

## DISCRIMINATORY INHERITANCE PRACTICES AND THE RIGHTS OF WOMEN IN NIGERIA\*

### Abstract

*In some ethnic groups in Nigeria, daughters and wives are prohibited from inheriting the landed property of their deceased fathers and husbands. Considering the huge economic value currently placed on real estate, the poverty of women could be alleviated if they can be allowed without discrimination, to deal on family's real estate equitably. Arguably, the male members of the family most often than not, engage in sale of the inherited properties as a result of which they become billionaires overnight. What is good for the goose is good for the gander. This article examined the discriminatory nature of inheritance rights of women in Nigeria. The methodology of the paper is doctrinal in collecting and analyzing data from primary and secondary sources. This study discovered that practice of male primogeniture is prevalent in Nigeria and that there is a general discrimination and violation of women's right to inherit even in light of the plethora of court decisions which have heavily condemned the practice as being an infringement on the fundamental rights of women as enshrined in Chapter iv of the Constitution of Nigeria 1999 (as amended) and other relevant international and regional laws. This study made some recommendations which includes but not limited to the following: Wills should be made so that the testators share their properties amongst the beneficiaries, in doing so, some discriminatory inheritance practices against women can be avoided. Statutory marriages should be conducted in addition to the customary marriage ceremonies because the law protects the wife and children of a statutory marriage as opposed to customary marriages as the spouse is given priority in administration of the deceased estate or better still, customary marriages should be upgraded to the status of statutory marriage.*

**Keywords:** Women, Inheritance, Nigeria, Male Primogeniture, Discrimination

### 1. Introduction

Cultural and religious practices which divest the property of a deceased man to only the male members of his family, leaving out the wives and daughters though have been criticized by several scholars and held by the apex Court in Nigeria to be discriminatory against women,<sup>1</sup> these customs continue to abound. Customs where a woman's late husband's properties have been forcefully divested to the husband's brother because she was unable to give birth to a male child, have been condemned by both the court,<sup>2</sup> erudite scholars and the society at large, but these practices have not ceased to exist, In a bid to answer the question of how the law which is an instrument of social engineering, contributed in the management of these challenging issues relating to the inheritance right of women, the researcher found it pertinent that some relevant Statutes, both domestic and international laws, including case laws relating to the succession rights of women be considered. These Laws has been made over time to address the issues bothering on women rights globally. The Supreme Court has in recent times considered the issue of the succession rights of women in several cases like the cases of *Mojekwu v Mojekwu*,<sup>3</sup> *Ukeje v Ukeje*<sup>4</sup> and *Anekwe v Nweke*.<sup>5</sup> It is pertinent that these laws continue to be emphasized to illustrate their usefulness in challenging discriminatory inheritance practices against women.

### 2. Definition of Terms

Some reoccurring terms are defined in the context in which they are used in this Study. The Researcher adopts the definitions herein, as follows:

#### Inheritance

Inheritance is defined by the Black's Law Dictionary<sup>6</sup> as Property received from an ancestor under the Law of Intestacy or property that a person receives by bequest or devise. Okpalaobi and Okaphor<sup>7</sup> defined Inheritance as 'The practice of passing on property, titles, debts, rights and obligations upon the death of an individual'.

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<sup>1</sup> See, *Mojekwu v Mojekwu* (1997) 7 NWLR (Pt 512) p.283; *Ukeje v Ukeje* (2014)11 NWLR (pt 1418)384; (2014)4 S.C; (Pt. 1)1) ; (2014) LPELR 22.

<sup>2</sup>*Anekwe v Nweke* (2014) 9 NWLR (pt 1412) 393.SC; (2014) 4 S.C. (PT. III) 65.

<sup>3</sup>*Mojekwu v Mojekwu* (n 2).

<sup>4</sup>*Ukeje v Ukeje*(n 2).

<sup>5</sup>*Anekwe v Nweke* (n 3).

