ENFORCEMENT OF FEMALE CUSTOMARY RIGHTS TO INHERITANCE OF REAL PROPERTY IN OWERRI WEST LOCAL GOVERNMENT AREA, IMO STATE, NIGERIA

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CERTIFICATION

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DEDICATION

This thesis dedicated to my mother, Mrs Caroline Nwaechefu, who in no small measure contributed to my success story; words would never suffice to explain your kindness. I will forever appreciate you.And to the Almighty God, who has made the completion of this thesis a reality, even though it was not easy but His grace saw me through.

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ABSTRACT

The denial of females or widows' right to inheritance of real property on the intestacy of a father or a husband in Imo state has been a matter of debates and litigations. Notwithstanding the Supreme Court decision in *Ukeje v. Ukeje* (2014) and also the 1999 Constitution of Nigeria prohibiting discrimination, female disinheritance of real property has persisted. Existing studies were limited to the explanation of the discrimination, but none dealt with the ways of enforcing the Supreme Court judgment in *Ukeje v. Ukeje*. This study, was therefore, designed to study the mode of implementation of the Supreme Court judgment in *Ukeje v. Ukeje* on inheritance of real property in Owerri West Local Government of Imo State, Nigeria.

Rhode's Crisis in Masculinity and Feminist Critical theories were conceptual framework, while the ethnographic design was adopted. Respondents were purposively drawn from five communities across Owerri West Local Government of Imo state namely, Ohii, Amakohia-Ubi, Irete, Ihiagwa and Ndegwu out of 16 communities as they all share the same cultures. Qualitative methodology was adopted for data collection. Twenty-four respondents were selected. In-depth interviews were conducted with 3 traditional rulers, one each from Ohii, Ndegwu and Amakohia-Ubi. Key informant interviews were conducted with 11 community leaders: Ndegwu (2), Ohii (6) and Amakohia-Ubi (3). One Focus Group Discussion was also conducted with ten family heads. Data were content-analysed.

Ignorance, lack of awareness among the females, and the dominance of male ego in Owerri West Local Government made compliance with the Supreme Court judgment in *Ukeje v. Ukeje* difficult. Removing discrimination against females in the inheritance of real property was perceived by the males as an imposition of foreign culture on them. The decision in *Ukeje v. Ukeje* was perceived a threat to masculine superior status and as a way of giving women advantage over men. The males were also worried that the females would permanently dispossess family members of the intestate if the decision is enforced in the communities. Men also perceived the decision in *Ukeje v. Ukeje* as a means of weaponising the Nigerian Constitution to impose the customs of the Yoruba and the Hausa on Igbo people. However, traditional rulers and community leaders observed that persuasion was required to make the people comply with the judgment.

Despite the decision in *Ukeje v. Ukeje*, there is still a strong cultural resistance to its enforcement. In making executive restatement of the case law, there is a need to involve traditional rulers and Chairmen of town unions in the enforcement process. The ministries of Information and Women Affairs should enlighten people on the inheritance rights of women while also enlisting the support of religious institutions.

Keywords: Inheritance rights of females, Ukeje v. Ukeje (2014), Gender discrimination, Supreme Court of Nigeria

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[1] (2014) 9NWLR (Pt 1418)p. 384
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Constitution of the Federal Republic of Nigeria 1999, as amended 2011

Convention on Political rights of Women 1952

Child Right Act cap 50 LFN 2003

Criminal Code Act Cap. C 38 Laws of the Federation of Nigeria 2004

Violence against Persons Prohibition Act (VAPP) 2015

Eastern Nigeria Marriage Laws 1956

Evidence Act of Nigeria 2011

Female Genital Mutilation Act 1985

International Covenant on civil and political Rights

Marriage Act, Cap. M6 Laws of the Federation of Nigeria 2004

Married Women Property Law 1882

United Nations Commission for the status of Women 1952

Universal Declaration of Human Rights, 1948

Wills Act 1837 amended 1852

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

There is the Convention on Elimination of All forms of Discriminations against Women (CEDAW) was adopted in 18th December 1979 by United Nations General Assembly and has so far been ratified by 189-member state of the UN. It became operational as an international treaty in 1981. The Convention has a committee that monitors the extent the provisions of the convention are implemented among the state especially in the areas of violence against women, gender pay gap, stereotypes, girl school drop-out rates, political participations among other.[4] CEDAW propagates that men and women should be treated equally and given equal opportunities in all spheres of life. There should be no hindrance placed on the women's wheel of progress towards contributing to the growth of the society in which the live. Based on the CEDAW treaty, there should not be occupational or trade placement discrimination against female gender. The dignity of womanhood should be restored devoid of cultural and historical inhibitions, contrary what is currently being practiced in the South Eastern Nigeria.

The concept of men and women equality advocated the removal of all forms of inequalities between men and women; by so doing the female folks can achieve self-actualisation and contribute to nation-building and restore gender dignity in every sphere of life. By implication of CEDAW, the society will grow to the optimum only if both genders are given full opportunity to contribute to societal advancement. This cannot be achieved in an atmosphere where the women are discriminated against or treated as inferior to men.

[4]https://www.soroptimistinternational.org/what-is-cedaw-and-how-does-it-work/>accessed 20th April 2021

Women's activism has risen all over the world in response to nationalist or class struggles, as well as struggles for democracy, human rights, and peace. Feminism and activism have sprung up in response to women's repression and exploitation, with the primary goal of improving women's social and humanitarian circumstances. Women's legal and political rights; violence against women, reproductive rights and abortion, sexual liberty; employment and discrimination eradication; and political involvement and representation appear to be common topics in gender equality movements around the world.

The discriminatory attitude towardsthe right of a female child and widows to inheritance and succession among the Igbo people of South-Eastern part of Nigeria has become topical, important, and perhaps notorious among legal analyasts. There is no gainsaying that Lawyers, sociologists, religious bodies and social commentators have shed varying opinions on the issue of the discriminatory attitude towards females on the inheritance of real estate. Judges, in their bid to do justice have made conflicting judicial pronouncements on the all-important subject of the rights of females andwidows towards matters of inheritance of realty. Several writers in the past and present notably E I Nwogugu (1974), Saggay (2014), Oyewo (1999), among others have commented and criticsed the ideology behind this subject matter of female discrimination in respect of inheritance and succession rights generally. It should be known that the Supreme Court of Nigeria had in recent time taken a position which had become a precedent that a female child or a widow has the constitutional backing not to be discriminated against on the ground of God instituted gender differentials. There is no doubt that following recent judgments of the Supreme Court of Nigeria, it is actionable in a competent court of law for a female to be excluded in the partitioning of the property of a man who dies without a will or valid will. It is unfortunate that no legislation had been passed by the Federal Parliament in Nigeria entitling women to the inheritance of their late father's estate, except the general provision of constitutional of the Federal Republic of Nigeria 1999 as amended and the recent judgments of the Supreme Court of Nigeria, *Ukeje v. Ukeje* (2015)[5], which will serve as useful reference points when the need arises.

In Igbo land, particularly in Imo State, the scramble for the dispersal of the real assets of a dead man constitutes serious social and cultural problems that lead to endless court

[5] (2014) 9NWLR (Pt 1412); (2015) EJSC (vol 3) 70

litigations. Such litigations, due to the slow justice system in Nigeria, run several years in the Court, up to twenty years in some cases, as exemplified in the cases of *Ukeje v. Ukeje*[6] which began in 1982 and ended at the Supreme Court of Nigeria in 2014. In other instances, some of the litigants or their witnesses may die in the process of protracted litigation spanning many years in Court. When a man dies testate or makes a valid Will before death, the problem of sharing his estate or deciding who gets what at his death is minimised. There are still instances of children and wives of a deceased who feel aggrieved or less benefited in the Will and later turn around to challenge the due execution of the Will in the relevant Court of law. Nevertheless, when a man makes a Will, he has the freedom to device any real property or bequeaths any personal property to anybody, including his female children. It advocated that for a man to make a Will to enable him give property to his female children and wife so as to protect them against discrimination that usually occurs when the man dies intestate, leaving his beloved female children and wife at the mercy of the custodians of custom. The position of the customary law of the Igbo people prior to Supreme Court judgment in *Ukeje v. Ukeje*[7] is that the females are excluded from the distribution of the estate of a man who dies intestate. The rules of customary law and the Administration of estate laws may be used. It is a problem of the discriminatory practice against females during inheritance of real property under the customary law of the Igbo people particularly in Owerri West Local Government Area that this research work is out to investigate and solve in line with the recent Supreme Court judgment in *Ukeje v. Ukeje*[8] that has empowered female the right to inheritance.

We are more interested in the inheritance rights of females in the research work than the succession right, even though some people see the two concepts as the same. A writer like Kolajo (2005) argues that the concepts are the same. Emiola (2011) threw more light on the matter when he opined that inheritance is limited to property, while succession is the devolution of title to the property under the law of descent and distribution. What worries the mind of any well-meaning citizen of Nigeria is that in the rural setting, women constitute the

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[6] (2014) 9NWLR (Pt 1412); (2015) EJSC (vol 3) p.70
[7] (2014) 9NWLR (Pt 1412)p. 384
[8] (2014) 9NWLR (Pt 1412)p. 384

bulk of the farming population in food production, children upbringing, organization of cultural events, yet this vulnerable gender as one may choose to call them appear to be seen as mere chattels, which can only be seen and not be heard in the scheme of things pertaining to inheritance of real property. The most they could inherit are the clothing and cooking utensil of their deceased mother. This is grossly unfair, and that is why this researcher is embarking on this study.

There is no doubt that this work, when completed, will serve the immediate and future needs for the much-agitated gender equality and the advancement of Nigeria legal jurisprudence.

1.2 Statement of the Problem

It is of a truth that in southeastern Nigeria, the dilemma and plights of women being denied the right to inheritance when their fathers or husbands die intestate among Igbo people had existed for centuries. Under customary law, the division of the estate of the deceased is grounded on traditional doctrines of inheritance and property succession based on paternal or maternal lines. When a person dies without a will or a valid will, the customary law oversees the circulation of his assets, regardless of the location of the assets or place of the death, unless he had moved his domicile while alive.The females among the Igbo nation are treated as objects of inheritance; it is therefore seen as absurd for a female who herself is an object of inheritance to seek to inherit the real estate of her father or husband in the event of death. Over five decades, there has been the hue and cry from different quarters condemning this discriminating and unwarranted injustice meted out on the females in the southeastern part of Nigeria. In spite of the Supreme Court judgments in *Onyibor Anekwe, Chinweze v. Mrs. Maria Nweke*[9] condemning disinheriting of female, also the most recent Supreme Court judgment of *Ukeje v. Ukeje*[10] has condemned the practice of disinheriting females in the Igbo land. The reason why the Igbo still refused to comply with these two laudable Supreme Court judgments remains a mystery. Does it then mean that the Igbo people in Imo state are not law-abiding citizen? Failure or refusal of the Igbo in the Imo state to comply with this recent Supreme Court judgment in *Ukeje v. Ukeje*[11] directing them to stop disinheriting females and

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[9] (2014) 9NWLR (Pt 1418)p. 393
[10] (2014) 9NWLR (Pt 1412)p. 384
[11](2014) 9NWLR (Pt 1412)p. 384

the need to know what can be done to ensure compliance with the judgment arethe focus of this study. The focus of this study is on discrimination against women, with a nod to the courageous verdict in Ukeje v Ukeje; Anekwe and Nweke and their implications for women's property rights. The project looked into the legal and policy framework that underpins the protection of women's rights. The nature of Igbo customary law in Nigeria is the focus of this research study, as is the progression of Ukeje's case from the High Court to the Appeal Court to the Supreme Court, and the impact of the cases on judicial protection of women's right to property in Nigeria, as well as how this right will be realized to a logical conclusion.

1.3 Research Questions

The study will address the following questions:

1. Is there any connection between the discrimination meted on the females in the south eastern part of Nigeria and enacted statutory instruments in the region?
2. Why have the Igbo people not complied with recent Supreme Court judgment in *Ukeje v. Ukeje* [12] that has empowered females with the right of inheritance of realestate?
3. Which sanction should be imposed on any family who fails to comply with the Supreme Court Judgment in *Ukeje v. Ukeje*[13] which empowered females with the right of inheritance of real estate?
4. How can the law ensure compliance with the judgment in *Ukeje v Ukeje*[14]which empowered females with the right of inheritance of real estate among the Igbo, particularly in the Owerri West Local Government Area of Imo State, Nigeria?

1.4 Aim and Objectives

[12] (2014) 9NWLR (Pt 1418)p. 384
[13] (2014) 9NWLR (Pt 1418)p. 384
[14] (2014) 9NWLR (Pt 1418)p. 384

The study aimed at discussing and suggesting ways of persuading or compelling the Igbo people in Imo state, particularly in Owerri West LGA, Imo state, to stop disinheriting females of real property. The specific objectives of this study include:

i. The studies examinedthe relevance of the Supreme Court judgment in *Ukeje v. Ukeje*[15] inrespect of customary female rights to inheritance of real property in South-Eastern Nigeria whena man dies intestate, particularly in the Owerri West Local Government Area of Imo state.
ii. The studies investigatedthe level of compliance by the Igbo people of Owerri West Local Government area of Imo state with the Supreme Court judgment in Ukeje v. Ukeje[16] and why the people had not implemented the judgment.
iii. The studies identified the type of sanctions that can be meted out against any family whofailsto comply with the Supreme Court judgment in *Ukeje v. Ukeje*[17]
iv. The studies proffered ways of ensuring compliance with the judgment so that it will notend upas a mere paper judgment

1.5 Scope of the Study

Studies have not stated how this Supreme Court judgment will be complied with in Imo state and this is the reason for embarking on this work. The scope of this study is to focus on the recent Supreme Court judgment in *Ukeje v Ukeje*[18] as it affects females in the southeastern Nigeria as to their right to inheritance of real property. The study will cover the Owerri West Local Government Area of Imo state. This selection is based on the fact that this Local Government stood as one of the Local Governments that make up the Owerri as the state capital of Imo state and has the major concentration of the citizens of the state.

1.6 Significance of the Study

[15] (2014) 9NWLR (Pt 1418)p. 384
[16] (2014) 9NWLR (Pt 1418)p. 384
[17] (2014) 9NWLR (Pt 1418)p. 384
[18] (2014) 9NWLR (Pt 1418)p. 384

The study, when completed, will awaken the consciousness of equality before the law and the rule of law as enshrined in the Constitution of the Federal Republic of Nigeria 1999 as amended, more specifically section 42(1)(a) and (2) of the Constitution. It is crystal clear that the rate of compliance with the recent Supreme Court judgment in *Ukeje v Ukeje*[19] among the Igbos of South East Nigeria is abysmally low, if any, particularly in the Owerri West Local Government area of Imo state. The study will contribute to the body of knowledge in the area equality of right to inheritance and succession in real property between female and male offspring of any man who died intestate in South-East Nigeria. The female offspring has a remedy where she is denied a right to inheritance of real estate and succession.

The study will further provide useful insights and suggestions for the customary custodians of Igbo native laws and culture and other stakeholders in Imo state for compliance with the recent Supreme Court judgment that has now empowered females with the right of inheritance of real estate and succession just like the males are entitled thereto *ab initio*. This is apparently going to be so because every citizen of Nigeria is subject to the Constitution of the Federal Republic of Nigeria, the Constitution being the grund norm of all Nigerian laws, bearing in mind that we are under the Constitution and the Constitution is what the Supreme Court judgment says it is. The work, in conjunction with similar studies on this subject, is expected to provide the required intellectual support for the actualisation of the much-agitated quest for gender equality in South Eastern states of Nigeria. Previous studies have not stated how the Igbo of Imo state of Nigeria will be made to comply with this laudable Supreme Court judgment, and that is the gap this study is meant to fill in the body of knowledge.

1.7 Operational Definition of Terms

[19] (2014) 9NWLR (Pt 1418)p. 384

Intestate: this means that a person died without making a Will.

Testacy: the state or condition of a dead person leaving a valid Will

Repugnancy test: this is a practice whereby the courts declare whether or not a custom is inconsistent or contrary to natural justice or simply barbaric based on an objective test.

Grund norm: this is the basic law against which all other laws in the country are tested for their validity.

Constitution: the fundamental and organic law of a nation or state that establishes the institutions and apparatus of government, defines the scope of governmental sovereign powers, and guarantees individual civil rights and civil liberties

Ubi jus ibi remedium: This means that where there is a right there is a remedy.

Ante-nuptial property: The property a single woman acquired before her marriage, that is, as single girl

A *feme sole:* single girl

Real property: Landed property

Inheritance: The Property received from a deceased parents under the laws of Intestacy. Property that a person receives by bequest or device.

Succession: The acquisition of right or property by inheritance under the law of descent and distribution, that is, by stepping into the shoes of a deceased person

Intestate law: The relevant statute governing succession to the estate of those who die without a valid Will.

Domicile: The permanent place of residence chosen by a person or dictated by his place of birth

CHAPTER TWO

LITERATURE REVIEW AND THEORETICAL FRAMEWORK

This chapter reviewed relevant literature on the female rights to inheritance of real estate of the father or husband who dies intestate among the Igbo in the South Eastern Nigeria. The review will be done in the light of the aim and objectives of this study.

2.1 Literature Review

2.1.1 Analyzing the Igbo Harmful Cultural Behaviors that Abate Women's Rights

There are several factors that tend to promote the subjugation of women as second class citizen among the Igbo race in the southeast of Nigeria. In the light of this ugly situation females find themselves, two notable writers, Ifemeje Sylvia Chika and Umejiaku Nneka[20] traced the origin of the discrimination against female property inheritance and identified seven (7) factors responsible for gender discrimination against females in the Igbo land and some of the factors are discussed hereunder.

i. Domestic Violence as a social norm.Domesticviolence isprevalent in a situation where the woman is perceived by the man as his personal property, which he could maltreat and dispose off at will. No wonder Egbue, had identified the giving of bride price as the main reason why husband treats the wife as mere a chattel who he could handle in whatever ways it pleases him. The man believes that once he has paid the bride price, the woman is his personal property, which he can control and discipline and even dispose of whenever he pleases—this attitude of men in the south-east calls for academic and judicial investigations. Previously, the courts also did not help matters. The court had earlier given kudos to this inimical oppressive culture against women in the southeast. In the retrogressive judgment of Akinbuwa v Akinbuwa[21], the Nigerian Court of Appeal gave judicial approval to husband

[20] "*Gender-Base Domestic Violence in Nigeria"* India Journal of Gender studies 2012vol. 19 issue 1 pp 138-148
[21](1998) 9 NWLR (pt564)p.100

subjugation of the wife. When a court, a court of appellate jurisdiction for that matter could also approve of women humiliation by men, many women in Igbo land had by the judgment been conditioned subconsciously to think and believe that battery of women is a sign of their husband's affection for them, and they refuse to complain out of fear of rejection and divorce. Women battery had become a norm in such a society.

ii. Humiliating Widowhood Custom

We would surely agree withIfemeje Sylvia Chika and Umejiaku Nneka[22]that the Igbo women are denied their human dignity, which the Nigerianconstitution guaranteed. Ifemeje Sylvia Chika observed that when a husband dies, the widow is made to take fetish oath to absolve her of blame of the death of her husband. She is also humiliated by shaving off her hair and her pubic hair. She is made to eat little food poorly cooked as sign of pain that she is not happy over her husband's demise. As if that wasn't enough, the widow is forced to drink a mixture made from the water used to bathe her husband's corpse in order to prove her innocence in the death of her husband. She cannot go to the market and her trading or whatever business she was engaged in comes to a halt during this mourning period. At this time she lives on charity of her relations or spends her little savings to feed the children left behind by the late husbandon the death of their wives, men are not subjected to this type of degrading treatment by the culture. The males are subjected to these humiliating practices and the constitution frowns at this discriminatory humiliating practices against any citizen of Nigeria and that was why the Supreme Court had by the decision in *Ukeje v. Ukeje*[23] removed these discrimination and this is the centre piece of this research work at hand

iii. Wife Inheritance

The discrimination against women which is the focus of this research could be attributed to the practice inheritance of wife by a member of the deceased man's family. In support of the argument that the Igbo culture views the woman as a slaves to be inherited when the husband dies, we agree with Ifemeje Sylvia Chika's submission where she explained thatthe practice where a widow is required to marry the late husband's brother in order to continue the marriage, and if she refuses, she will be expelled from the family, is totally bad, frustrating

[22]"*Gender-Base Domestic Violence in Nigeria"* India Journal of Gender studies 2012vol. 19 issue 1 pp 138-148
[23] (2014) 9NWLR (Pt 1418)p. 384

and repugnant to human conscience and is unprogressive in nature. How coulditbe explained that the death of the husband does not bring to an end the marriage but the death of the wife terminates the marriage under customary law?The barbaric idea is that the woman is married to contribute nothing other than bear children and nurse them to maturity. To stretch it further, on the death of the husband, the eldest son of the husband from another wife can also step in and start cohabiting and having sexual intercourse with the widow who may be old enough to give birth to such a son, all in the name of raising children for a dead man who has departed the world. The practice of wife inheritance is demeaning and offensive. It is however submitted that the widow should be free from all forms of discrimination as guaranteed by the Nigerian constitution and be allowed to remarry any man of her dream. She could, at her discretion marry either from the late husband's family or remain single all her life or look for a man from any community or country of her choice without being coerced by anybody or culture. The decision of what to do with her life after her husband's death should be left for her to make.

iv. Payment and Refund of Bride Price

it is also observed that the Igbo people think that a woman is for sale and once dowry has been paid by the groom, the woman loose every sense and right of a citizen except as decided by her husband. This is whyEnemuo (2005) has condemned the practice of paying of bride price in the first place before returning it back at divorce. How can a woman who ought to be compensated by way of alimony, now under the customary law, be required to refund the dowry paid on her by her estranged husband at divorce, especially for a marriage that has lasted for over twenty years. We also agree with Enemuo that the culture of paying a bride price to be abolished. This practice of paying and refunding the bride price psychologically equates the women to chattels with no real say in matrimonial matters. This is whyAduba J.N. (1991) also submitted that paying and refunding the bride price appears as if a woman is an object of merchandise purchased and disposed of at whims and caprices of the man and his family. The submission of Aduba J.N. that paying and refunding the bride price amounts to commercial exploitation of the customary law marriage dissolution process. This cultural practice of exchanging women for monetary consideration offends the principle of human dignity and it is clear violation sections 34 and 42 of the 1999 Nigerian Constitution, which protects the dignity of human of human person and also offends the freedom from all forms

of discrimination. Does it mean a woman cannot be a wife without the man paying consideration in monetary terms? We believe, as Aduba J.N said, that a female can be a wife and bear children even if no money is paid by her husband's family.

These are the cultural practices that perpetually enslave the female gender and it is time women are extricated from all forms of cultural enslavements. The fact these oppression against women might have been going on for centuries does not make these obnoxious culture acceptable to modern society and modern civilisation. These oppressive cultures against women must come to anend through concerted efforts of the society at large. Those who still want those barbaric cultural practices to continue must be sanctioned by the executive and judicial powers of the state no matter their locations. There is no other better time to begin abrogating those offensive discriminatory cultures than now. This is a season of female emancipation and every one especially the females must say no to oppression, intimidation and victimisation in every shades of it. This oppressive refund of bride price during divorce and payment of bride price are cultural practices against women wellbeing whereas the male gender is not subjected bride price slavery. It amounted to oppressive gender discrimination which is the focus of this research using the judgment of the Supreme Court in*Ukeje v Ukeje* (2015) EJSC (vol.3) 70 as a reference point.

v. Denial of right of Property Settlement at Customary Divorce.

It is no more a strange information that the women in Igbo land are barred from inheriting real property of either their fathers or husbands at the demise of the man in question. This position prompted Ifemeje Sylvia Chika and Umejiaku Nneka[24] to posit that in Igbo customary marriages, alimony is unknown under native law and custom; the divorced wife receives nothing to help her start a new life, whereas in Nigerian statutory marriages, the Nigerian Matrimonial Causes Act, section 70, 13 made very detailed provisions for a spouse's maintenance on divorce. Both husband and wife have an equal right to child custody under Section 71 of the Matrimonial Causes Act. Section 72 of the matrimonial cause Act[25]provides for an equitable division of marital assets in the occasion of a divorce. The woman does not have the right to custody during a divorce under native law and custom

[24] "*Gender-Base Domestic Violence in Nigeria"* India Journal of Gender studies 2012vol. 19 issue 1 pp 138-148
[25] Laws of he Federation of Nigeria 2004

because the children are considered to be the man's family's assets. Under the Matrimonial Causes Act, in case of divorce, family properties are settled, custody is shared and the woman goes away peacefully with human dignity to start a new life. We totally concur with Ifemeje Sylvia Chika and Umejiaku Nneka in this research thatdiscriminatory cultures against female folks in our society are unprogressive, repressive and reprehensive and must be stopped. Whatever is good the goose is also good for the gender says an old adage. If a man and a woman get married and raise children, it makes sense that she should be entitled to property settlement at dissolution of marriage whether statutory or under native law and culture.

vi. Exclusion of Females in inheritance

It is an undeniable truth that the Igbo females are not included in the partition or inheritance of their father's or their husband's estate at the death of the man. The cultural explanation being that the female will marry and go away, so she must not be allowed to carry the family property to another man's family. She is expected to inherit properties in her husband's family through her male children if she was lucky to have males, otherwise she goes empty handed on the death of her husband just the way she was left empty handed on the death of her father. The simple logic is that the Igbo are patrilineal and so the females are maginalised. This position shows the Igbo people kept the females and mere chattels or window objects that have little or no value.

This study agrees with our studies at hand, and the reason being that in our present research we want to find out what can be done to change this age long orientation that a wife has no right to possess and administer the estate of her late husband or father as the case may be. Our present studies seek to find ways of ensuring that female begin to have right to inherit and administer estate like their male counterpart.

Ifemeje Sylvia Chika and Umejiaku Nneka’s work on female exclusion frominheritance is in agreement with the research at hand because the case Ukeje v Ukeje (2015) EJSC (vol.3) 70 as a reference point for this thesis is all about abolition of gender discrimination and how to enforce gender equality because gender discrimination contradict section 42 of 1999

constitution of Nigeria. Whether society is patrilineal or matrilineal cannot support gender oppression in a country Like Nigeria where theconstitution is supreme as the grund norm.

Great jurists, like Karibi-Whyte, J.S.C, have criticised the Igbo custom for discriminating against the females. This was why the decision in *Ukeje v.Ukeje*[26] has rightly been described as heroic but the compliance to that judgment has been a herculean task among the Igbo people who still hold on to their gender discriminatory culture. If men love inheriting and acquiring properties, there is nothing bad or absurd if a woman inherits the properties of her late husband or father as the case may be. A woman also has right to properties under the Nigerian constitution specifically section 42 (1) and (2) and such right cannot clawed back by cultural inhibitions because the constitution is supreme and it is from the constitution any other law derive its validity. Any customary law that purports to disinherit women in the area of property is null and void, that is of no effect of the whatsoever. Section 43 of the constitution[27] says every citizen of Nigeria has the right to acquire and dispose immovable property. Every citizen as envisaged by the constitution include male and female. To bar a female from inheriting property in any manner amounts to a breach of the constitution and such a breach is actionable.

vii. Priority for Male Child

It is no more a strange information that in Igbo land, people do not make pretence for the preference for male children; their reason being that the females joins the husband's family after marriage, while the males would remain to carry on and defend the family name. This was why and up to date they prefer to put their male children in more expensive schools and put their female children in public schools or less expensive one. They prefer the girls to learn a trade rather than pursue higher studies. In the homes the female children are saddled with the responsibilities of sweeping, washing all clothes including the boys' clothes, cooking and so on. It would have been appropriate for the family to give equal opportunities for both boys and girls, by which the female could prove their worth. Female is not a cursed gender and they should be treated with dignity. This practice of treating female as a second

[26](2015) EJSC (VOL.3) 70 SC
[27] 1999

class human beings prompted this present research of finding ways of changing this wrong perception.

viii. The Genital Mutilation of Women

Ifemeje Sylvia Chika,(2014)[28]explains Female Genital Mutilation, (FGM)"a hostile injury to the women gender's outer sex organ caused by cutting portions of the organ or causing major harm." Specifically, it is the cutting off the clitoris of the female child to purportedly curtail the tendency of sexual promiscuity of the females when they grow up. The practice is not limited to the tribe in Nigeria. Despite wide spread crusade against the barbaric culture, the Igbo had continued, arguing that circumcision curb sexual promiscuity among the females. Some females bleed to an unconscious state and some contract infections, develop nervous shock; and some become sexually frigidity as a result of this unwholesome practice. There are no medical proofs to support the argument that uncircumcised females are more promiscuous than the circumcised. If females undergo Genital Mutilation to curb sexual promiscuity, what then is done to the males to similarly curb their sexual promiscuity? The answer is: nothing. This is discrimination against the females and it must be stopped because the Nigeria constitution under section 42 speaks against discrimination in whatever form. Female Genital Mutilation FGM is a violation of section 34 of the Nigerian 1999 Constitution, which provides that no Nigerian citizen shall be subjected to torture or inhuman and degrading treatment. This is enforceable right at law. The Child Right Act, 2003 is against female genital mutilation. Mary Odeh[29], then a 15 year's old child from Calabar, Cross River State in Nigeria who was inflicted with forceful genital mutilation recounted her ordeal as screamed in pains, bleeding and no medical attention was given after the unorthodox FGM was carried out on her. We also submit that the this piece of literature agrees with the present research on female discrimination in Igbo land southeast Nigeriabecause females were singled out for stupid circumcision just carry out the wish of

[28]Ifemeje S.C. and Umejiaku N. *"discriminatory cultural practicesand women's right among the Igbo of South-East Nigeria:A critique" Journalof Law, Policy and Globalisation* vol. 25 2014 pp1-27.

[29] The Hindu online of India National Newspaper, Sunday, May 22, 2005 > accessed 10 December 2018. See also Uche Okonkwo, EBSU (2008) journal of sociology, vol 2 p.73 -cited Hoges:197

the male gender.To this end Female Genital Mutilation (FGM) or circumcision has been abolished.[30]

2.1.2 Feminist Perspective on Some Aspects of Nigerian Private Law

Succession and Inheritance

There is no doubt that Succession and Inheritance of real property in Imo state Nigeria is has generated controversy especially when it relates to the right of the females.Olugbemi A F (2015:160) submits that a person's right to his property, as to if legal or equitable, survives his death and passes to his personal representatives by operation of law. These "personal representatives" may be executors or administrators. Executors are appointed by the departed prior to his death to carry out the terms of his will, whereas administrators are assigned by the Court to administer the estate of the deceased who died intestate or testate but without having to leave executors who are able, eager, and ready to act. Personal representatives hold the deceased's property with the sole intention of dispensing it for the beneficial of the beneficiaries, which includes collecting assets, paying debts, and investing the remainder.

Nigeria is a federal state; that also indicates that all the tiers of government, namely the Federal, State, and Local Government Councils, also possess the right to implement legislation. While the federal law is applicable country-wide, the State law is restricted to the geographical boundaries of the state. It is complicated to have every of Nigeria's thirty-six states have the authority to enact their individual laws and make applicable, the customs of their locality within the state judicial system, which might be different one area from another within that state.The complex interaction of this multi-tiered legal framework, that works in conjunction with extremely powerful social control gender based, ethnicity, and religion, affects women's standing, mostly in marriage.

[30]Female Genital Mutilation Act 2015

In personal law's field, received English law has a particularly strong influence on customary law, native law, and practice (marriage and inheritance). Marriage laws in Nigeria have a significant impact on women's legal status and position in a variety of areas, including residence, property rights, and legal competency. Theright of a woman to life and assets is invariably determined by the type of marriage she enters. Statutory weddings and customary marriages, which include Islamic law marriages, are the two types recognized by the legislation. As a result, any discussion of women's birthright in the country must take into account the legal system's variety. As a result of the pluralistic structures of the Nigerian legal system, several systems of law are used to determine who succeeds and inherits the property of deceased people. To determine which legal systems apply to a deceased person, it is necessary to determine whether he died testate or intestate, that is, whether he drafted a valid Will while alive or not. If he made a valid will during his lifetime, the terms of his testamentary instrument effectively supersede any existing laws of inheritance, whether based on customary law, Islamic law, or English law marriage. Only after he dies intestate that the question of whether he was a Moslem or traditionalistarises. Washe married legally, or did he follow his own set of rules?

This literature agrees in whole with the present thesis at hand because discrimination against women becomes prominent when a husband who married under the native law and culture dies intestate, and that is when discrimination against women in the inheritance of real property manifests itself whichiswhat the present research tries to proffer solution to the discrimination by advocating the enforcement of the judgment in the case of Ukeje v Ukeje [31] which has removed the century-long discrimination against women in the inheritance of property according to section 42 (1) &(2) of 1999 constitution of Nigeria.

Testate Succession

Generally, all Nigerians of sound dispensable mind, having reached the testamentary age is capable of making a will in English form. A will in English form, complying with the rule of formal and essential validity will pass real or personal properties of the deceased in accordance with the intention of the testator. A Will, by its nature, is ambulatory and is

[31](2015) EJSC (vol.3) 70

revocable by another will or codicil or by destruction, by marriage and revocation may be conditional.

A will's principal purpose is to allow a testator to change, exclude, keep, or amend any rule or laws of inheritance; customary, Islamic, or marriage-based under the English law. This is provided, though, that it complies with all official validity criteria.Thus in *Shogbesan v Adebiyi*[32], a testator by a will broadened the ordinary idea of family and include the testator's brothers and another. Still on the foundation of this premise, the Islamic rule of the Maliki school that individual obligated by law in Islam might only allocate freely one-third of his inheritance as he chooses, whereas the remaining should be subjected to distribution in line with Islamic law was held in *Adebusokan v Yinusa*[33]incompatible straight or by insinuation with the provisions of the Wills Act1837, which is an English statute incorporated by reference into Section 33 of the High Court Law of Northern Nigeria

This testamentary liberty, however, is not without limitations. A testate cannot devise his entire share of family property in his will, and any clause in a will purporting to do so is null and void. The power of testacy is restricted to property individually acquired by the testator and which he had power to dispose in his lifetime and which, if he had died intestate, would have devolved on his heirs' at law. This was the principle applied in cases like *Taylor v Williams*[9] *and Ogunmefun. v Ogunmefun.*[34]This restriction on the power of the testator to order and distribute the assets will is recognised by the Wills Law of the several States in Nigeria which makes any such disposition lay open to any customary law relating thereto.

Intestate Succession

Where the departed dies intestate; parting withno will, then the questions regarding his marriage, religion or custom becomes relevant in determining how his estate should be distributed.

In Nigeria, the question of inheritance has always been difficult to solve. It is a festering wound that has exposed our society's women to various degrees of exploitation and oppression. The

[32] (1971) 16 NLR 26
[33](1971) 1 ALL NLR. P.225
[34] (1931) 10 NLR p.49

majority of the perpetrators of this heinous act are the husband's desperate, greedy relatives, who take pride in undermining the widow's rightful ownership of the husband's property. When it comes to inheritance, a woman in Nigeria is subject to one of three different types of law under the Nigerian legal system. Pertaining to the husband's estate, a woman married under the Act is governed by the Matrimonial Causes Act of 1970, whereas a female married within the customary law is governed by the customary law appropriate in the area the husband descended from. Lastly, Islamic succession law applies to women who marry according to Islamic law. Each of the aforementioned systems has its own set of principles and measures for dealing with several issues and situations.That is, whereas some rights of women to inheritance are assured by law, the law itself may prevent women from having inherited in some cases, depending on the law under which a woman's marriage is governed. Women married under Yoruba and Igbo customary law cannot inherit their husband's property, and Igbo women rarely possess their father's estate.

2.1.3 Women Inheritance Rights under the Matrimonial Causes Act

Marriage under the Act is based on English common law and is monogamous in nature (one man, one wife). This type of marriage is the life-long voluntary union of one man and one woman to the segregation of all others. Even if no will is made, either spouse can inherit from the other. Women who marry under the Act are entitled to all of the benefits provided by English law. They are considered equal to their English counterparts (English women married under the English Act). Regardless of a woman's husband's culture or tradition, it is assumed that if they were married under the Act, the man has made the decision that his dealings should be governed by the statutory laws. A woman married under the Act who is subjected to discriminatory treatment has the ability to request Court protection from such acts and to seek a declaration that such acts are unlawful.

In *Suberu v. Sunmonu,* Jibowu,[35] FJ, also held that it is a well settled rule of customary law 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. It is unfortunate that the current position of the Supreme Court of Nigeria on Yoruba succession in *Akinnubi v*

[35](1997) 1SCJN 202

Akinnubi[36] is that a Yoruba woman cannot administer her husband's estate on behalf of her children. This is an unfortunate decision to have been rolled out by the Supreme Court in this jet age. Many people have disagreed with the position of the Supreme Court in this case.

The origin of the Yoruba custom that the judgment rested upon is the belief that women are inferior to men and that they have to be guided and assisted to think by men. It is no gain saying that this position can no longer hold. Widows and children have suffered seriously and in some cases died as a result of a drastic change in their financial status which has made it absolutely impossible for them to have access to adequate medical care simply because the wife cannot inherit her husband's estate. Who will take care of the children of the deceased? Who will bear the cost of their education? Even though the brothers in *Akinnubi's* case are supposed to administer the property for and *on* behalf of the deceased's children, things do not always work out as smoothly as that. The custom is too old for this present day and it therefore has to change. The Court of Appeal had before it in the case of Mojekwu v. Mojekwu, which was decided a few months after the case of Akinnubi v. Akinnubi, a case in which it had to decide whether an Ibo custom known as Oli-ekpe was a fair custom. A woman (either a daughter or a wife) cannot inherit under that tradition, but a distant male relative can inherit a man's estate in place of a daughter. In the case of Mojekwu, the eldest son (Oli-ekpe of a deceased brother) wishes to inherit the deceased's estate at the expense of the deceased's daughter. The Oli-ekpe custom of Nnewi, according to Justice Nikki Tobi, is contrary to natural justice and good conscience.

Nikki Tobi J.C.A. delivering the lead judgment asked the following questions

> "Is such a custom compatible with equity and fairness in an egalitarian society like ours, where civilized sociology does not discriminate against men and women? Every day, month after month, and year after year, we hear and read about customs in this country that discriminate against women. They are thought to be inferior to the men. Why should that be the case?"

According to the learned Justice of the Court of Appeal, "all human beings - male and female - are born into a free world, and they are expected to participate

[36](1997) 1 SCNJ p.202

> freely, without any inhibition based on gender," which is constitutional. Besides being unconstitutional, any pattern of sex discrimination is diametrically opposed to a society founded on democratic principles that we have freely chosen as a people. We don't need to travel all the way to Beijing to see that some of our customs, such as the Nnewi "Oli-ekpe" custom relied on by the appellant, are incompatible with the civilised world in which we all live today, including the appellant. In my humble opinion, God has the monopoly on determining the sex of a baby, not the parents. Despite the scientific community's disagreement with divine truth, I believe that God, as the creator of human beings, is also the ultimate say on a person's sex. As a result, discriminating against a specific sex in a custom or customary law is, to say the least, an affront to the Almighty God Himself. Nobody should do such a thing. For my part, I have no hesitation in declaring that the Nnewi "Oli-ekpe" custom is contrary to natural justice, equity, and good conscience.

We also submit that this piece of literature agrees with the present research on female discrimination in Igbo land southeast Nigeria because the "Oli-ekpe custom was purely designed to deny a female the right of inheritance when her husband dies and she had no malechild except if a daughter would agree to remain in the family unmarried to bear male children on behalf of her late father, it is only on that situation that will she be allowed as a female to inherit her father's estate. This present research seeks to find ways of enforcing the right of femalesto inherit property of their father whether or not they get married, leveraging on the recent Supreme Court's decision in Ukeje v Ukeje(2015) EJSC (vol.3) 70[37] which had remove discrimination against females.

The law regarding intestate succession (death without leaving a will) in relation to a person married under the Act is somewhat complicated, and it varies from state to state.In Ogun, Ondo, Oyo and the Old Bendel states, the Administration of Estates' Law 1959 is applicable. Some of the states in the East have also made their own Laws. Under the law the following rules are applicable:

i. In the case in which a man dies leaving a wife without offspring, parents, brothers

[37](2015) EJSC (VOL.3) 70 SC

or sisters, his property will be inherited by the wife without question. The same is the situation where a woman dies leaving a husband, without an issue and other blood relations.

ii. ii. In the event of a man's death, leaving his wife and children without parents, brothers, or sisters, the wife takes complete possession of all personal belongings. After the costs of burial and debts have been paid, the Probate Registrar will assess a fee on all of his other assets. The remaining assets will be divided in a 1:3 ratio between the wife and the children. That is, the wife will get one-third and the children will get two-thirds. The wife's third is only valid until she dies. She does not have a complete inheritance. When she dies, her share of the property is passed down to the children.

iii. Where a man passes away leaving a wife, parents, brothers and sisters but no children, the wife inherits one half of the man's buildings absolutely. The remaining half is for the parents or brothers and sisters.

iv. If a man dies partingaway from his children but with no wife, the children take absolutely after charges, debts, and expenses are settled.

Under the 1987 Administration and Succession (Estate of Deceased Person) Law operational in States like Enugu, Ebonyi and Anambra states the followingrules apply:

i. If a man dies leaving a wife without a child, parents, brothers or sisters such a wife inherits his estate after all debts, funeral expenses as well as all the charges have been settled, Where the deceased person leaves brothers or sisters of half-blood, the wife's interest in the estate only last until her death or when she remarries, whichever comes first. Thereafter the half sisters and brothers take over the estate.

ii. When only the wife and children are left, the wife receives one-third of the estate, while the children receive two-thirds. The wife's interest in the estate, on the other hand, lasts only until her death or until she remarries, whichever comes first. Following that, the children will take over all the wife's share.

iii. If the deceased left a wife, parents, brothers and sisters, and other defendants, the wife receives two-thirds of the estate and the other defendants receive one-third. The wife's interest in the estate lasts only until her death or remarriage, whichever comes

first. Following that, the other dependants take over the wife's share.

One very clear thing is that there are discriminatory provisions in some of the laws. A clear example is section 51 (a) of the Anambra State Edict to the effect that where a husband survives a wife, he inherits the wife's estate absolutely but where the surviving spouse is the wife she inherits only up until the time she dies or when she remarries. The implication of this provision is that she cannot transfer her-interest in whatever she inherits to another person.

2.1.4 Women's Inheritance Right under Customary Law

Women maginalisation is not a recent phenomenon, this prompted Olugbemi A F (2015:160) to posit thatin most cases, women have no claim to take over their dead husband's property. The Nigerian customary law system is structured in such a way that no sole customary law applies to the entire population. Each ethnic group has its own set of customary laws. Under customary law, property can be disposed of in a variety of ways, including writing a will. Nobody can change a valid will written in accordance with English law. Except in the case of family properties, which can only be bequeathed to the entire family, the aim of an author of the will must be followed.If her spouse signs a will, a woman married under customary law can inherit his estate, and she has complete rights to anything she is provided under the will. A wife married by customary law whose husband died intestate, on the other hand, is not permitted to take over her husband's property, even if her children are. Although the wife cannot acquire outrightly from the husband in Yoruba tradition, she can however,become heir from her parents. In Yoruba tradition, there are simply dual types of succession: Idi - Igi and Ori - O-jori':*Idi - Ig*i and *Ori- O-jori'.*

The bride is usually regarded as property in Yoruba customary law, and she is not meant to have any expectations with regard to her late marital assets, especially in Southern Nigeria. Many customary laws seem so to keep denying women the right to own property, particularly land over which they only have a usufruct. The Lagos Division of the Court of Appeal ruled in Ogunkoya v. Ogunkoya that wives are considered chattels that can be inherited by other

members of the deceased's family under certain conditions. This position was not only available in Africa; it was also available in England until around 1870.

Under common law, the property of the wife, including her earnings, was entrusted to her husband. As a result, the ability of a woman who is married to take up a legal contract was severely limited, as was her ability to leave property by will. For such rules, equity served as a buffer. Later legislation reforms, most notably the Married Women's Property Act of 1882, resulted in the property separation of spouses, though this was far from equal in practice. As a result, claiming that marriage transferred a wife's property to her husband is almost certainly correct. Up until 1870, England may have been in this situation.

In general, couples have really no right to one another property during or after marriage, according to Nigerian customary law or native law and custom. Neither spouse had the authority to govern the pleasure or disposition of the other's property acquired prior to, during, or after marriage. If the husband dies without issue, his property is inherited by his blood relatives, and if the woman dies without issue, her assets is inherited by her family.

A wife does not acquire her husband's assets among the Yoruba. It is because, under customary law, a man's property is devolved by blood when he dies intestate. As a result, a wife or widow who is not a blood relative of the husband is not entitled to any part.In *Ogunbowale v. Layiwola,*[38]three spouses and three children (one from each wife) survived the deceased. At the period of, his death he also left two houses. The subject for determination here, among others, was whether it is the legal position of a Yoruba man's wife or children in respect to his real estate after his intestate death.If a wife without a kid for the deceased want to remain with the deceased's family, she appears to have just a right of occupation. The 2nd defendant had sold the subject property as her own and conveyed it in fee simple to the 1st defendant; she had not inherited any estate in her husband's real property other than the right to reside there as a widow, therefore she had no interest in the land that she could convey. She couldn't provide something she didn't have. Besides, she is the recipient of an inheritance.

[38](1975) 3CCHCJ/HC327

In like manner, Yoruba's law and custom, a husband do notsucceedhis deceased wife's property neither does heparticipate in her family property. Thus in *Caulcrick v. Harding,*[39]where a man left property to his three daughters, one of was the plaintiff's deceased wife.By reason of his deceased wife's entitlement to such one-third shares, the plaintiff husband sought one-third portion of the property. It was determined that the plaintiff lacked such a claim since the family property was inalienable under native law and tradition. It was not a tenancy in common relationship in England. If a person dies intestate without an heir but did leave assets that he inherited, the property passes to the family members from whom it was inherited, according to the law. If the deceased inherited it from his maternal relatives, it is passed down to his maternal relatives, and if he did inherit it from his paternal ancestor, it is passed down to his paternal relatives.

