



Culture and gender issues on inheritance rights in Nigeria

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Abstract

The case of gender inequality is the cankerworm that have eaten deep in various ethnic groups in Nigeria on areas such as electoral position, work place and inheritance rights inclusive. Due to the above stated facts, women have little or no participation on property inheritance in Nigeria unlike their gender counterpart. This is because various customs gives an over-whelming preference to the male child; thus, an unfair and unjust treatment has been meted on females. Some customary laws encourage gender inequality, social injustice and little appreciation of the women empowerment. These discriminatory aspects of property inheritance under customary law and statutes in Nigeria manifests in different forms and scope ranging from primogeniture rules to the right of spouses which are contrary to various international conventions. This study aims at appraisal of the inheritance rights of women under the various customary laws and statutes in Nigeria. It is centered on the position of women concerning inheritance right and the position of the law concerning inheritance right of women in Nigeria. It also deals with the effect of these laws of inheritance to the larger society, the discriminatory trend fuelled by ignorance, tradition and religion which serves as a bar to the economic and financial empowerment of women and their right to self-actualization. Doctrinal methodology is adopted with both primary and secondary sources such as relevant books, journals, statutes, legislatives and internet sources. It recommends for sensitization of women and creation of awareness program for women on their legal rights.

Keywords: inheritance, discrimination, gender, customary law, ethnicity, religion

Introduction

The unavoidable circumstance of death comes with challenges for the family of the deceased; aside from the burial rites, ceremonies and other necessary activities, the foremost of it all is what to do with the property of the deceased. In Nigeria, just as practiced in most part of the world, when a person dies, and leaves property, the property of that person is transferred to the beneficiaries as their inheritance. The issue of who inherits deceased property is decided in many ways depending on the prevailing custom. A person can decide before he or she dies who should inherit his property and under the English law, this is written down and signed in a document called a Will. But in a situation where a deceased died intestate, there is no Will and other laws are put into use to determine who inherits property. In this instance, customary law comes in handy.

Customary law varies as ethnic groups varies in Nigeria and so does the inheritance rights differ which by common knowledge favours the male gender more than their counter parts. The cultural practices of the various tribes, societal norms, illiteracy, poverty, and religious beliefs have all fuelled the continuing inequitable representation of women directly or indirectly. Nevertheless, the fact that there are laws, conventions and treaties that advocate for the equal treatment of all human beings regardless of their sex, tribe, origin and circumstance of birth, nonetheless these discriminatory practices still operate today.

Historical Development of Inheritance Rights of Women in Nigeria.

Human rights are regarded as first-generation rights and are provided for in the Constitution ^[1] while property acquisition for men and women in Nigeria for the most part, is through inheritance. And this inheritance rights to a greater extent is influenced by the prevailing customs and norms in the different parts of Nigeria and due to the influence of such customs, the men have a greater chance of inheritance over the women.

Historically, in the western part of Nigeria, women do not inherit land and property from their parents except in rare cases when there is no male offspring from the family however, this depends on the belief of the family members. A woman can also inherit her husband's property and land if she is legally married to him, but will lose such properties if she has no male child. The cultural norm in the eastern part of Nigeria have is that a female gender cannot inherit her father's property if she has male siblings. Even if she is married with male children, the inheritance rights falls on the male offspring.

Being a woman disqualifies one from inheriting her father's property in the Southern part of Nigeria not minding if the woman is the first child. Then the Northern part of Nigeria is worst of as due to religious and customary reasons women are excluded from the inheritance rights. But human rights as we all know are rights inherent to all human beings, irrespective of the nationality and gender; we are all equally entitled to our human rights without discrimination. The breakout on the discrimination of women over inheritance right is attributed to the intervention of education, increased awareness on inheritance rights and the formation of the inheritance laws in Nigeria.

