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*

Abstract

An Igiogbe is the house where a Bini man lived, died and usually in most cases is buried. It devolves absolutely without any contradiction on his eldest surviving son as soon as the burial rites are performed and completed by him (in rare instances supported by family members) in accordance with the Bini Customary burial rites. The work examined and appraised women's rights to inheritance under the Bini custom: vis a vis legal framework for testate and intestate succession in Nigeria, intestate succession, testate succession, and individual ownership of property. Thereafter, it examined Igiogbe inheritance in Bini kingdom and all other issues and matters arising from, bothering on and relating to this concept. The clamor for gender equality as constitutionally provided for by the Constitution of Federal Republic of Nigeria, and by most international and regional instruments has led to the asking of some fundamental questions which were sufficiently answered in this work. The work is concluded with some recommendations, mass enlightenment campaigns being mounted by the Ministry of Women Affairs at both the Federal and State levels to enlighten the people about the hardship and injustice which discriminatory customary laws impose on women and that any customary law that is discriminatory against women should be declared invalid on the grounds that it is unconstitutional and repugnant to natural justice, equity and good conscience.

Keywords: Women, Right to Inheritance, Testate and Intestate Succession, Bini Custom, Nigeria

1. Introduction

From time immemorial, women have suffered greatly and disproportionately in comparison to their male counterpart. 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. Today, the issue of Women's Rights has become a major concern the world over. It is a great concern to many that women are deprived of their human rights. It has been a burning issue in different parts of the world, yet some think it is all a propaganda blown out of proportion usually because of religious or cultural inclination. Inheritance right for women in Nigeria is a struggle that transcends class, religion, and ethnicity in Africa. Women in Nigeria face inheritance barriers within their birth family as well as within their marriages. These discriminatory practices against women are oppressive, thus leading many uneducated women (in some instances even the educated ones) to recourse to other means of fending for themselves. They may therefore perceive trafficking and transactional sex as empowering initiatives to protect them from the oppressive culture, which hinder their access to critical economic resources, but privileged the male gender. Even in divorce it is very difficult for women to receive financial support or for properties to be distributed equitably. In the case of a husband's death, many Nigerian women have seen their marital home stripped bare by their in-laws who claim the properties left behind as their own. Traditionally, women are taken care of by the family of her husband, usually by marrying a brother of her husband. In today's urban Nigeria, this practice is no longer adhered to by its traditional intention and many women simply find themselves in the streets with little legal protection or recourse. There are three laws that govern inheritance in the legal system. These are statutory, customary, and Islamic. It is the latter two, (customary/Islamic) the most often governs marital issues, and it is the latter two that are the most prejudicial towards women. In certain parts of Nigeria, the maltreatment of widows is common. In-laws and the community subject them to physical and emotional abuses such as being made to sit on the floor; being confined from a month to one year; having their hair literally scraped off with razors or broken bottles; not being allowed to bathe; being made to routinely weep in public; being forced to drink the water used to wash their husband's corpse; crowned by the loss of inheritance rights and eviction and many more. This work will analyze the rights of individuals to own properties and extensively discuss the legal frame work of testate and intestate succession. The rights of women to property inheritance and an analysis of how some of these discriminatory inheritance practices are a violation of the Fundamental Human Rights of women as constitutionally provided for by the Constitution of the Federal Republic of Nigeria, 1999[1] vis-à-vis the protection of women's rights as provided for under some

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[1] Section 42(1) of the Constitution of the Federal Republic of Nigeria 1999, Cap. C23 LFN 2004, as amended 2011.

international[2] and regional[3] instruments as adopted and ratified by most jurisdiction of the world to which Nigeria is not an exception.

2. Individual Ownership of Property

The rights of an individual in the African context can only be enjoyed as a group right as opposed to individual rights recognized by the West. This is because the group or community rights or interests generally override that of an individual. However, the individual's membership in a community does not rob the individual of his or her dignity, and by extension, the individual's rights.[4] The Constitution recognizes the right of the individual to acquire and own immovable property in any part of the country.[5] Any other law that abridges or has the similitude of an infraction on this right is unconstitutional and therefore null and void.[6] Though it is admitted that the right to ownership of property is not absolute, being that it is made subject to the provisions of the Constitution,[7] the Constitution recognizes the right of the state to compulsorily acquire land for public interest.[8] The Land Use Act, 1978 (as amended)[9] does not take away this constitutional right but merely expresses the concept of ownership of land in the terms of right of occupancy[10] and stipulates certain administrative procedures or steps to be followed and adhered to by the owner of the right of occupancy in conferring such interest, *inter vivos*, on any other person by way of alienation. These administrative procedures or steps include obtaining the Governor's consent or the consent of the relevant Local Government Chairman prior to the alienation of the statutory right of occupancy or customary right of occupancy. Thus, outside these constitutional limitations, the individual has a constitutional right to own property. This right subject to those constitutional limitations is absolute.

One of the integral incidents of ownership is the right to alienate or otherwise dispose ones' property in any manner the owner deems fit. This was confirmed lucidly in the following judicial pronouncement: It connotes a complete and total right over a property. The owner of the property is not subject to the right of another person. Because he is the owner, he has the full and final right of alienation or disposition of the property and he exercises his right of alienation and disposition without seeking the consent of another party because as a matter of law and fact there is no other party's right over the property that is higher than that of his … the owner of the property can use it for any purpose; material, immaterial, substantial, non-substantial, valuable, invaluable, beneficial or even for purpose detrimental to his personal or proprietary interest. In so far as the property is his' and inheres in him, nobody can say anything. He is the alpha and omega of the property. The property begins with him and ends with him. Unless he transfers his ownership over the property to a third party, he remains the owner.[11] Subject to the provisions of the Constitution of the Federal Republic of Nigeria, 1999[12] and by extension, the provisions of the Land Use Act, 1978 (as amended),[13] this is what the Constitution guarantees as right to own property in any part of the country. Thus, any law that tends to further limit this right of the individual in the exercise of this constitutional right to acquire and own property and by consequence, dispose of such property by a Will are null and void *ab initio*. Most Wills Laws (as will be enunciated subsequently in this chapter) abridge the right of ownership in limiting or restricting one of the integral incidents of ownership, that is, the right to dispose ones' property as there is no justification as to why female children and wife/wives of a testator should be prevented from inheriting land or landed properties of the testator. This is the position of certain native laws and customs to which the testator's right is limited. It should be noted that a constitutionally guaranteed right cannot be validly abrogated or limited by any statute.[14] Adekeye J.C.A., rightly observed: 'A right conferred by the Constitution cannot be taken away by any other legislation or statutory provision except by the Constitution itself … Any other

[2] Universal Declaration of Human Rights (U.D.H.R.), 1948, International Covenant on Civil and Political Rights (ICCPR), 1966; International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966; and Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), 1979.

