

THE IMPERATIVES OF MAKING A WILL FOR THE PROTECTION OF WOMEN AND CHILDREN*

Abstract

When a man dies intestate in Nigeria, his personal property may end up being shared according to the customary law of his people. Wives and minor children are usually excluded in the sharing formula. Making a will provides protection for women and children by making specific provisions for their upkeep. This work highlights the advantages of making a will. The writer recommends it as vital for the protection of women and children in Nigeria.

Keywords: Will, Women, Children, Protection, Nigeria

1. Introduction

Nigerians are generally hesitant to make a will. A number of factors have been advanced as reasons for this apathy. A will reminds people of death, and to advise a person to make a will is seen as not wishing the person well. There is a general tendency to see a will as a bad omen.¹ The inevitability of death is a major reason why everyone needs to make a will. Given the complexities in matters of inheritance occasioned by customary law and the inherent injustices that usually arise, a will must be seen as a necessity within the Nigerian context. Instances abound where the widow(s) and children of the deceased are prevented from inheriting his estate on the bases of custom.² Though such customs have not been given any validity by the courts, they still persist. In a study on the plight of widows in a Nigerian tertiary institution, 55 percent of the participants mentioned the loss of property to in-laws as a result of the lack of a will as their major problem.³ The making of a will guarantees more protection for women and children, as it will serve to oust claims that are strictly based on culture and tradition.

Customary Law embodies customs as practiced by the people which they regard as binding on them. It is any system of law different from Common Law and a Law enacted by legislation, but which is enforceable and binding within Nigeria as between the parties subject to its way.⁴

Customary is succession that is not in accordance with the common law or statute, but in accordance with the traditions, customs and practices of the local people which are enforceable and binding between the parties which are subject to it. Customary succession is mainly intestate.⁵ The pattern of intestate inheritance and succession under Customary Law in Nigeria reflects Nigeria's plural legal system. However one may generally say that women and children usually find themselves at the receiving end.⁶ Intestate succession under customary law is not the ideal for women and children, especially where the children are minors. The rules of succession were made for a subsistence economy, and may have worked for that epoch. In that era, it was possible for an adult male relative to inherit the wife and children of the deceased, along with the responsibilities that followed. Those responsibilities did not include modern day variables like school fees and medical bills. Also within the subsistence economy for which the customary laws of inheritance were fashioned, the inherited items were hardly things of value. There were no cars, bank accounts and landed property (apart from family land) to be inherited in the subsistence economy. Azuamairo succinctly captures the injustice of applying the old order in modern times thus:

Usually it is in the guise of application of the rules of inheritance under native law and customs that relatives of the deceased smuggle themselves in to fan the embers of

*By Patricia K. OBI, PhD, Lecturer, Baze University, Abuja.

¹Azuamairo, D.M., *Understanding Will Its Importance and Characteristics*, (Jonagraphics /Solid & Basic Concepts , Lagos, 2014) p. 5

²Wigwe, G.A, *Igbo Land Ownership, Alienation and Utilization: Studies in Land as a Source*, in IGBO JURISPRUDENCE: LAW AND ORDER IN TRADITIONAL IGBO SOCIETY 32, 39 (G. M. Unezurike *et al.*, eds., 1986)

³Onadeko , M.O et al, *Problems of Widowhood: A Study of Widows in a tertiary Institution in Ibadan Southwest Nigeria* wwwncbl.nim.nih.gov

⁴Bello, M.A. PRINCIPLES AND PRACTICE OF SUCCESSION UNDER CUSTOMARY FICMC http://nji.gov.ng/images/Workshop_Papers/2017/Refresher_Judges_and_Kadis/s4.pdf

⁵ Ibid

⁶ Onadeko M.O. et al Ibid

rancor, quarrels, bitterness and hatred among the extended family of the deceased who scramble for his property to the detriment of his immediate family (wife and children). In extreme cases the wife and children are eventually driven out of the late husband's and father's house...⁷

Therefore, to hold on to such rules will only occasion great injustice to women and children. Herein lies the need to adopt a different approach; one that is suited for the times. The laws of inheritance that were applied in pre-colonial times ought not to be regarded as binding principles today.

2. Definition of Will

A will is simply a legal document in which the testator declares who will manage his/her estate after his/her death. The estate can consist of big, expensive things and also small items that might hold sentimental value. The person named in the will to manage the estate is called the executor.⁸ A will has also been defined as a written document or testament by which a person (the testator) directs how his or her assets (estate) are to be distributed upon death.⁹ It is a legal instrument that permits a person, the testator, to make decisions on how his estate will be managed and distributed after his death.¹⁰ A will allows a person to select his heirs.

