

Abstract

This paper appraises Current Trends in Women's Inheritance under Nigeria Customary Law. The paper finds that most customary rules of inheritance in Nigeria are discriminatory against women and girls and that judicial attitude towards women's inheritance has changed in modern times in line with human rights considerations. The paper argues that the social settings in which -customary rules are expected to adapt to these changes to curb hardship for women and girls. The paper recommends adopting judicial and legislative measures to reform customary laws of inheritance in Nigeria to engage the ever-changing social conditions in the country.

Keywords: Current trends, Case law, Women, Inheritance, Customary law, Nigeria

1. Introduction

Traditionally women have suffered inordinately and greatly in all aspects of life when compared to their male counterparts. Most societies have been essentially patriarchal, but in no area of political, social, and religious life has the despicable plight of women been more conspicuously noticeable than the aspect of inheritance.¹ Inheritance right for women in Nigeria is a struggle that transcends class, religion, and ethnicity.² Nigerian women face inheritance barriers within their birth families as well as within their marriages.³ The often quoted principle under which women were denied inheritance rights was that of preserving bloodlines, and inheritance with responsibilities whereby the male members inherit with the responsibility to take care of the widow and the female children until they die, marry or become financially independent.⁴ Invariably, the girls are expected to be married outside the family and cannot carry over the family property to their new home. These challenges have remained despite the adoption of national and international legal instruments on gender balance by present and successive Nigerian governments.

There can be no doubt that the social milieu under which inheritance rules originated has vastly changed, and the operation of these rules is expected to adapt to changing times to curb hardship for women and girls.⁵ It is therefore not surprising that judicial attitudes towards women's inheritance under Nigerian customary law have changed in response to changing social conditions. The task of this paper is to appraise current trends in women's inheritance under Nigeria customary law to ascertain whether recent judicial pronouncements on the subject have addressed the social context of inheritance rules and human rights considerations. The paper is divided into four parts. Part one gives the general background to the paper. Part two deals with the concept of inheritance under Nigerian law. Part three examines the recent or current trends in women's inheritance in Nigeria. Part four concludes the work by making a case for the revision of obsolete customary rules in line with human rights considerations.

2. Inheritance under Nigerian Law

Inheritance is the devolution of property from the owner to his dependents. It is the devolution of the property of a deceased to his beneficiaries. According to Oxford Advanced Learner's Dictionary,⁶ inheritance is the money, property, etc. that you receive from somebody when they die. The Black's Law Dictionary,⁷ defines succession as the act or right of legally or officially taking over a predecessor's office, rank, or duties. According to Adekunle,⁸ this act of distributing the properties and chattels of a deceased person to the living is referred to as succeeding to the rights of the deceased. "Succession", therefore, is the process of transmitting the rights and duties of a deceased person about his estate, office, and dignity to persons who succeed him, such as his heirs, children, spouse, or relatives, in a manner sanctioned by the law.⁹ Once this is done, those properties are deemed to belong to the beneficiary, i.e. the successor to whom they have been given. It is then said that the properties have been inherited by the said beneficiary.¹⁰ Hence, it is hardly possible to use the word "succession" without accompanying it with its twin concept, "inheritance"¹¹ Emiola¹² tried to make a

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¹See Enakireru and Igbineweka, 'An Appraisal of Women's Rights to Inheritance Under the Bini Custom in the Light of the Legal Framework for Testate and Intestate Successions in Nigeria', Vol. 3 (1), *Law and Social Justice Review* January 2022, p. 117.

² Ibid.

³ Ibid.

⁴ See Anthony C Diala, 'Reform of the Customary Law of Inheritance in Nigeria: Lessons from South Africa', Vol. 14 *African Human Rights Law Journal* 2014 Pp. 633-654.

⁵ Ibid p. 633.

⁶ MLA Hornby, Albert Sydney, *Oxford Advanced Learner's Dictionary of Current English* (Oxford, England: Oxford University Press 1995) p.2356.

⁷ B. A Garner, *Black's Law Dictionary* (St. Paul, MN: Thomson Reuters, 2014) p.1431.