It is unfortunate that the current position of the Supreme Court of Nigeria on Yoruba succession in *Akinnubi v Akinnubi*[40]is that a Yoruba woman cannot manage her husband's belongings in the stead of her children. This is an unfortunate decision to have been rolled out by the Supreme Court in this jet age. Many people have disagreed with the position of the Supreme Court in this case. Widows and children have suffered seriously and in some cases died as a result of a drastic change in their financial status which has made it absolutely impossible for them to have access to adequate medical care simply because the wife cannot inherit her husband's estate. Who will take care of the children of the deceased? Who will bear the cost of their education? Even though the brothers in *Akinnubi's* case are supposed to administer the property for and *on* behalf of the deceased's children, things do not always work out as smoothly as that.

Traditionally in Nigeria, a wife is dispossessed of succession rights in her husband's manor, regardless of her efforts towards the accumulation of the property. Nigerian customary laws of succession epitomise the inequality, intense prejudice and suffering which women face in Nigeria, it clearly depicts the forces of subordination (customary laws and dictates) and their calculated efforts to restrict the economic independence of women in a patriarchal order.The ordeal of women can be elucidated by thousands of cases. For instance, in *Eze v.*

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[39] (1926) 7 NLR 48
[40](1997) 1 SCNJ p.202

Okwo,[41]Mr. A married the defendant and two other wives before he died.Mr. A. instructed his eldest wife, the defendant, to take possession of all his assetsand benefitfrom the dividends to support herself and the other two wives. He clearly specified that all the women should stay in his residence, hoping that they would have children of their own someday. However, Mr. A. died without any children born by all the three wives. The eldest wife tried to execute the wishes of her late husband but the son of Mr. A's late brother, (the deceased's nephew) filed a lawsuit against the eldest wife, as Mr. A's nearest male descendant, he affirmed that he is the proper person to inherit and manage the property. He also asked the Court to order aneviction notice to expel the defendant from her late husband's residence. The nephew won the lawsuit against the widows. In the ruling, the Obollo District Court opined that:

1. A wife has no rights to possess or administer a deceased husband's estate under customary law;
2. Only male descendants or relatives possess such rights;
3. Relatives or male descendants have the right to evict her from her deceased husband's residence, if she violates traditional dictates that would have made her husband to divorce her, if he was alive;
4. By acquiring the property of the deceased, regardless of the deceased's verbal instruction to do that, the nephew of the deceased had the right to circumscribe the unwritten wishes of the deceased and evict the widow out of her late husband's home.

The defendant appealed Obollo District Court's decision. But the Nsukka country Court affirmed the district court's ruling. Not satisfied and desperate to get justice the defendant took the case to Enugu Magistrate Court, which also affirmed the previous ruling but gave the defendant a reprieve of the eviction order. The legal impact of this ruling is that the customary legal system approves or supports the subordinate status of women in customary law marriages; the ruling also supports the denial of the succession rights of women in their husband's estate. Thus, childless widows continue to be treated like strangers in their homes by in-laws and the customary courts.

[41] (1963) ENLR Cap. 76 0f 1963

Actually, in most Nigerian societies, customary laws accord males succession privileges over land and other properties and deprive women such rights. Several reasons have been advanced for this action:

1. That an unmarried daughter is a temporary member of her father's household;
2. That the likelihood of marriage, confirms her transient membership because on marriage she assumes the membership of her husband's family;
3. Consequently, giving her the right of succession in her father's landed property will in effect allow her to cart away her family's heirloom to another lineage.

This validates the perception that Nigerian social norms do not regard the Nigerian woman as an individual but an appendage of a father or husband. The likelihood of divorce, and being a non-blood relative in her husband's family cancels her chances of succession rights in her husband's estate. The question now is: does a woman have any inheritance rights at all? Customary law, as shown above, denies women the right to inheritance and succession man, his wife and the children constitute a nuclear family. It is therefore unacceptable that after the death of the husband, the wife is regarded as a stranger without any right of inheritance. To her dismay, the property which she had laboured to gather together with her husband is inherited by the deceased's brothers and sisters if she had no issue. This is highly inequitable. Also, a custom which provides that a woman is an inheritable object can be said to be anti-civilisation and against morality.

We also submit that this piece of literature in tandern with the present research on female discrimination in Igbo land southeast Nigeria because the females were seen as temporary members of their families and must not be allowed to cart away the family property to her new family home after marriage. This present research seeks to find ways of enforcing the right of females to inherit property of their father or husband regardless of her marital status and gender as the case may be by leveraging on the recent Supreme Court's decision in Ukeje v Ukeje(2015) EJSC (vol.3) 70[42]. This research seek to advance the women right by seek avenue of enforcing the women right to inherit real property in line with the recent Supreme Court decision in Ukeje v Ukeje(2015) EJSC (vol.3) 70[43]. If woman carries her

[42](2015) EJSC (VOL.3) 70 SC
[43](2015) EJSC (VOL.3) 70 SC

share of her father's property to her matrimonial home cannot be seen as cultural property deprivation for the male's relatives of the woman.

Section 14 (1) of the 1999 Constitution provides that the Federal Republic of Nigeria shall be a state based on the principles of democracy and social justice. Similarly, section 21 (a) of the same Constitution supplies that the state willprotect, preserve and promote the Nigerian cultures in so far as it enhances human dignity. It goes to say therefore that any Nigerian culture or custom, which discriminates against any citizen, does not enhance human dignity and therefore should not be preserved. More fundamentally, section 42 (1) (a) of the Constitution of Nigeria, 1999 provides:

> A citizen of Nigeria of a particular community, ethnic group, place of origin, sex...shall not, by reason only that he is such a person- be subjected either expressly by, or in the practical application of any law in force in Nigeria...to disabilities or restrictions to which citizen of Nigeria of other communities, ethnic groups, place of origin sex are not made subject.

Similarly, Articles 1 and 2 of the Universal Declaration of Human Rights make provisions for the equal treatment and recognition of the status of woman. It is submitted that these provisions of the law are applicable to widows as well. The Supreme Court Ordinance No. 4 of 1876 which formally introduced the doctrine of equity as part of English Law to be applied in the Nigerian courts and which laid the foundation of the modern legal system in Nigeria provides:

> Nothing in this Ordinance shall deprive the Supreme Court of the right to observe and enforce the observance or shall deprive any person of the benefit of any Native Law and custom, such law or custom not being repugnant to natural justice, equity and good conscience, nor incompatible either directly or by implication with any law for the time being in force.

It is submitted that the customary rules of inheritance which deny a living spouse, the rights of inheritance or benefit over the property of his/her deceased partner is repugnant to social justice, equity, fair play and good conscience. The operation of the rules is by

implication incompatible with the Constitution and it cannot therefore stand. Niki Tobi, JCA, (as he then was) appeared to have laid credence to the above submission when he held in *Augustine N. Mojekwu v. Caroline M. Mojekwu*[44] that Nigeria is an egalitarian society where the civilised sociology does not discriminate against women. However, there are customs all over the country which discriminate against womenfolk and which regard them as inferior to the men folk. That should not be so as all human beings, male and female, are born into a free world and are expected to participate freely without any inhibition on ground of sex. Therefore, any custom, which discriminates apart from being unconstitutional, is antithesis to a society built on the tenets of democracy and law.But in the real sense of it, there are several forms of discrimination against women in our society. For example, on so many occasions, women were not allowed to stand surety for bail, unlike their male counterpart. Women are denied tax relief for their dependants and children, which in fact they are taking care of. All these are unpleasant discriminations happening every day in our society.

We also submit that this piece of literature is relevant with the present research on female discrimination in Igbo land southeast Nigeria because the wives were seen as a stranger in their husband's families and must not be allowed to inherit the late husband's if she had no male child in the marriage. This present research seeks to find ways of enforcing the right of females to inherit property of her husband regardless of whether or not she had a male child by leveraging on the recent Supreme Court's decision in (2015) EJSC (vol.3) 70[45]. This research seek to advance the women right by seek avenue of enforcing the women right to inherit real property in line with the recent Supreme Court decision in (2015) EJSC (vol.3) 70[46]

2.1.5 Women Inheritance Rights under Islamic Law

Islamic law, or Sharia, is recognized as part of Nigerian customary law. Shariah embodies Allah's ordained rules by which all Muslims are to be governed in their relationships with one another and with Him. The Shariah and its divine attributes can be traced back to four distinct sources.

1. The primary source of the *Sharia* is the Holy Qur'an, and as a direct revelation

[44](1997) 2 NWLR (pt 512) 283
[45](2015) EJSC (VOL.3) 70 SC
[46](2015) EJSC (VOL.3) 70 SC

it is sacrosanct and divinely ordained. Its Arabic text has remained consistent throughout the history of Islam, and is therefore not doubtful, or doubted Many of these verses were revealed in response to particular situation, and within a particular context, in contrast with other verses that conveyed universal principles, for all time.

2. The second source of the *Shariah* is the *Hadith*, which comprises of the sayings, practices, and actions of the Holy Prophet (S.A.W.). It includes even those actions that he did not openly disapprove of, by remaining silent in the face of their commission or omission.

3. The third source of the *Sharia* is the *Ijma*, which is the consensus of opinion of the knowledgeable in the community on any given question.

4. The fourth source is *Qiyas*, meaning individual analogical deduction or legal discretion (*istihsan*) and taking into account the public good (*istislah*) are also secondary sources utilised in developing the *Sharia* over the years.

Accordingly, there are four main schools of interpretation or authority named after their founders Malik Ibni Anas, Abu Hanifa; Al- Shafi'I and Ahamad bin rianlabi. The findings and opinions of the four schools though undoubtedly sincerely derived, and well founded, are not homogenous. Not only do they not always say the same things, some of them contradict one another, and even in a few cases, the primary source, itself.

Each school of interpretation leans heavily upon the perception of piety and worship as practiced or advocated by its founder. In this wise some of them allow for a lot of latitude on some issues. They bear strict understanding or application on others. To the extent that the interpretations are in any cases marred by human weakness and bias, they remain a source of manipulation, misrepresentation, and confusion thereby creating an image for Islam far from what it is.

For Muslims, Islamic law establishes its own method for distributing a dead person's estate, and a wife can acquire as well as female children. The only prejudiced component is that under Islamic succession law, a woman always takes half of what a male counterpart takes. After all debts, funeral costs, as well as other charges have been paid, the wife of a Muslim

man who dies without leaving a will is entitled to one-quarter of his estate.If she has children or grandchildren, her portion is decreased to one-eighth, and if more than one wife survives the dead, they all share one-quarter or one-eighth if she has children or grandchildren. When a woman dies interstate, her husband receives half of her estate after all expenses and debts are paid. A woman who converts to another religion may be disinherited. According to Islamic law, property is distributed per person rather than according to the number of wives the deceased had prior to his death. According to Islamic law (the Maliki School), a person who makes a will can only leave one-third of his estate to people other than his true heirs.As a result, any custom that discriminates, aside from being unconstitutional, is diametrically opposed to a society founded on the principles of democracy and the rule of law. However, in reality, there are several forms of discrimination against women in our society. For example, unlike their male counterparts, women were not allowed to stand surety for bail on numerous occasions. Women are denied tax relief for their dependents and children, whom they actually care for. All of these are unpleasant discriminations that occur on a daily basis in our society.

We also submit that this piece of literature is alsorelevant with the present research on female discrimination in Igbo land southeast Nigeria because the females of Islamic faith are entitled to inherit their late husband's estate. The wife of a Muslim man who dies without leaving a will is entitled to one-quarter of his estate. If she has children or grandchildren, her portion is decreased to one-eighth. This literature will serve as a reference point to encourage the Igbo race of the Imo state origin to emulate their northern counterpart by allowing women some right of share in their father's or husband's estate. This is why this research is centred around the research was seen as temporary members of their families and must not be allowed to cart away the family property to her new family home after marriage. This present research seeks to find ways of enforcing the right of females to inherit the property of their father or husband in the Owerri Imo state like their muslim counterpart, regardless of her marital status and gender as the case may be by leveraging on the recent Supreme Court's decision in Ukeje v Ukeje (2015) EJSC (vol.3) 70[47]. This research seeks to advance the women right by seekingan avenue of enforcing the women right to inherit real property in line with the recent

[47](2015) EJSC (VOL.3) 70 SC

Supreme Court decision in Ukeje v Ukeje(2015) EJSC (vol.3) 70[48]

2.1.6 Igbo Customary Law of Inheritance

According to Mary Aderibigbe[49], in Igbo land generally, when a man dies all his property passes to his eldest son. He manages and administers the estate on trust for the benefit of the whole family, his brothers especially. Where there is no issue, the deceased's brothers or uncle inherit but only as a trustee or custodian to administer the estate for the benefit of the family. The distribution of the estate will depend on the particular Igbo community the deceased comes from. In most part of the south east, a widow cannot inherit the property of her husband and she is sometimes part of the deceased's estate to be inherited by his heirs. She may, however be given a portion of her husband's land for farming, but this is subject to her good behavior

Igbo Customary Rules of Intestate Succession

The Igbo customary rule of inheritance, Osondu[50] declares, stipulated that upon the death of the founder of the family, the eldest surviving son succeeds him as the head of the family. He holds and administers the estate in trust for other children of the family. Property is shared in most cases, according to the number of wives for benefit of male children. In some cases, especially in cases where there is only one wife, the estate is shared equally among the male children of the family. This means that female children do not partake in the distribution of her late husband's estate. Thus in the case of *Nezianya-V-Okagbue*[51], the Court was to

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[48](2015) EJSC (VOL.3) 70 SC

[49] 2004. *Family law*. Godas Publishing Consult Lagos p.151

[50] 2012. *Modern Nigeria Family law & Practice* (2012) Printable Publishing Company Lagos p.213

[51](1963) 1ALL NLR 52

consider the issue whether Onitsha native law and custom allowed a wife to become the owner of her late husband's property to the exclusion of his family.

The facts of the case are that, upon the death of the husband, his widow began letting out his house and sold a portion of the land. When she tried to sell more of the land, her husband's family objected that she had no right. The widow devised the property to her grandchildren-the issues of her only child-a girl. The grandchildren sued the husband's family, claiming a right to exclusive possession on the ground that their grandmother had long adverse possession of the land. The matter was governed by Onitsha native law and custom, under which the trial judge held that the claim failed. On appeal the plaintiffs argued that the native law and custom ought not to be applied as being contrary to equity under Section 22(1) of the High Court Law of Eastern Nigeria. The Court of Appeal ruled that, under Onitsha's native law and custom, a widow's possession of her deceased husband's property is not that of a stranger, and, however long it lasts, it is not detrimental to her husband's family and does not make her the owner; she cannot deal with his property without his family's consent, which may be actual or implied from the circumstances. According to Onitsha custom, if a husband dies without male issue, as in this case, his real property descends to his family; his female issues do not inherit it.

The learned author submitted that the Ibo customary rule of inheritance is discriminatory against female children and may not stand the test of Section 42(1)(a) of the 1999 Constitution of Nigeria, which Section guarantees the right of Nigeria citizens to freedom from discrimination on the basis of their sex, ethnic group, religion or political opinion. Furthermore, this practice is contrary to Article 6 of the Convention on the Elimination of All Forms of Discrimination Agonist Women (CEDAW).In the case of *Agbal-v-Okagbue*[52] the Supreme Court remarked:

> 'I have no hesitation in coming to the conclusion that any customary law that sanctions the breach of an aspect of the rule of law as contained in the fundamental rights provisions guaranteed to a Nigerian in the constitution is barbarous and should not be enforced by our courts. On the basis of the above holding, the Ibo rule of customary inheritance which disentitles female children from sharing in their

[52](1991) 7NWLR (pt 204) 391

deceased father's estate has been declared unconstitutional since it conflicts with Section 42(1) of the 1999 constitution of Nigeria'.

Such females can now challenge such custom in Court when sought to be used against them. It follows therefore that female Ibo children are entitled to share equally in their deceased father's estate with male children. Furthermore, the wives are not entitled to share in their deceased husband estate real, or personal. They are however entitled to live in the family house.

One customary practice against widows in some parts of Igbo and worthy of comment here is that by which they are subjected to various mental, physical and psychological torture after the death of their husbands by the family members of their deceased husbands. The ulterior motive behind some of these barbarous practices is to victimise the widow and take over the administration of the deceased husband's estate, especially where the children are still of tender age. In some cases, these widows are not allowed even the "luxury" of living in their late husband's house but the practices is taken as a form of mourning their deceased husbands. Sometimes they are made to swear to oaths, drink native concoctions to show that their hands were not in the death of their husbands or that they are not responsible for the death of their husbands. Some of these experiences are so harrowing that they could pass for "trial by ordeal".

In the light of the constitutional provision that deals with and guarantees the fundamental human rights, widows are empowered to refuse to be subjected to these barbarous customary practices and to challenge such barbarous customary practices in the Court of law. A number of human rights organisations, Non-Governmental Organisations, and the Legal Aid Council are handy to provide assistance to such widows if they are willing to take up the mantle against such barbarous customary practices.

Furthermore, Anambra State has brought statutory intervention to bear on the problem of inheritance in that part of Ibo land. This is by virtue of the Administration and Succession (Estate of Deceased Persons) Law, which is a law meant to regulate the Administration and succession to the estate of deceased persons. The provisions of this statute displace the application of customary rules of inheritance in respect of persons to which it applies. The

decision of the court in the case of *Ojukwu-v-Ojukwu* (2000) was based on the provisions of Sections 119 and 120 of this statute. The case established the fact that the head or Obi of a family can intervene and take action to protect the family property on behalf of members of the family.In that case, the Appellant, who was the head of the Ojukwu family, sued 1st and 2nd Respondents at the High Court. The 1st Respondent was formerly married to one Christopher Ojukwu who is the full brother of the appellant. Christopher died in 1987 and the 1st Respondent remarried to one Gregory Agupusi. During the marriage of Christopher and 1st respondent, 1st respondent had three daughters for him. About 2 years after the death of Christopher and after her remarriage to Agupusi, 1st respondent gave birth to 2nd respondent and curiously named him Tochukwu Ojukwu instead of Tochukwu Agupusi, despite the fact that Agupusi acknowledged his paternity. Appellant's main interest was to intervene to protect the family property of the Ojukwu family, in respect of which the 1st respondent was fronting the 2nd Respondent to inherit. The trial court dismissed the case of the Appellant, who appealed to the court of appeal. It was held that the head or Obi of a family could take action to protect family property. In the immediate case, the mere fact, without more, that the appellant did not aver at the heading of the statement of claim that he instituted the action for and on behalf of the Ojukwu family of Okpuno Ebenato Uruagu Nnewi did not deprive him of the *locus standi* to institute and prosecute the action if he had claimed the relevant reliefs.

The case of *Nezianya-v-Okagbue*[53]set a discriminatory precedence against the femalegender, however this research is meant to correct that discrimination by invoking section 42 of the 1999 constitution of the Federal Republic of Nigeria. We also submit that this piece of literature is relevant with the present research on female discrimination in Igbo land of Imo state where this researches focuses as it study area. In Owerri west local government area of Imo state southeast Nigeria the wives were seen as a stranger in their husband's families and must not be allowed to inherit the late husband's property even though she may live there all her life but cannot inherit same if she had no male child in the marriage. This present research seeks to find ways of enforcing the right of females to inherit property of her husband regardless of whether or not she had a male child by leveraging on the recent

[53](1963) 1ALL NLR 52

Supreme Court's decision in Ukeje v Ukeje(2015) EJSC (vol.3) 70[54]. This research seek to advance the women right by seek avenue of enforcing the women right to inherit real property in line with the recent Supreme Court decision in Ukeje v Ukeje (2015) EJSC (vol.3) 70[55]

2.1.7 Igbo'sGeneral Rule of Inheritance

According to Margaret Onokah (2003:341), writing about the Igbo, customary law inheritance here is predominantly matrilineal, and is governed by the principle of primogeniture, which states that if a man dies intestate, his eldest son succeeds to his estate. As a result, he assumes his deceased father's position as head of the family and is thus obligated to farm in the compound or the immediate surroundings, as well as any special property that his father enjoyed while alive.This includes the right to live in his deceased father's home. In practice, he may choose to live in his own house and then select which of his brothers will occupy their deceased father's house, as well as who will receive a share of such land for erecting a building. Despite inheriting his deceased father's personal property, the eldest son holds his landed property as trustee beneficiary for his brothers and himself. In other words, he has control over his father's lands and is obligated to use them for the benefit of his younger brothers. This is supported in the statement of Okoro 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 not exclusively, but forhimself and his junior brothers."

In *Uboma & ors v. Ibeneme & anor*,[56] Egbuna J. held that among the Igbo, 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 Igbo inherited his entire father's estate to the exclusion of his brothers and could dispose of them by sale without the

[54] (2015) EJSC (VOL.3) 70 SC
[55] (2015) EJSC (VOL.3) 70 SC
[56](1967) E.N.L.R 252

brothers' consent. In support of this, Okoro argues that if the eldest son inherited exclusive of his brothers, then the concept of family property in customary law and succession would be non-existent.

Having thus inherited this exclusive status from his father, he also inherits his late father's responsibilities and obligations towards his dependents. Where, on the other hand, the deceased, if 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 brothers 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 as against full brothers. In some societies, the father has only a life interest which entitles 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 right whatsoever.

Unlike the position among the Yoruba (as will be clear hereunder), daughters, like their mothers, have no access to the assets of their departed father's real property. Where a man is survived only by his daughters and no sons, inheritance is as described above by Okoro. In respect of moveable properties such as economic plants, a daughter may inherit from the deceased father depending on the locality. While such right exists for her in some localities, it is non-existent in others. *Nezianya &Azika v Okagbue*& Ors[57] is an authority that the real property of a man who dies intestate in Onitsha without a male issue does not devolve on his female issue, but remains in the family as family property to the exclusion of a share by his

[57](1963)1 All NLR p. 52

female issue. The female issue may however live in the house with the consent of her father's family.

It should be noted that although the Igbo communities are predominantly patrilineal, succession in a few of them is matrilineal in Ohafia Division; a man's intestate estate is inherited by his maternal relatives, their sons and daughters. This is succinctly put by Allott thus: "In the matrilineal system, a man's wealth goes not to his own children, but to those of his mother, or his sisters or to other matrilineal relatives.'' Referring to the findings of L.C. Chubb on the order of distribution of the intestate estate of a man in the matrilineal communities of Ohafia, Afikpo and Edda, Elias states that inheritance is:[58]

(i) By his brothers of the same mother, though not necessarily of the same father, in order of seniority:
(ii) By his sister of the same mother, in order of seniority
(iii) By the children, male and female of his eldest sister by the same mother.

Finally, in respect of a customary wife who pre-deceases her husband, her land passes to her matrilineal line, that is, her maternal relatives: as do her personal estate and it is irrelevant that she is married. Thus in respect of succession, she is viewed as unmarried and a member of her maiden family.

The Principle of Cole v. Cole in intestate succession

Cases abound where the deceased intestate though subject to customary law contracted a non-customary law marriage other than under the Nigeria Marriage Act. In such cases the application of s.36 is quite out of the question. In the latter part of the 19th century, the courts evolved a rule of law on intestacy which was to become the authority in cases of this normal circumstances.

This was the situation in *Cole v Cole.*[59] In that case, the deceased who was domiciled in Lagos contracted a Christian marriage in Sierra Leone in 1864. He died intestate in Lagos, survived by widow and the only child of the marriage, AC. In a dispute as to the distribution

[58] Onokah, M.C 2003. *Family law*.Spectrum Books Publishers Limited, Ibadan p.99

[59] (1898) I.N.L.R

of his estate, the lower court relied, not on s 36, but on s. 19 of the Supreme Court Ordinance and gave judgment for the deceased's brother ABC, because it considered native law to be applicable. In deciding whether English law or "native" law applied, the Full Court on appeal, reversed this decision declaring:

> Where the matter before the court contain elements foreign to native life, habit and custom as in Cole's Christian marriage, the court is not bound to observe native law and custom.[60]

And adverting to the last paragraph of s. 19 added:

> in cases where no express rule is applicable to any matter in controversy, the court should be governed by the principles of justice, equity and good conscience.

It then held that English law of succession applied to entitle AC as the eldest and in this particular case the only son to inherit his deceased father's intestate estate, subject to his mother/the widow's right to dower and to one-third of the deceased's personality. The court thus adopted the view that the celebration of the Christian marriage shift a person way from the application of customary law. This view has been subject to severe criticism.[61] It has been argued that the Supreme Court Ordinance did not give the court the power to discriminate in applying the law to different sections of the community. Despite the criticism of this decision, the following statement of Griffith J.(as he was) is worthy of note.

> There must be many native person who have since 1876 contracted Christian marriages outside the Colony and I prefer to base my decision on broad grounds which will cover all such cases.[62]

The rule in *Cole v Cole* was a commendable step by the learned judge to provide a law governing the session of the intestate estate of those married statutorily outside the Colony and who, as a result fall outside the ambit of the marriage Act itself. This decision, which was the first of its kind in Nigeria, has led to the number of conflicting decision as it was either followed or distinguished.

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[60] ibid
[61] *Onwudinjo v Onwudinjo* (1957) E.R.N.L.R.I
[62] (1898) 1 NLR 15

This decision was followed in *Asiata v Goncallo*[63] by the Divisional Court. But the decision was overruled by the court of Appeal. The latter took cognizance of the fact that although the man and the woman had, for the sake of convenience gone through a marriage ceremony in Christian form, they were both professed Moslems, and continued to adhere to Islam after the marriage. The Appeal court held that Islamic law governed the disposition of the estate of the deceased intestate. This decision could not have been right because the marriage form contracted determines the mode of inheritance intestate. However a similar approach was adopted by Van de Meulen (as he was).

In *Smith v Smith.* The question here was whether customary law or English law would apply to the disposition of the estate of an intestate who had contracted a Christian marriage in Sierra Leone and died domiciled in Lagos, after having purchase property there. The judge decided that having regard to the deceased's general mode of life and the circumstances of the case, English law should not be applied, and customary law would therefore govern the distribution of the estate. The judge thus treated the principle of cole v cole as merely laying down a rebutable presumption that English law was applicable.

The approach taken in the above two cases seems to suggest that the deceased intestate's mode of life was the determinant factor. This approach has not always been followed by the courts. *Haastrup v Coker*[64]concerned the estate of a man who married according to law. The court applied English law although it was found that the deceased was a local chief living a customary mode of life. Although there were some conflicting statements in the judgment of Petrides J, it would seem that he adopted the inherent incident theory, according to which intestacy rights are regarded as an inherent and unalterable incident of the Christian marriage.

This decisionrelatedto the case of *Adegbola v Folaranmi*[65] where it was held that once a person who is normally subject to customary contracts to a Christian marriage his estate is thereby automatically bound in English law in reverence of the order of succession to his estate. A similar approach was also taken by the West African court of Appeal in *Gooding v Martins.*[66] It follows from these two cases that whether or not the Christian marriage took

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[63] (1900) 1 N.L.R. 41.
[64] (1927) 8 N.L.R. 68
[65] (1929) 3.N.L.R. 89.
[66] (1942) 8.W.A.C.A. 108.

place before place before or after the customary marriage, the English law of intestate succession will apply to the estate of the deceased, irrespective of his mode of life; and seems to suggest an attempt by the courts to superimpose the general law to customary marriage law. In the later case of Ajayi v White,[67] the mode of life theory was adopted unreservedly, with the court rejecting the request of English law to the intestate estate of a widow who married under the Act; the rationale being that the widow was illiterate and knew nothing about the English law of succession. An attempt to make the affairs less confusing led to the categorization of these conflicting decisions into theories that is, The inherent Incident Theory and The intention or manner of life Theory. This notwithstanding, it is still quite uncertain about how the court would decide a case on intestacy to fall within either of these theoretical categories cases seemed to have been decided on subjective judgments of the individual judges.

Smith v Smith was a case in which customary law should not have been applied. It involved a single statutory marriage, as in *Cole v Cole* because the deceased intestate clearly maintained a Christian way of life by not marrying subsequently under customary law to anyone else, and there was a heir, an eldest male child ofhis full blood. The court rejected a contention that English law governed the intestate estate. in view of the devolution of the man's intestate estate, intestate estate must be regulated by "native law and custom; irrespective of his education and general position in life with which *Cole v Cole* was concerned". One would want querry the basis of this decision?

Also, the intestate estate in *Haastrup v Coker*[68] should not have been held to be governed by English law i.e. the inherent incident Theory. Following the Christian marriage the deceased succeeded his father as a traditional ruler, married several wives subsequently and had a customary form of burial as applied in Asiata v Goncallo , but the court adopted the Manner of life theory to hold that customary law applied. Another case deserving the application of English law was Ajayi v White.[69] The widow had not only contracted a Christian marriage, she was married to a Reverend and as such had arguably conducted herself in a Christian ways of life with high position. But the court applied customary law (i.e "a hybrid" Manner of life Theory) to her intestate estate on the mere finding that she was illiterate and could not

[67] (1946) 18 N.L.R. 4.
[68] (1927) 8 N.L.R. 68
[69] (1946) 18 N.L.R. 4

have known about English law of succession. The decision could not have correct because ignorance of the law is no excuse If this widow had pre-deceased her Reverend husband, perhaps English law would have applied to his intestate estate on the basis of his education (i.e. that he knew about English law of succession) and his position in life, which is to say that he lived a Christian way of life all his life time. The absurdity of his state of the law can only be arneliorated by uniform legislation with guidelines on its application.

There is yet a further problem associated with these decisions, and that is the customary law wives could share in intestate estate of their husbands who had originally married by Christian rites. We saw from the discussion above that the court adopted a broader and more liberal interpretation of the statues of Distribution 1670 and 1655, to include customary law widows. The situation seems to be different under the cole v cole rule. For the court in that case went to lengths to distinguish the respective status of the wife under the two marriage systems.

It would seem from this that a widow for the purposes of Cole v Cole rule means one who had been married by Christian or other statutory form of marriage. The cases decided in reliance on the principle of Cole v Cole mainly were from marriages contracted outside Nigeria. It might therefore seem that the courts in the other parts of the country, particularly the Eastern and Northern provinces, could not rely on it were it not for the court's decision in the Igbo case of the estate of Emodi (then deceased) A-G, v Egbuna.[70] In rejecting the contention that since s.36 was inapplicable, Igbo customary law should apply, Ames J. said that the court must look elsewhere than in s.36 for guidance on this point and that the principle enunciated in cole v cole covered the point as it was not based on the provisions of any Act but on the general principle concerning the application of native law and custom to such cases. The court then applied the English law of succession as applied in cole v cole.

This view is also expressed in other legal texts.

(b) The Rule in *Onwudinjo v Onwudinjo*[71]

Notwithstanding the principle of Cole v Cole it became clear that much was still left to be desired from the law of succession in Nigeria in so far as it relates to non-customary law

[70](1945) 18 N.L.R.I.
[71]*Onwudinjo v Onwudinjo* (1957) E.R.N.L.R.I

marriage. While the former is seen as embodying flaws, the latter is continually distinguishing and criticised. This state of affair has been decried by some judges in the recent past and has even led to the situation where judgment is given without any reliance on the judicial system. A will purportedly made under the Will Act, 1837 by the decease failed, so that intestacy prevailed. Having rightly found that the customary marriage was invalid, the court gave judgment for the plaintiffs who were the children of the statutory marriage. The court in effect adopted the inherent incident Theory although it made it clear that it was not following the cole v cole principle.

As the application of section 36 of the Marriage Act was simply out of the question on the fact of this case, the court obviously was at pain in reaching its decision as can be clear from the statement that:

> If I were faced with evidence of a custom under which every natural son of an intestate was entitled to share the estate with offspring of a lawful marriage I might be persuaded to say that such a custom was repugnant to natural justice, equity and good conscience and the question of the unenforceability of claim contrary to public policy would require consideration. On the other hand, a clearly established custom under which natural children who have been for long recognised as members of the family had a right to a share of their father's property might possibly be placed in a different category. But in this case neither the one custom nor the other has been established. Upon what is before me I decide[72]

In his outright critique of the obnoxious state of the law of succession in respect of non-customary law marriage, the learned Ainley C.J. (as he the was) lamented as follows:

> there is little doubt that the trend of judicial opinion in Nigeria has been in favour of recognizing the right of the children and wife of a monogamous marriage upon the death intestate of the husband, to the exclusion of those who would take or share under the law.

(c) The Administration of e Estate Law, 1959

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[72](1957) E.R.N.L.R.I.

In 1959, the Western Region Legislature sought to ameliorate the problem arising from the application of section 36 to "the colony only by enacting the Administration of Estate law, 1959. The Law has no application whatever in any other parts of the country as in the old western region, although its provision have now been incorporated into the laws of those State viz: Ondo, Oyo, Ogun, Osun, Delta, Edo and Lagos which were constituted from the then Western Region. It also does not apply to the estate of deceased person which is either under the authority of a customary court or the distribution of which is governed by customary law. By s.49 (5), it applies thus:

> Where a person who is subject to customary law contracts a marriage in accordance with the provision of the marriage ordinance and such person dies intestate leaving a widow or husband or any issue of such marriage.

The law therefore applies only where a person who is subject to customary law contracts a marriage under the Act. Such a person must have died intestate survived either by a widow, widow or any child of the Act marriage or both. But the opening words of section.49 (1) that:

"The residuary estate of an intestate shall be distribution", clearly shows that even where the deceased intestate is not survived by a widow, widower or child of the marriage, his or her residuary estate, that is, the residue of net money arising from any sale or conversion of real and personal estate, and investments, including any part of the estate which may be retained unsold and not required for the administration of the estate is subject to distribution to members of the extended family in the order specified under it. If section 49 (1) is interpreted without reference to the other sections of the Law, it would have the latent effect of ousting the operation of customary law of succession. It is most likely therefore, that section 49 (1) would be interpreted by reference to section1 (3) as well as section 49(5).

The Rules of Distribution under section 49(1) are certainly based on English law and not surprisingly, in contradiction to those of customary law. It provides in part as follows:

(a) If the intestate leaves a husband or a wife:

(1) But no issue, parent, brother or sister of the whole blood, or issue of a brother or sister of the whole blood, the residuary estate shall be held in trust for the surviving husband or wife absolutely;

(2) And issue (whether or not persons mentioned in (1) above also survive) the surviving husband or wife will take the personal chattels absolutely. In addition, the residuary estate of the intestate (other than his personal chattels) shall be charged with the payment of a net sum of money equivalent to the value of one-third of the residuary estate (other than the personal chattels) free of death duties and costs, to the surviving spouse, with interest from the date of the death at the rate of two and half naira, per cent per annum until paid or appropriated. And subject to providing for that sum and interest, the residuary estate (other than the personal chattels) shall be held as to one-third on trust for the surviving spouse during his or her life, and then the statutory trusts for the issue of the intestate. The remaining two-thirds shall be held on the statutory trusts for the issue of the intestate;

(3) And no issue, but parent, brother or sister of the whole blood or issue of brother or sister of the whole blood, the surviving husband or wife shall take the personal chattels absolutely and in addition, the residuary estate of the intestate (other than the personal chattels) shall stand charged with the payment of a sum of money equivalent to the value of two-thirds of residuary estate free of cost to the surviving husband or wife with interest thereon from the date of the death at the rate of two and half per cent annum until paid or appropriated , and subject to providing for that sum and the interest thereon, the residuary estate (other than the personal chattels) shall be held (a) as to one-half in trust for the surviving husband or half absolutely, and (b) as to the other half;

    (i) Where the intestate leaves one parent or both parents (whether or not brothers or sisters of the intestate or their issue also survive) in trust for the parent absolutely or, as the case may be, for the two parents in equal shares absolutely,

(ii) Where the intestate leaves no parent, on the statutory trusts for the brothers and sisters of the whole blood of the intestate.

It is relevant, in view of the above, to discuss here the question who is a "wife" for the purpose of the law. The law is not specified in this respect even though section 49 (1) carries the words "a husband or wife," and section 49(1) and (2) the words "surviving husband or wife." However, sub-section (5), by making it clear that the Law applied only to person who marriage under the Marriage Act, raises doubt as to the inclusion of a customary law wife within its ambit. This point was well argued in *kharie Zaidan v Fatima Khalil Mohssen*[73] where counsel for the appellant disputed the trial judge decision that the appellant was not a surviving spouse under the Law in view of her sole Moslem marriage to the deceased intestate. Counsel for the respondent argued on the other hand that, on the basis of sections.49 (1)and 51 (2) which respectively refer to a wife and "election", the law showed that only wives of monogamous marriage were intended, other words, that cases of plurality of wives were not contemplated by the Law.

Similarly, the respondent counsel's contention could be interpreted to mean by our cannon of interpretation, singular usage could be also refer to plural usage, which means that what applies to one wife could apply to several wives.[74]

It should be however added that the Law does not include the deceased's "wife" whom he marriage during the subsistence of his Act marriage. This was declared by the court in *Awobodu v Awobodu & ors*[75]where the plaintiff had gone through a ceremony of marriage under customary law with the deceased intestate during the subsistence of his Act marriage; and there were four children were entitled to a share of the deceased's estate, the court held that for the purposes of section.49 (5), neither she nor her children could succeed to the estate of the deceased intestate.

[73] (1973) 11 S.C. p.I.

[74] I.O. Agbede (1977) "*Devolution of Immoveables Under the Nigerian Conflict Rules: The Dilemma of Legal Pluralism*" A.L. Studies. No. 15, 45-53 at p.50

[75](1979) 2 L.R.N. 339

Section 49 (5) is a modified form of section36 of the Marriage Act it does not operates in respect of the intestate estate of a person who though subject to customary law, died intestate, having contracted non-customary marriage other than under the Marriage Act.

This is because s.49 (5) refer specifically to marriage celebrated "in accordance with the provision of" the Marriage Act. In such a case, intestate estate will be governed by the rule in *Cole v. Cole*. Further 49 (5) unlike section 36, does not include in its scope, the issue of persons married under the Act.

Therefore, the matters to which the Law does not apply seem reasonably clear. This includes family property/right of occupancy in which intestate had only a life interest under customary law. Such property, if any, will devolve in accordance with the customary law of the decease intestate. Where therefore, a deceased intestate who was subject to a system of customary law outside the western state, left immoveables in such a community, the 1959 Law will not apply-the customary Law of such a deceased intestate will govern the distribution of the estate[76]

Clearly then, the law does not operate in respect of any estate the succession to which is governed by customary law and its machinery. But there are still many cases which do not fall under section 49 (5) and where there is no specific ground for holding that customary law applies. Section 1(3) is not quite helpful here, as it does not say where customary law applies, that is, which cases are, "governed by customary law". And so, faced with question of which law should govern the intestate succession to the immovable property of a deceased in the then Mid-Western State.

Where the deceased, though domiciled in the Western states (and having complied with the provisions of s.49 (5) died intestate leaving real property in "the Colony," the 1959 Law, as applicable in the respective states, would not apply to the intestate estate. Instead, the applicable law. Then if the property was left in the other parts of the country (i.e. the Eastern or Northern States) the rule in Cole v Cole, and not the 1959 Law, would govern the distribution of it notwithstanding the deceased's domiciled in the western State. In the case of movables left by such an intestate, they would be governed, by the 1959 Law provisions in

[76]*KharieZaidan v Fatima Khali Mohssen* (1973) 11 S.C. p.1

accordance with the conflict of Law rulesThe 1959 Law obviously increased the number of statutes on succession arising from the Act marriage. The effect is regrettably the perpetuation of the pluralism of succession laws in the country.

2. Under Customary Marriage Law

Ononka, M (200:340) observed that before the introduction of wills in English form, intestacy was the norm, except in the occasional instances where a person indicated how his property was to be distributed after his death.[77] Nor it seems, has the introduction of written wills given rise to increased testamentary depositions. The reasons for this have been variously stated. Woodman opined that the reluctance to make a will may be due to personal disinclination, calculated approval of what is likely to happen on death intestate, or an actual or assumed lack of power to make a will under customary law. Okoro also stated "that most people do not like to face up to the fact that they will die someday. Testamentary disposition

of property, it is feared, may attract death[78]

Unlike the position under the Act, the rules of succession on intestacy under customary law vary according to the different ethnic group and therefore present a wide picture of pluralism. As it is not possible to examine the individual succession rules applicable in the numerous ethnic groups, those applicable in the selected ethnic groups will be examine hereunder. These are the rules prevalent among the Igbo of the East, the Yoruba of the west, and the indigenes of the Mid-West. The rules prevalent in selected communities of the riverine will also be examined. After this, the rights of the customary law spouse to succeed to the other's estate on death intestate will be examined.

(b) The Yorubas of the West

Ononka, M (200:344) compared the Yoruba inheritance culture with that of the Igbo. She said that just like the Igbo, the Yoruba community is also patrilineal. However, the Yoruba customary law recognizes equality of the children of the deceased as a family upon whom the

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[77]. Nwabueze B.O. *Nigerian Land Law* p.380

[78]Okoro N. *Integration of the Customary and the General [English] Laws of Succession" in Integration of Customary and Modern Law Systems in Africa* (64) at p.251.

intestate estate devolves. As joint owners of the property they each have a right to ingress and egress and to attend meeting therein. On the death intestate of a man, his eldest son (Dawodu) inherits the responsibility for the management of his estate. In dealing with this point, Osborne C.J. in *Lewis v Bankole*[79] said that this was a well-established rule both in Lagos and in other parts of Yorubaland. It was after the death of the Dawodu, he said, that variations begin. In the words of the Judge:

> according to the plaintiff's witnessed, by Yoruba custom the other sons of the founder of the family are taken in turn, and then the sons of the Dawodu and other sons' sons, the headship being ever kept in the male line.

As in the instant case, she must be shown to be gentle and intelligent and capable. Where however, the deceased had died without children, the property would revert to his paternal relatives. Unlike the Igbo customary marriage law, that of the Yoruba does not discriminate among the sexes of the children of a deceased intestate. Thus any rights or benefits accruing to the male issue also accrue to the female issue. In a long line of cases, the courts made it clear that daughters, like sons, share equally in the estate of their deceased father.[80]This perhaps explains why Yoruba women are more prone to divorce than Igbo women who endeavour to stay married[81] as they are not entitled to share in their father's property even if they choose to remain unmarried or, being married, divorce their husbands and return to their maiden families. The average Yoruba woman, with the sense of security resulting from the possibility of her inheriting her deceased father's property, and the knowledge that any child, male or female, whom she bears for a wealthy man or chief will have a share in his property, will rather remain singles and pride herself on the fact that such and such a wealthy man or chief is the father of this or that child of hers.[82]

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[79]*Lewis v Bankole* (1908) 1N.L.R., 81

[80]*Lopez v Lopez* (1924) 5 N.L.R. 43; *Sule v Ajisegiri* (1937) 13 N.L.R. 146; *Ricardo v Abal* (1926) 7 N.L.R. 58; *Salami v Salami + Anor* (1957-58) W.N.L.R.10. C/f Chapter 2 p. 31 showing that this rule originated with the Supreme Court decision in 1913 and it therefore falls under the category of "lawyers customary law

[81] Okoro N. "Integration of the Customary and the General [English] Laws of Succession" in Integration of Customary and Modern Law Systems in Africa (64) at p.68

[82] Nwogugu E.I. *Family Law in Nigeria*. Pp pp. 311-312.

When a man dies without a will but had childrenfrom one wife, thenit is easier to share his estate among the children equally by ori ojoriformula; but if he dies intestate but married several wives who had children, another formula might by evolved because one wife might have more children than the other. It is either they children may adopt the Idi Igi, that is,per capita or ori ojori, that is,per stripes, which ever will promote peace and understanding and harmonious larger family.[83]

This point may be clarified with an illustration. If for example, the deceased intestate had ten children and three wives, this intestate estate will be distributed equally between his surviving children under the ori-ojori (per capita) mode regardless of the number of sub-households (i.e. the number of wives) in existence. But under the idi-igi mode, his estate will be distributed in three equal shares. Each of the three sub-households will further sub-divide suppose that wife. A has six children, wife B three children and wife C one only, obviously then, the child in the C sub-household will receive a one third share of his father's estate; the individual shares of the children in sub-households A and B will be one-third sub-divided into six parts and one-third sub-divided into three parts respectively. This unequal and therefore unfair distribution means that children who stand to get larger shares of their deceased father's intestate estate will always insist on the prevalence of the idi-igi (per stripes) mode of distribution while those likely to receive smaller shares will equally insist on distribution by the ori-ojori (per capita) mode. However, some decades ago, the Federal Supreme Court made it clear that unequal distribution and hence unfairness is irrelevant in the determination of the applicable mode.

In *Danmole v Dawodu*[84] the question in court was the applicable mode of distribution of the estate of a deceased intestate who was survived by four wives and nine children. Then trial Judge-Jibowu J. held that idi-igi mode was contrary to natural justice, equity and good conscience. The Supreme Court overruled this decision, holding that idi-igi mode of distribution was universal among the Yoruba, that ori-ojori mode was relatively modern; that idi-igi was not repugnant to natural justice, equity and good conscience; that where there was a dispute among the claimants and the family head took a decision as to which mode should apply, that decision would prevail.

[83]*Lewis v Bankole* (1908) 1N.L.R., 81
[84](1958) 3 F.S.C. 46

With all due respect to the higher courts, this decision smacked of unfairness of the children of a deceased intestate who would get comparatively smaller shares of their late father's property. How is one to reconcile this decision with the well-established rule of Yoruba customary law that the surviving children share equally regardless of age and sex? Distribution by idi-igi is, as Jibowu J, said, against natural justice and equity. The dictum by Lord Evershed leaves one wondering why in this instance, the Privy councils distinguished between polygamous and monogamous communities in the application of this common law principle when it had been used in many other cases in Nigeria to reject the application of some indigenous customary marriage rules.[85]

It will be seen from discussions below, that Yoruba customary law recognizes the right of a child born to a deceased intestate man by extra-marital relations (but whose paternity the father acknowledge) to inherit his estate. And it is clear from the discussion above that customary law does not allow widows, let alone mistresses to share in the distribution of estate of a deceased intestate husband or paramour respectively. If a deceased intestate husband's estate must be distributed to his children via his respective widows, by what means is a child of extra-marital relationship who was legitimated by acknowledgement to share in the distribution of his/her intestate father's estate?

The concluding statement of the trial Judge in *Danmole v Dawodu* regarding idi-igi is worthy of mention. In his words "This *idi-igi* does not agree with the modern idea that the basis is the number of children of the intestate, which assures equal shares to all the children".

