JUDICIAL ATTITUDE TO IGBO CUSTOMARY LAWS ON THE INHERITANCE RIGHTS OF WOMEN: BEYOND THE PRESENT EUPHORIA OF JUDICIAL PRONOUNCEMENTS*

Abstract

Much judicial and academic thought has gone into the subject matter of the right of women to inherit real property among the Igbo people of Nigeria. A lot of sentiments bothering on emotions have attended the discourse and the adjudicatory process culminating from cases on that subject. Most of the sentiments seem to bother on the personalities and circumstances involved in the individual cases and the fact that the cases were coming at an era that feminism seems to have succeeded in affecting the perception of our immediate society to an extent that anything that seems to put a female at a disadvantage is seen as barbaric and anti-social. Igbo customary laws bearing on the inheritance rights of women have come under unmitigated battering in courts in the most recent past. Whether such scathing remarks are justifiable enough or not is of the essence of this work which is aimed at examining the laws concerning the inheritance rights of women with a view to ascertaining whether the Customary Law of the Igbo people of Nigeria on the subject matter deserves the invectives and odium frequently poured on it at each judicial determination.

Keywords: Inheritance, Customary Law, Repugnancy, Family land, Rights of women

1. Introduction

From the Biblical account of the creation of man, we read that God created them male and female. The man and his wife from the beginning were made for different roles, the man first and then the woman to complement him. The man was obviously put in charge of the arrangement by God that was why the man was made accountable for whatsoever went wrong in that home[1]. However with the advent of western education and civilization, agitations began, first for the liberation of women, then for the equality of the man and woman. Women advocacy groups and those that have sympathy for their message have succeeded in inundating the world with the message of Feminism to an extent that institutions are today labeled as good or bad depending on their level of gender compliance. Governments all over the world have come under strong criticism and even brought down for their failure to be gender sensitive. The agitations to accord women with equal rights as men came to a head at the world women conference held in Beijing, China where the women reaffirmed what is today popularly referred to as '*Affirmative Action'.* By this declaration, women started and have consistently demanded that at least 35% of appointments into positions in Government should be reserved for women to occupy.

It is not arguable whether or not feminists and their sympathisers have succeeded. At least in Nigeria, in spite of our 'third world' status, laws have in the recent past been tinkered with in favour of the equality of male and female persons[2]. Particularly, Section 42 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) has been raised as a bullwalk for the protection of the rights of the female gender in Nigeria. Section 42 of the Constitution in that regards therefore has provided the yardstick for measuring the fairness, reasonableness and acceptability of the provisions and content of every legislation that may touch on the rights of women. However, an unforeseen and unfortunate trend seems to be emerging from the rampaging crusade of feminism. Hitherto, the application of customary laws to Nigerian societies had proceeded independently and without regards to the changing fortunes of the received English Laws largely on account of the unwritten nature of customary laws and its ability to change with time as society evolves from one age to another. Secondly, the fact that customary laws were attached to specific societies and remained acceptable as long as it was serving the interest of its host society had given it the quality of resilience which has helped customary laws to survive several years of civilization. In that regards it became very difficult to classify a customary law as good or bad outside the context of the society where it is applicable.

There is therefore, every need to re-examine the attitude of the Nigerian courts led by the Supreme Court of Nigeria towards the Igbo customary law on the right of women to inherit the landed property of a deceased husband or father with a view to finding justification or otherwise for the attacks that go out to the said customary laws on each occasion of judgment of court. In doing this, there is need to examine statutory enactments on the subject as against the contents of the Igbo Customary laws. Much of the customary laws discussed herein are as they appeared from the judgments of the appellate courts in Nigeria.

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[1]See the book of Genesis chapters 1 and 2

[2]See particularly Section 42 of the 1999 Constitution of the Federal Republic of Nigeria that provides for freedom from discrimination on grounds of sex, religion etc.

It must be stated at the outset of this discussion that Igbo Customary Laws on the inheritance right of women are only applicable when an intestate husband was married to his wife under Customary Law. Where the marriage between the deceased and his widow was done under the Marriage Act, succession to the estate of the deceased shall be governed by statute law. It is therefore up to the people entering customary law marriage to know what to expect in the event of their spouses dying intestate[3].

