



## Female inheritance right under customary law in Nigeria: An affront to justice

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### Abstract

Female inheritance right under customary law in Nigeria have been treated as subservient and dependent on their male counterpart support. This is so because of the inherent discrimination associated with intestate succession under the various native law and custom practices in Nigeria. As a result, women and their property rights in particular are not adequately catered for and enforced. This study examined the problems associated with women and proprietary right as provided in Nigerian law. It also examined the inadequacies of these laws especially as it relates to their enforcement. The study provides insight into understanding some of the problems associated with women property inheritance right in Nigeria and concludes that the decision in *Ukeje's* case alone cannot, except with some form of expansion, guarantee full acceptance of women's right to inherit property in Nigeria.

**Keywords:** Inheritance succession, primogeniture, patriarchy, patrilineal

### Introduction

Since creation female gender have suffered from one form of discrimination or the other. Women in Nigeria have been subjected to various degrading and discriminating practices on account of cultural inclinations of either origin or marriage which grossly infringe on their fundamental rights. Traditional belief and practices as conditioned by the customary laws of various communities have become such serious impediment militating against women and property inheritance in Nigeria. Customary law unlike statutory law is riddled with uncertainties and as a result of the obvious gap, inheritance to the property of a deceased father are subjected to all kinds of inhuman, discriminating and inequitable practices in the name of custom.

Under Nigeria native laws and custom, wives were seen as chattels to be sold by the parents to the husband as soon as the bride price has been paid. And paraventure their husband dies, she is seen as constituting part of the estate of the deceased husband. Customary law is often used in this instance and there are as many variations as there are ethnic groups in Nigeria. Inheritance like most rights are titled towards the male gender. The cultural practices of the different constituent tribes, societal norm, illiteracy, poverty and religious beliefs have all attributed to the continuing inequitable representation directly and indirectly. And even though there are laws, conventions and treaties that advocate for equal treatment of all human being regardless of their sex, tribe origin, and circumstance of birth, discriminatory practices still operate today unfettered <sup>[1]</sup>.

### The Concept of Succession/Inheritance

Succession as a subject is not amenable to a definite definition. The term has been defined differently depending on the usage. In ordinary parlance, the term succession means:-

1. A number of persons or things following one another in order or sequence.
2. The right or process by which one person succeeds to the office, rank, estate or the right of another.

3. The order or line of those entitled to succeed on another.

However, to remain focused on the subject of discourse, resort shall be had to the Black's Law Dictionary. The Black's Law Dictionary see succession as:

1. The act or right of legally or officially taking over a predecessor's office, rank or duties.
2. The acquisition or rights or property by inheritance under the laws of descent and distribution <sup>[2]</sup>.

The above definition is capable of two different interpretations. The aforesaid definition dutifully classified the term succession to both official or legal right or entitlement to the office, rank or duties of a predecessor and the right to acquire the property of a predecessor through or by inheritance under the laws of decent and distribution. Thus, one can by succession step into the office or rank of another. For example a child (the first son) under customary law automatically steps into the position (headship) of his deceased father, who died intestate. In a similar vein, a person also succeeds to organize or take over the property of another by inheritance under the customary law or otherwise or by way of the any testamentary disposition subject to the customary law, which is also applicable to various tribes in Delta State, the first son of a deceased person is automatically entitled to inherit the house where his father lived and died. This right of the first son under customary law is even recognized under the Will's Law <sup>[3]</sup>.

### The meaning of inheritance

To inherit means to come into possession by transmission from past generations <sup>[4]</sup> or to receive especially as a right. Inheritance in legal parlance therefore is the entry of a living person or living persons into possession of a dead person's property <sup>[5]</sup>. Over time inheritance has come to mean anything received from the estate of a person who has died, whether by the laws of descent or as a beneficiary of a will or trust and it operates where private ownership of property exists as a basis of social and economic enhancement.

When a man dies, the devolution of his self acquired property depends upon whether or not he has made a will. If he has made a will, the property will devolve according to the directions contained in the will *moreso*, where a Will is made in accordance with the law, the contents of the Will, will apply absolutely as nobody can change the wish of the maker of the Will <sup>[6]</sup>. This type of succession is described as *testate*. If he has made no will, or has made one which at his death has become totally inoperative, he is said to die *intestate*, and the devolution of his property will be governed entirely by the rules of law prescribing the order of succession upon an *intestacy*.

