

# THE NIGERIAN JURIDICAL REVIEW

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## EMANCIPATION OF FEMALE RIGHTS TO INTESTATE SUCCESSION UNDER IGBO CUSTOMARY LAW\*

### Abstract

*Customary law of intestate succession in many African societies including Nigeria, deny females of the right to succession. One explanation for this perspective is the fear that females on marriage will take the family property outside the family. The emancipation of women particularly through constitutional provisions has emphasized the human rights of females and their contributions to society. Nigeria has recently joined the march in humane treatment of females.*

**Keywords:** *Intestate Succession; Igbo Customary Law; Female Rights; Emancipation; Human Rights*

It has been firmly established that the principle of primogeniture – succession through the male line – governs the Igbo customary law of succession.<sup>1</sup> Under that system, the “okpala” or “diokpa” who is the eldest male member of the family succeeds, on intestacy, to the position of the head of the family and to the residence (obi) of his father together with the immediate surrounding land (*aniisi obi*).<sup>2</sup> He holds the rest of the intestate’s estate in trust for himself and other male members of the family.<sup>3</sup> Females, whether as widow or daughters, have no succession right whatsoever to the estate of the male deceased person. Thus, in *Ughoma v. Ibeneme*,<sup>4</sup> the female

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<sup>1</sup> Obi, S. N. C. *The Customary Law Manual*, (Government Printer, Enugu, 1977); Okoro, N. *The Customary Law of Succession in Eastern Nigeria*, (Sweet and Maxwell, London, 1956); Obi, S. N. C. *The Ibo Law of Property*, (London Butterworths, 1963); Basden, G. T. *Among the Ibos of Nigeria*, (2<sup>nd</sup> Ed, Ibadan U. P. 1961).

<sup>2</sup> *Nwafa v. Ububa* (1966) 1 All N. L. R. 80; *Osolu v. Osolu* (2003) All N. L. R 252 (SC).

<sup>3</sup> *Ejiamike v. Ejiamike* (1972) 2 E. C. S. L. R. II; *Ngwo & Nwojei v. Onyejene* (1964) 1 All N. L. R. 352

<sup>4</sup> (1967) E. N. L. R. 251. See the exceptum in *Udensi v Mogboh* (1976) 7 S.C.I; *Mojekwu v. Iwuchukwu* (2004) 11 NWLR (Pt. 883) 196.

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members of the family failed in 1967 in their challenge of the sale by the eldest male sibling of landed property located at Onitsha which belonged to their late father. The Supreme Court had also in *Nezianya v. Okagbue*<sup>5</sup> held that a widow cannot “assume ownership of (the late husband’s real estate) or alienate it”.

These pre-1970 decisions occurred before the enactment of section 39(1) of the 1979 Constitution of the Federal Republic of Nigeria which provides that:

A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person –

- (a) be subject either expressly by, or in the practical application of, any law in force in Nigeria, or any executive or administrative action of the government to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions, or political opinions are not subject; or
- (b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinion.

This provision was re-enacted *verbetim* as section 42 (1) of the Constitution of the Federal Republic of Nigeria, 1999.

The continued validity of the Igbo customary rules of intestate succession as they affect women and the impact of section 42(1) of the 1999 Constitution have been of great concern to the nascent movement for women liberation in Nigeria. On April 11, 2014 the Supreme Court handed down two significant decisions in this respect.

In *Onyibor Anekwe and Chinweze v. Mrs. Maria Nweke*,<sup>6</sup> the appeal before the court was against the judgment of the Court of Appeal, Enugu Division which upheld the judgment of the trial High Court,

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<sup>5</sup> (1963) 1 All N.L.R 352.

<sup>6</sup> SC. 129/2013 (unreported) delivered on April 11, 2014.



Anambra State in granting the respondent's claim and dismissing the appellant's counter claim.

