

**DISCRIMINATORY CULTURAL PRACTICES OF PROPERTY RIGHTS OF AFRICAN WOMEN  
DESPITE LEGAL FRAMEWORK: A CALL FOR MORE PROACTIVE MEASURES\***

**Abstract**

*African women have been subjected to myriad cultural discriminatory practices despite national and international laws guaranteeing their rights to own property. The aged long patriarchy and primogeniture practice which prefers male dominance is practiced in most customs in Africa. The 21<sup>st</sup> century ushered in a new way of thinking that questions the continuous observance and practice of these cultures. The superior courts in Nigeria and Kenya have relied on the constitutional provisions and other enabling Statute to proscribe some of these discriminatory cultural practices against women. The study aims at enabling women to change the narrative with regards to discriminatory practices in order to seek gender equality. It employs the doctrinal method where literatures related to the subject matter were explored. It is found out that the decisions of the Supreme Court are yet to be effective because in practice, women remain disadvantaged and discriminated. The paper among others, recommend for the involvement and networking of women rights activist and Non Governmental organization to bring about institutional change. It concludes that the collaboration of all and sundry will go a long way to make the law and judicial pronouncement in this regard practically effective.*

**Keywords:** Primogeniture; Patriarchy; African Women; Human Rights; Cultural practices

**1. Introduction**

Culture has been said to be the way of life of a people. This belief is resonated in Africa with its myriad cultural practices. Some of these practices are obnoxious and discriminatory to women especially in Africa. This stems from the cultural belief of male superiority primogenitor rule and the resistance to change that is firmly entrenched in patriarchal ideologies handed down through socialization as an undocumented memory of the people. Customary practices place all sorts of rules on the African women that limit their freedom. The female child suffers discrimination due to the male preference syndrome in some customs in Africa. This cultural preference aided in the discrimination of the female child<sup>1</sup>. This study focuses on discriminatory cultural practices on African Women in some part of Nigeria and Kenya with respect to their rights to own or inherit immovable property. Customs, tradition, religion and law are the instruments and tools used to subjugate the female gender. These obnoxious laws were made to protect the male gender and made the female gender a chattel to be inherited as a property. For example, one earlier case from the Federal Supreme Court in Nigeria echoed and restated the customary position when it held that women could not inherit as they themselves are part of the inheritance.<sup>2</sup> This custom treats women as chattels to be passed on to the remainder of his family after the death of a spouse.<sup>3</sup> Since customary law sees the female as a property, she does not have any inheritance rights in her place of birth or marriage. In Kenyan communities, women ordinarily do not own land or movable property. At best, their rights are hinged on their relationship to men either as their husbands, fathers or brothers who own and control land, while women are relegated to the right of use only.<sup>4</sup> Although Kenya now has comprehensive progressive laws<sup>5</sup> that should translate to benefits for women in relation to their land and property rights, in practical terms women are still disadvantaged in terms of access to and control of economic structures and resources.<sup>6</sup> The succession

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<sup>1</sup> *Suberu v Sunmonu* (1957) 2 FSC 31,

<sup>2</sup> In *Suberu v Sunmonu* (1957) supra Jibowu FJ said: 'It is a well settled rule of native law and custom of the Yoruba people that a wife could not inherit her husband's property since she herself is, like a chattel, to be inherited by a relative of her husband.'

<sup>3</sup> Other examples of customary law prevailing in cases before the Federal Supreme Court that raised issues of discrimination include *Nezianya v Okagbue* (1963) 1 ANLR 352 and *Osilaja v Osilaja* (1972) 10 SC 126 where women were prohibited from inheriting the property on the basis of their sex under customary law. In *Nezianya v Okagbue* the Federal Supreme Court recognised limited rights of women to inherit, such as providing a life interest in the property dependent on their good behaviour.

<sup>4</sup>Double Standards: Women's Property Rights Violations in Kenya. Available at <https://www.hrw.org/report/2003/03/04/double-standards/womens-property-rights-violations-kenya>. accessed on 20th May 2022.

<sup>5</sup> The Kenya Constitution 2010; the Marriage Act 2014; The Matrimonial Property Act; 2013; The Land Registration Act; 2012 and Law of Succession Act 1981 among others..