[3] The African Charter on Human and Peoples' Rights (also known as the Constitutive Act of the African Union), 1981, now consolidated into the Laws of the Federation of Nigeria, 2004 at Cap. A9 and The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (also known as Women's Protocol), 2003.

[4] Elechi O. O., 'Human Rights and the African Indigenous Justice System', a paper presentation at the 18th International Conference of the International Society for the Reform of Criminal Law, 08th–12th August, 2004, Montreal, Quebec, Canada.

[5] Section 43 of the Constitution of the Federal Republic of Nigeria, 1999 Cap. C23 LFN, 2004, as amended 2011.

[6] Section 1(1) and (3).

[7] Sections 44 and 315(d).

[8] Section 44(1) and Section 28 of the Land Use Act, 1978 (as amended), Cap. L5 LFN, 2004.

[9] Cap L5, LFN, 2004.

[10] Sections 5, 6, 34 and 36.

[11] Niki Tobi, J.C.A., (as he then was) in Abraham v. Olorunfunmi (1991) 1 N.W.L.R. (pt. 165) 53.

[12] Cap. C23 LFN 2004, as amended 2011.

[13] Cap. L5 LFN, 2004.

[14] *Osuagwu v. Onyeikigbo* (2005) 16 N.W.L.R. (pt. 950) 380.

law purportedly made abrogating the right conferred by the Constitution would be void to the extent of its inconsistency.'[15] The Court of Appeal had no hesitation in pronouncing the unconstitutionality of such obnoxious custom, when it held that:

> The Igbo native law and custom which disentitles a female whether born in or out of Wedlock from sharing in her deceased father's estate is void as it conflicts with Sections 39(1)(a) and 39(2) of the Constitution of the Federal Republic of Nigeria, 1979 (as repealed). These provisions are now contained in Sections 42(1) and 42 of the Constitution of the Federal Republic of Nigeria, 1999.[16]

3. The Legal Framework for Testate and Intestate Succession

In Nigeria, three different systems of law operate side by side.[17] The consequence of this legal pluralism is the complex interplay between Common Law, Statutes and Customary law, which in some cases had resulted in serious conflict of law issues domestically. Although, the effect of this legal pluralism is noticeable in different aspects of our law, it is however more evidently noticeable with regard to succession.[18] In this regard, most times it is difficult to determine which of the three systems of laws is to be applied in a certain situations. The origin of this may largely be traced to the history of Nigeria state and its legal system. Like, in most parts of Africa, the current legal system used in the adjudication of the disputes is a child of colonialism. This explains why the English common law applies till this day in Nigeria, with some substantial modifications by statutes.[19] With respect to succession, the genesis of this present state of our law began with the adoption of the English laws of marriage, which became applicable to Nigeria and thereby importing the English rule of legitimacy. The English laws of marriage recognize monogamy. Islamic religion which is widely practiced in the Northern part of the country permits a man to marry up to four wives in accordance with Muslim law. Customary law on the other hand allows a man to marry as many wives as he wishes.[20]

Testate Succession

Testate succession is a situation where a person makes a Will and in the Will gives expressions of wishes which may include how properties are to be shared, preferred means and mode of burial.[21] Freedom of testation is recognized as one of the founding principles of the Nigerian law of testate succession. According to this principle, testators are free to dispose of their properties in a Will in any manner they desire. Thus in *Shogbesan v. Adebiyi*,[22] a testator by a Will enlarged the customary concept of family to include the testator's brothers and another. Any person of statutory age,[23] who has sound mind and memory,[24] can validly dispose of his property by a Will complying with the rule of formal and essential validity will pass real or personal properties of the deceased in accordance with the intention of the testator. A Will being a legal document that addresses posthumous matters, many reasons have been advanced for Will making.[25] In *Banks v. Goodfellow*,[26] the court affirmed the right of testamentary freedom of a person. It held that: 'A person at all times has a right to make a Will and to give his properties to any persons he desires and wishes, and may also deprive any of his blood relatives of his properties without any questions being asked'. A Will can be made in English Form I in compliance with the Wills Act,[27] a statute bequeathed to Nigeria during the colonial era, is one of the laws under which people can make Wills in Nigeria. The Act is commonly used in the North and South-Eastern part of the country while all the South-Western States and many other states have made their own Wills' laws. The provisions of those states' laws are not however substantially different from the Act. As the name implies, testate succession consists primarily of wills. In

[15] Ibid.
[16] *Agbai v. Okagbue* (1991) 7 N.W.L.R. (pt. 204) 391.
[17] Common Law, Statutes and Customary/Islamic law.
[18] Itua P. O., 'Review 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', published in Journal of Law and Conflict Resolution, Vol. 4(3), pp. 31-44, March 2012. Available at http://www.academicjournals.org/JLCR accessed on 28th June, 2021.
[19] Ibid.
[20] Ibid.
[21] Kehinde A., 'Women and Inheritance: A Comparative Analysis of the African Law and the rest of the world' available at http://www.nigeriavillagesquare.com/articles/women-and-inheritance-a-comparative-analysis-of-the-african-law-and-the-rest-of-the-world.html accessed on 07th July, 2021.
[22](1914) 6 N.L.R 26.
[23] The statutory age of the testator depends on the applicable Wills Law or Act. Under the Wills Law of Lagos-State, Section 3 provides that it is 18years.
[24] *Okeola v. Bolye* (1998) 1 S.C.J.N. 63, *Adebayo v. Adebayo* (1973) 3 E.C.S.L.R. 544, *Johnson v. Maja* (1950-51) 13 W.A.C.A. 290.
[25] Imhanobe S. O., *Understanding Legal Drafting and Conveyancing*, (Secured Titles Publishers, Abuja, 2002), pp. 285-286.
[26] (1912) A.C. 658.
[27] Wills Act, 1837.

Nigeria, there is no uniformity of applicable laws relating to wills. Consequently, among the states that were created out of the former western region,[28] the applicable law is the Wills Law.[29] By virtue of the provisions of the Applicable Laws Edict of 1972,[30] Lagos-State adopted the Western Nigerian Law. On the other hand, the rest of the country[31] consisting of the states from the Northern and the Eastern part, still applies the English Wills Act 1837 and the Wills Amendment Act 1852.[32] A critical analysis of the provisions of the Wills Law[33] shows that the legislation basically re-enacted the provisions of the Wills Act 1837 and the Wills Amendment Act 1852 together with the provisions of the Wills (Soldiers and Sailors) Act 1918, but with inclusion of some provisions that took into consideration the prevailing customary laws principles that regulate succession under customary law in the affected states. For example, Section 3 (1) of the Wills Law[34] provides that: Real and personal estate, which cannot be affected by testamentary disposition under customary law, cannot be disposed of by will.[35] Also, Section 15 of the Wills Law[36] provides that: Every Will made by a man or woman shall be revoked by his /her subsequent marriage. However, the Wills Law exempts a marriage in accordance with customary law from having this effect. Every person writing a Will has the liberty to distribute his or her property as it pleases him or her. However, there are basically two limitations placed on this liberty.[37] The first limitation is that a Will maker must take relevant rules of customary law operating in the locality into consideration while distributing his or her estate.[38] For instance, any property owned as family property cannot be given to another person via the instrumentality of a Will.[39] Again, if a particular property must by rules of customary law be given to a particular person that particular property cannot be given to another person via the instrumentality of a Will.

