GENDER ROLES UNDER IGBO CUSTOMARY LAW: A REVIEW OF THE DECISION IN *MICHEAL EZE & ORS V AGNES NNAMANI, SUIT NO. CCAE/31/2014*

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Abstract

Gender roles are assigned *a priori* under native customs acceptable to the people. These customs, founded on the underlying philosophy of ontology of the people, have been the basis of relationships and interaction among natives. This ontology can only be appreciated when viewed from the people's prism. And unless this is understood, controversy over gender will continue to attend communal living. Questions such as who is entitled to perform funeral rites of a deceased who died intestate without a surviving male child and inherit the property of the deceased? What is the impact of a subsisting marriage of a daughter of the deceased in such circumstance? Could the absence of a legal right ground a claim based on natural justice, equity and good conscience? To what extent can a custom accepted to the people of a community be repugnant in the absence of a legal right? These issues will engage our attention in this review. The scope of this research is to examine the vexed and contentious issues of gender roles and gender entitlements under native law and custom, using the case

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under review as a paradigm. The methodology employed is essentially doctrinal.

Keywords: Gender Roles, Customary Law, Review, Decision.

1. Introduction

Native custom is understood to mean the established and commonly accepted usage of a people in a given society.[1] It is judicially defined as a 'mirror of accepted usage'.[2] Thus, native custom must have the assent of the native community and it is this assent that gives a custom its validity. It must therefore be shown that the custom is recognised by the native community as regulating its affairs.[3] It is the organic or living law of the people, regulating their lives and transactions.[4] And so, every society has a set of customs which regulate its affairs generally and guides its development from generation to generation.

The concept of gender roles under Igbo customary law is anchored *a priori* on Igbo people's ontology. Ontology is the philosophical understanding of the nature of beings, existence or reality as well as their basic classification and interaction. Ontology deals with the fundamental questions about the existence of beings and their categorization and relationship

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1 O N Ogbu, *Modern Nigerian Legal System,* (3rd edn, Enugu: SNAAP Press Ltd 2013) 92.

2 Bairaman, FJ in *Owonyin v Omotosho* (1961) 1 ALL NLR 304 at 309.

3 Atkin, LJ in *Eshugbayi Eleko v Officer Administering the Government of Nigeria* (1931) AC 662 at 673.

4 Obaseki, JSC in *Oyewunmi v Ogunesan* (1990) 3 NWLR (pt 137) 182 at 207.

within a hierarchy including their sub-divisions depicting their similarities or otherwise as well as their interactive relations. In African, nay Igbo ontology, 'being' is synonymous with 'force'. Thus, in the African conception, 'force' is 'being' and 'being' is 'force'.[5] This ontology envisages a hierarchical ordering of forces reflecting their primogeniture with God at the apex; then men including women (living and dead); animals; plants; and minerals.[6] This hierarchical ordering depicts the 'vital force' and *a fortiori* 'vital rank' of the African. It is on this foundation that gender roles are *a priori* assigned. Thus, the girl child like her boy counterpart grows up to know his or her roles and entitlements in the family and community under their accepted customs and norms.

If for instance, a native community is under violent invasion, it is the duty of men, not women to confront the violent threat. The much women can do in the circumstance is to raise alarm by cries. Similarly, preparation of food and management of kitchen and food affairs in the family is the responsibility of women, not men. Tilling the soil and performing such similar hard labour tasks including hunting and the like, are neatly within the domain of men, not woman. Furthermore, customary practices such as the *idu uno* ceremonies; the double funeral rites phenomenon; the *omugo* roles; and the *oriaku* syndrome to mention just a few, are attached to

[5] Placide Tempels, *Bantu Philosophy,* (Orlando: HBC Publishing, 2010) 51-52.

[6] *Ibid,* 61-68.

women *qua* women, not men. Similar examples could be replicated in virtually all spheres of communal living. Such is the natural ontological order of native communities. Thus, the African ontological ideas give meaning to African notions of customs and norms as means of regulating social interaction and social relationships.[7] It is against this background that the review of the case of *Michael Eze & Ors v Agnes Nnamani*[8] will be undertaken.