Until the introduction of the English law practice of writing wills that brought about the concept of *testacy*, *intestacy* was the rule and it was governed by customary law. The only customary practice of the concept of wills was at the occasional instances of a dying man indicating by a death-bed declaration how his property was to be distributed after his death. Most customary law wills are oral and therefore are *nuncupative wills*. *Nuncupative wills* are verbal wills that must be declared in the presence of two disinterested witnesses at least, and can only deal with the distribution of personal property <sup>[7]</sup>. They are otherwise known as ‘death-bed’ wills and could as a safety for people struck with a terminal illness and robbed of the ability or time to draft a proper written will. Often these declarations, in addition to disposition of property, also give directions as to the mode of burial and funeral ceremonies to be performed for the testator. The requirement of the presence of at least two disinterested parties is not necessarily for the purposes of validity, but for the proof of declaration <sup>[8]</sup>. A disposition of property by will under customary law becomes effective only if the testator possesses full mental capacity at the time the will was made. Furthermore, the identity of the subject matter of the will must be specific so as to be easily identified.

However, oral death bed declarations did not carry with it a force of finality; they were often modified and sometimes disregarded by the elders of the deceased family in situations where the application of such declarations can be seen as capable of causing great hardship to or disagreement amongst the family.

### **The primogeniture rule in inheritance under customary law**

*Primogeniture* means the status of being the first-born child among several children of the same parents. However, the *primogeniture rule* refers to a system of inheritance at common law through which the oldest male child has the right to succeed to the estate of an ancestor to the exclusion of younger siblings, both male and female, as well as other relatives <sup>[9]</sup>.

The tradition of *primogeniture* entails the total non-negotiable handing over of power of attorney over properties, titles and positions to the eldest son of a family. The eldest male child becomes the head of the family and he occupies the family house, holding same as trustee of the other children, male or female. In the *Onitsha* community, for instance, the deceased’s property devolves to the eldest son exclusively, in accordance with the rule of *primogeniture*, under which the eldest son is expected to look after the younger children and may sell the house over the wishes of other children or treat it as his own property <sup>[10]</sup>. The *Bini* speaking people of Nigeria – *Esan*, *Etsako*,

*Owan*, *Igarra* and *Okpameri* – still uphold the tradition of *primogeniture* with *Trojan* zealotry. It is upheld with religious devotion, notwithstanding the incursions of western civilization, *vide* education, religion and technology <sup>[11]</sup>. In contrast, among the *Markis* group of the *Verbe* people of Northern Nigeria, the rule of *ultimogeniture* applies, whereby inheritance is by the youngest son, which applies to bar other heirs of the deceased landowner <sup>[12]</sup>.

The right of the eldest surviving son to succeed his father in the headship of the family is automatic and arises from the fact of seniority. Only the father, as the owner and creator of the family property, can deprive the eldest son of this right, by a valid direction made with the aim of ensuring that the affairs of the family are properly managed by a person qualified on the grounds of intelligence and education to do so. In the absence of any such direction by the father, the right of the eldest son cannot be taken away without his consent. But a right that arises by the operation of the law is liable to be abrogated or modified by a change in customs <sup>[13]</sup>. An example of such right is the right to *Igiogbe* house, which exists in *Benin Kingdom*.

It is this researcher’s view that the principle of *primogeniture* violates the right of women to human dignity as guaranteed in the 1999 Constitution also implies that women are *prima-facie* not fit or competent to own and administer property. The *primogeniture rule* has been criticized on the ground that it prohibits female children from inheriting <sup>[14]</sup>. *Kaganas* and *Murray* assert that for African women, customary law openly discriminates against women <sup>[15]</sup>.

### **The concept of customary law**

The concept of customary law arises from the various customary law practices of the multiethnic groups scattered all over Nigeria. However, as many as these multi-ethnic groups exist in Nigeria, their customary law practices are somewhat not largely differentiated depending on the ethnic groups such customary law is practiced. Customary Law can be defined as the law relating to the custom and the tradition of the people and that is why it is regarded as the mirror of an accepted usage as it was rightly stated in the case of *Ogolo & Ors. v Chief Ogolo & Ors* <sup>[16]</sup>. Customary law is the living law of the indigenous people of Nigeria which regulates lives and transactions of the people.