⁸ See Titus Adekunle, 'Succession and inheritance law in Nigeria: Resolving the discriminatory proprietary rights of widows and children,' 1 *Property Law Review*, p.1 available online at www.academia.edu. Accessed November 16 2022.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² A. Emiola, *Emiola's African Customary Law* (Ogbomoso Nigeria Emiola Publishers Limited, 2011) 17.

distinction between inheritance and succession when he stated that the two words, though similar in meaning, are in no way like Siamese twins. Inheritance is an estate or property that a man acquired by descent and can be transmitted to his heir in the same way on his death in intestacy, while succession includes the devolution of title to land by will as well as accession to office and dignity. Both inheritance and succession have one thing in common which is the devolution of the property of a deceased, therefore they will be used interchangeably in this paper.

Succession may be testate or intestate. It is testate when an individual leaves a valid Will on his death and his estate will be shared according to the Will, while intestate is where an individual does not leave a Will on his death and his estate will be distributed by the laws of Intestacy which are governed by statutes and various customary laws in Nigeria.¹³ There are three laws governing inheritance under the Nigerian legal system. These are statutory, customary, and Islamic law. The type of law applicable in any given case is dependent on the type of marriage contracted by the deceased person while he was alive, or the deceased state of affairs or circumstances in his lifetime. According to Sagay,¹⁴ the type of marriage contracted by the intestate person is the factor which determines which system is to apply in a particular case. Thus, a person who marries under the Matrimonial Causes Act or contracts a Christian marriage would normally have his property distributed under the Act, and a person whose marriage is contracted under customary law would have his property distributed in line with customary law, while a person who contracts his marriage according to Islamic injunction would have his property distribution governed by Islamic law.¹⁵ This paper is strictly on customary rules of inheritance, and as such will be limited to an examination of judicial attitudes to women's inheritance under Nigerian customary law.

Inheritance under Nigerian Customary Law

Customary law refers to those rules that are generally accepted as binding in a particular locality. Nigeria has so many ethnic groups and so are its customary laws. The law of succession and inheritance in Nigeria is as complex as the ethnic groups comprised in the country. Even within the same locality, there are slight variations. Succession in most communities is patrilineal while some are matrilineal. One thing that is certain about customary rules of inheritance is that they are activated when one dies intestate and is subject to customary law, or is married under customary law. These rules are otherwise circumvented if one marries under the statute or makes a valid Will before his demise. Unlike western individualistic notions of property ownership, pre-colonial inheritance rules in Nigeria were concerned with the overall welfare of the family.¹⁶ Since these rules centered on family structures, heirs inherited not only the properties of deceased persons but also responsibilities to maintain the deceased's dependents and to preserve the continuity of the family.¹⁷ This is the context of the male primogeniture rule, which requires that the eldest male child of a deceased person should inherit his estate.¹⁸ Generally speaking intestate succession under the customary law among the various tribes in Nigeria is discriminatory especially as it pertains to the female folk. An attempt will be made at examining the customary rules of inheritance under the major ethnic groups in Nigeria in the forthcoming subheads.

Yoruba Customary Law of Succession and Inheritance

Inheritance in most communities in Nigeria is traced through the bloodline. A person's right to inherit from a deceased is based on being of the same blood. Generally speaking, the Yoruba law of succession and inheritance makes no distinction between male and female children as both sexes of children are equally entitled to a share of their father's property on the latter's demise.¹⁹ In some instances, however, when a deceased had no children surviving him, his relations could step in to take benefit of his property.²⁰ The court as far back as 1924 in *Salami v Salami*²¹ upheld this well-known principle of inheritance under Yoruba customary law that the plaintiff's right to inherit her father's estate along with her two brothers was not diminished by the fact that she was a girl. The apex court recently lent credence to this assertion when it held in *Okelola v Adeleke*²² that where a person dies intestate, leaving children surviving him under Yoruba customary law, all his real property devolves on his surviving children to the exclusion of other blood relations. It does not matter whether the children are all males or all females. Property of a deceased is inherited jointly by all the children of the deceased.

