

CONTEMPORARY JUDICIAL RESPONSE TO WOMEN'S SUCCESSION AND INHERITANCE RIGHTS IN NIGERIA: A HEAVE TO GENDER DISCRIMINATION*

Abstract

Women in Nigeria have continuously experienced discriminatory treatment in real life particularly due to the male dominant nature rooted in patriarchal ideology. One of the numerous areas where women have been treated unfairly is that of inheritance. Under many Nigerian Customary Law Systems, women cannot inherit their husbands' estate and in some cases their parents. However, their male counterparts can inherit as husbands and children. There is a notion that wives are their husband's immovable property to be inherited; most customs therefore based the right to inheritance on blood relation. Indeed, inheritance is one of the commonest ways for women to acquire or access land which the anchor of all that is valuable. Disinheritance seriously undermines women's economic security and feminized poverty. Using a doctrinal research methodology, the paper examined some discriminatory cultural practices under customary laws with particular reference to succession and inheritance. It equally appraised recent judicial decisions on women inheritance. The paper found out that Nigerian courts have a great role to play in the re-engineering of laws relating to women's inheritance rights under customary law; equally as a result of ignorance, illiteracy, poor access to legal justice system, women have not been able to exploit the full potentials of the law to their own advantage. The paper therefore recommended that women should be enlightened on the need to bring to fore cases of disinheritance and discrimination against women under the guise of custom. It further recommended that restatement of customary law through codification, unification and harmonization of the native laws and customs of the various ethnic groups would go a long way in bringing about uniformity, certainty and predictability of customary law thereby improving its status from being an instrument of male chauvinism to that of a civilized law that respects gender equality and the rule of law.

Keywords: Judicial Response, women succession, inheritance Rights, Gender discrimination, Nigeria.

1. Introduction

The triple system of marriage laws¹ in Nigeria has resulted in the existence of a plural law of women's inheritance rights to property in Nigeria. Upon a man's death, the devolution of his property may be governed either by customary or Islamic law on the one hand or by the adopted English System of inheritance. The question of which law would apply quite often arises in cases of intestacy for the presence of a valid will leave little or no room for uncertainty. Similarly, the type of marriage contracted by the intestate is also a determining factor of the applicable intestacy rules in a particular set of circumstance. Most marriages are usually conducted under the marriage Act and the traditional rites. Parties may do the traditional ceremonies first and later contract a marriage under the Act or vice-versa. Rarely do they feel adequately married until both are contracted². The parties go through these complicated arrangements in a purported desire to satisfy all the parties concerned, and themselves. It never occurs to them to reflect on the possible irreconcilable difference in the legal incidents of the two contracts, and the inevitable conflicts, that might result from their co-existence. Whereas, it is often theorized that the two streams of law run independently, the truth is that often times they meet in the personal life of the individual especially within marriage; but they rarely meet harmoniously. Consequently, inheritance rights are governed by the three system of laws with much complications upon the demise of one such parties. Moreover, the 1978 land Use Act of Nigeria established a state owned land system that allowed similar opportunities for men and women to acquire or inherit land. However, only legally married women could benefit from this Act, so it did not necessarily improve the ownership or inheritance rights for women in Nigeria. Transfer of land ownership is still largely guided by customary practices that discriminate against women. However, current judicial activism has exposed the fact that women's human right have, shifted from mere focus on human rights standards to means of implementing human rights of women, thus breaking barriers. It is therefore against this backdrop that this paper examines some discriminatory cultural practices under customary laws with particular reference to succession and inheritance and the recent judicial decisions on women inheritance in Nigeria.

2. What is Succession/Inheritance?

The law of succession involves the transmission of the rights and obligations of the deceased person in respect of his estate to his heirs and successors. It deals primarily with the distribution of a deceased person's estate to his heirs and successors. *Black's Law Dictionary* defined succession as the act or right of legality or officially taking over a predecessor's office, rank or duties; it is the acquisition of rights or property by inheritance under the laws of descent and distribution.³ There could be succession on death to entirely of a deceased person's assets and liabilities. Hereditary or instate succession is the method used to distribute property owned by a person who dies

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¹ These are statutory, customary and Islamic marriages.