The case initially arose in Mbailinofu District Customary Court of Anambra State but was subsequently transferred to the High Court, Awka Division in 1991. The plaintiff/respondent claimed to be entitled to statutory right of occupancy in respect of a piece of land situate at Amikwo village, Awka, and an injunction restraining the defendants/appellants from further trespass on the parcel of land in dispute. The respondent's statement of defence sought for a declaration that the defendant's father being entitled to the statutory right of occupancy over the land in dispute, the first defendant being the eldest son of his father is now deemed to be entitled to the statutory right of occupancy in accordance with Awka native law and custom.

The common ground between the parties was that the plaintiff's husband, Nweke Nwogbo, was the younger half-brother of the defendant's father, Aneke Nwogbo. Both the plaintiff's husband and Anekwe Nwogbo (the defendant's deceased father) were the sons of Nwogbo Okonkwo Eli who died intestate. Obiora Okonkwo Eli was the senior brother (half-brother) of Nwogbo Okonkwo Eli who did not have a compound of his own at Awka at the time of his death. After the death of Nwogbo Okonkwo Eli, his two widows who had a son each (the husband of the respondent and the father of the appellants) went with their sons to live with Nwogbo Okonkwo Eli's half-brother, Obiora Okonkwo Eli, before they were eventually moved by Obiora Okonkwo Eli into the compound now known as No. 19 Ogbuagu Lane, Amikwo Awka, part of which is now in dispute.

The respondent contended that Obiora Okonkwo Eli erected two separate bungalows each with a gate and shared them between the sons of Nwogbo Okonkwo Eli (the appellant's father and the respondent's husband). She claimed that on her husband's death, she inherited the portion given to him. The late husband was buried in that portion of the property and the respondent had since then continued to live in that portion of land. The defendant's father asked her to vacate her house on the ground that she had six daughters but no male child. The appellant claimed that a woman according to Awka customary law inherits the property of her husband whether or not she has a male child.

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The appellants contended that the land in question was never partitioned and shared by Obiora Okonkwo Eli for the two sons of Nwogbo Okonkwo Eli. They asserted that their father who inherited the compound as the first and only surviving son of Nwogbo Okonkwo Eli eventually erected two buildings on the land out of which he gave two rooms to the plaintiff to occupy as tenant at will. It was further contended that by Awka customary law, the land was inherited by the appellant's grandfather, Nwogbo Okonkwo Eli and then by the appellant's father, Anekwe Nwogbo as the first and only surviving son of Nwogbo Okonkwo Eli and on the death of Aniekwe Nwogbo, the land had been inherited by the first appellant as the eldest son of the late Aniekwe Nwogbo.

In its judgment on March 13, 2008, the trial court gave judgment in favour of the plaintiff/respondent and granted the declaration and injunction sought but dismissed the defendants/respondent's counterclaim. On appeal, the Court of Appeal affirmed the decision of the trial court. The defendants/respondents further appealed to the Supreme Court. Two issues were canvassed – whether the Court of Appeal was right in upholding the decision of the trial court on the issue of disinheritance of the respondent which it was alleged was never canvassed before the trial court. The appellants also questioned whether the Court of Appeal was right in refusing to interfere with the findings of the lower court.

Ogunbiyi JSC, who delivered the unanimous judgment of the court found that the main issue between the parties was not whether or not the land was partitioned but rather whether the respondent who has no male child can inherit the property of her late husband. The learned justice accepted that “the appellants had in their pleadings acknowledged the position of the respondent as a widow”. The court completely endorsed the concurrent findings by the two lower courts.

On the question of disinheritance, the learned Justice observed that:

I hasten to add that at this point, that the custom and practices of Awka people upon which the appellants have relied for their counter-claim is hereby out rightly condemned in very strong terms. In other words, a custom of this nature in the 21<sup>st</sup> century

societal setting will only tend to depict the absence of realities of human civilization. It is primitive, uncivilized and only intended to protect the selfish perpetration of male dominance which is aimed at suppressing the right of the women folk in the given society. One would expect that the days of such obvious differential discrimination are over. Any culture that disinherits a daughter from her father's estate or a wife from her husband's property by reason of God's instituted gender differential should be punitively and decisively dealt with. The punishment should serve as a deterrent measure and ought to be meted out against the perpetrators of the culture and custom. For a widow of a man to be thrown out of her matrimonial home, where she had lived all her life with her late husband and children, by her late husband's brothers on the ground that she had no male child, is indeed very barbaric, worrying and flesh skinning.

