

**THE NIGERIA SUPREME COURT JUDGEMENT AND THE CASE OF FEMALE
INHERITANCE IN IGBO LAND VIS-A-VIS THE CULTURAL PRACTICE OF IDU
NWANYI UNO: TOWARDS A PHILOSOPHICAL ANALYSIS AND REVIEW**

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Abstract

The patriarchal Igbo society of South East Nigeria is largely governed by customary laws and traditions. In this context, somewhat denial of female inheritance has since been a norm. However, the Supreme Court of Nigeria had recently declared that the age long practice of transfer and/or sharing of inheritance only among male children of a family in Igbo land is unconstitutional. The legal implication is a blow and challenge to the perennial custom and tradition of the land. Hence, the judgement appears to be far from being appreciated by the major stakeholders of the Igbo society, especially the custodians of culture and tradition. How objective is the judgement? What are the reservations (if any), with the said judgement? Considering the reality of the practice of *idu nwanyi uno* in Igbo land, does it not entail that there is no extreme denial of female inheritance among the Igbo people? The judgement though laudable, requires a further interrogations and clarifications so as to make implementation easier.

Introduction

Among the Igbo people, it is traditional and cultural practice that the property of a father is transferred to only the male children and in some instances; it becomes the sole inheritance of the first born male child (Di-Okpara). This tradition has lasted for ages; and is central to what many considered to define the Igbo society as a patriarchy.¹ Interestingly, the practice has never been frowned at or questioned except for the recent case study; wherein the Supreme Court of Nigeria described the practice as against the provisions of 1999 constitution of the Federal Republic of Nigeria. Truly, the judgement of the Supreme Court has been delivered but, months after; the reactions have been largely of dissent. Gender equality has been at front burner in contemporary philosophy. This has given birth to feminism as a theory or, even a movement. Yet, the Igbo Customary Law still maintains the status quo which seems to deny females the right of succession to their fathers' property. This disparity against the female gender in the right to inheritance could be judged as eminently a violation of human right. Any form of societal discrimination on grounds of sex, apart from being unconstitutional, is antithetic to a society built on the tenet of democracy.² Thus, with modernization, some of these customary laws are getting challenged and reformed. Specifically, the challenge against such unfavourable customary laws in Igbo land is evident in the recent decision of the Supreme Court on female right to inherit property.

The Case Judgement

The land mark judgment was on the appeal marked: SC.224/2004 filed by Mrs. Lois Chituru Ukeje (wife of the late Lazarus Ogbonna Ukeje, whose property is the object of the litigation) and their son, Enyinnaya Lazarus Ukeje against Ms. Gladys Ada Ukeje (Lazarus daughter and Lois step daughter). The Lagos High Court and Appeal Court had previously decided the case in favour of Gladys, but Lois and Enyinnaya appealed to the Supreme Court. Then, on April 15, 2014, the Supreme Court based its decision on the previous judgements of both the Lagos State High Court and Court of Appeal and held

that the practice of **denial of female inheritance** conflicted with section 42(1)(a) and (2) of the 1999 Constitution. The story line is as follows: “Gladys had sued the deceased (her Father) wife and son before the Lagos High Court, claiming to be one of the deceased children and sought to be included among those to administer their deceased father’s estate. The trial court found that she was a daughter to the deceased and that she was qualified to benefit from the estate of their father who died intestate in Lagos in 1981. The Court of Appeal, Lagos to which Mrs. Lois Ukeje and Enyinnaya Ukeje appealed, upheld the decision of the trial court, prompting them to appeal to the Supreme Court. In its judgment, the Supreme Court held that the Court of Appeal was right to have voided the Igbo native law and custom that disinherit female children. Justice Bode Rhodes-Vivour, who read the lead judgment, held that: “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. “Consequently, the Igbo customary law, which disentitles a female child from partaking in the sharing of her deceased father’s estate, is a breach of Section 42(1) and (2) of the Constitution, a fundamental rights provision guaranteed to every Nigerian. “The said discriminatory customary law is void as it conflicts with Section 42(1) and (2) of the Constitution. In the light of all that I have been saying, the appeal is dismissed. In the spirit of reconciliation, parties are to bear their own costs,” Justice Rhodes-Vivour said. Justices Walter Samuel Nkanu Onnoghen, Clara Bata Ogunbiyi, Kumai Bayang Aka’ahs and John Inyang Okoro, who were part of the panel that heard the appeal, agreed with the lead judgment.³