The appellate court gave a landmark judgment in *Mojekwu v Mojekwu* ^[2] concerning the "*oli-ekpe*" custom of Nnewi in Anambra state which insist that only male children can inherits their father's property. The court thus echoed that "all human beings both male and female are born into a free world and are expected to participate freely without any inhibition on grounds for sex; apart from being unconstitutional is antithetical to a society built on the tenets of democracy, which we have freely chosen. As people, we need not travel all the way to Beijing to know that some of our customs, including the Nnewi '*oli-ekpe*' custom are not consistent with our civilized world in which we all live today. Accordingly, for a custom or customary law to discriminate against a particular sex is to say the least an affront, I have no difficulty in holding that the '*oli-ekpe*' custom repugnant to natural justice, equity and good conscience" ^[3]. The afore mentioned case ^[4] in alignment with the 1999 Constitution ^[5] have been the turning point for the hope of women concerning their inheritance right in Nigeria.

Statutes on Inheritance Rights of Women in Nigeria.

There are various statutes on testate inheritance/succession in Nigeria. The Wills Amendment Act ^[6] and Wills Amendment Act ^[7] are statutes of general application which were in force in England on January 1, 1900. Also, the Wills (Soldiers and Sailors) Act ^[8] and Wills Laws of Western Nigeria ^[9]. Testate inheritance in some states in Eastern Nigeria is governed by the Succession Law Edict ^[10] in which the provisions of part 4 of the 1987 Edict are similar to those in the Wills Act, 1837 and Wills Law, 1959 ^[11].

It pertinent to note that these laws apply in respect of the spouses of a statutory marriage and their children. No disability is placed on widows with regard to inheritance under a testamentary disposition. They are not treated differently from other beneficiaries with regard to their general right of inheritance. Sadly, the provisions of these laws, however, do not extend to widows who contracted customary law marriages.

The Wills Act laws place no restrictions on women with regard to inheritance under a testamentary disposition. They are treated equally with all other beneficiaries. However, these Acts apply only to women married under civil law, not under customary law. By law of custom, certain real property cannot be affected by testamentary disposition. Instead, it must descend by way of such customary law, and thus cannot be affected by any of the Wills Act(s). This is enshrined in section 3(1) of the Wills Law ^[12]. Thus; "The real or personal estate which cannot be disposed by the applicable customary law, cannot be disposed by will". This deference to customary law can be very harmful to women: it usually means that they are denied use of any fair portion of the estate. The Wills Act(s) are usually inapplicable, as wills are rarely if ever made in Nigeria, and where there is a will, it does not favor female spouse. Even when a will is made in favor of the spouse, in-laws will generally contest such gifts. On many occasions, the widow does not know how to access the courts to enforce the will, or is prevented from doing so by threats and even physical force or violence.

The Administration and Succession Law applicable in the Eastern States, specifically provides for the distribution of movable and immovable property. If there is a surviving spouse but no children, the estate is held in trust for the spouse. Any interest in the estate belonging to the wife will be hers for the remainder of her life, unless she remarries, at which point such interest terminates and reverts to the siblings of the deceased in equal shares. If there are children, they receive two-thirds of the estate; the surviving spouse receives one-third. Again, such interest remains absolute for the surviving husband, but for the surviving wife only until she dies or remarries

Similarly, the Administration of Estates Law ^[13] applicable in the Western States applies only where persons are married in accordance with the Marriage Act, and prescribes for devolution of property. However, it gives deference to customary law for people subject to such law, even if they have entered into a civil law marriage according to the Marriage Act.

The Marriage Act ^[14] governs the intestate inheritance/succession in the Eastern States, predominantly Igbos, for persons married under the Marriage Act. The Act provides that; "where any person who is subject to customary law contracts a marriage in accordance with the provisions of this ordinance, and such person dies intestate, subsequently to the commencement of this ordinance, leaving a widow or husband, or any issue of such marriage, any property of which the said intestate might have disposed by will shall be distributed in accordance with the provisions of this law, any customary law to the contrary notwithstanding provided that.

