is a matter of preference. However, we think the *Ori-Ojori* method which is a relatively modern method is a more equitable form of distribution according to the court.

Widows whose husbands died intestate are not entitled to inherit the property of their deceased husbands. There have been judicial pronouncements on this customary rule. In *Osilaja v. Osilaja*,⁷⁴ the Supreme Court held that the rule that a widow cannot inherit her deceased husband property has become so notorious by frequent proof in court and has become judicially noticed. *Awobutu v. Awobutu*⁷⁵, the first defendant was married to the deceased husband under the Marriage Act. Subsequently, the deceased married to the plaintiff under Yoruba customary law during the subsistence of the marriage under the Act. On the death of the husband intestate the plaintiff sued the defendants claiming, inter alia, that as a wife of the deceased she was entitled to participate in the administration of the estate of the deceased and that she and her children were entitled also to share in the estate.

The court held that a widow under Yoruba customary law has no right to administer her deceased husband's estate and is also not entitled to share in the deceased's estate.

Furthermore in *Akinnubi v. Akinnubi*,⁷⁶ the Supreme Court held that:

⁷³ *Ibid*

⁷⁴ (1972) 10 SC 126

⁷⁵ (1979) 1 FNR 241

⁷⁶ (1997) 2 NWLR (Pt. 486) 149

it is a well settled rule of native law and custom of the Yoruba that a wife could not inherit her husband's property. Indeed, under Yoruba Customary Law, a widow under intestacy is regarded as part of the estate of her deceased husband to be administered or inherited by the deceased's family...

Finally if the intestate person was an indigenous Nigerian and he did not contract a Christian or Act marriage, or even if he did, and no issue or spouse of such a marriage survived him, his estate will be distributed in accordance with the relevant customary law. If the intestate was a Muslim, then Islamic law would govern.⁷⁷ Also, where a person who is subject to customary law or Islamic law dies intestate, it is his personal law that will apply to the distribution of his immovable property and not the *lex situs*.⁷⁸

Legislative Intervention in Widow's Inheritance Rights

At this juncture, it is gratifying to state that the Imo State House of Assembly has enacted a law,⁷⁹ specifically to give widows and daughters the right of inheritance. The law provides thus:

Women and men shall have the right to inherit their parent's properties.

- (a) A widow shall have the right to an equitable share in the inheritance of the property of her husband.
- (b) A widow shall have the right to live in the matrimonial house provided she does not re-marry.⁸⁰

The purpose of the law is to give effect to the elimination of all forms of discrimination and destruction against persons on the basis of sex as is presently obtainable in Imo State⁸¹. The law defines discrimination against women to mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or

⁷⁷ I. E. Sagay, *Nigerian Law of Succession Principles, Cases Statutes and Commentaries*, (1st Ed, 2006, Malthouse Press Limited) at 73.

⁷⁸ See *Zaidan v. Zaidan* supra and section 13 of the Bendel State High Court Law. (Bendel State does not exist again.)

⁷⁹ Gender and Equal Opportunities Law 2007. No 7 Imo State of Nigeria. Ibid. Section 21. Ibid. Section 3.

⁸⁰ Ibid.

⁸¹ Ibid.

exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Hence, section 4 (c) of the law specifically provides thus. 'Any existing laws, regulations, customs and practices which constitute discrimination against any person, shall be null and void and of no effect whatsoever and shall not be enforceable against any person'. The effect of this section would appear to have abolished the discriminatory customary law of inheritance of the Igbo of Imo State that deprives women of the right of inheritance.

The Enugu State House of Assembly has also enacted a law⁸² which accords women as wives the right of inheritance. The law provides:

*Subject to the Marriage Act, Wills Law, Administration of Estates Law or indeed any customary law (not repugnant to natural justice, equity and good conscience) a widow/widower shall not be dispossessed upon the death of the husband/wife (of property acquired in the deceased husband's/wife's lifetime) without his/her consent.*⁸³

The law defines a widow thus: 'Any female person married under native law and custom or under the Marriage Act or any other law recognized in Nigeria, whose husband has died and has not re-married'.⁸⁴

This implies that women who married under both the customary law and the Marriage Act are entitled to the rights of inheritance provided for under the law. To that extent, the law would seem to have abolished the customary law of inheritance of the Igbo of Enugu State which deprives wives of the right to inherit the property of their husbands. While these laws of Imo and Enugu States are progressive, the pertinent questions are, are people particularly women aware of these recent laws giving rights of inheritance to women as widows and daughters? Secondly, how can women access these laws when the rights provided under these laws are being violated?