2. Some Notable Judicial Decisions on the Igbo Customary Law on the Inheritance Rights of Women

Onyibor Anekwe & Anor v Mrs. Maria Nweke[4]
The facts of this case which bothers on the repugnancy rule and the Customary Law of Awka people of Anambra State in respect of the Inheritance Right of Women, briefly put are as follows:

The respondent initially instituted this suit against the appellants before the customary court. However, it was subsequently transferred to the High Court of Anambra State, Awka. The respondent claimed against the appellants jointly and severally, in the main, for a declaration of statutory right of occupancy to a piece or parcel of land which is situate at Amikwo village, Awka; injunction restraining the respondents, their servants and agents from further trespass to the said piece or parcel of land, and other reliefs. The appellants denied the respondent's claim and also counterclaimed for a declaration of statutory right of occupancy over the same land in accordance with the native law and custom of Awka people. The 2nd defendant who died in the course of the proceedings was substituted with the 1st appellant. It was common ground between the parties that the respondent's husband, Nweke Nwogbo, was the younger and half brother of the appellant's father, Anekwe Nwogbo. Nweke Nwogbo (the respondent deceased husband) and Anekwe Nwogbo (the appellant's deceased father) were sons of Nwogbo Okonkwo Eli who died outside the home town of the parties. 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 Obiora Okonkwo Eli before they were eventually moved by Obiora Okonkwo Eli into the compound now known as No. 19, Ogbuagu Lane, Amikwo village, Awka, part of which is now in dispute.

The respondent contended that Obiora Okonkwo Eli erected two separate bungalows on the subject property and shared them between the sons of Nwogbo Okonkwo Eli (i.e. the appellants' father and respondent's husband) and that she, (the respondent) inherited the portion given to her husband upon his death. It was also the respondent's case that after her husband died and was buried in their own house immediately before the civil war, she continued to live in the portion of land as was shared between her husband and the appellants' father. The appellants' father asked her to vacate her house on the ground that she had no male child in the house. The respondent, therefore, in the quest of asserting her right of inheritance, affirmatively contended on her claim that a woman according to the customs of Awka people inherits the property of her husband, whether she has a male child or not; that in confirmation of the foregoing assertion, she conclusively relied on the final arbitration made by the Ozo Awka society on the matter, which she claimed was not controverted by the appellants.

On the other hand, the appellants contended that the subject property in question was never partitioned and shared by Obiora Okonkwo Eli for the sons of Nwogbo Okonkwo Eli. Rather that at the time Obiora Okonkwo Eli moved them into the subject property, he only built a mud house therein and that it was their (appellant's) father who (having 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 respondent to occupy as a tenant at will. It was also the appellants' case that the subject land (now known as No. 19 Ogbuagu Lane Amikwo village, Awka) was the homestead of Okonkwo Eli and that by the native law and custom of Awka people, the land was inherited by the appellants' grandfather, Nwogbo Okonkwo Eli and then by the appellants' father, Anekwe Nwogbo, as the first and only surviving son of Nwogbo Okonkwo Eli and upon the death of Anekwe Nwogbo, same had been inherited by the 1st appellant as the eldest son of the late Aniekwe Nwogbo.

Upon the conclusion of hearing, the trail court in its judgment on 13th March, 2008 found in favour of the respondent and granted her claims. It then dismissed the appellants' counter-claim. Dissatisfied, the appellants appealed to the Court of Appeal. The Court of Appeal in its judgment on 14th February, 2012 dismissed the appellants' appeal and affirmed the judgment of the trial court. Still dissatisfied, the appellants appealed to the Supreme Court. At the Supreme Court, the appeal turned on whether the respondent who has no male child could inherit the property of her late husband. It was held, unanimously dismissing the appeal that the custom of Awka people of Anambra State to the effect that a married woman without a male issue cannot inherit landed property

[3] See Joy Ngozi Ezilo: *Property War in the South-East: Never Again will Igbo Women be Denied of Their Inheritance* published at Vanguardngr.com, 4/9/2016 visited on 4/8/2017
[4] *supra*

of her late husband, pleaded and relied upon by the appellants in the instant case, is barbaric and repugnant to natural justice, equity and good conscience and ought to be abolished[5].

Per Ogunbiyi, J.S.C

> I hasten to add at this point that the custom and practice 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 21st century societal setting will only tend to depict the absence of the realities of human civilization. It is punitive, uncivilized and only intended to protect the selfish perpetuation of male dominance which is aimed at suppressing the right of the womenfolk 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 wife from her husband's property by reason of God-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.(underlining mine for emphasis). 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. It is indeed much more disturbing especially where the counsel representing such perpetrating clients, though learned, appears comfortable in identifying, endorsing and also approving of such a demeaning custom. In a similar circumstance as the case under consideration, this court in Nzekwu vs. Nzekwu (1989) 3 SCNJ page 167; (1989) 2 NWLR (pt. 104)373 held amongst 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'. 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 justice, 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 appellants' act is in the circumstance without any hesitation or apology[6].'