2. The Case - *Michael Eze & Ors v Agnes Nnamani*

The parties in the case were *Messrs Michael Eze, Michael Ugwu, Joseph Eze and Alexander Eze* (for themselves and on behalf of Umuaneke Eze of Akpuoga Nike) *v Agnes Nnamani*[9] at the Customary Court of Appeal of Enugu State before their lordships: Hon Justice G. C. Nnamani, President of the Court who presided and read the judgment; CAB Onaga and P.A. Obayi, Judges of the Court. The judgment was delivered on Tuesday, 17/11/2015.

3. The Facts of the Case

This is an appeal against the judgment of the Customary Court Mbuluanwuri sitting at Ugwuomu Nike, delivered on 05/09/2013 in Suit No. CC/MBJ/2/2010. The plaintiffs (appellants in the Customary Court of Appeal (CCA) in a representative capacity sued the defendant (respondent in the

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7 CU Agbo, 'Women and Succession Under Igbo Customary Law: An Ontological Perspective', *International Review of Law and Jurisprudence,* Vol 4 (2), 2022, 12 and 15.

8 (2017) 1 ESCCALR 215.

9 Suit No. CCAE/31/2014

CCA) at the said Customary Court, Mbuluanwuri claiming as follows:

(a) A declaration that they are entitled to the customary right of occupancy over the two pieces of land situate at Ngene Obibi along Abakaliki Express Road, Akpuoga and that situate at Obodo Akpuoga Nike as beneficial owners.

(b) Perpetual injunction restraining the defendant, her agents, servants, privies or whosoever acting on her behalf from having anything with the said piece of land without their prior consent and authority as beneficial owners.

Okorie Nwaneke Nweze was the owner of the three parcels of land in dispute before his death. He was also an indigene of the said Akpuoga community and the father of the defendant. Okorie Nwaneke Nweze died intestate without a surviving male child. Although the plaintiffs (now appellants) and the defendant (now respondent) are cousins, the respondent, a surviving daughter of the said Okorie Nwaneke Nweze is married and living with her husband in her matrimonial home. The appellants' claim was predicated on their performance of the funeral rites of late Okorie Nwaneke Nweze as his closest kinsmen under the native law and custom of Akpuoga Nike. The respondent contended on the other hand that she was qualified to inherit her late father's estate first, because she took care of him till death; and the appellants stood aloof all

the while her father suffered in sickness and only descended on his property when he died simply because he had no male survivor; second, because her late father gave the estate to her in appreciation of her love and care; and third, because, she performed the funeral rites of her late father without any financial contribution from the appellants. She sees the custom being relied on by the appellants as anachronistic, antithetical to natural justice, equity and good conscience and deserving to be trampled underfoot. At the conclusion of evidence from the parties and their witnesses, the Customary Court entered judgment in favour of the defendant. Dissatisfied with the judgment, the plaintiffs appealed to the Customary Court of Appeal of Enugu State praying the Court to set aside the said judgment and to enter judgment for the appellants.

4. The Decision

After a careful consideration of the appeal in the light of the grounds of appeal, the unanimous issues for determination and the arguments deployed for and against the judgment of the Customary Court below, Justice G.C. Nnamani distilled the two issues, which arose for determination, one of which is of great moment to this discourse and will be considered hereunder. The issue is:

(1) Whether the respondent is entitled to inherit the estate of her father under the custom of Akpuoga Nike in the circumstance of this case and if answered in the negative, whether her non-

> entitlement is repugnant to natural justice, equity and good conscience.[10]

Unanimously allowing the appeal, the Court per Hon Justice G. C. Nnamani relied on relevant portions of the evidence adduced by the parties before the Customary Court below, particularly the evidence of the PW4, the Traditional Ruler of Akpuoga Nike Community, who testified that:

> in such circumstance that a man dies without a male issue but he has a female child who has been trained up and married, it is the kinsmen of the man that will come together to bury the man and conduct his funeral and see to his properties… A woman's inheritance is no more in her father's house but where she is married to.[11]

The court found as undisputed facts that the appellants are the kinsmen of late Okorie Nwaaneke Nweze who died without a male child and that the respondent, daughter of the said late Okorie Nwaneke Nweze, is married and living with her husband. Both parties were claiming to have carried out the funeral rites of the deceased to the exclusion of the other. The controversy now raises the question as to who between the appellants and the respondent should perform the funeral rites of the deceased with a view to inheriting his estate under the native custom of Akpuoga Nike. Should it be the respondent,

[10] *Ibid,* 230.