Possible Background Influences of the said Judgement

The provisions of the 1999 Nigeria constitution on Human Rights were not formulated on a vacuum. It does have some universal influence and references. Article 1 of Universal Declaration of Human Rights (The United Nations), 1948 stated: All human beings are born free and equal in dignity and rights.⁴ Also, the African Charter on Human and People Rights 2004 (ACHPR) which has been ratified by Nigeria contains 73 Resolutions on Economic, Social and Cultural Rights in Africa.⁵ Article 18 (3) among other provisions, charges the State to ensure the elimination of all forms of discrimination against women. This is again in line with article 2 of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) which enjoins State Parties to condemn discrimination against women in all its forms, agree to pursue all appropriate means and without delay formulate a policy eliminating discrimination against women and to this end undertake: to take all appropriate measures including legislation to modify or abolish existing laws, regulation, custom and practices which constitute discrimination against women.⁶ From the above, it is presumed that the judgement of the Supreme Court is in sync with universal legislation and contemporary advocacy. But, what is the Igbo understanding of Inheritance?

General Understanding of the Term: Inheritance

There are variegated but similar definitions of inheritance. According to *Accurate and Reliable Dictionary*, inheritance is defined as “a perpetual or continuing right which a man and his heirs have to an estate; an estate which a man has by descent as heir to another, or he may transmit to another as his heir; an estate derived from ancestor to a heir in course of law.”⁷ According to the Black Law Dictionary, it is the “property received from an ancestor under the laws of Intestacy. Property that a person receives by bequest or Device”⁸ Inheritance is also explained as the practice of passing on private property, titles, debts, entitlements, privileges, rights, and obligations upon the death of an individual.⁹ It is equally, the act of contracting or assuming or acquiring possession of something; “the acquisition of one company by another”¹⁰ Merriam Webster online dictionary defines inheritance as “the acquisition of real or personal property under the laws of intestacy or sometimes by will” and also as “the succession upon the death of an owner either by will or by operation of law to all the estate, rights, and liabilities of the decedent”¹¹ Furthermore, inheritance has come to mean anything received from the estate of a person who has died, whether by the laws of descent or a beneficiary of a will or trust.¹²

Meanwhile, “succession” is often used interchangeably with inheritance. Hence, succession means transmission of all rights, duties, powers and privileges from a deceased to his heirs or heirs in accordance with his personal law. For Black Law Dictionary, succession is the acquisition of right in property by inheritance under the law of descent and distribution.¹³ Thus, succession is the acquisition

or mode of acquiring a deceased property rights, duties and obligations. It is important to note at this juncture, that succession or inheritance may be testate or intestate. Briefly, testate succession occurs where there is a will while intestate succession takes place where there is no will or where the will is defective.¹⁴

Above are various definitions and explanations of the term 'Inheritance', which sometimes could refer to as 'succession' from different sources. The common denominator remains the transfer of property, rights and liabilities to another, who could be an heir; either while alive (testate) or at the death (intestate). What is the basic Igbo understanding of the term: Inheritance?

The Concept of Inheritance in Igbo Land

As already mentioned above, inheritance in Igbo land also comprises of two forms: testate and intestate inheritance; and it's about 'property, rights and liabilities'. These two forms of inheritance are also relevant in the context of the Igbo society. Testate succession is simply the transfer of property by the owner to a person while he is still alive. In the case of testate inheritance, the transfer of one's property commenced when the person is still alive. When the person dies, it is assumed that he has transferred his property to the beneficiary.¹⁵ The testate transfer of property is common in Igbo land either as a charity or in appreciation of goodwill or in some instances, as a repayment for loan or the likes. Often, inheritances acquired in the form of testate do not generate controversy, except in rare cases. Thus, Muonwe observed and unfortunately too, that only few Igbo men would ordinarily will their real property especially land, to their wives. Their real estates usually go to their son and brothers. If for any reason a man does will them to his wife, the living relatives practically do not respect such wills due to the absence of effective means of putting it in force. Hence, the Igbo saying, *onye nwuru anwu kechaa ekpe, ndi di ndu ekegharia*¹⁶ (that is, when a man makes a will while alive, after his demise, the living upturns it) is enforced in such circumstances. The process and agreement in testate inheritances even though unwritten has the seal of various ladder of witnesses and rituals.