It was probably in an attempt to overcome this difficult state of affairs that the Supreme Court's finding in favour of the idi-igi is subject to the qualification that where dispute arises, the head of the family may decide whether the *Ori-ojori* as the equitable mode of distribution. The question therefore is why the Supreme Court deemed it expedient to vest a family member with the power of supplant a particular rule of customary law regardless of whether the exercise of such power jeopardizes the interest of the member concerned. The uncertainty which will result from the continued vesting in the family head, of the power to veto a particular mode of distribution may be gleaned from the following cases. In *Reis v*

[85] *Edet v Essien* (1932) 11 N.L.R 47

Mosanya,[86] the court re-affirmed the decision of the family head for the ori-ojori mode. And in *Akinyede v Opere*[87] distribution had been by ori-ojori over the years. The decision of the family head to change to idi-igi resulted in the dissenting members taking court action. The Supreme Court on appeal affirmed the decision of the family head; and held that there was no question of estoppels operating against the family head. Until perhaps they are overruled by the Supreme Court it is difficult to reconcile this latter decision with *Akerele v Balogun + ors*[88] where the court held that when a beneficiary (including the family head) has obtained the benefits of distribution under ori-ojori system, he is barred from later opting for the idi-igi system. Again in *Adeniji v Adeniji*,[89] the court held that ori-ojori was an alternative custom applicable on the matter. And in the case of *Philips & ors v A-G & Lawanson*[90] the court held that: "The proper mode of distribution in this case is that decided upon by the third defendant, the Head of the deceased's family which is the Ori-ojori system".

This state of the law on the Yoruba mode of distribution of the intestate estate calls to mind the statement by Aguda in 1971 that "in this field the court have not completed working out the detailed rules, but a start has been made".

It is clear from these cases that the two method of distribution are of universal application among the Yoruba. The problem is the uncertainty as to when a particular mode will be adopted Nwabueze lamented this state of affairs when he wrote:

> If *idi-igi* is the universal rule, the competing desires of the children should be resolved according to it. It is the right of an only child of one mother to have his father's intestate estate distributed per stripes known as *idi-igi*, whatever the other children may think about it. To leave the matter to the head is to substitute personal discretion for the alteration of law, and to encourage a challenge of the law by those who stand to gain by fomenting dispute. The head is of course an interested party, and to make him the final arbiter is to go against the rule of natural justice that a person should not be a judge in his own cause. Human nature is not imbued with so much altruism that we can expect the head to take decision prejudicial to his own interest.

[86] (1964) L.L.R. 19
[87] (1968) 1 All N.L.R. 65
[88] (1964) L.L.R. 99
[89] (1972) 1 All N.L.R. 298 at pp.305-306
[90] 1975) 7 C.C.H.J. 1131

So long as men have children by women other than their wives and acknowledgement of paternity or polygamy exists, with the two modes of distribution, dispute and perhaps the perpetration of injustice against certain children of a deceased intestate cannot be over emphasized. For while an only child of a mother/wife will naturally insist upon distribution by the idi-igi in order to get more shares than his half-siblings, the children of another wife will equally insist on equal distribution by ori-ojori method. It would seem that any mode of distribution would cause dissension if there were a feasible alternative to it, because those who would benefit more from the alternative will inevitably challenge a proposed mode.

The difficulties may be resolved by succinct declaration of the Supreme Court in subsequent cases that *idi-igi* will apply only where there are equal numbers of children in each of the deceased sub-households or where the difference between the number of children in any two stripes is no more than one; but that in every case where the difference between the number of children exceeds one in the sub-households, the *ori-ojori* method of distribution will apply. Thus the universality of two systems will be preserved and the family head divested of his discretionary power to veto in the matter in which he has vested interest.

(i) Illegitimacy During the subsistence of the Act Marriage

Ononka, M (200:366) explained that the attitude of the court over the years has been that the legitimate children of a statutory marriage will inherit to the exclusion of any illegitimate children. The following cases well illustrate this point. In *Onwudinjo v Onwudingo,*[91]the court made it clear that if a man celebrated an Act marriage and during its subsistence, purportedly celebrated a customary marriage, there could be no legitimation of the offspring of the purported latter marriage in relation to his intestate estate. And it was irrelevant that both he and the woman cohabited with those offspring for so long. The court declared that any such situation leading to a decision that "a natural son was entitled to share with the offspring of a lawful marriage. ..was repugnant to natural Justice and the question of unenforceability of claims contrary to public policy would require consideration"[92]. The situation might well be different if the estate passed under customary law, as where the plaintiff in the instant case failed to prove that his late father had married his mother under

[91] (1957) E.R.N.L.R.I
[92] Ibid at p. 5

Act; the deceased's customary marriage would have prevailed, the intestate estate governed by customary law and the children would have had a share in their natural father's estate.

In the earlier case of *Coker v Coker*[93], the court held that the Intestate estate of a native who contracted a Christian or civil marriage was removed from the operation of customary law of succession to English law and therefore that the statutorily illegitimate children having no title under English law failed in their claim. The decision of Onwudinjo was re-affirmed in *Cole v Akinyele.*[94]Here, during the subsistence of his statutory marriage, Cole had two children conceived for him by another woman, one born during the wife's lifetime and the other after her death. He acknowledged paternity of the children. In respect of Brett F.J rejected any proposition that a statutorily married man:

Although Brett F. J. did not say which public policy would be violated, He succinctly added that:Indeed, to hold otherwise would almost be to reduce the distinction between the effects of the forms of marriage to a matter of words.

With due respect, the notion of public policy as applicable in England Seems a treacherous ground for legal decision in the Nigerian dual marriage system. It prompts the question as to what public policy is infringed by the acknowledgement of paternity of a child born to a man by another woman during the subsistence of his Act marriage when no such infringement is caused where the acknowledgement is made during the subsistence of his customary marriage? Although this decision lays emphasis on the time of birth. It nonetheless casts grave doubt on the court's emphasis on the concept of public policy. For whereas publish policy was held to operate to disentitle the one applicant in the instant case, it was held not to operate to disentitle the other applicant in his case as well as the applicant in the earlier case of *Alake v pratt*[95]. This call to mind the waring by Parke B. that:

> publish policy is a vague and unsatisfactory term, and calculated to lead to uncertainty of legal rights, it is capable of being understood in different sense; it may, and does, in its ordinary sense mean 'political expediency ', or that which is best for the common good of the community; and in that sense there may be every variety of opinion, according to education, habit, talents and disposition of each person, who is

[93] (1943) 17 N.L.R. 55
[94] (1960) 5 F.S.C. 84
[95] (1955) 15 W.A.C.A. 20

to decide whether an act is against public policy or not. To allow this to be a ground of judicial decide would lead to the gravest uncertainly and confusion.[96]

In a country like Nigeria, public policy appears to demand that a child who has been acknowledged by his or her father, by the entire community into which he or she was born, and who is not regarded as illegitimate by his or her personal law, be entitled to a share of his or her father's intestate estate.A further issue raised by the decision of the court in *Cole v Akinyele* is when acknowledgement of paternity might be validly made in instances of statutory marriages. The case of *Olympio v Oluwole*[97] might well illustrate the point. Here, the deceased who had been married under the statue was granted a decree nisi in June 1964. A child was born to him by another woman in August 1964 and the following month – September 1964-the nisi order was made absolute. In a dispute over the distribution of his intestate estate, it was contended that the decease had acknowledged the paternity of the illegitimate child on his birth. The court rejected this contention making it clear that legitimation by acknowledgment depended not on the date of birth but the date or time of conception. According to Adefara J... adultery committed between the pronouncement of the decree nisi and the decree absolutely is adultery during the marriage."

The question in Olympio was not whether the decease had committed adultery, in which case the time of the act would have been material. The case concerned the validity of the acknowledgement of paternity of a child. The court based its decision on the act which resulted in the birth of the child, and seemed to have taken the view that if there had been no adultery, there would have been no conception, and definitely no question of legitimation by acknowledgement.

Adultery per se does not necessary result in conception, and when it does, the pregnancy could terminate premature for various reason, thus giving no rise to any question of legitimation by acknowledgement. Until the child is born, he\she cannot be labelled legitimate or illegitimate. It is difficult to reconcile this case with *Cole v Akinyele*[98]above where the Supreme Court made it clear material time is the date of birth. In supporting the

[96] Egerton v Browlow, 4 H.L.C. 1 at p.123
[97] (1968) N.M.L.R. 469
[98] (1960) 5 F.S.C. 84

view that acknowledgement takes effect from the date of birth, Kasunmu[99] opined: "the capacity to acknowledgement must exist at the time of birth of child. It therefore follows that acknowledgement operates from the date of birth. To hold otherwise would be chaotic". One may also recall the statement of lord Akin in the English case of *fender v St john Mildway*[100], that once a decree nisi had been granted:

> There is no consortium and the parties are living apart, they owe
> No duties each to the other to perform any kind of matrimonial obligation

This view is shared by Kasunmu[101]who wrote: one is inclined to feel that the marriage in olympio's case should have been considered terminated for the purposes of permitting acknowledgement

(ii) Estoppel and the inheritance Right of the Illegitimate

Notwithstanding the decisions discussed above, the Supreme Court seemed to have introduced the principle of estoppel in his area of intestacy. Where an illegitimate child has been allowed to share and manage the intestate estate with the legitimate children and those claiming under them will be estopped from asserting that the illegitimate child has no share in the intestate estate. *Ogunmodede v Thomas+ ors*[102], there was only one child of the statutory marriage, P; and there were sixteen children, she had two children outside the marriage. On the P's parents and P's demise, her widower claimed he was exclusively entitled to the intestate estate. The Supreme Court stated that because P's widowed mother had regarded her decease husband property as belonging to her own daughter p and the sixteen illegitimate children and as p subsequently dealt with them in like manner, her surviving husband was estopped from claiming the property as solely his. As the Supreme Court put it:

> We are of the view that Mrs. Thomas [p] herself in her lifetime would be estopped from claiming this property as her individual property it is therefore

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[99] Kasunmu A.B. (1964) "*The Principle of Acknowledgement or Recognition of Paternity under Customary Law in Nigeria*" I.C.L.Q. Vol. 13, pp.1091-1104
[100] (1938) A.C.I. at p.17
[101] Kasunmu A.B. "Adultery, Acknowledgement and the Illegitimate Child in Nigeria" (1973) U.G.L.J. Vol. X, No.1. pp. 1-15 at p.9
[102] Suit No. F.S.C. 337/1962 of 10/3/66 (unreported) F.S.C

> difficult to see how the first defender her husband……could claim that the property devolved on him on the death of his wife

The Supreme Court in effected held that doctrine of estoppel may operate to enable an illegitimate child to share in the intestate of his\her statutorily marriage father. However, the implication that the right could depend, not on formal acknowledgement of paternity, but on the conduct of those legally entitled, is questionable. It would seem that this decision judiciously cut the archaic knot to bring the status of illegitimacy under Act marriage in line with that under customary marriage, but for the inconsistency in the subsequent case of *Osho v Phillips*.[103] Here, the decease had children by extra-marital affairs during the existence of his statutory marriage. On his death intestate these children who were acknowledge by him, sought a declaration that they were jointly entitled to share with the children of his statutory marriage. It was contended for them that since the defendant –the legitimate children, had by their conduct manifested that the plaintiffs were the children of the deceased, they were estopped from disinheriting them.

On appeal, the Supreme Court held that the defendants, being the legitimate children were entitled to the estate to the exclusion of the plaintiffs. The court added that the fact of the defendant's distribution of a portion of the intestate estate amongst the plaintiffs as beneficiaries and of their inviting the plaintiffs to participate in the family meeting did not estop them from maintaining that the plaintiffs were not the legitimate children of their deceased father. The court then dismissed the plaintiffs claim. Thus contrary to its decision in Ogunmodede, the Supreme Court here declares that there can be no validation of legitimation by conduct. It is difficult to reconcile these contradictions as the court merely distinguishing Ogunmodede from the instant case by saying that:

> The controversy in that related to the ownership of land claimed by the parties as beneficiaries of the estate of their deceased ancestor. The question of the legitimacy of some of the parties was also raised but the case was decided on the basis that [the deceased]….did not deal with the property in dispute all on her own but she regarded

[103] (1972) 1 All N.L.R. 276

it as belonging and the illegitimate children.[104]

These contradictions highlight the difficulties faced by even the Supreme Court on occasion, in the bid to reconcile the dichotomous dualistic family law. The court would have replaced contradictions with certainty if it had simply overruled its earlier decision in Ogunmodede.

(iii) The children Born Prior to the Act Marriage

It seems that the attitude of the court is not different from that adopted when the child is born during the subsistence of a statutory marriage in the case of *Adegbola v Folaranmi+ ors*,[105] the deceased marriage first under customary law and there was a child of his marriage, M. Subsequently, he contracted a Christian marriage with another woman in Brazil. Both customary law wife and daughter were still living in his hometown on his return to Lagos with his second wife with whom he had no issues until his death intestate. And despite the daughter's regular visits to her father inter vivos, his civil marriage widow died leaving the house in a will to an executor. M challenged the will, claiming a declaration to her title as the only child of her deceased father.

The executor contended that as she was not the issues of the Christian marriage, she had no right to share in the property and that English, not customary law, governed her deceased intestate father's property. The court held that English law applied to entitle the executor to inherit the house under the will of the statutory widow who herself was entitled under English law to inherit the intestate estate of her deceased husband; and therefore to disinherit the deceased man only legal child born prior to his civil marriage.

In the subsequent case of *Taylor v Taylor*[106], the children born to the deceased prior to his statutory marriage and who were acknowledged by him inter vivos, were held to be legitimate and entitled to share with the children of the Act marriage in the intestate estate of their father. And while making it clear in *Abisogun v Abisogun*[107] that the children born of the deceased's extra marital associations were illegitimate even though they were acknowledged by him, the court allowed the children born prior to the Act marriage to share

[104] Ibid at p.287
[105] (1921) 2 N.L.R. 89
[106] (1960) L.L.R. 286
[107] (1963) 1 All N.L.R. 237

in the estate. The confusion and uncertainty which these conflicting decisions create in the dual marriage system have led some legal academics, notably N. Okoro,[108] to state that:

> A suggested reconciliation is the recognition of legitimation by both subsequent Christian and customary law marriages and by no other process.

It is doubtful whether the established and traditionally entrenched rule of customary marriage law (i.e. acknowledgement of paternity), which is not at all repugnant to natural justice could be easily abrogated. In fact, legitimation other than by subsequent marriage is legally recognized in Europe[109]. Perhaps what is needed is certainty in the pronouncements of the Supreme Court on the issue. Legitimacy is said to be nothing but legal fiction[110]. A society with dualistic marriage laws like Nigeria should legalize legitimation by acknowledgement as a complementary or alternative to subsequent marriage. Since subsequent marriage of the illegitimate child's mother by the putative statutory husband is prohibited by the Marriage Act as long as the putative father's statutory marriage subsists, then the subsequent marriage need not to be under the Act, a customary law marriage should suffice for the purposes of legitimation. Support for this view may be gleaned from the statement of Kasunmu[111] that it is: unrealistic to insist on a marriage under the Act as the only method of making such a child legitimate, especially as it is often the case that persons married under the Act often avoid that form of marriage a second time.

Taking into consideration the provisions of section 39(2) of the 1979, now section 42(1)& (2) Constitution which states: "No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth", one wonders how far the courts implement this Federal law in terms of illegitimacy in intestate succession relating to statutory marriages. Although it is appreciated that the courts are handicapped by the provisions of the Legitimacy Act which is in contradistinction to the rules of customary marriage law, but the rationale for the above provision is that such children should not bear the brunt of the facts of their births which arose from the conduct of their respective parents.

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[108] Okoro, N. (1964) "Integration of the Customary and the General (English) Law of Succession in Eastern Nigeria" in Integration of Customary and Modern Legal Systems in Africa pp.242-257 at p.254

[109] Lasok D. "Legitimation, Recognition and Affiliation Proceedings" (1961) I.C.L.Q. Vol. 10, pp.123-142

[110] Ayrinhoc, H.A. (1946) Marriage Legislation in the New Code of Canon Law N.Y. p.209

[111] Kasunmu A.B. "The Principle of Acknowledgement or Recognition of Paternity under Customary Law in Nigeria" (1964) I.C.L.Q. Vol. 13, pp.1091-1104, at p.1103

The discrimination against illegitimate children in intestate succession touching on statutory marriages calls for re-examination by the law-makers in Nigeria with a view to placing them on the same footing with children born outside customary law marriages. The law in this area should be geared towards sections 69 and 70(1) of the M.C.A. 1970 which allow for the maintenance by the natural father of his illegitimate children born during the subsistence of his Act marriage. This is particularly so as the circumstances of the birth of the illegitimate children are, in the words of Nwogugu[112]"not generally considered immoral or objectionable to Nigeria customary society".

The contribution of Margaret Onokah (2003:341) explaining that the Igbo are primogeniture, implying that the first son hold the property of his late father and distributes them in the manner that he feels are just and equitable, but none of such properties are to be given to the females children of the their late father because female have no right of inheritance. The culture where the brother of a man who dies intestate without a male child will inherit his real property is quite offensive as a culture, but that has been the position before now which the case of Nezianya-v-Okagbue[113] also upheld in setting a discriminatory precedence against the femalegender.This research is meant to correct that discrimination by invoking section 42 of the 1999 constitution of the Federal Republic of Nigeria. We also submit that this piece of literature is relevant with the present research on female discrimination in Igbo land of Imo state where this researches focuses as it study area In Owerri west local government area of Imo state southeast Nigeria. This present research seeks to find ways of enforcing the right of females to inherit property of her husband regardless of whether or not she had a male child by leveraging on the recent Supreme Court's decision in Ukeje v Ukeje (2015) EJSC (vol.3) 70[114]. This research seek to advance the women right by seek avenue of enforcing the women right to inherit real property in line with the recent Supreme Court decision in Ukeje v Ukeje (2015) EJSC (vol.3) 70[115]

Persons who are entitled to Letters of Administration on Intestate Succession

[112] Nwogugu E.I. "Legitimation in Nigerian Law" (1964) J.A.L. Vol. 8, No. 2, pp.91-105, at p.97.

[113](1963) 1ALL NLR 52
[114](2015) EJSC (VOL.3) 70 SC
[115](2015) EJSC (VOL.3) 70 SC

Dadem, (2003:341) observes that one advantage for making a will is that individual representatives could be selected. Under the rule of intestacy, no such administrators are identified. Notwithstanding any materials or averments placed before the court on the claim of interest in the domain of the dead's intestate; once there is no interest, nothing could be done. This is because as provided by the law, interest is a matter of law; Ogunbiyi JCA, made this point clearer in *Williams v. Ogundipe*[116]when she stated that, interest as a concept here is not fictitious; it was lawful and made available by the law. The court further stated that Section 49 of the (Administration of Estates Law, Lagos State) establishes the tables of succession to the real possessions of a person that died without a will."Section 49 (1) of this Law placesfew direction regarding the directive of importance of an individual who might be allowed Letters of Administration. The choice among several next of kin follows certain rules of preference, e.g. Lineal descendants rank before lineal ascendants, and the whole blood before half-blood. Where the next-of-kin are of equal degree and their interest is nearly equal, the court has discretion to accept one or more of them, keeping in view considerations for suitability. These persons are:

1. Spouse of the deceased.
2. Offspring of the dead or the surviving offspring of a child who died when the deceased was still alive.
3. Father or mother of the deceased
4. Brothers or sisters of the deceased of full blood and the children of such brothers or sisters who died in the lifetime of the deceased.
5. Brothers or sisters of half-blood of the deceased or the children of any such half brother or sister who died in the lifetime of the deceased
6. Grandfather or grandmother of the deceased
7. Uncles and aunts of full blood or their children
8. Creditors of the deceased
9. Administrator General (where all the preceding fail).

If a person is allowed to marry under the Marriage Act but dies intestate, his estate is distributed in accordance with the provisions of the Administration of Estate Law rather than

[116](2000) All FWLR (pt327) p540 @ 552 per Ogunbiyi JCA

his custom. In *Obusez v. Obusez*[117] the deceased, Cornelius Paul Obusez married the 1st respondent (Sylvia Obusez) on 18th July, 1972 under the Marriage Act. They were both natives of Agbor in Delta State. Cornelius Paul Obusez was later assassinated in 1988 and his wife was charged along with others for his murder but was later discharged. The appellant at the Supreme Court were his brothers (in fact the 1st appellant was his twin brother and the deceased was buried in his house). Both parties claimed the right to the grant of letters of administration of the estate of the deceased. In addition, the 2nd appellants contested the application for the grant made by the 2nd respondent who was only a friend of the deceased. The key to resolving the dispute laid in the interpretation to be given to section 49(5) of the Administration of Estate Law of Lagos State and section 36 of the Marriage Act 1958.. Section 49 (5) of the law provides that where any person who is subject to customary law contracts a marriage in accordance with the provisions of the Marriage Act 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 the Law, any customary law to the contrary notwithstanding. The Supreme Court affirmed its earlier position that succession to the estate of a person married under the Marriage Act will be regulated by the provisions of the Administration of Estate Law notwithstanding any native law and custom of the deceased. The court held further that the provisions of the said law would permit the 2nd Respondent to be made an administrator of the estate of the deceased although he was his friend. In the words of Tabai, JSC (2003),

> "The rules do not prescribe that a person so nominated must be a relation of the deceased… Having regard to the uncontested fact that the 2nd respondent had been a friend of the deceased, there is good cause for his appointment as the 2nd administrator to the estate of the deceased."

Although the spouse has the priority under the Administration of Estate Law, where a decree nisi for the dissolution of a marriage solemnised under the Marriage Act, has been granted but has not become absolute and a spouse dies, the courts would still grant letters of administration to the surviving spouse, even if the deceased spouse had contracted a

[117](2007) All FWLR (pt 374) 227

customary marriage before his dead and regardless of the fact that the decree nisi was granted on the consent of the parties. In *Amobi v. Nzegwu*,[118] the deceased (Theophilus Nzegwu) married the 1st respondent (Grace Nzegwu) in 1958 in London under the Marriage Act on 30th September, 1996, the High Court of Justice Anambra State, granted a decree nisi dissolving the marriage. Before the decree nisi became absolute (which is a period of three months from making a decree nisi|), Theophilus Nzegwu died on 31st October, 1996. The court affirmed the decision of the Court of Appeal to wit:

> "The appellant's marriage to the deceased under the Ibo Customary Law on 7 July 1995 when the latter was still validly married to the 1st respondent under the Marriage Act… could not have been lawful given the combined effect of section 33, 35, 39 (1) and 58 of the Matrimonial Causes Act. In effect the lawful marriage between the 1st respondent and the deceased subsisting right to the time of the latter's death, the appellant cannot legally claim entitlement to administration of the estate on the basis of her being deceased's surviving lawful wife."

a) For example, among the Yoruba ethnic group in Nigeria, 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. She is thus neither entitled to apply for a grant of letters of administration nor to be appointed as co-administrator of her husband's estate. Such widow can never successfully sue to protect the estate as the next-of-kin or friend to her infant children unless as a guardian ad litem.

There is no statute prohibiting females anywhere in the country, Imo state inclusive, from applying and obtaining Letter of Administration for estate. Consequently, denial of females the right of inheritance of real estate is unjustifiable, contrary to natural justice equity and good conscience.

Dadem's observation of discrimination metted on women of the southwest (the Yoruba people) and women of the southeast (the Igbo people) is very relevant to the research at hand. Dadem's observation about the discrimination suffered by women is in agreement with this

[118] (2014) AFWLR, part 730,p.1284

thesis because the thesis itself focuses on way of enforcing gender equality in the south east in tune with the recent Supreme Court position in Supreme Court in*Ukeje v Ukeje* (2015) EJSC (vol.3) 70. Dadem rightly observed that women in Yoruba land are regarded as part of the inheritable estate of a deceased man, ditto to women in the south east particularly Owerri West Local Government of Imo state. As Dadem's contribution to the debateon discrimination against women noted that by the Estate Administration Law, spouses are allowed to apply for a Letter of Administration, it is then strange that a women will be barred from inheriting her late husband's estate, hence theretheneed to change this Nigerianised attitude of discriminating against widows and daughters in the matter of inheritance of real property, particularly in Owerri West local Government of Imo state, the study area of this laborious research work.

2.1.8 Distribution of Estate among Male Offspring in Igbo Land

Nwogugu, E.I[119] (1974:402) submits that the females are not included in the distribution of the real and personal estate of a deceased father or head of the family. The mode of distribution of the estate of a deceased father or head of the family is not a static mode or formula. In some instances where the deceased had more than one wife, the property is usually distributed per stirpes, that is, according to number of wives who are fortunate to have male children. In other situation, the distribution of property per capita is applied, wherefore the estate is distributed according to the number of sons of the deceased man. Where distribution is per stirpes, the distribution among each of the wife's male children is done in order of seniority, which also means that the eldest son takes a lion share, followed by the other sons according to the ages. The female children are left out of the distribution. Where distribution is per capita the eldest son of the deceased polygamist takes first and of course takes more share than the other children, who would take shares according to order of seniority.

Inheritance Practice and Succession among the Igbo Nation of South Eastern Nigeria.

[119](1974:402)

According to Nwogugu (1974), the south-eastern part of Nigeria is made up of five states out of thirty-six in Nigeria, which include Imo, Anambra, Abia, Ebonyi, and Enugu. We also have some parts of Delta that speak the Igbo language or languages that are very similar to the Igbo language, such as Aniocha, Okwushiuku, and Ibusa.In River state, we also have people from Ikwere, Ahoada, Andoni who also speak Igbo language or languages so similar to Igbo nation. However the origin of the Igbo speaking people in Delta state and Rivers state have not been confirmed to be the same with that of the Igbos in south eastern Nigeria.The Igbo culture on inheritance and succession follows the primogeniture principle, whereby the first male child succeeds his father at the latter's demise. The people of Benin kingdom in Edo state also practise the primogeniture culture. Suffice it to say the discussion is going to concentrate on the Igbo nation of the south eastern Nigeria.

By the concept of primogeniture as practiced by the Igbos, the first born male child succeeds the headship of his family after the father's demise, to the exclusion of his other male and female siblings. The Igbos refers to the eldest male child as "*Diokpala* or simply *Okpala*". In the nuclear family setting, the oldest son of a departedthrives, take over and headsthe immediate family, notwithstanding the fact that some female children of his late father may by far be older than him. In the extended family, where there are several heads of several nuclear families, the eldest man of all the nuclear families becomes the head of the family and is also referred to as the *Diokpala* of the extended family. The other nuclear family heads pay allegiance to the head or the *Diokpala* of the extended family. This Diokpala of the extended family may as well be the youngest child among several female children in the family, as for instance where the older males die in a war battle or even in auto crash or plane crash. No woman can step in as the head of the family.

The Igbo go by their ancestral name as surname, that is to say, the first man that started the family, his name automatically becomes the surname of the family members from generation to generation, except perhaps a member, for any reason rebels and voluntarily stops using the family name. When this occurs and it rarely does though, the other members will appeal to him to revert to the common family name for which everybody knows the family. Whenever this family founder dies, it is his first male child that customarily steps into his shoes as the new head of the family. This new head of the family will continue with surname already in

place. He also takes over the family god exemplified by an idol and performs the needed sacrifice so that the god will continue to protect the family here on earth. This family object of worship is call "*ofor*"in Igbo dialect.

Where a head of family dies intestate the first son inherits his clothes, regalia, personal cars and personal dwelling place called "*obi*" to the exclusion of deceased brothers and widows. The first son exclusively inherits his father's farming tools and his livestock, if any and the father's immediate surrounding compound, see *Nwafia V Ububa*[120] The money of the intestate father is inherited by all his male children to the exclusion of the females, no matter the female's biological ages.

The position of the first son is so important and sacred that a portion of the family property is specially allocated to him for habitation and for farming purposes as the head of the family (Obi 1977): After the head of the family, the other male children of the deceased head of family will thereafter take their turn and share in their late father's estate to the exclusion of the female children Where the deceased head of the family had no male child, his properties would be inherited by the eldest of his blood brothers and nobody disputes it.
It is unheard of that a female child or a widow will inherit her late father or late husband's landed property under Igbo native law and custom, let alone taking over the headship of the family of her late father or late husband

This custom is really an unfortunate one for the Igbo woman; but nonetheless, the daughter of a deceased must be maintained by whoever inherited her late father's estate until the daughter becomes an independent adult or whenever she marries or dies which ever event first occurs. For as long as the daughter remains unmarried, she has the justificationto be specified a portion of the land that belong to her family and for her to farm until she marries, or dies.

The position of the eldest son called "*Okpala*" in most part of the south eastern states of Nigeria is that, apart from inheriting the living home of his father referred to as Obi, he also holds the other family property in trust for himself and his other brothers, for whom he is expected to ensure that there is equitable distribution of the family property. These properties are distributed to the exclusion of the females, no matter how many females are in the family.

[120](1966) 1 All NLR 8

The proceeds from any property let out from the family property must also be shared through the oldest son and younger brothers to the elimination of the females; see *Onwusike v Onwusike*[121] (:1962)

In customary law generally, inheritance is said to devolve by blood. This being the case, a husband cannot be heard to inherit his late wife's real property which she acquired from her family following the death of her parents because, the surviving husband is seen as a stranger to the family of his late wife. In *Caulcrick v. Harding*,[122], The deceased landowner decided to leave property to his three daughters, one of whom was the plaintiff's deceased wife. The plaintiff claimed a third share of the property as a result of his deceased wife's right. The Plaintiff's action failed because he lacked such a right because he was not a member of the wife's family.

Prior to the Supreme Court decision in*Onyibor Anekwe, Chinweze v. Mrs. Maria Nweke*[123]a widow is not entitled to the benefits of her deceased husband's property.The only saving grace is where she had occupied the apartment during the life time of her husband even if she had no child; yet she loses the right to continue to occupy the apartment if she eventually remarries to a man who is not the brother of her deceased husband; in which case, the late husband's family has the right to evict her from the family house *see Nezianya v. Okagbue* (1963). The customary law argument is that, since inheritance devolves by blood, the wife not being originally of the husband's family had no right to inherit property from the family at the death of her husband. The Nigeria Supreme Court had declared this custom as barbaric, hostile to natural law, fairness, and noble moral principle*Onybor Anekwe, Chinweze v. Mrs. Maria Nweke*

Prior to the Supreme Court decision handed down in the case of Onyiboe Anekwe in*Onyibor Anekwe, Chinweze v. Mrs. Maria Nweke*, widows are so disadvantage to the degree of incapacitation that she can't imagine disposing of her late husband's belongings. without the consent of the husband's relations. At best she could be allowed to let it out and use the proceed for upkeep where there is no alternate source of income from the family as decided

[121](1962) 6 E.N.L.R 18
[122](1926) 7 NLR 48
[123] (2014) 9NWLR(pt 1412) 393

Nezianya v. Okagbue[124]. This custom is in utter conflict with the Nigerian constitution. One could also imagine that it is possible that the widow might have been more hardworking than her late husband and so contributed more resources in building the matrimonial property, yet at the husband's demise, she is stripped of every right and sometimes access to the property. This custom that encouraged such maltreatment of woman is an absolute wickedness and such custom must fade away and give way to modernity This custom offends the principles of natural law, fairness, and noble moral principle. It amounts to moral bankruptcyin modern civilisation for anyone to continue to uphold such morally debased custom.

Following the decision in *Nwugege v. Adigwe.*[125]*,* a deceased wifeanti nuptialproperty reverts back to her family if she was not lucky to have a male child, but her husband can lay claim to her personal property which are of inconsequential value. The husband is seen as stranger and mustbe allowed to inherit the late wife's anti nuptialproperty. The argument is that inheritance flow by blood and the husband is not relative of her husband. However, if the husband to the late wife has male children, he inherits through them, and that is if these children are kind to permit him.

Another position of this repugnant custom can be viewed from another angle. If for instance, the male children and the husband die before the wife, the man's property is completely inherited by the man's male relations. In other words, the relatives of the surviving wife and the wife have no say or entitlement in the property of the late inlaw.

Who Inherits a Married Woman's Estate in Igbo land?

Nwogugu, (1974:402) explains how a wealthy married woman might obtain a lot of property, and such massive property cannot be inherited by her daughters; at best the daughter could inherit her personalbelongings such as cooking utensils, jewelries, apparels, shoes and hand bags. When a married woman dies, her father or the successor of the father does not inherit her property. Where the married woman has no male offspring, the husband inherits her real estate no matter how massive or little the property maybe. If the children and her husband die

[124] (1963) 1 All NLR 52
[125](1934) 11 NLR 134

before the wife, the late husband's successor inheritsher property, but not the anti nuptial property. Anti nuptial real property, which she acquired as a *feme sole* (single girl) by the married woman, will be inherited by her maiden family.

This seemingly marginalisation of the females and widows in the Igbo land had remained so for centuries. Even where the male children are vagabonds and good for nothing sons, they are still the ones to inherit their parents properties. Even where the female children are clearly more accomplished and responsible, they are still not entitled to inherit real properties of their parents. Every property is left for a profligate son who eventually squanders the wealth left behind and the responsible daughters have no say or share in the real properties

Lately, in what appears to be a divine intervention, the Supreme Court of Nigeria had declared those cultures that exclude women and widows from inheritance as being hostile to natural law, fairness, and noble moral principle.

The explanation of Nwogugu (1974:402) on the denial of the females right of inheritance of real property is quite unfortunate for the females in Imo state. It is so critical that a woman's landed properties could not be inherited by her biological daughters. The daughters cold only inherit ornaments and apparels. Her husband inherits all in the absence of any male children. And where the male children and her husband predeceased the married Igbo woman, the husband's nearest male relatives inherit them, excluding her ant nuptial properties..

This piece of literature is relevant and agrees with the present research at hand. This present research is meant to correct that discrimination by invoking section 42 of the 1999 constitution of the Federal Republic of Nigeria, thus bring the female to focus in inheritance agenda. This present research seeks to cure this age long repugnant culture by seeking ways of enforcing the right of a female to inherit property of her immediate family or husband's familywithout undue emphasis of having a male child.The Supreme Court in the recent decision in *Ukeje v Ukeje* (2015[126]. had abolished the Igbo discriminatory culture by invoking section 42 of the constitution 1999. This relevance of this research is in its determination to advance the women rights by providing the avenue to enlighten the females in linewith the recent Supreme Court decision in*Ukeje v Ukeje* (2015) EJSC (vol.3) 70 which

[126] (2015) EJSC (VOL.3) 70 SC

abolished the discrimination hitherto suffered by women.

2.1.9 The *Nrachi* custom of Idemili Local Government Area of Anambra State

This is a custom whereby a female member of the family may be successfully persuaded to remain in the family so that she may likely bear a male child, in a situation where the father of the lady did not have a male child. The *Nrachi* ceremony is therefore performed to institutionalise her as member of the family entitled to inherit her father's estate. Since she will not marry, any property she inherits will not be taken away to any man's family.

Inheritance and Succession under Customary Law

Professor Itse Sagay (2006:264) argues that succession under customary law is essentially intestate succession. Although as we saw in some vague forms of testate succession which have been identified in some customary systems, resort to them is so insignificant that they are of interest for academic purposes only. Succession under customary law extends only to the estate of a person subject to customary law who dies without leaving a spouse or a child of a statutory or Christian marriage surviving him. In Nigeria, the rules of succession under customary systems are as diverse as the ethnic groups themselves. As a result, any discussion must be limited to broad generalizations and classifications.

In Yoruba areas, for example, succession is based on the concept of family property, whereas in other areas, particularly among the Ibos and in parts of Edo and Delta States, the concept of male succession prevailed until the Court of Appeal ruled that such discrimination was illegal and contrary to natural law, fairness, and moral principle in *Mojekwu v. Mojekwu*[127]. In other parts the concept is that of primogeniture, i.e. succession by the eldest male child. Some systems have a mixture of concepts.

Distribution of Estate of a Deceased Man after Death

The learned author, Professor Akintunde Emiola (2011:190), explained further that it is settled by statute and judicial authorities that the estate of a Nigerian subject to customary law is to be distributed according to customary law if he dies intestate. But as we shall see

[127](1977) 2NWLR (pt 512) 283

later, it might just happen that the estate is to be distributed partly under customary law and partly under some other law. We will consider personal estate first.

Personal Estate - This consists of all movable property of a deceased. The distribution of this poses no problem as the articles of personal effects comprising the estate are normally distributed per capita, i.e. among the children individually. In these, daughters may share.[30]Specifically, all the personal effects of a mother - such as wrappers, head ties, ear-rings and other ornaments, cooking utensils and other household wares - are shared among the daughters exclusively, though it is not uncommon for the woman to give some of these items to the wives of her sons or other female members of the extended family. Indeed, the daughters usually extend the privilege to their sisters-in-law. The distribution of the estate of a member of the family is the responsibility of the head and other members of the family. Every child - who had not been disinherited by being disowned, is entitled to a portion of the inheritance. Accordingly, all the surviving children - almost invariably but sometimes not exclusively - take in order of seniority of age. Although we have noted that testamentary disposition - other than customary 'will' just discussed above - is unknown to customary law, we also noted that property may be given away by death-bed declaration. It was held in *Coker v. Coker*[128]that close relatives may also be given a share in a deceased's personal estate.

Distribution of Immovable properties - The distribution of the immovable assets of a deceased under customary law is governed entirely by different rules. The established rule under customary law is that immovable property of a Nigerian vest in his male descendants as family property after his death. There are two broad exceptions to the rule. First, among the Edo where the rule of primogeniture applies, the first son inherits the property of the departed father known as *igiogbe*exclusively but the other property may be shared with other children or given away by will. The second exception is really not an exception because it is predicated on the deceased not having male children to inherit his property. In such a case, it is the brothers who are entitled to inherit the property under the Igbo customary law.

2.1.10 Application of English Law on succession in Nigeria

[128](1938) 14 NLR 83

Akintunde Emiola (2011:25). In his contribution on the debate of the extent to which the received English law is applicable in Nigeria, Emiola explained that by virtue of section 32 (2) of the interpretation Act 1964, it was decreed that "imperial laws" were to be applied in Nigeria "so far only as the limits of the local jurisdiction and local circumstances shall permit and subject to local law." This law applied to the whole nation, but the State in the East and the North have adopted the formula in modified forms[129] while the West jettisoned all the received English laws applicable in what is now the South-West.[130]

The provision contains at least four factors controlling the application of the received English law. First, an English statute is subject to jurisdictional limitation. It is obvious from the tenor of the Act that wherever there is no superior court of record, for instance, we cannot be talking of applying such statute as the English Companies Act 1862, the English Marriage Act or the Wills Act 1837.Secondly, where the law is unsuited to local circumstances, English law will not be applicable. And, indeed, it did not apply in *Bamgbose v. Daniels*.[131] In that case a testator left his estate to his children and other dependants. The question was whether the English statute of Distribution 1870-85 was applicable to the estate of the man who was a polygamist. Evidence showed that under the Nigeria customary law the children of a polygamous marriage are legitimate.[132] And it was held by the Privy Council that the Act could not be limited in its application to the issues of a monogamous marriage in the local circumstance. Who the children were in the local context had to be deciding first before the statute could come in to determine the order in which they should take. In fact, the area where most modification and adaptation have taken place is in that of personal law.

Thirdly, a received statute may not be fully applied where the dealing between the parties are presumed to be governed by any other law. But we have also seen from the cases that sometime modification had been found necessary in order to ensure that justice is done having regard to the local situation.[133]

Fourthly, there is no known doctrine of supremacy of the English statute over the local statute replace an imperial statute or modifies it the received law is no longer applicable or is

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[129] Eastern Nigeria High Court Law, s. 20(1)
[130] Law of England (Application) Law, s.4
[131] (1952) 14 WACA 111
[132] In *Re Adedovo* (1951) 13 WACA 304
[133]*Coleman v Shang* (1961) AC 481

applicable subject to the amendment or modifications effected by the local statute. Thus in *inspector –General of police v Kamara*,[134] the issues for determination before the court was whether the English summary jurisdiction Act 1848 was still applicable in Ghana which had applied it as statute of general application. It was established that Ghana (then the God Coast) had enacted a local statute by its legislative body. The West African Court of Appeal held that the English statute was no longer applicable in the territory.

Another Interesting case which illustrates this point is *Koney v. United Trading Company Ltd*.[135] In which plaintiff instituted an action to recover damage from the defendant company for breach of contract. The action was commenced after the period allowed by the statute of Limitation and the company contented that the action was statute –barred. The plaintiff pleaded that the statute of Limitation did not apply to his case because he was an African. The court rejected the argument, saying that the nature and form of the contract made in English form –implied that the statute could reasonably be held to be intended to apply to their transaction by the two parties.

Influence on Customary Law

The learned author Emiola espoused that the influence of the English or statutory law on customary law is felt in the area of personal law. It is this aspect of customary that is subject to frequent adaptation and modification and is concerned with the incidents of marriage, land, and inheritance.

Marriage observed that the impact of the Christian or statutory marriage cannot be appreciated unless we resolve the controversy over the status of customary law marriage in what is now known as 'double- decker' marriage. A 'double- decker' marriage is one in which the same couple have through the rites of both customary marriage as a result of a subsequent marriage under the Marriage Act 1915. One this practices, Uwais, CJN, Commented:[136]

> "It is a matter of common knowledge that most people in Nigeria

[134] (1934) 2 WACA 185
[135] (1934) 2 WACA 188
[136] *Jaiyesimi v Okotie-Eboh* (1996) 2 NWLR (pt 429) 128 at 147-148

> who contract marriage under the Marriage Act undergo a form of customary marriage earlier as a matter of practice and adherence to the custom of their forefather. It is never intended by the practice that the marriage under the marriage or engagement but rather it would supplement the practice or custom."

It is to prevent contracting marriage in breach of the law that section 33 of the Act seeks to define the inter- relationship between the two forms of marriage. Section 33 of the Act provides as follow:

> "No marriage in Nigeria shall be valid where either of the parties thereto,[137] at the time of the celebration of such marriage, is marriage under customary law to any person other than the person with whom such marriage is had."

As we have stated, the marriage prohibited is the statutory marriage and the parties so restrained from such marriage are those parties to separate previous customary law marriage.

In effect, section 33 of the Marriage Act 1915 bars any of the couple to an existing customary marriage from contracting a new marriage under the Act with a stranger to the previous customary marriage while the customary marriage is still subsisting.

Now, as regards a couple that marriage under customary law and who later contracted a second marriage under the Act, there is no express law in Nigeria prohibiting such second marriage. Incidentally, that in fact is the legal import of the phrase "other than the person with whom such marriage is had."

However, the two position of the proponent of the view that in a 'double – decker' marriage the earlier customary law marriage is eliminated or superseded;[138] and that the two marriage co-exist, need to be re-examined, as judicial and academic opinions support both sides.

Professor Nwogugu is among those who take the view that any rights acquired by virtue of a customary law marriage are superseded by the Act marriage. On the other hand, there are

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[137] Nwaogugu, E .I *Family Law in Nigeria* , 6th Ed., p.68
[138] ibid

strong judicial authorities to support the view that the customary marriage remains valid and subsisting and co – existing with the latter.[139]

The truth of the matter is that the subsequent statutory marriage neither eliminates nor supersedes the earlier customary marriage. It is settled by the highest courts in England and in Nigeria that where a statute covers the same field formerly occupied by the common law or custom, the statute prevails. This is known as the doctrine of "covering the field.[140]

In all the areas not touched by statute, the common law and\or custom continues to operate. The Supreme Court noted that aman who married under the customary law could still the person under the Actand that changes the status of the marriage to monogamy.[141]

True, the potentially polygamous marriage is "converted to a monogamous marriage "But that is only so with regard to the three main distinguishing features of an Act marriage. First, is the restriction of the man to one spouse – a woman has never had a right to more than one husband at a time. Second, the mode of dissolution of the marriage under the Act is only by judicial decree or order. And, third, the right of inheritance by a wife on the death of a husband who died intestate.

But there are more incidents of marriage under customary laws which are not covered by the Act. So much is therefore, goes beyond just the basic rules, but incorporates the whole traditions, culture, customary social obligation and fundamental values. These form the bedrocks of their philosophy of life. They include social and customary marriage obligation which sustain a marriage under customary law. The doctrine of "covering the field" will not extend to them. They can be ignored at the peril of breaking up the marriage!

In the field of customary marriage, it is now established through the case that archaic rules of customary law have been struck down by the application of the repugnancy doctrine. Rule of customary laws which offend against the basic norm of morality and equity and good conscience are over –ruled from time to time by the superior courts.

For instance, the general conception that marriage in African societies was a compact between two families and that the consent of the parties was irrelevant has gradually given

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[139]*Akparanta v Akparanta* (1972) ECSLR 779
[140]*AG of Abia state & Ors v AG of the Federation* (2002) NWLR (pt 763) 264, 431
[141]*Jaiyesimi v Okotie-Eboh* (1996) 2 NWLR (pt 429) 128. Per Iguh, JSC at p.155

way to the more rational idea that the consent of the parties is an essential legal element of a valid customary marriage. Mbiti acknowledges:

> "If either the girl or the young man very strongly rejects the prospective marriage partner, then negotiation is broken down; although there is case where force or pressure is applied to get the reluctant young person to marry the partner chosen by the parents and relatives."[142]

It is correct to talk of persuasion but not of force. In *osamwonyi v. Osamwonyi*[143] a high Court invoked the doctrine of repugnancy and firmly held that any custom that forced a girl into marriage against her consent was repugnant to good conscience.

The right of a child born out of wedlock is duly recognised by customary law. The only requirement for the vindication of such right is that the child be acknowledged by the putative father.[144] In effect, no child is really 'illegitimate' in African societies, unless the father denies the child's paternity. The influence of English law on Nigeria judges, however, led to the decision in *Cole v. Akinyele*[145] which drew distinction between the rights of children born in and out of statutory wedlock.

The right of all children to a share in their father's estate is inalienable under African customary law. Judges, who were overcome by sentiment, have sometime ignored that right, using the yardstick of foreign people to measure the morality of the African societies. This is not right Professor Gower was correct when he said that a Nigerian "statute should be construed as not affecting a transaction governed by customary law unless it expressly or by necessary implication provides to the contrary. The main argument in favors of this conclusion," he argues, "is the manifest absurdity which would otherwise result." [146] Morality ought to be judged by the accepted values of the society concerned.

The controversy generated by the decision of the court is partially address by section 42(2) of the Nigerian constitution that the right of a child are not to be adversely affected on the ground of the circumstance of his birth. However, it has been clarified in series of case that

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[142] Mbiti, J.S., (1969) African Religion and Philosophy (Heinemann) p.136
[143] (1968) B/22/1969 (unreported; approved on appeal (1972) ANLR 792
[144] *Alake v Pratt* (1855) 11 WACA 70
[145] (1960) 5 FSC 84
[146] Gower, C.B.L (1964) *1Nig. Law* Jo., 73

the provision can only be invoked against individual person; and that a citizen cannot complain of 'disability' or 'deprivation' under this constitutional provision, including traditional disability from succession to the right and privileges of a royal family.[147]

Incidence of Marriage – Akintunde Emiola (2011:193) stated that religion and marriage may determine the mode of distributing the property of a deceased. Three types of marriage are recognised and each of them has its varying legal consequences on the distribution of the estate of a Nigerian. These are marriages under customary law, under Islamic law and under the statute.