According to *Elias*, Customary Law is:

The law of a given community, the body of rules which are recognized as obligatory ... This recognition must be in accordance with the principles of their social imperative, because operating in every community is a dynamic of social conduct, an accepted norm of behavior which a vast majority of its members regard as absolutely necessary for the common weal. This determinant of the ethos of the community is the social imperative <sup>[17]</sup>.

The Supreme Court in the case of *Oyewunmi v Ogunesari* <sup>[18]</sup> defined Customary Law thus:

The organic law of the indigenous people of Nigeria regulating their laws and transactions. It is organic in that it is not static. It is regulatory in that it controls the lives and transactions of the community subject to it. It is said that custom is the mirror of the people. I would say that customary law goes further and imports justice to the lives of all those subject to it.

From the above dictum, it is right to refer to customary law as the body of legal rules that evolved from the custom of

the indigenous communities of Nigeria and which are used to regulate human conduct and governs social relations and economic transactions. Customary law consists of customs accepted by members of a community as binding amongst them. While some writers have maintained that customary law does not include Moslem law, it has been evidently proved particularly by the Old Native Ordinance that “Native Law and Custom also includes Moslem Law”<sup>[19]</sup> hence customary law in Nigeria is divided into two main classes as *viz*:

- a. Ethnic or Non-Moslem Customary Law, and
- b. Moslem Law

#### a. Ethnic or Non-Moslem customary law

This is indigenous and each system of ethnic customary law applies to members of a particular ethnic group and it is unwritten. While the rules of customary law are uniform, they vary from locality to locality hence there are many systems of customary law in Nigeria as there are ethnic groups and variations in the applicable customary laws.

#### b. Moslem law

This is a religious law based on Moslem faith and applicable to members of the faith. However, it is received written customary law introduced into the country as part of Islam. It is fundamentally in written form.

Assessing the present state of customary law in Nigeria, one will be safe to say that it is of confusion and doubt. Some of these doubts stem from the unwritten nature of customary law and the activities of the court themselves. The Supreme Court has equally lamented the state of customary law in Nigeria. In the case of *Ugo v Obiekwe*<sup>[20]</sup>, the court regretted that ‘whereas the authority concerned are taking the commendable step of ridding our statute and received English Law of anachronism, nothing appears to be happening in the area of customary law which form the essential backbone of our corpus juris Nigrianae’.

#### Native law and custom

Native Law and Custom means in relation to a particular tribe or in relation to any native community outside any tribal area the general law and custom of such tribe or community. Custom has been defined in several ways by different postulators particularly from the judicial point of view in some select decided cases. In the case of *Dakar v Dapol*<sup>[21]</sup>, the Court defined custom thus: As defined in section 2(1) of the Evidence Act, custom is “a rule which in particular district has for long usage obtained the force of law.”

Similarly, in *Falowo v Banigbe & Ors*<sup>[22]</sup>, Adekeye JCA defined custom thus:

What then is Native law and Custom? Section 2(1) of the Evidence Act Cap 112 Laws of the Federation of 1990 defines Custom as a rule which in a particular district has from long usage obtained the force of law.

Generally, at law, custom refers to the established pattern of behavior that can be objectively verified within a particular social setting. ‘A claim of what has always been done and accepted by law’. It consists of customs accepted by members of a community as binding among them. Every tribe or ethnic group as a people from time immemorial have some sets of native law and custom peculiar to them and different from another.

#### Characteristics of customary law

Customary Law is the law which has from long and consistent usage obtained the force of law. It has the following features or characteristics:

- a. **Acceptability:** Customary law must be accepted by members of the community who practice it as binding. In fact, if a custom is not widely accepted by those who practice it, then it is not a customary law. Plethora of cases exist where the court ruled that where a custom is not accepted by people, it cannot be regarded as a customary law. In the case of *Owonyin v Omotosho*<sup>[23]</sup>, customary law was defined as ‘a mirror of accepted usage’. By this definition, for a custom to be regarded as a customary law, it must be accepted.
- b. **Flexibility:** The unwritten nature of customary law has also made it flexible. By this, it means that customary law is dynamic and not static. Apparently, the reason why customary law is dynamic is because it is not contained in any document. Thus, from continuous interpretation of the laws, changes are made by the interpreters of the law. In the celebrated case of *Lewis v Bankole*<sup>[24]</sup>, it was stated that one of the striking features of customary law is its flexibility;
- c. **Unwritten Nature:** One of the characteristics of customary law is that it is totally unwritten. What this means is that customary law are not contained in a single document. For instance, the customary law of a particular village can be that only male children are to inherit the estate of their fathers. This law does not necessarily have to be contained in any document but it will still be recognized by members of the society.
- d. It must not be repugnant to natural justice, equity and good conscience.
- e. It must not be in conflict with any law for the time being.
- f. It must be provable by evidence.