However, the most frequent form of succession in Igbo land is intestate, and is mostly related to what can be called the 'Ancestral Inheritance'. In Igbo land, there are communal and personal inheritances, which could either be acquired or bequeathed through ancestral lineage. The customary law of the land have traditional ways to relate to each in circumstances of possible need of transfer of such properties. This is largely premised on the reality that Igbo society operates more under unwritten norms. In the same vein, Igbo parents are yet to come in terms with the habit of writing a will, and so they yield to the age long practice of assured intestate inheritance by the fiat of customary laws of the land. It is on this background that properties of Chief Ukaeje became objects of litigation between his wife and son, against his daughter. Hence, the issue of *inheritance intestate* is the main focus of this work.

Intestate Inheritance in Igbo Land

As already highlighted, the intestate inheritance is common in Igbo Land and regarded as normal. In some cases, the deceased is not interested in how his property would be shared since there are already, laid down procedures (customary laws) in the society. Under intestate inheritance, any property rightfully transferred after the death of the owner holds and is hardly violated as set principles are adhered to in the process of transfer.¹⁷

For the Igbo people, intestate succession or inheritance is based on the principle of primogeniture and primarily *Patrilineal*, with both the rights of control and property itself flowing to the eldest son.¹⁸ Regrettably, this system of succession does not recognize the females. As such a female has no hope in her father's property. In some instances, the woman is also deprived of even partaking in her husband's estate in the event of his (husband) death *intestate*, especially if she has no male child or still has very young children.¹⁹ This entails that the process of inheritance in the Igbo society discriminates against females both in their statuses as daughters and wives.

By the concept of primogeniture as practiced by the people of Igbo origin, the first born male child succeeds the headship of his family after the father's demise, to the exclusion of his other male and

female siblings.²⁰ The Igbo tribe refers to the eldest male child as *Diokpala* or simply *Okpala*. In the nuclear family setting, the eldest son of a deceased succeeds him and rules over his father's immediate family, notwithstanding the fact that some female children of his late father may by far be older than him. In the extended family, where there are several heads of several nuclear families, the eldest man of all the nuclear families becomes the head of the family and is also referred to as the *Diokpala* of the extended family. The other nuclear family heads pay allegiance to the head or the *Diokpala* of the extended family.²¹ This *Diokpala* of the extended family may as well be the youngest child among several female children in the family. No woman can step in as the head of the family. Whenever the head of a family dies intestate, the first son inherits his clothes, regalia, personal properties and personal dwelling place called *obi* to the exclusion of his deceased brothers and widows...the money of the intestate father is inherited by all his male children to the exclusion of the females, no matter the number of the females or biological ages.²²

From the foregoing, it is obvious that the position of the first son is so important and sacred. This explains why a portion of the family property is specially allocated to him for habitation and for farming purposes as the head of the family.²³ After the head of the family, the other male children of the deceased head of family will thereafter take their turns and share in their late father's estate to the exclusion of the female children.²⁴ Where the deceased head of the family had no male child, his properties would be inherited by the eldest of his blood brothers and nobody disputes it. Thus, it is unheard of, that a female child or a widow under Igbo native law and custom will inherit her late father or late husband's landed property, let alone taking over the headship of the family of her late father or late husband under Igbo customary law. This custom in its extreme application is really an unfortunate one for the Igbo woman.

