

FEMALE INHERITANCE AMONG THE IGBO OF NIGERIA: BETWEEN LEGAL INNOVATION AND DIE-HARD CUSTOM

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Abstract

A major challenge confronting women in Igboland, southeast Nigeria is the Igbo custom that denies female daughters and widows the right to inherit family property. This makes the inheritance of family property among the Igbo the exclusive right of male children. This age-long custom has subjected women to discrimination and deprivation and reduced them to a second-class status in Igbo communities. Recently, the Supreme Court declared the obnoxious custom unconstitutional and, therefore, void. This was followed by legislation in Rivers and Abia States vesting women with inheritance rights in family property. This paper critically examines the Igbo customary law of inheritance and its discrimination against women in succession to family property. It discusses the reason behind the disinheritance of women from the perspective of Igbo culture and the consequences of this discrimination for the women affected. The paper argues that beyond judicial decisions and legislation, there is also the challenge of die-hard custom that could ensure that these legal innovations aimed at eradicating the discriminatory custom do not yield the desired results. It makes recommendations on ways to eradicate the custom beyond judicial decisions and legislative intervention.

Keywords: Female Inheritance, Igbo custom, unconstitutional, legal innovation, die-hard custom

Introduction

Inheritance is the act of transmitting the property of the dead to a living

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person.¹ This conceptualisation of inheritance underlies the fact that it can occur only when the person inherited is dead, or it is only the property of the dead person that can be inherited.² Conversely, disinheritance is the act by which the owner of an estate deprives a person of the right to inherit the same, who would otherwise be his heir.³ This is usually accomplished by executing a will that guarantees certain individuals' inheritance and disinheritance. Disinheritance could also occur where, under the applicable laws, an individual is denied the right to inherit assets comprised in the estate of the deceased. This paper is concerned with disinheritance in the later sense as it relates to the Igbo of Southeast Nigeria.

Under customary law as applicable among the Igbo people of Nigeria, female children and widows have no right of inheritance of real estate of the deceased father or husband, respectively. Despite developments under both domestic law and international law (as shall be seen presently) on gender equality and against discrimination, female disinheritance has persisted among the Igbo of Nigeria. This persistent of practice which denies women of the right of inheritance in Igboland has been attributed to various factors, including the absence of human rights legislation and policies, the registration of land in the name of the male spouse, and discriminatory customary laws.⁴ It has also been attributed to Nigeria's tripartite legal regimes of marriage – customary, religious, and statutory.⁵ Due to this legal plurality, it is challenging to enact and execute laws that advance, defend, and uphold women's rights because these laws contradict one another in many ways. Statutory and customary laws are in conflict with religious laws, and vice versa. While Nigerian statutory laws acknowledge women's rights to land,⁶ Igbo native law and custom does not recognise and protect property rights of women, thereby leading to the disinheritance of female children and widows.

From the pre-colonial era, through the era of British colonisation of Nigeria to the present, the status of women among the Igbo has been described as

¹ ST Silas, 'Disinheritance and Women Development in Igboland, Eastern Nigeria: A Theological-Ethical Study' (2020) 3(5) *Journal of African Studies and Sustainable Development*, 19.

² *Ibid.*

³ BA Garner, '*Black's law dictionary*' (10th Edn, 2014) 568.

⁴ SF Folarin and OD Udoh, 'Beijing Declaration and Women's Property Rights in Nigeria' <<https://eujournal.org/index.php/esj/article/view/4835>> accessed 9 February 2024.

⁵ Silas (n 1) 19.

⁶ *Ibid.*

one of permanent subjection and subjugation.⁷ Due to the fact that most traditions emphasised male folk above the women folk, men are viewed as the world's leaders.⁸ The belief is strong among the Igbo that having children is a woman's major responsibility, one she has to carry out in order to appease her spouse. It was for this reason that society would usually ridicule childless women.⁹ The result is that wives and daughters are subjected to the harsh, dehumanising, and discriminatory cultural practice of female disinheritance.¹⁰ They are practically placed in a disadvantageous position from birth vis-à-vis their male counterparts.