When a marriage occurs under customary law, that law, as a general rule, regulates the distribution of the deceased's estate, and, as previously stated, only the deceased's children have the right to the inheritance. However, in a marriage under the Marriage Act, the estate is almost always entirely governed by the Statute of Distribution 1670-85 or, in the old Western State, by the Administration of Estates Law 1958. It is not uncommon for both customary law and the Act to apply to a deceased person's estate. The situation may arise where the same couple had gone through both forms of marriage. But there is a controversy in Nigeria as to the continued existence of customary marriage where that marriage was followed by another marriage conducted under the Marriage Act. One view is that the customary marriage is 'eliminated' or 'superseded' by the subsequent statutory marriage so that the application of the rules of customary law of succession no longer arises. The second view is that both marriages and the rights and obligations under them co-exist.
The proponents of the first view rely on section 33 of the Marriage Act 1915. In that section the Act stipulates as follows:

> "No marriage in Nigeria shall be valid where either of the parties thereto,at the time of such marriage, is married under customary law to anyperson other than the person with whom, such [customary marriage[3]ishad."

[147]*Aku v Aneku* (1991) 8 NWLR (pt. 209) 280

By simple logic and ordinary canon of interpretation, it is the second marriage under the Act that is prohibited. Second, the phrase "any person other than the person with whom such marriage is had" can only refer to the two parties to the earlier customary marriage.

The explanation of Professor Akintunde Emiola (2011:190),on the denial of the females right of inheritance of real property is quite unfortunate for the females in Imo state. It is so critical that a woman’s landed properties could not be inherited by her biological daughters. The daughters could only inherit ornaments and apparels. Her husband inherits all in the absence of any male children. And where the male children and her husband predeceased the married Igbo woman, the husband’s nearest male relatives inherit them, excluding her ant nuptial properties..

This piece of literature is relevant and agrees with the present research at hand. This present research is meant to correct this unfairness against women discrimination by invoking section 42 of the 1999 constitution of the Federal Republic of Nigeria. This research centred around how enforcement of female rights to inheritance of real property in Imo statecan be achieved using the recent celebrated judgment of the Supreme Court of Nigeria in *Ukeje v Ukeje* (2015)EJSC (vol.3) 70. With this decision, any woman who dies intestate, her female children just like the males will no longer be confined to inheritance of clothes, shoes, jewelries, cooking utensils and the likes. The literature being reviewed narrates the ordeal of females in inheritance of a wealthy married woman’s property by her female children. The literature being reviewed agrees with the research at hand because the research seeks to cure the anomaly created by the Igbo culture in Owerri west Local Government Area of Imo state Nigeria. The Supreme Court in the recent decision in *Ukeje v Ukeje* (2015) EJSC (vol.3) 70[148] is a welcome relief in addition to section 42 (1) and (2) of the 1999 constitution of Nigeria as amended. Female gender emancipation is already at hand and the war against discrimination on females in inheritance of real property is already nearing victorious end with the concerted cooperation of every stakeholder in Imo state and Nigeria in general.

Patrilineal succession

(Nwabueze B.O 1982), identified two main patterns of succession among the patrilineal

[148] (2015) EJSC (VOL.3) 70 SC

societies which are found, viz. succession by all the surviving issue jointly, and succession by a sole heir.

1. **Succession by all surviving issues jointly -**

Without a doubt, the most common type of succession is joint succession by all surviving issue of an intestate. When a person dies intestate, his or her real property passes to all of his or her surviving issue jointly as family property, subject to any rights that the surviving spouse, if any, may have therein, pending actual division or partition, and subject to any rights that the surviving spouse, if any, may have therein. The deceased's parents, brothers, and other collaterals have no claim to it; inheritance is decided by the issues, and all other relatives are excluded,[149] though if the children are all minors, the oldest surviving brother usually acts as caretaker. Failing issue the order of succession will be: (i) brother: (and sisters in some communities) of the whole blood;
(ii) Parents; (iii) half-brothers (and half sisters in some communities); (iv) brother's issue,[150] In default of all these groups the neat nearest relative takes. Uterine brothers and sisters and other maternal relatives are excluded, succession being strictly in the patrilineal line, unless the deceased was illegitimate. In Adre v. Agbebi,[151] personal estate of an illegitimate intestate was divided equally between his uterine brother and his half-sister by the same father, the court acting on the basis of principle of natural Justice, equity and good conscience in the absence of any reliable evidence of customary law applicable to the case.

Issue includes children and remoter descendants of the deceased. It has, however, been suggested that a grandson has no right of succession[152] and can only inherit through his father if�goal the latter‘ survived the intestate, because a son who dies in his father's lifetime has no succession rights in his father‘s estate.[153] While it is true that a child who predeceases his father has no right in the estate, his own children are indisputably member of their grand-father‘s family, and they inherit as members of the family not by virtue of any estate left behind by their father?[154] There is therefore no question of their being entitled by right of

[149]Adeseye v. Taiwo (I956) 1 F.S.C. 84
[150]. Ayinke: v. lbidunmi (1959) 4 F.S.C
[151](193!) l0 N.L.R. 79
[152]Okoro op cit. p.118
[153]Okoro op. cit. p. 117
[154]Saguaro-Davies v. Sogunro (1929) 9 N.L.R. 79

representation. It s repugnant to the whole notion of customary land tenure that a grandchild should be denied the right of membership of his grandfather's family and of the right to share in the enjoyment of his land, merely because his father predeceased the 'intestate.

It is necessary to recall the nature of the interest which the issues have in the land." Until actual division or partition none has a separate right of ownership to the whole or any part of the land.
The land is owned by the family as a quasi-corporate group, and an issue's right therein is defined by reference to his membership of the group; only the family as such quasi-corporate entity can dispose or authorize disposition of it. This is perhaps the most fundamental respect in which tenure of land under customary law differs from tenure in English law.

With some variations, succession by all the deceased': issue jointly as family property may be said to be of general application throughout Nigeria, except in the few matrilineal societies shortly to be noticed and in the still fewer communities where succession is by a sole heir. The variations relate in the main to the classes of issue comprehended, the manner of division, and the rights of the surviving spouse, if any.

(a) Classes of issue entitled to inherit
    Among most communities, succession to land is restricted to male issue; daughters cannot inherit land from their parents.
(b) A fortiori, a woman cannot succeed to the headship of the family, since it is to the head that the powers incident to family ownership of land belong. In *Uboma v, Ibeneme*[155] the daughters of a Deceased intestate from Awkuzu in Onitsha Province claimed to be jointly entitled with their brothers to inherit their father': land. Two witnesses who testified on their behalf stated that by Awkuzu custom a deceased man's land was inherited by all his children, both male and female; they admitted, however, that while men could sell their share women could not, and that upon their marriage their share passed to their brothers. Egbuna J. emphatically rejected this, and held that among the Awkuzu as also among the rest of the Ibo people "women have no such right. It seems to me that land can be allotted to women for fuming purposes but they cannot call the land their own. Among the Hausa-Fulani, although the Maliki

[155] suit no. o/150/61 of 12/4/67 (unreported) high court, Onitsha

Code permits inheritance by females, land tenure and inheritance are governed largely by custom, under which females cannot in general inherit. There appear however to be a few scattered instances of inheritance by women, e.g. among certain villages in Zaria Emirate[156] and Kebbi Argungu Emirate[157] but the most notable exception to this rule is among the Yoruba. In Yoruba law females are entitled alike with males.[158] Indeed not only do women among the Yoruba have a right of inheritance with men, but also, subject to the prior claim of the eldest son, the headship of the family is open equally to males and females according to their seniority of age.[159] After the death of a man, the headship of his family goes to the eldest son, and thereafter to the next senior child by age, irrespective of sex, unless the eldest child is a married woman living with her husband, since in that case she cannot manage the family property.

The Efik of Calabar also recognise the right of females to inherit with males, though this right does not extend to the headship of the family. Inheritance by daughters may have quite an important implication where the family character of the land has not been dissolved by actual division or partition. Among the Yoruba a daughter's share in her father's land may be inheritable by her issue, even without partition of the land[160]. The implication of this is that her children are members of her family as well as of their father's family; since otherwise they cannot succeed to their mother's share in her as yet unpartitioned family property. This system of cognatic descent is not of universal application throughout Yoruba land, and is limited to certain communities only, e.g. Ijebu and Ondo. In other places, e.g._ Ekiti and Oyo, a woman cannot transmit to her children commit any interest in land of her own descent group. Where such transmission is allowed, the share so inherited by the daughter's children does not form part of the child' father's patrilineal land, for upon the failure of a daughter's issue, her share of her father's land cannot be inherited by her husband or his family, but reverts back to her family.[161] The rule is that "when a man dies intestate without issue, leaving property he had himself

[156] C. W. Michie, "Notes on land tenure in northern districts of Zaria emirates" in C.W. Cole, Report JJ Land Tenure in Zaria Province (Govt. Printer, Kaduna, 1949) at pp 68-69.
[157] M. G. Smith, Hausa Inheritance and Sue:-anion, in perm! ed. op. cit- . 270.
[158] Bid p. 171
[159] Levis v. Bankole (1909) 1 N.L.R. 82.
[160] Taiw v_lawani (l96l) 1 All N L R 703.
[161] Caulrick v. Harding (l926) 7 N.L.R 48

inherited; the property will devolve on the member of the family from which it came. If the deceased inherited it from a maternal ancestor, it goes to maternal relations, and if he inherited it from a paternal ancestor was back to his paternal relations[162]. It is not clear whether it make any difference to this rule that the land in question has actually been partitioned. In at least one case where the rule has been applied, the fact that the land had not been was the basis of the decision[163]," but the rule was applied recently in a case in which there had in fact been a partition.[164] In *Bolajoko v. Layeni*[165] the real estate of an intestate was partitioned between his children, a son and a daughter both of different mothers. The daughter died leaving behind a girl who died too. The daughter's share was claimed by her half-brother and by her mother, with whom the girl had been living until her death. It was held that upon the girl's death the grandmother was the right person to inherit by Yoruba customary law. This decision cannot be supported on principle. There is no reason why partition should prevent reverted to the family from which the land was inherited. The rule has its parallel in the rule of English law whereby property which an intestate had inherited devolves not upon his heir, but upon the heir of the person from whom it had been inherited.

The term "issue" refers to children who are legally recognized as such. However, unlike English law, customary law does not have as strict a definition of illegitimacy. This is due to the prospect of legitimization through recognition. A child born out of wedlock whose natural father has acknowledged his paternity is just as legitimate as a child born in lawful wedlock.[166]" A child born out of wedlock is usually accepted by its natural father, unless someone else has a prior claim to its paternity, due to the great value placed on paternity by society. This is not to claim that under customary law, illegitimacy is unheard of. When a child is born out of wedlock, the first question is whether the child's natural father, mother's father, or the person who paid the bride-price for the mother is eligible to be the child's father. While custom differs on the competing claims of the

[162]Suberu v.sunmoni (1957') 2 F.S.C 33
[163]Idewu v. Hausa
[164]L.E.D.B v. Tukuru (1963) L.L.R. 155
[165] (1950) 19 N.L.R. 99

child's natural father and its mother's father, almost all communities agree that a child whose mother's bride price has been paid belongs to the provider of the bride-price, regardless of whether he and the child's mother are living together as man and wife.Superior courts, on the other hand, believe that paternity should be determined by blood, and that any custom that favors the bride-price provider or the mother's father over the natural father is contrary to natural justice, equity, and good conscience.[167]This is a classic example of a sharp divergence between judge-made law, based on advanced social and ethical values, and the actual facts of social life, because it is considered an outrage against custom in almost all communities to deprive a man of paternity of a child born by a woman for whom he has paid bride-price. However, the paternity of an illegitimate child is a primary question in determining what, if any, succession rights it has, because it can have succession rights, if any, only in the family to which it belongs, whether that is the family of its natural father, the family of its mother, or the man who paid bride-price on its mother.

What, then, are the succession rights of an illegitimate child? The answer varies as between various communities, some accord him and others denying him rights of succession. Among the Yoruba, it appears, he is equally entitled with legitimate children of the natural father, provided that his paternity is not in dispute. In a situation where a biological father gave an instruction to a person to obtain a birth certificate for the child, it is enough evidence of acknowledgment of paternity[168] This is also the position among many communities in Eastern Nigeria like the Annang, lhibio, Oron, Efut, Awgu, Mbaise, Udi, Aba-Ngwa, Nsukka and Owerri, [169] but in others he has no right of succession[170]at all." Perhaps the only judicial pronouncement portraying what the general attitude of the superior courts might be to inheritance by illegitimate children is that of Ames C.J. in *Onwudinjoh v.Onwudinjoh*[171]. In rejecting the claim of an illegitimate child

[167]Edet v. Essien (1932) 11 N.L.R 47
[168]Akerele v. balogun 1964 L.L.R. 99
[169]Okoro, Customary Law of succession of Eastern Nigeria, sweet and Maxwell , p. 105
[170]Arukapa v. Arukapa (1962) Suit no. OK/61A/61 Okigwe Magistrate court appeal (unreported)
[171](1957) 2 E.LL.R. 1

to share in the intestate estate of his father, on the ground that no evidence has been led in support of the claim, the learned judge observed:

> I do not exclude the possibility that in some parts of Nigeria customary law recognises the right of natural children to share to the east their father. If I were faced with evidence of a custom under which every natural son of an intestate was entitled to snare the offspring of a lawful marriage I might be persuaded to any custom was repugnant to natural justice, and the question of the unenforceability of claimed century to public policy would consideration. On the other hand, B clearly established custom under which natural children who have been for long recognized as members of the family was entitled to share in their father's estate might possibly be placed in a different category[172].

The condition posited by the learned judge (i.e. acceptance) clearly implies acknowledgment, and since acknowledgment confers legitimacy and succession rights in customary law[173], the learned judge's position amounts to this: any custom granting an illegitimate child a right of succession may be opposed to natural justice or detrimental to public policy. To say the least, the morality of this is debatable. While sexual promiscuity should be discouraged, there is no reason to penalize the innocent progeny of such behavior more than is required. There is nothing more ethically abhorrent than letting a man's illegitimate kid to share in his estate with his legal children, thereby alleviating the severe social stigmas he already bears.

The position of an adopted child, as regards succession to land, is not at all clear. To begin with, an adopted child has to be distinguished from a ward with whom he is often confused. Adoption of children is rare and only vaguely known in customary law. Among the Efik, the procedures for adoption require the presence of members of the adaptor's family to whom the adaptor formally nominates his or her adoptee. An adoption which fails to comply with this procedure confers no right of inheritance upon the adopted child[174]." For the Yoruba it has been stated that an adopted child cannot inherit from his or her adoptive parents,“[175]

[172]Ibid p.5
[173]Alake v. Pratt (1955) 15 W.A.C.A. 20
[174]Martins v. Johnson (I935) 12 N.L.R. 46
[175] Ajisofe, The Law and Customs of the Yoruba People (1924) Chap. 1 para. 3; quoted in Elias, Nigerian Land Law and Custom (195!) p. 23

however, in Administrator-General v. Tunwase[176] “the estate of a Yoruba woman from Ijebu, who had died without issue of her body, was claimed on the one hand by her husband from whom she had been separated for 44 years before her death, and on the other by her adopted child, by the children of another adopted child who had predeceased her, and by a number of collateral being the descendants of her maternal grandfather, including an adopted daughter of an aunt. The claim of the husband was rejected, and it was ordered that the descendants, including the adopted children, of the deceased's maternal grandfather should take one share each while her direct descendant (i.e. the surviving adopted child and the children of the deceased adopted child) shared per stirpes. This suggests that the right of an adopted child is inferior to that of a legitimate child of the blood, for the direct descendants, had they been of the blood, would have inherited the estate, to the exclusion of the collaterals. Descent by blood is the basis of the customary system of land tenure, and adoption can hardly be a substitute for this.

(b) Principle of division

It is perhaps necessary to begin by pointing out that in most communities no actual division ever takes place, the land being preserved and enjoyed together by all the issue as family property. Each member of the family is entitled to an allotment of farmland, to an apartment in the family house, if any, and to a share in the rents and profits of properties let out to tenants. As we have seen[177] among the Yoruba, and to a less extent among the Ibo, partition of a man's land among his children after his death is gaining currency. Among the Hausa, “when an old head of a *gandu* ,i.e. a household, dies, the sons who live in the compound may continue to farm together and may hold the land left by their father in common, until their own children marry and partition becomes necessary. Until then, the eldest son in the compound acts as head of the *gandu*. But if they-decide to farm superlatively, the sons generally split into groups of full brothers[178]."

Division of the estate among the children follows upon one of two principles, to wit: division per capital (i.e. according to the number of children) and division per stirpes (i.e. according to the number of mothers with children). In the Hausa Fulani areas of the North, as well as in

[176](1946) 18 N.L.R. 88.
[177]Ibid p.44
[178]Smith O.U.P.)1965) *The Laws of Succession in Nigeria* Derrett publishers p. 243.

parts of lgbo land, e.g. Owerri Division, division per capita is the rule,[179]" while in the rest of the country, including the greater part of Igbo land, division is into as many parts as there are mothers with children, each such mother forming a branch of the family or a stock of descent for this purpose.

An only child of one mother has thus an equal share with many children of another mother. Among the children of each mother inter se division is per capita, but grandchildren share with them per stirpes. The equal treatment of all children under the per capita method has the merit of fairness which may serve to avoid dispute and jealousy in the family. Recently among the Yoruba divison per stirpes has been attacked as being repugnant to the well-known principle of equity, "equality is equity", and is said to have been superseded by the per capita principle. In the event, the law has been authoritatively settled to be that.[180]

(i) division according to the number of mothers with children (otherwise known as Idi Igi or Igi kankan among the Yoruba) is an integral part of the Yoruba law relating to the distribution[181] of intestate estate, and is in full force and observance at the present time, providing, as it does, the universal method of distribution" except where there is a dispute, when the head of the family then decides whether division per capita *(ori-Ojiri)* ought, in that particular case, to be adopted instead of *Idi-Igi*; the decision of the head of the family prevails[182];

(ii) ori-ojori is a relatively modern method of distribution adopted as an expedient to avoid litigation;

(iii) *idi-igi* is not repugnant to natural justice, equity and good conscience.

lt may be questioned whether the proviso that in cases of dispute the head of the family decides which of the two methods should be adopted is not an innovation introduced by the modern courts without any basis in custom. According to Lloyd "equal division per stirpes is most rigidly followed. Compromises are effected only when such division is impracticable such as in an attempt to divide two houses into three parts.[183] Moreover the proviso is apt to negative the main rule completely, since dispute is almost inevitable

[179]ibid
[180]. *Danmole v. Dawodu* (1958) 3 F.S.C. 46
[181]*Reis: v. Mosanya*, I964 L.L.R. 19
[182]*Danmole v. Dawodu* (1958) 3 F.S.C. 702
[183]bid

whenever there is more than one wife with different number of children; an only child of one mother would naturally insist upon distribution by *idi-igi,* while several children of one mother would equally naturally desire an equal distribution among all the children. It is to regulate such disputes that the law exists. Accordingly, if *idi-igi* is the universal rule, the competing desires of the children should be resolved according to it. It is the right of an only child of one mother to have his father's intestate estate distributed per stirpes, whatever the other children may think about it. To leave the matter to the head is to substitute personal discretion for the arbitrament of law, and to encourage a challenge of the law by those who stand to gain by fomenting dispute. The head is of course an interested party, and to make him the final arbiter is to go against the rule of natural justice that a person should not be a judge in his own cause. Human nature is not imbued with so much altruism that we can expect the head to take a decision prejudicial to his own interest. In *Reis v. Mosanya*[184] a Yoruba who had died intestate in Lagos, had left him surviving nine children by four different wives. Two of the wives had only one child each, while the others had four and three respectively. The dispute in this case was between the two sets of children: the former demanding distribution by *idi-igi,* and the latter by *ori-ojori*. The eldest son who became the head of the family upon his father's death belonged to the latter group. At a meeting of the family, he decided, as might be expected, that division should be equal among all the children, his decision being accepted by the court as conclusive. One might ask whether this was the type of dispute contemplated by the proviso to the rule. Was this really a dispute at all? Indeed, not only were the applicants deprived of their legal right but they were also made to bear the whole cost of the proceedings because it was their greed in insisting upon distribution per stirpes that led to the litigation.

From this decision the conclusion can fairly be drawn that the universal rule for the distribution of an estate among the Yoruba people is not *idi-igi* but a choice between the two modes to be made by the head. So much has the head's discretion supplanted the law that he can change from one method to another. In *Akinyede v. Opere*[185] the estate in dispute was already being distributed by *ori-ojori*. When one of the family properties was acquired by a

[184]1964 L.L.R. 19.

[185]S.C. 216/1967 of 29/2/68 mentioned in 1968 N.L.Q. 177

public corporation, a dispute arose as to the distribution of the compensation money. The head of the family ostensibly to resolve the dispute, decided to change from *ori-ojori* to *idi-igi* and proceeded to distribute the money in accordance therewith. The plaintiffs claimed that after 26 years of division by *ori-* o*jori* it was wrong to change to *idi-igi*, a contention which found favour with the trial judge. The defendants had argued that *ori-ojori* had been adopted originally as an expediency to accommodate an elderly member, and to enable younger members of the family to be given proper education, and that the elderly member having since died and the younger members completed their education, the exigency which had made distribution per capita expedient had ceased to exist; *ori-ojori* was acceptable so long as the exigency lasted, but with its disappearance a dispute arose among the members of the family over the continued use of *ori-ojori*, and that it was to resolve this dispute that the head decided to change to *idi-lgi.* The Supreme Court, on appeal, affirmed the action of the head as being beyond question by the court. However, except in the exercise of the head's discretion for the purpose of resolving a dispute, a member who has accepted a benefit under one method of distribution cannot later demand that the rest of the estate be distributed by the other method.[186]

Whichever principle of division is followed in any particular community, it is usual for the eldest son, as the new head of the family, to be given a special share of the property. Subject to this, the children or branches share either equally or in a diminishing order of magnitude, according to the prevailing custom[187]. Where division is equal between children or branches, as it is among the Yoruba, no distinction is made between male and female[188]. A child's right to share in the division may, however, in some places be conditional upon his having contributed towards the funeral of the deceased. Among the Yoruba's, it is said that a soncannot be allowed to partakein sharing the estate alate fasther who he did not participate and contribute resource towards the burial rites. This point is usually contended in courts[189].

[186]*Akerele v. Balogun* 1964 L.L.R. 99
[187]Okoro, Customary Law of succession of Eastern Nigeria, sweet and Maxwell , p. 126
[188]*Sule v. Ajiseqiri* (1937) 13 N.L.R. l46
[189]ibid

(c) Right of surviving spouse ’

A wife cannot inherit[190] or administer[191]her husband's estate in her own right. This is because “in intestacy under native law and custom, the devolution of property follows the blood. Therefore, a wife or widow, not being of the blood, has no claim to any share[192]. However, a widow who chooses to remain in the husband’s house and in his name is entitled, in her own right and notwithstanding that she has no children, to go on occupying the matrimonial home, and to be given some share of his farmland for her cultivation and generally to maintenance by her husband's family. Should her husband's family fail to maintain her, it seems that she can let part of the house to tenants and use the rent obtained thereby to maintain herself,[193] Her interest in the house or farmland is merely possessory, and not proprietary, so that she cannot dispose of it out-and-out. Where, therefore, after a man death, his widow remained, with her only daughter, in occupation of his house at Onitsha, improved it and let parts to tenants from whom she collected rent, and in all other respects treated the house as her own for 44 years until her death, it was held that, as against the husband’s relatives, a person to whom she devised it by will acquired no rights in the house by the devise.[194]

A husband’s right of inheritance in his deceased wife real property depends upon whether the wife left any surviving issue and whether the property was acquired before or during coverture. A wife’: anti-nuptial property goes to her children jointly, and in default of children, to her relatives, but never to her husband or his family, except as regards personal property which she took to her husband's house. This principle was affirmed in *Nwugege v. Adigwe,*[195]an administration suit from Onitsha, in which the claim by the head of the family of a deceased widow for letters of administration to her estate was opposed by her husband's son by another wife. The latter was held to be the proper person to administer the estate. In coming to this conclusion, the court rejected another proposition of the customary law of

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[190]*L.E.D.B v. tukuru* 1963 L.L.R. 155
[191]Aileru v. Anibi (1952) 20 N.L.R. 46
[192]*Sogunro-Davies v. Sogunro* (1929) 9 N.L.R. 79, at p. 80
[193]*Nezianya v. Okagbue* (1956) Suit No. 0/ 17/I956, High Court, Onitsha; 398/1961 F.S.C. (unreported).
[194]ibid
[195](1934) 11 N.L.R. 134

Onitsha laid down by the six chiefs who gave evidence in the case namely that "where a man marries a woman who has a house, and lives with her as man and wife in that house, it goes to the wife's family on her death[196]." The reason given by the court for rejecting this proposition was that "in laying it down the chiefs explained that under their custom it was unheard-of that a man marrying a woman should live with her in her house. It is obvious that the native custom[197] could not provide for a set of facts unknown to native custom." The logic is unexceptionable, so far as it goes. Does the husband going to live in his wife's house constitute such a constructive taking of the house to his house? To answer this question in the affirmative would be to do violence to the general tenure and spirit of customary law. In any case, while this may be true of Onitsha customary law, it is not the law of most other communities that every ante nuptial property taken by a wife to her husband's house becomes inheritable by him or his family. The general rule seems to be that any such property retains its character as ante nuptial property of the wife unless it has become mixed with other properties acquired during coverture.[198]

Property acquired by a wife during coverture devolves upon her children, subject to the husband's right to use it, concurrently with the children, during his lifetime. Failing any issue of the wife, the husband takes. The wife's family has no claim to property which she acquired during coverture; accordingly where the wife is predeceased by her husband and all her issue, the property will go to the husband's relatives-his children by other wives, brothers etc.[199]

Inheritance of a wife's property by her husband in default of issue contradicts the general principle that devolution follows the blood, but is explainable by the fact that marriage has the effect of transferring the wife to the husband's patrilineage, and subjecting her to the control of the husband and his patrilineage. This result is brought about by the bride price paid upon the wife; it is a result which a bride price might well interpret as implying purchase". The ljaw communities, notably Nembe and Kalahari, practise two forms of marriage-the *igwa* and the *iya*. The difference between them consists in the fact that the latter is more expensive and operates to transfer the wife and her children to the family of the

[196]ibid at p.35
[197]ibid at p.35
[198]Obi, *Ibo Law of Property* (1963) 172
[199]*Nwugege v. Adigwe* (1934) 11 N.L.R. 134

husband, wherein they also have their rights of inheritance; the wife and children of an *igwa* marriage are not so transferred, and their rights of succession are in the wife's family[200]

It is not clear whether the husband's right of inheritance extends to property acquired by a wife during a separation. Separation does not affect the condition of marriage or its incidents; the wife remains transferred to the husband's patrilineage so long as the
bride price has not been returned. The marriage may be said to have been dissolved de facto, and it would look opportunistic for the husband to assert his right of inheritance then. Among the Yoruba people, the ldoma and perhaps a few other communities, a husband cannot inherit from his wife, just as she cannot inherit from him. If she dies without issue her property passes to her siblings and their children. A *fortiori* he cannot inherit property acquired by the wife during a separation.[201] Although a husband cannot inherit from his wife, this does not warrant the statement made in *Oloko v. Giwa*[202] by a supposedly expert witness that when a husband builds separate living houses for his wives, the house of each wife belonged to her and was inheritable by her children, and in default of issue, by her family.

2. Succession by sole heir

Inheritance of land by a sole heir to the exclusion of all others is exceptional in customary law. The principle here is usually one of primogeniture. It is not primogeniture in the strict sense of the first born son being the heir and entitled to representation by his son in case he predeceases his father. The right of inheritance devolves to the eldest surviving son.

It is necessary to distinguish the two respects in which primo-geniture operates in customary law, viz. succession to the headship of the deceased immediate family and the inheritance of land. As already noticed, the general principle in all patrilineal societies is that upon s man's death the headship of his immediate family devolves upon his eldest surviving son. The position of the head of family is a very unique and important one in the whole system of customary land tenure, for it carries with it certain powers and duties in regard to the management of the family property. The land is owned by the family as a "quasi corporate group, but since the family lacks a physical existence, it is personified by its head. This is a

[200]Okoro, *Customary Law of succession of Eastern Nigeria*, sweet and Maxwell , p. 149-153
[201]Administrator-General v. Tunwase (1946) 18 N.L.R. 88.
[202](1939) 15 N.L.R. 31

position that is clearly apt to be misunderstood, and so it is that the head is often erroneously referred to as the sole inheritor. But he is nothing of the sort. Even his powers of management are vested in him only in a representative capacity, and have to be exercised alter due consultation with his brothers whose consent must also be obtained.[203]The right of the eldest surviving son to succeed his father in the family's leadership is automatic, arising by operation of law from seniority of age. Only the father, as the owner and creator of the family property, has the authority to deprive the eldest son of his birthright through a valid direction issued with the goal of ensuring that his family's affairs are properly managed by a person best suited to do so on the basis of intelligence and education.[204]The right of the eldest son cannot be taken away without his consent in the absence of any such direction from the father. A right that arises by operation of law, on the other hand, is susceptible to being revoked or modified by a change in custom. It is said that in some communities, particularly the Efik, custom has changed in favor of family members electing the head. The decision has been criticized because it was not based on evidence of a genuine shift in custom. While the headship of extended families and houses may in recent times have become elective in some places owing to their political importance, it is doubtful whether this change in custom extends to the headship of a man's immediate family[205]

These principles of Bini law of succession were enunciated and applied recently by the Bini Grade “A” Customary Court in *ehigie v. ehigie*, but the judgment was reversed, on no evidence of the principles had been led before the court.[206] In the view of the appeal court, a rule of customary law which has not been so frequently before the courts as to be well established and notorious" should be proved by evidence before a Grade A customary court presided over by a legal practitioner, since there is no requirement that such a president should be a native. However, that may be, Ehigie v. Ehigie appears to have correctly stated the broad principles of Bini customary law of inheritance. *In Osazuwa v. Osazuwa*[207] they were confirmed by all the expert witnesses called on both sides in an inheritance suit before the High Court, where the plaintiff, a daughter, claimed against the defendant, her half-brother, a declaration to a piece of land in Benin as the share of her deceased's father estate

[203]ibid
[204]ibid
[205]ibid
[206](1961) 1 A11 N.L.R. 847
[207]SuitNo. B/39/67 of 31/10/68 (unreported) High Court, Benin City

apportioned -to her at a family meeting. The deceased father had been survived by the plaintiff, the defendant, and an eldest brother who later died without performing the burial ceremony of his late father, thereby forfeiting his right of inheritance. The defendant performed the burial ceremonies, and it was held that by Bini native law he thereby became the sole heir of his father's estate; and as there was no evidence of a grant or gift of the land in dispute by the defendant to the plaintiff, the claim for it declaration of title failed. Summing up his finding on the evidence of the relevant Bini custom given by the expert witnesses, the learned trial judge, Ighodaro Ag. J., said:

> "it is quite clear under bini law and custom that reality as in this case vests the eldest surviving son who has performed all the necessary burial ceremonies. I accept the evidence of the defendant second witness who deposed to the effect that the property of a deceased person vested in the eldest surviving son who had performed the burial ceremony and that sharing out of the property to any other children of the deceased was entirely at the sole discretion of the eldest son. His evidence is in line with the obiter dictum in *ogiamen v. ogiamen*[208] where Sir Adetokunboh Ademola F.C.J. says: 'It is common ground that according to Benin custom the eldest son succeeds to all the property of the father to the exclusion of the other children,

It is now settled, contrary to Rowling's findings in his Notes on Land Tenure in Bini Province,[209] that the eldest 'son': right of inheritance is not limited to the house in which the father had lived and to title houses, but extends to other real properties as well, and that as sole heir, the eldest son is entitled to sell the properties without the consent of the other children. In *Oglamien v. '0giamien*[210]" where the last and eighth son of a deceased Bini chief had asked for a declaration that the eldest son had no right by Bini customary law to sell one of the properties left by their father, the trial judge held as repugnant to natural justice, equity and good conscience the custom which gave the eldest son an exclusive right of inheritance, and accordingly granted the declaration sought by the plaintif'. This was reversed on appeal

[208](1967) N.M.L.R. 245 at p. 247

[209]. C. W. Rowling, Notes on Land Tenure in Bini Province (1948) Govt. printer, Lagos; quoted in Elias op. cit. pp. 223-7.26

[210]ibid

by the Supreme Court which affirmed the right of the eldest son, and observed: "We see nothing wrong in this custom; we can only say that it is not unknown in some other highly civilised countries of the world.[211] However, the eldest son's right is subject to any gift of hisproperty which the father may have made during his lifetime to his other children or to outsiders.[212]

A question that arises upon the dependence of the eldest son's right of inheritance upon performance by him of his father's burial ceremonies is as to whom the property belongs in the interval between the father's death and the performance of the burial ceremonies. In *ozazuwa v. ozazuwa*[213] the father died in 1928, the eldest son in 1940 and it was only in 1941 that the defendant, as the only surviving son, performed the burial ceremony. It seems reasonable to conclude that, until the eldest son comes into his inheritance by performing the burial ceremony, all the children are jointly entitled to the property as family property. Inheritance of land by the eldest surviving son alone is said also to be the principle of succession among the Ibos. In *Uboma v. Ibeneme,*[214] the defendant called so-called expert witnesses who testified that by the customary law of the Igbo people the eldest son inherits all his father's landed property (including houses) to the exclusion of his brothers, and could sell it without their consent; and that, though it was usual for the younger brothers to be given allotments of farmland, they had to approach their eldest brother for it. Egbuna J. emphatically rejected this as the law of lgbo land, and held rightly that land among the lgbo people is inherited by all the sons as family property, and that the eldest son, as the new head of the family, is only a 'caretaker'. Another version of the Igbo custom is that the eldest son alone inherits his father's residential house (known as as *obi* in Igbo dialect), but not the rest of the real estate.[215] This is certainly an over-statement based upon confusion between ownership and possession. The eldest son's right is merely one of exclusive occupancy of the *obi*; the ownership belongs to all the male-issue jointly as family property. In most cases, the'*obi* is built upon land of the extended family, so that no question of the ownership of the land itself by the deceased or by his eldest son arises. In these days of modern concrete houses, the distinction between the eldest son's exclusive occupancy of the father's obi and

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[211]Ibid 247
[212]*Ogiamien v. Ogiamien* (1967) N.M.L.R. 245 at p. 247
[213]ibid
[214]Suit No. 0/ 150/61 of 12/4/67 (unreported), High Court, Onitsha
[215]Obi, (1963) *Ibo Law of Property* 172

its ownership by all the issue jointly is likely to become more important than it was in the past, particularly having regard to the modern practice of selling land.

It is a well-known fact that some lgbo communities have a Bini heritage, if not origin. Onitsha is a notable example. This does not, however, necessarily imply a similarity in inheritance not between such communities and Benin. Writing about Onitsha law of inheritance, Talbot says that "property is inherited by the eldest son who is not obliged to give much to his brothers.[216] This statements obviously a reference to the right of the eldest son to succeed to the headship of his father's family and to occupy his residential house (obi), a right which, as already observed, is apt to be misunderstood as implying that the eldest son is the sole heir of his father's land. While Onitsha undoubtedly has its root in Benin, succession to land there follows upon the same principle as in other lgbo communities, namely by all the male issue jointly as family property, with the eldest son as the head of the family and entitled to the exclusive occupancy of his father's obi[217]This is supported by a recent decision of the Supreme Court on the customary law of inheritance of Asaba, an Ibo community in the Mid-Western State which, like Onitsha, has a Bini heritage. In that case, *Ngwo v. Onyejena*[218], the Appeal Court found the law, upon the evidence, to be that "when a father dies, his land 'is inherited by his eldest son who holds it in trust for his other children. The other children have a beneficial interest in the land and have a right to farm on it,[219]The language of English law used in the judgment is hardly appropriate, but the idea is clear and, it is submitted, conclusively disposes of the view that the eldest son is the sole beneficial heir in any part of Igbo land.

Inheritance of land by the eldest son alone hardly accords with modern democratic ideas. Happily, even in Nupe where it was practised in the pre-Fulani era, it has since been abandoned in favour of the more modern and democratic form of succession by the next of kin. It appears too that the deceased's' elder brother, rather than his eldest son, is "the proper person to and take care of the property" on behalf of himself and the children, and if the children are infants, the money is held in trust for them by the brothers of the deceased.[220]

[216]Peoples of S. Nigeria (1926) Vol. 11, p. 687
[217]Onwusike v. Onwusike Suit No. O/81/59_ of 1962 (unreported)
[218](1964) 1 All N.L.R. 352 (S.C.N.)
[219]. ibid at p. 355.
[220]Tapa v. Kuka (1945) 18 N.L.R. 5 at p. 6.

If the deceased was also head of the extended family, he is succeeded in this position by the eldest surviving member, who is more likely to be his brother than his own eldest son. Now, in the old 'days a man's rights, both in land and chattels, derived mostly from his membership of the extended family; it was these that, upon his death, constituted the bulk of his "estate". Thus, for purposes of succession, it was his position in the extended family that was largely important, and his brother, as the successor to this position, was often described as his sole inheritor. Nowadays, when self-acquired property has become important, a man's brother is still sometimes spoken of as his inheritor, although his right never extended by custom to self-acquired property, unless there is no issue. This misconception may be traced to another possible source. For, while succession is by the issue to the exclusion of collaterals, the deceased's brother acts as caretaker during the minority of the issue, and is also in those circumstances the rightful person to take over the deceased's widow, if she consents.

His caretaker ship of the land and inheritance of the widow(s) gives the impression that in such cases he is the sole heir. In fact, a brother, as caretaker, is no more the sole inheritor than an eldest son is as head of family. It is doubtful therefore whether any instances exist of a brother being entitled as sole heir to the exclusion of the deceased's children. The instances cited in support of this kind of system turn out upon close investigation to be nothing more than cases of joint succession, with the brothers caretaker for the successors of whom he may or may not be one.[221]

It may be that such a system of succession exists in one or two communities. In *Re the Estate of Agboruja,*[222] a deceased intestate, an employee of the medical department and a native of Warri, was survived by his wife, their minor children and a half-brother by the forefather. The estate was being administered by the Administrator-General, on whose application an order had been made. appointing the Public Trustee us trustee of the funds of the estate on behalf of the minor children, and the half-brother: the legal guardian of the children, the Public Trustee being required from time to time to pay to the half-brother money for the maintenance of the children. The appointment of the brother as legal guardian was made on the basis that according to the custom of the deceased's tribe (*Urhobo*), he (the brother) was

[221]Obi, (1963*) Ibo Law of Property* 179-180
[222](1947) 19 N.L.R 38

the next of kin and heir of the deceased, by right of which he inherited everything left by him, including the widow and her children The brother had, in accordance with this custom, taken over the widow, but after they have lived together for some time, they quarreled and she left him, refunding the bride-price paid on her, and with his consent took the children away to Lagos. In the present suit the widow applied to be substituted for the brother as the legal guardian of her minor children and to be paid the money for their maintenance, contending that the custom whereby the brother inherited everything was unfair and inequitable where the deceased left young children. This argument was rejected by Ames Ag. S.P.I.[223].

The variation of the original order was nevertheless allowed as prayed, but only because the brother had consented to the widow taking the children away to Lagos and also because the children were still in such tender age that it would be undesirable to separate them from their mother. Now, it is arguable whether this was not also a case of caretaker ship by the brother. If he was the sole inheritor, he would have been entitled to receive the money in his own name, unless the children were specifically designated as the persons entitled by some law applying to the funds. It is true that in customary law succession involves not only benefit but obligation as well.[224]But the fact that succession to an estate casts upon the successor responsibility for the deceased's debts and other obligations, including the maintenance of his dependants, should not prevent him from receiving what is due to him in the first instance. There is no law requiring that his responsibility for the deceased's obligations must be met from the estate. However, since the interest of minor children is always a paramount concern of the court, it maybe that the court can postpone the transfer of the estate to the inheritor, in order that it may be used for the maintenance of the children.[225] Primogeniture has its other extreme in the rule of ultimo geniture according to which inheritance is by the youngest son to the exclusion of the other children. Ultirmogeniture is of even more limited application in Nigeria, and with the exception of the Marki group of the Verre tribe of

[223]ibid at p.39
[224] Tapa v. Kuka (1945) 18 N.L.R. 5 at p. 6.
[225]In the Matter of the Estate of Edward Anfu Whyte (1946) 18 N.L.R. 70

Northern Nigeria,[226] is not found elsewhere in the country as far as inheritance of land is concerned.[227]

(B) Matrilineal Succession

The distinctive feature in this kind of system is that descent is traced through the mother, all those descended from a common ancestress forming a matrilineage. This means that a man and his children must necessarily belong to different matrilineagcs.

A matrilineage is thus a method of social organisation diametrically opposed to a patrilineage. It has, however, but a limited application. For the purposes of everyday life, all societies in Nigeria are organised in residential groups based upon patrilineage. The members of a matrilineage live in the compounds of their various patrilineages. This necessarily limits the areas in which they can function as a. corporate group, for without common residence, no group of persons can have much of a corporate life, and the exertion of political functions is well-nigh out of the question. Succession is one of the few ways in which the corporate existence of a rnatrilineage manifests itself. Three features of this kind of succession must be noticed. The first and undoubtedly the most distinctive characteristic of matrilineal succession is that a child cannot inherit from his father. His succession rights are in his mother's family, i.e. his mother, her brothers and sisters. The second is that men and women are treated alike. Thirdly "illegitimacy does not affect the rights of a successor. The test of succession right is that of origin from the same matrilineal descent. It is immaterial whether a woman's children were born in wedlock or not[228]

The exclusion of children from the inheritance of their father's estate is not only preposterous but may also be a positive disincentive to enterprise and hard work. It is indeed something of an unnatural arrangement, but the crucial question is whether it is so preposterous as to be repugnant to natural justice, equity and good custom. To be sure, matrilineal succession does not necessarily put the children in a worse position, since their father may be poorer or richer than their maternal uncle from whom they inherit. From the point of view of the children,

[226]Meek, Tribal Studies in N. Nigeria Vol. 1 p. 415.
[227]Okoro, Customary Law of succession in Eastern Nigeria sweet &Maxwell p.18
[228]21. ibid p. 183. See also Coker, family property among the Yoruba 2nd ed. (1966) pp. 287-288

there is hardly anything to choose between it and inheritance by an intestate's eldest brother. But the latter custom has been held not to be repugnant to natural justice, equity and good conscience. Moreover, a man's matrilineal successors have some responsibility towards his infant children, which may be enforced against the estate. The Administrator-General, by whom the estate was being administered proposed a scheme of distribution which, in derogation from the rights of the sister under customary law, allowed a one-sixth share to the widow and another one-sixth share to the daughter. This was faced by the sister who claimed the whole estate and, as a way of discharging her customary obligation to the daughter, proposed to take her back to Ghana where she would assume responsibility for her education. Should the widow not agree to return the daughter to Ghana, the sister proposed that she (the widow) should educate her from the resources of her (the widow's) own family. It was held that as the condition upon which the sister undertook to fulfil the customary obligation attendant upon her right of succession was that the daughter should be separated from her mother and compelled to return to the sister in Ghana, a hardship would be caused by the application in toto of the custom under consideration, and that the circulationsuggested by the Administrator-General was an equitable one. An order was accordingly made in terms thereof, with minor consequential amendments.

In Nigeria rnatrilineal succession is confined to only a few communities-Ugo and Unyaeda of the Andoni ethnic group in preset day south south Nigeria,[229] and the Verre and Longuda tribes of Northern Nigeria[230]

C) Bilineal Succession

. Under this kind of succession, both the patrilineage and matrilineage are entitled to certain classes of a deceased’s land, which of course vary among the communities where bilineal succession is practised. The practice may be that the deceased’s dwelling house and compound together with land reclaimed from community “bad bush", juju forest or swamp land is inherited by the patrilineage, while other properties including those acquired by purchase or pledge devolve upon the matrilineage.[231] Bilineal succession is found among the

[229]Okoro, Customary Law of succession in Eastern Nigeria sweet &Maxwell p 18
[230]ibid
[231] Nwabueze, B.O 1982 *Nigerian Land Law*. Nwamife Publishers Ltd Enugu p 401

Yala and Yakur ethnic groups: Egup-Ipa, Ubaghara and Ehom in Biase ethnic groups, and in bende, Afikpo and Ohafia Divisions in lgbo land.[232]

2.1.11 The effects of Modern Law on Land Inheritance

The system of inheritance is influenced by several factors, domicile and system of marriage celebrated by parties. We will consider each of these factors in turn to drive home our discussion.

Effect of Christian or Statutory Marriage

(Nwabueze 1982: 412) narrates how Christianity has introduced to the Nigeria a new form of marriage which is at once variance with the customary marriage in that, whilst the latter permits of a plurality of wives, a Christian marriage on its part prohibits polygamy; it is, in the famous words of Lord Penzance, "a voluntary union for life of one man and one woman to the exclusion of all others.[233] "Christian marriages celebrated in Nigeria are now governed by the Marriage Act.[234] But our law also recognises as valid marriages celebrated outside the country provided they complied with the law of the country where they were celebrated. The crucial question is as to the effect of such marriage on inheritance of the estate of the parties to it. The Marriage Act makes some provision for this.

It should be noticed, first, that the section is concerned only with succession to individually-owned property, i.e. property in which the intestate has an interest of inheritance. It confers therefore no right of inheritance in respect of a member's interest'in unpartitioned family land, for such interest endures only during for member's lifetime and is not such as could be disposed of by will.[235] The limiting of the provision to property of which the deceased might have disposed by will is only a confirmation by statute of the non-inheritable nature of a

[232] Okoro, op cit

[233] Hyde v. Hyde (1866) L.R.I.P. 8: D. I30 at p. 133.
[234] Cap. 115, Laws of the Federation, 1958. Now cap C 8 Laws of the Federation of Nigeria 2004.The first Marriage
Ordinance was passed for theColony of Lagos In 1864.