#### Proof of customary law

A custom is a rule in a particular district which has from long usage obtained the force of law in that district. In *Ubulu—Uku*<sup>[25]</sup> kingdom, for instance it is only the first son of the Obi (king) that can be crowned a king thus, this rule that marks the requirement for being a king in *Ubulu-Uku* kingdom from its usage qualifies as the custom of *Ubulu-Uku* kingdom.

The proof of customary law is into two folds as *viz*;

- a. Proof before customary courts.
- b. Proof before non-customary courts.

#### a. Proof of Customary Law before Customary Courts

Where a custom is to prove before a Customary Court within the area of the jurisdiction of that community, the President of the Customary Court is deeded to know the law and as such evidence is not required to prove the Custom. In *Ubulu-Uku* community, if there is a dispute arising and such dispute is taken to the customary court situated in *Ubulu-Uku* for settlement, the President of that customary court in *Ubulu-Uku* community is deeded to know the customary law of *Ubulu-Uku* people and such does not demand for evidence in prove thereof. However, where there is no

customary court in Ubulu-Uku community and a dispute is taken to a customary court in another community (outside the area of jurisdiction of Ubulu-Uku, the President may require the calling of evidence to prove such custom. In the case of *Ababio v Nsemfo* <sup>[26]</sup>, the court held that in a customary court, prove of customary law is not necessary where the presiding judge over the court is a member of that community and is versed in knowledge of the customs of the land. Thus, where the presiding judge is not a member of the community, nor verse in their custom, prove of evidence may be required.

#### **b. Proof of Customary Law before Non-Customary Courts**

Non-customary court in this context refers to courts other than the Area or Customary Courts such as the Magistrate Court, High Court, Court of Appeal and Supreme Courts. Section 16(1) of the Evidence Act 2011 <sup>[27]</sup> provides that a custom may be adopted as part of the law governing a particular set of circumstances if that custom can be judicially noticed or can be proved to exist by evidence thus this provision of the Evidence Act establishes two methods of proof of a customary law before a Non-Customary court. These methods are: by Judicial Notice and by Evidence.

#### **Judicial Notice**

Section 17 Evidence Act states that a custom may be judicially noticed 'when it has been adjudicated upon by superior court of record' Thus, where the court has ruled on a particular custom, it is said to have been judicially noticed and requires no further prove. For instance, if there is a dispute relating to the entitlement of a female child to the property of her deceased father, and the custom says otherwise, that it is only the male child that can inherit their deceased father's estate, the custom need not be proved in court as the court will take judicial notice of the decision in the adjudicated case of *Ukeje v Ukeje* <sup>[28]</sup> where the Supreme Court held that a female child is entitled to the property of her deceased father and a custom that is to the contrary is invalid.

#### **Proof by Evidence**

Section 18(1) Evidence Act 2011 provides that 'where a custom cannot be established as one judicially noticed, it shall be proved as a fact'. Consequently, it means that where a custom has not been adjudicated upon by a superior court of record, such custom is to be proved as a fact before a non-customary court. Such custom maybe proved wither through; Witnesses, Expert Opinion, Book or Manuscript.

Witnesses: Section 16(2) Evidence Act 2011 states that the burden of proving a custom shall lie on the person alleging its existence. So if for instance, I am alleging that the custom of Ubulu-Uku community does not allow a female child to inherit the property of her deceased father, I have to prove that such custom exists and one of the ways I can prove it is by calling witnesses who are vast with the custom of Ubulu-Uku community.

#### **Expert Opinion**

Section 68 Evidence Act 2011 provides for the opinion of persons especially skilled and highly knowledgeable in customary law to be admissible when the court has to form an opinion upon a point in customary law. Such expert opinion may include the evidence or opinion of native

chiefs, historians, Book authors, traditional rules and any other person having special knowledge of the customary law and custom.