Per Muhammed, J.S.C

> It baffles one to still find in a civilized society which cherishes equality between the sexes, a practice that disentitles a woman (wife in this matter) to inherit from her late husband's estate, simply because she had no male child from the husband. This practice, I dare say, is a direct challenge to God the Creator who bestows male children only; female children only (as in this matter), or an amalgam of both males and females, to whom He likes, He also has the sole power to make one a barren. There is nothing virtually one can do if one finds oneself in any of the situations. To perpetuate such a practice as is claimed in this matter will appear anachronistic, discriminatory and unprogressive. It offends the rule of natural justice, equity and good conscience. That practice must fade out and allow equity, equality, justice and fair play to reign in the society[7].

Per Ngwuta, J.S.C

> *My noble Lords, the custom pleaded herein, and is a similar custom in some communities wherein a widow is reduced to chattel and part of the husband's estate constitutes, in my humble view, the height of man's inhumanity to woman, his own mother, the mother of nations, the hand that rocks the cradle. The custom of Awka people of Anambra State pleaded and relied on by the appellant is barbaric and takes the Awka community to the era of cave man. It is repugnant to natural justice, equity and good conscience and ought to be abolished[8].*

[5]See *Lewis v Bankole* (1908) 1 NLR 81; *Eleko v Secretary, Govt. of Southern Nigerian* (1931) AC 662; *Dawodu v Danmole* (1962) 2 SCNLR 215

[6] At pages 421-422, Paras F-E

[7]At page 423, Paras, A-C

[8]At page 425, Paras E-H

Per Ariwoola, J.S.C

> *As clearly shown in the pleadings exchanged by parties and the testimonies adduced at the trial, the respondent challenged the action of the appellants in attempting to disinherit her. Perhaps it is necessary to state what the appellants shamelessly stated in their pleadings in defence to the respondent's action before the trial court. The averments ready thus: paragraph-'16. The defendants state that under Awka native law and custom a married woman without a male issue cannot contest title to land of her later husband with the male member(s) of her late husband's family. More so, when the defendant's father inherited the present land in dispute and has before this time even further asserted ownership by planting economic trees thereon, to wit: coconut, banana, pears, orange, avocado etc. In the oral testimony, the appellants had stated that the reason why their custom forbids the respondent from entitlement to her matrimonial family was the fact that she 'has six female children without a single male child'. By this, it meant that the said six female children of the respondent were denied their entitlement to inherit their father's property simply because of their gender. There is no doubt, this custom pleaded and canvassed by the appellants against the respondent is to say the least, repugnant to natural justice, equity and good conscience. It is even barbaric. One wonders whether it was the respondent's making what sex the pregnancy that her late husband made with her will come out with. Indeed, such a custom that discriminates against female children is a challenge on God Almighty who is the maker and producer of pregnancy will produce what type of sex male or female. It will therefore be inhuman and injustice to discriminate against a female child on her father's property or a widow on the ground that she has only female children for her later husband*[9].

The author had deliberately reproduced at length some of the pronouncements of the justices of the Supreme Court that sat on the instant appeal for the sake of emphasis as it pertains to the repugnancy of the native law and custom of Awka people of Anambra State in particular, concerning the right of widows to inherit the landed properties of their deceased husbands and the right of female children to inherit the landed properties of their fathers. This very question of law has attracted a lot of judicial comments before now and has always evoked emotions and emotional outburst whenever it arises and such was the case in this very appeal.

The invectives poured on the customary law of Awka people in this case, as in other cases on the subject matter before now, is understandable for the fact that cases bothering on affront on the right of widows and female children to inherit the deceased arose from human situations and are touching on the rights of existing human persons whom the perpetrators of the 'obnoxious customs' sought to put into great hardship and deprivations. However, there are some issues that may need to be put in proper perspective for a complete and proper appreciation of the content and scope of these customary laws. The limitations on the practicability and implementation of the law as created by the progressive and egalitarian decisions of the superior court lead by the Supreme Court of Nigeria as it concerns customary laws of inheritance in many parts of Igbo land ought to be x-rayed. Before we go into a discussion of the issues arising from these decisions, it would be good to put before us the facts and decisions in respect of few other cases in which the courts have descended heavily on Igbo customary law of inheritance as being repugnant to natural justice, equity and good conscience.

Mojekwu vs. Mojekwu[10]

The facts bothered on whether the appellant who was the plaintiff at the High Court could inherit the property of Okechukwu Mojekwu (the deceased husband of the respondent who died without a male child having lost his only male child, Patrick Adina to the Nigerian Civil War) by virtue of the 'Oli-ekpe' Customary law of succession of Nnewi people of Anambra State. It was held, unanimously dismissing the appeal that:

On whether 'Oli-ekpe' Customary law of succession is consistent with doctrine of equity.