<sup>6</sup>J N-Mewanu and N Abdi 'Securing Women's Property Rights in Kenya'. Available at <https://www.hrw.org/news/2020/03/07/securing-womens-property-rights-kenya>. accessed on 20th May 2022

law in Kenya bars a widow's husband's relatives from arbitrarily appropriating her inheritance. But the laws are rarely enforced and women that litigate on this issue are stigmatized especially in rural areas.<sup>7</sup>

The Igbo people of the South eastern part of Nigeria practice a patrilineal system where the succession and inheritance rights pass through the male offspring.<sup>8</sup> They share a common traditional belief in patriarchy and primogeniture which usually promote gender inequality and the subjugation of women, in both dignity and property rights.<sup>9</sup> The patrilineal nature of the Igbo people subsumed in the prevalent customary law ensures that no female could be the head of a household or lineage or a sub-lineage.<sup>10</sup> Women in Igbo land are also denied the right to inherit the intestate immovable property of a deceased husband or father under customary law, to the exclusion of the males, except to the extent that they can expect to be maintained by their husbands' heirs.<sup>11</sup> Many women experienced domestic violence, abandonment, denial of their rights and eviction from their homes. Cheluchi argued that patriarchal attitudes prevailed and violence against women in their homes was often considered private matters to be settled within the family. These attitudes she commented, prevented women from seeking redress from law enforcement for matters such as rape, child marriage, harmful traditional practices and other kinds of violence.<sup>12</sup> These cultural practices have been reverse by the highest Courts in Nigeria and Kenya through case law. The Supreme Courts have upheld the fundamental Human Rights provisions in Nigerian landmark cases of *Ukeje v Ukeje*<sup>13</sup> and *Anakwe v Nweke*.<sup>14</sup> And the Kenya reformatory cases of *Z.W.N. v. P.N.N*<sup>15</sup> and *J.A.O. v N.A.*<sup>16</sup> As laudable, far-reaching and commendable as the decisions of the Courts are in Nigeria and Kenya this reform is yet to be acknowledged by most of the kings, traditional rulers, family heads and elders who are the custodian of the history, tradition and custom of the people.<sup>17</sup> This work seeks to find out the disconnect between the law laid down and the law in practice and then proffer a workable solution.

## 2. Conceptual Framework

### Primogeniture Rule

Primogeniture is a system of inheritance in which a person's property passes to their firstborn legitimate child upon their death. The term comes from the Latin 'primo' which means first, and 'genitura' which relates to a rights person's birth. Historically, primogeniture favored male heirs, also called male-preference primogeniture. Under this regime, the eldest living son would inherit the entirety of his parent's estate.<sup>18</sup>

### Patriarchy

Patriarchy is an institutionalized social system in which men dominate over others; It is an analytical concept referring to a system of political, social, and economic relations and institutions structured around the gender

<sup>7</sup>Fida Kenya, 'Kenyan Laws and Harmful Customs Curtail Women's Equal Enjoyment of ICESCR Rights. Available at <https://www2.ohchr.org/english/bodies/cescr/docs/info-ngos/fidakenya41.pdf>. accessed on 10th Mat 2022

<sup>8</sup>The South East of Nigeria is one of the six geopolitical zones in the country. The region consists of the following states; Abia, Anambra, Ebonyi, Enugu and Imo State. South East Geo-political zone is 99.9% of population of Igbo people.

<sup>9</sup> A Ojilere, R Onuoha. ,and T. Igwe, 'New Directions for Securing African Women's Right to Property under Customary Law: The Case of Nigeria.' *Asian Women* [2019] (35) (1); 95-119.

<sup>10</sup> U Nduka, and N. G. Ozioma, 'Chinua Achebe's Things Fall Apart and the Role of Women in Igbo Traditional Religious Culture.' *Open Journal of Social Sciences*; [2019] (7)(12) 273.