[235]*Davies v. Sogunro* (I936) I3 N.LR. I5

member's interest in family property.[236] Not even the entirety of individually owned property is necessarily included; any real property, the succession to which cannot by customary law be effected by testamentary disposition, is excluded, and is inheritable according to customary law.[237] The extent to which customary law limits the-freedom of testation of a Nigerian is of course a matter of dispute.

Secondly, the section applies to the colony only, i.e. the Federal Territory of Lagos.[238]The Act does not state in what circumstances s'. 36 becomes applicable in Lagos, the only clue being the provision requiring the registrar, before issuing a certificate in
the case of a marriage to be celebrated in Lagos, and to which one of the parties is a person subject to customary law, to explain to both parties the effect of the section upon their succession rights.[239] This makes it clear that a marriage celebrated outside Lagos is excluded from the operation of the section, notwithstanding that the estate comprises property in Lagos,[240] but it leaves it in doubt whether all marriages celebrated in Lagos are within the section. It would be contrary to established principles of law, as accepted and acted upon in all civilized countries, if the section were to govern succession to the intestate estate of all persons married in Lagos, irrespective of their domicile at the tme of death or of the location of the property. From this it seems that s.36 will apply only when a marriage under the Act is celebrated in Lagos and either the land is in Lagos or in the case of movables the deceased is domiciled in Lagos at the time of his or her death.[241]Domicile raises a problem of its own, because of the controversy about whether there is only one single Nigerian domicile or a separate domicile for each region, Lagos counting as a region for this purpose. If the view of one domicile for the whole country adopted, then permanent residence in Lagos at the time of death should be insisted upon in place of domicile. In all the cases in which the question of the application of the section has been before the courts all the facts had been connected with Lagos the marriage had been celebrated in Lagos, the property was in Lagos, and the intestate had died domiciled in Lagos. In the Estate of Herbert Macaulay the W.A.C.A. held

[236]*Sogunro-Davies v.Sogunro* (I929) 9 N.LR. 79.
[237]S. 36(1) (b)
[238]S.36(3)
[239]S. 36(2
[240]*Adm- Gen v. Egbuna* (1945) 18N.LR.l
[241] Kasumu, Intestate Succession In Nigeria (l964) Vol. I No. 1 Nig. L.J.

that “as the matter concerned persons and property in the colony of Nigeria [referring to Lagos] the distribution of the estate is governed by s. 36 of the Ordinance.[242]

The provisions are comparable to those in s. 36 of the marriage Act except that succession is in accordance with an order prescribed by the Law, and the issue of a statutory marriage is not affected by the enactments unless he himself marries under the Act. This is a sensible and desirable reform, as it seems somewhat absurd to apply English law to the inheritance of the intestate estate of an issue of a statutory marriage who is not himself married under the Act. In the rest of the country outside Lagos, West and Mid-West there was no statutory definition of the effect of a statutory martin; upon inheritance rights. There have been three divergent viewpoints upon the matter. The first may conveniently be referred to as the rule in *Cole v. Cole*[243]where the intestate estate of native of Lagos who had married according to the rites of the Church of England in Sierra Leone was claimed by his widow on behalf of her lunatic son, and by his brother as customary heir and caretaker.

It was since been expressly enacted that customary law is not to apply when the transaction is unknown to it. Having excluded customary law, the court held that the English common law applied. The second viewpoint denies that right of inheritance is an incident of marriage; the status created by marriage is a personal one, and has nothing to do with succession “A wife’; rights in her husband's intestacy, where they exist”, writes Okoro, “arise

> from the fact that the law of intestate succession provides that a wife should be so entitled and not from the fact of marriage itself[244]. The law of marriage regulates the relationship between husband and wife in their lifetime. It imposes on them matrimonial rights and duties, just as another body of law- the law of parent and child regulates the relationship, *inter vivors*, between parents and chi1dren.[245] Since, therefore, the succession rights of a wife and children arise not from the relationships of marriage and paternity, but independently from the law of succession, it follows that those rights cannot be said to arise from any

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[242] (1951) 13 W.A.C.A.304 at p.305
[243] (1898) 1 N.L.R 15.
[244] Okoro, *Customary Law of succession in Eastern Nigeria* sweet &Maxwell p.18
[245] Coker, (1966) *family property among the Yoruba* 2nd ed. pp. 287-288

> transaction; accordingly a civil cause or matter relating to succession in which all the parties are Nigerians must be governed by customary law. With respect, this argument involves the fallacy of treating rules of law as belonging to watertight compartments. The law is one organic body of rules, operating within a more or less consistent framework, and its compartmentalization is no more than a device of convenience to facilitate its exposition and study. The procedure of the law is to define incidents of relationships or acts created or done by individuals, and to regulate competing claims. Testamentary disposition, for example, is strictly a part of the law of gifts, though for convenience and because it takes effect from death, it is treated under succession. The rules conveniently grouped together under the head of succession have therefore no separate origin or existence, but are drawn from those governing various relationships and acts by which rights and duties are created between individuals.

it seems that we must accept the reasoning of the decision in *Cole v. Cole* as being by and large incontrovertible; marriage unquestionably affects, as one of its incidents, the right of inheritance; accordingly, since the status of a Christian marriage is unknown to customary law, the inheritance rights of the parties to it should ordinarily be governed by English law. What, however, is objectionable about the reasoning in *Cole v. Cole* is that it seems to postulate that, once the status of a Christian marriage has been created, then all the consequences flowing from it by English law follow undoubtably, regardless of whether the parties intended or contemplated them when they entered into the marriage. Here in lies the essence of the third viewpoint. It accepts the basic reasoning of *Cole v. Cole*, but insists upon a flexible application which should take full cognisance of the intention of the parties. In the absence of statutory prohibition, it is competent for the parties to a Christian or civil marriage either expressly, that is, as by direction contained in a will) or by conduct, to limit or vary the consequences normally attaching to the status by English law. It is a matter of the range of consequences the parties intended the marriage to have. One would naturally begin with the normal presumption that a person intends that which is the immediate or at probable consequence ‘of his act. Therefore, where two parties went through a Christian form of marriage they intended to be bound by its consequences.[246] This presumption is however

[246]*Haastrup v. Cooker* (1927) 8 N.L.R 68 at p. 70- per Petrides J.

only a prima facie one, and may be rebutted by evidence showing that the parties did not intend succession according to English law as one of the incidents of the marriage. The point is clearly expressed by Baker Ag. C.J. in *Ajayi v. White*[247]that a woman who contracted Christian marriage may not necessarily imply that she intended English law of succession, though every case has its own peculiarities[248]

In determining intention of a party, one must take into account not only the party's conduct but also his station in life. To dismiss as irrelevant considerations concerning a party' station in life would, Van der Meulen J., observed that the case of Cole v. Cole regulates inheritance of property to go in line with the native law and custom a man his educational level notwistanding.[249].The point of view represented in these statements has been described as "the manner of life" test.[250]

The cases have vacillated between a mechanical application of the decision in *Cole v. Cole* and "the manner of life test". In *Gooding & Bankole v. Martins*[251] the deceased had been married to Christian rites, the plaintiffs being the offsprings of that marital union. After the demise of his wife, he married another woman by native law and custom. Of this later marriage the defendant was born. The court held, without any question as to the station or mode of life of the deceased, that *Cole v. Cole* applied, and that only the children of the Christian marriage were entitled to inherit.[252] Happily, "the manner of life test" has been adopted in a greater number of cases. In *Asiala v. Goncalo*[253] decided two years after Cole v. Cole by the same court, the presumption that parties had by their Christian marriage intended English law govern succession to their estate was held to have been rebutted by the fact that:

> the Christian rites were preceded by Mohammedan rites, which suggested that the Christian rites were performed simply in order to conform to the standards of the country, a Christian country (Brazil), in which the parties happened by the accident of slavery and found themselves at the time; this

[247] (1946) 18 N.L.R 41
[248]*Haastrup v. Cooker* (1927) 8 N.L.R 68 at p. 70
[249]*Smith v. Smith* ibid at p. 107
[250] Selacuse, birth, Death and the Marriage Act (1964) Vol. 1 No. 1 The Nig. L.J
[251] (I942) 8 W.A.C.A. 108
[252]*Adm- Gen. V. Egbuna* (I945) 15 N.L.R. 1
[253] (1900)1 N.L.R. 41 (Full Court)

> is very significant having regard to the practice in Nigeria where it has become fashionable for parties to a customary marriage to follow it up with Christian rites;

Quite recently the Supreme Court applied customary law in determining succession to the intestate properties of a person married according to Christian rites, though, fortunately, the authority of the case seems to be weakened by the fact that the earlier decisions based upon *Cole v. Cole* were not considered by the court.[254]

In *Haastrup v. Coker*,[255] while admitting the rebuttable character of the presumption, the court held that it had not in fact been rebutted in that ease. The *Haastrup* case was rather a strong case, for there the deceased, after his Christian marriage in Sierra Leone, returned home to his native *Ilesha* where, upon the death of his father, he succeeded to the chieftainship of *Ilesha*, took unto himself some 50 wives according to native law, and on his death was buried with a mixture of Christian and pagan rites. The court dismissed as irrelevant the argument that the deceased was not a professing Christian at the time of the marriage. That fact cannot be completely irrelevant; on the contrary, it should have been taken into account in deciding whether the presumption had been rebutted, though admittedly it cannot by itself alone rebut it. What is perhaps more regrettable about the judgment in the *Haastrup* case is the impression created in certain parts of it that, once given a Christian marriage, succession by English law necessarily follows.[256]Commenting on the merits and demerits of the two approaches to this problem, Salacuse has said:

> "The virtue of the inherent incident theory as a basis for resolving this conflict of law: problem is its certainty and ease of application. There is no need to speculate on such vague matters as what exactly the parties intended when in fact the deceased and his wife may have had no specific intention at all, or at least never stated any. And as for determining the deceased‘: manner of life, in a country such as Nigeria where a man’s way of life very often includes elements of the

[254]*Nezianya v. Okagbue* (1963)1 All N.L.R. 352
[255] (1927) 8 N.L.R. 68
[256]*Cole v. Cole*(1898) 1 N.L.R. l5

> European and traditionally African in varying proportions, one can easily imagine the enormous and almost insoluble evidentiary problems which could confront a judge required to decide whether a Deceased's manner of life was such as to warrant the application of customary law. Faced with such problems. a judge would obtain little assistance from the judgments in *Ajayi v. White* and Smith v. Smith for the tests which they set down were at best vague and indefinite.
>
> The great objection to the inherent incident approach is that it automatically imposes a system of law which was not developed in response to local conditions and which may not at all be in accord with local habit and expectations. The manner of life theory acknowledges this fact and therefore allows the application of English law only where the parties were living a type of life somewhat similar to that for which the English law of intestate succession was developed .[257]

It is necessary to point out that the law in England which may be applicable by reason either of the rule in *Cole v. Cole* or of statute includes that part of it which determines the choice of law in a matter having a foreign element. This is important where a question of status is involved. The right of a child to inherit from his father in English law depends upon his being the legitimate child of his or her father. An illegitimate child has no right of inheritance. By English law as it applies in a matter involving property in England and between parties domiciled in England, legitimacy can only be acquired by birth in a lawful monogamous marriage. It was once thought that it was English law in this purely domestic sense that determines the legitimacy of a child in Nigeria in cases of succession governed by English law. Legitimate children of a lawful polygamous marriage have thus been held disentitled.[258] Such a view would indirectly result in the bastardisation of the children of a perfectly lawful customary marriage,[259]since its implication is that, although they are legitimate by customary law, they cannot be recognised as such for purpose of succession in English law. Happily, this erroneous view of the law of England, based entirely on its domestic conception of

[257] Ibid p. 65
[258]*Re William* (1941) 7 W.A.C.A. 156
[259] bid

legitimacy, has been overruled. It is now recognised that by English law, as indeed by international comity and law, the status of a person, including his legitimacy, is determined according to the law of the country of his domicile of origin, and that if by that law he is legitimate, he will also be recognised as such by English law.[260] In the words of Cotton L.J:

> “If, as in my opinion is the case, the question whether a person is legitimate depends on the law of the place where his parent were domiciled at his birth, that is, on his domicile of origin, I cannot understand on what principle if he be by that law legitimate he is not legitimate everywhere, and I am of the opinion that if a child is legitimate ‘by law of the country where at this time of its birth its parents were domiciled, the law of England. . . . recognises and acts on the status thus declared' by the law of domicile[261]

It makes no difference that the person is born out of a polygamous home; providing such union is acknowledged as valid and the children as legitimate by the law of the country of domicile; English law will also recognise and act upon the status.[262] Like-wise, where the law of the country of domicile recognises legitimation by mere acknowledgment, this will also be accepted as suflicient for succession under English law.[263] It is therefore only when England is the domicile of origin that the purely domestic conception of legitimacy in English law will apply; ' The same principle applies to the status of a widow; a widow or widows of valid customary marriage are therefore entitled to the right of a widow in the intestate estate of her husband by English law.[264] Thus, *In the Estate of Herbert Macaulay*[265] the W.A.C.A ordered that the one-third share belonging to a widow in English law should be reserved pending the determination of any claim to share in the estate, which the widows of the deceased might subsequently make.

Intestate Succession according to English Law

[260] *In Estate of Hubert Macaulay* (1951) 13 'W.4.C.A. 304
[261] *Re: Bischoffshelm* (1948) Ch.79—per Romer J
[262] *Baindall v. Baindall* [1946] 1 All E.R. 348
[263] Taylor v. Taylor 1960 L.L.R 286
[264] *In the estate of Herbert Macaulay* (1951) 13 'W.4.C.A 304
[265] (1951) 13 W.A.C.A. 3043 at 358

(Nwabueze 1982: 412) brought our attention to appreciate the extent to which Christian marriage alters the course of succession that would, but for it, have followed upon an intestacy under customary law, it is not enough to say that it excludes customary law in favor of English law. It is important to ascertain whether the persons designated by English law as entitled to inherit are different from those who would have inherited under customary law, and what the nature and quantum of their interest are.

The nature of the interest acquired by inheritance under English law can be disposed of simply: whether succession is by a sole heir or by two or more persons, the interest acquired by each beneficiary confers upon him or her, a separate right of ownership, which is alienable, and attachable in payment of his or her debt[266]. There is nothing in English law corresponding to family property. As will have appeared, there is no uniform pattern of succession under English law for the whole country. Nigeria falls into three territorial groupings for this purpose: the Eastern and Northern states, Lagos, and the Western and Mid-Western states. It will be convenient to discuss each territorial grouping separately.

Eastern and Northern States

(Nwabueze 1982: 412) also explained that the rules were here derived from the common law, as amended by statute, mainly the Inheritance Act, 1883. The principle is one of strict primogeniture. The first-born son inherits exclusively,[267] subject only to the right of the surviving spouse. Even if he predeceases his father, his right of inheritance is preserved and passed on to his issue, if any, who takes by right of representation. It is only if he predeceases his father without leaving surviving issue that the next elder son takes. In default of male issue, daughters inherit equally among themselves as members of the same blood. ln the event of a total failure of issue, the order of succession is (i) the deceased's father[268] (ii) brothers or sisters, nephews or nieces; (iii) paternal grandfather (iv) uncles, aunts and cousins.

In every case the-whole blood take before the half blood, and only paternal relatives are entitled; so long as there is a surviving paternal relative, the deceased‘s mother and her relatives are excluded. There can be only one male heir at a time, ascertained by the same

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[266] *Johnson v. U.A.C. Ltd*. (1936) 13 N.L.R. l3
[267] *Cole: v. Cole* (1898) 1 N.L.R. l5
[268] S.6: Inheritance Act,1833, reversing the common law rule which excluded the father

principle of primogeniture, and the right of representation is also allowed at every stage. Succession by more than one person at a time is possible only in the case of daughters, who take equally among themselves as co-blood sister of the same parents.

One important qualification which needs to be stressed is that, when the heir of land dies intestate, the property devolves, not upon his heir, but upon the heir of the person from whom he inherited it. The heir is of course free to dispose of the land during his lifetime or by will, and this qualification on his right applies only when he dies intestate without having done so. If no heir can be traced, the property goes as *bona vacantia* to the state[269]

The erudite learned author Nwabueze Ben went down memory lane to trace the situation of inheritance during the old western region (now these state Edo, Delta, Oyo, Ondo, Lagos, Ekiti, Ogun) wherein he explained that widows were not entitled to inherit their late husbands' estate, but they can only do so through their children, if any. He however added that both male and female children of the Yoruba man who died intestate are entitled to partake in the inheritance of their deceased father's estate. On the part of the Igbo ethnic group of the southern region of Nigeria, the learned author Nwabueze Ben observed that the primogeniture pattern of inheritance are prevalent, that is, at the intestate death of head of a family, the eldest son takes the position of his father as the new head of the family and then sees to the equitable sharing of his late father's estate. The striking point is that the eldest son inherits absolutely the home in which their late father was residing no matter how big the house may be. The eldest son does not inherit all the estate alone but shares the estate fairly according to the number of male children born of their father. No matter the inheritance formula of the Igbo people, the learned author Nwabueze explained that female children are excluded from whatever inheritance formula adopted in sharing the intestate estate. Similarly, Nwabueze made it clear that a wife is excluded in the inheritance formula for sharing the estate of the intestate husband's estate no matter her contribution in the acquisition of the vast of the husband.

There is therefore no doubt that this piece of literature is relevant and is in tandem with the present research topic centred on women inheritance right which the Igbo people of the southeast Nigeria refused to accept despite the obvious provision of section 42 (1) and (2) of

[269]*Administrator-General v. Egbuna* (1945) 18 N.L.R. 1

the 1999 constitution of the Federal Republic of Nigeria as amended prohibiting discrimination by whatever guise it may present itself. This research, from the title of topic is all about ways and means of enforcing the right of females to inherit real property in Owerri West Local Government of Imo in compliance with the recent celebrated judgment of the Supreme Court of Nigeria in *Ukeje v Ukeje* (2015) EJSC (vol.3) 70.[270] With this decision, any woman whose husband dies intestate, she will as a matter of law be entitled to inherit her late husband's real property whether or not she has children. The Supreme Court in the recent decision in *Ukeje v Ukeje* (2015) EJSC (vol.3) 70[271] has brought what can be referred to as a customary law salvation for female gender in the south eastern Nigeria which hitherto was absent.

***The Courageous Decision in Ukeje v Ukeje*[272]**

It is no longer a new story that women in Igbo land are discriminated against when it comes to partitioning of the property (specifically real property) of a man who dies without a will, intestacy as it is called in legal parlance. This unwholesome attitude of the Igbo people in the south east had generated a lot of controversy, and it was finally laid to rest when the Supreme Court handed down what one may call the courageous decision in the recent case of *Ukeje v Ukeje*[273], wherein the apex court did not minx words in declaring that the discriminatory practice against the females in Igbo land ran foul to the provision of the constitution, more specifically section 42(1)(a); (2). This is a case which commenced from the High Court in 1981 and ended at the Supreme Court in 2014. In the case the Supreme Court x-rayed the rationality of the Igbo custom which forbade a woman the right to inherit her deceased father's estate or forbade a widow the right to inherit her late husband's property especially landed property as it were.

In this historic judgment, the facts were that a man named Lazarus Ogbonnaya Ukeje who hailed from Umuahia, the present day Abia state capital in Nigeria, but lived all his life in Lagos doing business and thereby acquired movable and immovable properties. During the said Lazarus Ukeje's early life time he met and cohabited with the mother of

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[270] (2015) EJSC (VOL.3) 70 SC
[271] (2015) EJSC (VOL.3) 70 SC
[272](2015) EJSC (vol.3) 70
[273](2015) EJSC (vol.3) 70

Plaintiff/Respondent and subsequently the Plaintiff/Respondent was born by that cohabitation. However the first appellant got married to the deceased. Lazarus Ukeje on 13th December 1956 and bore him four children. At the death intestate of the Mr. Lazarus Ukeje, his wife Mrs. Lois and her son (Mr Enyinnanya) applied and were issued a Letter of Administration in respect of properties of the deceasedLazarus Ukeje. Following a twist of faith or luck, the Plaintiff/Respondent got to know of the development and subsequently filed an action at the High court of justice in Lagos, claiming that she was the daughter of the lateLazarus Ukeje and a result she was entitled to be included in the partitioning of her father's estate. In her action at the High court of Lagos, the Plaintiff/Respondentprayed the court to declare that, she being the daughter of Lazarus Ukeje was entitled to share in the estate of her late father. She prayed the court to invalidate the letter of administration dated 15 June 1982 purportedly issue to 1st and 2nd Defendants and revoke same and also order that all funds which the 1st and 2nd Defendants had received by reason of the said Letter of Administration by accounted for. She further prayed the honourable court to make an order that a fresh Letter of Administration be granted to her (plaintiff) and the second defendant (son of Lazarus Ukeje). Justice Fafiade of the Lagos High Court rightly found that the plaintiff was the daughter of the deceased Ukeje by reason of the birth certificate of the plaintiff and other oral evidence adduced at the trial and held that the plaintiff being the daughter of the man Lazarus Ukeje was entitled to partake in the sharing of the deceased man's estate by the provision of section 39 of the 1979 constitution which prohibits discrimination. The judgment was read on 10 January 1992. Following the judgment of Justice Fafiade, the defendants, now as appellants, appealed to the court of Appeal still relying on the Igbo custom of female disinheritance to real property. The Defendants/Appellants prayed the court of Appeal to nullify the judgment of the court below presided by Justice Fafiade. They contended in their brief of argument that justice Fafiade erred in law and misdirected himself by holding that a female was entitled to inheritance of real property in Igbo land. The court of Appeal unanimously dismisses the appeal and upheld the judgment of Fafiade J. The appellate court re-echoed the provision of the 39 of the 1979 constitution of Nigeria (now section 42 (1)(a); (2) 1999constitution) that no person should be discriminated on the ground of sex or circumstance of birth. The Defendants/Appellants, not still satisfied with the judgment of the court of appeal further appealed to the Supreme Court for a set aside of the judgments of the courts below. Rhodes-Vivour JSC who delivered the

Lead Judgment held that the decisions of the courts below having not perverted justice would not be upturned by the Supreme Court. The apex court relied too on section 39 of 1979 constitution, now 42(1)(a); (2) 1999 constitution and held that the Igbo culture of female disinheritance was repugnant to natural justice equity and good conscience and ran foul to the constitution, the *grund norm* or basic Supreme law of Nigeria. The appeal was dismissed in its entirety. In addition, the court awarded a heart breaking cost of two hundred thousand Naira against the Appellants, but in favour of the Respondent.

ONNOGHEN JSC: (2015:90) and OGUNBIYI JSC**:** (2015:91) asserted that the appeal which was brought against the concurrent judgments of the High court and the Court of appeal Lagos divisions was frivolous and an exercise in futility. The erudite justices of the Supreme Court agreed that the Plaintiff / Respondent was the true daughter of Lazarus Ukeje and as such could not be sidelined and cheated in the sharing of her biological father's estate. The justices also observed that the claim by the shameless Appellants (as the court described the appellants) that the birth certificate and photographs tendered the Plaintiff / respondent were forged could not hold water in the sense that forgery was only raised at the final address and was not originally pleaded; even at that, it must be proved beyond reasonable doubt. The principle of Nigerian jurisprudence is hinged on 'he who alleges must prove,' and prove it beyond reasonable doubt. The Supreme Court supported itself by citing the case of *George v. Dominion Flour Mills*[274]. Mere allegation without more goes to no issue. The court added that Section 138(2) of the Evidence Act, and section 141 of the said Act placed the burden proof on the person who asserts that a crime had been committed to adduced credible facts establishing the allegation.

AKA'AHS JSC**:** (2015:94) and OKORO JSC (2015:94) on their part stated that they agreed with the lead judgment of Rhodes Vivour JSC. The hinged their agreement with the judgment by placing weight on the birth certificate, photographs and divorce certificate tendered at the trial at court of first instance to drive home their position that Plaintiff / Respondent was the daughter of one late Mr. Lazarus Ukeje and as such she was entitled to inherit from her late father's estate; and such entitlement could not be taken away by the Igbo

[274](1963) 1All NLR 70 at 102, (1963) NSCC 54

custom which did not recognize the inheritance status of female.The offensive Igbo native law and custom could not be allowed to override the 1999 constitution,more specifically section 42(1)(a); (2). The Igbo custom in this regard was seen as barbaric, inhuman and offensive and must not in any way be encouraged and allowed. The learned justices concurred that the appeal lacked merit and was accordingly dismissed.

MUHAMMED, J .S.C.(2014: 422) and ARIWOOLA, J.S.C (2014:426) and MUNTAKA-COOMASSIE;J.S.C (2014:426) on their part expressed judicial displeasure at the way the counsel to the appellant who was learned could also comfortably argue in support of such demeaning and flesh skinning culture. The justice berated the appellants for stubbornly pursuing the appeal against God instituted gender differentials, stressing that it was God who decides who gets which gender at birth and as such the gender of a person could not be used against any person, because such discrimination challenged God supreme authority over mankind. They wondered how being a female could be a criterion to bar a woman from inheriting her late husband's estate or a daughter from inheriting her deceased father's property.It would therefore be inhuman and amounted injustice to discriminate against a female child on her father's property or a widow on her husband's property on the ground that she had only female children for her late husband. The justices maintained the two issues conversed by the appellants must be resolved against and same was accordingly resolved against them, they so held. They stressed that the custom relied upon by the appellants could not stand the taste of time and it was a retrogressive custom which must not be allowed to continue in the twenty first century civilisation. To uphold such custom would mean going back to the stone ages of the early man history. They consequently dismissed the appeal in its entirety.

Repugnancy of Native Law and Custom of Awka People which Disinherits a Married Woman Without a Male child. See Anekwe v. Nweke[275]

The Supreme Court had stated that the custom of Akwa people of Anambra State to the effect that a married woman without a male issue cannot inherit landed property of her late husband, pleaded and relied on by the appellants in the instant case, is barbaric, inhuman and hostile to natural law, fairness, and noble moral principleand ought to be abolished. The apex

[275] (2014) 9NWLR(pt 1412) 393

court cited other cases like *Lewis v. Bankole,*[276] *Eleko v. Secretary, Govt. of Southern Nigeria,*[277] *Dawodu v. Danmole*[278] in support of its holding.

Ogunbiyi, J.S.Cobserved in the case that the custom off Awka people which the appellant had based his appeal is more off an insult to Good than to the society. He pointed out that only god the creator that determines thee gender a couple may have otherwise. The learnedjusticesfurtherexplained that such discriminatory collateral practice against women, particularly a wife who was to be thrown out of her matrimonial home after the death of her husband simply because she no male child was worrisome annoying and flesh skinning in the modern age of civilisation. He also condemned the action of the counsel too the appellant who, though learned, appeared to support such barbaric custom. Similarly, Muhammed, J .S.C**.** (2014:400) stated that such discriminatory custom against women ought to be condemned in strong terms. He said that such barbarous practices should be phased out in order for fairness, equality, integrity, and fair play to prevail in community.This custom and practices of Awka people offends the rule of natural law, fairness, and moral principle.

As for NGWUTA, J.S.C. he observed that the Children are gifts from the God the Originator. He noted that the Awka custom of throwing a married woman out of her matrimonial home after where she had lived all her life after the death of her husbandjust because she had no male child home, is to take the people of Awka community back to the cave man days and such custom can no longer stand in modern civilsation of the 21st century. The learned Justice Ngwuta concluded that the Awka community custom of gender discrimination against females is hostile to natural law, fairness, and noble moral principleand ought to be abolished.

ARIWOOLA, J.S.C. (2014:401) has said that the defendants were shameless to have come to court to say that because a woman had six female children without a male was not entitled to inherit her late husband's estate, that such a woman cannot contest title to the landed property of her late husband with the various members of the family. The woman cannot be blamed for

[276](1908) NLR
[277](1931) NLR
[278](1962) NLR

the gender outcome of a pregnancy made with a husband. Only God himself who determines the gender of a pregnancy at every point in time. To punish a woman by disinheriting her on the estate of her deceased husband because she had no male-child was a challenge to God-the giver of live and children. The learned justice further submitted that such custom that discriminates females or widow inheritance of real property of her husband is inhuman and injustice, to say the leastas being hostile to natural law, fairness, and noble moral principle. Ariwoola, J.S.C submitted that the law was well settled that thesupreme court would ordinarily not obstruct with the parallel decisions of the high court as well as the Court of Appeal,except if the decision complained of amounted to a lapse of fairness in the face of record, or the trial court heard and watch the witnesses failed to apply the evidence adduced in a proper manner which lead to inadvertent insufficiency of justice.

On his side, I.T. MUHAMMAD, J.S.C indicated that his learned brother, Ogunbiyi, J.S.C, provided him with a draft of her leading judgment, which he had already read. In deciding the appeal, he concurred with his lordship conclusions.He was perplexed as to why a social system could very well reject a woman the right to her late husband's estate merely because she did not have a male child. No civilized society that values gender equality would accept a procedure that barred a woman [wife in this case] from inheriting her late husband's wealth solely because the husband had only female offspring. The educated jurist asserted that this practice was a direct challenge to God, the Creator, who bestows only female children or a blend from both sexes on those He decides.God alone has the capacity to make someone infertile, according to Justice Muhammad.If one found oneself in any of the conditions described in the appellant's case, there was virtually nothing one could do. According to the justice, continuing such a procedure would be outdated, discriminatory, and unprogressive. It was against the rule of natural law, fairness, and morality. He came to the conclusion that gender discrimination must fade away and become a thing of the past in order for equity, equality, justice, and fair play to reign in society.

MUNTAKA-COOMASSIE;J.S.C. observed that the plaintiff, now the respondent, originally commenced the action at the Mbailinofu District customary court, but the suit was transferredto the high court following the order of the High Court division of Awka Anambra state dated 19th day of February, 1991.

In an amended statement of defence filed on February 6, 2007, the defendants refuted the plaintiff's claim in its totality and counterclaimed the subject matter. In the trial High Court, the respondent gave testimony and called two other witnesses, while the first appellant, Onyibor Anekwe, and three other witnesses testified for the defendants/appellants. In her effort to introduce her right to inherit, she asserted that, according to Awka customs, a woman inherits her husband's property whether she has a male child or not, and that she relied on the Ozo Awka Society's final arbitration on the matter, which she asserted was not refuted by the defendants/appellants, to endorse her claim.

The plaintiff/respondent was granted the requested declaration and injunction by the trial High Court, but the defendants/appellants' counterclaim was dismissed. The defendants' appeal was dismissed by the Court of Appeal, which upheld the trial court's decision. The appeal is now clear that it is against the decision of the Court of Appeal Enugu Division, which upheld the decision of the trial high court in Anambra state; as a result, the case has been transferred to the Supreme Court. According to Supreme Court rules, the parties have filed and exchanged argument briefs. Both attorneys relied on and used their respective argument briefs.

Muntaka-Coomassietotally agreed with the lead judgment and also adopted same thatthe appellants' two points of contentionwent to no issue and must be resolved against them; consequently the appeal was dismissed. To the learned justice, the days of such discriminatory customarypractices were over and had become that of the bye gone days and moribund. To punish a woman for the singular reason that she had only female children was an absolute insanity in the modern day realities. Such customary practice of the Awka people could never tenable anywhere in the globe, let alone being accepted in Nigeria, the cynosure of African civilization. It is only God who decides the gender of any pregnancy. The appeal was therefore thrown out, and the consequential orders and order of were also adopted by Muntaka-Coomassieduring his concluding remarks.

Succession and Inheritance

Fatula observes that viewed from any angle, the law of inheritance stems from the simple fact that man's sojourn on earth is limited and that ownership in life is transient and rotational. In the mathematical equation of life, death is constant, and no matter what one's proprietary rights in this ephemeral world are, they lack permanency. Every possessor therefore precedes a successor.

Certainly, no one can be an island on his/her own. Whatever a man owns in life comes as a result of collective efforts of some people that had rendered their utmost during the course of acquisition of the property. Inheritance thus is a way through which they may be compensated. The property a person acquired real or personal will devolve on his personal representative. Such personal representative are either executors or administrators, who were appointed by the deceased or the might appointed by the court and they administer the estate for the beneficiary after settling just debts.

To establish who thrives and inherits in the Nigerian legal system, it is necessary to determine whether the deceased died testate or intestate, that is, whether he wrote a will during his lifetime or not. If he made a will during his lifetime, the terms of his testamentary instrument supersede any customary law or marriage position under the act.

Testate Succession

Every Nigerian of sound mind and testamentary age, in general, does have competence to make a will in English form. An English will which fulfills the rule of formal and substantial validity will convey the deceased's real or personal property in line with the testator's intention. A will, by definition, is ambulatory, and it can be revoked by another will or codicil, or by annihilation, or by marriage. It is possible that revocation will be provisional.
The core of a will is that a testator may use it to amend, exclude, maintain, or change any rule or rules of inheritance, providing that these rule or rules conform with all formal validity criteria. Thus in *Shogbesan v Adebiyi*[279], a testator's by will broadens the traditional idea of family to include the testator's brothers and others. On the basis of this premise, the Maliki school of thought claimed that a person bound by Islamic law could only distribute one-third of his fortune as he pleased, with the remainder subject to distribution in accordance with

[279](1941) 16 NLR 26

Islamic lawin *Adesobokun v Yinusa*[280] incompatible directly or by incorporation with the provisions of the Wills Act 1837, which is an English statue incorporated by reference into Section 33 of the High Court Law of Northern Nigeria. In that case, the plaintiff had challenged the will of his late father which disentitled him as a child as he was eligible to a portion in his father's estate under Islamic law.

This testamentary rule is however not without exceptions. A testator cannot, by his will devise his individual share in a family property. Individually owned property is restricted to property individually acquired by the testator and which he had power to dispose of in his lifetime and which, if he had died intestate, would have devolved on his heirs at law. This was the principle applied in cases like *Taylor v Williams* [281] and *Ogunmefun v Ogunmefun*.[282]This limitation on the testator's authority to dispose of his property by will is recognized by the Wills Law of the various Nigerian states, which makes any such disposition subject to any customary law relating to it.

Intestate Succession

When a person dies intestate, or without a will, the question of his marriage, religion, or custom becomes necessary to ascertain how his estate should be distributed. His eldest male child ascends to the throne of the family.Under the rule of primogeniture as practiced among the Binis, the deceased's property vests in the eldest son who has performed all the burial rites, subject to any gift the departedmight have given to any of his other children or any other person in his lifetime. Primogeniture is absolute where all the properties, which rightly belong to thedepartedintestate becomes as a matter of customary law vested in the eldest child or youngest child as the case may be, that child becomes absolute owner of all the properties. The concept of trust has no place here because the ownership is absolute. He can sell, transfer or do whatever he likes with all or any of the properties. He cannot be compelled by any person, not even any of the other children to treat the properties in a particular way. And where he extends the benefits to the enjoyment of any of the properties to any of the children, it is as a matter of privilege and not as a right in the other children or

[280](1971) 1 ALL NLR p.225
[281](1935) 12 NLR p. 67
[282](1931) 10 NLR p.49

as a duty on his part. Primogeniture is different fromTrust. Trust implies a relationship between persons, created for the benefit of a aparty called the beneficiary. A trustee does not hold any property as absolute owner but for the benefit of himself where he is one of the beneficiaries and the rest beneficiaries. He is under obligation at all times to administer the property under trust fairly and justly for the benefit of all. It is submitted that under the principle of primogeniture and ultimogeniture, whereby all properties were exclusively on the eldest or youngest child, the concept of trust has no relevance. Any attempt to introduce trustto it would amount at best to a profane surrender of the truth for the form.

In some tribes in the northern Nigeria where the ultimogeniture rule operates, it is the youngest son that get ahead of utilizing the assets of the departedexclusively. Under the primogeniture rule practiced in some communities like Bini and Onitsha only the main property occupied by the departedintestate that becomes exclusively vested in the eldest son, subject to his having performed all the necessary burial and other rites.

Though under the primogeniture system as practised in Bini custom a first son is the rightful heir to his father's *Igiogbe* in line with *Bini* Customary Law- this custom can only come into play where it is established that the house was legally owned by the deceased. Though the primogeniture rule of succession, whereby on intestacy, a deceased's property devolves on his children as family assets with the oldest son as trustee of the other children, is founded on the principle which emphasize the function of the eldest son as the fore bearer of the family having both moral, social and legal obligation towards "his children", it is submitted that both the primogeniture and the ultimo geniture rules are hostile to natural law, fairness, and noble moral principlehaving legally barred other children from succession and placing them at the mercy of one of them as regards their father's property to the extent also that the other children, barred from inheriting part of their father's estate as of right are being denied because of the biological and natural position in the family. The rules of primogeniture and ultimogeniture are inconsistent with Section 42 of the 1999 Constitution.

The law applicable to the estate of a deceased intestate is the individual law of the deceased but not the customary law of the locality where the property is situated.Thus, in *Tappa v*

Kuka[283] where the deceased from *Nupe* died leaving possessions in Lagos, the issue was whether the Yoruba customary law of succession of Lagos (the *Iex situs*) or the deceased personal law in Nupe was the applicable law. It was held that the *Nupe* law, being the personal law of the departed was the applicable law. A person can however opt out of the application of his personal law for another customary law of his choice during his lifetime, provided the custom permits. The customary law may be of another place. The adopted customary law often is that of the place the person had lived for a considerable period of time and had come to see the place as his own home, having married and raised children, built or acquired moveable and immoveable property on the new place. But these facts are however not sufficient to raise the presumption of adoption. It is a question of fact to be determined by the courts according to the merits of each case. A noticeable case where it was as a fact that a man had opted out of his own personal customary law for that of the place he lived is the case of *Olowu v. Olowu*.[284] The departedwas a Yoruba man who not only lived his life in Benin but had by formal application acquired Bini citizenship from the Benin monarch after which he acquired a lot of property in Benin and its environs. Having died intestate, his estate was divided by his administrators in accordance with Benin customary law for succession by his administrators, which division was challenged by the plaintiff and some of his children on the premise that being a Yoruba man by birth, the Yoruba customary law of succession, especially that of *Ijesha* should apply to his estate. The High Court judgment that the departed had become a *Bini* indigene to whom *Bini* customary law should apply was upheld by the appellate courts.The above rules of customary law apply only to the self-acquired property of the deceased such as houses or compound and not farmlands or agricultural produce on land as these have their own rules of customary law.

Succession by Relatives

The current rule of customary law in Yoruba land is as declared in the case of *Adeseye v Taiwo*[285] to the effect that the land of a deceased intestate is inherited by his children to the exclusion of his relatives. It is only in the absence of issue that parents, brothers and sisters

[283](1945) 18 NLR p.3
[284](1985) 3 NWLR (pt13) 372
[285] (1956) 1 FSC 84

comes in[10]. If he is neither survived by any issue, then his mother and father share his property equally. If he has siblings, his property will be inherited by them in equal shares to the exclusion of the parents. Paternal half brothers are not entitled by any share in the deceased property. And where the mother is no more and no maternal brothers and sister, then the maternal grandmother would step into the shoes of the mother who was her own daughter so as to inherit the deceased property.

In Igbo land, the real property of a deceased is inherited by his brothers or sisters of the same mother in the order of seniority or by the mother. This rule which recognises male relatives instead of the children of the deceased intestate, though on the face of it inequitable ought to be seen as a traditional scheme of social insurance to protect the deceased's dependants against neglect and hunger for the customary right so vested in usually accompanied by an implied obligation on the part of the relative to take over the responsibilities of the deceased including marrying the deceased wife and taking care of the deceased's children.

2.1.12 Ouster of Customary Rules of Inheritance

Customary law is a flexible system, which continues to adapt itself to changes in the sociological pattern of life in the society. Such changes might thus be where the application of a particular rule of customary law to a particular situation might cause a great hardship or problem within a family, other rule may be applied. Again the court could refuse to apply a rule of customary law if it offends natural law, fairness, and moral principle. And where a man is married under English law, notwithstanding having died intestate, the customary law of inheritance would be deemed to have been ousted by necessary implication. Notwithstanding a man's allegiance to customary law, he could device to have his property shared and distributed contrary to the law applicable to him. All he needs to do is to disclose his intention before witnesses prior to his death. Such intention when proved takes precedence over any rule of customary law of inheritance that would have applied to him.

Local Legislation Regulating Succession to Real Property

In addition to the will at least there are three other statutes regulating succession and inheritance in Nigeria. These are (1) Administration of Estate Law, (2) Land Tenure Law of Northern Nigeria and (3) LUA of 1978. The main object of Administration of Estate Law is

to vest real and individual property of a deadperson intestate in his own representatives for management and administrative commitments including sale where necessary. The provisions of this law as to distribution of intestate estate apply only to the property of a dead intestate who contracted marriage in the English form during his lifetime and not to that of an intestate whose estate is ruled by customary law. The law directed that after settlement of the intestate's debt by the personal representatives, the residuary estate is to be distributed in the manner prescribed by Section 49 (1) of the law in circumstances where the intestate (1) leaves no issue and no parent or brother or sister of the whole blood or issue of the whole blood (2) leaves issue, whether or not person aforementioned also survives, (3) leaves one or more of parents, brother or sister or the whole blood or issue of a brother or sister of the whole blood but leaves no issue.

When following the rules of distribution under Section 49(1), married couple are treated as two people, so that if both the intestate and the intestate husband or wife died in circumstances that make it unclear which of them survived the other, the law implies that the husband or wife never survived the intestate. Section 49(1) (f) makes rules of customary law to apply to that part of the intestate estate that ought to belong to the state as *bona vacanti*a. Customary Right of Occupancy devolves on intestacy in accordance with the customary law existing in the locality, that is lex situs, unless non customary law or any other customary law applies, according to section 24(8) Land Use Act 1978.As regards the devolution of statutory right of occupancy, the customary law of the deceased's occupier whether personal or adopted applies and not the *lex situs.*

2.1.13 Women's Inheritance Rights to Real Property in Nigeria

Where the deceased dies intestate, leaving no will, then the questions regarding his marriage, religion or custom becomes relevant in determining how his estate should be distributed.

In Nigeria, the problem of inheritance has always been difficult to solve. It is a festering wound that has exposed our society's women to varying degrees of exploitation and oppression. The majority of perpetrators of this act are the husband's desperate, greedy

relatives, who deny the widow's rightful ownership of the husband's property. When it comes to inheritance, a woman in Nigeria is subject to one of three different types of law under the Nigerian legal system.When it comes to questions relating to her husband's estate, a woman married under the Matrimonial Causes Act is governed by the Administration of Estates Laws, whereas a woman married under customary law is subject to the customary law applicable in the locality from which her husband originates. It is customary law that their parents were subjected to when it came to issues concerning their parents' property. Finally, Islamic succession law applies to women who marry under Islamic law. Each of the three systems mentioned above has its own set of standards and yardsticks for dealing with various issues and situations. That is, while some women's rights to inheritance are guaranteed by law, the law itself may prevent women from inheriting in some cases, depending on the law under which a woman's marriage is governed.Married women under Yoruba and Igbo customary law structures cannot inherit their husband's property unless by Will, and Igbo women rarely inherit their father's estate.

Inheritance Rights to Parties Married under the MarriageAct

Women who marry under that same Act are entitled to all of the benefits provided by English law. They are expected to act similarly to their English counterparts (English women married under English Act). Regardless of a woman's husband's culture or tradition, it is assumed that if they were married under the Act, the man has decided that his affairs should be governed by the statutory laws. A woman married under the Act who is subjected to discriminatory practices has the right to seek judicial protection and a declaration that such actions are unethical and illegal. The laws governing intestate succession (the death of a person married under the Act without leaving a will) are somewhat complicated and vary from state to state.

Under the 1987 Administration and Succession (Estate of Deceased Persons) Law operational in States like Enugu, Ebonyi and Anambra states the following rules apply:

1. If a man dies leaving wife without children, parents, brothers or sisters, such a wife inherits his estate after all debts, funeral expenses as well as all charges have been settled. Where the deceased person leaves brothers or sisters of half blood, the wife’s interest in the estate ever comes first. Thereafter the half sisters and brothers take over the estate.

2. Where wife and children are left, the wife take 1/3 and children takes 2/3 of the estate. However the wife's interest in the estate only last until her death or when she remarries, whichever comes first. Thereafter the children take over the wife's shares
3. Where the deceased left a wife and parents, brothers and sisters, the wife takes 2/3 and the other dependants take 1/3. The wife's interest in the estate only lasts until her death or when she remarries, whichever comes first. Thereafter the other dependants take over the wife's share.

Women's Inheritance Right under Customary Law

Fatula (2012:118) further states that, Nigerian customary law system is such that there is no single customary law applicable to its entire people. Each ethnic locality has its own different

Laws of custom. In most cases, women have no right to inherit their deceased husband's property. Under customary law, property can be disposed of in a variety of ways, including writing a will. When a valid will is written, it must be followed, except in the case of family properties, which can only be bequeathed to the entire family. A woman married under customary law whose husband died intestate cannot inherit her husband's property, even if her children can. In Yoruba tradition, the wife cannot inherit promptlyfrom her late husband, but she can acquire from her parents.In Yoruba tradition, there are two types of succession: *Idi-Igi* and *Ori Oju Ori.*

In Yoruba traditional law, the woman is regarded as the deceased husband's property, and she cannot be heard claiming her late husband's property, particularly in Southern Nigeria.Nowadays, this rule will not apply where women now engage in salaried work and contribute to the upkeep of the home even as wives married under customary law. This positions was not peculiar to Africa alone some years ago; the position was also obtainable in England up till 1870 or thereabout.

In the Eighteenth century, Blackstone observed:

> "By marriage, the husband and wife are one person in law, that is,
> thevery being or legal existence of the woman is suspended
> during the marriage, or at least is incorporated and consolidated

intothat of the husband.

Under common law, the significant proportion of the assets of the woman, including her earned earnings, eventually conferred in her husband. As a consequence, a married woman could not come in into legally bound contracts, and the ability to leave property by will was severely restricted. Such guidelines were alleviated by equity. Later legislative reforms, most notably the Married Women's Property Act of 1882, resulted in the separation of spouses' property, though in practice this proved far from equal.In general, under Nigerian customary law, married couples have no right to each other's assets, whether inmarriage or afterwards. Neither husband or wife had authority over the enjoyment or disposition of the other's property acquired before, during, or after the marriage. If the husband dies without a surviving spouse, his property is inherited by his blood relatives, and if the wife dies without a surviving spouse, her property is inherited by her family.
Aileru v. Anibi,[286] Jibowu J notes as follows:

> Our law recognizes marriages based on native law and custom, and the issue of such marriages is legal. The Plaintiffs are without a doubt legitimate children of their deceased fathers, but their mothers do not have the same status under native law and custom as wives of marriage under the marriage ordinance.