> Nigeria is an egalitarian society where the civilized sociology does not discriminate against women. However, there are customs all over which discriminate against the womenfolk which regard them as inferior to the menfolk. That should not be so as all human beings, male and female are born into a free world and are expected to participate freely without any inhibition on grounds of sex. Thus, any form of societal discrimination on grounds of sex, apart from being unconstitutional is antithesis to a society built on the tenets of democracy. The 'Oli-ekpe' custom, which permits the son of the brother of a deceased person to inherit his property to the exclusion of his female child is discriminatory and therefore inconsistent with the doctrine of equity.

9 Per Ariwoola, J.S.C, at pages 426-427, paras E-C

[10](1997) 7 NWLR (pt. 512), pages 304-305, paras H-B

Per Tobi, J.C.A (as he then was)[11]

> *we need not travel all the way to Beijing to know that some of our customs, including the Nnewi 'Oli-ekpe' custom relied upon by the appellant are not consistent with our civilivised world in which we all live today, including the appellant. In my humble view, it is the monopoly of God to determine the sex of a baby and not the parents. Although the scientific would disagrees with this divine truth. I believe that God, the Creator of human being, is also the final authority of who should be male and female. Accordingly, for a custom or customary law to discriminate against a particular sex is to say the least an affront on the Almighty God Himself. Let nobody do such a thing. On my part, I have no difficulty in holding that the 'Oli-ekpe' custom of Nnewi, is repugnant to natural justice, equity and good conscience. A court of law, being a court of equity as well, cannot invoke a customary law which is repugnant to natural justice, equity and good conscience. The 'Oli-ekpe' custom is one of such customs as it permits the son of the brother of a deceased person to inherit the property of the deceased to the exclusion of the deceased's female child*[12].

In *Ukeje vs. Ukeje*[13] concerning the rights of a female child born out of wedlock to inherit from his biological father, the Supreme Court held that the right of such a child to inherit from his biological father is secured by Section 42 (1) and (2) of the 1999 Constitution which provides such a child with freedom from discrimination on account of her sex and the circumstances of her birth. On this occasion, the court found the Igbo Customary Law on the right of a female child to inherit her father, which was on a collision course with Section 42 (1) and (2) of the 1999 Constitution to be null and void and of no effect after the said custom was also pummeled as being repugnant to natural justice, equity and good conscience. It is instructive to note that the decision in **Ukeje vs. Ukeje**[14] has been hyped out of context in successive citations of the said judgment. Ukeje vs Ukeje was decided on the principle of law that a child born out of wedlock has got a right to inherit her father once there was an acknowledgment of paternity and did not focus on the right of a female child to inherit her father.

Whether the decision in *Ukeje vs. Ukeje*[15] is sound and equitable should be weighed against the provisions of Section 42 (1) and (2) of the 1999 Constitution that dwells on equality of human persons and freedom from discrimination. To the extent of its conformity with the constitutional provision, *Ukeje vs. Ukeje*[16] is a sound and equitable judgment. However, it is capable of being interpreted as an active encouragement to promiscuity and irresponsible parenthood which would finally affect the desirability and sacredness of the marriage institution which is the bedrock of family life. On the relationship of that judgment with the Igbo customary law of inheritance as it pertains to family land, the situation of a female child born out of wedlock is not different or any better than that of other female children born in wedlock as has already been discussed elsewhere in this work.

Earlier, in *Nzekwu vs. Nzekwu*[17], it was held in similar circumstances that:

> The Onitsha native law and custom postulates that a married woman, on the death of her husband without a male issue, with the concurrence of her husband's family may deal with the deceased's property[18]. The widow's dealings however must receive the consent of the family and she cannot by the effluxion of time, claim the property as her own. She has however a right to occupy the building or part of it, but this is subject to good behaviour[19]. A widow who chooses to remain in the husband's house and in his name is entitled, in her own right and notwithstanding that she has no children to go on occupying the matrimonial home and to be given some share of his farmland for her cultivation and generally to maintenance by her husband's family. *Nezianya and Anor. Vs. Anthony Okagbue* (1963) 1 All NLR 352 at 356 referred to).[20] Should her husband's family fail to maintain her, she can let part of the house to tenants and use the rent obtained thereby to maintain herself, but her interest in the house and farmland is merely possessory and not proprietary so that she cannot dispose of it out and out. (*Nezianya and Anor. Vs. Anthony Okagbue* (1963) 1 All NLR 352 at 356 referred to).[21]Any Onitsha custom which postulates that an Okpala has

[11]At page 305, paras B-C
[12]At page 305, paras D-E.
[13] (2014) 11 NWLR (pt. 1418) 384
[14] *Op cit*, note 13
[15] *supra*
[16] *supra*
[17] (1989) NWLR (Pt. 104) 373
[18]*Nezianya & Anor. v Anthony Okagbue* [1963] 1 All N.L.R. 352 at 356 at page 394, Para. C
[19] *Nezianya and Anor. v Anthony Okagbue* (*Op.cit*) at page 394, Para D.
[20]At page 394, Para E.
[21]At page 395, Paras F-G.