<sup>6</sup> B A Garner, *Black's Law Dictionary*, 10<sup>th</sup> ed (Thomas Reuters, St Paul MN, West Publishing co; 2014),

**Discrimination**

It defined by the Black's Law Dictionary as the effect of a law or established practice that confers privileges on a certain or that denied privileges to a certain class because of race, age, sex.

**Right**

According to Ogbu,<sup>8</sup> Right in the noun form means that to which a person has a just and valid claim, whether it be land, a thing, or the privilege of doing something or saying something.

**3. Types of Inheritance Law in Nigeria**

The laws governing inheritance in Nigeria can be divided into two broad types namely: Testate and Intestate.<sup>9</sup>

**Testate Inheritance**

When a man dies, the devolution of his self-acquired property depends upon whether or not he has made a will. If he has made a will, the property will devolve according to the direction contained in the will, and the succession is described as testate. If he has made no will, or has made one which at his death has become totally inoperative, he is said to die intestate, and the devolution of his property will be governed entirely by the rules of law prescribing the order of succession upon intestacy, this was held in the case of *Chukwu v Okoh*.<sup>10</sup> In Nigeria there is no uniformity of applicable law relating to Wills. Some states have created their Wills Laws, like the Wills Law of Lagos State, 1990, the Wills Law of Oyo State, 1990, the Succession (Estate of Deceased Persons) Law, Cap. 4 Revised Laws of Anambra State 1991 and Enugu State Administration of Estate law, 1991 are laws governing succession in these states, although both Anambra and Enugu Law cover testate and intestate. Section 140 of Anambra State Administration and Succession (Estate of Deceased Persons) Law, stipulates the way and manner a valid will should be executed as it concerns Anambra State in particular. Section 3(1) of the Wills Law, 1958 provides that real or personal estate which cannot be disposed by the applicable customary law cannot be disposed by will. For instance, the un-partitioned family land in which the testator has no demarcated interest<sup>11</sup> cannot be disposed by will. As it is the position of several customary laws in Nigeria, the house wherein the testator lived and dies cannot be disposed by a will.<sup>12</sup> However this was otherwise decided by the Court of Appeal in the 2014<sup>13</sup> case of *Okafor v Okafor*<sup>14</sup> considered sections 136, 137 (1), 138 (1) and 164 (1) of the Administration and Succession (Estate of Deceased Persons) Law of Anambra State, 1991 and held that section 137 (1) of the Administration and Succession (Estate of Deceased Persons) Law of Anambra State contains no qualification or limitation to the testator's capacity to make a will or the property to be devised.

**Intestate inheritance**

Generally, when a person dies without a will, the type of marriage contracted by the intestate person is the factor which determines which system is to apply,<sup>15</sup> either conducted under the Marriage Act or under customary law. Intestate inheritance basically involves the application of three systems of law, which are: the Common law, the Administration of estate laws of various states and customary law.<sup>16</sup>

<sup>7</sup>B N Okpalaobi and E F Okaphor, 'Revisiting the case of Ukeje v Ukeje viz a viz Igbo Customary Inheritance' (2017) (6) (4) *NG-journal of social Development*, 84.

<sup>8</sup> O N Ogbu, *Human Rights Law and Practice in Nigeria*, (2<sup>nd</sup> Revised Ed. Vol. 1, 2013, Snaap Press Ltd)1.

<sup>9</sup>P O, Itua 'Legitimacy, Legitimation and Succession in Nigeria: An Appraisal of Section 42(2) of the Constitution of the Federal Republic of Nigeria 1999 as amended on the Rights of Inheritance' [2012] 4 (3) *Journal of Law and Conflict Resolution*, 31-44.

<sup>10</sup> (2016) LPELR-42117(CA).

<sup>11</sup>EI Nwogugu, *Family Law in Nigeria* (3<sup>rd</sup> edition, HEBN Publishers Plc. 2014) 399.

<sup>12</sup> See *Idehen v Idehen* (1991)6 NWLR (Pt. 198).

<sup>13</sup> We await a confirmation or otherwise from the Supreme Court.

<sup>14</sup>(2014) LPELR-23561(CA).

<sup>15</sup>Itua (n 10) 35.