Overview of the Nigerian Legal System on Inheritance Rights of Women

The Nigerian legal system can best be described as a mixture of various legislations; English law, customary law, Islamic law and judicial precedents. The various states have various applicable laws, established courts as rule of courts. This complex legal system works in conjunction with the already established social controls in the society and it offers protection for its citizens against bias based on gender, ethnicity and religion.

The 1999 Constitution ^[15] reiterates non-discrimination on citizens on the basis of sex and prohibits discrimination on issues such as place of origin, sex, religion, status, ethnic or linguistic association or subjected to any disability or deprivation merely by reason of the circumstances of his birth.

Furthermore, the Constitution encourages the equality of rights for all citizens of Nigeria ^[16] and invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office under the State or as a member of the armed forces of the federation or member of the Nigeria Police Force or to an office in the service of a body, corporate established directly by any law in force in Nigeria ^[17].

Property rights for all are secured by the 1999 Constitution, which confers upon all Nigerians the right to acquire and own property anywhere in Nigeria. This means that irrespective of gender, age, ethnicity or religion, the Constitution ensures that every citizen has an equal opportunity to acquire and own immovable property anywhere in the country.

Inheritance is one of the commonest ways for women to acquire or access property. However, the pursuit of gender equality in inheritance rights has been one of the most difficult challenges in rights-based approaches owing to the complexity as well as entrenched patriarchal characteristics of our legal system. Judicially, the courts held in various judgments that the customary law of inheritance which excludes women from inheritance of their deceased ones, is in conflict with the non-discrimination provisions of the 1999 Constitution (as amended), and therefore void.

The prevailing form of inheritance practice in Nigeria is the intestate inheritance where the deceased died without a valid will or binding declaration as to how his property would devolve. Where this happens a problem arises as to which mode of inheritance practice would be adopted. The method used to determine what system of inheritance to be adopted for sharing a deceased's property depends on the form of marriage he adopted, be it a civil, customary or Sharia marriage. The choices available to individuals are either a statutory, civil marriage, or a marriage under a customary or Sharia system which is permissive of polygamy.

In order to have one's property shared under extant statutory provisions, one must contract a valid civil marriage under the Marriage Act, which is the primary statute governing marriage in Nigeria. Therefore it is necessary to both complete a formal registration process and to get married within a licensed facility such as a church or court registry. Thus, a civil marriage establishes the presumption that the couple intend to subscribe to the British inheritance system. This presumption is founded on two primary bases. First is established in the case of *Cole v. Cole* ^[18] whereby individuals married in the Christian form had the presumed right to succession on Christian principles. This principle was codified in the Marriage Act ^[19] and the case of *Salubi v Nwariaku* was decided on this principle, where a person, subject to native law or custom marries under the Marriage Act and dies intestate, the applicable law for the distribution of his estate would be the Marriage Act and not the Administration of Estates Law or Customary Law. This is because his intestacy is governed and regulated by English Law ^[20].

In summary, a female gender can attain equal rights and inherit property if the marriage is itself a civil marriage, therefore, the couple did not cohabit customarily and will not be subjected to customary prohibitions. Contrary a couple that did not have a civil marriage cannot be bound by latter but can also be bound by the latter system if the deceased left a will.

It is trite law that where the couple marries either under a customary system, or marries under a Sharia system but is not aware of their rights under the Sharia system of inheritance, or had a Christian marriage which was not registered in compliance with the Marriage Act and, potentially, in the case the couple lives a "traditional lifestyle" but had a civil marriage. Alternatively, inheritance will be governed by the Sharia/customary law the case may be.

Treaties and Conventions on Women's Right

Article 2, Universal Declaration of Human Rights (UDHR) provides that, everyone is entitled to all the rights and freedoms set forth in the declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Those rights articulated in the declaration include: the rights to equality before the law and to equal protection; the right to equality with respect to marriage; the right to own property; and the right to an adequate standard of living, including the right to adequate housing.

