



Proposing legislation for the enforcement of women's right to succession in Nigeria: Post UKEJE v UKEJE and other cases

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Abstract

The right to inheritance by women over the years has been a knotty legal tussle which has expanded the jurisprudence of family and customary law in Nigeria. This Article examines the viability of a proposal for a legal framework for enforcement of women's rights to inherit property in Nigeria. The objective of this Article is to appraise the position of the law since the apex court decided in Ukeje v Ukeje and its impact on the enforcement and protection of rights of Nigerian women. Also, to determine the propriety or otherwise of the need for legislation to enforce their right to inheritance adopted from international legal instruments on the rights and protection of women.

Keywords: enforcement, women's, inheritance, jurisprudence, Nigeria

1. Introduction

The concept of human rights is borne out of the need to protect human dignity and ensure human wellbeing ^[1]. Certain rights have been recognised to achieve this goal, these rights were given recognition through the adoption of Universal Declaration of Human Rights (UDHR) in 1948 ^[2] and subsequently in the International Covenant on Civil and Political Rights (ICCPR) ^[3] and International Covenant on Economic, Social and Cultural Rights (ICESCR) ^[4] in 1966. Some of the rights guaranteed under international human rights instruments are defined to include the rights of women, girls and children. Gender rights over the years have gained prominence since the Beijing Conference of 1995. The essence of the conference was to advocate for improved socio-economic conditions of Women and the Girl Child. To further achieve the implementation of the Convention on Eradication of All Forms of Discrimination against Women (CEDAW) 1979. The human rights drive and the endorsement of individualism have meant that efforts – legislative, judicial and civil – are geared towards the universality principle and the vanguard in Nigeria is strong. For a number of scholars, the cultural intervening structures should be jettisoned and rights should be applied to the individual. This rights' theorizing has driven some commentators to the extreme. Some even lose sight of the fact that inequalities are unchanging realities in many aspects of life. And some make very general scathing expressions of dismissal of the perceived "negative" African treatment of women as though it were a universal reality. According to Okoboh, it is pathetic to observe that in African Societies women were tagged as inferior, less valuable than and subservient to men. Even now, in these rustic and rural African Societies including Nigeria, women are perceived as mere objects of production, reproduction and inordinate sexual gratification. As patriarchal and patrilineal as the Nigerian Society, it is fundamentally structured on gender and institutional inequality

between men and women and rigorously underpinned by the antiquated aphorism that "women are to be seen and not heard" ^[5]. Such statements also ignore the reality that inheritance is but one means of acquiring an interest in land in Nigeria. There is no law that bars or prohibits women from dealing in land under customary law either by way of purchase (outright transfer to her), taking out a pledge, being gifted land, or becoming a customary tenant ^[6]. The comments also neglect the fact that some so-called "inequalities" favour women.

According to Dada, marginalization of women in Nigeria is much more pronounced in the native laws and customs and they are mostly challenged in family law areas such as succession and widowhood issues ^[7]. She (Dada) contends that most cultures in Nigeria do not afford women with rights such as afforded by international instruments and local laws including the Constitution. Without contextualizing these problems, she isolates the primogeniture rule, exclusion of widows from succession (even though she admits that she is entitled to be maintained from the proceeds of the deceased husband's estate), daughter retention (Nrachi or Nnaeto customs) and labels them as unlawful ^[8]. To Dada, CEDAW should provide the basis for achieving equality between women and men through ensuring women's equal access to, and equal opportunities in political and public life and Chapter II rights of the 1999 Constitution should be justiciable. Furthermore, Her views published in 2014 fail to take cognizance of progress which have been made to emancipate women from abuses of some customs. Furthermore, she does not identify the *raison d'être* of these customs or the customary structures in which they are engaged. Apparently, to her, they are irrelevant in the application of human rights in inheritance situations – the universality principle.

Edu basing his critique on section 42 of the 1999 Constitution and other non-discrimination and equality provisions of CEDAW, ICCPR and ACHPR (and the Nigerian domesticated

version) He (Edu) frowns at some customary inheritance rules in the Southeastern states of Nigeria including the *Oli-ekpe* custom (which allows nearest paternal male relative to inherit as against biological female children) and the rules that appear to exclude females as being contrary to natural justice, equity and good conscience^[9]. He states that;

A customary law rule which falls foul of the right of equality with respect to inheritance upon intestacy runs contrary to democratic provisions in the 1999 Constitution and international treaties and conventions which Nigeria has ratified and even domesticated, as in the case of the African Charter. Such customary rules amount to an unjustifiable assault on the dignity of not just womankind but also mankind. The effect of such rules of customary law is to subject women to the status of second class citizens. Such rules clearly violate the right to equality enshrined in the constitution as well as international treaties and conventions which Nigeria has ratified^[10].