<sup>16</sup>Ibid; M A Bello, 'Principles and Practice of Succession under Customary Law', A paper delivered at the National Judicial Institute on 22<sup>nd</sup> March, 2017, P 2.

### ***Intestate inheritance under the Marriage Act or Statutory Marriage***

In a case of Marriage conducted under the Act, it is the indigenous law, i.e., the law of the state of origin of the deceased that determines the law by which his estate will be distributed. See the cases of *Mgbodu v Mgbodu*<sup>17</sup> and *Nebuwa v Nebuwa*,<sup>18</sup> On how to prove a statutory marriage, in the case of *Anyaegebunam v Anyaegebunam*<sup>19</sup> The Supreme Court said that the production of the original or certified copy of a Certificate of Marriage either under Section 32 of the Marriage Act, or under Section 80 of the Matrimonial Causes Decree 1970 is not the only way to prove a marriage: thus, where there is evidence of a ceremony of marriage having been gone through followed by the cohabitation of the parties, everything necessary for the validity of the marriage will be presumed in the absence of decisive evidence to the contrary.<sup>20</sup> By virtue of section 35 of the Marriage Act, every customary marriage conducted with another person during the pendency of a statutory marriage is invalid and void *ab initio* as was held in the case of *Mgbodu v Mgbodu*.<sup>21</sup>

### ***Intestate Succession under Customary Law***

For every rule of customary law to be valid, it must satisfy three tests of validity; a) The Repugnancy Test, b) Incompatibility Test, c) Public Policy Test.

*Repugnancy Test:* The Repugnancy Test seeks to uphold natural justice, equity and good conscience.<sup>22</sup> Section 18(3) of the Evidence Act<sup>23</sup> provides as follows: ‘In any judicial proceeding where any custom is relied upon, it shall not be enforced as law if it is contrary to public policy, or is not in accordance with natural justice, equity and good conscience.’ See the cases of *Eleko v Government of Nigeria*.<sup>24</sup> and *Ojiogu v Ojiogu*.

*Incompatibility Test:* For a rule of customary law to be valid and enforceable, it must not be incompatible, either directly or by implication with any law for the time being in force.<sup>25</sup> The validity of customary law is subject to the Constitution of Nigeria.<sup>26</sup> The Constitution is the supreme law in Nigeria<sup>27</sup> it is on this basis that every other law gain validity including customary law.<sup>28</sup> In the case of *Ukeje v Ukeje*<sup>29</sup> the Court held the male primogeniture rule to be incompatible with Section 42 of the Constitution.

*Public Policy Test:* Public policy means decisions that will ensure the security and welfare of the individual and the State in general.<sup>30</sup> This has the ability to change overtime for instance a shift in public policy occurred in the context of inheritance of property by illegitimate children.<sup>31</sup> Any custom contrary to public will not be enforced. The repugnancy, incompatibility and public policy tests are measures taken to protect the sanctity and sanity of customary law in Nigeria,<sup>32</sup> which has been predominantly useful in cases of customary law of succession in Nigeria.<sup>33</sup> It is no gain saying the fact that Nigerian customary law of intestate succession generally discriminates against women<sup>34</sup> therefore these tests are of great necessity.

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<sup>17</sup>(2018) LPELR-43770(CA).

<sup>18</sup> (2018) LPELR-45097(CA).

<sup>19</sup>(1973)1 A11 NLR (part 1) p. 385 at 386.

<sup>20</sup> *Obiekwe v Obiekwe* (1963) 7 ENLR 196.

<sup>21</sup>(2018) LPELR-43770(CA).

<sup>22</sup>O Aladetola, ‘Analysis of the Nigerian Supreme Court’s Constitutional Duty Regarding Women’s Inheritance Right under Customary Law,’ A Thesis submitted in Partial Fulfillment for the Award of a Masters Degree submitted to the Faculty of Law University of Cape Town, 2017, 18.

<sup>23</sup> Evidence Act 2011.

<sup>24</sup> (1980) 3 NILR 14; Okpalobi and Okaphor. (n 8)86.