#### **Books and Manuscript:**

Section 70 Evidence Act 2011 states that 'in deciding questions of customary law and custom, the opinions of traditional rulers, chiefs, or other persons having special knowledge of the customary law and custom and any book of manuscript recognized as a legal authority by the people indigenous to the locality in which such law or custom applies, are admissible. For example, in *Ibrahim v Barde* <sup>[29]</sup>. The court held admissible a book, which according to some witnesses is regarded in Suleja as an authentic account of the history of the area. Also, in *Oyelowo v Oyelowo* <sup>[30]</sup>, the court relied on the Nigerian Land Law book by Professor Ben Nwabueze (SAN).

#### **Validity Test of Customary Law**

It is noteworthy to assert that it is not every custom that is qualified as a customary law. For a customary law to be qualified as a customary law, it must fulfil the validity test of customary law. The following three test have been put in place to test the validity of all customary law before it can be applied by our courts in the determination of customary cases. They are as follows; Repugnancy test, Incompatibility test and Public Policy test.

#### **Repugnancy Test**

A rule of customary law must not be repugnant to Natural Justice, Equity and Good Conscience. Section 18(3) Evidence Act 2011 states that "in any judicial proceedings where a custom is relied upon, it shall not be enforced as law if it is contrary to public policy or is not in accordance with natural justice, equity and good conscience" The court has on so may occasions declared invalid customs that has failed this repugnancy test. In *Ukeje v Ukeje*, the Supreme Court held that a custom denying women the right to inherit their deceased father's property is invalid. In *Okonkwo v Okagbue* <sup>[31]</sup>, it was held and declared that a custom which allows woman to be married to a dead man was invalid. In the case of *Mrs. Glory Anieze v Mrs. Josephine Anieze* <sup>[32]</sup> unreported where a woman married another woman as her wife for the purpose of producing children for her by arranging men to sleep with her, the Customary Court of Appeal, Asaba held and declared invalid on the ground that it was repugnant to natural justice, equity and good conscience.

In *Uke v Iro*, a custom denying women the right to give evidence in relation to land subject of customary occupancy was declared invalid. In *Meribe v Egwu* <sup>[33]</sup>, a custom allowing women to women marriage was declared invalid. In *Guri v Hadejia N.A* <sup>[34]</sup>, a custom denying the person accused of armed robbery the right to defend himself is held to be contrary to natural justice, equity and good conscience.

#### **Incompatibility Test**

Various High Court Rules enabling the application of customary law provides that a rule of customary law which is incompatible either directly or indirectly or by necessary implication, with any law for the time being in force cannot be observed or enforced by the courts. This implies and simply means that where there is an existing legislative enactment, and there is a custom contrary to that legislative

enactment, such custom is invalid. In *Agbai v Okogbue* <sup>[35]</sup> the plaintiff's sewing machine was seized because he failed to pay the development levy for the purpose of building a health centre in the village. The plaintiff contended that he was not a member of the age grade association because his religion forbids him from joining it. The court held that the plaintiff is entitled to the tenets of his religion and the custom which translates the plaintiff as an automatic member of the Umunkalu age grade association, without his consent is incompatible directly with the provisions of section 38, 1999 constitution which provides for right to freedom of thought, conscience and religion.

### Public Policy Test

Section 18(3) Evidence Act 2011 provides that any custom relied upon shall not be enforced if it contrary to Public Policy. A custom is contrary to public policy where it is injurious to public interest or welfare of the people. A custom in Nigeria promoting promiscuity, discrimination because of circumstances of birth, lesbianism and gay marriage is against Public Policy. As such, where a custom is against public policy, it will not be valid.

### The Yoruba Customary Law of Inheritance

The native law and customs among the Yoruba, especially in respect to inheritance and succession, have grown out of the age-long practices and dealings of the people. The Yoruba customary law of inheritance and succession appears to be general among the constituent Yoruba States. This, however, is not to say that there are no few differences among the sub-ethno cultural groups. For example, findings have shown that among the Ijesha people mode of inheritance is bilineal. Among the Ijebus, it is patrilineal (although women can inherit). And for the Ilaje and Idanre people of Ondo State, it is bilineal.