Ojikere and Chuan identify denial of inheritance and proprietary right as one of the common abuses of the dignity of women in Nigeria as provided in section 34 of the 1999 Constitution^[11]. They assert that the attitude of the courts to law generally (a positivist ideology), section 6(6)(c) and the non-domestication provision of section 12 of the 1999 Constitution constitute a setback and an affront to the protection of dignity of women^[12]. Particularly, they assert that the ESC and environmental rights necessary to guarantee life with dignity remain judicially unenforceable because they are mere “fundamental objectives and directive principles of state policy. Nonetheless, this whining over non-justiciability of Part II rights of the 1999 Constitution pretends as though a woman who has been treated with indignity does not have any access to any remedies before the courts outside ESC rights regime. Inheritance and property rights are in the realm of private law, yet the court will be prepared to make particular applications of the right to dignity of the human person enshrined in section 34 of the Constitution where it is necessary to do so. This is in addition to the judicial strides and gains which have been made in the application of the right to freedom from discrimination under section 42 of the same Constitution. Besides constitutional adjudication, a number of states have made laws that proscribe abuses of customary rules which constitute social and material disadvantage to females in the inheritance context. Diala’s recent paper critiques the judicial failure to subject customary inheritance rules to constitutional scrutiny using the Bill of rights^[13]. He claims that this preservative philosophy of the Supreme Court evident in decided cases is unsuitable to contemporary conditions. Finally, it is not true that the courts fail to utilize the Bill of Rights in the Constitution to assess customs.

2. Intestate succession and females (widows and children)

The making of international human rights agreements targeting gender-based discrimination such as the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) 1979 and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa 2003 has not prevented abuses of customs or the continued application of customs in the inheritance context that seem to truncate women’s human rights. Therefore it is not surprising that despite the efforts of international organizations and human rights activism and drive in favour of women especially in

property issues, challenges to perceived discriminatory customs hinged on the constitutional provisions in section 37 (the right to enjoy family relationships and its benefits), section 42(2) – the non-discrimination clause, section 16 and 44 (right against forced dispossession or eviction from property) – remain important judicial discourse. Claims are usually made by spouses (particularly women due to patrilineal patterns of inheritance and property tenure) and children of deceased persons who die intestate. Often, these claims clash with those of full or half blood relatives. The later category tries to prove that there was no marriage entitling the spouse to inherit or that the descendants are not children of marriage or of the deceased. At other times customary structures are presented as intervening in the succession mix as determinants of entitlement. As will be seen in next chapter, where there is no marriage, (and in certain customary contexts such as the *Nrachi* Custom) a claim may be founded on paternity. Again, conflict of rights arises between children and relatives of the deceased. These conflicts exist whether the claim is under customary law or under the general law. Therefore a major task of the courts has been to determine qualification for entitlement either based on marriage or paternity as well as the applicability of customary intervening institutions or structures. Below, we examine certain forms of relationships upon which claims to inheritance may usually be founded and the judicial attitude to them. Furthermore and importantly, this chapter evaluates the approach of the courts in balancing the rights of women to inherit against customary structures which are founded on group ownership and mutualism. It finds that although under customary law and social behaviour, there are a number of forms of relationships upon which rights could be claimed, the courts have insisted on legal marriage as the acceptable basis for inheritance. And as opposed to human rights advocacy that claims that women are disinherited and discriminated against under customary laws in Nigeria, courts have consistently protected women’s right to inherit even though this right is relative to the larger communal interests of families. Finally, the courts have courageously struck down abuses of customs that fail to accord these relative rights to women.

3. Women and Inheritance: Are Customary Law Structures Anti-Human Rights?

It appears that one of the most interesting and controversial issues in relation to intestate succession relates to the application of the human rights to the position of women under customary law. As discussed, feminist jurisprudence in Nigeria is awash with opinion that suggests strongly that customary law of inheritance truncates women’s right to inherit, thereby affecting other rights, including the right to life, housing and dignity. Generally, with only a few exceptions, customary structures of property holding are male-centred and patrilineal. A simple explanation for this could be that marriage is virilocal – the female members leave home to their husbands’ home leaving only male members to protect, manage and continue to put family property to use. Another is that customary law of property ownership is founded on communalism which fosters group rights, group land holding and intra-family social cooperation and mutual welfare support. In Contemporary Nigeria, the advent of individualism (a basic precept of human rights) has injected a clash of ideologies in the inheritance context. Therefore, courts of law in Nigeria have been