<sup>25</sup>Ibid.

<sup>26</sup> Section 1(3) Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010 (Act No 3).

<sup>27</sup> Ibid Section 1(1).

<sup>28</sup> Ibid Section 315.

<sup>29</sup> *Ukeje v Ukeje*(n 2)

<sup>30</sup>Okpalaobi and Okaphor (n 8)86.

<sup>31</sup> 1999 Constitution (n 27) Section 42(2)

<sup>32</sup>Aladetola (n 23)20.

<sup>33</sup> See the cases of *Mojekwu v Mojekwu* (supra) *Ukeje v Ukeje* (supra); *Anekwe v Nweke* (supra).

<sup>34</sup>I P, Enemo, ‘Customary Law of Succession and the Rights of Women in Nigeria: Need for Reform; A paper presented at the International conference on philosophy and the Law in African on the 12<sup>th</sup> of June 2004. P 6.

***Intestate Succession under Igbo Customary Law***

Customary law of succession among the Igbos is generally primogeniture; this means succession by the eldest son, known as *Okpala, Diokpala or Diokpa*.<sup>35</sup> The real Property of the deceased vests on his eldest son and it is his duty to manage and administer such a property for the benefit of himself and his brothers and half-brothers.<sup>36</sup> The eldest son inherits as of right, the late father's dwelling house, *obi*.<sup>37</sup> In *Ugboma v Ibeneme*,<sup>38</sup> it was held that in accordance with the general Igbo custom women are not entitled to inherit land from their father.<sup>39</sup> Under Igbo customary law, daughters and wives do not have that right to succeed to their deceased father's or husband's estate. A female cannot be the family head no matter her seniority in the family. In some Igbo customs, where an intestate dies without sons, brothers, or father, his estate is inherited by his eldest nearest paternal male relation, this practice is known as *Iriekpe* Custom, and such relation is known as 'Oriekpe'.<sup>40</sup> It is certain that by Igbo customary law, a widow is entitled to live as a member of the family in her late husband's compound until she re-marries or dies, see *Nezianya v Okagbue*.<sup>41</sup> In order to protect this right the husband'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. The customary laws are silent as to what the tests to determining her good conduct are, and who will be the best judge of same. This is subject to abuse and tends towards putting the widow at the mercy of her deceased husband family member. The Court in *Nzekwu v Nzekwu*,<sup>42</sup> maintained the same position after 20 years has passed,<sup>43</sup> holding that the interest of the widow in the house is possessory and not proprietary so that she cannot dispose of it. A widow of a deceased person has no right to succeed to his estate. Under the general customary law of the Igbos, the only situation where a daughter can inherit is where she chooses to remain unmarried in her father's house with a view to raising children in her father's home<sup>44</sup> and in his name.<sup>45</sup> This is known as '*Nrachi*' or '*Idegbe*' institution. There is no gainsaying that the law of Succession under the Igbo customary law is largely discriminatory against women.

***Intestate Succession under Yoruba Customary Law***

According to Yoruba Native Law and Custom, if an individual dies intestate, his children both male and female succeed to the estate as a single entity to the exclusion of other relations. The eldest son known as *Dawodu* inherits the responsibility for the management of the estate. In *Sule v Ajisegiri*<sup>46</sup> it was held that the partition must be equally between those entitled regardless of sex. Thus, the defendant's claim that being a male he was entitled to a larger share was rejected. The eldest son however wields the power to manage the estate of the deceased person. He holds the property in trust for the other members of the family. The institution of the title of a *Dawodu* which is exclusive to the eldest male child is a form of inheritance which creates discrimination especially where the first child is a female. Explaining the rationale for maintaining male trusteeship or primogeniture the Court in the case of *Lewis v Bankole*<sup>47</sup> held that female children get married and move to their husband's family thus will not be able to handle the affairs of the estate effectively. This decision of the learned judge is debatable and subject to criticism, in that being married does not affect the right of women to manage the property of the family. In the case of *Lopez v Lopez*<sup>48</sup> Combe J. held that originally women were not equal to men on the issue of inheritance, however, women now have equal rights to inherit like male children. In *Salami v Salami*<sup>49</sup> the Court held that the Plaintiff's right to inherit her father's estate along with her two brothers was