Despite constitutional safeguards against discrimination against persons on ground of sex, and notwithstanding decisions of Nigerian courts that have declared the custom unconstitutional and repugnant to natural justice and recent legislation that have outlawed female disinheritance, equity and good conscience, female disinheritance has persisted among the Igbo. This paper will analyse the Igbo customary law of inheritance under which female children and widows are denied the right to inherit family property. It will examine recent developments in the law by which female disinheritance has been abolished. The paper will also examine the extent to which these legal innovations have impacted the entrenched custom of female disinheritance among the Igbo of Southeast Nigeria.

Igbo Customary Law of Inheritance

The Igbo constitute one of the largest ethnic groups in Nigeria.¹¹ They are the indigenous people of Southeast Nigeria and one of the three major tribes in Nigeria, others being the Hausa/Fulani and the Yoruba.¹² The Igbo occupy a continuous stretch of territory in Southeast Nigeria roughly bounded on the north by the Igala, Idoma, and Ogaja peoples, in the east by the Ibibios, in the south by the Ijaws and in the west by the Edo people.¹³ The ethnic Igbo speaking people of Southeast Nigeria inhabit the area usually described as Igboland, which comprises the states of Abia, Anambra, Ebonyi, Enugu and Imo, with a significant number clustered in

⁷ NM Abdulraheem, 'Rights of Women in Pre & Post Colonial Era in Nigeria: Challenges for Today' (2010) 3(2) *Journal of Public Law*, 83.

⁸ J Njoku, *The World of Africa* (Scarecrows press 1980) 1.

⁹ B William, *Women in Modern Life: The Psychology series* (Fordham University Press, 1968).

¹⁰ F Orabueze and Ogazi, 'The Inscription of Fundamental Human Rights and the Liberation of Igbo Woman from Customary and Administrative Burdens' (2014) 14(2) *Unizik Journal of Arts and Humanities*, 3.

¹¹ Silas (n 1) 16.

¹² *Ibid.*

¹³ *Ibid.*

Edo, Delta, Bayelsa and Rivers States.¹⁴

The Igbo share a common traditional belief in patriarchy and primogeniture which usually promote gender inequality and the subjugation of women in both dignity and property rights.¹⁵ The patrilineal nature of Igbo societies, and the prevailing Igbo native law and custom guaranteed that no woman may be the head of a family, a lineage, or a sub-lineage. It is, therefore, a society exclusively led by men. Succession and inheritance are by primogeniture, a system whereby inheritance is by the eldest son, *Okpala* or *Diokpa*,¹⁶ of the family, and female children and widows are totally excluded from inheritance.¹⁷ In polygamous families where the deceased had several sons from multiple spouses, the first sons of the spouses would share his estate. These customary practices subject women to discrimination through a tradition that disinherits them from the acquisition and ownership of property in their fathers' and husbands' houses.¹⁸

Among the Igbo, custom forbids women from inheriting the intestate immovable property of a deceased father or husband, save to the degree that they may be expected to be supported by their spouse's heirs.¹⁹ They are not to be heard when land matters are being discussed. In fact, there is an Igbo aphorism that 'a woman does not stay around when issues of land are being discussed.'²⁰ She is expected to sit docile in a corner when issues that border on land are being discussed, and is only expected to ask questions for elucidation on boundaries as the only right bequeathed to her is the right to cultivate the land.²¹ They can, however, amass income and purchase

¹⁴ GI Eluwa and Others, 'A History of Nigeria: For Schools and Colleges' (Africana First Publishers Limited 1988).

¹⁵ HO Obi and OC Aduma, 'Contemporary Judicial Response to Women's Succession and Inheritance Rights in Nigeria: A Heave to Gender Discrimination.' <<https://www.nigerianjournalsonline.com/index.php/ACARELAR/article/view/2261> > accessed 7 December 2023.

¹⁶ EI Nwogugu, *Family Law in Nigeria* (3rd edn, HEBN Publishers 2014) 416.

¹⁷ EOC Obidimma and AE Obidimma, 'Mitigating the Injustice of the Customary Law Relating to Inheritance of Landed Property by Women amongst the Igbo People of Nigeria' (2015) 4 (11) *International Journal of Innovative Research and Development*, 71; EI Nwogugu, *Family Law in Nigeria* (Heinemann Educational Books, 1999) 23.

¹⁸ *Ibid.*

¹⁹ BA Oni, 'Discriminatory Property Inheritance Rights under Yoruba and Igbo Customary Laws in Nigeria: The need for reforms' (2014) 19(2) *Journal of humanities and social science*, 34.