involved in a balancing act – they endeavour to protect women while at the same time preserve customary institutions of property ownership for their utilitarian values. Such institutions as family property, customary tenancy, pledge, land gifting and land borrowing are all forms of land use insurance schemes known to customary law. In such contexts, individual land ownership with full proprietary rights is alien ^[14]. While management and allocation authority may rest with certain male members of the family or community such as eldest male-members of families, chiefs and community heads, individual members are availed land that meets their needs. This is where the conflicts of ideologies spring from. Firstly, human rights advocacy insists that the women whose husbands die should have full proprietary rights as opposed to say, possessory or rights of use. Customary structures on the other hand prefer to preserve the communal foundations of land use. Secondly, customary institutions seem to intrude into private property or self-acquired property of the male members of their conclaves and endeavour to apply customary principles of title holding to such properties. This behaviour loses sight of contemporary development which began from the colonial period onwards when land acquired commercial value as an instrument of financial enablement and obtainment of credit for other purposes. Thirdly, there are abuses of the customs such that male-members with management functions over family land try to exclude women whose husbands die even from their possessory rights. Incidentally, human rights advocacy in its zeal to protect women falls into the error of categorizing these abuses as part of the custom thereby failing to separate the actual customs from their abuses. The result is a negative perception of customary institutions and structures as being anti-human rights. What the courts have done especially recently, is to realign and correct these practices that constitute abuses in the institutions. These efforts by the courts is more than half a century old.

4. The Decision in *Ukeje v Ukeje and Ors.*

In *Ukeje v Ukeje*, ^[15] in 1961, Lazarus Ogbonnaya Ukeje died intestate with real property in Lagos. The appellant's wife Mrs. Lois Chituru Ukeje and her Son Mr. Enyinnaya Lazarus Ukeje, both of whom obtained letters of Administration for and over the deceased's estate. The Plaintiff/ respondent is the daughter of the deceased and brought this suit as the daughter of the deceased she is entitled to share of his estate. The trial judge found for the plaintiff, declared the letters of Administration to be null and void, granted an injunction restraining the defendants from administering the estate, and ordered that new letters of Administration be created. The defendants/ appellants lodged an appeal, which the Court of Appeal Lagos (Division), dismissed for lacking merit. The case was brought before the Supreme Court of Nigeria by appellants appealing the Court of Appeal judgement. No matter the circumstances of the birth of a female child, such a child is entitled to an inheritance from her late father's estate. Consequently the Igbo customary law which disentitles a female child from partaking, in the sharing of her deceased lather's estate is in breach of section 42 (1) and (2) of the Constitution, a fundamental rights provision guaranteed to every Nigerian. The said discriminatory customary law is void as it conflicts with section 42(1) and (2) of the Constitution, therefore dismissed the appeal.

It therefore held that the court's order conferred on the respondents the authority to deal with the estate of the deceased. The Supreme Court had another opportunity to restate these principles under Onitsha Customary law in *Nzekwu v Nzekwu*. In this case, the deceased had died intestate, leaving a wife and two female children. Mrs. Nzekwu's in-laws sold the disputed land and the purchaser gave it out to tenants. The Court of Appeal held that a widow without a male child who chooses to retain her husband's name has the right to reside in the matrimonial home even if she is childless. She also has the right to use her matrimonial property as long as her rights do not negate the rights of her late husband's family. On appeal, the Supreme Court ruled that a widow has the right to reside in the matrimonial home, to be given farm land for cultivation, and to be supported by her husband's family. However, it upheld the lower court's validation of the male primogeniture custom and affirmed that a widow's matrimonial property rights are relative. It approved the conclusion of the trial court that no member of her husband's family had the right to dispose of the property at least while she was alive. The court ruled that any Onitsha custom which postulated that the 1st son had the right to alienate as the Okpala, property of a deceased person in the lifetime of the widow should be regarded as repugnant to equity and good conscience.

In *Mojekwu v Mojekwu*, the appellant, Mr Iwuchukwu, sued Mrs Mgbafor Mojekwu who, following her death, was substituted by her daughter, the respondent. Mr Iwuchukwu claimed right of occupancy over a property at 61 Venn Road, Onitsha. He claimed that under the *oli-ekpe* (primogeniture) custom of Nnewi, the brother of a man without a male child inherits his estate, even where the deceased had female children. The High Court dismissed his suit. Notably, the parties did not request the invalidation of the *oli-ekpe* custom, nor did the trial court address it. In dismissing Mr Iwuchukwu's appeal the Court of Appeal, on its own, invalidated the *oli-ekpe* as repugnant to natural justice, equity and good conscience. The first issue on appeal in the Supreme Court was the propriety of the Court of Appeal's unsolicited invalidation of the *oli-ekpe* custom. The Supreme Court held that in the circumstances, the invalidation was wrong. It based this reasoning on the need for judicial declarations to be founded on the claims of the parties.