It should however be noted that under the Wills laws of some states in Nigeria, if a man makes a Will and fails to provide adequately for his wife or children, such persons can apply to the court so that their interests can be appropriately catered for in such Will. Section 2 of the Lagos-State Wills Law provides that:

> … where a person dies and is survived by any of the following persons- (a) The wife or wives or husband of the deceased; and (b) A child or children of the deceased, That person or those persons may apply to the Court for an order on the ground that disposition of the deceased estate effected by his Will is not such to make reasonable financial provision for the applicant.

The Oyo-State model is captured in Section 4(1) of the Oyo–State Wills Law[40] and provides that:

> Notwithstanding the provisions of Section 1 of the Law, where a person dies and is survived by any of the following persons:
> (a) The wife or husband of the deceased;
> (b) A child of the deceased;
> (c) A parent, brother or sister of the deceased who immediately before the death of the deceased was being maintained either wholly or partly by the deceased, that person may apply to the court for an order on the ground that disposition of the deceased's estate affected by his Will is not such as to make reasonable financial provision for the applicant.

Section 4, Abia-State Wills Law[41] and Section 27 Kaduna-State Wills Law contains provisions akin to the above provisions of the Lagos-State and Oyo-State Wills Laws. There are however some differences in the tenor of these laws. For example, in Kaduna, Abia and Oyo States, the persons who can apply for reasonable financial provisions include the parents, brothers or sisters of the deceased who immediately before the death of the deceased where being maintained either wholly or partly by the deceased. Under the provisions of these laws, 'reasonable financial

[28] Oyo, Ondo, Ogun, Osun, Ekiti, Edo and Delta States.
[29] Cap. 133, Laws of Western Nigeria 1959.
[30] No. 11 of 1972.
[31] With the exceptions of some few states that have enacted their own Wills Laws in line with the Laws of Western Nigeria, 1959.
[32] This Statute qualifies as Statute of General Application in Nigeria.
[33] Cap. 133, Laws of Western Nigeria 1959.
[34] Ibid.
[35] *Idehen v. Idehen* (1991) 6 NWLR (Pt.198) P.382 and *Lawal-Osula v. Lawal-Osula* (1995) 9 NWLR (Pt.419) p.259 where the Supreme Court, discussed extensively the legal implication of the provisions of Section 3(1) of the Wills Law of Bendel–State, Cap. 172, Laws of Bendel-State, 1976 applicable to Edo and Delta States.
[36] Cap. 133, Laws of Western Nigeria 1959.
[37] Kehinde A., 'Women and Inheritance: A Comparative Analysis of the African Law and the rest of the world' available at http://www.nigeriavillagesquare.com/articles/women-and-inheritance-a-comparative-analysis-of-the-african-law-and-the-rest-of-the-world.html accessed 07th July, 2021.
[38] Ibid.
[39] *Johnson v. Macaulay* (1961) 1 ALL N.L.R. 743.
[40] Cap. 170, Volume V, Laws of Oyo-State of Nigeria, 2000.
[41] Cap. 37, Laws of Abia-State, 1999.

provisions' means such financial provisions as it would be reasonable in the circumstances of the case for the applicant to receive for his maintenance.[42]

The above provisions are modeled and tailored after the English Inheritance (Provisions for Family and Dependants) Act 1975. It is noteworthy that in Lagos-State, the deceased dependants are the wife/husband and child or children while in Oyo-State, apart from the wife, husband or child of the deceased, only a parent, brother or sister of the deceased who immediately before the death of the deceased was being maintained either wholly or partly by the deceased are recognized. What these provisions seek to achieve as in England, is to protect the interests of the family especially the child/children against unjust dispositions by Will. The provisions do not confer rights to a particular share of the deceased's estate on any of his dependants. The Courts may in proper cases direct that the whole of the deceased's estate be allocated to someone who would not have received anything under the Will or intestacy. It is submitted that it is not the function of the court to decide how available properties should be fairly divided, instead it is concerned with dependency and in particular to remedy 'wherever reasonably possible, the injustice of one, who has been put by a deceased person in a position of dependency upon him, being deprived of any financial support either by accident or by design of the deceased, after his death'.[43] Certain questions arise in respect of this limitation. First and particularly in the Nigeria context, the meaning of a 'child', 'brother', 'sister' of the deceased may present some difficulties. While in Western world, these may be the biological and direct child/children, brother or sister, in Nigeria, 'child', 'brother', 'sister' may have extensive meanings to cover those that may not be related by blood[44] to the testator and this may pose serious challenges. There is thus the need to delimit the meaning of 'child', 'brother', 'sister'.

Secondly, what constitutes 'reasonable financial provisions' is one that will be decided on the facts of each case, but only that it has to be reasonable. The criterion for determining what is 'reasonable' would vary from one case to the other. The test for determining 'reasonable financial provisions' is objective 'from the point of view of the Court and not subjective from the point of view of the deceased'[45] and it is 'irrelevant to consider whether the deceased acted unreasonably in making no provision, or no larger provision for the applicant'.[46] In *Re-Coventry*,[47] the court held that the provision is not intended to keep the applicant above the 'breadline' but must be one that is reasonable in all the circumstances of the case to enable the applicant maintain self in a manner suitable to those circumstances. In *Re-Dennis*,[48] where a son applied for the sum of fifty thousand pounds sterling to settle tax liabilities from the estate of his late father, the Court held that the provision is only intended to discharge the cost of daily living and the payment of the tax will not directly or indirectly contribute to the son's living expenses.

A will by its nature, is ambulatory and is revocable by another will or codicil or by destruction, by marriage and revocation may be conditional. These must be in conformity with the laws governing Wills in Nigeria.[49]
Section 9 of the Wills Act, 1837 established the rule for the formal validity of Wills and provides that:

> No will shall be valid unless it shall be in writing and . . . signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction, and as such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.