²⁰ C Mefor-Nwachukwu, 'Denied Right to Inheritance, Women in South East Daily Face Life of Uncertainties' <<https://reportwomen.org/amp/denied-right-to-inheritance-women-in-south-east-daily-face-life-of-uncertainties/>> accessed 4 March 2024.

²¹ *Ibid.*

properties of their own, which will pass to their offspring as personal property.²² Also, in localities where it is customary for a mother-in-law to 'show' a newly married wife a parcel of land where she will plant seedlings given to her by her mother, such parcel of land ceases to be family property and therefore not liable to distribution upon the death of her husband. If a widow is childless, they can still bear children by means of the customary law 'woman to woman marriage.'²³ Children born to her in that marriage become her late husband's children and are permitted to inherit his estate.

With regards to widows, they have no rights in the intestate estate of their deceased husbands.²⁴ A widow has no ownership rights over the property of her deceased husband and she is only entitled to possessory rights of her husband's house which is subject to her good behaviour as determined by members of her late husband's family. She has no right to keep any immovable property, even if she used the same property during her husband's life. It does not matter if she is survived by sons or not. In severe circumstances, widows are even considered to be a part of a deceased husband's or father's inheritable patrimony.²⁵ Sometimes they are dispossessed of the immovable properties of their deceased husbands even where the parties had been married under the marriage Act (and, accordingly, not subject to customary law of inheritance). In some other cases, this rule of native law and custom prevails despite that the deceased made a valid will containing provisions to the contrary.²⁶

Female children are not only excluded from inheriting the landed assets of their father, they are also not reckoned with in the distribution of assets acquired by their mother during her lifetime. They may share in her clothing, jewellery and other personal effects, but not in landed assets acquired by her. Only the male children may share in such assets.²⁷ The discrimination underlying female inheritance among the Igbo extends also to inheritance of spousal estate. While a widower would inherit assets acquired by his deceased spouse during her lifetime, a widow would not

²² NT Nwachukwu, 'The Inheritance Rights of Women in Nigeria: A Case Study of Igbo Custom' <https://www.academia.edu/43660462/THE_INHERITANCE_RIGHTS_OF_WOMEN_IN_NIGERIA_A_CASE_STUDY_OF_IGBO_CUSTOM> accessed 4 March 2024

²³ US Obi, OB Uruchi, and O Tobechukwu, 'Females Succession Rights under the Native Laws and Customs of Nigerian Societies: An Affront to Justice' (2021) 7 *MUNFJ*, 96.

²⁴ Oni (n 19) 34.

²⁵ Obi and Aduma (n 15) 44; Obi, Uruchi and Tobechukwu (n 23) 96; Silas (n 1) 17.

²⁶ Silas (n 1) 18.

²⁷ Obidimma and Obidimma (n 17) 72.

inherit her late spouse's assets; only her male children with the dead man could do so.²⁸

The only circumstance in which a daughter may inherit is if, for example, she chooses to remain unmarried in her father's house with the intention of raising children in her father's house in the name of her father.²⁹ This is referred to as *nrachi* or *idegbe*. It often occurs where a father leaves behind a sizable inheritance after his passing, but no sons or other male heirs remain to inherit it. The purpose of this practice is to prevent the extinction of the bloodline. The daughter, as an *idegbe* or *nrachi* is qualified to inherit both movable and immovable property of her deceased father's estate. Until she gives birth to her own children, she will retain the legal interest. However, according to the Igbo rule of primogeniture, if she has sons and daughters, the sons will succeed her to the estate, not the daughters.³⁰

Rationale Behind Female Disinheritance

But what are the reasons for female disinheritance among the Igbo? There are four main reasons why female children and widows are denied the right of inheritance under Igbo native law and custom. Firstly, female children are disallowed to inherit family property because they will marry and leave their father's house to be catered for by their husbands. As such, they do not need those properties as their male siblings do.³¹ That is, when they marry, they become the responsibility of their husbands while their male siblings will need the properties to support their own wives and children.

Secondly, under Igbo native law and custom, a widow only has a life interest in her matrimonial home, as such her interest in the matrimonial estate does not survive the death of her husband.³² Upon the death of her husband, her interest ceases and the late husband's real estate devolves to their male children. In the absence of male children, it devolves to his male brothers. His widow's continued use of the properties is from then at the pleasure of the male inheritors. To this extent, she cannot howsoever validly alienate the properties.