In *Asika v Atuaya*, ^[16] the defendant argued that his siblings were only entitled to inherit their husbands' properties, not their father's estate. The trial court found that under Onitsha customary law women, including the female children of a deceased person, could not inherit their father's land. In partly granting the plaintiffs' claims, it found that where the land is situated in an urban area, the testator may devise it by will to his children, irrespective of their gender. The Court of Appeal ruled that the impugned custom was discriminatory and offended sections 42(1) and (2) of the Constitution. As the Court put it, 'customary laws and statutory provisions cannot, in any way, render constitutional provisions nugatory'

In 2014, *Anekwe v Nweke* ^[17] was decided by the Supreme Court. It further sent a message that abuses to customs which engender discrimination or oppression and tend to be usurpatory would be struck down by the court. Even though the language of the Supreme Court sounded more recommendatory than a declaration of a specific rule, the message was nevertheless sent.

The spirit behind these statements must be commended. The judgment serves as a platform for redress for women who suffer acts of discrimination from male members of their extended families. However, it is observed here that the language of their Lordships leans more on the side of recommendation or declaration of what should be the ideal. Indeed what the Supreme Court did was to endorse the ruling of the Ozo Awka Society which had correctly applied the custom in its fullness to the case of the respondent. In other words, the court actually upheld a part of the Awka custom to the effect that a widow is entitled to *reside* in matrimonial home while she is alive. The court referred to the case of *Nzegwu v Nzegwu* ^[18] to this effect: a widow has a “right of possession of her late husband’s property and no member of her husband’s family has the right to dispose of it or otherwise whilst one is still alive ^[19].”

It appears that in Northern Nigeria the contemporary approach is that the woman’s right to inherit any kind of property has consistently been affirmed. In *Muhammadu v Mohammed* ^[20] the plaintiffs’ action against their brothers was a claim of their own share of inheritance in the estate of their father who died 36 years before the action. The defendants maintained that their sisters were not entitled to inherit farmlands and grazing land. The Upper Area Court rejected this defence and gave a verdict in favour of the plaintiffs. On appeal, the Kebbi State Sharia Court of Appeal affirmed this judgment. On further appeal to the Court of Appeal, the court in affirming the judgments of the lower courts held that God designated the heirs under Islamic law and that no one could deny females their right to the inheritance under Islamic law. And as opposed to human rights advocacy that claims that women are disinherited and discriminated against under customary laws in Nigeria, courts have consistently protected women’s right to inherit even though this right is relative to the larger communal interests of families. Finally, the cases examined indicate that courts have continuously struck down abuses of customs or versions of customs that fail to accord these relative rights to women.

The general law includes received English law, (common law, statutes of general application, doctrines of equity), legislations by the National Assembly and state Houses of Assembly and byelaws made by local government councils. On the other hand, there are as many customary laws as there are distinctive areas or groupings of peoples. These laws are generally unwritten. The Constitution of the Federal Republic of Nigeria 1999 recognises and preserves these sources of laws in Nigeria and projects a policy of keeping them segregated. The law of intestate succession is impacted by a variety of laws from the two broad systems of laws. It is a residual matter over which all levels of government can make laws.

The Constitution of the Federal Republic of Nigeria 1999(As amended) provides for the separation of powers between the Federal Government and the State Government through the National Assembly and State Assemblies. The National Assembly operates a bi-cameral legislature with a Senate and House of Representatives. The Constitution separates powers exercisable by the Federal legislature in the Exclusive legislative list (CFRN 1999, Part I Second Schedule) and powers exercisable by both the Federal and State Legislature under the Concurrent list of powers (CFRN 1999, Part II Second Schedule).

These rights accrue to women by virtue of their birth as human beings. Globally, incidences of cultural, socioeconomic deprivation of the women has raised the awareness on the need to improve the recognition, enforcement of economic, social and cultural rights of the female gender. The increase in awareness of the need to implement and advance the course of the rights of the women has translated most global instruments and rights intentions into a written document in form of multilateral agreements. The second generation rights are enshrined in the Chapter II of the Constitution of the Federal Republic of Nigeria ^[21]. The crux of this article which has been discussed already being the examination of the decision of the court in *Ukeje v Ukeje* to enforce the right of women to inherit property in Nigeria. Furthermore, the need for this right to be adopted into legislation in relationship to the various International legal instruments addressing this issue and the provisions of our extant laws in Nigeria.