The main essence of a Will is that a testator may by it elect to alter, exclude, retain or modify any rule or rules of inheritance whether customary, Islamic or marriage under English law. This is however so to the extent that such a Will complies with all the requirements of formal validity. Also on the basis of this principle, the Islamic rule of the Maliki school that a person bound by Islamic law could only distribute one third of his estate as he likes,

[42] Dadem Y. Y., *Property Law Practice in Nigeria,* (University of Jos Press Ltd, Jos, 2009), p. 255.
[43] Per Stephenson L. J., in *Jally v. Iliffe & Others* (1981) Pam. 128, 137-138.
[44] In *Ejilemele v. Opara* (1998) 9 NWLR (pt. 567) 597, the court held that 'the fact that he was born into the family, grew up in the family, took the family name, participated fully in family meetings, died and was buried on the family land, is sufficient to have assimilated him into the family'.
[45] Kerridge K. & Brierly A. H. R., *Law and Real Property Rights in Nigeria*, (University of Lagos Press, Lagos, 2008), pp. 255-276.
[46] Ibid.
[47] (1980) Ch. 461.
[48] (1981) 2 All E.R. 140.
[49] Wills Act, 1837 and Amoloye-Adebayo A. O., 'The Regulation of Inheritance Rules and Practices in Nigeria: The Role of Sharīcah and International Human Rights Law' published in *University of Ilorin Journal*, Vol. 17, No. 1, pp. 105-128, available at
https://www.google.com.ng/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CCoQFjAC&url=https%3A%2F%2Fwww.unilorin.edu.ng%2Fejournals%2Findex.php%2Fcp%2Farticle%2Fdownload%2F853%2F455&ei=MtqbVYuIJ8KUsgGEha7oCg&usg=AFQjCNGvoAI7d8ateixz466IoqiXgTDfpg accessed on 07th July, 2021.

while the rest is to be subject to distribution in accordance with Islamic law was held in *Adesobokun v. Yinusa*[50] to be incompatible directly or by necessary implication with the provisions of the Wills Act, 1837, which is an English statute incorporated by reference into our laws.[51] In that case, the plaintiff had challenged the Will of his late father which disentitled him as a child on the ground that the testator, being a Moslem could not disinherit him as a child as he was entitled to share in his father's estate under Islamic law. This testamentary liberty is however not without exceptions. A testator cannot by his Will devise his undivided share in a family property and any clause purporting to do that in any Will is void. The power of testacy is restricted to individual property, that is, property individually acquired by the testator and which he had power to dispose in his lifetime and which, if he had died intestate, would have devolved on his heirs at law. This principle has however been applied successfully in some cases.[52] This restriction on the power of the testator to dispose of his property by Will is recognized by the Wills Law of the various states in Nigeria which makes any such disposition subject to any customary law relating thereto.

Intestate Succession

Where a person dies without instruction on how his properties should be distributed or where such instruction lacks legal potency, he is said to have died intestate.[53] Inheritance in Nigeria is normally determined by the customary rules of where the deceased person originates from and not by where he resides or, where the property is situated.[54] Even in instances of mixed succession cases, the court is to apply the principle of natural justice, equity and good conscience; it is consistent with those principles to apply the personal (customary) law of the deceased.[55] These are the general rules. On the other hand, intestate succession basically involves the applications of three systems of laws. These are; the common law and the Administration of Estate Laws of the various States and customary law (Customary Law in this context includes Muslim law). The crucial question is how does one determine the applicable laws to be applied in cases of intestates' succession non–customary? It is imperative to bear in mind that the above stated position of the law is subject to many qualifications. For instance, in cases involving the distribution of immovable properties of intestate persons, the applicable law is the *lex situs*, in other words, the law of the place where the land is situated. Therefore, the above generalization is only correct with respect to movable. Also, where a person who is subject to customary law or Islamic law dies intestate, it is his personal law that will apply to the distribution of his immovable property and not the *lex situs*.[56] The common law principle that governs the administration of the estate of persons, who dies intestate while domiciled in Nigeria, but having contracted a Christian Marriage outside Nigeria, is the rule in *Cole v. Cole*.[57] The facts of the case are that Mr. Cole, a native of Lagos, lived most of his life in Lagos, and he died domiciled there. However, during his lifetime, he contracted a Christian marriage with one Mary Cole in Sierra Leone, and they had a child, Alfred Cole. Cole died in 1897. His brother, A.B. Cole commenced an action seeking to be declared the customary heir of his late brother in accordance with customary law. Mary Cole the widow challenged him and contented that succession to Cole's estate should be governed by English law relating to the distribution of personal estate of intestates. Under the English Common law, the widow and her son were entitled to inherit the estate to the exclusion of the brother. The court held that by contracting a Christian marriage, Cole had removed the distribution of his estate from customary law to English system.[58]

The Administration of Estate Law regulates the administration of the estate of a person who married under the Nigerian Marriage Act, but nevertheless dies intestate domiciled in Nigeria. States created out of the former Western Regions have basically re-acted the provisions of the Administration of Estate Law of Western Nigeria.[59] Lagos state has adopted the Administration of Estate Law of Western Nigeria.[60] Before the adoption of the Administration of Estate Law of Western Nigeria, Section 36 of the Marriage Act[61] was applicable to Lagos. By

[50] (1971) 1 ALL N.L.R 225.
[51] Section 33 of the High Court Law of Northern Nigeria.
[52] *Taylor v. Williams* (1935) 12 N.L.R 67; *Ogunmefun v. Ogunmefun* (1931) 10 N.L.R 82.
[53] *Abeje v. Ogundairo* (1967) L.L.R. 9. The estate of an intestate devolves on the personal representatives who are usually granted letters of administration. This is also provided for by virtue of the provisions of Order 55 of Ekiti-State High Court Civil Procedure Rules, 2011.
[54] Obilade A. O., *The Nigeria Legal System*, (Spectrum Books Limited, Ibadan, 2011), p. 158.
[55] Ibid, p. 163.
[56] *Zaidan v. Zaidan* (1974) 4 U.I.L.R. 283 and section 13 of the Bendel-State High Court Law.
[57](1898) 1 N.L.R. 15.
[58] *Adegbola v. Folaranmi & Ors*. (1921) 3 N.L.R. 89, *Smith v. Smith* (1925) 5 N.L.R. 105; *Ajayi v. White* (1946) 18 N.L.R. 41 where the court adopted a more liberal interpretation to the rule in *Cole v. Cole* (1898) 1 N.L.R. 15
[59] Cap. 133, Laws of Western Nigeria 1959.
[60] Ibid.
[61] Cap. 115, Laws of the Federation 1958.

that section, any person who is subject to customary law, and contracts a marriage under the Act,[62] and such a person dies intestate, leaving a spouse or issue of such marriage, all his properties, both real and personal would be distributed in accordance with the English law relating to the distribution of the personal property of an intestate. Commenting on the implication of Section 36 of the Marriage Act[63] in *Obusez v. Obusez*,[64] Tobi J.S.C., (as he then was) stated that: 'By contracting the marriage under the marriage Act, the deceased intended the succession to his estate under the English law and not customary law. Therefore, real property was to be distributed in the same manner as personal property under the statute of distribution'.