A woman could not inherit the asset of her husband among the Yoruba. This is because, under customary law, a man's property is devolved by blood when he dies intestate. As a result, a wife or widow who is not a blood relative of the husband is not entitled to any share.In *Ogunbowale v. Layiwola,*[287]Three spouses and three children (one from each wife) managed to survive the deceased. Just at time of his death, he also left two houses. The second defendant, the mother of one of the children, claimed to have sold and conveyed in fee simple one of the deceased's two houses under the authority of a document signed by the deceased's two daughters and another relative. The court ruled that nothing by way of property devolves on a Yoruba man's wife/wives under customary law after his death

[286]1952 20 NLR 46
[287](1975) 3CCHCJ/HC327

intestate, reversing the sale of the property. Wives who had children with the deceased could continue to live in the deceased's home with their children. If a wife has no reservations about staying with the deceased's family, she seems to have only an occupation right.The 2nd defendant had sold the property involved in this case as her own property and conveyed the same to the 1st defendant in fee simple, she inherited no estate in the real property of her husband except the right to live there as a widow. Therefore, she had no interest in the property, which she could convey. What is more, she herself is an object of inheritance.

In *Osilaja v. Osilaja*,[288]the Supreme Court ruled that the rule that a widow cannot possess her deceased husband's property has become so well-known as a result of frequent evidence in courts that it has been judicially recognized.Similarly, in *Oloko v. Giwa,*[289]It was retained that when a husband dies, the room apportioned to the wife becomes part of the deceased's real estate and does not pass to the wife. The wife has the right to use the property not as a member of the family, but with recognition of her husband's membership in the family, if and only if she does not remarry outside her deceased husband's family after her husband's death.

Similarly, Yoruba native law and custom state that a husband cannot inherit his deceased wife's property or her share in her family property.Thus, in *Caulcrick v. Harding* [290] where a man left property to his three daughters, one of who was the plaintiff's deceased wife. The plaintiff's husband claimed one-third of the property. The plaintiff was found to have no such right because family property was inalienable under native law and custom. It was not a tenancy in common relationship in England. The rule is that if a man dies intestate without a will but leaves property that he inherited, the property will devolve on the members of the family from which it came. If the deceased inherited it from his maternal relatives, it is returned to them; if he inherited it from a paternal ancestor, it is returned to his paternal relatives.

In *Suberu v. Sunmonu*,[291] Jibowu F.J also held that it is established rule of native law and custom of the Yoruba people that a wife cannot inherit her husband's property since she

[288] (1972)10 SC
[289] (1939)15 NLR 31
[290](1926) 7 NLR 48
[291](1954)2 FSC 33

herself is like a chattel to be inherited by a relative of her husband.It is unfortunate that the current position of the Supreme Court in Nigeria on Yoruba succession in *Akinnubi v. Akinnubi*[292] is that a woman married under the Yoruba customary law cannot administer her husband's estate on behalf of her children. This is an unfortunate decision to have been rolled out by the Supreme Court in this jet age. Many people have disagreed with the position of the Supreme Court in this case. The origin of the Yoruba custom that the judgment rested upon is the belief that women are inferior to men and that they have to be guided and assisted to think by men. It is no gainsaying that this position can no longer hold. Widows and children have suffered seriously and, in some cases died, as a result of a drastic change in their financial status which has made it absolutely impossible for them to have access to adequate medical care simply because the wife cannot inherit her husband's estate. Who will take care of the children of the deceased? Who will bear the cost of their education? Even though the brothers in *Akinnubi*'s case are supposed to administer the property for and on behalf of the deceased's children, things do not always work out as smoothly as that. The custom is too old for this present day and it therefore has to change. In the case of *Mojekwu v. Mojekwu*,[293] which was incidentally seated on a few weeks subsequentlyafter the case of *Akinnubi v. Akinnubi*, the Court of Appeal heard a case in which it had to decide whether an Ibo custom known as Oli-ekpe was a fair custom. A male relative would inherit a man's estate instead of a daughter, according to custom. In Mojekwu's case, the eldest son (Oli-ekpe) of a deceased brother desired to inherit the deceased's estate at the expense of the deceased's daughter. Nnewi's Oli-ekpe custom, according to Justice Niki Tobi, is contrary to natural law, fairness, and noble moral principles.The learned Justice of the Court of Appeal has this to say:

> All human beings-male and female are born into a free world, and they are expected to participate freely without any restrictions on grounds of sex: orcircumstance of birth and that is constitutional. The"Oli-ekpe practice invoked by the appellant is against modern civilisation in which we live including the appellant. It is God that determines who comes to this world as a man or woman or sex of a baby, although scientist may object to this divine truth. Any form of social discrimination on grounds of sex, apart from being unconstitutional, to say the least an affront on the Almighty God Himself. On

[292] (1997) 1 SCNJ p.202
[293](1997) 2 NWLR (pt 512) 283

my part, I have no difficulty in holding that the"Oli-ekpe" custom of Nnewi, is hostile to natural law, fairness, and noble moral principle."

Thus, the court decided that Virginia, the mother of the 3rd appellant and grandmother of the 1st and 2nd appellants, who was a victim of the Nnewi nrachi ritual, could not be discriminated against because she is a woman. Virginia was subjected to limitations or restrictions, which the constitution's clause 41(1) prohibits. Apart from the Nigerian constitution's provisions,Virginia was also protected under Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), that is a United nation Convention. Article 5, enjoins state parties to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which creates superior statusfor either gender. Virginia, in my humble opinion, is a victim of the prejudices predicted in Article 5. Given that Nigeria is a party to the convention, courts of law should give or provide teeth to its provisions, thereby assisting women in an unfortunate situation in Virginia. The barbaric practice violates not only Nigerian law, but also nature. This case is significant for women's rights because it is the first time a court has recognized an international convention on women's human rights. The two cases mentioned above are decisions of the Court of Appeal, Enugu Division, which have given all women great hope.Though the Supreme Court of Nigeria affirmed the decision of the Court of Appeal in *Mojekwu v Mojekwu*'s[294] case on different grounds, it however disassociated itself from the basis of the decision of the Court of Appeal that the *Oli-Ekpe* custom was hostile to natural law and good ethics, for according to the apex court, the issue of *Oli-ekpe* was not joined by the parties.

Before these cases which seem to change the flowregarding women's privileges to property were decided, inheritance in Igbo land is doneinline with the principle of primogeniture which dictates succession falls on the eldest son, called "*Okpala*" or "*Diokpa*". A polygamist who latter dies, his first sons from each wife will partake in the sharing of the deceased properties; however, daughters and wives have no right of succession to their father's or husbands movable and immovable property:

[294](1997) *supra*

Basically, wives in Igboland are not entitled to inherit property of their deceased husband because they too are objectof inheritance. How then can an object of inheritance be claiming right of inheritance?

> According to Onitsha people's native law and custom, a widow's acquisition of her deceased marital assets is not that of an outsider, and it is not opposed to her husband's family or makes her the owner: such a wife cannot deal with the property without his family's agreement. She cannot reclaim the property as her own via the passage of time if the family does not consent, but she does have the right to retain the building or part of it until death, subjected to her positive conduct.The court further said that no equity arose in the widow's favor as a result of her long ownership, because it was acquired by her as a member of her husband's family with the family's permission (actual or implied).

After more than 20 years, the Supreme Court has upheld the preceding ruling in Nzekwu v. Nzekwu, holding that the widow's stake in the house is possessory rather than proprietary, preventing her from disposing of it. A daughter cannot be heard to inherit her deceased father's real property under native laws and customs, unless she elects to remain unmarried and then raise children for the deeased father who died but had no male child to inherithis estate. This situation is referred to as the as "*nrachi*" or "*Idegbe*" institution. The daughter, as "*Idegbe*" or "*nrachi*" is entitled to inherit both movable and immovable property of her deceased father's estate. The "*nrachi*" is expected to bear male child who would then step inttto her shoes and inherit her late. The concept of primogeniture states that sons, not girls, will succeed her. In the case of an unmarried girl who is not a "Idegbe," her property is inherited by full brothers; in the absence of full brothers, it is inherited by fathers. Unfortunately, if neither a father nor a brother survives, the half-brother will acquire, but a sister or half-sister will not. When a wife predeceases her husband, the sons inherit, lacking sons, the significant chattel husband, as the case may be, while the daughter inherits what are considered feminine possessions, such as jewelry, domestic utensils, clothing, cocoyam, and animals (fowls).Thus,

traditionally in Nigeria, a wife is deprived of succession rights in her husband's family. Several reasons have been advanced for this action[51]:

1. That an unmarried daughter is a temporary member of her father's household;
2. That the likelihood of marriage, confirms her transient membership because on marriage she assumes the membership of her husband's family;
3. Consequently, giving her the right of succession in her father's landed property will in effect allow her to cart away her family heirloom to another lineage.

This validates the perception that Nigeria social norms do not regard the Nigerian woman as an individual but an appendage of a father or husband. The likelihood of divorce, and being a non-blood relative in her husband's family, cancels her chances of succession rights in her husband's estate. The question now is: does a woman have any inheritance rights at all?

Customary law, as shown above, denies women the right to inheritance and succession. In the same vein, women themselves are regarded as "object" of inheritance after the death of their husbands. For instance in *Ogunkoya v. Ogunkoya,*[295] it was held that wives are also part of the famiiily chattel which canalso be inherited by other members of the family of the deceased under certain conditions.

The pertinent question here is, will a custom which denies a surviving spouse an inheritance right out of her husband's estate not be in violation of the constitutional provisions? Of course certainly it is? The surviving spouse is discriminated against in the sharing of her husband's estate. A man, his wife and the children constitute a nuclear family. It is therefore unacceptable that after the death of the husband, the wife is regarded as a stranger without any right of inheritance. To her dismay, the property which she had laboured to gather together with her husband is inherited by the deceased's brothers and sisters if she had no issue. This is highly inequitable. Also, a custom which provides that a woman is an inheritable object can be said to be anti-civilization and against morality.

2.1.14 Inheritance Rights under Islamic Marriage Law

[295]suit No CA/L/46/88, (unreported)

Islamic law forms a part of the Nigerian customary law. As for Muslims, Islamic law lays down its own formula for the distribution of the estate of a deceased person. The simple fact that a deceased is a Moslem is not enough to justify his estate being subjected to the Islamic law of inheritance. The deceased, in addition to being a Moslem must have lived his life and conducted his affairs in accordance with Islamic injunctions and showed very clear intention to be bound by Islamic law. At any rate the power to make a legacy in Islamic law is limited to one third of the deceased estate while the remaining two third is to be distributed among the heirs according to the prescribed portions after all the debts of funeral or interment expenses have been paid.

A wife, as well as female progeny, are eligible to inherit. The only prejudicial aspect is that, according to Islamic succession law, a woman is always entitled to half of what a male counterpart is entitled to. The wife of a Muslim man who dies without leaving a will is entitled to one-quarter of his estate after all debts, funeral costs, and other expenses have indeed been paid. If the deceased has children or grandchildren, her share is reduced to one-eighth, and if the deceased has multiple wives, they all share the one-quarter or one-eighth if there are children or grandchildren.When a woman passed away intestate, her husband is entitled to half of her estate after all expenses and debts have been paid. A woman who transforms to some other religion may be deprived of her inheritance. According to Islamic law, property is distributed per person, not by the number of wives the deceased had prior to his death. A person who makes a will can only leave one-third of his estate to people other than his true heir, according to Maliki School Islamic law.

Under the Maliki school of Islamic Jurisprudence, which version applies in Nigeria three basic grounds for inheritance are recognised. These are (1) marriage contract (2) consanguinity i.e. blood relationship between the deceased and heirs including ascendant, descendants, siblings, uncles, aunts etc (3) client-ship personal relationship between an emancipated slave and his emancipator. The last ground is however no more considered relevant as a basis for inheritance in modern times. There are three categories of heirs recognised by the Maliki School, namely (1) shares at law (2) residuary and (3) distant kindred to succeed as heir to the estate of the deceased in order of priority.

All authors on customary marriage and the Supreme Court Justices hold the view that the Igbo culture that disinherit females from their deceased intestate father and husband estates are barbaric. The authors and the Supreme Court Justices were unmindful of the fact that culture evolves from the people's long practice and it thus becomes the norm. They were also oblivious of the fact that the people of the south east do not see it as barbaric; otherwise they would have jettisoned the culture long before now. It is another way of saying that the Igbo are barbaric set of a people which, it is believed, is myopic of those who hold the view. Most justices of the Supreme Court are not of Igbo extraction and so do not appreciate the theme behind the culture they called barbaric, inhuman and unjustified, hostile to natural law, fairness, and noble moral principle.

The learned author Nwaogugu, being of the Igbo extraction, could not say the *Nrachi* custom of the Idemini Local government Area of Anambra state is barbaric or inhuman, because he being of Igbo origin could appreciate the philosophy behind persuading a female not to marry but to remain in the family to bear male children to maintain the family line where the father of the lady had no male offspring. The justices like Ogunbiyi, J.S.C., Innoghen JSC, Rhodes Vivour JSC, Obaseki J.S.C.Ariwoola JSC, Muhammad J.S.CMuntaka-Coomassie J.S.Care not of Igbo extraction and that is why they could not appreciate the philosophy behind denying the female right to inheritance of real estate. They merely use the Nigerian Constitution to justify their stand against that customary law of the Igbo. They ought to allow the Igbo to practice their culture since the Igbo people are comfortable with their age long culture of inheritance and succession. The culture is part of the peoples' spirit and grew with them and there is nothing wrong if such culture is allowed to continue so long as the vast majority agrees with it.

2.1.15 Customary Law Marriage In Nigeria

Imasogie,[296] believes that marriage has traditionally been the fate assigned to women by society. It is still true that almost all women are married, have been married, plan to be married, or suffer as a result of not being married. Because the vast majority of women in Nigeria are married under customary law, customary law marriage has a significant impact on their rights and status. Dowry is an essential component of customary law. The

[296]2018. Human rights, Women are Rights: so a long Journey Baptist Press Nig. Ltd, Ibadan, Oyo State, Nigeria p.68“

importance of children in customary law marriages is also emphasized. A traditional marriage is a relationship between the woman's family and the man’s family. This stems from the fact that, according to customary law, the primary reason for marriage is to have children. The wife's family prepares the woman as a wife for the sufficient fulfilment of her main functions, which are the bearing and rearing of children and the proper keeping of a home for carrying out this purpose. The husband's family group, represented first and foremost by the husband and, after his death, by his heir, gives the implied undertaking that the wife will be kept and treated in such a way that she can reasonably and adequately maintain a home and rear children.

The wife is joined to her man’s family group, and after the man's death, she continues to be a wife of his family home until the marriage is dissolved in a way that is legal under customary law. The husband's death does not end the couple's relationship; the wife may enter a levirate relationship with a male relative of the deceased husband, or subject to good behavior, continue to live with the husband's family.

Status of Customary Marriage in Nigeria

In Nigeria, there are two main marital regimes – statutory marriage and customary law marriages. Statutory marriage is a monogamous type of marriage, and the laws, which govern the celebration validity and incidents of monogamous marriage (referred to as statutory marriage) are found mainly in the Marriage Act, Matrimonial Causes Act and the common law. Customary law marriage in Nigeria may further be divided into two;traditional African marriage and Islamic marriage. These two types of marriages are grouped as one. Even people who are married under the Marriage Act perform one form of customary marriage or the other. Statutory marriages are seen as enhancing social status, giving women who are married under the Act some form of false security that they are legally married and that their husbands cannot take other wives as this will amount to bigamy, which is a crime in Nigeria.

It is on record that to date in Nigeria, only one case of bigamy has been prosecuted and that was in 1963 in R. v Bartholomew Princewill[297]. Since then, there was no further record of offence of bigamy in Nigeria. This has led some people to say that the offence of bigamy as it exists on the Nigerian statue book is dead and should, therefore, be expunged. During the

[297](1963) NRNLR 54

colonial period, the colonialists did not accept customary marriages as legal marriages. This is because customary marriages are potentially polygamous. During the colonial era, the British devised the “repugnancy rule”, to test all customary law. “Repugnancy rule” is a rule developed by the colonialist to test customary law against the English law. Those rules of customary law that fail the repugnancy test weredeclared void as being hostile to fairness, good ethics and natural law, and are therefore considered to be unenforceable. One is tempted to ask whose equity, whose good conscience and whose natural justice as being projected here?

Payment of Dowry

The dowry may be described as the consideration for which marriage is bought. One of the main attributes of a customary marriage is the payment of dowry. Dowry is such an integral part of customary marriage in Nigeria, and this has prompted Kasunmu and Salacuse[58] to observe that:

> One of the most distinguishing features of Nigerian customary marriage is the requirement that the boy or his family make some sort of payment to the girl's family in order to establish a valid marriage. The authors are unaware of any Nigerian customary law system that does not include such a requirement.

Although the payment of dowry as a legal essential of a valid customary marriage is widespread in Nigeria, there is some evidence that in a few communities, payment of dowry must take place to validate a marriage. For example, Chief Tesigiweno Pessu says of marriage according to Itsekiri customary law, Itsekiri people do not pay or aceept bride price or dowry, as money is not a requirement. This is called Temotsi marriage. Paternal parental consent is all is needed to validate a customary marriage. At the endof the marriageceremony the groomis expected to express thanks and appreciation to his father inlaw with the presentation of wines and drinks referred to as Emon-okpe. Incidentally if an Itsekiriwoman cohabits with a man for up to six months or more , though not formally married, they would be regarded as husband and wife. If the woman eventually moves out and gets married traditionally to another man, the previous man cannot claim any damages for adultery[298]

[298] M.facebook.com>permalink

Similarly, among the Yorubas, there is a legally recognised form of marriage in which no dowry is paid, and the only legal requirement is the mutual consents of the parties.
The amount of dowry payable is not fixed except in the Eastern parts of the country where the government has intervened by legislation to fix the amount payable as bride price. Government intervention was necessary because of the exorbitant amount of money usually paid as bride price. In most parts of Eastern Nigeria, the amount payable as dowry will depend on the educational level of the lady. The more educated the lady is the more the dowry. The implication of this is that women are regarded as chattels for sale.

In the Yoruba speaking area, dowry when payable is usually a token and is paid to show that the bridegroom family consents to the marriage. The dowry is usually given to the wife. The full amount remains repayable in the event of a divorce. It is the responsibility of the wife to repay the dowry. In most parts of Nigeria, a woman cannot remarry unless the dowry is fully refunded. In *Edet v Essien*[299]a man paid a dowry on a woman when she was a child. The same thereafter married another man who had also paid a dowry on her and bore three children for him, one of whom died. Customary Court granted the first husband whose dowry had not been refunded custody of her two surviving childrenfollowing Ibibio customary law. On appeal, this decision was reversed on the ground that it was hostile to natural law, fairness, and noble moral principlethat a man should be entitled to the child of another.

An outstanding example of a customary law system of marriage in which no payment is made by, or on behalf of the man to the family of the woman, is "marriage by exchange", practised by many groups in the Northern States of Nigeria. No transfer of wealth is necessary for this form of marriage as practised by the Tivs, to make it binding. This is a form of marriage where parties exchange daughters. For example, A can give out his daughter to marry the son of B on the understanding that B would give out his daughter in marriage to A's son.

Among some communities, marriage by capture is also recognised. In marriage by capture, the prospective bridegroom or his family makes no payment to the bride or her family. Indeed, in many areas, the inability or refusal to pay dowry is the only reason why this form

[299](1932) 11NLR 40

of marriage becomes necessary. Dowry as an essential requirement of customary marriage was reiterated in the case of *Nsirim v Nsirim*[300] (1995) where the Court of Appeal held that for there to be a customary marriage; dowry or bride price as it is called must be evidenced, which is a gift, or monetary payment. Dowry may be in money, natural produce or any other kind of property. Marriage by payment of dowry is, therefore, the normal mode of contracting a marriage according to customary law in Nigeria.

2.1.16 Child Marriages

Imasogie[301] observes that people in Nigerian, especially the Muslim in the North, practice child marriages. In Nigeria, a child is well-defined as anybody below 18 years of age. The Marriage Act stipulates 18 years as the minimum age but provides for an exception where the consent of the parents is obtained. Several international instruments have outlawed child marriages.Child marriage is a common traditional practice in Africa, but the practice is decreasing becausepeople encourage their female children to pursue secondary and higher education and before theycomplete this studies, they would attain adulthood. Further to this is that more and more people are becoming aware of the damaging health, social and psychological implications of child's marriage.

In Northern Nigeria, the end of childhood for girls coincides with the onset of puberty. Girls in this part of the country are expected to get marriedonce they reach puberty, which is often as early as age 10. Several reasons are adduced for this practice in Nigeria. These reasons range from the desire to avoid dishonour to the family as virginity can only be guaranteed between ages eight to ten years; economic gains resulting from bride price. There is abundant evidence, however, to show that while polygamy increases the number of children; generally, it does not do the same for the women involved. The relationship between polygamy and fertility shows that polygamy can result in fewer children born especially by each woman in polygamous marriages.

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[300](1995) 9 NWLR (pt 318) 144

[301]*Women rights are Human Rights*" Gentlemen in skirt, Quarterly 2006 Publication of FIDA, Ogun State

In traditional African society, polygamy was correlated with prestige and wealth. Wealth was exhibited not by the possession of land or other property, but by family size, numerous wives and children acting in turns as producers of further wealth. “Women and slaves constitute the wealth of an African”, is a well-known statement. In the traditional Yoruba society, a man's status is not usually judged by his wealth in landed or buiding property. As a rule, it is only by showing that he has many wives that he can convince his neighbours that he is somebody. Among kings and chiefs, the matter is much the same, "title is not a criterion of status or respects from subjects, but the size of harem nearly always is according to Imasogie (2006)”.

Generally, the possession of many wives and children was the status symbol of wealth and social prestige. The wives, especially the first one, shared the prestige property to some extent. Wives and children are not only symbols of prestige, indicative of wealth, but they are also a fruitful source of economic gain, as they are invariably the creators of wealth. With a few exceptions, for example, the Fulani in the North and a few riverine communities who traditionally engage in fishing, most traditional Nigerian societies are based on a farming economy.Before 1939, there was dearth of manufacturing industry in Nigeria. Cotton was partially processed, and cigarettes are manufactured at Ibadan, but there was very little else. Many communities depended heavily on the labour of women and children on the farms. For example, the Igbo traditionally engaged in farming and women performed most of the work. “Native Agriculturalists,” says Basden, depend almost entirely on their wives and families for manual labour; the peasant farmer would be sadly crippled without his wage less staff of workers. The Yoruba women generally did very little farm work, the wives of farmers usually carried the farm product to the market; a valuable contribution which enabled their husbands to make a profit.

In cases where none would have been made, if they had to depend on paid labour, a scarce commodity in a subsistence economy where land was freely available to everyone.The need for many wives as a source of labour is considerably reduced in modem Nigeria, even in rural areas. Agriculture is becoming increasingly mechanised, and the subsistence sector of the economy in no small extent eroded by changes in the technique of production. The economic participation of women has shifted from agriculture to trade, and to a lesser extent, to occupations requiring education and skill.

The cyclical situation occurs, wherein numerous wives who do not possess adequate qualifications for procuring employment in the urban areas can be a source of embarrassment to an urban dweller of meagre income. However, women with the required qualifications, who can contribute effectively to the economic prosperity of marriage, will not usually tolerate polygamy; they would refuse to marry or remain with a polygamist of inadequate means and tend to marry men of higher social and economic status than their own. Many Nigerian women of today marry for lucre, not love. Not only is the educated woman unlikely to choose an economically inferior marriage partner, but she can more easily manipulate the marriage relationship, and can more effectively exert pressure to prevent her husband from marrying more wives than the educated wife. The cycle is completed by the fact that men who can afford to maintain wives show a reluctance to engage in polygamy since monogamy in no small extent has replaced polygamy as an indication of social prestige.

The need for men to cater for periodical continence has been cited as one of the reasons why men indulge in polygamy. Many traditional societies forbid women from having sexual intercourse during periods of menstruation, pregnancy and lactation, which might last for two to five years in the latter case. A woman who is menstruating was usually ostracised, and various social and other taboos are imposed in most African, as well as other societies. In Nigeria, menstruating women are prohibited from cooking for their husbands in many societies. Similarly, it was the practice in Nigeria to prolong the post-partum period to several years during which marital sexual intercourse was forbidden. Men are not debarred from sexual intercourse during post-partum periods of a wife. It has been argued that polygamy thus provides a husband with a socially acceptable way of fulfilling his sexual needs during this period of prolonged female continence following pregnancy, and during lactation.

Another reason usually advanced in favour of polygamy is the unequal numbers of men and women in society. It is generally believed,rightly or wrongly, that there are more women in the world, and if every man married one woman each, there would be a lot of excess women who would not find husbands. Strictly speaking, the unequal numbers of men and women in society do not provide a reason for polygamy, since men do not contract multiple marriages

for humanitarian reasons. The hypothesis is that a surplus of female makes polygamy feasible. Thus Basden says “in order for polygamy to exist at all, there must be more women than men”. However, Westermarch provides numerous examples of societies with surplus men, which nonetheless practice polygamy to a considerable extent. The 1991 census of Nigeria affirmed that there are more men than women in Nigeria, yet polygamy continues to thrive in Nigeria.

The need to provide for widow under levirate and other analogous systems has also been cited as another reason, which contributes to the high incidence of polygamy. In many African systems of law, a man inherited the wives of certain deceased relatives. Similarly, among some communities, a traditional ruler, for example, the King inherited the surviving wives of his predecessor in office, regardless of his previous marital status. The refusal was considered a severe breach of familial obligations or tribal political tradition, and considerable pressures would be exerted on an individual to secure compliance. Such laws encourage polygamy, and in traditional society, the so-called “widow inheritance” was a popular method of acquiring multiple wives. This is also seen as a form of traditional insurance provision for the widow.

In modern Nigerian society, however, such marriages are becoming increasingly rare, and a breach of the law in this aspect earns no censure. Their adult children are now maintaining older widows.Polygamy is, however, decreasing in Nigeria. Of all aspects of traditional family life, the decline of polygamy in the urban areas is one of the most likely casualties of social changes.

Access to Justice for Women Married under Customary Law in Nigeria

In Nigeria, majority of the women are married using the customary law, and even statutory marriages are usually preceded by traditional wedding ceremonies. This section considers the plight of women married under customary law in Nigeria and their ability to seek divorce when such marriages have broken down. Access to justice is the ability and opportunity of a person to approach a court of law in order to litigate cases when there is a denial of rights. Access to justice can be broken into three main components:

- The ability of individuals to institute actions in court without hindrance,
- The means of individual to pay for the cost of litigation in a court of law, and
- The timely resolution of disputes.

It is trite law and a universal axiom that justice delayed is justice denied. Education and poverty are some of the factors militating against women in Nigeria, and these factors affect their ability to approach a court, especially to seek divorce. Customary law is patriarchal, and gender discrimination features prominently as one of its ugly features. The existence of customary and statutory laws in Nigeria makes it difficult for women to access their legal rights because most of these laws are contradictory and discriminatory. One common feature of African customary law is the subjection of women to the whims and caprices of the men. Under African customary law, women are generally regarded as being inferior to men and are seen as objects of production and reproduction. African societies are generally patriarchal, or a society organised based on gender, thus institutionalising the inferiority of women to men. In patriarchal societies, men create laws and control women. This control extends to all spheres of life - economic, legal, political, educational, sexual and personal.

This section focuses on the adequacy (or otherwise) of the reliefs available in customary courts and the enforcement of such reliefs. Most customary courts do not recognise the right of women to share in matrimonial properties. In some cases, women are ordered to refund dowry or bride price, irrespective of the time of the length of the marriage.

Authors, human rights activists, and civil society organizations have all argued that marriage under indigenous law unfairly treats the wife as an unequal partner in the marriage. It has been claimed that women lack significant equality and are merely chattel to men. It is suggested that in order for women to become equal partners in marriage, the government must take several legislative actions to correct this perceived imbalance.

Access to justice can be broken into three main components: the ability of individuals to institute actions in court without hindrance, the means of individuals to pay for the cost of litigation in a court of law, and the timely resolution of disputes.

There is widespread concern that access to justice is still restricted to those who can afford it and who know how to right any wrongs done to them. As a tool for social engineering, the law should reach out to the people rather than the people reaching out to the law. As a result, the adage "justice for all" does not apply to every Nigerian in every case.A more pathetic point is the lack of access to justice for women married under customary laws. Due to the disadvantaged position of women arising from cultural prejudices, gender discrimination, poverty, or social disadvantages, as well as the expensive nature of the justice system, women are unable to approach the courts for redress. While gender discrimination continues to exist in many forms around the world, laws that explicitly discriminate against women demonstrate state-sanctioned discrimination and represent the government's blatant disregard for the fundamental right of women to be treated less favorably than men. Numerous laws that explicitly discriminate against women remain in force twenty-two years after the Beijing Platform for Action was adopted to "revoke any remaining laws that discriminate based on sex," and seven years past the United Nations-set target date. As a result, women married under customary law do not always have equal protection and access to justice.When a woman marries under indigenous law, she becomes a member of a family group and clan. She has the right to farmland where she can grow cash crops and agricultural trees. According to Igbo custom, neither spouse has a claim on the other's property acquired during the marriage in the event of divorce. As a result, in indigenous law systems, the accrual system of sharing property is irrelevant and unnecessary. This is true of certain court interpretations of the proprietary consequences of a customary law marriage's dissolution.In Nigeria, for example, the repugnancy doctrine states in Section 14(3) of the Evidence Act that “any custom relied on in any judicial proceedings shall not be enforced as law if it is contrary to natural justice, equity, and good conscience.” Despite the fact that it is intended to ensure justice, the courts incorrectly interpret this section in ways that are harmful to women. Contributions made by a woman during marriage subsistence are now well quantified under customary law, leaving the woman unable to prove her worth.Families use a non-judicial method of dissolving a marriage in a customary law system, and appropriate compensation is not made to the woman because she only takes from her children's entitlements and not directly as a wife.

2.1.17 Factors Militating Against Access to Justice by Women under Customary Law

- **Institutional Barriers**

The establishment of customary law courts in Nigeria has not resulted in gender justice, particularly for women married under customary law. Some states in Nigeria have done the right thing by appointing qualified lawyers to the position of Leader of the Customary Court. Only the President of the Customary Court of Appeal in Imo state is required to be a qualified lawyer. The majority, if not all, participants in theCustomary Court are not lawyers.The Lagos state judiciary that is currently taking steps to appoint qualified lawyers into its customary courts. The membersof Customary Court are not usually qualified lawyers, but they are knowledgeable in matters of native laws and customs. Where a Customary Court is manned by non-lawyer in a state where there are gender discriminatory customs; women are not likely to get justice in such a court.

- **Ignorance**

Most Nigerian women are ignorant of their rights under the law and institutions that render legal aid. Poverty and illiteracy levels among women, especially in rural areas, are very high. Most women married under customary law are uninformed and uneducated about their rights and how to enforce them in the formal court system. Even when some do knowhow and desire to enforce their rights, they do not have any access to justice and no access to the formal court system and other legal mechanisms such as legal aid and *pro bono* legal services. Many rural women have limited access to courts due to the courts being too far from their localities. Where access to court is readily available, most women are too poor to retain the services of a qualified attorney or to pay the requisite court or other administrative fees.

- **Cost of Litigation**

Considering the country's economic situation, several litigants, particularly rural women, have no access to the courts, not because they have no justiciable rights but because the cost of litigation is beyond them. Besides, the court system, as practised by the customary court, leaves much to be desired the customary courts are handled by unqualified personnel who lack the requisite knowledge of the application of law and the rules of evidence in deciding cases. In cases where the court has erred, the litigant has the right to appeal to a higher court, but the cost implications are usually beyond his or her earning capacity. The

unitary form of a judicial system does not allow equal access to justice to all persons throughout Nigeria. In some states, the filing fees are beyond the reach of the ordinary citizen, particularly rural women.

- **Delay in Prosecuting Cases**

Most litigants in Nigeria complain about unnecessary, incessant delays associated with the prosecution of cases. For the final determination of a case to take more than 15years to travel to the Supreme Court from the High Court is a total disservice to the course of justice. Justice delayed is justice denied. For example, the case of *Ukeje v. Ukeje*[302] which commenced in 1982 and ended at the Supreme Court in 2014. The perseverance and the financial resource to pursue such long years of litigation are not affordable by most women, especially the rural women who are predominantly peasant farmers and illiterates.

- **Incompetent and Unqualified Judicial Officers**

Access to justice connotes the ability to have a right and means of enforcing that right through the court of law. If a court of law must dispense justice, those appointed to staff of the temple of justice must also be qualified to do so. Most of the problems encountered in the customary courts result from the courts being staffed by non-legal practitioners who dispense justice not according to the law but according to their conscience. This position has beencured inlagos where customary court presidents are lawyers.

- **Conflicts of Law and Legal Pluralism**

In situations where the marriage is wrongly terminated, the option ordinarily open to the aggrieved party is to appeal against the judgment, but this can only be done if the aggrieved party can afford litigation fees. It would have been good if a law was enacted to provide for free legal services for divorced women under customary law marriage.

Under English law, the provision of alimony has taken care of the right of women divorced under statutory law. The same should be done in Nigeria for customary law marriages. In this regard, it is suggested that women organisations, such as International Federation of Women

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(2015) EJSC (VOL.3) 70 SC

Lawyers (FIDA), should take up the challenges of defending the rights of women divorced under customary law since the law has not adequately provided for this right.

Although it could not be sensibly advocated that litigation should be free, it is still necessary, considering the level of poverty in Nigeria, to minimise the filing fees. The cost of litigation is not limited to filing fees; however; it also includes the costs of retaining the services of counsel. Charges for professional services are also certainly out of the reach of this class of litigants who are in the majority. It is, therefore, necessary to enlarge the scope of the Legal Aid Council. In this instance, the Nigerian Bar Association should come to the aid of the indigent litigants. For instance, as practised in the Gambia, the African Society of International and Comparative Law organises a weekly programme whereby poor citizens can obtain free legal services; sometimes their cases are even taken up by that organisation at no cost to the litigant. FIDA should take up this challenge and partner with the Legal Aid Council and other similar agencies to ensure that *pro bono* services are rendered to poor litigants.

In the main, the Nigerian legal system is not fully access friendly to women. Customary law is particularly oppressive to women, especially as it is the legal system that directly concerns the majority of Nigerian women, in particular, the rural dwellers. Women married under Nigerian customary law suffer from a range of systemic abuses and discrimination promoted by oppressive customary laws. Customary law supports women being at the receiving end of domestic abuse, forced marriage, genital mutilation (circumcision), and disinheritance, trial by ordeal, repugnant widowhood rites, and so on. For example, under Nigerian Sharia (which is a species of customary law in Nigeria), a man was givenpermissionto reprimand his wife physically, provided the chastisement is reasonable in mode and degree and does not inflict grievous bodily harm on her. Likewise, Section 55 of the penal code provision in northern Nigeria is a statutory endorsement of the customary laws that support violence against women. Thus, wife battering is regarded as a legitimate practice under customary law.

For battered wives, going to the police is an exception to the unwritten rule that marital conflict is a matter for law enforcement. Police officers almost always presume that getting involved in “family matters” is a waste of time, having learned from experience that pressure

from family members, cultural implications, financial considerations, and time-consuming and complicated nature of the judicial process would dissuade a battered wife from asserting her rights and seeking legal redress for violation of her rights by her husband.

The Marriage Act, which governs Christian and statutory marriages, confers special privileges (such as entitlement to maintenance or settlement of property upon divorce) on women in monogamous marriages. These privileges are not extended to customary law wives upon dissolution of their marriages. The implication is that women married under native law and custom cannot access justice to enforce rights that are not available to them in the first place, either through customary courts or statutory law courts.

The majority of aggrieved women are not able to redress these abuses in regular courts due to some legal barriers. Apart from customary laws that adversely affect women's rights and access to justice, some extant laws are either discriminatory or create several impediments to women having access to justice in the enforcement of their rights.

The only way for a woman to inherit her husband's estate is through her male child, if that child allows his mother to have a say over the property. A childless woman is a perpetual loser because she does not inherit anything. These discriminatory practices was upheld by the courts. According to Yoruba customary law, a married woman has no inheritance rights in her husband's property. She is considered part of her husband's property, to be inherited alongside other assets. The Supreme Court ruled in Suberu v Sunmon that "a wife could not inherit her husband's property because she is like a chattel to be inherited by a relative of her husband."

Despite the fact that Nigeria has ratified a number of international and regional instruments protecting women's rights, discrimination against women persists in both law and practice. For example, despite the provisions of the 2003 African Protocol on the Rights of the Woman (the protocol recognizing and guaranteeing rights and the Nigerian government's obligation), gender discrimination married under customary laws persists.

Nigeria practices dualism, so mere ratification of an instrument or covenant does not mean that the instrument or covenant is part of the Nigeria law. Such an instrument or covenant does not become part of the law until the National Assembly has ratified it. Article 7 of the African Protocol provides for the right to dignity, freedom from harmful practices that harm women's human rights, equal rights in marriage, equal rights in cases of separation, divorce, and annulment, the right to equal legal protection and benefits, the right to health, including sexual and reproductive rights, and equal rights within and after marriage; and a right of remedy to any woman whose right or freedom has been violated. Regrettably, these rights are not recognised in Nigeria. The position in Nigeria laves much to be desired for women married under the customary law and under the Islamic tenets. The United nations convention and its protocol does not help women married underthe native law and custom. Such women only enjoy their husbands provision as long as he is alive. At his demise, the customary married woman has no right to jointly owned property incase of divorce or death of the husband. She cannot dispposed off the deceased husband’s property. The Matrimonial Causes Act does not offer protection to the customary and Islamic married women, because under the customary law the women are considered part of the decased man’s estate; hence the woman does not benefit from settlement of property and maintenance as offered by the matrimonial Causes Act. Such women cannot inherit the husband's property; instead, she must be inherited along with his other property by another male member of the family. Furthermore, many customs that violate women's human rights continue unabated.

Access to justice is one of the essential weapons to fight against gender discrimination. Since most women married under customary law have limited access to justice, a resort to advocacy and women empowerment and public interest litigation may be used as a tool to bring about social change and ensure gender justice.

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2.1.18 Succession and Inheritance in Nigeria

I O Smith (1999:353) states that a remarkable feature of rights in real property is the enduring character of such rights after the death of the owner. It is trite law that the death of a landowner does not extinguish his property rights which rights either devolve on his heirs upon intestacy followingthe appropriate personal law of the deceased landowner or on other persons appointed by the deceased landowner in accordance with the provisions of a will otherwise known as testate succession.

The law of succession and inheritance in Nigeria is a reflection of the country's diverse legal systems.

Where the deceased landowner contracted marriage under English law, customary inheritance rules may be superseded by English inheritance rules. If the landowner chose to write a Will during his lifetime, the provisions of the testamentary instrument supersede any existing rules of inheritance, regardless of his marriage under English law or any existing rules of customary law.Islamic law of inheritance governs two-thirds of the estate of the deceased landowner who led his life in accordance with Islamic injunctions, the existing customary rules of inheritance or the provisions of any Will notwithstanding. The existences of state legislation in the various states of Nigeria constitute another source of rules of inheritance while the various rules of succession are subject to the overriding provisions of the Land Use Act 1978. This issue will be considered in the following order:

1) Intestacy and customary rules of inheritance in Nigeria as modified by a different intention of the deceased landowner or by English law consequent upon the deceased landowner’s change of status during his lifetime.

2) Rules governing testate succession as modified by some state legislation on Islamic law of inheritance
3) Relevant statutes on succession to real property, including the Land Use Act, 1978.

Intestacy and Customary Rules of Inheritance

One fundamental principle applied in this area of the law particularly in the Northern, Eastern and Lagos States of Nigeria is that the law applicable to the estate of a departed landowner who pass away intestate is the personal law of the dead, Thus in *Tapa v. Kuta*[303]where the deceased from Nupe left property in Lagos, the question for determination was whether the Yoruba customary law of succession applicable in Lagos (the *lex situs*) or the deceased personal law in Nupe was the applicable law. It was held that the applicable law was the deceased personal law in Nupe.

The position in the old Western Region (comprising of *Oyo, Ogun, Osun, Ondo and Ekiti* and the Mid-Western State (the present-day *Edo and Delta* state) of Nigeria is however different. While a succession of movables in those areas is governed by the law of the departed, succession to immovable (such as Land) is governed by the immediate environment's law where the real assets is situate (the *lex situs*). In *Zaidan v. Mohseen*[304], the deceased husband died domiciled in Lebanon. The deceased and his wife who were married according to Moslem law, had all along been resident in the then mid-western Nigeria. The question for determination was what law was to be applied to the intestate succession in the case of the immovable property of the deceased in Warri. It was held inter-alia that the *lex situs* applied by virtue of section 23 of the Mid-Western State Customary Courts Edict No. 38 of 1966. Section 23(2) of that Law which generally makes the customary law of the deceased applicable to causes and matters of inheritance is subject inter alia to section 23(1) which makes the appropriate customary law, the *lex situs* in the case where the subject matter is, land.

[303](1945) 18 NLR p.3
[304](1973) NNCC 516

A deceased landowner's personal law may be his customary law or another customary law of his choice where the customary law of his choice permits. In *Olowu v.Olowu*[305] (1985) the Supreme Court found the personal law of an *Ijesha*man is the Bini Customary law as opposed to *Ijesha* Customary law having found as a fact that the deceased landowner had, during his lifetime, changed his status to that of a Bini man and the change was in accordance with Bini customary law.

The customary practice is that if a landowner died intestate, his seperate propertiesis inherited by his children as family property since the children are from the same family tree. The eldest male child of the deceased assumes the headship of the family and holds the property of their late father in trust for his siblings (male or female).
The process of the primogeniture or ultimogeniture rule has also been identified as a "likely solution to the problem of fragmentation in land tenure" that has hampered large-scale agriculture and economic development. The preceding customary law rules apply only to the family house or compound. Customary law has established specific distribution rules for farmlands and agricultural products on land.

Mode of Distribution of Estate
The customary law in Yorubaland generally favours equality in the distribution of an estate, particularly in a polygamous setting where squabbles and rancour feature prominently.
Where a wife and children survive the deceased, the property is shared amongst the children, male or female on the advice of the family council. In the case of children of polygamous marriage, the rule in *Dawodu v. Danmole*[306]suggests divisions of the estate per stirpes; the eldest child in each unit being entrusted with the distribution per head. If the family council is of the view that division per stirpes may result in injustice or where there is a disagreement amongst members of the family, division per head may be adopted in lieu whereby both male and female children share out of the estate without discrimination. However, in many localities in Northern Nigeria, only male children can share out of the deceased's property; female children are not entitled to inherit property not even by a death-bed gift of land. Amongst many of the Igbo communities, real property is always reserved for the sons, the

[305] (1985) 3 NWLR (pt13) 372
[306](1958) 3 FSC P. 46

eldest being entitled to the large share while the others divide the rest in diminishing proportions.

Succession and Parent's Rights

I O Smith (1999:353) observes that under Yoruba Customary law if a person died leaving personally owned property without an issue but survived by the mother, the latter inherits the property. Where both parents are alive, the property would be shared equally between them although the father would naturally allow the mother to inherit. Such right does not exist; however, if the deceased had siblings, and they belong to the same mother in which case, his property is inherited by them in equal shares. Half brothers and sisters are not entitled to share in the property where parents are alive. In *Adedoyin v. Simeon & Ors,*[307] the plaintiff was the mother of a woman who died and with no children and the defendants were the deceased's surviving three half-sisters, the four of them had inherited from the same father an estate, the subject of this suit. It was held that under customary law of inheritance the mother must take their deceased's daughter's share to the omission of the deceased's sisters of the half-blood.

In circumstances in which the parent of a deceased person is entitled in law to inherit his personal property, the grandparent may inherit the property of the deceased grandchild upon the death of the parent. In *Bolajoko & Anor v. Layeni*[308], a deceased property owner left two parcels of land at two different locations to his son and daughters respectively, each one inheriting a parcel of land. The daughter died leaving a girl who lived with her grandmother. On the death of this girl, the girl's uncle also claimed it as the girl's mother's brother. It was held that when the grandchild died intestate, the grandmother stepped into the shoes of her own daughter who was the girl's mother- the person entitled to inherit under Yoruba Customary Law. The foregoing rules of customary law do not apply where the property in question is the child's allotted but undivided share of family property. The rules appear to be applicable in other parts of Nigeria subject to variation in the Igbo, Hausa and Fulani communities.

[307] (1914) 16 NLR 26
[308] 19 NLR 99

Right of Spouses

It is unheard of in customary law for a husband to claim his deceased wife's family property. According to popular belief, because the husband is not a blood relative of the wife's family, he cannot inherit such property because he is regarded as a stranger. This point was clearly made in the case of Caulcrick v. Harding, in which a deceased landowner left the property to three daughters, one of whom was the plaintiff's deceased wife. The plaintiff claimed a one-third share of the estate as a result of his deceased wife's right to such a one-third estate. The plaintiff had no such rights, according to the court, because the property devolved on the wife's family as family property.

Succession by Relative

There is a striking aberration of the Customary rules of inheritance already discussed which entitles deceased landowner's relative to inherit his property as against the children. There could have been traces of this rule in some parts of Yoruba land in the olden days, but the modern trend is exhibited in the case of *Adeseye v. Taiwo* [309] in which the court laid down the Yoruba Customary rule that his children inherit the land of a deceased intestate to the exclusion of all other relatives. In many parts of Ibo land, the rule holds its tyrannical sway as the real property of a deceased landowner is inherited instead by his brothers or sisters of the same mother in the order of seniority or by the same mother. In the Nupe locality of Northern Nigeria, this rule of customary law which gives the deceased brothers the right to inherit his property applies. So important is this principle that it has formed the basis of the court's endorsement of levirate marriage upon a sound rationale under native law and custom. Thus in *Re Agboruja*[310], the court rejected a widow's argument that the law that recognized a man's heir to be his male relative rather than the man's children was inequitable. It was held that the custom was widespread in Nigeria and that the system is a scheme of social insurance against neglect and hunger for the deceased's defendant.