Further, on the learned Justice referring to the court's previous position in a similar case said:

In a similar circumstance as the case under consideration, this court in *Nzekwe v. Nzekwe* (1989) 3 SCNJ page 167 held among others and ruled "that the plaintiff had the 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.

His Lordship concluded that:

The impropriety of such a custom which militates against women particularly, widows, who are denied their inheritance, deserves to be condemned as being repugnant to natural justices, equity and good conscience. The repulsive nature of the challenged custom is heightened further in the case at hand where the widow of the deceased is sought to be deprived of the very building where her late husband was buried. The condemnation of the appellant's act is in this circumstance without hesitation or apology.

The disapproval of the custom was manifested not only in finding for the plaintiff/respondent but further by the award of a punitive cost of two hundred thousand naira against the defendants/appellants.

In both the *Anekwe* and *Nzekwu* cases, the Supreme Court supported the proven custom of the Onitsha and Awka communities which entitle a widow to reside in the matrimonial home where she

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has no male issue. This custom is common among the Igbos. However, in the latter *Anekwe case*, the court went further to castigate any alleged custom which deprives the widow of the right of inheritance to her home and to show its disapproval by the imposition of heavy costs.

It is interesting to note that in the *Nzekwu* case, the Supreme Court found it irrelevant that the land in dispute was part of the estate of the late family head and had not been allotted to any son of the deceased in his lifetime. Rather, the emphasis was on the fact that “the plaintiff was in possession from 1941 to 1972. She was in possession of the family land of Nzekwu Ojudo as the widow of a member of that family.” Long possession by the widow seems to be an important factor in establishing the custom.

It is not clear whether the fact that the land in dispute in *Nzekwu's* case was family property affected the decision of the court which recognized her life possessory right only but not the right to dispose of the property during her life without the consent of the family. Would the decision be different if the land has been partitioned or belonged to the late husband? It is submitted that by the established customary law rules, which has been affirmed by our courts, a family member cannot alienate family land allotted to him for residential or commercial purposes without the permission or consent of the family. Consequently, where the matrimonial home is built on land owned exclusively by the late husband, there are no convincing reasons why the widow should not be able to sell during her lifetime without obtaining the family's consent.

Furthermore, the existing decisions relate to the continued occupation of the matrimonial home of the widow. So far there is no known case in which the right of the widow to participate in the general distribution of the intestate estate of the deceased husband both real and movable property has been decided. Can a widow for instance, claim a share of the entire estate? From available information, Igbo customary law of intestate succession will not admit such claim. However, section 42(1) of the 1999 Constitution prohibits any form of discrimination based on sex. Consequently, it will be unlawful for the male members of the deceased husband's

family to exclude the widow in the distribution of both the real and personal estate of her husband on the basis of her sex and status.

Though the decision of the court was based on facts arising from Igbo customary law, it is submitted that the basic principle should be applicable to other customary law system in Nigeria which deprive widows succession rights. Moreover, section 42(1) of the 1999 constitution avails all Nigerians and as a result will empower widows irrespective of the applicable customary law.

The second case decided by the Supreme Court on April 11, 2014 is that of *Mrs. Lois Ukeje and Eyinnaya Lazarus Ukeje v Ms Gladys Ada Ukeje*.<sup>7</sup> The facts were that one Lazarus Ogbonnaya Ukeje, a native of Umuahia, Imo State died intestate on December 27, 1981. He had real property in Lagos State and for most of his life was resident on that State. The first appellant married the deceased, Lazarus on December 13, 1956. There were four children of the marriage. After the death of Lazarus, the first and second appellants (mother and son) obtained Letters of Administration in respect of the deceased's estate.