In Nigeria, there are many challenges bedeviling the implementation of these Conventions aimed at putting an end to various impediments to the realization of the rights of the women. The various international legal instruments and programme focus on the elimination of discrimination between genders and promote equality among all human beings in the exercise of both civil and political rights of Women. The purpose is to ensure the protection of the alienable rights to human beings, improve the quality of life and provide economic development. In Nigeria, most international Agreements on the rights of the women is governed through the Constitutional process of domestication by reason of the dual system of international law which is operational in Nigeria.

Nigeria is a dualist State by virtue of Section 12 of the Constitution of the Federal Republic of Nigeria 1999(as amended). To the extent that any treaty to which Nigeria has signed and ratified cannot be implemented unless, the National Assembly passes it into a national legislation. Although the treaty has global flavor except the National Assembly enacts it into law, it cannot be enforced. Furthermore, the treaty with its international flavor when implemented cannot be placed above the Constitution. To ensure equality of both the first and second generation rights under the Constitution, the National Assembly must of necessity amend the provisions of the Constitution through the instrumentality of S.9 to adopt provisions of international legal instruments and the decision of the Supreme Court of Nigeria in *Ukeje v Ukeje*. The essence of the legislation is to ensure enforcement of this decision within the States and rural areas where most of these unwholesome practices against women occur. Under Nigeria’s legal system, the International Covenant on Economic, Social and Cultural Right (ICESCR) has influenced the improvement of the socio-economic and cultural rights of Women. To establish the rights of women who have grown into married women but still faced with issues of inheritance in her matrimonial home upon the death of her husband the courts have clearly stated the position of the law. In furtherance of the spirit and intentions of the International Covenant on Economic Social and Cultural Rights, the Court of Appeal in *ASIKA V ATUANYA*, upholding inter alia, that a custom which disentitles women from inheriting their father’s property is contrary to the provisions of the Constitution of the Federal Republic of Nigeria 1999 which is the basic law of the

land, essentially superior to any other law, customary laws and statutory provisions in any way cannot render provisions of the constitution nugatory. Such a custom is also not in conformity with the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap 10 Laws of the Federation of Nigeria 2004, which is part of Nigeria's domestic law. By virtue of Article 2(7) of the United Nations convention on Eradication of all forms of Discrimination Against Women (CEDAW) 1979, government shall take all appropriate measures including legislations to modify or abolish all existing laws, customs or practices which constitute discrimination against women. This convention has universal jurisdiction and it is applicable to Nigeria. These judicial pronouncements have been made by superior courts of the land, however, more work needs to be done to ensure these decisions are enforced to put a stop to such discriminatory practices against women. It is important to state that the courts do not possess any enforcement mechanism necessary to implement these landmark decisions and would need some form of backing. This support is in the birth of a legislation on the enforcement of women's right to inheritance or succession. Having discussed earlier in the course of the paper that this issue is within the concurrent legislative list of the Constitution, the National Assembly, State Houses of Assemblies and Local Government Legislative Councils could make laws to this effect. It is important to further say that these ignoble customary practices against women occur in the remotest parts of the States where there exist little or no presence of security personnel.

5. Conclusion

The paper set out to evaluate the proposition that there is a need for a legal framework for the enforcement of women's right to inherit property under Nigeria's native laws and customs. Furthermore and importantly, this paper evaluated the approach of the courts in balancing the right of women to inherit against customary structures which are founded on group ownership and mutualism. It finds that although under customary law and social behaviour, there are a number of forms of relationships upon which rights could be claimed, the courts have insisted on legal marriage as the acceptable basis for inheritance. And as opposed to human rights advocacy that claims that women are disinherited and discriminated against under customary laws in Nigeria, courts have consistently protected women's right to inherit even though this right is relative to the larger communal interests of families. Finally, the cases examined indicate that courts have continuously struck down abuses of customs or versions of customs that fail to accord these relative rights to women. This paper proposes that there should be a federal enactment for the enforcement of women's right to inherit property from which various States of the Federation would further pass laws. These legislations would provide enforcement mechanisms in the form of Agencies responsible for the enforcement of such rights especially in the rural areas where most of these discriminatory practices occur.

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12. *Ibid*, at 95-96
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14. It appears that for the same reason, most Administration of Estates Laws in the States give only a life interest to the wife and an absolute interest to the husband. Such discrimination has however been corrected by some state such as Lagos State whose Administration of Estates Law Cap A3 Laws of Lagos State now gives the life interest to both a husband and wife: s. 49
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