There are two modes of distribution of an intestate estate under Yoruba customary law. They are the *idi-igi* and the *ori-ojori* method of distribution of an estate. The *idi-igi* mode of distribution of an intestate estate otherwise known as distribution per stripes is distribution according to the number of wives with children for the deceased, while the *ori-ojori*

¹³ ABUAD Law Review, 'Right to Inheritance in Nigeria: A Liberation for Widows' available online at www.djetlawyer.com. Accessed November 16 2022.

¹⁴ IE Sagay, *Nigerian Law of Succession Principles, Cases, Statutes and Commentaries* (Lagos: Malthouse Press Limited, 2006) 73.

¹⁵ Adekunle (n 8).

¹⁶ See SNC Obi, *Modern Family Lin Southern Nigeria* (Lagos: African University Press, 1st edn, 1966) 337.

¹⁷ N Okoro. *The Customary Laws of Succession in Eastern Nigeria and the Statutory and Judicial Rules Governing their Application* (London: Sweet & Maxwell, 1966) 4.

¹⁸ Ibid.

¹⁹ Adekunle (n 8) 7.

²⁰ Ibid.

²¹ (1924) 5 NLR 43. See also *Sule v Ajisegiri* 13 NLR 146.

²² (2004) 13 NWLR (Pt 890) 307.

method of distribution of an intestate estate is distribution according to the number of children that survived the intestate person. As Obilade²³ captioned it, the *idi-igi* mode of distribution is a custom whereby the property of the deceased is divided among his children per stirpes (the property being first divided into the number of wives, the share attributable to each wife being then subdivided equally among her children). On the other hand, the *ori-ajori* mode of distribution, ie per capita, is a system that enables the property of a deceased to be divided into the number of children that survived him on his death.²⁴ This enables each child to receive an equal share of the property irrespective of the number of children born by each wife.²⁵ The *idi-igi* mode of distribution has been held to be the most popular mode of distribution *albeit* some criticism that it does not make for equity and fair play.²⁶ It is to be noted that although the *idi-igi* mode of distribution is the most popular mode of distribution of an intestate estate, in the event of a dispute the head of the family has the final say as to the mode of distribution to be adopted.²⁷

Whereas female children can inherit the estate of their deceased parents in Yorubaland, the same cannot be said about wives.²⁸ The right of the widow to succeed to her late husband's property is considerably curtailed as wives have no right to inherit their deceased husband's estate. The reason for this deprivation was stated by the court in *Sogunro-Davies v Sogunro-Davies*²⁹ that the Yoruba native law and custom deprived the wife of the inheritance right in her deceased husband's estate because devolution of property follows the blood. Wives in Yoruba land are regarded as chattels who are to be inherited by other members of the deceased family under certain circumstances.³⁰ The court in *Oloko v Giwa*³¹ emphatically stated that widows are only allowed to remain in the house or a portion of farmland but cannot inherit their deceased husband's property.

From the foregoing, it is clear that only the children can inherit the estate of their deceased parents. Men equally cannot inherit the estate of their wives as their properties are inherited by their children jointly.

Igbo Customary Law of Succession and Inheritance

The rule of succession among the Igbos is generally patrilineal but there are a few communities where bilineal succession was in vogue.³² These are the Afikpo and Bende areas of Abia and Ebonyi States, as well as Abiriba and Ohafia communities.³³ Inheritance in some of these communities is matrilineal. The cardinal principle of the customary law of succession in various parts of Igbo land is primogeniture, that is, succession by the firstborn of the male line.³⁴ Although there are slight variations in the prevailing customary law of succession in various parts of Iboland, the main principles are the same.³⁵ Adumbrating the primogeniture rule, Nwogugu posits that

Succession is through the eldest male in the family who is known as 'Okpala' 'Diokpala' or 'Diokpa'. In the case of a nuclear family, succession is through the eldest male child of the deceased. Concerning the extended family, succession is through the eldest son of the ancestor and so on in that line irrespective of the fact -that the 'Okpala' may be junior in age to other members of the extended family.³⁶