⁸²The Prohibition of Infringement of Widows and Widower's Fundamental Rights 2011. No. 3 of Enugu State of Nigeria.

⁸³*Ibid.*

⁸⁴*Ibid.*

Nevertheless, both the primogeniture and *urho* rules of inheritance are discriminatory against women. This is because although the *urho* rule allows daughters to share in the property of their deceased father with their brothers, precedence is given to sons. This sort of discrimination by reason of sex is against the provision of S.42 (1) of the 1999 constitution.⁸⁵

S. 42 (1) of the 1999 constitution provides:

... a citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person... (a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions are not made subject...

The import of this provision is to protect all citizens of Nigeria, male or female against any form of discrimination by reason of sex, religion, ethnicity e.tc. which may be imposed by any law in force in Nigeria or any executive or administrative action of the government. Therefore, the Benin customary law of inheritance which discriminates against women by reasons of being female persons is unconstitutional.

CONCLUSION

Upon all, the writer is of the view that most customary law of inheritance specifically, customary law of inheritance of Benin and Igbo are discriminatory in nature, even that of Yoruba which permits daughter of the deceased person to inherit still discriminate against daughter and wife of the deceased person, for instance, a female child regardless of her age might be made to take last and her share might also be smaller when compared to the entitlements of her brothers.

For long, the validity of those customary laws which discriminate against inheritance right of women have not been finally settled though Supreme Court held in the case of *Ukeje v. Ukeje*⁸⁶ that Igbo Customary Law of inheritance

⁸⁵ 1999 Constitution of the Federal Republic of Nigeria, op cit

⁸⁶ (2014) All FWLR Part 730 2 p 1323

which disentitles female child from partaking in her deceased father's estate was unconstitutional. Supreme Court further held that no matter the circumstances of birth of a female child, she is entitled to an inheritance from her late father's estate, and consequently, the Igbo Customary Law which disentitles a female child from partaking in her deceased fathers' estate is in breach of Section 42 (1) and (2) of the 1999 Constitution of the Federal Republic of Nigeria, a fundamental rights provisions guaranteed to every Nigerian. The Supreme Court finally held that the said discriminatory law is void as it conflict with Section 42 (1) and (2) of 1999 Constitution as amended.

It is however important to note at this juncture how relevant is the above quoted judgement on the validity of Igbo Customary Law of inheritance or any other customary laws of inheritance which deny women as the case may be, their inheritance? To really address the issue of validity of Igbo or any other customary law of inheritance which deny women as the case may be their inheritance rights, prove of existence of the said customary law of inheritance has to be established start from lower court to the Supreme Court's pronouncement. Validity of such customary rules have to be tested. As regard the above quoted Ukeje's case, the issue before the courts, started from High Court to Court of Appeal and finally to the Supreme Court was not on prove of validity of Igbo Customary rules of inheritance but as it was described by the Court of Appeal as the case of 'paternity of the respondent'. In fact the aspect of the judgement which talked about validity of Igbo Customary rules of inheritance which denies women their inheritance rights was not appealed against from Court of Appeal. From the foregoing, it would not be good to rely on the few lines of the judgement in Ukeje's case which briefly discussed and held that Igbo "Oli-Ekpe" Customary rules of inheritance which denies women as wives and daughters their inheritance rights void as the matter or fact it were not pleaded before the courts, both from lower courts to the Supreme Court. With due respect to the learned justices of the Supreme Court nothing in that judgement could have reasonably constituted Ratio Decidendi.

Finally, to a large extent much has not been really done to ameliorate the extent in which rights of women as regard inheritance are been violated despite the pronouncements in the case of *Mojekwu v. Mojekwu*⁸⁷, *Uke v. Iro*⁸⁸, *Anaekwe v. Nweke*⁸⁹ and *Ukeje v. Ukeje*⁹⁰ and it must be noted that a custom and practices which denied wives and daughters their rights to inherit the properties of their deceased fathers and husbands was not only repugnant to the principle of natural justice, equity and good conscience but held to be barbaric and offend their fundamental rights as enshrined in Section 42 (1) of the 1999 Constitution of the Federal Republic of Nigeria and Article 15, 17 (1) and (2) and 25 of the Convention on the elimination of all forms of discrimination against women.

⁸⁷(1997) 7 NWLR (pt 512) 283

⁸⁸(2001) 11 NWLR (pt 723) 196

⁸⁹ Unreported suit No Sc/29/2013

⁹⁰(2014) All FWLR (part 7302) p. 1323