3. Why Is a Will Necessary?

A will sets forth the wishes of the testator regarding the distribution of his/her property and the care of any minor children. To maximize the likelihood that a person's wishes are carried out, a will that is set forth in writing, and signed by the testator and his/her witnesses is required.¹¹ A Will gives the testator sole discretion over the distribution of his/her assets. It gives directives on how personal belongings should be distributed, and decides how there will be a smooth transition in the management of a business or other investment.¹² Where a person has minor children, a will can make adequate provision for their care, especially for their school fees. If there are children from a prior marriage, even if they are adults, a will can dictate the assets they receive. A will minimizes tensions among survivors, and the incidence of relatives battling over possessions can be weakened or totally eliminated. Also, a situation where there is a scramble for property while the corresponding responsibilities are ditched is avoided.

4. The Advantages of Making a Will

1. The Testator decides how his/her estate will be distributed. A will allows a testator to speak from the grave and determine how his/her estate is to be handled in death. If wishes are not put on paper, there is no guarantee that the testator's desires will be carried out.¹³
2. The testator decides on the care of minors and other dependants. A will may decide the welfare of those left behind. The testator can make adequate provision on the upkeep of his dependants.¹⁴
3. A will avoids a lengthy probate process. Having a will speeds up the probate process and informs the court how the estate of the deceased is to be divided. It avoids long, unnecessary delays.¹⁵ It reduces the possibility of a frivolous legal challenge.
4. A will minimizes the cost of administering the estate of the deceased. It may serve as a bar to undue litigations.
5. The testator gets to decide who will wind up the affairs of his or her estate. There may be certain relatives that a person does not trust to administer his/her estate. In the absence of a will, such persons may have access to the estate. Making a will allows a person to choose trusted people and appoint them trustees or administrators.

⁷ Azuamairo Ibid p.3

⁸ Smith L, What is a Will and Why do O Need One? www.investopedia.com

⁹ What is a Will? www.businessdictionary.com

¹⁰ Will legal definition of www.legaldictionary.thefreedictionary.com

¹¹ Lisa Smith, What Is A Will And Why Do I Need One? <https://www.investopedia.com/articles/pf/08/what-is-a-will.asp#ixzz5R3VjA1KW>

¹² Ibid

¹³ Find Law, Top 10 Reasons you need a Will <https://estate.findlaw.com/wills/top-ten-reasons-to-have-a-will.html>

¹⁴ Ibid

¹⁵ Brett Wisness, 10 Things You Should Know About Writing a Will https://www.aarp.org/money/estate-planning/info-09-2010/ten_things_you_should_know_about_writing_a_will.html

6. The testator can disinherit individuals who would otherwise stand to inherit. A will is the best way to exclude relatives who would have made a claim based on custom from inheriting property. It is the best way of excluding native law and custom. A man who has no male child can through the instrumentality of a will void any customary claims his male relatives would have made to his estate. The testator in his lifetime has an idea of persons who are likely to cause problems for his wife and children in his absence. Such persons can be expressly forbidden from having anything to do with the estate in the will.
7. A will enables a testator to make gifts and donations. The ability to make gifts is a good reason to have a will. A person may wish to make a special gift to a person who ordinarily is not within his circle of inheritance like a trusted servant.
8. A will helps to avoid greater legal challenges. Dying without a will, may pass a person's estate to someone he/she did not intend. An example, involved the estate of a deceased son who was awarded over \$1 million from a wrongful death lawsuit. When the son died, the son's father – who had not been a part of his son's life for over 32 years – stood to inherit the entire estate, leaving close relatives and siblings out of the picture.
9. A will helps to accommodate changes in life, as amendments can always be made. Life changes, such as births, deaths, and divorce, can create situations where changing a will becomes necessary.
10. Because tomorrow is not promised. Death is inevitable, and it can come at an unexpected time.

Procrastination and the unwillingness to accept death as part of life are common reasons for not having a will. Sometimes the realization that wills are necessary comes too late – such as when an unexpected death or disability occurs. To avoid the added stress on families during an already emotional time...¹⁶

From the advantages stated above it can be deduced that a will allows a man to determine what his loved ones inherit from his estate after he dies. Within the Nigerian context, it gives specific instructions on inheritance and protects a woman and her children against the excesses of in-laws. A will states the specific desires of the deceased and may discourage greedy relatives from scrambling for property since the wishes of the deceased are clearly spelt out.