²⁸ EO Obioha, 'Inheritance Rights, Access to Property and Deepening Poverty Situation among Women in Igboland and South East Nigeria' being paper presented at a Sub-Regional Conference on Gender and Poverty organised by Centre for Gender and Social Policy, OAU, Ile-Ife, Nigeria, (2003) xx; *Okoli v. Okoli* (2003) 8 NWLR (Pt. 823) 565.

²⁹ Nwogugu (n 16) 426.

³⁰ JN Ezeilo, *Women Law & Human Rights: Global and National Perspectives* (Acena Publishers 2011) 14.

³¹ *Ibid.*

³² *Ugboma v. Ibeneme* (1967) E.M.L.R. 251.

Thirdly, upon a man's death her widow's maintenance becomes the duty of the first son of the house whose right it is to inherit the estate of her late husband.³³ She therefore does not need to inherit the estate of her late husband in order to be adequately maintained. This means that though widows have no right of inheritance, they are not left without any form of protection. The first son who inherits from the father is charged with the responsibility of taking care of the widow and his younger sisters if they have not attained the age of marriage.³⁴ Aside from being maintained by the first son, the widow also has the right to harvest fruits from trees in the marriage estate.³⁵

Fourthly, in Igboland, land is said to belong to the dead the living and those yet unborn. It is for this reason that in some localities, land cannot be sold. It is believed that if a female child is allowed to inherit land, upon marriage the land becomes that of her husband and effectively leaves the family. Every generation, therefore, considers it a duty to ensure that land left to them are also left to the generation after them.

Consequences of Female Disinheritance

The disinheritance of women under Igbo native law and custom brings about unimaginable consequences for women. Firstly, disinheritance creates either explicit or implicit problems between the children. The disinheritance of one or some persons causes a rift and lasting tensions in the family.³⁶ It could bring about strains in the relationship between brothers and sisters who had lived all their lives believing that they were born equal and were equally loved by their parents. Moreover, disinheritance could put the disinherited children in an awkward position of having to decide whether to honour their parents' wishes and uphold their disinheritance; or whether they should go against their parents' wishes and resist their disinheritance.³⁷ Where there is disinheritance of one or some children and the widow, there is, more often than not, chaos and aggression

³³ *Ibid.*

³⁴ Motun911, 'Igbo law of succession: A Review of the Igbo Traditional System of Inheritance and an Examination of the Discriminatory Aspect Considering Recent Pronouncements by the Courts in Nigeria' <<https://motun911.wordpress.com/2019/09/13/igbo-law-of-succession/ance> and an examination of the discriminatory aspects conjuring recent pronouncements by the courts in Nigeria > accessed 6 March 2024.

³⁵ R Mordi, 'An Appraisal of Inheritance Rights of Women in Nigeria' <https://www.academia.edu/7187814/AN_APPRAISAL_OF_INHERITANCE_RIGHTS_OF_WOMEN_IN_NIGERIA?auto=download > accessed 5 January, 2024

³⁶ Silas (n 1)22.

³⁷ *Ibid.*

in the family.

Secondly, disinheritance weakens the disinherited female children and reduces them to a lesser social status due to cultural norms.³⁸ The right to inherit family property places the male children in a higher social status in the community than the female children. It tends to accord the male children more dignity and respect as members of the community recognise them as potential owners of the assets of their father. On the other hand, female children are not so highly regarded considering the accepted cultural norm that they have no right to their father's estate. This lower status ascribed to women by virtue of their lack of property entitlements has been found to negatively affect their self-esteem.³⁹ As a result, the majority of Igbo women, particularly those in Igboland's rural communities, are incredibly complacent on this issue.⁴⁰ They appear to have accepted their subjugated position as normal and cultural, since they have been in such conditions for ages.⁴¹

Disinheritance also prevents women and female children from receiving quality education.⁴² The death of their father could truncate the education of the female children since they have no right of inheritance, a right which, if available, could ensure that they conclude their education. In Igboland, the male children's right to inherit all lands includes the right to dispose of them as they wish.⁴³ They can, therefore, dispose of property to meet their needs. Female children have no such right. Because of this, female children in Igboland are sometimes ill-equipped to defend their rights. Their lack of education also reduces their chances of political participation compared to their male siblings with better education.⁴⁴

Inheritance is one of the easiest ways for women to acquire or access property.⁴⁵ Again, owing to disinheritance, women in rural Igbo communities are not economically empowered and this has negative social

³⁸ Silas (n 1) 22.