The rationale behind the principle of primogeniture which underlines the Igbo customary law of succession was the maintenance of family welfare and stability.³⁷ Thus, pre-colonial inheritance rules in Nigeria were concerned with the overall welfare of the family.³⁸ Since the Igbo customary rules of inheritance were centered on protecting family structures, perpetuating clan lineage, and keeping wealth within the family, heirs inherited not only the properties of the deceased persons but also responsibilities to maintain the deceased's dependents and to preserve the continuity of the family.³⁹ Ultimately, underlying the primogeniture principle in the traditional Igbo society was the best interests of the

²³ AO Obilade, *The Nigerian Legal System* (London: Sweet and Maxwell, 1979) 86-87.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ See *Dawodu v Danmole* (1962) 1 WLR 1053.

²⁷ This was the decision of the court in *Dawodu v Danmole* *Ibid.*

²⁸ Adekunle (n 8) p 8.

²⁹ (1928) 8 NLR 79.

³⁰ See *Suberu v Suberu* (1957) 12 FSC 33 where the court held that 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. See also *Ogunkoya v Ogunkoya* (1988) Suit No. CA/L46, 88, P.6; *Aileru & ors v. Anibi* (1952) 20 NLR 46; *Akinubi v Akinubi* (1997) 2 NWLR 486 at 144.

³¹ (1939) 15 NLR 31. See also *Taiwo v Lawani* (1961) ANLR 733 where the court held that inheritance is by blood and widows are not blood relatives of the deceased hence cannot claim a share of the property.

³² Adekunle (n 8) p.5. Bilineal succession is inheritance from both father's and mother's line.

³³ B A Oni, *Law of Succession in Nigeria (Principles, Cases and Practice)* (Lagos: UNILAG Press and Bookshop Limited, 2019) 234.

³⁴ EI Nwogugu, *Family Law in Nigeria* (Ibadan: HEBN Pub. Plc, 1974) 401.

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Obi* (n 16) 337.

³⁸ *Ibid.*

³⁹ *Okoro* (n 17) 4.

family (males and females, inclusive).⁴⁰ Thus, on the death of the head of the family in Igboland, his eldest surviving son known as the 'okpala' or 'diokpala' inherits his estate for himself and his male siblings. In *Ugboma v Ibeneme*,⁴¹ the court per Egbuna J held that land, among the Igbos, is inherited by all the sons as family property, and that the eldest son, as the new head of the family, is only a 'caretaker'. The principle of primogeniture rule, therefore, imposes an obligation on the eldest surviving son - Okpala. Since the real property of the deceased vests on his eldest son (Okpala), he must manage and administer such property for the benefit of himself and his brothers and half-brothers.⁴² It must be emphasized that in the exercise of power by the eldest surviving son the Okpala is accountable to his younger brothers.⁴³ The younger brothers have no right to oust the Okpala in the administration of their late father's real estate, even if he is profligate.⁴⁴ They can, however, report his profligacy to the extended family.⁴⁵

With regard to the female children, they were not allowed to inherit anything from their deceased father. The belief was that female children will get married and go to her husband's house and, as such, the property of the father cannot be entrusted to them.⁴⁶ Moreover, if daughters are allowed to inherit from their father's real estate, the implication is that a daughter's share in her father's land may be inheritable by her issue, even without the partition of the land.⁴⁷ Daughters however are entitled to be maintained by the person who inherits their father's estate until they marry or become financially independent or die.⁴⁸ Moreover, the unmarried daughter has a right to be shown a portion of her father's land or family group farmland for her annual farming needs, and this right lasts until she marries or leaves the family group or dies.⁴⁹ In some parts of Igbo land, where the *Iri-ekpe* custom obtains, if the intestate dies without sons, brothers, or father, his estate is inherited by the eldest nearest paternal male relation, who is called the *ori-ekpe*, and not any of the surviving daughters of the deceased.⁵⁰ However, under the *Iri-ekpe* custom, the *Ori-ekpe* does not inherit absolutely and exclusively.⁵¹ His rights cannot be more than that of the eldest son (Okpala), where there is one. He holds the property on trust and for the benefit of the family, which includes the daughters.⁵² The unmarried daughters of the deceased thereby do not lose their rights to maintenance nor are they disentitled from using a portion of their father's land for their annual farming needs.⁵³