On being aware of this development, the plaintiff/respondent filed an action in the Lagos High Court in which she claimed that she is the daughter of late Lazarus Ukeje and that her paternity was acknowledged by the said Ukeje in his lifetime.<sup>8</sup> By virtue of that status, she had a right to participate in the sharing of her father's estate. She also sought an injunction restraining the defendants from administering the estate of the said L.O. Ukeje; inventory/account of the estate and that the letters of Administration be granted to the plaintiff and the second defendant.

Apart from her testimony on oath and that of her mother to prove that she is the daughter of L.O. Ukeje (deceased), the respondent tendered the following documents – her birth certificate by which her birth was registered in Lagos in 1952 showing that the late Ukeje was one of her parents, a passport Guarantor's Form filed by the deceased in which he acknowledged that he was the father of the plaintiff and photographs.

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<sup>7</sup> SC. 224/2004 delivered on April 11, 2014.

<sup>8</sup> See judgment of Okoro, JSC.

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The appellants opposed her assertion of being a daughter of the late Lazarus Ukeje and challenged the validity of the birth certificate and photographs.

Thirteen witnesses gave evidence for the defence and thirty documents were admitted as exhibits. The learned trial judge, Fajiade, J in a judgment delivered on January 1, 1992 found for the plaintiff and ordered the defendants to hand over the estate to the Administrator General pending when the children would choose persons to apply for fresh letters of administration. The defendants/appellants being dissatisfied appealed. The Court of Appeal (Lagos Division) agreed with the learned trial judge and dismissed the appeal for lack of merit. The appellants filed further appeal to the Supreme Court, challenging *inter alia* the evidence and whether the Court of Appeal drew the right conclusions in respect of the plaintiff's birth certificate.

The Supreme Court formulated three issues – (i) whether the respondent has proved that she is a biological daughter of L.O. Ukeje (deceased); (ii) whether the evidence of her mother was discredited in the High Court and (iii) if the trial court arrived at its decision after following the proper guidelines for decision making laid down by the Supreme Court?

With regard to the authenticity of the birth certificate, Bode Rhodes JSC, who read the unanimous judgment of the court applied the presumption in section 114(1) of the Evidence Act, 2011 and found that “a birth certificate is conclusive proof that the person named therein was born on the date stated, and the parents are those spelt out in that document. Once the authorized Government official appends his signature and stamp on the document and such authentication is not contested by the adverse party the presumption of regularity will be ascribed to it”.

The court was of the opinion that the paternity of the plaintiff/respondent was the main issue in the appeal. On that question it was decided that:

When the issue is whether the respondent is the daughter of L. O. Ukeje (deceased) family photographs may help or resolve the issue, but the birth certificate of the respondent is decisive in settling such an issue. It answers the questions when, where the

respondent was born and who her parents are. Documents such as guarantors form further shows L. O. Ukeje (deceased) is the respondent's father.

Dealing with the concurrent findings of facts by the two lower courts, the learned justice held that:

When there is an appeal where there is a finding of fact affirmed by the Court of Appeal, this court would presume that the trial judge's conclusions are correct. This is so since the trial judge was the only judge who saw and heard the witnesses.

He explained that both the trial court and the Court of Appeal correctly found that the Igbo native law and custom which disentitles a female from inheriting in her late father's estate is void as it conflicts with sections 30(1)(9) and (2) of the 1979 Constitution as amended; and remained inviolate as there was no appeal on it.

In conclusion the learned Justice stated that:

No matter the circumstances 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 father's estate is in breach of section 42(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.

The inheritance right of the daughter recognized by the Supreme Court relates to both real and personal property. Consequently she has a full right as other children.

For sometime, the pronouncement of the Supreme Court had been awaited on this question. The Court of Appeal had earlier in *Okonkwo Timothy v Sunday Oforka and Ors* struck down an Orifite (Anambra State) customary law alleged to disentitle females – in that case, a daughter, from holding title to land, as being in violation of section 42(2) of the 1999 Constitution. By this decision, the Supreme Court put Igbo daughters on the same footing as their Yoruba counterparts.