Under the Yoruba Native Law and Custom, it was the brothers and sisters (of full blood) of the deceased who were entitled to inherit property. However, the tendency now is to excise the brothers and sisters and limit the right to inherit property to the children of the deceased. The rights of the brothers and sisters are in some areas only curtailed but not abrogated. For example in *Abeokuta* they are still entitled to one-third (1/3) of the deceased property <sup>[36]</sup>. However a testator by Will may enlarge his family to include brothers and sisters. In *Sogbesan v Adebisi* <sup>[37]</sup>, the deceased founder of the family devised his property to his heirs as family house. In this Will, he appointed one of his brothers as the head of family. The court held that the Will as a whole made it clear that the testator intended the word "family" to include his brothers and sister and their descendants as well as his own children.

According to Yoruba Native Law and Customs, if an individual dies intestate, his children both male and female succeed to the estate as a single entity as was held in *Amadi v Obayomi* <sup>[38]</sup>. As joint owners of the property they have the right to ingress and egress and to attend meetings therein. The eldest son known as Dawodu inherits the responsibility for the management of the estate. In dealing with this point Osborne C.J. in *Lewis v Bankole* <sup>[39]</sup> said that this was a well-established rule both in Lagos and in other parts of Yoruba land. It was however on the death of the Dawodu; he said that variations would begin. However, it has been a laid down general rule of inheritance among the Yoruba that the eldest son succeeds to the land in the place

of his father for his own benefit and that of the family <sup>[40]</sup>. The children and wives though have the right to live in the house. The widow who takes another husband loses her right. The son had no right to sell the land or house for he holds it in trust for the family. Accepting that the rationale for keeping the headship in the male line is that the women on marriage go to live with their husbands, the court nonetheless accepted the evidence of the chiefs that what was really important in this role was the mental and cultural competence of the family head.

### Igbo Customary Law on Succession

The rules of customary law on succession in Igboland are not uniform. However, certain similarities can still be identified. The Igbos of Nigeria are found predominantly in Anambra, Abia, Imo, Enugu, Ebonyi and some parts of Rivers and Delta State. The cardinal principle of customary law of succession among the Igbos is primogeniture that is succession by the first born of the line. This principle, which is also prevalent in the customary laws of other ethnic groups in Nigeria, determines the right to inherit property in Igbo land and therefore the interest of all persons related in one way or the other to the deceased. The exception to this rule exists in Afikpo and Bende areas of Ebonyi and Abia States which are bilineal, where women have full legal capacity to own land and to transmit their rights and interests to others either intervenes or death. Daughters, like wives, do not inherit under Igbo customary law <sup>[41]</sup>. A daughter can only inherit were she accepts to remain unmarried in her father's house with a view of raising sons in her father's name.

This is known as "Nrachi" <sup>[42]</sup> or "Idigbe" institution. It usually happens when the deceased left behind a substantial estate but no surviving sons or other male issue of the lineage to inherit it. The idea behind this practice is to save the lineage from extinction. The daughter as an "Nrachi" or "Idigbe" is entitled to inherit both movable and immovable property of her deceased father's estate. The legal interest vests in her until she gives birth to her own children. However, if she bears sons and daughters, the sons and not the daughters will succeed her in accordance with the rule of primogeniture.

### Benin Succession and Inheritance Law

The customary law of succession of the Benin is not only intriguing and interesting but it is a law that stands on its own among its peers. It is thus sui generis. Generally speaking, the Benin customary law shares some attributes in common with the customary laws of other ethnic groups in Nigeria, it is unique in that it is the only customary law that has to do with the primogeniture rule linked with the performance of the second burial of the deceased father. For instance, the customary law of succession to the estate of a deceased person among the Benin (otherwise known as the Edo people) follows the blood line. This means that it is the children of the deceased that inherit the property of their father on his death.

Although this patrilineal mode of inheritance is usually adopted, there is a slight variation brought into it by a rule known as primogeniture, which is the principle whereby only the surviving male children of the deceased can inherit the property left behind by the deceased. Under the primogeniture principle, the eldest son of a deceased inherits the house in which the father lives till his death, which is

known as the igiogbe, after performing the second burial rites and if there are other properties left, these would be shared among the remaining children of the deceased including the first son. The inheritance of the Igiogbe by the first son does not exclude him from sharing from other properties of the father.