The *Iri-ekpe* custom held sway for a long time in Igboland until 1997 when the Nigerian Court of Appeal in *Muojekwu v Muojekwu*⁵⁴ struck down the 'Iri-ekpe' custom of the Igbos for being repugnant to natural justice, equity, and good conscience.⁵⁵ Although this judgement did not go down well with many as a further appeal to the Supreme Court shows in *Muojekwu v Iwuchukwu*,⁵⁶ the judgement marked a turning point in the inheritance rights of women in Igboland. At least for the first time in history, a court had the opportunity of making a positive pronouncement on a custom that many adjudged barbaric. Much more recently in *Ukeje v Ukeje*⁵⁷ the Supreme Court had the opportunity to revisit this vexed issue of women's inheritance in Igboland, and the court did not mince words in striking down the custom as discriminatory and unconstitutional. The court per Justice Rhodes-Vivour held that:

the Igbo native law and custom which disinherits a female from inheriting in her father's estate is void.... No matter the circumstances of the birth of a female child, such a child is entitled to an inheritance from her late father's estate...the Igbo Customary Law which disentitles a female child from partaking in the sharing of her deceased father's estate is in breach of S 42(1) and (2) of the Constitution, a fundamental right provision guaranteed to every Nigerian.

⁴⁰ See N Nhlapo, 'The African Family and Women's Right: Friends or Foes' (1991) *Acta Juridica* 138 141 145-146 quoted in G U Emeasoba, 'An Evaluation of the Nigerian Judicial Attitude to the Igbo Customary Law of Succession', Vol. 1 *African Customary and Religious Law Review* (2020) p. 14.

⁴¹ (1967) F.N.L.R. 251. Similarly, in *Ngwo v Onyejena* (1964) 1 All NLR 1352, the Court found, on the evidence of the Asaba customary law of succession that, 'when a father dies, his land is inherited by his eldest son who holds it on trust for his other children. The other children have a beneficial interest in the land and have a right to farm on it. See also *Ejiamike v Ejiamike* (1972) 2 ECCLR 11.

⁴² Adekunle (n 8) p.5.

⁴³ See *Onwusike v Onwusike* (1962) 6 ENLR 10.

⁴⁴ *Ejiamike v Ejiamike* (1972) 2 ECCLR 11.

⁴⁵ Nwogugu (n 34). 418-419.

⁴⁶ Adekunle (n 8) p. 5.

⁴⁷ See B Nwabueze, *The Nigerian Land Law* (Enugu: Nwamife Publishers; Oceana Publications, 1972)383.

⁴⁸ Nwogugu (n 34). 418-419.

⁴⁹ Ibid.

⁵⁰ Obi (n 16) 187-188.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ (1997) 7 NWLR (Pt. 512) 283.

⁵⁵ Adekunle (n 8) p.6. See also *Nzekwu v Nzekwu* (1989) 2 NWLR 373.

⁵⁶ [2004] 11 NWLR [Pt 883] 196, Justice Uwaifo criticized the earlier Court of Appeal pronouncement.

⁵⁷ (2014) 11 NWLR [Pt 1418] 384.