<sup>35</sup>J, Ezeilo, 'Laws and Practices relating to Women's Inheritance Rights in Nigeria: An Overview' (2000) Occasional working Paper Series: Women's Aid Collective. P 142; B A Oni, 'Discriminatory property inheritance rights under the Yoruba and Igbo customary law in Nigeria. The need for Reform' (2014) 19(2) *IOSR Journal of Humanities and social science (IOSRJHSS)* 34; Enemo Op.Cit, P. 10.

<sup>36</sup>*Ibid*.

<sup>37</sup> *Nwafia v Ubah* (1966) 1 All NLR 8; *Ezeokafor v Ubah* (1975) 1 UILR 162.

<sup>38</sup> (1967) F NLR 25.

<sup>39</sup> *Ejiamaike v Ejiamaike* (1972) 2 E.C. SN.L. R at 11.

<sup>40</sup> *Udensi v Mogbo* (1976) 7 SC 1.

<sup>41</sup> (1963) 1 All NLR 352.

<sup>42</sup> (1989) 2 NWLR (Pt. 104) 373.

<sup>43</sup> Ezeilo (n 36) 143.

<sup>44</sup> *Ibid*; Enemo (35) 10.

<sup>45</sup> Oni (n 36) 35.

<sup>46</sup> 13 N.L.R. 146.

<sup>47</sup> (1909) 1 NLR 82.

<sup>48</sup> (1924) 5 NLR 50.

<sup>49</sup> (1924) 5 NLR 43.

not diminished by the fact that she is a girl. In *Richardo v Abal*<sup>50</sup> not only did the Court accept the proposition that a female child has inheritance rights, but it went further to hold that when a man dies leaving two house and two children, male and female, the female if older has the first choice as to which house she wants if the property is eventually partitioned. Unfortunately, in the Yoruba customary law of succession, a wife has no right to succeed to her deceased husband's estate, and where there are no children of the marriage, the property of the estate will devolve on the members of the deceased's family unless property given to a wife is proved to be an outright gift it will pass on the husband's death to the husband's family, she has no right of inheritance whatsoever. The wife under Yoruba Native Law and Custom is said to form a part of the estate of her husband, see *Suberu v Sunmonu*<sup>51</sup>. The reason for depriving a wife of succession rights in the deceased husband's estate according to Beckley, J. in the case of *Sungunro-Davies v Sungunro-Davies*,<sup>52</sup> was because devolution of property under native law and custom follows the blood, and a widow not being related by blood has no claim. This of course is discriminatory against women.

### **Islamic Law of Succession**

Universality of Islamic precepts applies in Nigeria.<sup>53</sup> This was restated by the court in the case of *Aikamawa v Bello and Anor.*,<sup>54</sup> thus: 'Islamic law is not same as customary law as it does not belong to any particular tribe. It is a complete system of universal law, more certain and permanent and more universal than the English Common Law'.<sup>55</sup> Enemo<sup>56</sup> stated that the Islamic laws are regards as part of customary law in areas where they apply. Mohammed<sup>57</sup> is of the opinion that Islam is one of the early comers in the restoration of the right and dignity of women. He referred to the Qur'an, Chapter 3 verse 195 of same, where the equality of women to men was highlighted. Chapter 3 verse 195 of the Qur'an provides thus: 'Their Lord responded to thee 'I never fail to reward any worker among you for any work you do, *be you male or female, you are equal to one another.*'<sup>58</sup> The Right of Succession under Islamic Laws is set out in the Qur'an.<sup>59</sup> If a Moslem dies intestate, his estate must be shared among his heirs entitled to share his estate under Moslem law. His male children must have equal shares and the female children half-share each. These shares are contained in the Qur'an, particularly chapter 4 verse 11-12 and 176, again, this unequal distribution is discriminatory against women.