³⁹ *Ibid* at 23.

⁴⁰ *Ibid* at 22.

⁴¹ IS Chika and U Nneka, 'Discriminatory Cultural Practice and Women's Rights among the Igbo of South-East Nigeria: A Critique' (2014) 25 *Journal of Law, Policy and Globalization*, 24.

⁴² Silas (n 1) 22.

⁴³ *Ibid* at 23.

⁴⁴ Silas (n 1) 22.

⁴⁵ International Network for Economic, Social & Cultural Rights, 'Gender Equality in Rights affirmed by Nigerian Supreme Court' <<https://www.escri-net.org/country/nigeria>> accessed 6 March 2024

and economic effects. The rural women are the most disadvantaged and vulnerable group whose lives are marked by hardship, deprivation, and uncertainty.⁴⁶ As a result of female disinheritance, even a lazy male child has a far better future than a hardworking female child. At the demise of a father, a lazy son could become rich by merely inheriting the wealth of his father. But a lazy female child will become poor, especially if she has no education. Worse still, because of disinheritance, female children lack assets that can be securitised, they have less chances of obtaining financial advances for their self-development.⁴⁷ This means that men are more likely to be richer than women.

Even in matrimonial property, when a marriage faces dissolution under Igbo customary law, the contribution of the wife to properties built or acquired in partnership with her estranged husband is often disregarded. This is due to the belief that the woman has no property rights. Whatever contribution she made in the course of acquiring those properties become irrelevant, thereby exposing her to untold suffering she never anticipated. The consequence is that while the man could remain stable following a divorce, the woman must lose everything and, in some localities, she would still be required to return to the man the bride price paid for her marriage.⁴⁸

The consequences of disinheritance for widows and female children in Southeast Nigeria may be best illustrated with the cases of Joy Dike, Njideka Onuko and Victoria Ohaeri.⁴⁹ Joy Dike, a native of Umudioka in Njikoka Local Government Area of Anambra State, lost her husband, Gabriel in 2020 when she was only three weeks pregnant with her third child. The 25-year-old mother of three was yet to come to terms with the death of her husband when her brother-in-law, with the backing of her mother-in-law, emptied her late husband's bank account and took over all his properties. The young widow, who struggles to survive with the pittance made daily from her petty trade was left to take care of three children of the marriage and her ante natal condition. She took the matter to her husband's kinsmen with hopes that it would be resolved amicably and quickly so that she could be able to take care of the children. They did nothing about it because a woman does not talk about land.⁵⁰

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ M Fortes, *Marriage in Tribal Societies* (Cambridge University Press, 1962) 10; See J Goody, 'Bride Wealth and Dowry in Africa and Euroasia' in J Goody and SJ Tambia (eds), *Bride Wealth and Dowry* (Cambridge University Press, 1973) 1-57.

⁴⁹ Mefor-Nwachukwu (n 20).

⁵⁰ *Ibid.*

Joy's case is not different from that of Njideka Onuko, a 40-year-old mother of four.⁵¹ Njideka's challenges started immediately after she lost her husband, Chinweze in 2019.⁵² The deceased's step-sons insisted that she must move out of the matrimonial home so that they could take over her husband's only land on which she had managed to build a house where she put up with her children after her husband's death. Before his death, Chinweze had shared the land between Njideka and her co-wife and their respective children. But following the death of Chinweze, the whole land was sought to be possessed by her step-sons who had grown into men and felt she had no right to land. It is reported that her step-sons often engaged her in fisticuffs just to take possession of the property.⁵³

Regarding the difficult condition daughters find themselves in Igboland due to the customary law rule that women do not inherit land, a story shared by Victoria Ohaeri, Executive Director of Space for Change, a non-governmental organisation (NGO) is quite apposite.⁵⁴ Though a female child, she had been closer to her father who recently died than her male siblings. She was, in fact, the backbone of the family. Following the death of her father, her uncles came to her for every information they needed while planning the burial. After the funeral, she urged the family to give two rooms in the family house to the daughters of the house where they and their children could stay whenever they came visiting. The request was bluntly refused by the men who stared at her as having spoken sacrilege. She then requested the men to provide a little parcel of land close to the family house where she could build a two-bedroom apartment where the female children of the family could stay whenever they visited. Again, her request was vehemently turned down by the men because a woman has no business with land.⁵⁵