But there are other necessary provisions to ensure that there is basic care for the females under the inheritance arrangement. Thus the Igbo customary law directs that the daughter of a deceased must be maintained by whoever inherited her late father's estate until the daughter becomes an independent adult or whenever she marries or dies whichever event first occurs.²⁵ For as long as the daughter remains unmarried, she has the right to be given a portion of the family land for her to farm until she marries, or dies.²⁶ The only situation where a daughter can inherit is where for example she chooses to remain unmarried in her father's house with a view to raising children in the father's home.²⁷

So, the foregoing is summed up as follows: the position of the eldest son called *Okpala* in most part of the south eastern states of Nigeria is that, apart from inheriting the living home of his father referred to as '*Obi*' in Igbo dialect, he also holds the other family property in trust for himself and his other brothers, for whom he is expected to ensure that there is equitable distribution of the family property.²⁸ These properties are distributed to the exclusion of the females no matter how many females are in the family. The proceeds from any property let out from the family property must also be shared by the eldest son and younger brothers to the exclusion of the females.²⁹

Understandably, the above explications are the customary basis for which Lois and son denied Gladys (the daughter of the deceased) a share in her late father's property. It is also the seemingly discriminatory stance of the custom that Gladys challenged in the court. However, as Muonwe rightly observed that the above judgment is a welcome development, yet the age old Igbo customary law of inheritance does not allow a woman whether as daughter or wife to inherit either movable or immovable property from her father or husband.³⁰ Hence, this remarkable judgment has evoked mixed reactions from the Igbo people, particularly traditional rulers who are the custodians of the tradition and culture, human right activists as well as religious leaders. To what extent does the issue of inheritance pose as a problem to the being of an Igbo woman?

The Igbo Women and the Problem of Inheritance

Land and landed property, devolve under this system on the males, to the exclusion of daughters and wives. Igbo customary law by implication denies the female genders the right to inherit their deceased husbands' or fathers' landed property, thus their inheritance rights are grossly marginalized and

jeopardized.³¹ None the less, in some cases, women could benefit from their fathers' or husbands' estate or property. Such gestures are normally extended to them by their father or husband out of his personal consideration while he is alive. Nevertheless, such gesture cannot include any portion of land within his ancestral home. From the foregoing, the only females' possible property for inheritance is non-landed property of their mothers.³² In a traditional Igbo society where in the force of modernity have not permeated, married women is said to customarily enjoy what belongs to their husbands while they are alive, and the reverse becomes the case when their husbands die. A widow who does not have a male child does not have a stake on the landed property of the husband at intestate.³³

So the problem of women and inheritance in Igbo land is a vivid experience which the Supreme Court had attempted to address. However, it is important to note that despite the bold pronouncements by the courts, many women still experience what the Apex Court judged as discrimination in terms of their right to inheritance. Only those who are bold enough and have the wherewithal to go to court can enforce their right to inheritance, and they are very few. The reality as Okorie noted is that laws and the brilliant pronouncements by the courts have not proven sufficient to eliminate the discrimination against women as is currently experienced, in Nigeria.³⁴

There are contemporary perspectives of outright denial of women's rights which are economic, social and religious are necessary to be considered in this discuss.

Some Perspectives of the Problem of Denial of Female Inheritance

It is worthy to note that the practice of denial of female inheritance wherever it really exists, has its problems and consequences today. The consequences are economic, social and religious.

Economic Perspective: The discriminatory law of inheritance in Igbo culture where it really exists, undoubtedly has far reaching consequences on the female gender. Firstly, it is important to note that the rural women are the most disadvantaged and vulnerable group whose lives are marked by hardship, deprivation, and uncertainty. The International Fund for Agricultural Development (IFAD, 1993), noted and observed that rural women are the worst nourished, and sicknesses are far more widespread among them than among their male counterparts.³⁵ It could be construed from these facts that disinheritance of women contributes to the deepening of women's situation of poverty. This is why it has been argued that in the area of wealth possession; even a lazy male child has a better future than a hardworking female child. At the demise of a father, a lazy son can become rich by the wealth of his father accrued to him. But, a lazy female child will become poor and deepen in poverty, especially if her laziness also deprived her of education.³⁶

Social Perspectives (Global Gender Equality Crisis): Since 2017, gender equality is the fifth of the seventeen sustainable development goals (SDG 5) of the United Nations. It is the state of equal ease of access to resources and opportunities regardless of gender, including economic participation and decision making. It is the state of valuing different behaviours, aspirations and needs equally regardless of gender.³⁷ The reality of gender equality has become a global phenomenon which any attempt to neglect or invalidate renders one anachronistic. For the Igbo nation to be a competitor in the global family of nations, women's unhindered access to property and inheritance must be facilitated, and obstacles to such realizations, jettisoned.