In *Salubi v. Nwariaku*,[65] Ayoola J.S.C., (as he then was) succinctly brought out the difference between Section 36 of the Marriage Act[66] and Section 49(5) of the Administration of Estate Law of Western Nigeria[67] thus:

> The only difference in the two provisions is that while Section 36(1) of Marriage Act incorporated the English law (fixed at the date of commencement 1914) into our laws of intestate succession by reference, the latter statute has directly and not by reference substantially incorporated the contents of the current English law on the subject in its provisions with consequence that it was not necessary to search for what the English law on the matter was from the foregoing, before the provisions of the Administration of Estate law can apply in any given circumstance, the following conditions must exist: (a) A spouse or issue of such marriage must survive the deceased; (b) Properties covered by the law are such as the deceased could have disposed of by will.

It is imperative to state that the Administration of Estate Law[68] applies to all persons not subject to customary law, irrespective of the type of marriage contracted by them. It is only in respect of a Nigerian (a person subject to customary law) that the condition of marriage under the Act is applicable.[69] Prior to the enactment of the various Administration of Estate laws in the former Eastern States[70] there was no Nigerian statute governing the distribution of the estate of intestate in the Eastern and Northern states.[71] Therefore, the common law rule laid down in the case of *Cole v. Cole*[72] and later modified in *Smith v. Smith*[73] continues to apply to cases of intestacy. This issue came up for consideration in the case of *Administrator-General v. Egbuna*.[74] The respondent in this case has argued that since Section 36 of the Marriage Act[75] was made to have direct application to the colony of Lagos only, and that since the matter occurred outside Lagos, it is the deceased customary law that should be applicable to the distribution of his personal estate. The court held that the principles in *Cole v. Cole*[76] which represent the common law principle, should apply because it involved general principles as to the application of customary law to such a case.

Succession under customary law is applicable to the estate of a person who is subject to customary law, who dies without being survived by a spouse or a child of that marriage, that is, Statutory or Christian marriage. In Nigeria, there is no uniformity of rules of succession under customary law. The reasons for this state of affairs are not far-fetched. They are so many ethnic groups in Nigeria, each with their own peculiar characteristics, even within a larger ethnic classification.[77] In some part of Nigeria, for example among the Yoruba speaking ethnic groups in the southwest, succession is based on the concept of family property. While on the other hand, among the Edo people in the present day Edo State in Mid-Western Nigeria, the concept of male succession prevails with little modifications.[78] What then is the correct law to be applied in cases of intestate succession under customary law? Essentially, the deceased customary law is the appropriate law to be applied. The principles of customary law will

[62] Section 49(5) of the Administration of Estate Law of Western Nigeria. Section 49(5) of the Administration of Estate Law of Western Nigeria contains similar provisions to that of Section 36 of the Marriage Act.
[63] Ibid.
[64] (2007) All F.W.L.R. (Pt.374) p.245.
[65] (2003) 20 W.R.N SC 53.
[66] Cap.115 Laws of the Federation 1958.
[67] Cap. 133, Laws of Western Nigeria 1959.
[68] Cap. 133, Laws of Western Nigeria 1959.
[69] The Administration of Estate Law, Cap. 1 Laws of Rivers-State of Nigeria 1999; The Anambra State Administration of Succession to Estate of the Deceased Laws 1987 and the Administration of Estate Laws Cap.5 Laws of Eastern Nigeria, 1963.
[70] Ibid.
[71] Administration of Estate Laws Cap.5, Laws of Eastern Nigeria, 1963.
[72] Ibid
[73] (1925) 5 N.L.R. 105.
[74] (1945) 18 N.L.R. 1.
[75] Cap.115, Laws of the Federation 1958.
[76] (1898) 1 N.L.R. 15.
[77] Ibid
[78] Ibid.

still be applicable irrespective of whether the deceased died outside his ethnic group or he leaves properties outside his hometown. It is also important to observe that while it is true that with respect to land matters generally, the customary law of the place where the land is situated is the applicable law. However, with respect to inheritance, the appropriate customary law is the customary law of the deceased.[79] Before the Supreme Court's decision in *Adeniyi Olowu and Ors v. Olabowale Olowu and Ors*,[80] it was a generally accepted principle of law in Nigeria that a person carries his customary law with him. Therefore, it was not legally possible for a Nigerian to change his ethnic group and acquire another ethnic identity, irrespective of the number of years he must have spent in that foreign ethic group. Thus, in *Osuagwu v. Soldier*,[81] the court was faced with a situation, that is, whether to apply Islamic law, which was the *lex situs* and *lex loci*, or Ibo customary law, which was the personal law of the parties to the resolution of a dispute between two Ibo men who were living in Kano, in the present day Kano State. The court, in the interest of justice opted to apply the Ibo customary law. Consequently, the court held as follows:

> We suggest that where the law of the court is the law prevailing in the area but a different law binds the parties, as where two Ibos appear as parties in the Moslem court in an area where Moslem law prevails, the native court will…in the interest of justice…be reluctant to administer the law prevailing in the area, and if it tries the case at all its will… in the interest of justice…choose to administer the law which is binding between the parties.[82]

In *Yinusa v. Adebusokun*,[83] Bello J., (as he then was) held that duration is immaterial when considering whether a settler and his descendants have merged with the natives of the place of settlement. The test is whether it can be established that as a result of the settlement, the settler has merged with the native, and has subsequently adopted their ways of live and custom. The learned Judge continued as follows:

> Subject to any statutory provision to the contrary, it appears…that mere settlement in a place, unless it has been for such a long time that the settler and his descendants have merged with the natives of the place of settlement and have adopted their ways of life and custom, would not render the settler or his descendants subject to the native law and custom of the place of settlement.[84]