Developments in the Law

Customs and traditions that disallow women to inherit property from either their husbands or fathers are not only repugnant to natural justice, equity and good conscience but also unconstitutional. Because of the deeply ingrained patriarchal features of Igbo society, achieving gender equality in inheritance rights has proven to be one of the most challenging problems for rights-based approaches. Unfortunately, a few judicial decisions have

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

seemed to reinforce the native law and custom that makes inheritance among the Igbo a male thing. In *Nezianya v. Okagbue*,⁵⁶ it was held that possession by a widow of her late husband's land under the native law and custom of the Onitsha people cannot be averse to the right of her husband's family. She cannot acquire an absolute right to possession of it against the late husband's family. Such possession, no matter how long, cannot make her the owner of the land.

In *Nzekwu v. Nzekwu*,⁵⁷ the Supreme Court affirmed the principle that a widow's dealings with her deceased husband's estate must have the approval of the late husband's family, and as such she cannot claim the properties comprised in the estate as hers. In *Chinweze v. Masi*,⁵⁸ the Supreme Court also held that under customary law, a wife has only a life interest in the property of her deceased husband so that if her husband dies, her interest ceases. Similarly, in *Onwuchekwa v. Onwuchekwa*,⁵⁹ the Court of Appeal refused to reject as repugnant to natural justice, equity and good conscience, a custom under which a husband is said to own his wife and all that she owns.

Despite these decisions, there have been legal innovations by way of statutory law and dynamic judicial decisions that have invalidated the Igbo custom that denies women the right to inherit property. Section 42(1) of the 1999 Constitutions of the Federal Republic of Nigeria (as amended) prohibits discrimination against any person on the basis of sex, among others. This means that nobody should be made to suffer any disability to which others are not subject for reason of their sex. The Igbo native law and custom that allows men to inherit landed property but disallows women from doing so is, without doubt, discriminatory, and accordingly, unconstitutional. As Chianu points out, 'a law is discriminatory when it has the effect of imposing burdens and obligations or when it withholds or limits access to opportunities and benefits to historically disadvantaged groups.'⁶⁰ Thus, the term 'discriminatory' is not limited to numerical minorities but for all intent and purposes, extends to disadvantaged groups in the society, such as women.⁶¹

⁵⁶ (1963) 1 ALL N.L.R. 352.

⁵⁷ (1989) 2 NWLR (pt. 104) 317.

⁵⁸ (1989) 1 NWLR (pt. 97) 254; *Ugboma v. Ibeneme* (1967) E.M.L.R. 251.

⁵⁹ (1997) 7 N.W.L.R (Pt. 194) 737.

⁶⁰ E Chianu, *Law of Succession* (New System Press, 2019) 197.

⁶¹ *Ibid.*

In the recent case of *Ukeje v Ukeje*,⁶² the Appellants who were the son and wife of a deceased Igbo called Linus Ukeje, who lived and acquired immovable properties in Lagos applied for and were granted letters of administration of the estate of the deceased situate in Lagos to the exclusion of the respondent, Gladys Ukeje, who was a daughter to the deceased through his former wife. The respondent instituted proceedings asking the court to stop the appellants from disinheriting her and to be included in the letters of administration as an administrator of the estate. The trial court agreed from the preponderance of evidence that the respondent was a daughter of the deceased and as such, entitled to the reliefs sought from the court. The court made an Order setting aside the said letters of administration; an Order to account for monies and properties in the possession of appellants, and an Order of Court granting a fresh letter of administration in favour of the respondent and one of the appellants.