² A O Obilade, *Women in Law* (Lagos: University of Lagos, 1993) P 118.

³ BA Garner (ed), *Black's Law Dictionary*, (8th Edn, Minnesota: Thomson West, 2004) p. 1479

without a valid will⁴. Succession is also referred to as the passing of property of persons upon the death of the owner of the property⁵. It deals with the rules governing the administration of the real estate by the personal representatives of the deceased person including state participation. In respect of the real estate situate within its territory and personal estate of the deceased person subject to its jurisdiction.

Succession may be testate or intestate. Where a deceased person made a will, he is said to have died testate. Where a deceased person did not make a will he is said to have died intestate. Properties which are acquired by a person could be 'personal' or 'real'. Personal property include all the property owned by a person except land,⁶ while real property is land and as a general rule, whatever is affixed or attached to land. The totality of both the personal and real properties of a deceased person is called an estate. The estate also includes all debts and liabilities of the deceased person before his death.⁷

This is the property received from an ancestor under the laws of intestacy. It is also the property that a person receives by bequest or devise⁸. It is the entry of a living person or living persons into possession of a dead person's property. It operates where private ownership of property exists as a basis of social and economic enhancement⁹. Inheritance and succession are essentially the same, however, the minor difference between them is worthy of mention. Thus, while inheritance connotes the possession of a dead person's property or interest by a living person or persons, succession is more elaborate and includes the act or right of legally or officially taking over a predecessor's office, rank and duties. It also involves absorption of rights and liabilities of the deceased in respect of the estate of the deceased¹⁰.

3. Some Customary Women's Inheritance Practices

Generally, a woman has no right of inheritance to her husband's estate, her contributions to the acquisition of the estate notwithstanding. The practice is entrenched in patrilineal societies which accord the right and privilege to inherit to sons alone and exclude daughters and wives from inheritance¹¹. This is indeed discriminatory, using gender as a construct on the issues of women's inheritance rights.

The Igbo Custom

Originally, the custom forbids property inheritance by women. The customary law of inheritance is predominantly patrilineal. Land and landed properties are basically inherited by the eldest son of the deceased in areas that practice the primogeniture system. Such first son can inherit absolutely to the exclusion of other children. However, if there is no son or he is not of age, the man's brother or uncle becomes the visible beneficiary¹². The females of the family can reside or utilize allotted parcels of land according to their needs but it is very temporary in nature. It will never amount to inheritance. Thus, sisters or wives cannot inherit landed property. In *Uboma v Ibeneme*¹³ the court held that daughters cannot inherit from their deceased father's estate in the Eastern part of Nigeria. Where a man is married to more than one wife, the eldest sons of each wife inherit jointly their father's land. In *Ejiamike v Ejiamike*,¹⁴ it was held that the absence of the right to inheritance by the widow extends to the administration of the intestate estate especially where there is a male issue and that the male as of right was entitled to administer the estate of the deceased father. Indeed, the woman's interest or right to her husband's estate depends on a number of factors such as whether she has sons or is childless, and also her character and behaviors. If she produced sons, she is fully entitled to remain in her husband's house, farm his personal lands as she wishes. She however remain not as an owner but as a caretaker of the lands for her infant sons who are the rightful successors. However, where she has no male but only female issues, at her husband's death, she is merely entitled to reside in the home with her children for life or until she decides to leave. But this right is subject to good behavior on her part. Thus, if the family finds her wanting in character she forfeits her right to remain in the house or farm the land¹⁵

⁴ Ibid, p. 1479

⁵ TOG Animashun and A B Oyenehin, *Law of Succession, Wills and Probate in Nigeria* (Lagos: MIJ Publishers, 200) p. 3.