2.1.19 Limitation of Customary Rules of Inheritance

[309]1 FSC 84

[310] (1949) 19 NLR 70

There are two main exceptions to the rule that the customary rules of inheritance govern intestacy. The first, which is a product of a recognised evolutionary process of customary law, includes an oral declaration of the deceased landowner, family verdict and application by the court of the rules of Natural Justice. The second is a product of cultural contact culminating in a change of status through marriage.

The two exceptions are discussed as follows:

a. Evolutionary Process at Customary Law

(i) Nuncupative Wills:

Customary law is adaptable and changes with the sociological pattern of life in society. A person may swear allegiance to native law and custom but, for whatever reason, may intend to institute or disinherit a specific person in the matter of successors to land and may, before his death, reveal to witnesses the person or persons entitled to inherit his property. Where this exists, the deceased landowner's intention, if proven, takes priority over any rule of customary law.This rule is recognised in many indigenous African communities and exhibits the flexible character of customary law. However, the customary law practice cannot be exploited to 'validate' an invalid Will made under English law. An English-type Will made without compliance with the relevant Wills Law is inoperative both under English and Customary law except the 'testator' intended to be bound by the rule of customary law since the latter does not state any particular form it should take save that adults must have witnessed the deceased's acts or words.

ii) Family Verdict:

The family verdict is of considerable significance in situations where the application of a particular rule of customary law is causing great hardship to or disagreement amongst the family. In such cases, other rules may be applied which accords with wisdom. In *Dawodu v. Damole*[311] for example, the court emphasised the fact that although *the Idi-Igi* system of sharing property per stripes was the applicable custom, the alternative system of *Ori-O-jor*i whereby property is shared per head might be applied in case of disagreement amongst beneficiaries.

[311] (1958)*supra*

iii) Rules of Natural Justice**:**

As a result of civilisation, rules of customary law have been subjected to specific rules of validity contained in the High Court Laws of the various states in Nigeria. A court, for instance, will not apply a rule of law if it offends against the rule o natural justice. Thus in Re Whyte[312], the court refused to apply a customary rule of inheritance which would result in the daughter being separated from her mother.

(iv) Marriage Under English Law/Marriage Act

Contracting marriages in agreement to the Christian belief changes the status of anindividual who would have otherwise been subject to customary law. The effect of such marriage is contained in the Administration of Estates Law of the intestate's domicile if the state of domicile has one; otherwise, the English common law applies.

The foregoing provision is applicable to oust any customary rule of succession where a person who is married under the Marriage Act or any issue of such marriage survived the intestate in which case, the real and personal property of the intestate will be distributed amongst the survivors in accordance with the provision of the Administration of Estates Law. Where the state in which a person who died intestate died domiciled does not have legislation on intestacy governing the distribution of property. The court's decisionwas that case that the marriage of the deceased by Christian rite will not permit the application of the customary law of inheritance and that the English law of succession applied to disentitle the deceased's brother from succeeding to the inheritance which by the communal law of the English falls on the eldest son.

The real property that may be distributed in accordance with the Administration of Estates Law or English law must be such that the intestate might have freely disposed of by Will. It follows therefore that the deceased's undivided share in the family property is not distributable in accordance with any of these laws. In *Sogunro-Davies v. Sogunro & Ors,*[313]

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[312](1936) 18 NLR 70

[313](1929) 8 NLR p79

the plaintiff claimed from the defendant members of her deceased husband's family, the portion of her husband on his family assets from distribution of which she, as the legally married wife of the deceased under the Marriage Act had been excluded by the family. It was held that the deceased husband left behind him no separate estate in the family property which the plaintiff his widow under the Marriage Act, could inherit. However, the principle, in this case, will not apply and distribution will be in accordance with the applicable statue where the property in question is a specific partitioned portion vested in the deceased during his lifetime.

The law of their domicile decides the right of succession by persons claiming on intestacy as distinct from the method of distribution which is governed by the Administration of Estates Law of English law. Thus, the application of the rule in *Cole v. Cole*is not limited to children of the monogamous union but also cover other children found to be legitimate under the relevant customary law of the deceased's domicile. In *Bamgbose v. Daniels*[314]the applicant, a nephew of the deceased, challenged the right of succession of his twelve cousins the respondents who were offspring's of polygamous marriages contracted by the deceased under Yoruba Customary law because of this the deceased being an matter of exclusive marriage contracted under the Marriage Act 1864 (of the then Colony of Lagos) by his parents, the Statute of Descendants 1670 applied to exclude the respondents as illegitimate descendants contending that he was the only nearest legitimated kinsman of the deceased's intestate. It was held that the legitimacy of portions claiming on an intestacy must be declared because of the law of their residence, that the law of the country, being the law where they reside, permitted the departed to contract polygamous marriage under which the respondents were born legitimate under the relevant customary law, that the rule in *Cole v. Cole* cannot be limited in its local application to children who are the issues of a monogamous unions and that the twelve children of the deceased were entitled to inherit their father's estate.

The rule that English marriage or marriage under the Marriage Act changes the status of the intestate who would have been bound by customary law is only a presumption and in

[314](1953) 14 WACA p.111; (1955) AC p.107

deciding on the applicable law, the court shall be guided by a consideration of the position in life of the parties as well as their conduct with reference to the property in dispute.

Testate Succession

A Will in English form complying with the rule of formal and essential validity will pass real or personal properties in accordance with the intention of the testator.The law controlling official validity of Wills being the law of the place where the Will was made, a Will made in Nigeria is governed by the provisions of the Wills Act, 1837 (or Law) as to the formal validity which requires due execution and attestation in the sense that, the two witnesses were both presents at the same time when the Testator signed his Will.Nigerian domicile, however, the common law rules govern essential validity of Wills which required that the testators must have had a sound disposable mind, that is, full mental capacity, and that the content of the Will in question must not have been unduly influenced.

A testator may by his will, retain the incidents of the relevant concept of customary rules of succession. For example, in *Jacobs V. Oladunni Bros,*[315] the fact that the testator provided in his Will inter-alia, that the property should remain and be retained as a family property in accordance with native law and custom led the court to hold that a Writ of fiery-facias could not attach the property in question. The provisions of a Will may also alter or modify the customary rules by redefining the beneficiaries of the estate to be or fixing the share or portion of the estate to be given to each of such beneficiaries. Thus, in *Sogbesan & Ors v. Adebiyi*[316], a testator by a Will validly enlarged the membership of the family to include the sister, brother and mother.

It is important to note that the question whether a Will imports customary rules of succession is that of construction of the content of the Will and where there is any indication that customary rules have been ousted, the court is bound to apply the provision of the will strictly in accordance with the testator's intention. In *Branco v. Johnson*[317] where a testator

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[315]*(*1935)12 NLR 1
[316](1941) 16 NLR 26
[317] (1943)17 NLR 70

devised his real property to trustees to let the same collect the rents and to distribute the balance equally amongst his children and, after their death, among their children the court applied the general law in ordering sale of the property notwithstanding the testator's desire that the 'said houses shall never be sold' as it was the rents from the houses and not the houses which were the subject matter of the bequest. However, for a Will to validly pass property whether, by the general law, customary or Islamic law of inheritance, It must meet all of the prerequisites for official validity under legal principle.The Wills Law of the various states in Nigeria recognizes this limitation on the testator's power to discharge of his property by Will, which makes any such attitude subject to any customary law concerning it.

The rule of the Islamic law that person bound by it is entitled to distribute only one-third of his estate as it pleases him, the rest two-thirds being subject to distribution in accordance with Islamic law is incompatible with the –provisions of the Wills Act 1837 (or law) which supervenes. In *Adesukokan v. Yinusa,*[318] the plaintiff challenged the Will of his late father which disinherited him on the ground that the testator being a Muslim could not disinherit him as a child, contending that he was entitled to share in the testator's estate under the Islamic law. The decision of Bello J. (as he then was) that the Will was void on the ground inter-alia, that such law was incompatible directly or by implication with provisions of the Wills Act 1837 an English statute of general application incorporated by reference into section 33 of the High Court Law of Northern Nigeria.

Islamic Law of Inheritance

For Islamic law applies to the determination of rights of succession to and inheritance of the estate of a departed being where it is established by evidence that the deceased was a practicing muslims. The deceased must have lived his life and conducted his affairs in accordance with Islamic injunctions. The intestate must also have evinced a clear intention to be bound by Islamic law; otherwise, customary law applies.

The power to make a legacy in Islamic law is limited to one-third of the estate[66] the remaining two-thirds to be distributed among the heirs according to the prescribed portions

[318](1971) 1 ALL NLR p.225

after the settlement of debts such as a charge on the real property, unpaid purchase price etc, and funeral or interment expenses.

Although there are different Islamic schools of thought on the content of Islamic law relating to inheritance, the Maliki version of Islamic law applies in Nigeria. The Maliki school recognises three basic grounds for inheritance namely, marriage under a valid contract in Islamic law, consanguinity i.e, the blood relationship between the deceased and heirs including ascendant and descendants, siblings, uncles, aunt etc., and personal relationship between the deceased and emancipated slave and his emancipator. In modern times, however, the position in Islamic jurisprudence is that inheritance is now strictly limited to parties to a marriage and blood relations. There are three categories of heirs recognised by the Maliki school; namely, sharers at law, residuary and distant kindred, each category is entitled to succeed as heir to the estate of the deceased in order of priority.

Sharers at Law

Sharers at law are heirs entitled to a fixed share of the inheritance as prescribed by the Holy Quran. The fundamental principle behind the provisions of the Quran on sharers at law is the making of provisions not only for the husband the wife and the children but also all other relatives including collaterals and the maternal and paternal relations.Sharers have been defined as the husband, wife, father, mother, true grandfather however high or low, daughter, son's daughter however low, full sister, consanguine sister, uterine brother, and uterine sister. Shareholders own one-half, one-fourth, one-eighth, two-thirds, or one-sixth of the company.

Rules of distribution

When there is a child or son's child, the husband receives one-fourth, and when there is no child, he receives one-half. When there is no child or child of a son, the wife inherits a quarter, and an eighth if there is. Two or more wives inherit a quarter or one-eighth of the estate, which is divided equally among them.

When there is only one or no son, the daughter receives one-half, and when there are two or more daughters in the absence of a son, they receive two-thirds.

If there are two or more son's daughters and no child or son's son, they take two-thirds; otherwise, in the case of one daughter or a higher son's daughter in default of a son, they take one-sixth. When there is only one son or no son or son's son, father, daughter, son's daughter, or brother, the sister takes one-half, but if there are two or more sisters, they take two-thirds. The mother receives one-sixth with a child or son's child or two or more brothers or sisters, otherwise one-third, but only after subtracting the wife's or husband's share in cases where the husband and wife and the offsprings.

The father shall inherit one-sixth when there is a child or child of a son how-low-so ever; otherwise he inherits as a residuary. He inherits both as a sharer and a residuary when there are only daughters or son’s daughters how-low-so ever.
The true grandfather inherits one-sixth when he is not excluded.The true grandmother, whether the father or the grandmother exclude maternal or paternal, is excluded by the father or the grandfather through whom she is related to the deceased.

The Residuaries

Residuaries are persons who take what the legal sharers leave from the estate and may succeed to the whole estate where there are no sharers. They are classified into three namely:

i) Residuary in their own right: that is, every male in whose line of relation to the deceased no female enters.
ii) Residuary through another: These are the four categories of women who become residuary through brothers e.g., the daughter, the daughter of the son, the sister of the whole blood and the sister by the father’s side.
iii) Residuary when inheriting with others: They are the full and consanguine sisters who are both shorters but in the absence of a male agnate, they become residuary with the daughter(s) or the son’s daughter(s).

The three categories of residuary are preferred to each other according to the proximity or the degree of kindred to the deceased and in proportion to the strength of their relationship.

Distant Kindred

These are the blood relation of the deceased who are neither sharer nor residuary. They are relations by virtue of the ‘womb’ in the sense that they are related to the deceased through

one or more female links and become entitled to inherit only on failure of sharer (except a spouse) or residuary.

There are four classes of distant kindred each taking precedence over the other in the following order.

i) Descendants of the deceased through a female link such as the deceased daughter's children or female and the children of the son's daughter how-low-soever.

ii) Ascendant of the deceased parents through a female link, consisting of precluded grandfather or grandmother, how-low-so ever.

iii) Descendants of the deceased parents who are neither sharer nor residuary and consist of the sister's children whether male or female true sisters by the same father or by the mother, daughters of the full or half brothers and sons of the brother by the same mother.

iv) Descendants of the deceased immediate grandparents consisting of all paternal aunts, all maternal aunts uncles and uterine paternal.

Where the deceased estate's distribution is subject to Islamic law upon the death, the estate is divided as discussed, and each person concerned take his or her share accordingly. The system frowns against any form of joint holding foragriculture or common use as family property through the individual beneficiary may subject his own shared portion to any form of landholding subsequently.

2.1.20 Relevant Statues on Succession to Real Property

Certain local legislation regulates succession and inheritance in Nigeria which provisions are so germane to the actual administration of the deceased estate or to vesting or portion in the beneficiaries that it is necessary to touch on the relevant portions of the statues. Apart from the provision in the Wills Law in the various states of Nigeria, which tend to protect some defendants heirs ensuring that the Will eaters for their welfare, there exists at least three other statutes regulating rights in succession and inheritance in Nigeria. The statues are:

1) The Administration of Estate Laws, applicable in various states in Nigeria

2) Land Tenure Law applicable in the Northern Nigeria which the Land Use Act still preserves provisions with such modifications as would bring its nature into conformity with the Act or its general intendment.
3) The Land Use Act of 1978.

Relevant provisions of the enumerated statutes are discussed hereunder accordingly:

Administration of Estates Law:

The main object of Administration of Estates Law is to vest real and personal properties of a departed intestate in his personal representative for management and administration thereof under the authority of Letters of Administration and where necessary, transfer by way of conveyance of title or deed of assent to the person entitled to inherit it.

Although the provisions of the Law are the same in the various states in which the Law applies, the relevant provisions of the Administration of Estate Law of Lagos State Cap 3, 1994 are discussed here accordingly.

Section 1(30) of the said Law states that the Law does not affect the administration, distribution, inheritance, or succession of any estate administered by a customary court or governed by customary law. "Nothing in this legislation affects the administration of a departed person's estate under the authority of any customary court, nor, unless otherwise expressly provided, the distribution, inheritance, or succession is governed by customary law whether such estate is administered under this Law or by or under the authority of a customary court.

The implication of the above statutory provision is that even where an administration is appointed pursuant to this Law, in a situation where customary rules of inheritance apply, the estate will be inherited according to customary law. The provisions of the Law as to the distribution of intestate estate therefore apply only in circumstances where general law would apply as discussed earlier, i.e. where the departed intestate contracted marriage in English form during his lifetime.

After the settlement of the intestate's debt by the personal representatives, distribution of the residuary estate is carried out in pursuant with the provision of the Law on Distribution of

residuary estate and not in accordance with any statues of Distribution. By virtue of section 54, references to any statute of Distribution in an estate inter vivos made or in a Will coming into operation after the commencement of the Law shall be constructed as references to the relevant provision of this Law on the distribution of the residuary estate.

The practice is for the residuary estate be held in trust for the surviving husband or wife in absolute term.

It is important to note that the provision of s.1(3) does not automatically preclude the application of the Law to the administration, succession or distribution of an intestate's estate on the ground only that he was subject to customary law during his lifetime. When an intestate contracts marriage in accordance with the Marriage Act and dies leaving a widow or husband or any issue of that marriage, all property that the intestate would have disposed of by will is distributed in line with the Law; any customary law to the contrary is ignored.

2.2 THEORETICAL FRAMEWORK

The theories adopted in this study include:

2.2.1 Masculinity theory: this is the theory that justifies the dominant man's position in society and the subordination of women and other marginalised ways of being a man. Masculinity refers to behaviours, languages, and practices that are commonly associated with males and thus culturally defined as not feminine and exist in specific cultural and organisational settings. So masculinity exists as a positive reference to male gender and negatively describes weakness negatively referring toFemininity. However Clatterbaugh, (1990) opined that Masculinity and male behaviors are not purely genetic but other factors are involved.

Gender has cultural accounts in all societies. In modern usage, the term implies that one's behaviour is determined by the type of person one is. That is, an un-masculine person would act differently: peaceful rather than violent, conciliatory rather than domineering, unable to kick a football, uninterested in sexual conquest, and so on. This viewpoint is based on a belief in individual differences and personal agency. In that sense, it is based on the concept of individuality that emerged in early-modern Europe as colonial empires and capitalist economic relations expanded.

Masculinity and men suggest that masculinity is inextricably linked to broader social and cultural transformations within the British nation-state and other Western countries, and that the assumed crisis of masculinity can be read as a result of the broader crisis of late modernity. The issue of identity has resurfaced as a key dynamic concept in the context of rethinking social and cultural change. It is proposed that socio-cultural change is characterised by the disintegration of older social collectives such as social class and an increase in the fluidity of social relationships, as well as an interest in identity and subjectivity (Bradley, 1996).

The notion of identity is a highly resonant term that is used in a wide range of contexts. Mackinnon (1979) examines three emphases relevant to masculinity theorisation, namely, the socialisation case, masculine crisis theory, and the reality construction model, to demonstrate the utility of the concept of identity. Identity has a high conceptual value in sociology because of its contribution to new individuals and society.

2.2.2 Masculinity's Crisis

Men and masculinities are continuously and vociferously claimed to be in crisis; however, the ways and manner of this so called crisis had not been well defined. Crisis inmenhas cometobe accepted but how it manifests whether in the past, present or a unique event; or isit a component of masculinity? It needs to be properly explained for it to be convincing to become a theory inmasculinity

2.2.3 How crisis manifest in men?

Men were seen to be at the core of contemporary concerns about jobs, changing family patterns, academic failure, and violent crime in the 1990s. Some contradictory factors contribute to a masculinity crisis. It has been observed that men are far more hesitant than women to confront and respond to physical and psychological problems. They are deeply depressed as a result of the loss of the breadwinner role and the status that comes with it, as this was regarded as one of the masculinity crises.

Finally, comprehending masculinity has proved that masculinity is not 'natural, but rather socially, culturallyand environmentally created to provide identity for the male gender.

Modern society's understanding of masculinity has also seen femininity as a threat on masculinity, as evidenced by the current crisis that men face in the world, work, and job roles in society.

2.2.4 Feminism

Feminism is an ambiguous statement that takes on different meanings depending on the context, though the multiple interpretations are not unrelated or irrelevant to one another. The term "feminism" originated in nineteenth-century French politics as a description of various groups that sought to improve the position of women in one way or another. Feminism as an ideology is founded on the recognition that women are a group that is unfairly oppressed by male-defined values and masculine institutions of social, political, cultural, and familial power. On the one hand, it can be defined as a philosophy and a social justice movement whose life is political engagement. On the other hand, it may be used to refer to the body of knowledge.

Contemporary feminism as a movement received widespread recognition in the 1960s but owed as much to the theoretical and political perspectives enunciated by French feminists at the turn of the century as it does to the Women's Liberation Movement, which flourished during this period (the sixties in Western Europe and North America. Capitalising on constitutional guarantees of the freedom from discrimination (sometimes described as the right to equality) as was the case in the United States (and similar constitutional states) or by allusions to a universally acknowledged fundamental human right to equality (as affirmed by the Universal Declaration of Human Rights, (1948) and other human rights instruments), the Women's Liberation Movement made the case for equal treatment of all persons and groups of persons within society. Like their predecessors of the late 18th and early 19th centuries, 20th-century feminists challenged male dominance of every sphere of social life and the differential treatment of women exemplified by the denial of equal access and equal status.

Feminism as a movement manifest in various forms depending on the field of human endeavour of the feminists concerned; thus there is feminist theology, feminist history and feminist spiritually, feminists ideology, feminist jurisprudence, feminist sociology etc.

2.2.5 Feminist Jurisprudence

Feminism approached jurisprudence from women's perspectives being concerned with how substantive laws are made with a bias in favour of men. It queries the foundation of legal doctrines, albeit from the standpoint of women's reality. It does not just identify sexist laws but evinces the 'natural' sexism of law. Not content with an unquestioning acceptance of the methods and methodology, theory and epistemology in legal science, feminist jurisprudence calls for probing these more, as it posits that it is on them that the inherent maleness of law rests.

Feminist jurists contended that no matter how the origin and women conceptualised each conception has the effect of treating men and women differently, either by consciously discriminating against women or by simply denying their existence or reality. The result is that when the law is invented to check sexist and gender distortions, it can hardly do so. Instead, it systematically offends the values it seeks to serve in its very origin; it was conceptualised with a male bias. In different ways, traditional male jurisprudence has been concerned with identifying the characteristics of valid law, not with the effect of the law on the individuals it serves. It would not be too sweeping a conclusion to argue that women have been denied recognition in male jurisprudence. The only manner in which it is tenable to argue the converse is to argue that women are 'men'.

Women's law or feminist jurisprudence is conceptualised as a challenge to traditional jurisprudence. Though it has remained on the fringes and for the last decade been ignored in more universities than not, feminist jurisprudence has come to stay as part of jurisprudence as a discipline. It could not be wished away. Arguably, the volume of academic research undertaken and publications that have been produced in this area far exceed the total amount of new work in the rest of the field of jurisprudence. The implications of thoughts and ideas exposed in feminism informed complete re-conceptualisations of law's relations with both men and women and even the State. In fact, there is talk about the 'mainstreaming' of feminist jurisprudence given the vast amount of literature which has been produced which use insights derived from feminist aspects of law, and model alternative constructions of law.

Feminist jurisprudence as a separate and significant field of legal scholarship has been described as an offshoot of the critical legal studies movement whose 1983 conferences devoted a section to feminism precisely and from this conference, a caucus of ‘Fem-Crits’ emerged. Some of the earlier works in feminist jurisprudence reflect this. These works reflect this. These works include: Olsen on the Family and the Market, McKinnon’s Comparison of Sexism to Classism and Feminism to Marxism, work on the ‘public’ and the ‘private’ analysis of the law’s relationship to oppression, in particular to patriarchy.

Feminist jurisprudence is also seen as a development from the women’s movement activities and writings in the late 1960s and early, 1970s. Such works include the writings of Simone de Veauvoir, Betty Freidan, Germaine Greer, Kate Milet, Eva Figes and others. To Ashe, the development of feminist jurisprudence, on the heels of feminist sociology, feminist philosophy and feminist history was a natural “extension of the engagement of female reflection and speech to one more area of discourse[57] which is as a result of large proliferation of women‘s studies and courses in the 1970s

A huge proportion of women studying law from the late 1960s onwards provides opportunities for female students to query a curriculum that ignores issues of primary concern to women such as rape, domestic violence, reproduction, unequal pay, sex discrimination, and sexual harassment. Some of those studying law at the time or later became practising lawyers who took on litigation on behalf of women, which nourished both their scholarship and the scholarship of others.

Some trace the term'feminist jurisprudence' to Ann Scales' intervention at a Harvard conference in 1978 through her article "Towards a Feminist Jurisprudence," which was published in 1981, and Catherine MacKinnon's influential article "Feminism, Marxism, and the State: Towards Feminist Jurisprudence," which was published in 1983. Feminist Jurisprudence is a house with many rooms, reflecting the various movements in feminist thought. However, what unites feminist legal theorists is the belief that patriarchy is the necessary legal order in society.

Feminists believe that history was written from a male perspective and does not reflect women's roles in shaping history and society. The concept of human nature, gender potential, and social arrangements has been skewed by male written history. The language, logic, and structure of the law are all male-created and serve to reinforce male values by portraying male characteristics as the norm and female characteristics as deviations from the norm. Feminists believe that the dominant view of law reinforces and perpetuates patriarchal power because laws are made and enforced by male-dominated people.Feminists question the idea that men and women's biological make-ups are so dissimilar that certain behaviors can be attributed to sex or gender. According to feminists, sex or gender determines physical appearance and reproductive capacity, but they contend that gender does not determine mental, attitudinal , psychomotor and affective personalities.

Feminist legal thought entails the use of feminism to analyse the basis of systems to explain the "law's role in perpetuating patriarchal hegemony". The method of feminism is consciousness-raising, in Catherine Mackinnon's words, "the collective critical reconstruction of the meaning of women's social experience, as women live through it." The goal is changing, "revision," and as Adrienne Rich puts it. Moreover, she adds, "this is 'more than a chapter in cultural history; it is an act of survival.[319]

Feminist jurisprudence has matured over the last two decades, with a body of literature that is both extensive and impressive, albeit sometimes inaccessible to many students. While earlier works on jurisprudence are entirely silent on feminist jurisprudence as if it does not exist, Lloyd's work is notable for recognising its existence and devoting a chapter to it in its 6thedition.[320] A significant defect in of Lloyd's work is that discourse on Feminist Jurisprudence appears like an appendage without much significance.

The objective of Hillarie's works[321] is to introduce students to the significant themes of inquiry and scholarship with which feminist scholars, many of whom are lawyers, are concerned. Hilaire's*Introduction to Feminist Jurisprudence*is concerned more with key issues in western Feminist Jurisprudence such as pornography, prostitution, rape, etc. It does not treat

[319] On lies, Secrets and Silence: selected prose 1966-1978 (Norton, 1980), p35

[320] Freeman, M.D.A, Lloyd's Introduction to Jurisprudence 1996 Sweet and Maxwell; pp 102-1145

[321]Hillarie, E, 2007 *Introduction to Feminist and Check Bibliography Jurisprudence* University of London press; pp 99-127

those issues of central importance as far as African feminism is concerned such as child custody, polygamy, widows rights, women's inheritance right etc.

Atsenuwa's work[322] is a contribution to the vast literature in a field, which ostensibly constitutes a challenge to traditional legal theory. Her work reviews the literature in the field of feminist legal theory, notes the need to consider law "relevant to women's lives" and emphasises the discriminatory attitude of customary law towards women. Finley[323] asserted that it is imperative to task for feminist jurisprudence, feminist lawyers and anyone concerned about what the impact of law has been, and will be, on the realisation and meanings of justice, equality, security, and autonomy for women to turn critical attention to the nature of legal reasoning and the language by which it is expressed.
Since law will unavoidably be one of the essential instrument of control affecting the position of women, we musttherefore engage the law to protect women perspective, experiences and make their voice heard in the society in which women live and work. This perspective will help people understand the predicament of women and thereby legitimize theirexperiencesand empower women as appropriate as the men folk. The truth is that it is not as simple as it sounds, because there is no "one truth" about women's experiences, and their own interpretations of those experiences are influenced by legal categorisations. Aside from critical engagements with the nature of legal language, another promising strategy is to employ the mutant concepts that do exist within legal reasoning. As previously stated, legal reasoning can be context sensitive; we can work to expand the language; and we can work to make the law more comfortable with diversity and complexity, less wedded to the perceived need to universalize reductive principles.

Littleton, C.A [324] (1987) work concerns feminist endeavours to reside with, and eventually resist, abstract itself from men’s hold. The article employs the work of several non-legal authors to demonstrate the impossibility of viewing solutions to inequality through that abstraction lens. She argued that the Aristotelian doctrine of equality is insufficient for women's protection and advocated for the adoption of "the differences

[322] Atsenuwa, V.A (2001) Feminist Jurisprudence; An Introduction, Florence and Lambard, London pp304-309
[323]Finley Lucinda M. (1989) “Breaking the Silence: IncludingWomen’s Issues in a Torts course”, Yale Journal of Law & Feminism 41
[324]Littleton, C.A[324]*Reconstructing Sexual inequality*(1987) 75 California L.Rev. 1274

approach" as opposed to the similarity approach, which holds that men and women are "similarly situated." That is, there was no discernible difference between the sexes that justified getting treated them different manner.

2.2.6 African Feminism Theory

This is the theory that explains how women can navigate a male-dominated society. In general, the African women's movement has been heavily influenced and shaped by anti-colonial and anti-racist activism.

African feminism is a modern concept that advocates for equal treatment and opportunities for men and women in all aspects of life. There should be no constraints on women's progress toward contributing to the growth of society in Africa and the world at large.
There should not be occupational or trade placement discrimination against African women. The position of women in society does not end in the kitchen. The dignity of womanhood should be restored devoid of cultural and historical inhibitions. Inhibition of any kind against women fouls the theoretical position of feminism.

The concept of men and women was popularised by publications of Freeman[325] (1994), which advocated the removal of all forms of inequalities between men and women; by so doing the female folks can achieve self-actualisation, contribute to nation-building and restore gender dignity in every sphere of life. Feminism propagates that the society will grow to the optimum only if both genders are given full opportunity to contribute to societal advancement. This cannot be achieved in an atmosphere where the women are discriminated against or treated as inferior to men.

The theoretical framework for this thesis is centred on feminism and masculinity to illustrate the oppression, maginalisation and discrimination women go through in a male-dominated world in the Owerri West Local government Area in Imo State, Nigeria. Feminism questions why laws are made in favour of the male gender, treating the females as second class citizens. The feminists question the rationale for political control of all facets of the economy by men and also question the rational for the popular saying that women's education ends in

[325]Freeman, M.D.A, Lloyd's Introduction to Jurisprudence 1996 Sweet and Maxwell; pp 102-1145

kitchen whereas if the women are given the enabling environment to put their naturalpotentialsinto operation they are capable of contributing to political and economic development of the society. The feminists advocate equal treatment and equalopportunity for both males and the females. Corroborating the feminists, the masculinists assume that males are superior and more physically and mentally endowed than the female gender to perform several tasks; hence women are giving lesser roles in the place of work, educational settings and in other physical challenging activities. The feminists have on their part seethe views of masculinists are narrow, ill-conceived and mere ego boosting for the males. They argued that there are nothing a man can do that a woman cannot do as well. The feminists argued that there are no scientific proofs that men are better in the use of psychomotor, cognitive and affective domain of life.

This thesis on its part aligns with the theoretical framework because the thesis tries to investigate the rationale behind the oppression, subjugation and discrimination females are subjected to culturally in the area of inheritance of real property in Imo state, Nigeria. This oppression and discrimination as espoused in theoretical framework purely aligns with the objective of this thesis, and the research carried out sought to abolish the oppressive and discriminatory practice against women by canvassing for ways and means of enforcing the recent judgment of the Supreme Court in*Ukeje v Ukeje* (2015) EJSC (vol.3) 70 which abolished the discrimination hitherto suffered by women because the discrimination fouls the section 42 of the Nigerian constitution 1999 as amended.

CHAPTER THREE
RESEARCH METHODOLOGY

3.1 Research Design

This research focuses on the judgment of the Supreme Court in*Ukeje v. Ukeje*[326]as it affects the female right to inheritance of real property in the Imo state, particularly Owerri West Local Government Area of the state.

The research design adopted was the ethnographic and qualitative methods of research. This enabled the researcher to be able to describe and analyse in a qualitative form all the data generated during the fieldwork. The primary data in this research was generated from the fieldwork. The focus group discussions, semi-structured and in-depth interviews with informants was utilised in the following compositions: (2) Traditional Rulers, four (4) village heads, ten (10) heads of families were interviewed so as to gather from their experience how female inheritance rights, widow's inheritance rights, succession and inheritance have been practiced till date. The interview sought to find out why despite this Supreme Court in decision *Ukeje v. Ukeje*[327] relating to female and Widow's rights to inheritance of real property in the Imo state, particularly Owerri West Local Government Area of the state have not been implemented or being followed by the people. For the primary source, relevant Law Reports, Statutes and the Nigerian Constitution, 1999 were consulted.

The outcome of these interviews, some of which were specific while others were generalised and they formed the basis for an academic analysis of the customary laws and practices of

[326](2015) EJSC(vol.3)70
[327](2015) EJSC(vol.3)70

people in Owerri West Local Government Area of Imo state using the following communities: Amakohia Ubi, Ohii, Orogwe and Ihiagwa

For secondary data, Textbooks on Igbo customary laws, Textbooks on Property law and Succession, Textbooks on family Law, Library, internet materials, Articles, and relevant published scholarly works were used. Relevant journals were also consulted.

Customary laws and practices relating to inheritance of real property were investigated as to what they were in earlier times and what they are now. This enabled the researcher to reconcile with the reality, the often quoted statement that one of the characteristics of customary law is its flexibility with modern reality. Contrary to the dynamic characteristics of customary law, the researcher investigated into why the Igbo people of Imo state have not followed this laudable and heroic judgment of the Supreme Court in*Ukeje v. Ukeje* (2015) by ensuring that female children and widows are not discriminated in the inheritance of real property at the demise of their fathers and husbands.

3.2 Study Area

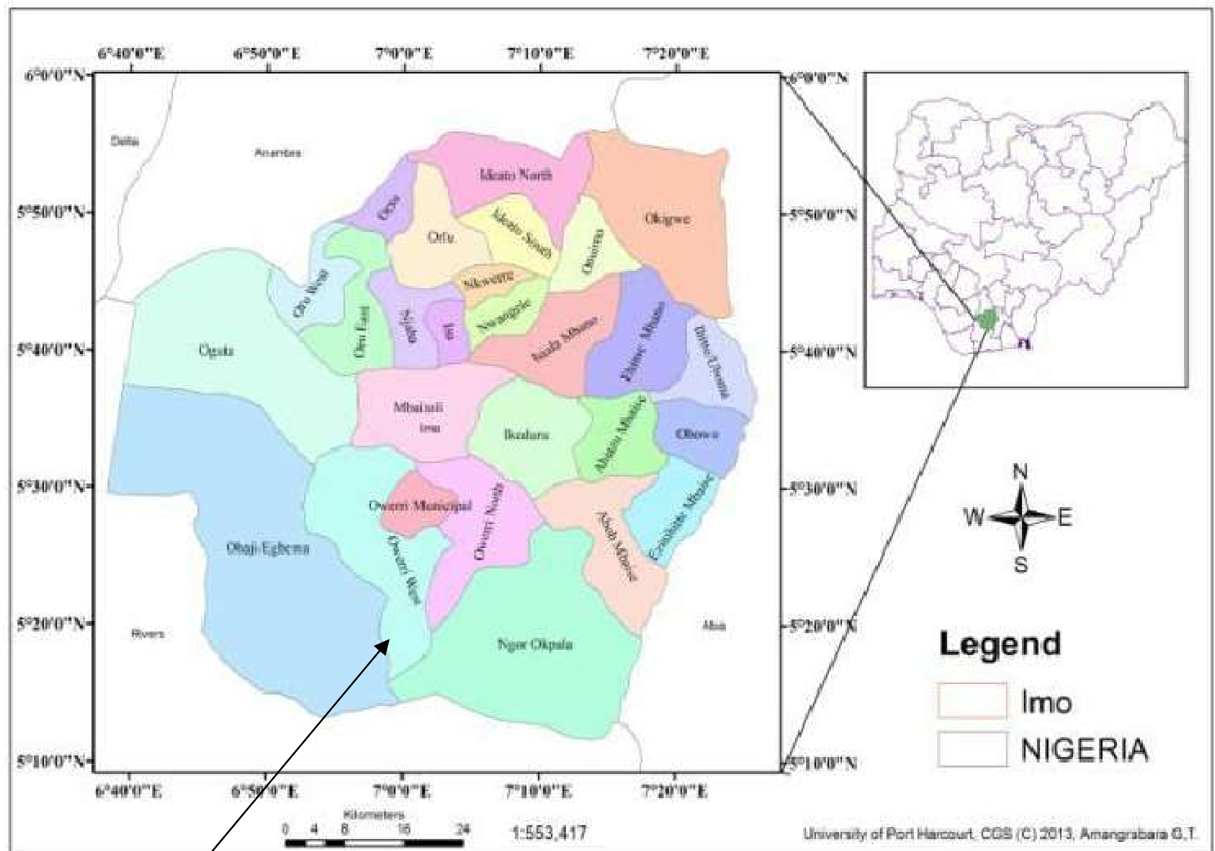
The Researcher conducted the study in five (5) communities of Amakohia Ubi, Ohii, Ndegwu, Orogwe and Ihiagwa in Owerri West Local Government Area of Imo state Nigeria.

By the reason that there are scanty scholarly works in existence in respect of the customary laws and practices of people in Owerri West Local Government Area of the state in the areas of female right and widow's rights of inheritance, the scholarly works of the likes of Ajuzie C O. (2012), Onokah, M.C. (2003) and Okani, M.C (2000), Nwogugu, (1974) were not insightful enough as to provide detailed information on the female rights and widow's rights of inheritance of the indigenous people of West Local Government Area of the state in the areas under focus. To this end, fieldwork became highly imperative, direct oral account of these customary laws and practices were gathered from the custodians of the customs such as three (3) Traditional Rulers, two (2) village heads, and ten (10) heads of families, two experienced lawyers and all these were collated with the few existing scholarly works that were relevant to this study.

The affected communities were purposively sampled in order to investigate the philosophy or world views that influenced these customary laws and practices in Owerri West Local Government Area of Imo state. It was not necessary to investigate all the communities in Owerri West Local Government Area. This is because people in the Owerri West Local Government Area are linked by common origin, history, culture, customs and practices and traditional religion, therefore what was said of one community applied without any alteration to other communities not listed in this work. It therefore follows that restricting the fieldwork to five communities situate within local government areas did not in any way affect a balanced judgment of the outcome of the research into why people have still not complied with the judgment in Supreme Court of *Ukeje v. Ukeje*[328] (2015) which has abolished discrimination against females and widows in inheritance of real property in any intestacy.

[328](2015) EJSC(vol.3)70

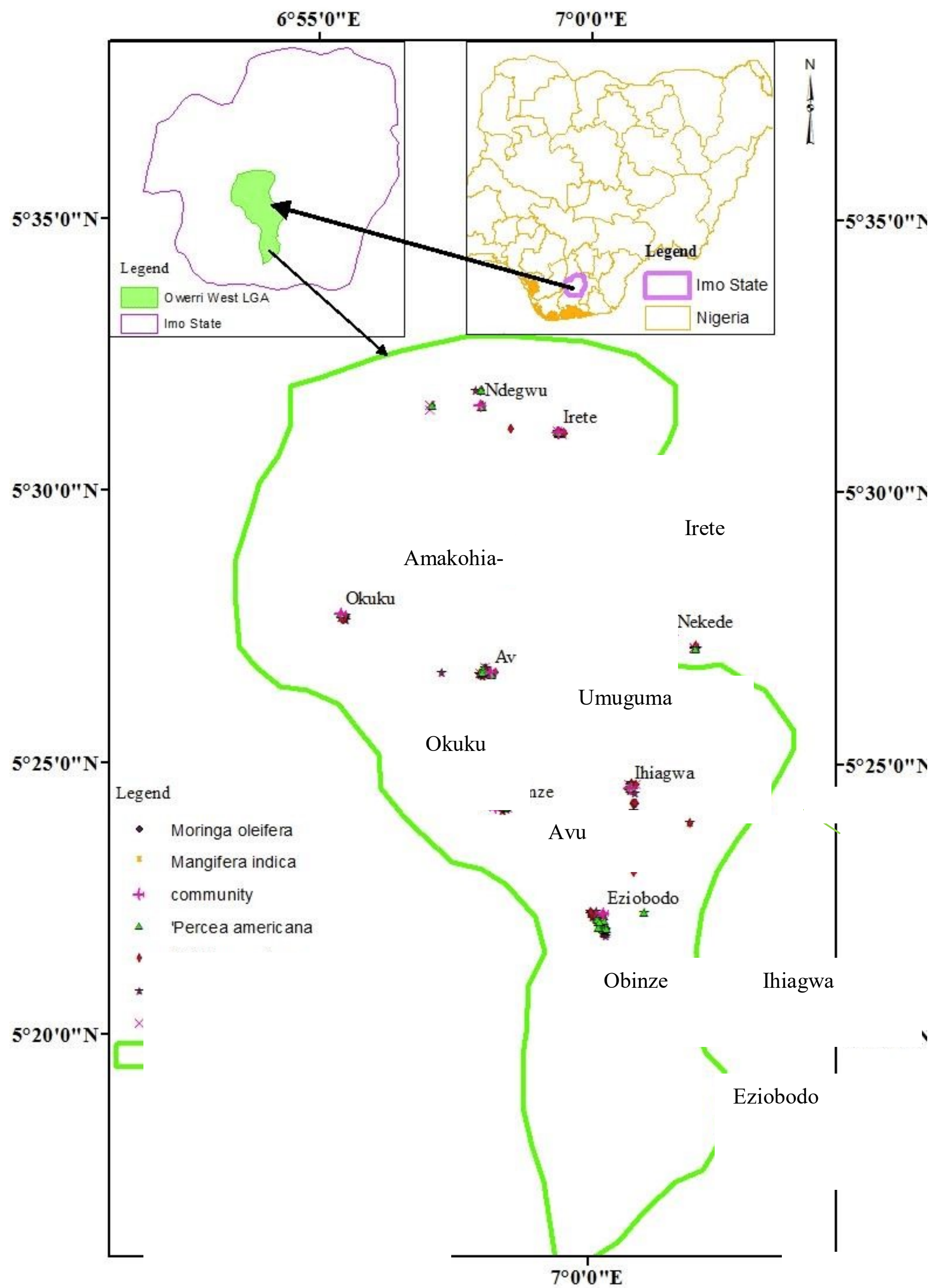
Map of Imo State Showing the Various Local Government Areas



Owerri West LGA

Source: www.researchgate.net> accessed 30th April, 2018

A Map Of Owerri West Local Government Area, Imo State Showing some of the Communities (see chart below)



Source: www.researchgate.net> accessed 30th April 2018

LGA of Imo state Nigeria. Owerri West has its headquarters located in a town called Umuguma. Owerri West was carved out of the main Owerri Local Government Areaspecifically in the year 1996. A very large portion of the Owerri West Local Government makes up the capital city of Imo state, Nigeria. It has an area of 295km and a population of 99, 265 by 2006 census. The postcode of the area is 460.

Communities in Owerri West Local Government Area include:

1. Avu
2. Umuguma
3.,Oforola
4. Okuku
5. Obinze
6.,Ihiagwa
7. Nnekede
8Eziobodo
9. Emeabiam
10. Okolochi
11. Irete
12. Amakohia Ubi
13. Orogwe
14. Ohii
15. Ndegwu

Source: www.researchgate.net> accessed 30th April 2018

3.3 Study Population

The focal point of this study is Owerri West Local Government Area Imo State, Nigeria with a combined population of 99265 (NPC Webiste) with headquarters in Umuguma and area^{2} of 295 square kilometres (Nigeria Congress website)

The communities that were investigated include: Amakohia Ubi, Ohii, Ndegwu, Orogwe, and Ihiagwa. The fieldwork from which the data were collated targeted the elderly male and the aged in the affected communities, village heads, lawyers, traditional rulers and community

leaders. This strategy enabled the researcher to generate opinions across the board for sufficient reliable and balanced research during the fieldwork.

3.4 Sample Population

Key informant interviews and focus group discussion with the ten members' informants in*Ohii* autonomous community was conducted by the researcher, and this was composed of family heads. A monarch in the person of His Royal Highness (HRH) Nze Smart of Amakohia Ubi Kingdom was interviewed. Another traditional ruler in the person of His Royal Highness (HRH) Dan Enwereuzo of Ohii Kingdom was interviewed. In the key information segment, Traditional ruler respondents participated. Also there were In-depth interviews involving ten members of the family Heads respondents; while focus group discussion involved two Traditional rulers. The opinions of aged people and traditional rulers were taken into consideration as they were the repository of customary laws and practices of the people. In interviewing the informants, the objectives of the study were taken into consideration. In line with the first objective concerning the southeastern Nigeria, a Traditional ruler in person of Eze Anthony Elui from a town called Oba in Anambra state was interviewed. Two experienced lawyers in the person of barrister Alphonsus Anyalemechi and Dr Chioma Emukah both of Imo State Ministry of Justice in Owerri West extraction were interviewed. The opinions of the lawyers were taken into consideration as they are learned men who offered legal advice to the communities and also enlighten the rural communities on the judgment of the Supreme Court in *Ukeje v. Ukeje*[329] which has abolished discrimination against females and widows in the inheritance of real property

3.5 Sample Technique

A purposive technique was adopted by the researcher to conduct interviews in the five communities.

3.6 Sources of Data Collection

The researcher sourced his data both from the primary and secondary sources.

3.6.1 Primary Source of Data Collection

[329](2015) *supra*

3.6.2 Key Informant Interview (Kii)

Key informants were selected from each of the five selected communities using purposive sampling. The in-depth key informants were persons selected based on their perceived experience and relevance. In selecting the key informants, specific criteria was adopted by the researcher which included status as custodian of customs of the communities, age, educational background, the gender of the informants. In all, the researcher interviewed fifteen respondents. The old men and women leaderprovided useful oral guide as to what the customary laws and practices of Owerri West Local Government Area people were, on females' and widows' right to inheritance of real property prior to this judgment of the Supreme Court in *Ukeje v. Ukeje*[330] which has abolished discrimination against females and widows in inheritance of real property.

The interviews were conducted in English with an Igbo language interpreter. The responses in Igbo were carefully translated into the English language by an interpreter employed by the researcher. As this research involves issues bordering on the enforcement of the female right of inheritance of real property, both structured and unstructured interview were administered. The response from the participants were recorded.

Fifteen (15) participants were interviewed. A monarch in the person of His Royal Highness (HRH) Nze Smart of Amakohia Ubi Kingdom, His Royal Highness (HRH) Eze Daniel Enwereuzo of Ohii Kingdom, an aged village head of Ohii community , one village head from Amakohia Ubi, ten (10) ten discussants in Ohii community, one experienced lawyer, Barrister Alphonsus Anyalemechi from Orogwe autonomous community and one experienced female lawyer, Dr Chioma Emuka from Ihiagwa autonomous community were interviewed which truly provided insight into the discrimination against females and widows in inheritance of real property in Owerri West Local Government Area using the Purposive techniques and qualitative method . The informants were interviewed based on the need to enforce the females and widows rights to inheritance of real property in line with the recent judgment of the Supreme Court in *Ukeje v. Ukeje*.[331]

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[330](2015) *supra*

[331] (2015) EJSC (vol.3)70

Law Reports was a vital primary source of law as it contained the reported case of the Supreme Court judgment in*Ukeje v. Ukeje* which inspired the Researcher into the study in the first place. Constitution of the Federal Republic of Nigeria, 1999 as amended was also a vital primary source of law in this study

3.6.3 Focus Group Discussion (FGD)

This was one of the primary sources of generating data for this research work. It involved the purposive selection of ten (10) discussants made up of family heads of the community being investigated. It was a well supervised discussion. It was through this process that aggregated views of the participants relevant to the study were collated. To guide the researcher properly, a predetermined FGD Guide was prepared and used but as it was expected, this predetermined guide elicited other vital and useful information which immensely assisted the researcher. The responses of the discussants were recorded by note-taking. The researcher moderator was in charge of taking notes and also moderating the focus group discussion.