<sup>11</sup> A Ojilere, 'Expanding Women's Right to Inherit Immovable Property in Igbo Land Beyond The Limits of Ukeje v Ukeje' 2021. Available at

[https://www.researchgate.net/publication/349732305\\_Expanding\\_Women's\\_Right\\_to\\_Inherit\\_Immovable\\_Property\\_in\\_Igbo\\_land\\_Beyond\\_the\\_Limits\\_of\\_Ukeje\\_v\\_Ukeje](https://www.researchgate.net/publication/349732305_Expanding_Women's_Right_to_Inherit_Immovable_Property_in_Igbo_land_Beyond_the_Limits_of_Ukeje_v_Ukeje). accessed on 30th May 2022.

<sup>12</sup> C Onyemelukwe, 'Legislating on Violence Against Women: A Critical Analysis of Nigeria's Recent Violence Against Persons (Prohibition) Act, 2015' 5 *DePaul J. Women, Gender & L.* (2016) Available at: <<https://via.library.depaul.edu/jwgl/vol5/iss2/3>>. Accessed on 1st May 2022.

<sup>13</sup> (2014) 11 NWLR (part 1418) 384; (2014) 234 LRCN 1

<sup>14</sup> *Onybor Anekwe, 2. Chinweze v. Mrs. Maria Nweke* (2014) 9 NWLR (PT 1412) 393-422; *Nzekwu v. Nzekwe* (1989) 3 SCNJ page 167; (1989)2 NWLR (Pt. 104) 373.

<sup>15</sup> [2012] eKLR

<sup>16</sup> [2013] eKLR24

<sup>17</sup>See Supreme Court's Decision on Female Inheritance Divides Igbo. Available at <https://www.vanguardngr.com/2020/08/supreme-courts-decision-on-female-inheritance-divides-igbo/>.Accused on 27<sup>th</sup> May 2022. The judgment has evoked mixed reactions from Ndigbo, particularly traditional rulers who are the custodian of the tradition and culture, as well as church leaders. see also Igbo Culture, Supreme Court on Head-on Collision. Available at <https://www.vanguardngr.com/2020/08/supreme-courts-decision-on-female-inheritance-divides-igbo/>. Accessed on 27<sup>th</sup> April 2022.

<sup>18</sup> Legal Information Institute Primogeniture Available at <https://www.law.cornell.edu/wex/primogeniture#:~:text=>. Accessed on 27<sup>th</sup> May 2022.

inequality of socially defined men and women.<sup>19</sup> Within patriarchal relations, women are collectively excluded from full participation in political and economic life. In a patriarchy, authority is exercised by the male head of the family and inheritance occurs through the male children. The role of patriarchy deprived women from advancing educationally.<sup>20</sup>

### **Human Rights**

Human rights are commonly understood as inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being. The concept of human rights is based on the belief that every human being is entitled to enjoy her/his rights without discrimination. Article 1 of the UN Charter declared that *all human beings are born free and equal in dignity and rights*. The entry into force of the UN Charter on 24 October 1945 marked the formal recognition of human rights as a universal principle, and compliance with human rights was mentioned in the Preamble and in Articles 55 and 56 as a principle to be upheld by all states.<sup>21</sup> In 1948, it was followed by the adoption of the UDHR, and in 1966 by the ICESCR and the ICCPR and its First Optional Protocol.<sup>22</sup>

### **Marriage**

The major means through which individuals are differentiated and placed into a system of inheritance is through the form of marriage that they choose to adopt, be it a statutory marriage, or under a customary or sharia system.<sup>23</sup> It is through the institution of marriage, the inheriting child whether male or female effectively step into the shoes of the deceased whose possessions, rights, and duties all transferred to the heir. In order to have a valid statutory marriage under the Marriage Act, it is necessary to both complete a formal registration process and to get married within a licensed facility. A valid customary marriage in Nigeria is by payment of bride price, dowry and the formal handing over of the bride to the groom.<sup>24</sup> Marriage under customary law is largely polygamous.