5. What happens if a Nigerian dies without a will?

There is no straight answer to this question as situations vary. The maltreatment of widows and their children is a global phenomenon, though it is more pronounced in third world countries.¹⁷ The ill-treatment of widows is rooted in culture and tradition, and they suffer social exclusion, hunger and¹⁸ poverty with their children. Widows in Nigeria suffer the worst forms of abuse and are driven to suicide as they see widowhood as a death sentence. These problems are considerably reduced where there is a valid will. Under most customs property is generally inherited by sons as a corporate body, there are localities where they are jointly inherited by the deceased's full brothers, matrilineal uncles, matrilineal half-sisters, matrilineal sisters, matrilineal half-brothers, matrilineal aunts and the mother of the deceased.¹⁹In *Re Whyte*²⁰ the estate of the deceased was made the subject of Fanti native law and custom under which a man's maternal relations inherit all his property to the detriment of his wife and children.

In *Mojekwu v Mojekwu*²¹ and *Ukeje v Ukeje*,²² one finds instances where women and daughters were sought to be excluded from inheriting property on account of a custom that forbids wives and daughters from inheriting property. In *Nezianya v Okagbue*²³ it was held that a widow's possession of her deceased

¹⁶ Ibid

¹⁷ www.blueprint.ng

¹⁸ Ibid

¹⁹ Jaoyeola Mulikat Bolaji, *A Comparative Study of Women's Rights of Inheritance in Nigeria Under Islamic Law and Some Customary Law* 157 University of Ilorin website.)

²⁰ 18 NLR 70

²¹ (1997) 7 NWLR 283

²² (2014) 11 NWLR (Pt 1418) p. 384

²³ (1963) All NLR 358

husband's property is not that of a stranger. Similarly, in *Mojekwu v Ejikeme*²⁴ it was held that a female child could inherit her deceased father's estate.

When a person dies without a valid will, he dies intestate. This usually means his estate will be settled based on customary laws of that outline who inherits what. In the decided cases cited above, the courts did not give legal backing to the customary laws that sought to exclude women and children from inheritance. That however does not amount to adequate protection, as not every person has the means to embark on lengthy and costly litigation up to the apex court. The reality is that customary laws of inheritance can only be legally challenged by those who have the courage and wherewithal. In essence the customary laws are still being widely applied. Indeed, cases like *Mojekwu v Mojekwu* and *Ukeje v Ukeje* represent the tiny minority of women who can afford to, and dared to challenge tradition. The vast majority suffers in silence.²⁵ For every single successful challenge mounted against unfair customary laws of succession, there exist hundreds of other situations where the widow must bear the brunt in silence. An article on the harrowing experience of Nigerian widows chronicles the harsh reality of the Nigerian widow. One widow tells of how her husband's brother began demanding for title deeds to landed property even before the body of the deceased was deposited in the mortuary. Another tells the story of how while her husband was still on his sick bed relatives began demanding to make withdrawals from his account. There is also the story of relatives who did not show up in hospital during the protracted illness of the deceased, but eventually took away all the property the deceased left behind.²⁶ The maltreatment of the Nigerian widow has been described as increasingly alarming.²⁷ If a Nigerian dies without a will, he leaves behind a very complicated situation for his wives and children. Even widows who fall into the category of the enlightened have had cause to cry out.²⁸ Given the position of customary law on inheritance, it is highly desirable that every Nigerian should have a will. It is perhaps the best form of protection for loved ones. The will being a written legal instrument can hardly be validly challenged based on culture and tradition. Where there is a valid will, it becomes easier to ward off mischief makers with injunctions.

The appointment of executors to a will means the widows and children left behind have allies who must fight on their behalf. Any legal challenge against a will must be filed against its executors whose duty is to enforce the wishes of the deceased. Where the deceased made a will appointing trusted executors and bequeathing his house to his wife and kids, it becomes difficult, if not impossible to picture how they can be kicked out of the house by relatives. In the same vein access to bank accounts by greedy relatives becomes very difficult where there is a valid will. While the widow may easily be bullied into surrendering to the whims of her late husband's relatives, same cannot be said of the executors.

6. Conclusion

It is the 21st century. The era of wives and children being disinherited by male relatives ought to be long gone. Customary rules of inheritance are obsolete and have no place in our society today. Sadly, that is not the case in Nigeria. The existence of a valid will offers protection and empowerment for widows and their children, hence the need for education and enlightenment on the subject matter. Nigerian men need to grow above custom and superstition to accept wills as vital for the common good of their dependants. Government departments like the Ministry of Justice, Legal Aid Council and the National Human Rights Commission need to create special desks to handle issues relating to widows and inheritance.

²⁴ (2000) 5 NWLR 402

²⁵ Olisanebe N.O The Plight of Widows and Widowhood in Nigeria: Reflections on 2 Kings 4:1-7

²⁶ Adekunle, Agonies of Widows Hit by Harsh Nigerian Traditions www.vanguardngr.com

²⁷ Conditions of Nigerian Widows Still Deplorable www.thisdaylife.com

²⁸ Plight of Widows Unbearable-Mrs Idoko www.sunnewsonline.co Mrs Idoko is the wife of a former Chief Judge of Benue State.