The Supreme Court decisions raise a number of questions. The acknowledged customary law right of widows to possession of the matrimonial home during her life time may in fact be seen as a

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confirmation of the late husband's right to reside on family land. This point was recognized by the court when it pointed out in the *Nzekwu's* case that the widow continued possession "of the family land of Nzekwu Ojudo as a widow of a member of that family." That right may in practice be regarded as a lien on family property during the widow's life time which prohibits the family during the period from selling the property in question.

Section 42(1) of the 1999 Constitution besides enlarging the intestate succession rights of women involves significant social and economic changes. Granting a widow the right of full participation in the distribution of the husband's estate will ensure that she will not be left in penury. Presently the discriminatory custom enables male members of the family to inherit the estate of the deceased member without providing adequately for the widow and children particularly where there are only female children.<sup>9</sup> For the unmarried woman, there is the traditional fear that if she is granted full succession rights, that may result in giving family land to her future husband who belongs not only to a different family but also may be a member of a different ethnic group. There is no doubt that the changes envisaged will give women access to more resources and thereby improve their social standing. It may be observed that the experience of the Yorubas where females are granted equal succession rights with men has been peaceful and beneficial.

The equality of sexes in Igbo intestate succession will certainly affect the power dynamics in the family. There will be a shift in favour of women. Females unlike in the past will now have equal voice with males in matters pertaining to family property and will no longer be silent observers. Moreover, in a society where age is revered, granting equal right to all members may be resented. An important related issue is whether the constitutional provision in question also grants females the right to be the head of the family as their Yoruba counterparts. While advocates of constitutional equality will support such reading, it is doubtful if the Igbo society is presently prepared for such sudden transformation.

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<sup>9</sup> *In re the Estate of Agbonuja - Deceased* 19 N. L. R. 38.



It may be contended that objectors to the new status of women are free to make a will under the applicable law. However, will making is not a commonly accepted among most Nigerians.

As has been already indicated, the Supreme Court has not yet been offered the opportunity to address the full implications of the new female succession rights. The important point here is how the non-discriminatory provisions should be applied in the peculiar circumstances of Nigerian society. Should Nigeria in spite of the present prevailing ethnic and group divisions adopt the free society which has evolved in the industrialized societies? On the credit side, full implementation will open our society and deepen the integration between sexes and cultural groups. On the down side, the immediate full implementation of the rule will require major social adjustments in society. The concern may be one of the law as interpreted being different from the actual practices of the people. This is particularly the case because only a few women are presently in a position to challenge the denial of their constitutional rights. Considerable work remains to be done by the government, private and non-governmental organizations to sensitize women of the evolving changes in their status and rights.

## CONCLUSION

The Supreme Court has by these two recent decisions, advanced the cause of equality between the sexes in matters relating to intestate succession under Igbo customary law. As has been pointed out, the project is not complete and will require, in an appropriate situation, the declaration of the full rights of widows to succeed to their late husband's estates. Furthermore, it is relevant to underline the fundamental importance of section 42 of the 1999 Constitution in this process. Its liberating influence will be felt not only in respect of the unacceptable position of widows under Igbo customary law but also in all other similar customs in Nigeria. As Pat-Acholonu, JCA (as he then was) concluded in *Uke v Iro*,<sup>10</sup> "A custom which strives to deprive a woman constitutionally guaranteed rights is otiose and offends the provision that guarantee equal protection under the law

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<sup>10</sup> (2007) 11 NWLR (Pt. 723) 196 at p. 203.

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it offends all decent norms as applicable in a civilized society in this search for equality of the sexes.” It is a welcome development that the Supreme Court in the matter of the succession rights of women is squaring up with the approach of other African apex courts particularly the South African Constitutional Court.<sup>11</sup>

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<sup>11</sup> *Nonkululeko Letta Bhe & Ors. v. Commissioner for Gender Equality*, Case CCT 49/03 decided on October 15, 2004; *Charlotte Shibi v. Mantebeni Sithole & Ors.* Case No CCT 69/03.