This decision settled beyond all doubt, the fundamental right of a female to participate in the inheritance of her deceased father's estate.⁵⁸ The judgment of the court, in this case, is of very significant value to Nigerian women because the Nigerian judiciary has experienced a chequered history on this issue of the right of women to inherit their deceased father's properties, in light of the various customary laws in some parts of the country which prohibits women from participating in such inheritance.⁵⁹

Widows under Igbo customary law face the same treatment meted out to female children. They were not allowed to inherit or administer their deceased husband's intestate estate. This is because, in customary intestacy, devolution of property follows the bloodline.⁶⁰ Therefore, a wife or widow, not being of blood, has no claim to any share.⁶¹ In *Nezianya v Okagbue*,⁶² the court made it abundantly clear that a widow is not entitled to succeed to the personal or real estate of her deceased husband. However, the widow can remain in the matrimonial home and be maintained by her husband's family. In the words of Nwabueze,

a widow who chooses to remain in the husband's house and his name is entitled, in her own right and, notwithstanding that she has no children, to go on occupying the matrimonial home and to be given some share of his farmland for her cultivation, and generally to maintenance by her husband's family. Should her husband's family fail to maintain her, it seems that she can let part of the house to tenants and use the rents obtained thereby to maintain herself. Her interest in the house or farmland is merely possessory, and not proprietary so she cannot dispose of it out and out.⁶³

In *Nzekwu v Nzekwu*,⁶⁴ the issue that arose was whether a widow is entitled to any rights in respect of her late husband's estate in Onitsha customary law. The husband had died intestate leaving a wife and two children. The late husband's family sold the house and the purchaser put tenants in the house. The Court of Appeal held that under the Onitsha custom the widow is entitled to certain rights in the property even when she is childless. Her rights are however not averse to her late husband's family and are not absolute ownership rights. Much more recently, judicial attitude towards the inheritance rights of women in Igboland has changed with the recent Supreme Court decisions in *Anaekwe & Ors v Nweke*⁶⁵ which has laid to rest the burning issue as to inheritance rights of women in Igboland. In *Anaekwe's* case, the Supreme Court was faced with determining whether the respondent who had no male child could inherit the property of her late husband. The court per Ogunbiyi J. held that:

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 are 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. One would expect that the days of such obvious differential discrimination are over. Any culture that disinherits a daughter from her father's estate or a wife from her husband's property because of God-instituted gender differential should be punitively and decisively dealt with. The punishment should serve as a deterrent measure and ought to be meted out against the perpetrators of the culture and custom. For a widow of a man to be thrown out of her matrimonial home, where she 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, worrisome and flesh skinning.

The above decisions have laid to rest the controversy as to whether female children and widows can inherit and administer the estate of their deceased fathers and husbands in Igboland. Unarguably, these decisions were influenced by human rights considerations and the principle of equality and non-discrimination.

Widowers under Igbo customary law cannot inherit the estate of their deceased wives. The general principle is that the wife's ante nuptial property is not inherited by the husband or his family.⁶⁶ Even where a man goes to live with the wife in a house built by her before marriage, the real property retains its character as ante-nuptial property of the wife unless it has become mixed with other properties acquired during coverture.⁶⁷ On the other hand, property acquired by a wife during coverture devolves upon her children, subject to the husband's right to use it concurrently with the children during

⁵⁸ Nonso Anyansi, 'Do Nigerian Women Have the Right to Inherit Properties?' 06 march 2022 Guardian Newspapers, available online at www.gurdiannewspaper.com Accessed 6th November 2022.

⁵⁹ *Ibid.*

⁶⁰ Nwabueze (n 47) 389-390.

⁶¹ Adekunle (n 8)p. 7.

⁶² (1963) 1All NLR 352. See also *Ejiamike v Ejiamike* (1972) 2 ESLR 11.

⁶³ Nwabueze (n 47) 389-390.

⁶⁴ [1989] 2 NWLR (pt) p 373.

⁶⁵ (2014) 9 NWLR [Pt 1412] 393.

⁶⁶ Nwabueze (n 47) 390-391. In *Nwugege v Adigwe* (1934)11 NLR 134, It was held that a husband's right of inheritance depends upon whether the wife left any surviving issue and whether the property was acquired before or during coverture.