Furthermore, International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) re-echoed, the rights articulated in the Universal Declaration on Human Rights, and recognised the right to equality between women and men and the right to non-discrimination. These rights to equality and non-discrimination have direct implications with regard to women's access to property and inheritance. Women should also have equal inheritance rights to those of men when the dissolution of marriage is caused by the death of one of the spouses.

Other human rights instruments also recognise women's rights to property and inheritance such as the Declaration on the Elimination of Discrimination against Women ^[21] that, 'all appropriate measures, particularly legislative measures, shall be taken to ensure to women, married or unmarried, equal rights with men in the field of civil law', and the right to acquire, administer, enjoy, dispose of and inherit property, including property acquired during marriage.

Under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the foremost international treaty on gender equality, State Parties agree to take a series of measures to combat discrimination against women. CEDAW also recognises that, in many cases, the driving force behind

discrimination against women runs deeper than the rule of law. Article 5 of the Convention ^[22] requires that 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 are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women." This issue of customs and traditions proves to be highly relevant to inheritance rights.

Again, Article 18(3) African Charter provides that discrimination should be eliminated and integrates international legal standards as provides that the State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa is a vital step towards raising the status of women. The Protocol provides, in Article 16 on the right to adequate housing, that: Women shall have the right to equal access to housing and to acceptable living conditions in a healthy environment. To ensure this right, State Parties shall grant to women, whatever their marital status, access to adequate housing. Article 16 further states that women should not suffer discrimination due to their marital status. In addition, the Protocol specifically recognises women's right to inheritance, and Article 21 stipulates that; a widow/widower shall have the right to inherit each other's property. In the event of death, the surviving spouse has the right, whatever the matrimonial regime, to continue living in the matrimonial house.

Under Article 21 ^[23], women and girls are also ensured the right to inherit their parents' properties in equal shares with boys. These provision on inheritance clearly articulate a free-standing right of women to inherit, outside of the procedural scope of equality and non-discrimination.

African Charter and Inheritance Rights in Nigeria

The limitations placed by the provision of the 1999 Nigerian Constitution (as amended) on the enforcement of Human Rights as enshrined in the various International and regional Human Rights instruments to which Nigeria is a signatory leaves a lot to be desired. However the popular regional Human Rights instrument The African Charter on Human and Peoples Rights otherwise called the "Banjul Charter" ACHPR contains most of the provisions of other international Human Rights instruments especially on equality of all persons and elimination of very discrimination against women. It prescribes for recourse to the application of other international human rights treaties.

Interestingly, the ACHPR has been domesticated and forms parts of Nigerian laws. Rightly some decisions of the Nigerian Courts have embraced the above position in *Oshivere v British Caledonian Airways Ltd* ^[24] the Court of Appeal observed that:

"... an international treaty is an expression of agreed compromises principles by the contracting states and is generally autonomous of the municipal laws of the contracting states. The contracting parties have submitted themselves to be bound by its provisions. Thus any domestic legislation in conflict is void".

The ACHPR bore culture in mind yet emphasised Women's Rights against any form of discrimination. Therefore it's a cure to the limitations on Women's Rights created by the Nigeria Constitution. In *Ephraim v. Pastory* ^[25] the court relied on the ACHPR declaration to equality of all persons contained in the universal declaration of Human Rights (UDHR) the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR) the last three together are known as the International Bill of Rights, to override the customary law which debarred women from selling clan land while granting the men the right to do so.

Beijing Declaration and Platform for Action (BPA).

The Beijing Declaration and Platform for Action undertake legislation and administrative reforms to give women equal rights with men to economic resources, including access to ownership and control over land and other properties, credit, inheritance, natural resources, and appropriate new technology. This aims at advancing the goals of equality and the inherent human dignity of men and women on development. The assurance of peace in the interest of humanity by reducing the poverty level of women everywhere in the universe.