> the right to alienate property of a deceased person in the lifetime of his widow is a barbarous and uncivilized custom which should be regarded as repugnant to equity and good conscience and therefore unacceptable. (*Nezianya and Anor. vs. Anthony Okagbue* (1963) 1 All NLR 352 at 356 referred to).[22]

3. The Significances of the Judicial Decisions on Women's Right of Inheritance in Igbo Societies

Some issues considered as common and central to the cases mentioned above which all emanated from Igbo societies and they include the following:

1. Customs and customary laws are not set in the abstract; rather they are peculiar laws belonging to a people with their own history, cultural background and way of life. Repugnancy, a white man's (western) ideology was imported from a different society devoid of the peculiarities of the place whose customary law is standing trial.
2. Repugnancy must be related to the peculiarities of such people including the enacted laws. Otherwise a rush to declare a law as repugnant to natural justice, equity, good conscience etc. would have succeeded in creating a law whose implementation would be difficult.

It should be noted that no custom, standing alone can be universally accepted as good or bad outside the context of where it was erected. A functional customary law should be targeted at curbing a particular mischief or promoting a cherished ideology. It is on the scale of the mischief sought to be targeted or the ideology sought to be promoted that a particular custom should be weighed. Functionality therefore, should be the yardstick for the evaluation of Customary Laws. As a general rule a widow, under Igbo customary law, is not entitled as of right to succeed to the personal or real estate of her deceased husband.[23]

4. Can a widow acquire an absolute right of inheritance over her husband's real estate under the Igbo customary law?

This question was answered by the Supreme Court in the case of ***Nezianya vs. Okagbue***[24]. In that case, the land in dispute was situate at Onitsha and all the parties were natives of Onitsha also. On the death of the husband, his widow began letting his houses out to tenants. Later on, she sold a portion of the land and with the proceeds she built two mud huts on another portion of the land. When she wanted to sell more of the lands, her late husband's family objected. The only child she had from her husband was a girl who died before her. The widow devised the property to the late daughter's child who now sued the husband's family claiming a right to exclusive possession on the grounds that the widow, their grandmother had long adverse possession of the land. In the court of first instance, it was held that possession by a widow of her husband's land cannot be adverse to the rights of her husband's family to enable her to acquire an absolute right to possession of it against the family. The plaintiffs appealed. In the opinion of the Supreme Court, one of the important issues to be determined was whether under Onitsha native law and custom, a wife of a deceased member of a family could become the owner of her late husband's real estate by virtue of long possession of the property which she occupied with the knowledge of the family or by adverse possession. The court gave a negative answer to this question and observed that:

> It will appear that the essence of possession of the wife in such a case is that she occupies the property or deals with it as a recognised member of her husband's family and not as a stranger; nor does she need the express consent or permission of the family to occupy the property so long as the family make no objection to her occupation … From the evidence … it is abundantly clear that a married woman after the death of her husband can never under native law and custom be a stranger to her deceased husband's property; and she could not, at any time, acquire a distinct possession of her own to oust the family's right of ownership over the property. The Onitsha native law and custom postulates that a married woman, without a male issue, on the death of her husband, with the concurrence of her husband's family, may deal with his (deceased) property. Her dealings, of course, must receive the consent of the family. The consent, it would appear, may be actual or implied from the circumstances of the case, but she cannot assume ownership of the property or alienate it. She cannot, by effluxion of time, claim the property as her own. If the family does not give their consent, she cannot, it would appear, deal with the property. She has, however, a right to occupy the building or part of it, but this is subject to good behaviour. (ibid at pp. 356-567)[25]

[22]At page 396, Paras B-C.

[23]E.I Nwogugu; *Family Law in Nigeria*, 3rd ed., Heinemann Educational books Plc (Ibadan) 1990 p. 407

[24] 1963 1 All NLR (ibid pp. 107: Okoro op.cit. p. 124) followed in *Nzekwu v. Nzekwu*. (Supra) where it was held among others that a widow's dealings on the landed property of her late husband where she has no male child must receive the consent of the family and she cannot by the effluxion of time, claim the property as her own. She has however a right to occupy the building or part of it, but this is subject to good behaviour.

[25]As reported in E.I Nwogugu; *Family Law in Nigeria*, 3rd ed., Heinemann Educational books Plc (Ibadan) 1990 pp. 407-408

This statement of the law is true of most of other Igbo speaking areas of Nigeria to the extent that although a widow does not inherit her husband's estate absolutely, she is entitled to some rights therein. First, she is entitled to live as a member of the family in her late husband's house and the deceased's heir has no power to dispose of the matrimonial home which is occupied by the widow. However, her right in this respect is subject to good conduct.