### **3. Legal Framework**

There are lots of legal instrument that have been enacted locally and internationally to protect the interest of the Women and to prohibit discriminatory cultural practices against them. Some of the national and international legal frameworks are discussed below:

#### **Constitutional Framework**

The Constitution of the Federal Republic of Nigeria<sup>25</sup> and the Republic of Kenya entrenched some reformative provision with regards to women Rights and gender equality. The Constitution in both countries are supreme and has binding force on all authorities and persons in Nigeria<sup>26</sup> and Kenya.<sup>27</sup> It prevails over any other law that is inconsistent with it.<sup>28</sup> Article 2 (4) of Kenya Constitution 2010 provides that: Any law, including customary law that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid. Customary law and the English law are subject to the Constitution of the Federal Republic of Nigeria 1999,<sup>29</sup> this is also the same with Kenya,<sup>30</sup> the Constitution is supreme law and prevails over any inconsistent laws. The fundamental rights are outlined in Chapter IV of the Nigeria Constitution from Sections 33 to 44. The Chapter IV rights include the rights to own property, dignity of human persons, and

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<sup>19</sup>C.J. Nash, in International Encyclopedia of Human Geography, 2009. Available at <https://www.sciencedirect.com/topics/social-sciences/patriarchy>. accessed on 10th April 2022.

<sup>20</sup> T.J Mudau, and O.S Obadire, The Role of Patriarchy in Family Settings and its Implications to Girls and Women in South Africa. *Journal of Human Ecology* [2017] (58)(2) 67-72

<sup>21</sup> Nigeria and Kenya are members of the United Nations and signatory to the declaration

<sup>22</sup> Universal Declaration of Human Rights. Available at <https://www.un.org/en/about-us/universal-declaration-of-human-rights>. Accessed on 30th May, 2022.

<sup>23</sup> V Emery, 'Women's Inheritance Rights in Nigeria: Transformative Practices. 1 UNAIDS, 2004 Report on the Global AIDS Epidemic. Available at <http://www.nigerianlawguru.com/articles/customary%20law%20and%20procedure/WOMEN%20INHERITANCE%20RIGHTS%20IN%20NIGERIA,TRANSFORMATIVE%20PRACTICES.pdf>. Accessed on 27<sup>th</sup> May 2022.

<sup>24</sup> H Boparai 'The Customary and Statutory Law of Marriage in Nigeria'. [1982] (46) (3) *The Rabel Journal of Comparative and International Private Law*. 530-557

<sup>25</sup> *Constitution of Federal Republic of Nigeria 1999 as amended in 2011* the current Constitution which is the 1999 Constitution although amended in 2011 was established by the Military administration of General Abdulsalami Abubakar. The Constitution has been criticized for not being autochthonous because it was not enacted by elected representatives of Nigeria but by the Military Administrators

<sup>26</sup> Section 1(1) of the 1999 Constitution as amended in 2011

<sup>27</sup> Article 2(1) of Kenya Constitution

<sup>28</sup> Section 1(3) of Nigeria Constitution and Article 2(4) of Kenya Constitution

<sup>29</sup> Section 1(3)

<sup>30</sup> Article 2(4) of Kenya Constitution

provisions outlawing discrimination on the basis of sex. Also in Kenya, Chapter 4 provides for Bill of Rights. These Rights and Freedom are encapsulated in Articles 26 to 51 of the Constitution. It is interesting to note in this discourse that Section 42 (1) of the Nigerian Constitution guarantees the right to freedom from discrimination on the basis of gender or circumstance of birth, and state thus: Section 43 thereof guarantees the right of every Nigerian citizen to acquire and own immovable property anywhere in Nigeria. It is also a Fundamental Objectives and Directive Principles of State Policy in the Nigerian Constitution that the State ‘shall protect, preserve and promote the Nigerian cultures which enhance human dignity and are consistent with the fundamental objectives.’<sup>31</sup>

The Kenya Constitution of 2010 in Article 27 (1-3) provides for Equality and Freedom from Discrimination. According to Article 28 Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres. It further provides in Article 28 that every person has inherent dignity and the right to have that dignity respected and protected. Article 29 also provides for freedom and security of the person. Article 29 (c) provides that no one should be subjected to any form of violence from either public or private sources; Article 40 (1) provides that, ‘every person has a right, either individually or in association with, to acquire and own property (a) of any description and (b) in any part of Kenya’. Article 40 (2) prohibits parliament from enacting any law that allows the government or any individual to (a) ...’deprive a person of property of any description or of any interest in, or right over, any property of any description or (b) ...to limit or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27(4).’ Article 45(3) of the Constitution provides that parties to a marriage will be entitled to equal rights at the time of marriage, during the marriage and at its dissolution. Article 60 (1) (f) eliminates gender discrimination in relation to land and property and gives everyone, including women, the right to inheritance and unbiased access to land.