Cardinal to the United Nations strategies are ensuring women's equal access to economic resources including land, credit facilities, science and technology, education, vocational training, information, decision making bodies and markets by means of international cooperation. X-raying these Human Rights instruments showed consistency in the importance and emphasis on the actualization of women's human rights, notwithstanding any customary law or customary practices. It must be noted that most states in Nigeria are fast legislating against the obnoxious customary practices. For examples, the Enugu and Anambra States Widowhood/Widowerhood Prohibition to Property Rights, 2001 and 2005 respectively. The African Charter on Human and Peoples Right has become part of the Nigerian municipal Law. Therefore all customary practices in contradiction to the provisions of ACHPR are illegal and should not be upheld under the guise of native law and custom.

In *Asika v. Atuanya* ^[26] the trial court found as claimed by the plaintiffs/appellants (all females) that the property situate at New American quarters, Onitsha was rightfully devised by the Plaintiff/appellants deceased father to

all his children equally. The Trial Court went ahead and held that to partition the property as prayed by the plaintiffs/appellants will met injustice to the defendant/respondents notwithstanding that the plaintiffs/appellants instituted the case so as to stop their nephew (the son) of their late brother who is the second child from appropriating the property alone.

The Court's decision that it will amount to injustice was simply based on the Defendant/Respondent's defence that under the Onitsha Native Law and custom that the appellant (his aunts) are not entitled to anything as he is the rightful heir. One may ask, what has custom to do with testate inheritance? Upon appeal, the Court of Appeal per Denton-West held, that where a Will bequeaths property equally, the beneficiaries of the estate shall take equally without discriminations. The respondent's submission that the estate descended on him alone in accordance with Onitsha law cannot overrule the contents of the Will. Moreover, the parties were before a superior court of record not before Onitsha Customary Court. The court of appeal was indeed sensitive to gender as a suspect construct.

The court in *Arah & 4 Ors. V Orah & Anor* ^[27], per Hon. Justice M.O Anyachebulu re-echoed the above principle when he relied on section 4(g) ^[28] of the prohibition from infringement on the rights of the widows and widowers, laws of Anambra State 2005 to be hold that an uncle has no interest and cannot inherit from his deceased brother's estate against his children and widow.

Argument for Inheritance Right of Women in Nigeria.

Gender equality to inheritance rights in Nigeria differ according to tribes or various state. The prevailing custom of a particular community of the deceased person is applied with regards to his personal property. For properties such as land, farmland and houses, the applicable law is that of the place where the property is situate on the principles of *lex situs*. This aims at discouraging conflict of laws in customary law application because customs vary from one locality to the other.

Inheritance by Daughters in the Igbo Custom

Under most customary law, daughters and wives, do not inherit. The only situation in which a daughter can inherit is where she chooses to remain unmarried in her father's home with a view to raising children there. This is known as '*Nrachi*' or '*Idegbe*' custom, and is practiced in various regions and communities in Nigeria. This situation usually arises when a deceased man leaves behind an estate, but no surviving male issue to inherit it. The idea underlying this practice is to save the lineage 'from extinction'. The daughter, now considered an *Idegbe* or *Nrachi*, is entitled to inherit both movable and immovable property from 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 rather than the daughters succeed her in accordance with the rule of primogeniture. Under the customary law applicable in the Anambra and Imo states, on the whole, daughters have no rights to inherit their father's compound or residual land and houses. Some local variations do provide for inheritance by daughters; however, control of the inherited property remains with the oldest son.

Discriminatory Factors to Female Inheritance Practices in Nigeria.

This philosophy is divulged from the mindset or central philosophies that exist in the minds of any traditional customary society which is manifested various ways, as regards the practice of disinheriting women. The social perception of women is low due to high illiteracy, poverty and cultural practices, which treat women as sub-persons, objects of inheritance rather than subjects of inheritance. This proposition forms the basis for the widespread perpetuation of acts some which are very harmful to the overall well-being of women.