⁶ This include, money, goods, trinkets, shares, clothes

⁷ JAM Agbonika, 'The Right of a Woman to Succession and Inheritance Under Native Law and Custom in Nigeria: The Need for Reform' (2013) 5(13) *Kogi State University B. Annual Journal of Public Law*, 15.

⁸ Ibid, p15.

⁹OVC Ikpeze, 'Gender Dynamics of Inheritance Rights in Nigeria, Need for Women Empowerment (Onitsha: Folmech Printing & Pub. Co. Ltd, 2009) p 6.

¹⁰ Ibid.

¹¹ E I Nwogugu, *Family Law in Nigeria*, (Ibadan, Heinemann Educational Books Nigeria Ltd, 1974) p 407.

¹² OVC Ikpeze, *op cit*, p 147.

¹³ (1967) E M L R 251.

¹⁴ (1972) 2 ENLR, 11.

¹⁵ A O Obilade, *op cit*, P 310.

Moreover, the decision in *Nezianya v Okagbue*,¹⁶ portrays the position of a widow without male issue with regard to her husband's property. In that case, the widow on the death of her husband began to let his house to tenants. Probably responding to her business sense, she sold a portion of the land and with the proceeds she built two or more huts on another part of the land which she also let. On her attempt to sale more lands, perhaps for more viable investments, her husband's family objected, claiming that she had no right under Onitsha custom to make such sales. She had just one daughter who predeceased her, leaving also two daughters who were the plaintiffs in the case. The plaintiff's claimed as against members of their grandfather's family who instituted action in the Native Court challenging the widow's right to alienate her husband's property that they were entitled to the exclusive possession and ownership of the land and huts which their widowed grandmother had built. Rejecting their claim, the Supreme Court held that under native law and custom of Onitsha, a widow's possession of her deceased husband's land was not that of a stranger, and no matter how long such possession lasted, it could never be adverse to her husband's family and would never make her the owner. She could not also deal with his property without the consent of the family. It was also held obiter that if a husband died without male issue, the real property descended to his family. Neither his female issue nor his widow could inherit it.¹⁷

More than two decades later, the Supreme Court affirmed their *Nezianya* decision in *Nzekwu v Nzekwu*,¹⁸ where it was held inter alia, that on her husband's death, a widow who has no male issue has only a right to occupy the building or part of the building belonging to her husband subject to good behavior. While she may deal with the property only with the consent of the family, she cannot by effluxion of time, claim the property as her own. Her interest in the house is merely possessory and not proprietary so that she cannot dispose of it. The rationale for this law is the fact that women are expected to get married and ultimately leave their parents' home and move to the family of their husband to become part of their husband's family. Hence, much of the heritable properties, such as land, remains in the family of founder and cannot be taken out into another family¹⁹. There is also the general notion that a wife is her husband's property to be inherited on his death. This description of a wife has gained considerable ground among Nigerians and Europeans alike. Early writers and even High Court judges have accepted and referred to this view. However, the concept is unpleasant to the hearing of many Nigerians and also repulsive to women.

Perhaps, Obi made a very valiant and brilliant defence that wives are neither property nor are they inherited. A wife is a priceless property and a distinct specie which is totally adored. She is a thing of beauty to be handled with celestial care and protected by the husband. She is his, potentially for life and perhaps forever. Her worth is inestimable. Above all, a widow has the right to refuse and remarry²⁰. The writers are of the view that it is naïve to suggest that a widow is inheritable. It is a truism that defective land tenure system which concentrate land ownership in the hands of a selected group fans social injustice as is the case in most states in Eastern part of Nigeria. It simply demonstrates man's inhumanity to womanhood, an entrenched mechanism of disempowerment of women and a barbarous social condition. It is interesting to know that this Igbo custom is repositioned currently through judicial activism²¹.