According to Ogbobine <sup>[43]</sup>, this customary law, which allows the eldest son to inherit the main house (igiogbe) to the exclusion of the other children, cannot be regarded as unfair or unjust because the eldest son is supposed to play his traditional role as the guardian of his younger brothers and sisters, and the custodian of the family shrines, which are of great significance in other aspects of Benin custom. If, as the eldest son, he is to carry out the responsibilities attached to that position properly, the social and family duties should be coupled with the proprietary right to meet the obligations. Therefore, on the demise of a deceased and after the performance of the final burial ceremonies, an inventory of all his properties is taken and the okaegbe (head of the extended family), together with other senior members of the family, will share the properties among the deceased's children as prescribed by the custom, While justifying the need to leave the main family house (igiogbe) for the eldest son, Obaseki J was of the opinion that since the eldest son steps into the father's shoes on his death and takes charge of the family, he must of necessity take charge of the building which houses the family <sup>[44]</sup>. On appeal against the case in which above statement was made, the Nigerian Supreme Court remarked:

Although in general, a testator may dispose of any property vested in him at the time of his death, it was impossible for him to devise any property which has to devolve on a particular class of persons by customary Law on his death <sup>[45]</sup>.

This means that if the eldest son offended the father before his death and the latter decided to punish him by giving the igiogbe to a younger brother, the devise would be invalid under the customary law. It has thus been held that the Bini custom of inheritance whereby the eldest son of a deceased person inherits the igiogbe is not repugnant to natural justice, equity and good conscience and there is nothing that the eldest surviving son of the deceased could do that would debar him from relying on or taking benefit of further benefit under section 3 of the Wills Law of Bendel State (applicable to Edo State). i.e from inheriting the igiogbe <sup>[46]</sup>.

### **Hausa's arrangement of Inheritance and Succession**

The Hausa community occupying the Northern part of the Niger-Benue confluence had originally been converted to Islam around 1804 when Shehu Usman Dan Fodio launched his jihad against what is believed to be the corrupt and irreligious practices of the Habe or Hausa rulers <sup>[47]</sup>. The general rule under Islamic law is that both males and female have the right to inherit the property of their deceased parents, husbands and even sons. In fact, the Holy Quran spells out the rights of inheritance of women in different capacities, e.g Daughter, wife, mother, sister and even grandmother <sup>[48]</sup>. Therefore, whatever the parents leave after their demise, their children and nearest kin have the rights over their property which should be shared according to guidance from the Quran, in which the rights of males and females are spelt out in detail:

Allah enjoins you, concerning your children: the male shall have the equal of the portion of two females, then if they are

more than two females, they shall have two-thirds of what the deceased has left, and if there is one, she shall have the half and as for his parents, each of them shall have the sixth of what he has left if he has no child and (only) his two parents inherit him, then his mother shall have the third but if he has brothers then his mother shall have the sixth after (the payment of) a bequest he may have bequeathed or a debt your parents and your children you know not each of them is nearer to you in usefulness; this is an ordinance from Allah Surely Allah is Knowing, Wise <sup>[49]</sup>.

The above injunction means that when the son takes a full share, the daughter takes half of the son's share except when the deceased left no son and the daughter then takes half of the whole estate of her deceased parent. Two or more daughters will be entitled to two-thirds of the net estate in the absence of a son of the deceased and they must share the two-thirds equally. The widow gets one-fourth of her deceased's husband property, if he leaves no children, the widow gets one-eighth. If there is more than one widow, their collective share is one-fourth if there are no children. However, if there are children, their collective share is one-eighth from which they divide equally <sup>[50]</sup>.

### **Conclusion**

Efforts have been made to examine the right of inheritance of women in Nigeria. The work found that African traditional institutions have had their own way of devolving property since the beginning of time. This work is therefore an attempt to highlight some of the practices of the Nigerian traditional communities with respect to succession. The work further found that the long time marginalization and domination of fundamental human rights of woman in patriarchal Nigeria is not a secret. However, the 2014 Supreme Court of Nigeria judgement in the case of Ukeje v Ukeje have revolutionized women's inheritance rights not only for the Igbo women but for Nigerian women in general by reversing the old order which exclude women from inheriting land and other immovable intestate property based on Nigeria's traditional beliefs in patriarchy and male primogeniture. The work here recommends that public enlightenment be carried out to particularly changing the psyche of Nigerian men into accepting the new reality of women's right to inherit property under customary law going by Ukeje's judgement which is the crue of this work.

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