The view expressed by Bello J., (as he then was) above was given judicial recognition and consideration by the Nigerian Supreme Court in the case of *Adeniyi Olowu & Ors v. Olabowale Olowu and Ors.*[85] Here the court was urged to consider whether it was possible for a person to change his personal customary law of origin in favor of that of his adopted place of settlement. In this case, the deceased, Adeyinka Ayinde Olowu, was a Yoruba man by birth from Ijesha. He had lived most of his life in Benin-City. He married Bini women who bore him all his children, who were the plaintiffs and defendants in this case. In 1942 the deceased applied to the Omo N'oba of Benin (the traditional Ruler of Benin) to be naturalized as a Bini citizen. His application was granted. As a result of his status as a Bini man he was able to acquire a lot of landed property both in Benin City and elsewhere in Bendel-State. The deceased died in 1960 without making a will. The defendants, two of his children were granted Letter of Administration to administer the deceased's estate. First defendant distributed the estate in accordance with the Benin Customary Law, but the other children, the plaintiffs and the second defendants were dissatisfied and claimed that the estate ought to have been distributed in accordance to Ijesha Customary Law rather than by Benin Customary Law. The plaintiffs applied to the High Court for an order setting aside the distribution according to Benin customary Law, and for a Declaration that Ijesha Customary Law was the applicable law. They failed in the High Court. The High Court held that Benin Customary Law was the applicable law. They appealed to the Court of Appeal. The Court of Appeal affirmed the decision of the High Court and dismissed the appeal, wherein they further appealed to the Supreme Court. In a well-considered Judgment, five Justices of the Supreme Court unanimously dismissed the appeal and confirmed the decision of the High Court on the ground that although the deceased was a man of Yoruba extraction, he had spent most of his life in Benin City, naturalized as a Benin and acquired considerable properties in Benin-City. On the strength of this evidence, the Supreme Court held that his personal law should be the law governing the distribution of his estate at his death, which in this case was Bini Customary Law and not his personal law of origin, which was Ijesha (Yoruba) Customary Law. Coker J.S.C., (as he then was) in his lead judgment observed that in the light of the facts of the case, the deceased in effect relinquished his Yoruba cultural heritage and acquired Bini status. Accordingly, his Lordship held as follows:

> It follows therefore that by virtue of his change, his personal law changed to Benin Customary Law; distribution of his estate on intestacy must necessarily be governed by Benin Customary

[79] *Tapa v. Kuku* (1945) 18 N.L.R 5.
[80] (1985) 3 N.W.L.R. (Pt.13) 372.
[81] (1959) N.R.N.L.R. 39.
[82] Ibid.
[83] (1968) N.N.L.R. 97.
[84] Ibid.
[85] (1985) 3 N.W.L.R. (pt. 13) 372.

> Law. He married Bini women who had children for him, he carried on various business activities in and around Benin-City. He found also that the change of his status endowed him with the rights and privileges of a Bini indigene and his change in status accords with Benin customary law. Unless this finding of fact is reversed, I hold the view that the trial Judge was right in saying that the applicable customary law for the distribution of the estate is Benin Native Law and Custom.[86]

From the foregoing judicial authority, it is now possible in Nigeria for a person to change his personal customary law of origin in preference to another one which he acquires as a result of acculturation and assimilation. Unlike the situation under the Administration of Estate Laws,[87] children are the exclusive beneficiaries to the estate of a deceased person under customary law. Some tribes do not discriminate between the sexes of the children of the deceased as seen among the Yoruba speaking tribes in the south–western Nigeria. Thus, in *Amusan v. Olawunmi*,[88] the court held that the right of inheritance of female children in Yoruba custom emerges from the fact that in some situation women can be head of family. However, in *Mojekwu v. Mojekwu*,[89] the court held that an Ibo customary law that allows only male children to exercise a right of inheritance and deny female children of the deceased the right of inheritance while conferring the right on distant male relatives is repugnant and unconstitutional. Under the Yoruba (Lagos, Ogun, Oyo, Ondo and Kwara States) system, the children of the deceased are entitled to his real property to the exclusion of other blood relations.[90] Unarguably, all the children of the deceased have rights to the family property but its management is under the control of the *Dawodu*, who is the eldest surviving son of the deceased.[91] On the death of the intestate, his landed property devolves on his children as family property. This includes property acquired by the deceased, whether under English form or by customary law, and family property under his control.[92] All the legitimate children of the deceased are entitled to succeed to his disposable landed properties.[93] But where the deceased makes a gift of his self-acquired land to a child or any other person during his life time, the property will not devolve as family property.[94] These include children born of customary law marriage and those legitimated in accordance with the prevalent customary law, for instance, by acknowledgement.[95] An illegitimate child cannot succeed to the estate of the putative father until acknowledged by the father in accordance with Yoruba customary law.[96] This rule has however been altered by the provisions of Section 42(2) of the Constitution of the Federal Republic of Nigeria 1999.[97] It provides that 'No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth'. The children share equally, irrespective of sex or age.[98]

There are two systems of distribution recognized by Yoruba customary law. These are the *Idi-Igi* and the *Ori-Ojori*.[99] Under the *Idi-Igi* system, the estate is divided *per stirpes*, that is, equally among the mothers-wives of the deceased, the children taking the portion of their respective mothers.[100] In the case of *Ori-Ojori*, the distribution of the deceased's property is *per capita*, that is among the children of the deceased.[101]

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[86]Sagay E. I., 'The Dawn of legal Acculturation in Nigeria – A Significant Development in Law and National Integration: *Olowu v. Olowu'*, published in *Journal of African Law*, Vol. 30, No. 2, pp. 179-189, Autumn 1986 and Sagay E. I., *Nigerian Law of Succession: Principles, Cases, Statutes and Commentaries*, (1st Edition, Malthouse Press Limited, 2006), pp. 260-261.
[87] Cap. 133, Laws of Western Nigeria 1959.
[88] (2002) 12 N.W.L.R. (Pt. 780) 30.
[89] (1997) 7 N.W.L.R. (Pt. 512) 283.
[90] *Adeseye v. Taiwo* (1956) 1 F.S.C. 84, Coker G. B. A., *Family Property Among the Yoruba*, (Second Edition, Sweet and Maxwell, London; African University Press, Lagos, 1966), Chapter 12, Nwogugu E. I., Family Law In Nigeria, (Heinamann Educational Books Nigeria Plc, Ibadan, 2011), p. 399 and Adesanya T., 'Rights of Women and Children to Succession under Yoruba Customary Law', available at http://segunakinpelu.blogspot.com/2011/03/term-paper-on law-of-succession-by-tolu.html accessed on 08th July, 2021.
[91] Ibid
[92] Ibid.
[93] Ibid.
[94] *Bankole v. Tapo* (1961) 1ALL N.L.R. 140.
[95] *Roberts v. Wilson* (1962) L.L.R. 39.
[96] *Young v. Young* (1953) WACA Civil Appeal No. 3631 and *Reis v. Mosana* (1962) L.L.R. 19.
[97] Cap. C23 Laws of the Federation of Nigeria 2004, as amended 2011.
[98] *Salami v. Salami* (1957) W.R.N.L.R. 10 and Adesanya T., 'Rights of Women and Children to Succession under Yoruba Customary Law', available at http://segunakinpelu.blogspot.com/2011/03/term-paper-on law-of-succession-by-tolu.html accessed 08th July, 2021.
[99] *Danmole v. Dawodu* (1958) 3 F.S.C 46, (1962)
[100] Ibid.
[101] Ibid

The surviving spouse is not entitled under Yoruba customary law to succeed to the property of the other.[102] In *Suberu v. Sumonu*,[103] the Federal Supreme Court held that:

> By Yoruba custom a wife cannot inherit her husband's property. In the absence of surviving children, property which the intestate inherited will devolve on the members of the family from which it came. Thus if the property came from a maternal ancestor it goes to his maternal relations, and *vice versa*.