## **4. Legal Framework for the Inheritance Rights of women**

### **Constitution of the Federal Republic of Nigeria 1999 (as amended)**

Section 42 of the Constitution prohibits discrimination on grounds of sex and affirms a legally enforceable right to equality of all persons. It provides as follows:

42. (1) 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 administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious 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, religious or political opinions.

(2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

<sup>50</sup> (1926) 7 NLR 58.

<sup>51</sup> (1957) 2 FSC 31. See also *Akinnubi v Akinnubi* (1997) 2 NWLR (Pt. 486), P. 144 at 156.

<sup>52</sup> (1929) 2 NLR, 79.

<sup>53</sup>A Mohammed, A paper presented at the Nigerian Bar Association Annual General Conference 2019, Section on Family and Children's Right, on the 27<sup>th</sup> day of August, 2019. P.1.

<sup>54</sup> (1998) LPELR – 424 (SC).

<sup>55</sup> Per Wali, JSC. P.15, Paras A-B.

<sup>56</sup>Enemo, (n 35) 9.

<sup>57</sup> Mohammed (n 54)1.

<sup>58</sup> Emphasis supplied.

<sup>59</sup>Nwogugu (n 12) 413.

It is therefore an infringement on her fundamental right to freedom from discrimination when a woman is deprived of a share of her father's property or her husband's property only because she is a woman.

**Violence against Persons (Prohibition) Act, 2015<sup>60</sup>**

Section 15 of VAP Act, 2015 provides that a person who subjects a widow to harmful traditional practices commits an offence. Such person on conviction is liable to imprisonment for a maximum period of 2 years or a fine not exceeding N500,000.00 or both.<sup>61</sup> A person who attempts the offence, a person who incites, aids, abets or counsels another to commit the offence and a person who receives another who had committed the offence are all liable on conviction to imprisonment or fine or both. Section 20 of the VAP ACT provides for a penalty against a person who carries harmful traditional practices against another. The VAP Act is geared to, amongst other things, protect the inheritance right of women.

**Anambra State Malpractices against Widows and Widowers (Prohibition) Law No. 2005**

This law prohibits and penalises the maltreatment of widows and widowers in order to uphold and preserve the dignity of the human person as entrenched in the Constitution. Section 3 of the Law provides that the fundamental human rights as enshrined in the Constitution are inalienable and accrue to every widow or widower. Section 4 (1) protects the property interests of widows (and widowers). This law also protects women in Anambra State from discriminatory inheritance practices.

**Prohibition of Curtailment of Women's Right to share in Family Property Law No. 2 of 2022 of Rivers State**

This law abolishes the prevalent customary practices in Rivers State that female children are not to share in family property. Women have been called to use the protection provided by the law to stand up for their rights and challenge any discrimination against them court.<sup>62</sup>In signing the bill into law, i.e., the 'Rivers State Prohibition of the Curtailment of Women's Right to Share in Family Property Law No. 2 of 2022,' Governor Nyesom Wike said he couldn't comprehend why it is considered a taboo in many parts of the state for female children to share in their family inheritance. Four sisters on 29<sup>th</sup> March, 2023 in Port Harcourt became the first beneficiaries of the Rivers State Prohibition of the Curtailment of Women's Rights to Share in Family Property Law No. 2 of 2022 as a Port Harcourt High Court ruled in their favour in a case between them and their three brothers. The sisters approached the High Court seeking the interpretation of some sections of the 1999 Constitution as amended, as well as sections of the Rivers State Prohibition of the Curtailment of Women's Right to Share in Family Property Law No 2 of 2022. In the judgment delivered on Wednesday, 29<sup>th</sup> March 2023 Justice Chukwu asked the defendants to pay the four women N72-million as damages and also publish an apology in a national newspaper and two local tabloids, and then proceed to reshare the estate to accommodate them adequately.<sup>63</sup>

**African Charter on Human and People's Rights (Ratification Enforcement) Act<sup>64</sup>**

On 17 March 1983, Nigeria's National Assembly passed the African Charter on Human and People's Rights (Ratification Enforcement) Act to enable effect to be given in the Federal Republic of Nigeria to the African Charter on Human and People's Rights made in Banjul on the 19th day of January 1981.<sup>65</sup> Although the Courts

<sup>60</sup> VAP Act, 2015.