Religious Perspectives: The magna carter for Christianity remains the bible. It is gratifying therefore to note that the problem of inheritance has long been settled in the sacred scripture. The provision of the book of Numbers chapter 27 settles the argument in favour of women. Zelophehad from the tribe of Manasseh had five daughters: Mahlah, Noa, Hoglah, Milcah and Tirzah, but had no son before he died. The daughters petitioned Moses, Eleazar the high priest, the elders, and the entire assembly of Israel on their right to inherit their father's property; otherwise, the name of their father would be extinguished. After due consultation with God and the people, Moses ruled that the daughters had right to their fathers' inheritance. Even when the men of their tribe; Manasseh, raised objections, the case was still ruled in the favour of the daughters with advice that they marry from their clan. Therefore, the contemporary

Igbo society which is predominantly Christian should know that total denial of female inheritance is against the dictates of not only reason and conventional law, but also, of their faith.

Philosophical Review of the Supreme Court Judgement vis –a-vis the Practice of *Idu nwanyi uno* in Igbo Land

Regardless of the above highlight on the challenges and problems of gender bias against Igbo women with regard to issues of inheritance, it is also informing to note that there is need for an intellectual and realistic caution with regard to blanket application or implementation of the said Supreme Court judgement. The contention here is to the effect that the said judgement may not have totally analyzed all the sundry issues of inheritance in Igbo culture as it pertains to women; and so, may not have the fiat of general application.

A closer analysis of the Igbo socio political milieu exposes the fact that Igbo society is an inclusive gender republic. The existence of women socio political institutions (like umuada, umuokpu) with full and respected authority and rights is a proof of caution, a presence of ‘checks and balance’ against extreme patriarchy in Igbo Land. Umuada and Umuokpu and their likes ensure that women rights are protected. Their activities cannot be ignored in any Igbo society. In fact, they are to a great extent; the most viable pressure group in any Igbo community. The popular case of ‘Aba women riot of 1929’, lays credence to the fact that Igbo women have the guts to fight for their rights anywhere, any day. In such a republic where women associations like umuada have a voice, it is curious that a customary law of denial of female right to inheritance remains permissible. Therefore, a necessary interrogation of the Supreme Court judgment raises the poser: Are Igbo women actually and factually forbade from having a share of their Fathers’ property?

Idu Nwanyi Uno as testate Inheritance: It is observed that in Igbo society there is a practice called *Idu Nwanyi Uno*. This is a settlement done to any daughter by her biological family when she is given out to marriage. Each family does this in accordance with their financial and economic strength. Some wealthy families go at any length to gift their daughter a choice landed property, car, huge amount of cash and other heavy investment, while some less financially fortunate families settle their own with the little they have; ranging from kitchen utensils to some other affordable properties. It is a customary practice that exists in all communities in Igbo Land. When this practice of *idu nwanyi uno* is done, which is entirely a prerogative of the daughters; it is considered as a form of inheritance given to them. Therefore, is it a case of total denial of inheritance that the Gladys Ukeje presented to the court or should it be that her contention would be a demand for upgrade in the share of inheritance? Is Gladys married? Was she a beneficiary of the practice of *Idu Nwanyi Uno at marriage*? If unmarried, have the customary court not provided for her as highlighted previously? Again, is Gladys seeking for a share in the ancestral inheritance or estates in Lagos and across other cities? These probing questions points to the uniqueness of each case on inheritance in Igbo land, and as such, are necessarily to be clarified by the Supreme Court.

Again, the Supreme Court Justices who gave the judgement by their surnames (Bode, Onnoghen, Olabode and Ogunbiyi) seem to have no Igbo roots. Is it not possible that they had not been at home with the entire practice of inheritance in Igbo culture? The practice of *idu nwanyi uno* is a part of sharing of inheritance in Igbo land, and must serve as caution towards the implementation of the said judgement. Even in the instant case, it is about Gladys Ada Ukeje against her step mother (Mrs Lois Chituru Ukeje) and her half brother (Enyinaya Lazarus Ukeje). So, it is possible that Gladys have not in any away been a beneficiary of the rite of *idu nwanyi uno*. Therefore, this may be treated as a unique case, and cannot serve as a reference to all issues of right to female inheritance in Igbo Land. There is need for moderation and further interrogation of the judgement on a note of specificity.