The Yoruba Custom

Originally, the eldest brother of the deceased inherited absolutely to the exclusion of his children and wife or wives. The Yoruba customary law appears by means of judicial decisions to have developed beyond the restrictions imposed in other native law and customs. In *Adeseye v Taiwo*²² the Court viewed such custom as repugnant to natural justice, equity and good conscience. The Yorubas have early enough responded to the waves of change in the social and economic attitudes and needs in their society and have modified the custom. Under the present Yoruba customary law, daughters have the same inalienable rights as sons over their father's property. Thus, under Yoruba customary law all the children of a deceased person both male and female, succeed to his property²³ on his intestacy. The eldest son, the Dawodu, thenceforth becomes the head of the family taking charge and management of the deceased's estate for himself and other children. However, it was held in *Lewis v Bankole*²⁴

¹⁶ (1963) 1 All NLR 352

¹⁷ *Ibid.*

¹⁸ (1989) 2 MWLR (Pt 104) 317

¹⁹ A G Karibi – Whyte, *Succession Rights of Women in Nigeria* in International Federation of Women Lawyers Proceedings and paper of a symposium, 10th anniversary (Enugu, Forth Dimension Publishers, 1994) p 49.

²⁰ SNC Obi, *The Igbo Law of Property* (London, Butter worth, 1963) p 9.

²¹ *Mojekwu v Mojekwu* (1997) 7NWLR 283, change the tide with respect to women's right to land and to inherit property from the estate of their deceased husband or father; In *Balogun v Oshodi* (1931) 10 NLR 36, it was posited that native law or custom is a living thing and may change as conditions change.

²²(1957) IFSC, 54; *Coker v Coker* (1975) WRLR 10. Court held that daughters right to the house do not terminate at their marriage for they are entitled on their husband's death or termination of their marriage to return and reside in the family house with their children.

²³ *Olowu v Olowu* (1985) 3 NWLR 372.

²⁴ (1908) NLR, 81.

that not only can a woman inherit property but she can also be the head of the family. Consequently, where the eldest child is a female she succeeds as head of the family. Osborne CJ stated in *Lewis v Bankole*,²⁵ that there is nothing inequitable in the recognition of women's right. While indeed the rights of daughters to succeed to their father's property has been achieved in Yoruba land, the wife is still treated as a stranger in her husband's family. The custom is that a wife can neither inherit her husband's property nor take a share in his estate. The Supreme Court held in *Akinnubi v Akinnubi*,²⁶ that it is a well settled rule of native law and custom of the Yoruba, that a wife could not inherit her husband's property. Indeed, under Yoruba customary law, a widow under an intestacy is regarded as part of the estate of her deceased husband to be administered or inherited by the deceased's family, she could neither be entitled to apply for a grant of letters of administration nor appointed as co-administrator of her deceased husband's estate.²⁷ However, current judicial activism have paved way for prevention and protection putting customary law at the verge of extinction. An unfair custom should not be enforced or invoked by the machinery of Justice as per what the Supreme Court did in *Mojekwu's* case. The writers are therefore of the view that with the decision in *Mojekwu's* case, overwhelming power of interpretation of laws by courts is very glaring.

Northern Customary Law

This is basically the Hausas, Fulanis and others. The customary law of inheritance in the northern part can be divided into the indigenous native laws and customs of inheritance and the Islamic rules of inheritance. The indigenous native law and customs noted here are the Birom of Plateau State, the Chibok of Borno State, the Lugada of Adamawa State, the Igala of Kogi State and the Hausa. Although, the mode of inheritance under these indigenous native laws and custom vary, it is generally accepted that the first in line as heirs to a deceased person's property are his sons and the next his brothers. Females are excluded from inheriting the deceased father's property. They would however, inherit their mother's entire movable properties. But in the case of landed property whether owned by a man or woman is inherited only by the males in the family.²⁸ By Hausa native custom, before the advent of Islam, young males and females are not entitled to inherit from their deceased father's estate as was held in *Mohammedu v Mohammed*²⁹. The rationale was that since young sons and daughters cannot go to war and secure booties or loot,³⁰ they should not be allowed to inherit as heirs. By the original Hausa native custom, the females were themselves object of inheritance. Only adult sons and brothers were entitled to inherit.