### **International Framework**

These are laws made at the international fora that are applicable in Nigeria and Kenya by reason of its membership, ratification and domestication of the law in these countries. Some of these laws are:

#### ***African Charter on Human and People Rights 2004***

Nigeria and Kenya are signatories to the African Charter on Human and People Rights. This Act contains diverse provisions, protecting women against discrimination. For instance, the general non - discrimination clause states that: every individual shall be entitled to the enjoyment of his rights and freedom recognized and guaranteed in the charter without distinction of any kind such as ... sex’ Article 3 further concretised women’s right in Africa by stating that: (1) every individual shall be equal before the law. (2) every individual shall be entitled to the equal protection of the law’ The right of women in Africa were further firmly entrenched by the provision of Section 18 (3) of the Africa Charter which stated in every explicit term that ‘the State, shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the women as stipulated in international declaration and convention’.

#### ***Convention on the Elimination of All Forms of Discrimination against Women (1981) (CEDAW)***

Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women with Protocol 2000 also enjoins State Parties to condemn discrimination against women in all its forms, agree to pursue all appropriate means and without delay formulate a policy eliminating discrimination against women and to this end undertake: (f) To take all appropriate measures including legislation to modify or abolish existing laws, regulation, custom and practices which constitute discrimination against women. Article 16 (vi) provides for Respective rights in matters of property and succession. Article 5 enjoins state parties to take all appropriate measures to modify the social and cultural pattern of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority and the superiority of either of the sexes or on stereotyped roles for men and women.

#### ***Universal Declaration of Human Rights 1948***

Article 1 of the Universal Declaration of Human Rights has declared that ‘all human beings are born free and equal in dignity and rights’. Under Article 7, it states thus: “all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination”

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<sup>31</sup> Section 21 of the 1999 Constitution

#### **4. Appraising the Discriminatory Practices through the Cases**

This paper has categorised the various judgments of the Superior Court of records in Nigeria and Kenya with regards to customary discriminatory practices against African Women in Nigeria and Kenya into two; the Conservative Approach and the Liberal Approach.

##### **Conservative Approach<sup>32</sup>**

In time past, the Supreme Court of Nigeria and Kenya endorsed the traditional practice of inequity and discrimination against the women by upholding the customary law position on inheritance and property rights. For instance, in the Nigerian case of *Suberu v Sunmonu*,<sup>33</sup> Jibowu F J said: 'It is a well settled rule of native law and custom of the Yoruba people that a wife could not inherit her husband's property since she herself is, like a chattel, to be inherited by a relative of her husband.' Also, in *Nezianya v. Okagbue*<sup>34</sup> the court unequivocally stated thus:

By the customary law predominant in Igboland, a widow has no right to succeed to personal or real estate of her deceased husband. Of course, it would be absolute nonsense in the circumstances for a widow who is herself regarded as property to turn round to claim the property of her late husband. In such a case the only right available to her will be to be accommodated by the person who inherits the husband's estate until she remarries or becomes financially independent or dies.

The Supreme Court held in *Arase v. Arase*<sup>35</sup> that *the custom was not repugnant to natural justice, equity and good conscience, and therefore, valid and binding on those subject to it.* Also, in *Atuanya v Onyejekwu*<sup>36</sup> Egbuna J. held with regards to Ibo native law and custom that on the death of Udemba his land which were not sold in his life time cannot rest in the second defendant as she can never be the head of the family, she being a woman. In *Ejiamike v Ejiamike*<sup>37</sup> the court held that a widow had no right to the late husband's estate. Also in Kenya, this discriminatory property practice against women was upheld by the courts in Kenya. In *Essa v Essa*<sup>38</sup> the court held that the estrange wife lack equal share of the property. Also, in *Peter Mburu Echaria v. Priscilla Njeri Echaria*,<sup>39</sup> the Plaintiff instituted an action for divorce and ownership of matrimonial property. The Court of appeal reversing the first Court of First instance decision of equal proportion, held that husband and the wife shares of the property based on their monetary contribution towards its purchase.