Another reason for the necessity of caution is the ripple effects of unending family feud and litigation. The Igbo customary law which is largely unwritten serves as a stabilizing agent in any Igbo community. This is the reason why it is highly a respected law with assured implementation and enforceability. It is always the last resort to settling family disagreement and inter communal feud. In the light of the above,

any blanket legislation from a 'supreme court' that seem to upturn the customary practice without recourse to the details, may have set a tone for instability in the land and an unending litigation. Hence, the practice of *idu nwanyi uno* should be considered while addressing or in reference to the recent judgement on female inheritance and its possible implementation.

Again, what about other 'slippery' cases of argument which this judgement may resonate, like the issue of ancestral property like the *Obi* (ancestral family compound) belonging to the first born? Is the first born more human than the other male children in the family? Again, the Igbo customary law have settled possible rift among sons of same parents by establishing the practice of *ala obi* (giving out other parcel of land outside the *obi*) for other males apart from the first son. Therefore, if the judgement of the Supreme Court is applied without due interrogation and recourse to uniqueness and details of each case, then the Igbo stable family would soon besiege the courts in their drones. The Supreme Court based their judgement on the 1999 constitution (as amended), but the customary law in Igbo land has been there as an agent of stability and justice since ages.

Consequently, it is philosophically recommended that all aspects of the social practice must be considered in matters of inheritance, so as to ensure that the judgement could be implementable. For instance, what about the case where there is no inheritance to share, or where the only intestate inheritance is the *Obi*? Does the Supreme Court take note of the daughters who are beneficiaries of the inheritance of *Idu nwanyi uno*, as against the unmarried female adults of the family? Also, did the Supreme Court Judgement take careful note about the necessary distinction between ancestral properties or inheritances and other landed properties and investment?

Conclusion

Yes, the Supreme Court in the landmark judgement (SC.224/2014, Mrs Lois Chituru Ukeje and Enyinnaya Ukeje vs Gladys Ada Ukeje) has declared the practice of denial of female right to inheritance in Igbo land as discriminatory and unconstitutional. By this fact, a legal backing to this crusade against total denial of female right to inheritance is achieved. The implementation should then begin; but with observable caution as already highlighted. The judgement cannot be applied in all circumstances considering the weighty cultural attachment to issues of inheritance. The practice of *Idu Nwanyi uno* and its hermeneutics in reference to inheritance takes a lead in the need to apply caution over a blanket implementation of the said Supreme Court judgement. Other considered 'missing links' in the judgement as already pointed out, should be reviewed by Igbo stakeholders. These include: the difference between ancestral properties and other properties like shares, investments, and the danger of extreme interpretation of the judgement to also include the rights of *Diokpala* in the family.

A philosophy of dialogue encapsulated in the 'I-Thou' relationship such as seen in the works of Martin Bubber and Gabriel Marcel is a necessary tool for proper implementation. The traditional, political and religious leaders must, in line with the philosophy of dialogue, ensure a socialization process towards a better appreciation of womanhood as it affects property and inheritance. Without the collaboration of the leadership of the various spheres; the implementation of the Supreme Court judgment in favor of female inheritance to property may remain elusive; and may as well usher in an unstable community rift with incessant family litigations. So, it is a necessary recommendation that this post 2014 Supreme Court judgement approach is initiated to guarantee a possible understanding and implementation of the judgement, with needed caveats. One thing is certain, man and woman are equal in dignity, but the patrilineal marriage culture of the Igbos makes a case for proper look at issues of sharing of inheritance. The customary law which has always served as a legal compass, and has since ensured social cohesion and stability must not be arbitrarily jettisoned.

Finally, it is strongly recommended that parents should write their Will (last testament) while alive; for the sake of the testator. In the 21st century Igbo society and beyond, it is a necessity for all parents so as to guide rightly the decisions over inheritance in their absence.

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- ³³*Ibid.*
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- ³⁶*Ibid.*, 10
- ³⁷ *Gender Equality*, Wikipedia, en.m.wikipedia.org, searched last on 1/5/22