The Islamic rules of inheritance apply to persons who are Muslims and who subject themselves to Sharia law. Under Sharia Laws, Allah the 'Most High' did not leave inheritance in the hands of the males. He classified heirs as including females and stated their shares. The rationale behind the Islamic law of inheritance is based on the fact that the deceased's property should be used primarily to support those persons whom he was obliged to first support in his life time and who have greatly suffered by his death³¹. Sharia affords women whether as daughter or wives right to inheritance, making it the only customary law that guarantees such rights. The provisions have put the sharia customary laws on a higher pedestal in the realm of inheritance rights with emphasis on equality of all human beings³². The rules for distribution are provided for in chapter 4, verses 11 and 12 of the Holy Quran. In Quran 4.7, Allah ordained that for inheritance, the females and males must have their shares and that any widow is entitled to a share in her deceased husbands estate, as held in *Sidi v Sher'aban*,³³ where the Court of Appeal recognized the right of a widow without any issue (child) under Islamic law and practice as entitled to one quarter (1/4) of the estate of the deceased husband.³⁴ Islamic law also recognizes the use of wills, called 'Wasiya.' The power of the deceased to dispose of his property through a will is allowed but this is restricted to only one-third of his property. The use of will from the Islamic point of view is a divine injunction since it is regulated by the Quran. It offers the testator the means of correcting, to certain extent, the law of succession and of enabling some relatives who are excluded from inheritance by Islamic law of succession to obtain a share in the deceased property.

²⁵ *Supra*.

²⁶ (1997) 4 NWLR (Pt 486) 144.

²⁷ *Ibid*. Their Lordships arrived at this decision in 1997 following old decided cases of *Aileru v Anibi* (1952) 20 NLR 46, where Jibowu J held that under native laws and customs, widows cannot administer the estate of their husbands; *Suberu v Sumonu* (1957) 2 FSC 33, where the court upheld the Yoruba custom that a wife cannot inherit her husband's property and where there are no children alive at his death, the property will devolve on the members of the husband's family either paternal or maternal.

²⁸ JAM Agbonika, *art cit*, p 13.

²⁹ (2002) NWLR (Pt. 708) p.104.

³⁰ Gamima.

³¹ C M G Yakubu, 'Property Inheritance and Distribution of Estate Under Customary Law', cited in Y Osinbajo & AW Kalu, Towards Restatement of Nigerian Customary Law, Federal Ministries of Justice Law Review Series 136.

³² O V C Ikpeze, *op cit*, p 146.

³³ (1992) 4 NWLR Pt. 121) p. 208

³⁴ Note that a non-Muslim cannot inherit from a moslem and vice-versa.