5. Distinction between Property Acquired by the Deceased with his Money during his Lifetime and Land Inherited as Part of Family Property

There is need to state that a distinction exists in practical terms between property purchased by the deceased with his money and property allotted to the deceased as his entitlement out of the family land. Where a man acquires property with his money, there is usually not many disputes as to whether his wife or female children would inherit such property after his demise as more often than not, issues relating to the acquisition of such property, its location, title documents etc are within the knowledge of members of the immediate family of the deceased. It would be futile to make customary law to apply in such a situation because it can hardly be effectively applied.

On the contrary, where the deceased was allotted part of the family property to build his homestead, if he dies without a male child, the land on which he lived would eventually return back to the family as part of the family property. The custom in such a situation in many parts of Igbo land is that where the property accrued to the deceased from a general partition of the family property, upon the death of the deceased without succession, the property will fall for inheritance by the eldest closest male relative of the deceased ('Oli-ekpe' or 'Ili-ekpe' custom). However, the 'Oli-ekpe' shall not be entitled to take the property until the widow of the deceased has lived her life in the house of the decease (her matrimonial home) and died or remarries. Where the deceased begat female children, the property is not available for inheritance until the last of the female children of the deceased has got married.

There are instances of extreme situations, where the widow of the deceased, desiring to perpetuate her husband's lineage, would perform some customary rights called 'Nrachi' in respect of one of her female children wherein the daughter is officially instituted in the family to procreate as if she was married into the family. In that case, children begotten by that daughter are the children of the deceased father of the daughter who are entitled to inherit the property of their deceased grandfather as if they were born to him directly. The property of the deceased in that situation is not available for the 'Oli-ekpe*'* to take as the deceased has got succession.[26]

6. The position of the law in relation to family land

The New Lexicon Webster's Dictionary of English Language defines family as a group consisting of parents and their children; a group of people closely related by blood, example, children, their parents, their cousins, their aunts and uncles; a group consisting of individuals descendants from a common ancestry; a household.

Family Land:

Therefore, family land is land vested in a group of persons closely related by blood or persons consisting of parents and their children. It can also be referred to as land which had vested upon individuals who had descended from a common ancestry or pedigree, and including, of course those such as domestics and strangers who have been incorporated into the family by the founder. At the death of the founder, all empty land, farm land and houses acquired by him in his life become family property. In plain language the land belongs to the family of the said founder as a corporate entity in which case they become inalienable, or they become liable to be distributed to the members of the founder's family as defined by him during his lifetime or the customary law that governs inheritance of land in the very area in question. Under this customary land holding arrangement, every member

[26] Though deprecated by the court, the effectiveness of this practicewas demonstrated in the case of *Muojekwu v. Ejikeme* (2000)5 NWLR (Pt. 657)402, where the Court of Appeal declared the law to the effect that if any blood relation of the deceased (child or grandchild irrespective of the circumstances of his/her birth) is alive, it will be against equity, fair play and good conscience to allow the '*Oli-ekpe' a distant stranger* to inherit his property. In that case, the court descended on the 'Nrachi' custom of Nnewi people of Anambra State in the following words: 'Nrachi' ceremony enables a man to keep one of his daughters unmarried perpetually under his roof to raise issues, more especially males, to succeed him. With the custom performed on a daughter, she takes the position of a man in the father's house. Technically, she becomes a 'man'. The custom legalizes fornication as the woman stays unmarried for the rest of her life procreating outside the bounds of marriage. A daughter with the custom performed on her has upper-hand over the others without it. She can inherit her father's property while the others without same cannot. (see *Mojekwu v Ejikeme* (*supra*) Pp. 418, Para. F; 422, Paras. E-F). Per Fabiyi, J.C.A. (as he then was) I must express the point hereby which I will continue to stand that human nature, in its most 'exuberant prime and infinite telepathy' cannot support the idea that a woman can take the place of a man and be procreating for her father via a mundane custom. She stays in the father's house and cannot marry for the rest of her life even if she sees a honest man who loves her. I cannot, and do not believe that the society, as it is presently constituted, will for long acquiesce, in a conclusion so ludicrous, ridiculous, unrealistic and merciless more especially as we march on into the next millennium.

of a family has an interest in the property and under a duty to protect such property. Hence every member of the family has or enjoys a *locus standi* to institute an action in respect of any wrong to illegal dealings with the property and the right of action to protect the family property avails the individual member even if he has no authority of the family to bring the action.