Furthermore in *Akinnubi v. Akinnubi*,[104] the Supreme Court held thus:

> It is a well settled rule of native law and custom of the Yoruba that a wife could not inherit her husband's property. Indeed, under Yoruba Customary Law, a widow under intestacy is regarded as part of the estate of her deceased husband to be administered or inherited by the deceased's family…

On the death intestate of a child, his brothers and sisters will be exclusively entitled to succession to his estate.[105] Half-brothers and half-sisters, being the children of a different mother, would not take any share.[106] In the absence of brothers and sisters (of full blood), the property will devolve on the parents of the child.[107] Under the Ibo (Abia, Anambra, Ebonyi, Enugu, Imo) system, the cardinal principle of customary law succession is primogeniture, that is, succession by the eldest male known as the *Okpala, Diokpala* or *Diokpa*.[108] In the case of the nuclear family, succession is through the eldest male child of the deceased.[109] With regards to the extended family, succession is through the eldest son of the ancestor and so on in that line irrespective of the fact the *Okpala, Diokpala* or *Diokpa* may in fact be junior in age to other members of the extended family.[110] On the death of the founder of a family, the eldest son succeeds him as the head of the family. A female cannot be the head of the family no matter her seniority in the family. Succession to the intestate's properties is dependent on the nature of the particular property. The eldest son inherits the father's dwelling house and the immediate surrounding compound,[111] the insignia of the hereditary office which he has no right to sell,[112] they being family property,[113] his personal staff of authority and other objects of worship, furniture to the exclusion of his brothers and the widows, wearing apparels and other articles for dressing. His sons inherit his money, farming implements or tools and livestock.[114] The right to succeed to other lands and houses of the intestate is vested in the sons as a body,[115] but the duty to manage and administer such properties for the benefit of the family (brothers and half-brothers) vests on the *Okpala, Diokpala* or *Diokpa.*[116] In the absence of sons, these properties devolve on the brothers (of full blood). Females do not have rights to inherit, that is, nether the daughters nor the wife/wives.[117] This principle was enunciated in the case of *Ugboma v. Ibeneme.*[118] As a general rule, a widow under Ibo customary law is not entitled as of right to succeed to the personal or real estate of her deceased husband.[119] This principle was applied by the Supreme Court in *Nezianya v. Okagbue*.[120] She is entitled to live as a member of the family in her late husband's compound until she remarries or dies. A widow without a son has no rights to remain a member of her late husband's family.[121] In other to protect this right, the husband's heir has no power to dispose of the matrimonial home which is occupied by the widow.[122] However, her right in this regard is subject to good conduct.[123] The husband's heir may in fact

[102]Obilade A. O., *The Nigeria Legal System*, p. 86; *Caulcrick v. Harding* (1926) 7 N.L.R. 38.
[103] (1957) 2 F.S.C. 33.
[104] (1997) 2 N.W.L.R. (pt. 486) 149.
[105] Nwogugu E. I., *Family Law in Nigeria*, (Heinamann Educational Books Nigeria Plc, Ibadan, 2011), p. 400.
[106] Ibid, p. 401.
[107] Ibid; *Adedoyin v. Simeon* (1928) 9 N.L.R.76, 77-78.
[108] Nwogugu E. I., *Family Law in Nigeria*, p. 401.
[109] Ibid
[110] Ibid.
[111] *Nwafia v. Ububa* (1966) 1 All N.L.R. 8; *Ezeokafor v. Ubah* (1957) I.U.I.L.R. 162 and Obi S. N. C., *The Customary Law Manual* (Government Printer, Enugu, 1977), p. 136.
[112] Obi S. N. C., *The Customary Law Manual*, pp.129-132.
[113] Ibid.
[114] Ibid
[115] Ibid.
[116] *Ejiameke v. Ejiamike* (1972) 2 E.C.S.L.R. 11.
[117] Ibid
[118] (1967) F.N.L.R. 251.
[119] Nwogugu E. I., *Family Law in Nigeria*, p. 407.
[120] (1963) 1 All N.L.R. 352.
[121] Okoro N., *The Customary Law of Property*, (Butterworths, London, 1963), pp. 356-567.
[122] Ibid.
[123] Ibid.

expel her from the husband's compounds and other lands.[124] The rule that a daughter is not entitled to inherit her father's estate is partly mitigated by her right to be maintained by the person who inherits her father's estate until she marries or becomes financially independent or dies.[125] Moreover, an unmarried daughter has a right to be shown a portion of her father's land or family group farmland for her annual farming needs.[126] This right lasts until she marries or leaves the family group or dies.[127] An exception to this patriarchal practice occurs when a man is only survived by daughters in which case the eldest daughter may inherit her late father's property provided she would remain unmarried for life.[128] However, in the recent case of *Ukeje v. Ukeje*,[129] the Supreme Court upheld the right of female children to inherit their father's property on the basis that any custom that discriminates against anyone on account of gender is null and void. The Court relied on the constitutional provision which forbids discrimination of any kind.[130]

In the Northern states, the rights of succession under Islamic law are set out in the Koran (the Hadith).[131] Succession under Islamic law is to the net estate of the intestate after the payment of funeral expenses, debts, legacies and other charges.[132] The shares which are inherited are in the following fractions only; half, one-quarter, one-eighth, two-thirds and one-sixth of the estate.[133] According to the Maliki Law, 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 his female children half share each.[134] A child can only be disinherited from his share if he is not a Moslem[135] or if he kills his parents with the intention to inherit their properties. The rules of distribution are as follows. On the death of a man intestate, his widow is entitled to one-quarter of his estate. But if there are children or grand-children, her share will be reduced to one-eight. Where there is a plurality of wives, they share the one-quarter or one-eighth equally between them. If a woman dies intestate, her widower is entitled half her net estate, and if there are surviving children, he is entitled to one-quarter. With regards to the succession rights of children, a single daughter is entitled to half the net estate. If there are two or more daughters, they get two-thirds, divided equally among them.[136] An only son will be entitled to the whole estate or to the remainder after the payment of the shares of any ancestor who is entitled to succeed.[137] Thus, if the deceased left a son and a father, the father takes one-sixth of the estate and the remainder devolves on the son.[138] If there are sons and daughters they inherit the entire estate or the remainder after the shares of the spouse and the ancestors have been paid in the appropriate proportions.[139] In Edo State, the patrilineal system is generally practiced. Therefore in most cases, the eldest son inherits certain property of the deceased exclusively, while the other children are entitled to the distribution of the remaining estate. The practice is common among all the tribes in Edo state, and also amongst the Urohobos and Itsekiris in Delta state.