4. Transformative Judicial Decision on Women's Inheritance

In Nigeria, judicial activism is currently empowering women to access land, property, and housing by inheritance and succession from her deceased father's or husband's estate. The case of *Mojekwu v Mojekwu*³⁵ seems to have changed the tide with respect of women's right to land and to inherit property from the estate of their deceased husband or father. This case is seen nationally and internationally as a landmark for women's human rights in Nigeria, it is therefore imperative to discuss the full facts of the case. Moreso, as it went to the Supreme Court wherein the brave woman, woman who fought for three decades for her right died and was substituted with her daughter's name hence Augustine *Nwafor Mojekwu v Theresa Iwuchukwu*³⁶. At the High Court, Onitsha, the appellant claimed a declaration that he was entitled to the statutory right of occupancy of the property situate at and known as No. 61 Venn Road, South, Onitsha in accordance with Nnewi native law and custom, a declaration that he, being the recognized Kola tenant of the Mgbelekeke family of Onitsha Kola tenancy. According to the appellant, his only uncle Okechukwu Mojekwu, acquired a parcel of land from the Mgbelekeke family of Onitsha under kola Tenancy and built a house on it which was known as No. 61 Venn Road South, Onitsha. The man died in 1944 and was survived by two daughters and a son called Patrick Adina Okechukwu Mojekwu. The appellant averred that his own father, the only brother of Okechukwu Mojekwu, died in 1963 while Patrick, the only son of his said uncle, died during the Nigerian civil war without any child. The appellant claimed that by virtue of Nnewi native law and custom, he succeeded to the estate of his late uncle, Okechukwu Mojekwu, and was the head of the Mojekwu family. The mother of late Patrick was the defendant at the High Court. The respondent who was substituted for the defendant at the Supreme Court was one of her two daughters. The defendants case was that the property in dispute had passed to late Patrick and that it later passed to Chukwuemeka Okechukwu, the alleged infant son of late Patrick. The defendant claimed that when the house built by her husband went into ruins during the Nigerian civil war, he rebuilt it, without any reference to the appellant, with her own money and that she put in all fee-paying tenants. The defendant averred that the appellant misrepresented facts to the Mgbelekeke family to recognize him as the person entitled to continue the Kola Tenancy; that the recognition of the appellant where the male and female issues of the deceased kola tenant are living is contrary to the Onitsha Customary law kola tenancy system of devolution of property on death. And that the native law and custom of inheritance of Onitsha applied to the cases where the land in dispute is situated and not the native law and custom of Nnewi.

At the trial, the evidence led on behalf of the appellant was that under Nnewi Custom, a male child inherits property; and, if there is no male child, the brother of the deceased owner of the property inherits it, even where the man was survived by female children. In either case, the person who so inherits is called the "oli-ekpe". He inherits the assets and liabilities of the deceased. At the conclusion of the trial, the High Court dismissed the suit. Aggrieved by the decision of the trial court, the appellant appealed to the Court of Appeal. The Court of Appeal came to the conclusion that the applicable law was the *lex situs* and that the *lex situs* was the kola tenancy law and not the personal law of the parties, which was the Nnewi custom of "oli ekpe". The court affirmed the findings of the trial court and then dismissed the Appeal. Further, the Court of Appeal declared the "oli ekpe" custom was repugnant to natural justice, equity and good conscience. As such, the Court of Appeal held unconstitutional and contrary to democratic values an age long Igbo Customary law and in this case "Oli-Ekpe" custom of Nnewi under which males and not females inherit their father's property. According to Niki Tobi, (JCA) who delivered the lead judgment:

Is such a custom consistent with equity and fair play in an egalitarian society such as ours where the civilized sociology does not discriminate against women? Day after day, month after month and year after year, we hear of and read about customs which discriminate against the womenfolk in this country. They are regarded as inferior to the menfolk. Why should it be so? All human beings males and females 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 ground of sex, apart from being unconstitutional, is antithesis (sic) to a civil society built on the tenets of democracy which we have freely chosen as a people. We need not to 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 civilized 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 world disagrees with the divine truth, I believe that God, the creator of human being is also the final authority of who should be male or female. Accordingly, for a customary law to discriminate against a particular sex is to say the least an affront to the Almighty God himself. Let nobody do such a thing. On my part, I have no difficulty in

³⁵ [1997] 1NWLJ (Pt. 512) p. 283.

³⁶ [2004] II NWLR (Pt 883) p. 196.

holding that "Oli-ekpe" custom of Nnewi is repugnant to natural justice, equity and good conscience³⁷.