<sup>61</sup> In section 17 of the VAP. Law of Anambra State, 2017, the term of imprisonment is a maximum period of 7 years for a person who subjects a widow to harmful traditional practices.

<sup>62</sup>H B Ibunge, 'Wike Promotes Women Participation in Family Inheritance' *Thisdaylive* (Portharcourt, 16 September 2022) <<https://www.thisdaylive.com/index.php/2022/09/16/wike-promotes-women-participation-in-family-inheritance>>accessed on 8 February 2023.

<sup>63</sup>A Okonkwo, 'How Abel sisters won family inheritance case' *Tribuneonline* (Portharcourt, 14 April 2023) <<https://tribuneonline.com/how-abel-sisters-won-family-inheritance-case/>> accessed 5 September 2023.

<sup>64</sup> Cap A9, LFN 2004.

<sup>65</sup>Preamble, African Charter (Ratification and Enforcement) Act; V O Ayeni, 'The impact of the African Charter and the Maputo protocol in Nigeria' in Businessprint, Pretoria (ed), The impact of African charter and the Maputo protocol in selected African states (Pretoria Law Press (pulp) 2016),186.

have held that the African Charter is not above the Constitution,<sup>66</sup> they have affirmed its superiority<sup>67</sup> over other laws.<sup>68</sup> Article 18 (3) provides that ‘the State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.’ By virtue of article 18(3) of the Africa Charter which has been domesticated as article 18(3) of the African Charter (Ratification and Enforcement) Act, Nigeria has an obligation to ensure the elimination of discrimination and protection of women as stipulated in international declarations and conventions, some authors are of the view that article 18(3) makes CEDAW for instance applicable to all states parties to the African Charter irrespective of their ratification status under CEDAW. It is further submitted that even the Maputo protocol could be considered part of the African Charter under this provision. This creative interpretation may be resorted to where a litigant in Nigeria intends to rely on an undomesticated provision of the Maputo protocol.<sup>69</sup> African Charter therefore secures women from discrimination in terms of inheritance.

### **Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) 1979**

In Article 5(a) of CEDAW, State Parties commit themselves to take all appropriate measures to:

Modify the social and cultural patterns of conducts of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. Article 13 provides that: ‘States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) The right to family benefits. Article 15 of CEDAW provides that:

1. States Parties shall accord to women equality with men before the law.
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.

CEDAW touches squarely on the issue of women’s right. This international convention though not yet domesticated, can be cited as a law providing against discrimination of women in the issue of inheritance. See 18(3) of the Africa Charter

## **5. Supreme Court pronouncements against Discriminatory Inheritance Practices in Nigeria**

### **Mojekwu v Mojekwu<sup>70</sup>**

The Court held that the *Oli Ekpe* custom was repugnant to natural justice, equity and good conscience and consequently refused to enforce such custom. Furthermore, the Court declared the custom invalid for infringing on a fundamental human right against discrimination guaranteed by the constitution.<sup>71</sup> It emphasized that this custom conflicts with the provisions of the right to own property as guaranteed by the 1999 constitution. It also declared the customary law invalid for infringing on the provision of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).<sup>72</sup> In *Mojekwu v Iwuchukwu*<sup>73</sup> Mojekwu appealed to the Supreme Court which unanimously dismissed the appeal.<sup>74</sup>

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<sup>66</sup>A Atsenuwa ‘National Legislations, Policies and Practices Congruent and Incompatible with the Provisions of the Convention on Elimination of all Forms of Discrimination (CEDAW) and the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa,’ in A M Imam (ed), *Adopting Women’s Human Rights Legislation in Nigeria: A Synthesis Analysis & Report* (InfoVision Limited, 2010), 102.