3.6.4 In-depth Interviews

The research conducted in-depth interviews and by so doing elicited more information on the various issues under discussion. The interview was fairly long because the participants showed commendable enthusiasm and willingness to discuss for a long time, hence the researcher allowed the discussion to stretch on. The traditional rulers on their part also were enthusiastic and willing to talk for so long and the researcher allowed them, by which more information were elicited.

3.6.5 Secondary Sources of Data Collection

The secondary sources of data collection used by the researcher for this study was drawn from law textbooks, books on customary law practice, internet materials, Journals and Newspaper publications.

3.7 Method of Data Collection

Writing materials and notebooks were used to record information elicited during Field Work. Photographs of the discussants and interviewees with the Researcher were also taken. The researcher adopted a combination of the primary and secondary methods of data collection in order to corroborate or otherwise disagree with some or all the views expressed via the secondary source of data collection in respect of the issues under discussion. The researcher physically visited the various communities under investigation to obtain primary data. Used at the primary source level was the Focus Group Discussion (FGD), in-depth interviews (IDI), Key Informant Interviews (KII) and observations for emphasis. The secondary source of data collection emanated from law textbooks, books on customary law practice, internet materials Journals and Newspaper publications relevant to issue under discussion.

3.8 Research Instruments

3.8.1 The Key Informant Interview Guide

In this respect, questions were specifically couched in such a way as that they elicited the desired answers from the informants.

3.8.2 In-depth Interview Guide

The in-depth interview guide was a strategy specifically designed to elicit information from the personal experience of the interviewees.

3.8.3 FGD Guide

In other to effectively carry out this research, the researcher made use of a Focus Group Guide (FGD).

3.9 Method of Data Analysis

During the fieldwork, notes were taken. These notes formed the basis for the final report. Oral interviews in Igbo dialect were first transcribed into the English language before final analysis. The various information were handwritten and the information passed the process of first being transcribed. The main purpose of adopting this method was to ensure that the researcher's final analysis accords with the information obtained during the fieldwork. Data

derived from interviews, textbooks on Igbo customary laws, statute books were analysed according to the questions raised at the interviews. Data collected were sorted and aggregated into facts and estimated according to a reasonable accuracy.Qualitative Analysis: the Researcher mainly brought out the usefulness of the information generated via interaction/ interviews he has had with the participants in the study.

CHAPTER FOUR
DISCUSSION ON FINDINGS

4.1 Presentation and Analysis

This chapter is a presentation and analysis of the data gathered during the field work. It is in response to the aim and objectives of this study pursuant to the research questions under the chapter one of this study. As a reminder, the research questions are as follows:

1. Is there any connection between the discrimination meted on the females in the southeastern part of Nigeria and enacted statutory instruments in the region?
2. Why have the Igbo people not complied with recent Supreme Court judgmentin *Ukeje v. Ukeje*[332] that has empowered females with the right of inheritance of real estate?
3. Which sanctions should be imposed on any family who fails to comply with the SupremeCourtjudgment in *Ukeje v. Ukeje*[333] which empowered females with the right ofinheritance of real estate?
4. How can the law ensure compliance with the judgment in *Ukeje v Ukeje*[334]whichempowered females with the right of inheritance of real estate among the Igbo peopleparticularly in the OwerriWest Local Government area of Imo state, Nigeria?

The findings documented in this study are based on information gathered and collated from the following sources: Focus Group Discussion (FGD) and In-dept Interviews (IDI) with informants from Owerri West Local Government Area. The findings in this study were generated from responses in the course of interview conducted in line with the objectives of this study. The researcher also gathered other relevant and useful information that further

[332] (2014) 9NWLR (Pt 1418)p. 384
[333] (2014) 9NWLR (Pt 1418)p. 384
[334] (2014) 9NWLR (Pt 1418)p. 384

enriched this study. It is important to state that the crux of this study is to bring to focus the Supreme Court judgment in *Ukeje v Ukeje*[335]which empowered females with the right of inheritance of real estate among the Igbo people particularly in the Owerri West Local Government area of Imo state, Nigeria

The essence of this research is to find ways of ensuring that the discrimination against females in the inheritance of real property is removed, so that male and female will be at par as far as the inheritance of real property is concerned. This is in consonance with women empowerment slogan of women rights advocates in Nigeria. The researcher in the course of his investigation in Owerri West Local Government area of Imo state, sought to investigate into the level of compliance of the Igbo people with the Supreme Court judgment in *Ukeje v Ukeje*[336]*,* which has abolished discrimination against women pursuant to section 42 (1) and (2) of the 1999 constitution of the federal republic of Nigeria as amended. The researcher enquired into possible ways of ensuring compliance with the novel judgment of the Supr[[[[[eme Court.

4.1.2 ***The research question number one***

4.1.3 (1) Is there any connection between the discrimination meted on the females in the south eastern part of Nigeria and enacted statutory instruments in the region?

The findings from the study show that, unfortunately there has been no legislation aimed at removing the discrimination against the female gender in the area of inheritance of real property in Imo state. Interview with two principal state counsel that work with the Ministry of Justice Owerri seem to suggest that the Imo state legislature has not thought it in the direction of specifically enacting laws to ensure women are included in inheritance sharing. There are also no laws entitling only the men to inheritance of real estate in the state. The discrimination meted against the females was an age long standing customs among the Igbo people which evolved over centuries. The traditional rulers interviewed include His Royal

[335] (2014) 9NWLR (Pt 1418)p. 384
[336] (2014) 9NWLR (Pt 1418)p. 384

Highness (HRH) Eze Daniel Enwereuzo of Ohii Kingdom and His Royal Highness (HRH) Eze Smart Nze of Amakohia Ubi Kingdom in Owerri West Local Government Area. The Monarchs stated unequivocally that there was no statutory legislation supporting the discrimination against females' inheritance of real property. The traditional rulers explained that the discrimination was just a customary affair, and that no statute in Imo state, prior to the Supreme Court judgment in *Ukeje v Ukeje,*[337] has attempted to remove the discrimination. The traditional rulers stated that though section 42(1) and (2) of the 1999 Constitution of the Federal Republic of Nigeria was against discrimination, but they and their subjects did not understand it in the light of removal of the discrimination against females in the inheritance of real property.

4.1.4 (2) Why are the Igbo people not yet complying with recent Supreme Court judgment in *Ukeje v. Ukeje*[338] that has empowered females with the right of inheritance of real estate?

The researcher's findings was that the majority of participants during the Focus Group Discussion saw the Supreme Court judgment in *Ukeje v. Ukeje*[339] as strange, as an attack on their long standing customary practice. They felt that the Supreme Court Justices could not seat in Abuja, the Nigerian capital, and decide what their custom should be or not be. Few of the participants were of the view that the Supreme Court judgment in *Ukeje v. Ukeje* came so sudden and could not be obeyed over night. They felt that the compliance with the judgment may start in the distant future and not immediately.

Two women by name Mrs Marcelina Anugwolu, 71 years old and Mrs Celestina Unanwa 68 years old, who arrived during the focus Group Discussion sought permission to explain the indepth discrimination women contend with in the community. They spoke one after the other and pointed out that when a woman's parents die, the custom was that the first daughter called *Ada* in Igbo dialect was responsible for the procurement of casket for burial, yet this same woman can never be allowed to inherit landed property owned by her late father. The two

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women admitted that they have not heard about this Supreme Court judgment in *Ukeje v. Ukeje.* They expressed gratitude to the Justices of the Supreme Court. Their fears were that, who then will come from the court to compel the men folk to comply with the new case law. The women also felt that some of the men among the discussants have heard of the decision of the Supreme Court and kept quiet because the men felt it would be a threat to their perpetual domination of women and a threat to status of male gender.

Barrister Alphonsus Anyalemechi, from Ndegwu autonomous community, one of the communities under investigation and a principal state counsel with Imo State Ministry of Justice was of the view that the Supreme Court, through its decision in *Ukeje v. Ukeje*[340] merely imposed the custom of the Yoruba people on the Igbo people using the instrumentality of the 1999 Constitution of the Federal Republic of Nigeria. The lawyer explained that most justices are of Yoruba and northern extractions, and few Igbo justices were in the apex court. Barrister Alphonsus Anyalemechi, during the interview with the researcher stated further that to obey the decision in *Ukeje v. Ukeje's*[341] case would amount to allowing the women to override the male folks. He explained that the female after getting shares in her late father's estate would also marry and get share at her matrimonial family's estate. This, if allowed to happen would defeat the spirit of equity. Equity abhors double standard, the lawyer concluded. These factors, Barrister Alphonsus Anyalemechi explained were responsible for the reluctance of the Igbo people to accept and implement the Supreme Court decision in *Ukeje v. Ukeje.*[342]

One respondent, an experienced female lawyer of over twenty years at the bar, Dr Chioma Emukah from Ihiagwa autonomous community, one of the community under investigation and a principal state counsel with the Ministry of Justice in Owerri, who is also a member of Federation of Women Lawyers (FIDA) Owerri branch, when interviewed reiterated the fact that females and widows were discriminated against in the inheritance of real property in Owerri West Local Government Area in Imo state and other Igbo land. Her response was that though she was aware of the Supreme Court decision in *Ukeje v. Ukeje*[343], but compliance

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[341] (2014) 9NWLR (Pt 1418)p. 384
[342] (2014) 9NWLR (Pt 1418)p. 384
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with the decision had been difficult due to the fact that we live in a male dominated society and most women were not aware of the judgment in question. She explained that FIDA was planning sensitisation tours of many towns and villages in each Local Government area in Imo state. She admitted that since judgment was handed down, FIDA had received just two complaints and the FIDA wadded in and the women interests were adequately protected. Dr Chioma Emukah commended the novelty of the judgment. She stated that FIDA defends women's rights free of charge for the benefit of indigent women. She said that when complaints comes, FIDA will follow the women to their homes and invite the males in the families for discussion and where the males prove difficult, FIDA will follow up with litigations to obtain justice for the women. Dr Emukah advocated constitutional amendment where women rights will be specifically mentioned and protected. She advocated that seminars should be organised in towns to re-orientate the people in line with section 42 (1) and (2) and in line with the recent decision of the Supreme Court. Dr Chioma Emukah suggested that representative of the Ministry of Justice should visit worship centres, print handbills to educate the natives on the rights of inheritance of female under the new dispensation. She suggested that traditional rulers should be carried along in the campaign against women discrimination, bringing to their knowledge the new position of the case law.

Thefindings of the researcher, through in-depth interviews with the traditional rulers, are that the traditional rulers felt that compliance would be a gradual process and that with time the acceptance of the people to the Supreme Court decision in *Ukeje v. Ukeje.*[344]Would come to be a reality. His Royal Highness (HRH) Nze Smart of Amakohia Ubi Kingdom in Owerri West Local Government Area Imo state, though he condemned the age-long customary practice of discrimination against women, but stated that time would change the situation. He pointed out that, following the Supreme Court decision in *Ukeje v. Ukeje,* male children would stop being lazy on the premise that they alone would inherit the estate of their fathers if fathers pass on. The Monarch explained that the apex court judgment is still fresh and recent, that was while the people appear to have refused to comply with the laudable Supreme Court decisionin *Ukeje v. Ukeje,* Nze Smart stated.

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His Royal Highness (HRH) Nze Smart of Amakohia Ubi Kingdom said nobody amends customary law. The monarch said that no case of female disinheritance had come to his palace yet, but whenever it comes, he would ensure that equity prevails. He was hopeful that the customs would change gradually. While the monarch agreed that women should be included in the partitioning of family property, he observed that if a wife is allowed to inherit all the husband's property, she may decide to kill the husband, knowing she would inherit all his estate alone.

Mrs. Edna Nzeh, the wife of His Royal Highness (HRH) Nze Smart of Amakohia Ubi Kingdom, pointed out that, in a polygamous family, the four wives of the man may conspire and kill the man since they would be the only persons to inherit his properties. They may feel that they would be better off without the man alive. She illustrated this with a 60-year-old man who married a 20-year-old girl. She married the wealthy man because of his wealth. Assuming the man dies six months into the marriage, it would be unfair for members of the man's family to fold hands and watch the young girl carry away their brother's belongings. She suggested that sharing the departed man's real estate should be proportional to including his widow or widows. Mrs Edna Smart suggested that the man's relations should sharehis estate where the man's had no child during his lifetime. The royal wife further indicated that a woman who did not marry should not get as much as the male who would eventually marry and have children to train. She concluded that people are yet know about the Supreme Court decision in *Ukeje v. Ukeje;* hence compliance is slow or nil, but with time, probably in the next ten years, people may start to comply.

His Royal Highness (HRH) Eze Daniel Enwereuzo of Ohii Kingdom in Owerri West Local Government Area of Imo State, on his part, said that the Supreme Court decisionin *Ukeje v. Ukeje* came as a shock to his subjects. Many people have not even heard of the judgment, let alone reading the report published. He, however, said few complaints had come to his palace for settlement. All he did as a royal father was to appeal to male members of such families to give the females no matter how little, reminding them that there was a new law against female discrimination. The royal father also said non-compliance with the Supreme Court decisionin *Ukeje v. Ukeje* was mainly because of ignorance of the existence of the judgment.

An elderly man of 98 years of age in the person of Sunday Ogbuehi and a former community leader in Ndegwu autonomous community, one of the communities being investigated, explained that he was not aware of the new case law handed down by the Supreme Court of Nigeria. He maintained that most community members were not aware of the Supreme Cour decision in *Ukeje v. Ukeje,*[345] except probably those who were educatedand nobody had informed him.

Chief Christopher Unanwa, 84 years old, a community leader in Ohii autonomous community, one of the communities being investigated, stated with sincerity that he had not heard about the *Ukeje v. Ukeje's*[346]case and that most people have not heard also. Chief Unanwa explained that if the decision were real, his subjects would obey, because according to him, his community was law-abiding. He promised to appeal to his community to include females in the partitioning of real assets, no matter how little women should be given. On what he thought could be done to ensure his subjects comply with the Ukeje's judgment, Chief Unanwa suggested that traditional rulers should sincerely be committed to compliance with the decision. He further indicated that the government should provide financial assistance to the traditional rulers who would inturn mobilise community leaders toward enforcing the Supreme Court decision in *Ukeje v. Ukeje,*[347]which has removed the discrimination suffered by females over the centuries before now.

One Chief Samuel Ihenacho, 65 years old, a community leader in Irete autonomous community, one of the communities being investigated, stated categorically that he had not heard about the *Ukeje v. Ukeje's*[348]case and that most people have not heard also. How then can people begin to comply with a law not known to them, Chief. Ihenacho asked rhetorically. He expressed dismay with the decision when he realized that the Ukeje's decision was meant to include women in the partitioning of assets of a deceased man who died intestate; Chief Ihenacho said that the Supreme Court could not be the ones to tell the community which culture to follow. Chief Ihenacho said those who want to share their father's properties with

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women could go ahead and do so, but for him, no woman would join in inheriting his late father's properties.

One Mrs Caroline Nwosu, an eighty (80) year old women leader in Amakohia Ubi kingdom in Owerri West Local Government Area Imo state, one of the communities being investigated, like many respondents, pleaded ignorance of the Supreme Court decision in *Ukeje v. Ukeje.*[349]She expressed delight over the judgment of the Supreme Court as touching on the female right to inheritance of real assets, but regrettably, Mrs Nwosu said women were not aware of this novel decision of the apex court. She added that when women are fully aware of it, they would indeed fight for their rights. She said that this custom of cheating and subjugating women had been like that for a long time and nobody knew when and how it started. She said she came to this world and met the customs, and there was nothing women could do about it to date.

Mr Frank Odunze, a community leader in Amakohia Ubi autonomous community, said that, though he had a master's degree in business administration, he heard about Supreme Court decision in *Ukeje v. Ukeje*[350]recently from a lawyerand added that no complaint had come to him by any female on denial of the right of inheritance of real assets. He later commended the decision and stressed that compliance is almost zero because of ignorance of the case law. He promised to encourage his followers to embrace the new case law with good grace, as according to him, the new case was meant to bring equity and balanced happiness; after all, the female members of the family are still the blood relations of the male folks in the same family. He commended the judgment, stressing that the custom of allowing only the males to inherit assets of the deceased parents breed laziness on the part of the males who hope for their wealthy parent to die. He contended that men will see the judgment as a threat to the male status, but that in a real sense, it is not a threat but would encourage the males to work hard to acquire their assets.

Commmmenting on why the Igbo people have not complied with the Supreme Court decision in *Ukeje v. Ukeje,* the community leader who hailed the Supreme Court said the decision is still recent, and people are still studying the judgment. He said it would take a gradual process for people to start complying.

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Mr Odunze said if any woman comes forward with a complaint of discrimination, he would advise the male members of her family accordingly in line with Supreme Court decision in *Ukeje v. Ukeje*. If the males fail to recognise the woman's right, he woullldl advise the woman to seek redress in the court of law.

Pursuant to the first specific objective which: To examine the relevance of the Supreme Court judgment in *Ukeje v. Ukeje*[351] in respect of customary female rights to inheritance of real assets in South-Eastern Nigeria (particularly in the Owerri West Local Government Area of Imo state) when a man dies intestate, a traditional ruler outside Imo state, a native of Oba in Idenmili South Local Government Area of Anambra State, His Royal Highness Eze Anthony Elui was interviewed. The monarch admitted that he has heard about the judgment of the Supreme Court in *Ukeje v. Ukeje's*[352] case. He eulogised the boldness of the Justices of the Supreme Court for the novel decision. He responded to the question of noncompliance and answered that it was because of the greed of the Igbo men that they find it challenging to comply with the judgment. He said women were not fighting for their rights because of illiteracy and ignorance. The few educated women fight for their rights, and they get judgments at law courts. Eze Elui went down memory lane and traced the culture of female disinheritance in real assets. He narrated that the custom started from the origin. It started as a result of men's desire to cheat and subjugate women. For instance, he said, women were not allowed to eat egg, also barred from eating gizzard of fowls. Women also were forbidden from eating the waistline of any animal. These were the most delicious parts of the animals, and men reserved those parts for themselves, saying it was a taboo for women to eat those parts, but today women eat all these parts of animals, and no calamities have befallen women.

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4.1.5 (3) Which sanctions should be imposed on any family who fails to comply with the Supreme Courtjudgment in *Ukeje v. Ukeje*[353] which empowered females with the right of inheritance of real estate?

The research findings were that the majority of participants during the Focus Group Discussion saw the Supreme Court judgment in *Ukeje v. Ukeje*[354] as strange, as an attack on their long-standing customary practice. Few of the discussants who hailed the judgment were of the view that whoever failed to abide by the judgment should be reported to the traditional monarch for necessary action. They further submitted that the traditional monarch will in turn take necessary action on behalf of the discriminated women against any recalcitrant family members.

His Royal Highness (HRH) Eze Daniel Enwereuzo of Ohii Kingdom suggested that whoever fails to abide by the Supreme Court judgment in *Ukeje v. Ukeje,* after he has counselled and wadded in as a royal father in any reported dispute touching on the subject of family assets inheritance, he would advised the aggrieved women to go to court and get justice. He would refer them to human rights lawyers or the Federation of Women Lawyers (FIDA), who would take up the legal battle in favour of the aggrieved women and such women would obtain justice. The royal father said he would be prepared to appear at the police station and court to testify against any of his subject who proved adamant in complying with the Supreme Court judgment in *Ukeje v. Ukeje.*

His Royal Highness (HRH) Eze Smart Nze of Amakohia Ubi kingdom in Owerri West Local Government Area stated that court action may not be the first option because, according to him, culturally, it is not right for family members to call in police in family matters or take action against each other. He, however, added that where a family member, despite all appeal remained adamant in giving females part of the family inheritance, he would advice that a court action be taken against the erring male members of such a family. He noted that if some adamant male folks were jailed, it will serve as a deterrent to other families.

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His Royal Highness Eze Anthony Elui during the interview expressed dismay over female maginalisation in Igbo land. He suggested the government in the south east should set up a monitoring committee to whom an aggrieved female could go to as a first point of call to lodge a complaint and the committee will take legal action against the erring family.

Mr Frank Odunze, a community leader in Amakohia Ubi autonomous community who holds a master degree in business administration suggested that, the Imo state government should initiate a bill so that the state legislature would domesticate the judgment as a law, which could empower the Nigeria Police to arrest any family member who refused to accord the females the right to partake in partitioning of family assets.

An elderly man of about 98 years of age in the person of Sunday Ogbuehi and a former community leader in Ndegwu autonomous community, on his part suggested that any man who refused to give women the opportunity now that the court has said women should be given share in family assets, should be reported to the traditional ruler of the community who would surely know what to do.

One Mrs Caroline Nwosu, an eighty (80) year old women leader in Amakohia Ubi kingdom in Owerri West Local Government Area Imo state, one of the communities being investigated, suggested that the women should come together and go to the men and demand for their right in family assets. She further suggested that women should come in a group and march to their traditional ruler and stage protest against denial of the right of inheritance.

4.1.6 (4) How can the law ensure compliance with the judgment in *Ukeje v Ukeje*[355] whichempowered females with the right of inheritance of real estate among the Igbo, particularly in the Owerri West Local Government Area Imo State, Nigeria?

During the interview with the respondents, the two Focus Group Discussants could not proffer a solution as to how law can ensure compliance with the judgment in *Ukeje v Ukeje* to make the judgment a reality to mankind in Imo state. However, few key informants in other separate interviews gave some suggestions on how the law will ensure compliance with the judgment in *Ukeje v Ukeje* Dr Chioma Emukah, a member of the federation of women lawyers (FIDA), a Principal state Counsel with the Imo state Ministry of Justice suggested that Imo State

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House of Assembly should pass the Supreme Court decision in *Ukeje v Ukeje*[356] into law so that many people will become aware of it; hence compliance will become relatively easy. Barrister Alphonsus Anyalemechi, a Principal state Counsel with the Imo State Ministry of Justice, in his wisdom suggested that both the Imo State House of Assembly and National Assembly should pass a law and Act respectively to harmonise the decision in *Ukeje v Ukeje* into a functional legislationand, by so doing, create more awareness about the decision. In this manner, the law will be used to ensure compliance with the Supreme Court decision in *Ukeje v Ukeje*.

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CHAPTER FIVE

SUMMARY, RECOMMENDATIONS AND CONCLUSION

5.1 Summary

This is a research conducted in Owerri West Local Government Area of Imo state Nigeria, to examine the relevance of the Supreme Court judgment in *Ukeje v. Ukeje*[357] in respect of customary female rights to inheritance of real assets in South Eastern Nigeria when a man dies intestate (particularly in the Owerri West Local Government Area of Imo state). The researcher investigated the extent of compliance by the Igbo people in the Owerri West Local Government Area of Imo state with the Supreme Court judgment in *Ukeje v. Ukeje*[358] which had by its decision removed the discriminatory assets inheritance right meted on females of south eastern Nigeria. The research focused its study area in the Owerri West Local Government Area of Imo state. The researcher, after field investigations and discussion on findings, proffers ways of ensuring compliance so that the Supreme Court judgment will not be a nugatory.The researcher went on field work in the course of this study. Focus Group Discussion (FGD), In-dept Interviews (IDI) with informants from Owerri West Local Government Area were used so as to generate data and information that were used in discussion of finding in the preceding chapter. Based on the findings, the following recommendations are hereby put forward as solutions to the research questions.

5.2 Recommendations

1. It is hereby recommended that Imo state House of Assembly and National Assembly
Should pass a Law and an Act respectively in line with the Supreme Court decision in *Ukeje v Ukeje*. This measure will make the decision popular and more acceptable to the large Igbo communities. When legislation is passed, it becomes widely known by lawyers and non

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lawyers alike. A case law is usually known mainly by lawyers and few enlighten citizens. The vast majority of the masses are not usually aware of case laws. Some lawyers too do not know of case laws until they stumble into it via law report by chance or through information by their colleagues.

1. There should be an executive restatement of the Supreme Court decision in *Ukeje v Ukeje.* This could come in the form of publication in the Imo state official gazette, where people could have the opportunity of reading about the case law and getting acquainted with equal gender status which the judgment has now blessed women with. People, such as non lawyers will get to know about the case law; hence women can fight for their rights and obtain justice. According to the findings of the researcher, ignorance has been the main reason why the Supreme Court decision in *Ukeje v Ukeje* has not been widely implemented by the Igbo people especially in Owerri West Local government of Imo state.

2. The government of Imo state should create and launch 'women assets redress' register by way of an executive order in each local government secretariat. There should be mandated reporting policy as well so that every female will be sure her case will receive government attention. There should be an Agency of the Government to be headed by a female Senior Advocate of Nigeria (SAN) and the Agency should be named as "the "Imo State Women Property Right Response Team (WPRRT" who will respond swiftly to a distress call of any women who has been denied the right to property inheritance. The Agency should undertake free legal representation and free transportation to court for the women whose rights are infringed upon by the males in their families in any capacities aside from denial of property inheritance. Frequent transportation is needed by the women who will come to lodge a complaint with the Imo State Women Property Right Response Team (WPRRT). Many of such women may be indigent and should be assisted in every capacity to obtain justice. To avoid delayed justice, the Imo State Government should establish the 'Property Settlement Offences Court', which will be designated to solely handle property settlement and inheritance cases for quick dispensation of justice in such cases. This will be a commendable bold initiative if implemented.

3. Federation of Women Lawyers (FIDA) should defend women's rights free of charge for the benefit of indigent women. When complaints are received, FIDA should follow the women to their homes and invite the males in the families for discussion and where the males prove difficult, FIDA should follow up with litigations to obtain justice for the women.

4. The officials of the Imo state Ministry of Justice and the officers of the Federation of Women Lawyers (FIDA) should visit worship centres, print handbills to educate thenatives on the rights of inheritance of females under the new dispensation in line with Supreme Court decision in *Ukeje v Ukeje*; bearing in mind that many of the rural women who are victims of discrimination are illiterates. The officials of the Imo State Ministry of Justice and the officers of the Federation of women Lawyers (FIDA) should visit town unions, women organisations and bring to their knowledge the decision of the Supreme Court in *Ukeje v Ukeje* which has now abolished discrimination against women pursuant to section 42 (1) & (2) of the 1999 Constitution of the Federal Republic of Nigeria. They should inform the town unions and women organizations that females are now allowed to partake in the partitioning of their dead or late husband's estate in the event of intestate death. The natives should be informed of the punitive implication of contempt of court for those who would think of disobeying court judgment.

5. The traditional rulers should be carried along in the campaign against women Discrimination, bringing to their knowledge the new position of the case law. The traditional rulers would in turn call their cabinet meetings with Town Union Chairmen and the executive members of the town union in attendance and educate them that a new law had emerged and had abrogated the custom of denying females the right of inheritance of real property. The cabinets will, in turn, disseminate the new position of females to their clans so that the information will get to the grassroots. After this enlightenment has gone round the communities, any persons who discriminate the

females in real estate inheritance should be reported to the traditional rulers who will in turn handover the culprits to the police for prosecution

6. The Imo State Ministry of Information and Ministry of Women Affairs should use the mass media to wit: radio, television and newspaper to restate the decision of the Supreme Court in *Ukeje v Ukeje's* case so that Igbo radio and Igbo television medium will be used to spread out the property rights of the women in Imo state, particularly in Owerri West Local Government Area of the state.

5.3 Conclusion

There is no doubt that a cultural revolution is taking place in Imo State particularly Owerri West Local Government Area because of theSupreme Court judgment in *Ukeje v Ukeje's* case. The objectives of any revolution don't materialise easily in all cases. The Supreme Court decision in *Ukeje v Ukeje's* case has come to stay with the Nigerian people unless the Supreme Court over rules itself in future cases. The Igbo people have no choice but to abide by the decision of the apex court of the land. The decision touches on the age-long culture of the Igbo people of Imo state. Nevertheless, the decision must be complied with. The compliance, though very slow due to largely ignorance, will get to full compliance as more females pursue their rights in the law court. Section 42 (1) & (2) of the 1999 Constitution of the Federal Republic of Nigeria as amended cannot exist in vain. This is a time of the liberation of the Igbo women of Imo extraction, particularly in Owerri West Local Government Area of the state from the bondage of cultural slavery, and every hand must be on deck to achieve the enforcement of customary female rights to inheritance of real property in Imo state Nigeria. Gender equality must be achieved at the earliest possible and the time is now.

5.4 Contribution to Knowledge

The purpose of conducting this research, as can be seen from the discussion, is to bring out the importance of maintaining or sustaining human rights as it concerns gender equality in the Owerri West Local Government Area of Imo State, southeast Nigeria upon which the survival and happiness of humanity lies. It is evident that in southeast Nigeria, human rights

abuse against daughters and wives are rampant, and females had groaned in pain under such discriminatory cultural practices of denying females the right to inheritance of real property in the event of the intestate demise of their husbands and fathers as the case may be. Several works of literature had existed on the disinheritance of females to the estate of their deceased husbands and fathers. However, these piece of literatures did not explain how the decision in *Ukeje v. Ukeje*[359] will be enforced so that the judgment will not be nugatory or mere paperwork. The judgment sought to restore the female rights to the inheritance of real property in Nigeria. The failure of previous works to put suggestions on how to enforce the judgment created a *lacuna,* and it became necessary to research the ways and means of implementing females right to inheritance of real property in line with the judgment *Ukeje v. Ukeje's* case and the section 42 (1) and (2) of 1999 constitution of Nigeria. The novelty of this research can be seen in the suggestions put forward in the recommendation section. If implemented, will stop the discriminations women have been subjected to in the Owerri West Local Government Area of Imo State, southeast Nigeria. Information and knowledge is power; hence, this thesis calls upon the state government of Imo state, traditional rulers, and other stake holders to take proactive action, following the sugfgestions, toward ensuring gender equality in the Imo state Southeast Nigeria.

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APPENDIX I

Key Interview Guide

Interview with Traditional Rulers

1. High Royal Highness, Eze Smart Nze of Amakohia Ubi Kingdom in Owerri west Local Government Area of Imo state

i. As the Royal father and custodian of cultural heritage of your kingdom, what is the philosophy or reason behind this cultural practice of denying females the right to inherit landed property in Igbo land especially in Owerri West Local Government Area of Imo state?

ii. As the Royal father of the Amakohia Ubi Kingdom, how long has this cultural practice of denying females the right to inherit landed property belonging to their husbands or fathers at the latter's' demise, been going on in your kingdom?

iii. Your highness sir, have you heard of the Supreme Court decision of *Ukeje v.Ukeje*, (2015) EJSC (VOL.3) 70 SC which said that women must be entitled to inheritance of real property in Igbo land?

iv. What are your feelings and reactions to that decision in *Ukeje v.Ukeje*case, being a royal father and the custodian of the customs of your kingdom? If you have not heard previously about the judgment, now you have heard. What are your feelings and reactions to that decision in *Ukeje v.Ukeje case*?

v. Your highness sir, what are the responses of your subjects in complying with this novel decision in *Ukeje v.Ukeje's* case abolishing cultural discrimination against females in area of real property inheritance?

vi. Your highness sir, now that this Supreme Court decision of *Ukeje v.Ukeje*, (2015) EJSC (VOL.3) 70 SC which entitled women the right to inheritance of real property in Igbo land has become a law, to what extent have you been educating your subjects on the benefits of this judgment since the Supreme Court of Nigeria handed it down and it was reported in 2014 and 2015 law reports?

vii. What do you and your cabinets intend to do against any of your subjects who flout your directive towards enforcing the Supreme Court decision of *Ukeje*

v.Ukeje, (2015) EJSC (VOL.3) 70 SC which said that women must be entitled to inheritance of real property in Igbo land?

viii. Your highness sir, what are your suggestions towards ensuring that females, who are the victims of cultural discrimination in the area of real assets inheritance, begin to inherit landed assets belonging to their husbands or fathers as the case may be at the latter's' demise just like their male counterparts in line with the Supreme Court decision in *Ukeje v.Ukeje*, (2015) EJSC (VOL.3) 70?

ix. Your highness sir, has there been any woman who has, since Supreme Court decision in *Ukeje v.Ukeje*, reported in 2014 and 2015 brought petition to your palace for not being included in the inheritance of real assets and how did you resolve such issue?

x. Sir, as a royal father and custodian of customs, do you see this new development in Supreme Court decision in *Ukeje v.Ukeje*, as threat to males' position in the family, if yes why?

xi. Your highness sir, are you aware that the constitution of the Federal Republic of Nigeria is against any forms of discriminations against any citizen on the ground of sex, religion and circumstance of birth or place of origin, which also imply that women should no longer be denied their right to inheritance of real estate?

xii. Your highness sir, would you in your opinion hail the Supreme Court for handing down the decision in *Ukeje v.Ukeje*, removing all forms of discriminations against any citizen on the ground of sex, religion and circumstance of birth or place of origin, especially in the area of real assets inheritance?

xiii. Sir, how do you intend to mobilise your subjects in complying with this new case law so that they don't become guilty of contempt, bearing in mind that nobody is above the law and ignorant of the law is no excuse?

xiv. Your highness sir, in what ways do you think the information regarding the Supreme Court decision in *Ukeje v.Ukeje*, (2015) EJSC (VOL.3) 70would be brought to the attention and knowledge of every one in Imo stateso that by so doing the cultural discrimination against women in the area of real assets inheritance will stop.

2. High Royal Highness, Eze Dan Enwereuzo of Ohii Kingdom in Owerri West Local Government Area of Imo state

i. As the Royal father and custodian of cultural heritage of Ohii Kingdom,what is the philosophy or reason behind this cultural practice of denying females the right to inherit landed assets in Igbo land especially in Owerri West Local Government Area of Imo state?

ii. As the Royal father of the Ohii Kingdom, how long has this cultural practice of denying females the right to inherit landed assets belonging to their husbands or fathers at the latters' demise, been going on in your kingdom?

iii. Your highness sir, have you heard of the Supreme Court decision of *Ukeje v.Ukeje*, (2015) EJSC (VOL.3) 70 SC which said that women must be entitled to inheritance of real assets in Igbo land?

iv. What are your feelings and reactions to that decision in *Ukeje v.Ukeje*case, being a royal father and the custodian of the customs of your kingdom? If you have not heard previously about the judgment, now you have heard. What are your feelings and reactions to that decision in *Ukeje v.Ukeje case*?

v. Your highness sir, what are the responses of your subjects in complying with this novel decision in *Ukeje v.Ukeje's* case abolishing cultural discrimination against females in area of real assets inheritance?

vi. Your highness sir, now that this Supreme Court decision of *Ukeje v.Ukeje*, (2015) EJSC (VOL.3) 70 SC which entitled women the right to inheritance of real assets in Igbo land has become a law, to what extent have you been educating your subjects on the benefits of this judgment since the Supreme Court of Nigeria handed it down and it was reported in 2014 and 2015 law reports?

vii. What do you and your cabinets intend to do against any of your subjects who flouts your directive towards enforcing the Supreme Court decision of *Ukeje v.Ukeje*, (2015) EJSC (VOL.3) 70 SC which said that women must be entitled to inheritance of real assets in Igbo land?

viii. Your highness sir, what are your suggestions towards ensuring that females, who are the victims of cultural discrimination in the area of real assets inheritance, begin to inherit landed assets belonging to their husbands or fathers as the case

may be at the latters' demise just like their male counterparts in line with the Supreme Court decision in *Ukeje v.Ukeje*, (2015) EJSC (VOL.3) 70?

ix. Your highness sir, has there been any woman who has, since Supreme Court decision in *Ukeje v.Ukeje*, reported in 2014 and 2015 brought petition to your palace for not being included in the inheritance of real assets and how did you resolve such issue?

x. Sir, as a royal father and custodian of customs, do you see this new development in Supreme Court decision in *Ukeje v.Ukeje*, as threat to males' position in the family, if yes why?

xi. Your highness sir, are you aware that the constitution of the Federal Republic of Nigeria is against any forms of discriminations against any citizen on the ground of sex, religion and circumstance of birth or place of origin, which also imply that women should no longer be denied their right to inheritance of real estate?

xii. Your highness sir, would you in your opinion hail the Supreme Court for handing down the decision in *Ukeje v.Ukeje*, removing all forms of discriminations against any citizen on the ground of sex, religion and circumstance of birth or place of origin, especially in the area of real assets inheritance?

xiii. Sir, how do you intend to mobilise your subjects in complying with this new case law so that they don't become guilty of contempt, bearing in mind that nobody is above the law and ignorant of the law is no excuse?

xiv. Your highness sir, in what ways do you think the information regarding the Supreme Court decision in *Ukeje v.Ukeje*, (2015) EJSC (VOL.3) 70would be brought to the attention and knowledge of every one in Imo stateso that by so doing the cultural discrimination against women in the area of real property inheritance will stop.

Interview with the Village head and heads of families comprising of sixteen persons in Umuagwu clan in Ohii Kingdom in Owerri West Local Government Area of Imo state

1. As heads of your respective families, what are the historical reasons accounting for women not being entitled to inherit landed property belonging to their husbands or fathers at the latters' demise?

2. Have you heard or read of the Supreme Court decision of *Ukeje v.Ukeje*, (2015) EJSC (VOL.3) 70 SC which said that women must be entitled to inheritance of real assets in Igbo land?
3. What are your feelings and reactions to that decision in *Ukeje v.Ukeje case*? If you have not heard previously about the judgment, now you have heard. What are your feelings and reactions to that decision in *Ukeje v.Ukeje case*?
4. Why is it that the Igbo people in Owerri West Local Government, Imo state are not yet abiding by the judgment so that females can be entitled to inheritance of landed assets belonging to their husbands or fathers at the latter's demise?
5. What do you; in your opinion suggest should be the penalty for those who fail to abide by this Supreme Court decision in *Ukeje v.Ukeje* which has now removed the cultural discrimination against females in area of real property inheritance.
6. Has there been any woman who has, since Supreme Court decision in *Ukeje v.Ukeje*, in 2014 insisted on being included in the inheritance of real property and how was such issue resolved?
7. Do you see this new development in Supreme Court decision in *Ukeje v.Ukeje*, as threat to males' status in the family, if yes why?
8. As heads of your respective families, are you aware that the constitution of the Federal Republic of Nigeria is against any forms of discriminations against any citizen on the ground of sex, religion and circumstance of birth or place of origin, which also means that women should no longer be denied their rights especially in inheritance of landed property?
9. Would you in your opinion hail the Supreme Court for handing the decision in *Ukeje v.Ukeje*, removing all forms of discriminations against any citizen on the ground of sex, religion and circumstance of birth or place of origin which gave males and females equal right to inherit real property?

10. What are your suggestions toward ensuring that females, who are the victims of cultural discrimination in area of real property inheritance, begin to inherit landed property belonging to their husbands or fathers at the latters' demise in line with the Supreme Court decision in *Ukeje v.Ukeje*, (2015) EJSC (VOL.3) 70?

Interview with the Community leader in Amakohia Ubi kingdom in Owerri West Local Government Area of Imo state

i. As the Chairman of Amakohia Ubi of Community Development Union (ACDU) could please give us the historical reasons accounting for women not being entitled to inherit landed property belonging to their husbands or fathers at the latters' demise?

ii. Have you heard or read of the Supreme Court decision of *Ukeje v.Ukeje*, (2015) EJSC (VOL.3) 70 SC which said that women must be entitled to inheritance of real property in Igbo land?

iii. What are your feelings and reactions to that decision in *Ukeje v.Ukeje case*? If you have not heard previously about the judgment, now you have heard. What are your feelings and reactions to that decision in *Ukeje v.Ukeje case*?

iv. Why is it that the Igbo people in Owerri West Local Government, Imo state are not yet abiding by the judgment so that females can be entitled to inheritance of landed property belonging to their husbands or fathers at the latters' demise?

v. What do you; in your opinion suggest should be the penalty for those who fail to abide by this Supreme Court decision in *Ukeje v.Ukeje* which has now removed the cultural discrimination against females in area of real property inheritance.

vi. Has there been any woman who has, since Supreme Court decision in *Ukeje v.Ukeje*, in 2014 come to your union and insisted on being included in the inheritance of real property and how was such issue resolved?

vii. Do you see this new development in Supreme Court decision in *Ukeje v.Ukeje*, as threat to males' status in the family, if yes why?

viii. As the Chairman of Amakohia Ubi Community Development Union (ACDU), are you aware that the constitution of the Federal Republic of Nigeria is against any forms of discriminations against any citizen on the ground of sex, religion and

circumstance of birth or place of origin, which also means that women should no longer be denied their rights especially in inheritance of landed property?

ix. Would you in your opinion hail the Supreme Court for handing the decision in *Ukeje v.Ukeje*, removing all forms of discriminations against any citizen on the ground of sex, religion and circumstance of birth or place of origin which gave males and females equal right to inherit real property?

x. What are your suggestions toward ensuring that females, who are the victims of cultural discrimination in area of real property inheritance, begin to inherit landed property belonging to their husbands or fathers at the latters' demise in line with the Supreme Court decision in *Ukeje v.Ukeje*, (2015) EJSC (VOL.3) 70?

xi. Sir, in what ways do you think the information regarding the Supreme Court decision in *Ukeje v.Ukeje*, (2015) EJSC (VOL.3) 70would be brought to the attention and knowledge of every one in Imo stateso that by so doing the cultural discrimination against women in the area of real assets inheritance will stop.

Interview with the two Lawyers who are indegenes of Owerri West Local Government Area of Imo state

i. As a Lawyer from Owerri West Local Government Area of Imo state, could you please state the historical reasons accounting for women not being entitled to inherit landed property belonging to their husbands or fathers at the latter's' demise?

ii. As a learned gentleman, the Supreme Court decision of *Ukeje v.Ukeje*, (2015) EJSC (VOL.3) 70 SC has said that women must be entitled to inheritance of real assets in Igbo land? What are your feelings and reactions to that decision in *Ukeje v.Ukeje case*?

iii. Why is it that the Igbo people in Owerri West Local Government, Imo state are not yet abiding by the judgment so that females can be entitled to inheritance of landed property belonging to their husbands or fathers at the latters' demise just like their male counterpart?

iv. What do you; in your opinion suggest should be the penalty for those who fail to abide by this Supreme Court decision in *Ukeje v.Ukeje* which has now removed the cultural discrimination against females in area of real assets inheritance.

v. As a practicing Lawyer, has there been any woman from Owerri West Local Government Area of Imo state who has, since Supreme Court decision in *Ukeje v.Ukeje*, reported in 2014 and 2015 come to your chambers and complained of being excluded in the inheritance of real property and how did you resolve the issue?

vi. Do you see this new development in Supreme Court decision in *Ukeje v.Ukeje*, as threat to males' superiority status in the family, if yes, why?

vii. As a Lawyer, you are aware that the constitution of the Federal Republic of Nigeria is against any forms of discriminations against any citizen on the ground of sex, religion and circumstance of birth or place of origin, which also means that women should no longer be denied their rights especially in inheritance of landed property. Why has discrimination continued against female's inheritance of landed property even after the heroic Supreme Court decision in *Ukeje v.Ukeje?*

viii. Would you in your opinion hail the Supreme Court for handing down the decision in*Ukeje v.Ukeje*, removing all forms of discriminations against any citizen on the ground of sex, religion and circumstance of birth or place of origin which gave males and females equal right to inherit real property?

ix. What are your suggestions toward ensuring that females, who are the victims of cultural discrimination in the area of real property inheritance, begin to inherit landed property belonging to their husbands or fathers at the latter's demise in line with the Supreme Court decision in *Ukeje v.Ukeje*, (2015) EJSC (VOL.3) 70?

x. My learned friend, in what ways do you think the information regarding the Supreme Court decision in *Ukeje v.Ukeje*, (2015) EJSC (VOL.3) 70 would be brought to the attention and knowledge of every one in Imo state so that by so doing the cultural discrimination against women in the area of real property inheritance will stop.

APPENDIX II

Chief Sunday Ogbuehi 98years, a former community leader in Ndegwu autonomous community, in Owerri West Local Goverment Area Imo state, in an interview with the Researcher

APPENDIX III

Ohii village heads and representatives in Owerri West Local Governemnt Area Imo state, ina group discussion on the subject matter of the research with the Researcher in their midst taking notes

APPENDIX IV

Interview with elderly heads of families in Ohii autonomous community, in Owerri West Local Government Area Imo state, in an interview with the Researcher

APPENDIX V

Former women leader, Lolo Caroline Nlemchi, of Amokohia-ubi autonomous community in Owerri West Local Government Area Imo state, in an interview session with the Researcher

APPENDIX VI

Dr Chioma Emuka, Principal state counsel of the Imo Ministry of Justice, a native of Ihiagwa in Owerri West Local Government Area Imo state, in an interview session with the Researcher in her office at the Imo Ministry of Justice, Owerri

APPENDIX VII

Dr Chioma Emuka, Secretary Federation of Women Lawyers (FIIDA) in her office in Owerri, Owerri West Local Government Area Imo state, in an interview session with the Researcher

APPENDIX VIII

Barrister Alphonsus Anyalemechi, Principal state counsel of the Imo State Ministry of Justice, a native of Irete autonomous community, in an interview session with the Researcher in his office at the Imo Ministry of Justice Owerri.

APPENDIX IX

Mr Frank Odunze, the community leader of Amakohia ubi autonomous community in Owerri West Local Government Area Imo state, in an interview session with the Researcher

APPENDIX X

Chief Samuel Ihenacho, the community leader of Ndegwu autonomous community in Owerri West Local Government Area Imo state, in an interview session with the Researcher

APPENDIX XI

Chief Christopher Unanwa, the community leader of Ohii autonomous community in Owerri West Local Government Area Imo state, in an interview session with the Researcher

APPENDIX XII

Mrs Marcelina Opara and Mrs Celestina Nwosu, women leaders in the Ohii autonomous community in Owerri West Local Government Area, Imo state in an interview session with the Researcher

APPENDIX XIII

His Royal Highness (HRH) Eze Smart NZE of AMAKOHIA-UBI Kingdom in Owerri West Local Government Area, Imo state in an interview session with the Researcher in the palace of the Monarch.

APPENDIX XIV

Lolo Edna Nzeh, wife of HRH Eze Smart Nzeh, of Amakohia Ubi Kingdom in Owerri West Local Government, Imo state in an interview session with the Researcher

APPENDIX XV

His Royal Highness (HRH) Eze DAN ENWERUZO of OHII Kingdom in Owerri West Local Government Area Imo state in an interview session with the Researcher in the palace of the Monarch