##### **Liberal Approach<sup>40</sup>**

The above approach discussed earlier was the unenviable position, women in Nigeria and Kenya found themselves despite Constitutional and Statutory framework. The Highest Courts in Nigeria and Kenya proactively reversed this ugly trend and upheld the provisions of the Constitution. The reformative Nigerian case of *Mojekwu v Mojekwu*<sup>41</sup> came up for determination by the Nigeria Court of Appeal. Niki Tobi J.C.A (as he then was) in this case, invalidated the Nnewi 'Oli-Ekpe' Customary Law which disinherited a deceased man's biological daughter from inheriting her father's land in preference of her uncle as repugnant to natural justice equity and good conscience. The judge in his leading illuminating judgment, observed thus:

We need not travel all the way to Beijing to know that some of our customs, including Nnewi 'Oli-Ekpe' custom ... are not consistent with our civilized world in which we all live today, ... Accordingly, for a custom or Customary Law to discriminate against a particular sex is to say the least an affront on the Almighty God himself.

This decision by the Court of Appeal strengthened by the Supreme Court landmark decisions in *Ukeje v Ukeje*<sup>42</sup> and *Anakwe v Nweke*.<sup>43</sup> In *Ukeje v Ukeje* the Respondent as Plaintiff sued the Defendant Appellant; she contended that she was entitled to the estate of her late father. The Appellant as Defendant asserted that under Igbo customary

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<sup>32</sup>An approach which seeks to promote and preserve traditional social institutions. Adherents of conservatism often oppose modernism and seek a return to traditional values.

<sup>33</sup> (1957) 2 FSC 31

<sup>34</sup> [1963] All NLR 358 SC.

<sup>35</sup> (1981) N.S.C.C 101,114.

<sup>36</sup> (1972) NMLR

<sup>37</sup> (1972) ECSLR

<sup>38</sup> Civil Appeal No. 101 of 1995

<sup>39</sup> [2007] eKLR.

<sup>40</sup> A concept that believes in or allowing a lot of personal freedom, and believing that society should change gradually so that money, power and property will be shared more fairly. It generally supports individual right and equality and opposes norms, beliefs that are against social freedom.

<sup>41</sup> (2005) 5 NNLR (pt 657) 402

<sup>42</sup> (2014) 11 NWLR (part 1418) 384; (2014) 234 LRCN 1.

<sup>43</sup> (2014) 9 NWLR (PT 1412) 393-422

law, daughters, and women generally, are not entitled to inherit immovable property. The trial court found for the plaintiff/respondent. Dissatisfied, the defendant as appellant further appealed to the Supreme Court. Justice Olabode Rhodes-Vivour, JSC, who gave the lead judgment voided the Ibo customary law which disentitled a daughter from inheriting immovable property of a deceased father since such custom violated the fundamental rights to freedom from discrimination on the basis of sex or circumstance of birth guaranteed respectively by sections 42(1) (a) and (2) of the 1999 Constitution.<sup>44</sup> This also contradicts section 43 of the Constitution which guarantees the right to acquire and own immovable property anywhere in Nigeria. Also, in another celebrated case of *Onybor Anekwe, v. Mrs. Maria Nweke*,<sup>45</sup> the issue before the Supreme Court was whether a widow could inherit the family home after her husband's death. If she was not entitled to inherit, then the property would go to the eldest living male in the family;

Clara Bata Ogunbiyi, J .S.C<sup>46</sup> delivering the lead judgment held:<sup>47</sup>

I hasten to add 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 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 perpetration of male dominance which is aimed at suppressing the right of the womenfolk in the given society.

She also condemned the male appellants and their counsel for their actions in arguing that the widow should be disinherited. Nwali Sylvester Ngwuta JSC agreed with the condemnation of the custom and referred to it being a challenge to God's will and the height of man's inhumanity to woman,<sup>48</sup> In a similar circumstance as the case under consideration, the Court in *Nzekwu v. Nzekwe*<sup>49</sup> 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.' In Kenya the Landmark decision In *Z.W.N. v. P.N.N*<sup>50</sup> began a reform agenda in the property rights of Women in Kenya. In this case, where the husband and wife separated on the ground that the husband had left the matrimonial home to live with a mistress, the wife claimed for an equal (half) share of the matrimonial property. The court upheld the need to accord equal treatment to women following the principles of international law, as incorporated into law under Article 2 (5), and considering also the provision of Article 45 (3). In *J.A.O. v N. A.*<sup>51</sup> the plaintiff filed for judicial separation. The court upon hearing the matter granted orders for judicial separation. The plaintiff in this case, contended that property bought in the name of the Defendant and during the sustenance of the marriage be shared equally. The court held that the plaintiff was entitled to half share in all the properties which were found to be matrimonial property.