4. Conclusion and Recommendations

From the above analysis, it is clear that the decision of the Nigeria Supreme Court in *Idehen v. Idehen* created a lot of anxiety as to whether the Supreme Court has expanded the scope and definition of *Igiogbe* under Bini Customary Law of inheritance and succession. The Oba of Benin quickly responded to correct this impression and restore the age long traditions of the Bini people. With the reform he introduced in his book affecting succession to the *Igiogbe*, the eldest surviving son of the deceased now has a choice as to which property he would prefer as *Igiogbe* in a situation where the deceased had more than one house provided the deceased had lived in

[124] Ibid,
[125] Ibid
[126] Ibid; Obi S. N. C., *The Customary Law Manual* (Government Printer, Enugu, 1977), pp. 150-151.
[127] Ibid.
[128] Kehinde A., 'Women and Inheritance: A Comparative Analysis of the African Law and the rest of the world' available at http://www.nigeriavillagesquare.com/articles/women-and-inheritance-a-comparative-analysis-of-the-african-law-and-the-rest-of-the-world.html accessed 07th July, 2021
[129] (2001) 27 W.R.N. 142 at 160 and Soniyi T., 'Supreme Court upholds right of female child to inherit properties in Igboland' available at http://www.thisdaylive.com/articles/supreme-cour-upholds-rights-of-female=-child-to-inherit-properties-in-igboland/176214/ accessed on 08th July, 2021.
[130] Section 42(2) of the Constitution of the Federal Republic of Nigeria 1999, Cap. C23 LFN 2004, as amended 2011.
[131]Ibid.
[132] Ibid.
[133] Ibid; Harvey B. W., *The Law and Practice of Nigerian Wills, Probate and Succession,* (Sweet & Maxwell, London; African Universities Press, Lagos, 1966), p. 182.
[134] *Yinusa v. Adesubokan* (1970) 14 J.A.L. 56.
[135] Ibid.
[136] Ibid.
[137] Ibid.
[138] Ibid, p. 414.
[139] Harvey B. W., *The Law and Practice of Nigerian Wills, Probate and Succession*, (Sweet & Maxwell, London; African Universities Press, Lagos, 1966), 182-183.

that house during his lifetime, died in the house, may be buried in it and the first son had performed the second burial rites of his father according to the burial rites of the Bini custom. These reforms which are documented and widely circulated in the state has to a large extent reduced the efficacy of the Supreme Court's decision in *Idehen v. Idehen* concerning the concept of two *Igiogbe* under Bini native law and custom. Consequently, inheritance to the *Igiogbe* is now done on the bases of the Oba's proclamation rather than in accordance with the principles in *Idehen v. Idehen* thereby reducing if not eliminating completely the conflict introduced by the concept of two *Igiogbes.* In the *Igiogbe* concept under the Bini Customary Law of Inheritance and Succession, the provision of Section 42(1) of the Constitution of the Federal Republic of Nigeria 1999, Cap. C23, LFN, 2004 (as amended 2011) is not strictly followed, in that the *Igiogbe* concept forbids discrimination on grounds of circumstances of birth being that a legitimated first son can inherit an *Igiogbe* but a child is forbidden from inheriting an *Igiogbe* simply because she is a female. A daughter who is the eldest surviving child of a deceased is not accorded a special status or treatment under the customary laws of inheritance but a son who is the eldest surviving child is generally accorded a special status and treatment as the head of the immediate family of the deceased man. It observed that the problems of discrimination against women are both international and national and not peculiar to the Binis alone.

In view of the foregoing, this work recommends the following suggestions as the way forward in achieving a reasonable advancement of women's rights in the contemporary Nigerian society.

a) Customary laws of inheritance that are discriminatory against women on the basis of sex needs to be reformed, so that wives and daughters can be given the right to inherit the property of their deceased husbands and fathers. The enlightenment campaign should be a collective duty of traditional rulers, religious leaders/bodies, community leaders and heads of family who are regarded as the custodians of the culture of their people considering the fact that customary laws are deeply rooted in the culture of the people. It is necessary to involve these categories of people because it is under their auspices that these customary laws which cause a lot of hardships to women operate. Their support is therefore necessary for the reform to be effective.
b) Mass enlightenment campaign should be mounted by the Ministry of Women Affairs at both the Federal and State levels to enlighten the people first about the hardship and injustice which the discriminatory customary laws impose on women. Secondly, to make people appreciate that the basis for which custom denied women the right to inherit property in the past is no longer sustainable in contemporary times. Therefore, there is need to reform the laws. The campaign should be through jingles on electronic media, discussions over the radio, advertisements on bill boards, in newspapers in both English and local languages so as to reach the literate and illiterate members of the public. These enlightenment programmes are necessary to change the social attitudes of the people particularly the men. This will aid change the popular misconception that women are inferior to men and eventually facilitate a reform of the customary laws. This is because many women, owing to illiteracy or ignorance are not aware of the existing laws on inheritance which provide the rights of inheritance for them. Even the educated ones who have some knowledge of the laws do not bother to know the contents of such laws and how they can access the laws to protect their rights of inheritance. In this connection, women social groups/organisations, religious leaders in rural communities, non-governmental organisations, mass media, Ministries of Women Affairs and Justice at both Federal and State levels should embark on educational and enlightenment programmes to educate women of their rights of inheritance under the existing laws. It is hoped that such concerted efforts will help to promote women's rights of inheritance.
c) Reform of States' Laws on Inheritance starting from the grassroots should be followed by legislation. Such legislation should abolish the indigenous customary laws of inheritance that are discriminatory against women. Also, it is the recommendation of this work that new Wills Laws should be enacted. States that have not enacted Wills Laws should enact such laws to replace the English Wills Acts of 1837 and 1852 that are still applicable in those states.
d) The role of the Judiciary should not be under-emphasized. Our courts should be bold and imaginative in their determination of issues on customary laws affecting inheritance rights of women. Any customary law that is discriminatory against women should be declared invalid on the grounds that it is unconstitutional and repugnant to natural justice, equity and good conscience. In this way, the judiciary will help to develop our customary laws to meet changes in global trends to women's rights and uphold the fundamental human rights of women as guaranteed under our Constitution.