<sup>67</sup>N Moodie, ‘Denial of Inheritance Rights for Women under Indigenous Law: a Violation of International Human Rights Norms,’ A Thesis submitted in part fulfilment of the requirements for the degree of Master of Laws at the University of South Africa. December 2000, 26.

<sup>68</sup>*Abacha v Fewehinmi* (2000)6 NWLR (PT.660)228.

<sup>69</sup>Ayeni (n 75)188.

<sup>70</sup>*Mojekwu v Mojekwu* (n 2).

<sup>71</sup> 1999 Constitution (n 27) Section 42

<sup>72</sup>Aladetola (n 23)34.

<sup>73</sup> (2004) 18 NSCQ, P.84. The widow had died and was substituted by her step daughter.

<sup>74</sup>Enemo (n 35)15.

**Ukeje v Ukeje**<sup>75</sup>

In the case of *Mrs. Lois Chituru Ukeje and anor v Miss Gladys Ada Ukeje* the Supreme Court affirmed the decisions of both High court and Appeal court and ruled that the said Igbo native law and custom that disentitles female from sharing in their late father's property is discriminatory and is void as it conflicts with section 42(1) and (2) of the constitution.<sup>76</sup>

**Anekwe v Nweke**<sup>77</sup>

In *Anyibor Anekwe and Anor v Mrs. Maria Nweke* (2014)<sup>78</sup> the Supreme Court Per. Ogunbiyi JSC, held that 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. It is repugnant to natural justices, equity and good conscience.

**6. Conclusion and Recommendations**

In Africa, there is a general discrimination against wives and daughters in terms of inheriting their family property. This is especially where the deceased husband or father died intestate, that is, he made no valid Will as at his death. We commend the several laws enacted to protect and preserve the succession rights of women, we must however state that where the head of a family distributes his property equitably in a valid Will, the females are to a greater extent saved from the application of some discriminatory laws, especially customary law. Section 42 of the 1999 Constitution, though provides against discrimination of every form, has not been potent enough to solely curb or even reduce the incessant discriminatory practices hurled on women in recent times. The long-aged issue of male dominance continues to rear its ugly head. We must however continue the fight for justice and equity for the female folks. The following measures may be relevant:

- i. The making of valid will should be encouraged and advocated for. If the deceased had left behind a will some victims,' predicament could have been avoided. A decease through a valid will can share his properties even to his wife. In so doing, some discriminatory succession practices against women can be avoided.
- ii. Statutory marriages should be conducted in addition to the customary marriage ceremonies because the laws offer better protection to the wife and children of a statutory marriage, as they take priority.
- iii. There is need to domesticate some international law relating to women like the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), Protocol to Africa Charter on Women's Right and other International and Regional instrument providing for the rights of women.
- iv. The role of Judicial activism is continuously needed and encouraged so as to keep churning out more judgements against discriminatory customary laws on succession no matter whose ox is gored. Judges should be active in dispensing justice and challenging the status quo.
- v. Women who are victims should be assisted to seek redress by Non-governmental and government organizations, financially and otherwise.
- vi. The Challenge of long and expensive litigation should be tackled. For instance, the case of *Ukeje v Ukeje* and *Anekwe v Nweke* lasted over 30years before the Supreme court judgments.
- vii. There should be consistent advocacy and enlightenment on the various laws protecting women from discriminatory customary laws through Radio jingles, T V shows, Fliers and Billboards, Seminars and Trainings, open air advocacy at market places, in church, mosques, school, 'August meetings'.
- viii. Formal Education for girl children should be encouraged and Child bride discouraged, so the women will be enlightened as early as possible and equip themselves, mentally, physically and financially to contend any form of discrimination against them.

<sup>75</sup> (2014)11 NWLR (Pt. 1418)384.

<sup>76</sup> Per Bode Rhodes – Vivour JSC PP 33 – 34.

<sup>77</sup> 2014) 9 NWLR (pt 1412) 393.SC; (2014) 4 S.C. (PT. III) 65.

<sup>78</sup>(2014) 9 NWLR (pt 1412) 393.SC; (2014) 4 S.C. (PT. III) 65.