## **5. Conclusion and Recommendations**

Various laws at the national and international fore have been enacted to invalidate discriminatory practices against women and promote gender equality in Nigeria and Kenya. The judiciary has been proactive in proscribing discriminatory cultural practices against women in line with the constitutional provisions and other enabling statute in these countries. However, these laws and judgments are yet to be effective especially on the local chiefs and rural dwellers who in most cases observe such discriminatory cultural laws. Gender rights courses should be taught as a compulsory course in schools in other to correct societal perception. African Women are also enjoined to rise to the occasion to champion rights-based issues and sponsor programmes that enhance women rights. The collaboration of all and sundry will ensure that the law and decisions of the Courts are workable and not a mere academic exercise that conflicts with the law and tradition. One of the challenges of the enforcement and implementation of the Supreme Court Judgment is the reluctance of the people to accept the decision of the court that reverses the age long tradition handed supposedly over to them by their fore fathers. Ajabor, Ifanyi and Ovreme commented that in South Africa the Court has proscribed the primogeniture rule as it negates the equality of gender.<sup>52</sup> It is on this basis that this article suggested some recommendations which are necessary for

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<sup>44</sup> This was a unanimous decision as all the justices concur with the Justice that delivered the lead judgment.

<sup>45</sup> *supra*

<sup>46</sup>The other judges (Ibrahim Tanko Mohammad, Muhammad Saifullahi Muntaka-Coomassie, Nwali Sylvester Ngwuta and Olukayode Ariwoola (JSC) wrote brief concurring judgments and all of them expressly agreed with Ogunbiyi JSC. Justice Ogunbiyi was the only woman on the panel. At the time of her appointment Ogunbiyi JSC was the first woman to be appointed from north eastern Nigeria, and the fourth woman appointed to the Supreme Court overall.

<sup>47</sup> *Anekwe v Nweke*, *supra* n 3, at 15.

<sup>48</sup> *Supra* n 3, at 18.

<sup>49</sup> (1989) 3 SCNJ page 167; (1989)2 NWLR (Pt. 104) 373

<sup>50</sup> 44.[2012] eKLR

<sup>51</sup> 46 [2013] eKLR28

<sup>52</sup> I Ajabor, and O A Ovreme, 'The Female Right of Succession Under the Igbo Customary Law: A Critique' *International Journal of Innovative Legal and Political Studies*. [2019] (7) (1); 59-67

institutionalizing women's right to equality, dignity and property inheritance rights. Some of these recommendations include:

#### **Incorporating gender rights in the school curriculum**

In a bid to catch them young and instill in them the right societal virtue, the introduction of gender right courses in the primary and secondary schools and incorporating it as a core course in the tertiary institution will go a long way to correct the societal perception of gender equality. Education of the girl child from primary, secondary and tertiary level is sacrosanct. African Women are also enjoined to rise to the occasion to champion rights based issues and sponsor programmes that enhance women rights.

#### **Enlightenment programme**

As the saying goes charity begins at home, primary reform must occur at the local level especially with the traditional rulers who are seen as the custodian of their tradition. In Africa many of the customary disputes do not reach the customary court system, but are resolved through local mechanisms such as traditional rulers, family heads and village counsels.<sup>53</sup> The heads of the local institution and counsels through which majority of these land disputes are resolved who apply the discriminatory customary law of inheritance against women, should be informed about the reform the decisions of the Supreme Court have brought in their tradition. This will make them to reform their mind set towards accepting the change, thus become change agent in applying the decisions, propagating and enforcing the decisions of the court in the settlement of the dispute in the community; this will make the judgment of the Supreme Court effective especially when the custodians of the same customary laws and traditional institutions which used to deny women of property rights now become the ones to educate them on their new rights.<sup>54</sup>