⁶⁷ *Ibid.*

his lifetime.⁶⁸ Where the wife leaves no issue to inherit, the husband succeeds to the property.⁶⁹ However, where the deceased wife leaves no issue or husband to inherit, the wife's family has no claim to the property which she acquired during coverture, as these properties will go to the husband's relatives – his children by other wives, brothers, etc.⁷⁰

Customary Law of Succession and Inheritance in Northern Nigeria

A discussion of succession and inheritance in northern Nigeria will take two forms. Inheritance under indigenous native law and custom and inheritance under Islamic law. This is because a lot of native inhabitants in the north are not Muslims. Inheritance in the northern part of the country is largely determined by the customary rules the deceased person was subject to in his lifetime. If the deceased died a Muslim, automatically Islamic law will govern the distribution of his estate, on the other hand, if he was a non-Muslim, then his estate will devolve according to his indigenous native law and custom.⁷¹ Under the indigenous native law and custom, young men and women were originally forbidden from inheriting their deceased father's estate.⁷² The rationale was that since young sons and daughters cannot go to war and secure bodies or loot they should not be allowed to inherit their heirs.⁷³ By the original Hausa native custom, the females were themselves objects of inheritance.⁷⁴ Indigenous Hausa customary law recognizes the principle of primogeniture. The eldest son inherits the deceased cattle which were the main assets in those days out of which he will make gifts to his younger brothers following their needs.⁷⁵ Females can only inherit their mother's moveable properties. In the absence of sons, the deceased brothers will inherit his estate, and where there are no brothers, the intestate estate goes to his father. It is to be noted that the indigenous customary law of inheritance of the Hausas is similar to the Igbo customary law of Inheritance.

Where the deceased died a Muslim, then Islamic law will apply to govern the distribution of his estate. Islamic law recognizes the rights of both males and females to inherit the property of their deceased parents and husbands. The Holy Quran spells out the rights of inheritance of women in different capacities, eg daughter, wife, mother, sister, and even grandmother.⁷⁶ Therefore, whatever the parents leave after their demise, their children and nearest kin have the rights over their property which should be shared according to guidance from the Quran, in which the rights of males and females are spelled out.⁷⁷ The Holy Quran provides as follows regarding the rights of all the dependents:

Allah enjoins you concerning your children: The male shall have the equal of the portion of two females, then if they are more than two females, they shall have two-thirds of what the deceased has left, and if there is one, she shall have the half and as for his parents, each of them shall have the sixth of what he has left if he has a child, but if he has no child and (only) his two parents inherit him, then his mother shall have the third but if he has brothers then his mother shall have the sixth after (the payment of) a bequest he may have bequeathed or a debt your parents and your children you know not each of them is nearer to you in usefulness; this is an ordinance from Allah: Surely Allah is Knowing Wise.⁷⁸

It is clear from the above that Islamic law allows all the dependents of the deceased to inherit from his estate. As H 'Abd al 'Ati⁷⁹ captures it, overall, the Islamic law of inheritance has probably raised the sentiment that it fosters the collective social spirit, because it favours the distribution of property among many heirs and thus holds in check the concentration of wealth. Female children and wives under Islamic law, therefore, do not suffer the predicament suffered by women under the various customary laws in Nigeria.

Having discussed inheritance under the customary law of the major ethnic groups in Nigeria in the forgoing sub-sections, the next subhead will be dedicated to the recent judicial attitude towards women's inheritance in Nigeria.

3. Recent Development in Women's Inheritance under Nigeria Customary Law

It is unarguable that the rights of women to inherit properties from their husbands under customary laws in Nigeria are somewhat similar. A careful examination of all the customary laws reveals that women from time immemorial were regarded as inheritable chattels. Besides what use was it to allow a girl to take the properties of her father to another family? These were some of the sentiments that propelled the age-long primogeniture rule. This writer contends that the social conditions under which inheritance rules originated have vastly changed, and changing times have necessitated the

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ ABUAD Review (n 13).

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ JM Bolaji, "A Comparative Study of Women's Rights of Inheritance in Nigeria under Islamic Law and Some Customary Laws" quoted in Adekunle (n 8) p. 4.

⁷⁷ Ibid.

⁷⁸ See Chapter 4, Verse 11 of the Holy Quran.