Again, the decision in *Chinweze v Masi*³⁸ readily provides the answer to non-inheritance. In that case, Oputa, JSC held a man's family normally consists of the man, his wife or wives and children born to by such wife or wives to him. In this case Peter Chinweze (deceased) married one Elizabeth Chinweze and he died in 1939, while his wife was pregnant with Veronica Mari (1st respondent) Elizabeth Chinweze and Veronica were this joint – heirs until the formers death. The appellants were children acquired by the late Elizabeth from 1943 onwards, who lived in the property in dispute from childhood till date. The appellants thus claimed that they grew up to know the property as theirs and sued as beneficiaries of the Estate of Elizabeth Chinweze. The 1st respondent sold the property to the 2nd respondent, who applied to be joined as a party at the High court and was so joined. At the high court, the appellant were held to be strangers, having no interest to assert on the said property, the property being left to Elizabeth Chinweze by her husband (who was not appellants father) the appellants appealed to the Court of Appeal, which upheld the trial court's decision and to the Supreme Court which also dismissed the appeal with costs to the respondents. The Supreme Court reaffirmed the decisions of the Court of Appeal that the plaintiffs had nothing to inherit. They are stranger to the property in dispute and consequently, have no interest to assert. In other words, the plaintiffs have no locus standing to bring the present action. Equally, the Court of Appeal held in the case of *Okonkwo Timothy v Sunday Oforka*,³⁹ declared the Oraifite native law and custom which does not allow women to deal in landas not only unconstitutional but repugnant to natural justice, equity and good conscience.

Furthermore, in *Anekwe v Nweke*⁴⁰, the Supreme Court condemned the custom and practices of the Awka people finding the custom of disinheriting a woman from property to be repugnant to natural justice, equity and good conscience. The judgement emphasized that custom of this nature in the 21st century societal setting will only tend to depict the essence of the realities of human civilization, it is punitive, uncivilized and only intended to protect selfish perpetration of male dominance which is aimed at suppressing the right of the women folk in the given society. In *Ukeje v Ukeje*⁴¹, the Nigerian Supreme Court invalidates Igbo Customary Law denying female descendants the right to inherit. The Supreme Court in a unanimous decision, confirmed that the Igbo customary law of inheritance, which excludes female children from inheriting the property of their deceased fathers, was in conflict with the non-discrimination provisions of the Nigerian constitutions of 1999 and therefore void. Thus, in aforementioned cases, the Supreme Court condemned the refusal of customary law to recognize female inheritance with regard to property. The writers are therefore of the view that the judgements brought to light issues of multiple or intersectional discrimination that is experienced more severely or in a unique way in connection with excursion from inheritance on the over tapping grounds of gender and circumstances of birth⁴²

Indeed, Customary law in Nigeria is a major source of law; however the holdings in these cases illustrate that the validity of customary rules within the legal system depends on whether those rules are consistent with the constitution and are not repugnant to natural justice, equity and good conscience. Thus, in a country like Nigeria, where there is a large discrepancy in gender equality that is largely grounded in traditional cultures and practices, the holdings in these cases are a significant step in the protection of women's property rights and gender equality. Recently judicial decision have developed inheritance by women to include administration of their deceased husband's estates as typified in the case of *Emokpae v Idubor*,⁴³ where the widow of a deceased intestate who was not entitled to benefit under the estate of the deceased was held by the court to possess the right to commence an action against the administration of such estate in order to protect the interest of her children who are beneficiaries of the estate and to protect her personal interest where it is affected by the actions done by the administration of the estate in a purported gathering of the estate. This is equally in line with the decision enunciated in *Akinnubi v Akinnubi*,⁴⁴ where eventually the Supreme Court allowed the widow to administer her decease husband's estate on behalf of her children as their next of friend.

5. International and National Human Rights Standards Pertaining to Women's Inheritance Rights

International Legal Framework

The significance of women's property and inheritance rights has been recognize in a variety of international legal instruments. Foremost among these are the following:

³⁷ *Mojekwu v Mojekwu*, *supra*, Pp. 304-305.