#### **Disseminating Supreme Court decision through Electronic, Social Media and other Platforms**

The role of social media, electronic and the print media are enormous in disseminating information in the 21<sup>st</sup> century. The social media platforms like Facebook, WhatsApp, twitter, Instagram, blogs are one of the various ways information are disseminated. The community of users of these platforms are growing astronomically as one only need to get a SIM card, smart phone with a data to access information on the internet. On the spot information are usually posted through any of these platforms. Indeed, one can access most the decisions of the Supreme Courts on-line and be aware of the reform in the customary inheritance rights of women in Africa. Human rights activist, Nigerian Bar Association (NBA) NBA Women Forum, Kenya Bar, International Federation of Women Lawyers (FIDA), traditional leaders, concerned citizens and NGOs can utilize this medium; create a group/forum to drive home the reform in the customary law of inheritance. They can sponsor programmes on the Radio station, Television or print media to educate people on gender equality of which the decisions of the Supreme Court stand for. They can create jingles and run it on the local TVs and Radio stations where most of the traditional leaders, rural men and women reside with their indigenous languages to create the awareness.

#### **Education, Mass Mobilisation, and Sensitisation Programme**

African women, especially those in the remote and rural communities who are usually cut off from modernity and access to justice must be mobilized and informed of the changes in the customary law of inheritance and how the Supreme Court decisions have reversed the age long custom. They can be mobilized in places of religious worship, market places, schools, co-operative societies, various women unions, as well as town halls and be sufficiently informed that the courts have eliminated the notion of inferiority, subordination and gender dichotomy which society previously placed on women because of traditional beliefs in patriarchy and male primogeniture. This mobilization, awareness and sensitization programme can be spearheaded by the traditional rulers, village heads and religious leaders who are within the locality.

#### **Involvement of Professional Institutions/NGO**

Professional institutions like the Nigerian Bar Association, the Nigerian Bar Association Women Forum, Kenya Bar, the International Federation of Women Lawyers and other nongovernmental organization should rise to the

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<sup>53</sup> These included the family head who is the first mediator for internal family disputes; the umuadas, or married daughters who may return to enforce morality and prevent issues such as spousal abuse, theft and corruption; the village tribunal composed of 10 to 15 lineages which settles the majority of land issues, and its extension to the city through organizations like town unions; age grades (cohorts) who have responsibilities to each other such as burial and enforcement of discipline amongst each other; chiefs (titled men) who has statutory authority to reconcile parties in civil matters.

<sup>54</sup> H Nwaechefu, and S.K. Timiebiowei, 'Discrimination Against Female and Widow in Inheritance of Real Estate and Succession in the South Eastern Nigeria: A Breach of International Instrument and the Nigeria Constitution' *Journal of Law, Policy and Globalization*. [2019] (81). ISSN 2224-3240.P53-60

occasion through advocacy and condemn laws or policies that discriminate against gender equality.<sup>55</sup> FIDA in Kenya has been using radio talk shows and legal aid open days to raise awareness among women about their property rights. That includes educating women on the importance of jointly registering property that they buy with their husbands, because under the Matrimonial Property Act that gives both spouses the same interest in the property.<sup>56</sup> In Nigeria, NBA Women Forum, FIDA and other Women Organisations were at the National Assembly the legislative headquarters in Nigeria on the 8<sup>th</sup> of March 2022 (being the International Day for Women with the theme Break The Bias) to protest the Gender Sensitive Bills that were voted out by the Law makers. The Nigerian Women occupied the National Assembly for three days until the decision of the Law makers were reversed.

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<sup>55</sup>R.A Onuoha 'Discriminatory Property Inheritance Under Customary Law in Nigeria: NGOs to the Rescue' *The International Journal of Not-For-Profit Law*. [2008] (10) (2) 10

<sup>56</sup>Fida Kenya, Women's Land and Property Rights in Kenya. Available at <https://land.igad.int/index.php/documents-1/countries/kenya/gender-3/625-women-s-land-and-property-rights-in-kenya/file>. Accessed on 20th May 2022.