[11] *Ibid,* 233.

who though is the daughter of the deceased is, nevertheless, married and living with her husband, or the appellants, who though are kinsmen of the deceased, are not his biological children?[12]

The Court also found that there is abundant evidence that the funeral rites of a man who dies having no surviving male child but daughters who are all married, are performed by his kinsmen and observed that the application of this custom in Igbo land is so rife that judicial notice of it can be taken.[13]

While noting that the fact of marriage introduces a disabling element into the claim of the respondent, Justice G.C. Nnamani drew from his concurring judgment in *Columbus Chukwu & Anor v Kelvin Obasi & Anor*[14] as follows:

> …Does a woman continue to retain domestic legal capacity in her maiden home after she had become lawfully married to her husband and his family? Exactly what is the meaning, connotation and implication of marriage? Marriage entails legal severance of the married woman from her maiden roots and fusion with her husband and his people in a legal bond that is only broken upon divorce (and we dare add,

[12] *Ibid,* 234.

[13] *Ibid.*

[14] Unreported, judgment of the Customary Court of Appeal of Enugu state in Suit No. CCAE/128/2010, delivered on 29th March, 2011, cited with approval in *ibid,* 235.

> or death). Payment of the bride price and handover of the bride to the groom and his people create this legal bond and fusion.[15]

Thus, his lordship held that the obligation to perform the funeral rites of the deceased and consequently inherit his estate was that of the appellants and not the respondent who by virtue of marriage now belongs to another family.[16]

With respect to the second limb of the issue raised for determination, that is, whether the non-entitlement of the respondent to inherit her deceased father's estate is repugnant to natural justice, equity and good conscience, his lordship distinguished with admirable distinction, the instant case from the decision of the Supreme Court in *Mrs Lois Chituru Ukeje & Anor v Miss Gladys Ada Ukeje.*[17] The facts in the *Ukeje* case indicate that in December, 1961, LO Ukeje died intestate leaving real property in Lagos State. The appellants are his wife and her son, Enyinnaya Lazarus Ukeje both of whom obtained Letters of Administration for and over the deceased's Estate. The plaintiff/respondent is the daughter of the deceased. She brought the suit at the High Court seeking a declaration that as the daughter of the deceased she is entitled to a share of his estate. The trial judge found for the plaintiff and declared the original Letters of Administration granted to the defendants null and void. The Court also granted an

[15] *Ibid,* 235.

[16] *Ibid.*

[17] (2014) 11 NWLR (pt 1418) 384.

injunction restraining the defendants from administering the estate and ordered that new Letters of Administration be created and the defendants hand over the administration of the estate to the Administrator General of Public Trustees pending the issuance of new Letters of Administration. Dissatisfied with the judgment, the defendants/appellants appealed to the Court of Appeal (Lagos Division) which was dismissed for lack of merit. The appellants further appealed to the Supreme Court. The appeal was also dismissed and the concurrent judgments of the two lower courts were upheld. The apex court declared *ex cathedra* that:

> No matter the circumstances of the birth of a child, such a child is entitled to an inheritance from her late father's estate. Consequently, the Igbo customary law, which disentitled a female child from partaking in the sharing of her deceased father's estate, is in breach of section 42(1) and (2) of the Constitution,[18] a fundamental rights provision guaranteed to every Nigerian. The said discriminatory customary law is void as it conflicts with section 42(1) and (2) of the Constitution.[19]

Nnamani, J, took the view that while in *Ukeje v Ukeje* the bone of contention was whether the respondent is a daughter of late LO Ukeje and whether she was entitled to inherit his

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[18] Constitution of the Federal Republic of Nigeria 1999 as Amended, hereinafter, 'the Constitution'.