⁷⁹ H 'Abd al 'Ati, *The Family Structure in Islam* (American Trust Publication, Islamic Publication Bureau, Nigeria, 1982) 252.

adaptation of these rules in line with recent occurrences in society. The recent judicial attitude towards women's inheritance under customary law in Nigeria is a testament to the changing social conditions. The 1997 Court of Appeal decision in *Muojekwu v Muojekwu*⁸⁰ marked a turning point in the history of inheritance rights of women under Nigerian customary law. Before that year women were not allowed to inherit from their fathers or husbands. In those instances where the court was called upon to decide on the right of women to inherit properties, the courts simply held that the right of the widow is only possessory but not adverse to the deceased husband's family. In other words, the widow does not have absolute rights over the late husband's property.⁸¹ Although the decision in *Muojekwu's case* was criticized by the Supreme Court on further appeal to the apex court. The judgement was widely celebrated as the first time a court had the opportunity to make a pronouncement on such obnoxious customs that militate against the rights of women to inherit properties in Igboland. Clearly, this recent judicial attitude was influenced by human rights considerations, and the principle of equality and non-discrimination.

Seventeen years later, the courts again were invited to make a pronouncement on the inheritance rights of female children and widows under Igbo customary law, and the courts did not waste time in declaring such customs as discriminatory, unconstitutional and therefore void in so far as it conflicts with the 1999 Constitution of the Federal Republic of Nigeria.⁸² It does appear and rightly too that customary law is being reformed in Nigeria in line with human considerations, equality and principles of non-discrimination. As a country with a common law legal tradition, judicial precedents and court hierarchy are taken seriously in Nigeria.⁸³ In *Loye v Loye*,⁸⁴ the court was mindful of the modern socio-economic changes in the relationship of husbands and wives and held that the practice of disinheritance of widows is capable of working great hardship in modern times especially when wives make significant contributions to the wealth and properties of their husbands.

At face value, the April 2014 judgments of the Supreme Court in *Ukeje v UKeje* and *Nweke v Anaekwe*⁸⁵ on male primogeniture rule appear like the judicial reform of the customary law of inheritance.⁸⁶ It is hoped that the enforceability of those judgements will not suffer any setback in Igboland as the court did not dwell on the quantum of inheritance to which female children will be entitled. The quantum of inheritance is a necessary component of any judgement that will alleviate the suffering of women in Igboland. This is because merely declaring such customs as repugnant, discriminatory, and unconstitutional without more will not give women the desired result. Moreover, the fact that the Supreme Court did not refer to all customary laws that disentitle women from inheritance leaves Yoruba women at the mercy of their customary law which has not undergone any form of reform lately. It is hoped that the Supreme Court will at any slightest opportunity revisit the issue of women's inheritance under customary law in Nigeria, and make its pronouncement generally applicable to all customs, and specify the quantum of inheritance for female children.

4. Conclusion

The foregoing discourse has demonstrated that the courts are beginning to fill the gap in the inheritance rights of women by adopting the best interests of dependents principle in all judicial decisions concerning the customary law of succession. It is a welcome development that the courts have commenced the process of reform of those customary laws that cause hardship to women and girls to reconcile them with human rights prescriptions and changing social conditions. The courts should do more to spell out the territorial reach of their decision, and specify the quantum of inheritance for female children. Finally, our customary laws are obsolete and in dire need of a revamp as those original considerations that propelled the rules can no longer stand the taste of time.

⁸⁰ *Muojekwu v Muojekwu* (n 54).

⁸¹ See *Nzekwu v Nzekwu* (n 55) *Ugboma v Ibeneme* (n 41).

⁸² See *Ukeje v Ukeje* and *Nweke v Anakwe* (n 57 & 63).

⁸³ *Diala* (n 4) 651.

⁸⁴ (1989) 377 S.E 2d 804.

⁸⁵ See *Ukeje v Ukeje* and *Nweke v Anakwe* (n 57 & 63).

⁸⁶ *Diala* (n 4) 651.