It is the law that family land does not lose its identity simply because it was allocated to a member of the family. Family land remains family land at all times to the effect that where the allottee of family land fails in his succession, the land returns to the pool of family land waiting to be allocated to another member of the family that may need the land for habitation or other purposes. Where there was no partition of family land but a part of the family land was simply given to a man to build his house, upon his demise without succession (a male child) the widow of the man remains in his house, lives her life until she dies or remarries. If she had got female children, the female children are allowed to remain in their fathers' house until they are married. Thereafter, the land reverts back to the family in general to become part of the family land. From the above, it could be seen that the land given to a member of the family from the family land is not for absolute ownership such as the land he bought with his money. In many communities, he cannot alienate the land given to him from the family land without the consent of the family even where there has been a general partition of the family land. This is unlike the property he acquired with his money which he can dispose of at any time. The reason for this restriction may be of twofold:

1. To discourage profligacy among members of a family, and avoid a situation where a member of a family becomes lazy, hoping to sell off the land given to him by the family as 'ana-obu' in the event of a slight financial challenge.
2. To avoid a situation where a member of a family sells part of a family land granted to him to a non member of the family, who comes in to set up a homestead in the midst of the family members and thereby erode the privacy. Security and homogienity of the family as non members of the family begins to build houses and dwell in the midst of the family.

It is for this later reason that when such a member of the family dies, the family does not allow the widow of the deceased and her female children to take over the property of the deceased on absolute terms since to allow them to do so would be to allow them to alienate the property eventually, possibly, to a stranger.

7. The Realities and Practicability of Laws on Women's Right of Inheritance of Landed Property under the Igbo Customary Law

It is submitted, most humbly, that it is debatable whether or not a customary law that regulates dealings on family land in the manner explained above is barbaric or not. It depends on the perspective from which it is viewed. However, it is still a strong argument that no family or community would allow an absolute transfer of title in a part of family land from a man who dies without a male child to his wife or daughter for the fear of what will happen to the land eventually. No daughter is ever married back into her family of origin. If such a daughter acquires absolute right in her father's compound, at her marriage she would either sell the property or transfer it to herself and her husband in a new name thereby introducing a stranger into a community or family that was otherwise hitherto homogeneous and would have loved to remain so. The fact that the man who died without succession may have been the head or 'Okpara' of the family in which case he was the custodian of the sacred things of the family and was housing the family's 'Iba' (Obi or meeting hall) would even make matters worse. Where such was the case, all the sacred things of the family would have been passed on to a stranger who, more often than not would not have value or respect for them. There is no better way of eroding communal lifestyle and kindred spirit than that. In the light of the above, it is submitted, most humbly, that the issue of application of customary laws on inheritance of land given to a man that died without succession from family property should be approached with caution. Except for cases of abuse of such customary laws by overzealous persons, seeking to disturb the widow and daughters of such a deceased person from enjoying the non permanent interest which they have in such land, there may be little or no justification for descending heavily on those customary laws in the manner the courts are presently doing[27]. From the practical point of view, beyond the euphoria of victory, full implementation of those judicial decisions may not be possible. Where such a widow takes over her husband's compound, she may not be able to sell it assuming she wants to, because the community may by a resolution stop its members from buying it and equally make it difficult for a stranger to buy same. In that case, the widow may have only enjoyed the same life interest the law originally gave her. Such would equally be the case with the female children of such a deceased who may want to marry and leave their fathers' house. In many instances, they may not find it convenient to come from their husbands' house to manage their fathers' compound after their marriage. In such a situation they would have only enjoyed the property before the marriage as envisaged by the said customary law.

[27] The attitude of the Supreme Court in *Nezieanya v. Okagbue* (*Supra)* and Nzekwu vs. Nzekwu (*Supra*) is highly recommended as the proper approach to issues of inheritance of property of a man that dies without a male child by his widow.

In the final analysis, it would seem that what is repugnant, barbaric, anachronistic etc. as pronounced by the courts are acts of overzealous '*Oli-ekpes'* who pounce on the property of their decease brother or uncle who died without a male child and begin to appropriate his landed property when the spouse is still alive and living on that property sometimes with her female children. Such is an unbridled display of lack of conscience as was shown in the case of *Onyibor Anekwe & Anor. vs. Mrs. Maria Nweke*[28] and ought to receive an unmitigated knock from heavily weighted judicial hammer[29].

Statutory enactments to the rescue?