[19] See *Ibid* (n 8) 235.

estate, in the instant case, the controversy is whether the respondent, a biological daughter of late Okorie Nwaneke Nweze, who is married and living with her husband can inherit her father's estate in violation of the custom of Akpuoga Nike which entitles the kinsmen of a deceased indigene who has no male child surviving him and whose surviving daughters are married, to perform his funeral rites and subsequently inherit his estate.[20]

In the *Ukeje case,* the courts relying on the respondent's birth Certificate; Form of Undertaking and Guarantee signed by the deceased acknowledging paternity of the respondent and family photographs showing the respondent and her deceased father as well as the respondent's mother and her deceased father, found that LO Ukeje (deceased) was the father of the respondent.[21]

In the instant *Eze v Nnamani* case it is not in contention that the respondent is the daughter of late Okorie Nwaneke Nweze. What is seemingly problematic and a point of departure from the *Ukeje* case in the instant case is that the respondent is married and her marriage is still subsisting. In the *Ukeje* case, the respondent who was married to a German national was already divorced and she indeed, tendered the judgment in her divorce proceedings (Exhibit J). Thus, she was 'once again an Ukeje and *a fortiori* qualified to co-inherit her late father's estate, irrespective of her circumstance of

[20] *Ibid,* 236.

[21] *Ibid.*

birth. On the contrary, with her marriage still subsisting, the respondent in the *Eze v Nnamani* case does not fit into the narrow compass of *Ukeje v Ukeje supra.* According to his lordship, a different consideration would have applied if the respondent was a spinster or divorced and is back into her maiden home. Her case does not fit into the bigger apartment of sub-sections (1) and (2) of section 42 of the Constitution.[22]

With respect to the issue of repugnancy, natural justice, equity and good conscience, the court held that the concept of natural justice, equity and good conscience is based on rights and does not operate in vacuo. The respondent has no right to perform her late father's funeral rites. Such right resides with her late father's kinsmen. The absence of the respondent's legal right banishes the idea of repugnancy from the said native law and custom of Akpuoga Nike. Accordingly, the non-entitlement of the respondent to inherit her late father's estate is not repugnant to natural justice, equity and good conscience.[23]

5. Matters Arising

Let it be said at once that discrimination on the basis of gender is condemnable and must be condemned. However, assignment of gender roles *a priori,* based on native people's ontology cannot be said to approximate to discrimination. This is premised on the fact that such *a priori* pattern of communal living is based on native customs and norms

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[22] *Ibid,* 236-237.

[23] *Ibid,* 237.

accepted by the people. After all, the roles of both the male and female gender are not only complementary, but are vitally important in the propagation of any traditional society. Besides, it is not by the choice of anyone that he or she is born a male or female. This point was judicially amplified by Niki Tobi, JCA (as he then was) in *Mojekwu v Mojekwu*[24] as follows:

> …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 (seemingly) disagrees with this divine truth. I believe that God, the Creator of human beings, is also the final authority on who should be male or female. Accordingly, for a custom or customary law to discriminate against a particular sex is to say the least an affront to the Almighty God himself…

In the light of the foregoing, could the respondent's contention that she took care of her late father, including paying his medical expenses, until his death not have attracted greater weight from the Court? Could the Court not have been more circumspect in considering that a custom which places on a deceased's kinsmen the right and responsibility to perform the funeral rites of the deceased who had no surviving male child and consequently thereafter, inherit his property, should have also imposed a correlative duty on the said kinsmen to take care of him in his ailing and last days up

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[24] (1997) 7 NWLR (pt 512) 283.

to his death? if by the same custom, the married daughter of a deceased is severed by marriage from inheriting her father's property, then why should the same custom not severe such a daughter from inheriting the 'trouble' of taking care of her aged and ailing father's upkeep, including, but not limited to payment of his medical expenses?

Perhaps these are moot points under native law and customs where it is the ontological duty of a child, particularly a female child, to take care of her aged and ailing parent or parents. The difficulty in the circumstance of this case, appears to be that the respondent's late father subscribed to the said Akpuoga Nike native law and custom *inter vivos.* If that is so, then it seems inexpedient for the respondent to repudiate the accepted custom. However, despite the fact that kindred and kinship settings hold sway among natives, African societies are still dynamic and these customs may likely change in course of time.