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

Furthermore, the payment of bride price is made by the groom or his kin to the kin of a prospective bride in order to ratify a marriage. This payment is negotiated in a manner akin to haggling for foodstuffs in any open market and this is done by the elderly men of both families without the input and participation of the bride and her mother. At the end of the bride price payment, the bride is regarded as part of the man's property and not a partner. It is this writer's humble submission that this singular practice marks the conception of the social "permissibility" of the discrimination of the woman in the minds of the husband and his kinfolk and this is exhibited in various ways throughout the span of the marriage especially at the demise of her husband.

Oluyemisi Bamgbose ^[29], rightly states the negative effects of bride price on women to include;

- a. Transfer of right: The nature of the practice is an indication and confirmation that a woman is viewed as a chattel with a price tag that is purchase by a person who pays the price. The "purchaser" like a purchaser of goods in law has a right to deal with the "purchased chattel" in any manner. This is the attitude of men under customary law as regards their wives.
- b. Loss of right: After the payment of the bride price, the woman remains married to the man who paid it. If the marriage breaks down, the woman must return the bride price back to the man for her to regain her freedom. Non-repayment of the bride price makes the woman remained married to the man to the extent that

any child given birth to by the woman outside the marriage is deemed to be the child of her estranged husband. The issue is more severe when the woman is unable to refund the bride for economic reasons.

By the foregoing, if wives are regarded as property of their husbands, they are therefore objects of inheritance themselves. In some cultures, it has been argued that it is the man who pays the bride price (dowry) for a wife. The belief is that a man got his wife for a price and as such, she is a piece of property. Arising from that belief, in our customary reasoning, such a woman cannot inherit her late husband's property; instead, she is to be inherited by one of her deceased husband's brothers. After all, how can property inherit another property? One may rightly conclude that it is the issue of payment of bride price by a man in order to secure his wife's hand in marriage that places her in a position of inheritable property: after all she was paid for and bought. It was based on this belief that the Court of Appeal in Lagos had held in the case of *Ogunkoya V. Ogunkoya*, that 'wives are also regarded as chattel that are inheritable by other members of the family of the deceased husband under certain conditions.'

Inheritance under the Islamic Law

A wife is given no share in her husband's estate, but the husband is the first to inherit from the deceased wife's estate even before her sons. A daughter can only inherit if no male heirs exist. A mother regarded as an heir to her deceased son's estate at all whereas a father is. Widows and daughters, if male children exist, were at the mercy of the male heirs for provision.

In northern Nigeria, which is predominantly Muslim, women's inheritance is governed by the Sharia law. Here women can acquire and retain their own property, pass it on to their heirs, and can inherit from their deceased parents, husbands, brothers, sisters, daughters and other relations. Under this law code, the share of inheritance a female receives is half as much as male heirs. A wife, though, has the right to only one-quarter of the estate if her deceased husband has no descendants and one-eighth if there are heirs. If there is more than one widow (that is, surviving a polygamous marriage), this one-eighth portion is shared between them. These are usually inadequate assets, with no provision for housing or land. Under the Sharia law, a sole surviving daughter is entitled to half the net estate, whereas a sole surviving son receives the entire estate. This inheritance practice is clearly biased against Muslim women; however, provided that it is adhered to, it can be argued that it at least limitedly secures Muslim women's land and inheritance right, though not their equality.

Conclusion

The writer has observed that custom and religion affects women's rights to inheritance. A woman is not viewed as man's equal, consequently custom and religion will hardly concede equality of share in inheritance. These prevailing system in Nigeria relegate woman to the background thereby covertly or overtly reinforcing the inferiority of women. Notwithstanding the various laws promulgated to protect women's rights to inheritance in Nigeria, it is yet to yield positive results. The writer advocates for continuous education of women to reduce illiteracy rate and awareness programmes on these prevailing rights. In addition, the author's advocacy for consciousness of right of inheritance among women can only be achievable when there is a correlation between education of women and mental restructuring.

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