³⁸ (1989) 1SCN 14 ;(1959) INWLR (Pt. 512) 283.

³⁹ (2008) 9 NWLR (Pt 1091) 42.

⁴⁰ (2014) 9 NWLR (Pt 1412) 393.

⁴¹ (2014) 2 NWLR (Pt 1418) 384.

⁴² ie being born out of wedlock.

⁴³ (2003) 12 NWLR (pt 849) 19.

⁴⁴ (1997) 4 NWLR (Pt 486) 144.

Universal Declaration of Human Rights (1948)

Article 2 of the Universal Declaration of Human Rights, 1948 provides to the effect that everyone is entitled to all the rights and freedom set forth in the Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 17 1 also provides that everyone has the right to own property alone as well as in association with others. Also, no one shall be arbitrarily deprived of his property.⁴⁵

International Covenant on Economic, Social and Cultural Rights

By virtue of Article 22 of the International Covenant on Economic, Social and Cultural Rights, 1966, each state parties undertake to guarantee that the rights enunciated in the present covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 3 enjoins state parties to ensure equal rights of men and women to the enjoyment of all economic, social and cultural rights.

International Covenant on Civil and Political Rights

Article 26 of the International Covenant on Civil and Political Rights, 1966 also provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this aspect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, sex, colour, language, religion political or other opinion, national or social origin, property, birth or other status.

Convention on the elimination of all forms of discrimination against women

Convention on the elimination of all forms of discrimination against women enjoins state parties to accord to women equality with men before the law.⁴⁶ By virtue of Article 15 (2), states parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

United Nations Convention on the Rights of the Child

Article (2) of the United Nations Convention on the Rights of the Child, 1989 also enjoins state parties to respect and ensure the rights set forth in the present convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parents, colour, sex, religion, social origin, property, disability, birth or other status. The right of the girl child is a pointer to rights of women and girl-children.

Again, Para 35 of the Beijing Declaration and Platform for Action, 1995 guarantees women's equal access to economic resources, including land, credit, science and technology, rotational training, communication and markets as a means to further the advancement and empowerment of women and girls. Article 14 of the African Charter on Human and Peoples Right, 1981, also guarantee the right to property and enjoins states to ensure the elimination of every dissemination and also ensure the protection of the rights of the women and the child as stipulated in international declarations and conventions⁴⁷ while according to Article 21 of the Protocol to the African charter on the rights of women in Africa, 1995, a widow shall have the right to an equitable share in the inheritance of the property of her husband.

6. Conclusion and Recommendations

There is no doubt that inheritance is the most veritable and important means of acquiring property in different parts of Nigeria; inheritance law create confusion and undermines the efforts of women to access land and landed property so as to participate in the development of the country. Women are blatantly discriminated against in a manner that is incompatible with the international instruments ratified by Nigeria and also regarding the constitutional provision prohibiting discrimination. The customary laws and practice governing inheritance and succession rights of women are deficient in most places especially among the Igbo of Nigeria. Therefore, they constitute a major obstacle to gender equality, economic empowerment of the feminine gender and actualization of social justice in terms of development, peace and security. The writers therefore recommend that women should be educated on their inheritance rights, and their enforcement and also conditions under which such rights can be enforced. The traditional chiefs (obas/ emirs/ obis where most domestic disputes are resolved should be integrated in this transformative agenda. Human rights mechanisms and United Nations bodies should strengthen women's inheritance rights to property, land and other resources through effectively addressing discriminatory laws and practices. In the context of these contemporary contestations surrounding customary laws relating to women's inheritance, Nigeria Jurisprudential developments on inheritance Laws should ensure equality between males and females' right to inheritance in case of intestacy. Laws governing intestate succession should automatically provide spouses a share of the estate, including a life interest irrespective of forms of marriage.

⁴⁵ Article 17. 2.

⁴⁶ Article 15 (1).

⁴⁷ Article 15 (3).