It is true that the judgment of the Customary Court of Appeal of Enugu State in *Michael Eze & Ors v Agnes Nnamani supra* is not a decision of the court with the highest appellate jurisdiction in Nigeria. The jurisdiction of the Customary Court of Appeal in a State is derived from two sources *viz*: sub-section (1) of section 282 of the Constitution on questions of customary law and sub-section (2) of section 282 of the said Constitution which pertains to increasing the jurisdiction of the Court by the legislative acts of the House of Assembly

of the State where the Court is situate over and above mere questions of customary law.

However, quite fundamentally, the Customary Court of Appeal appears to have become inadvertently transformed into a 'final' court of some sort, in certain matters. Sub-section (1) of section 245 of the Constitution[25] provides that appeals from the Customary Court of Appeal shall lie to the Court of Appeal on questions of customary law only. The Supreme Court appears to have been giving effect to this provision.[26]

However, the harsh reality is that the Customary Court of Appeal of a State can hear appeals from Customary Courts on issues beyond mere questions of customary law if its jurisdiction is increased in that regard by legislative acts within the contemplation of sub-section (2) of section 282 of the Constitution. Yet in such circumstances, appeals on such non-customary law issues cannot lie to the Court of Appeal or any other court in Nigeria.[27] Unfortunately, such state enactments which confer additional jurisdiction on the

[25] S 245 (1) of the Constitution is *impari materia* with s.224 (1) of the Constitution of the Federal Republic of Nigeria 1979, hereinafter, 'the 1979 Constitution'.

[26] See for instance the case of *Golok v Aiyal Pawn* (1990) 3 NWLR (pt. 139) 411 which was based on s.224 (1) of the 1979 Constitution.

[27] See EN Nnamani, J, PhD, 'The Revolutionary Decisions of the Supreme Court in Customary Court of Appeal, *Edo State v Aguele*: A Review', (2019) 1 *Journal of Contemporary Customary & Sharia Law Issues in Nigeria,* 63 at 78.

Customary Court of Appeal have often been held inconsistent with the Constitution and *ultra vires* because the appeals were constituted on grounds other than questions of customary law.[28] This has seemingly turned the Customary Courts of Appeal into 'apex' courts with respect to cases involving matters beyond questions of customary law. Thus, a litigant's complaint on vexed issues of procedure, evaluation of evidence, appreciation of facts and such other non-customary law questions cannot proceed beyond the Customary Court of Appeal. This could be doubly frustrating for a litigant where pursuant to sub-section (2) of the section 282 of the Constitution, the jurisdiction of the Customary Court of Appeal has indeed been expanded beyond just questions of customary law.[29] It follows that decisions of the Customary Court of Appeal of a State are of great moment and ought to be taken with due circumspect.

6. Conclusion

As Nnamani, J, observed in the *Eze v Nnamani* case under review, 'the respondent's resilience in this matter is understandable. It is not out of place considering the current upsurge of feminism and struggle for gender equality in Africa'.[30] The critical question that calls for consideration is whether a fierce struggle snow-balling into the politics of

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[28] See the cases of *Iyamu v Aigbiremwen* (1992) 2 NWLR (pt. 222) 233; *Tiza v Begha* (2005) 15 NWLR (pt 949) 616. These cases were based on s 224(1) of the 1979 Constitution while *Onam v Nnamchi & Anor* (2016) LPELR 42121 was based on s 245(1) of the Constitution.

[29] E N Nnamani, *Ibid* (n 26) 80-83.

[30] See *Ibid,* (n 8) 237.

gender chauvinism could be the solution to the settlement of the seemingly vexed issue of gender roles and gender entitlements?[31] It seems that a proper appreciation of native law and custom must be premised on an understanding of the native people's ontology. Unless and until this is done, crass legalism in the face of tacit resistance at the communal level might prove counter-productive.[32]

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[31] C U Agbo, *op cit* (n7) 15.

[32] *Ibid.*