In Anambra State, there is an accommodation of both extremes in the Anambra State Succession Law Edict, 1987 now the Succession Law of Anambra State, 1991 which deals with succession to real and personal estate upon intestacy. Section 51 of the said law prescribes the following rules of distribution:

a. If the intestate leaves a husband or wife but no children, parent or brothers or sisters of the whole blood, the residuary estate shall be held on trust for the surviving spouse absolutely. However, where the surviving spouse is the wife and the intestate leaves brother or sisters of half blood, the wife's interest will be for her life or until she remarries whichever first occurs. Thereafter, the residue of her interest shall go to the intestate's brothers and sisters absolutely in equal shares. The children of a deceased brother or sister will take the share to which his parent would have been entitled if alive.
b. Where the intestate leaves a husband or wife as well as children's children (whether or not he also leaves parents or brothers or children of brothers and sisters), the residuary estate shall be held on trust as to the value of one third thereof for the surviving spouse. The interest of such spouse shall be absolute in the case of a husband and in respect of a wife, for her life or until re-marriage which ever first occurs. The remainder of the estate together with any residue on the cesser of the wife's interest shall be held on trust for the children in equal shares absolutely or failing children, on trust for the children of the intestate's children in equal shares absolutely.
c. If the intestate leaves a husband or wife as well as one or more of the following – a parent, a brother or sister of the whole blood or children of a brother or sister of the whole blood, but does not leave a child, two-thirds of the residuary estate shall be held on trust for the surviving spouse. In the case of a husband, the interest shall be absolute while for a wife, it will last for her life or until her re-marriage whichever first occurs. The remaining one-third of the estate together with any residue on cesser of the wife's interest, shall be held on trust for the brothers of the whole blood in equal shares absolutely. In the absence of brothers of the whole blood or their children, the portion will be for the parents absolutely.

It can be seen clearly that even the Succession Law of Anambra State has vested on the widow of a deceased spouse who died with or without a child only a life interest in the property of the spouse or an interest before she remarries but not an absolute perpetual interest. That is the same position even under the 'Oli-ekpe' custom that is much buffeted and maligned as repugnant to natural justice, equity and good conscience. The position of the widow who enjoys qualified inheritance in the nature of a life interest in the estate of her deceased husband is different from the position of the widower who inherits his deceased wife in absolute terms. It may be argued that even Section 51 of the Succession Law of Anambra State, 1991 may not stand in the face of Section 42 (1) and (2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) to the extent that the provisions of the Succession Law of Anambra State seeks to segregate between deceased male and female spouses in the vesting of rights to inherit each other's property. Section 42 (1) and (2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides:

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 subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administration action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions are not made 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 opinions.

[28] *Op.cit note 4*

[29] See also the case of Mojekwu vs. Mojekwu (*Supra*) followed in *Onyibor Anekwe & Anor. v Mrs. Maria Nweke* (*Supra*) under review

9. Conclusion and Recommendations

From the judicial and academic point of view, the customary laws seen in Igbo societies and even the Succession Law of Anambra State, 1991, seem to offend the provisions of Section 42 (1) and (2) of the 1999 Constitution (as amended). The said laws are to the extent of their inconsistency with the `1991 Constitution, null, void and of no effect whatsoever. However, from the point of view of practicability, the customary laws of Igbo land would not have been otherwise. The said customary laws may be seen to be working hardship on the people on whom their incidences fall, it seems however that it wouldn't have been otherwise. In the final analysis, it is submitted that the problems associated with abuses of the right of women to inherit the properties of their fathers or husbands in Igbo land do not lie in the absence of sufficient legal framework to safeguard such rights. The problems lie with human weaknesses that manifest in greed, collusion with one another etc. the solution to these may lie in the vigilance and readiness of members of the society to rise up to defend the cause of justice whenever such situation arises. After all, how many of these cases do actually get to court? There is need for women's rights advocacy groups to be more proactive in educating and enlightening women as to the consequences of marriage under customary law and their remedies when they have chosen such marriage as well as enlightening the society on the consequences of discrimination against the female child in matters of inheritance of property. Also there should be public education on the consequences of possible collision between the provisions of Customary Law on inheritance of property by widows and female children and statutory enactments and case laws. Finally, such groups are expected to go some steps further, as many of them are already doing[30] to institute actions in court to stop such abuses, intimidation and harassment of women. There are situations where admonitions, entreaties and sermonisation may not be enough. On its part, the judiciary should be vigilant to know when overzealous relatives of a deceased intestate begins to oppress the deceased widow and her female children so as to exercise its discretion in their favour assuming such a case gets to court. That would certainly provide a more cushioning effect to such challenged persons than the name calling which has become the past time of our courts in respect of Igbo Customary Laws on inheritance by widows and female children. Regarding Section 51 of the Anambra State Inheritance and Succession Law, 1991 (as amended), there is every need and it is recommended that the said law should be amended immediately to grant a deceased widow absolute right to inherit the property of her deceased husband irrespective of whether she had a child for the husband or not. To allow otherwise is to perpetuate and give statutory backing to the ignominious and much maligned 'Oliekpe' custom.

[30] The activities of F.I.D.A, WACOL etc in this regards is commendable to the extent that they assist even indigent women who fall victim of such intimidation and harassment after the death of their spouse to take hold or reclaim the properties of their husbands.