Dissatisfied with the decision of the trial court, the appellants appealed to the Court of Appeal. The appeal was dismissed. On further appeal to the Supreme Court, the apex court declared the Igbo customary law which denies a female child the right to inherit the estate of her late father void. The Court held that:

No matter the circumstances of the birth of a female child, such a child is entitled to an inheritance from her late fathers' estate. Consequently, the Igbo customary law which disentitles a female child from partaking in the sharing of her deceased father's estate is in breach of section 42(1) and (2) of the Constitution, a fundamental right provision guaranteed to every Nigerian. The said discriminatory customary law is void as it conflicts with section 42(2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

In *Mojekwu v. Ejikeme*,⁶³ the Court of Appeal declared unconstitutional the Nnewi native custom under which a female child is precluded from inheriting property except she performs the *nrachi* ceremony. This a ceremony in which a man declares that her daughter would remain unmarried and bear children, especially male children to succeed him. This is usually done where the man and his wife have no male child and can no longer bear children. This is necessary because if they have female children, such children cannot succeed the man upon his demise. Upon performance of the ceremony, the daughter becomes a 'man' and can bear children who

⁶² (2014) 11 NWLR (Pt.1418) 384.

⁶³ (2000) 5 N.W.L.R (Pt. 657) 402.

will bear her father's name and inherit his estate. The Court held that a female child should be able to inherit the estate of her father without performing the *Nrachi* ceremony.

Aside from the Igbo customary law that disentitles women from inheritance being unconstitutional, it has also been held to be repugnant to natural justice, equity and good conscience. In *Mojekwu v Mojekwu*,⁶⁴ the *Oli-Ekpe* custom of the Nnewi people of Anambra State was successfully challenged by the respondent to be, not only unconstitutional, but repugnant to natural justice, equity and good conscience. Under the custom, only male children of a dead man could inherit his estate; the female children have no such right of inheritance. In declaring the custom unconstitutional and nullifying it, the Court of Appeal stated as follows:

All human beings – male and female - are born into a free world, and are expected to participate freely, without any inhibition on grounds of sex; and that is constitutional. Any form of societal discrimination on grounds of sex, apart from being unconstitutional, is antithetical to a society built on the tenets of democracy, which we have freely chosen as a people. We need not travel all the way to Beijing to know that some of our customs, including the Nnewi 'Oli-Ekpe' custom relied upon by the appellant are not consistent with our civilised world in which we all live today, including the appellant. In my humble view, it is the monopoly of God to determine the sex of a baby, and not the parents. Accordingly, for a custom or customary law to discriminate against a particular sex is to say the least an affront on the Almighty God himself. Let nobody do such a thing. On my part, I have no difficulty in holding that the Oli-Ekpe custom of Nnewi is repugnant to natural justice, equity and good conscience.

In *Onyibor Anekwe & Anor v. Mrs Maria Nweke*,⁶⁵ the Supreme Court gave judgement for the respondent who was asked to vacate her house by her late husband's father on the ground that she bore no female child.⁶⁶ The appellants had argued that it was customary law in Awka, Anambra state, for the eldest son to inherit the properties of his late father and in a situation

⁶⁴ (1997)7 N.W.L.R (Pt. 153) 283.

⁶⁵ (2014) LPELR-22697 (S.C).

⁶⁶ I Nnochiri, 'Inheritance: How Supreme Court Voids Discrimination against Females in Igboland, *vanguard* <<http://www.vanguardngr.com/2014/04/inheritance-supreme-court-voids-discrimination-females-igboland/>> accessed 13 March 2024.

where there is no male child, the property goes to the deceased's father and his eldest brother. The court held that a custom of this nature in the 21st century societal setting will only tend to depict the absence of the realities of human civilization.

Aside from female disinheritance being discriminatory and, therefore, a violation of the Constitution, it is also a violation of the right of every citizen of Nigeria to acquire and own immovable property anywhere in Nigeria.⁶⁷ When the right of a woman to own property anywhere in Nigeria is curtailed by reason of native law and custom, the Constitution, which is the supreme law of the land is violated. This is because the Constitution being the supreme law, any other law inconsistent with its provisions is void to the extent of that inconsistency.⁶⁸

The Constitution and judicial decisions apart, there have been statutory interventions that have sought to do away with female disinheritance among the Igbo.⁶⁹ These statutes include the Matrimonial Causes Act, 1970, the Wills Act, the Wills Law of the various states of Nigeria, the Administration of Estates Law of the various states of Nigeria, the Child Rights Act, the Child Rights Law of the various states of Nigeria, and the Violence Against Persons (Prohibition) Act, 2015. These pieces of legislation seek, generally, to protect the property rights of women. Recently, the effort being made to abolish female disinheritance among the ethnic Igbo received fresh impetus with the enactment by two states of laws that specifically address the right of women to inherit property in the family.

In 2022, the Abia State House of Assembly passed the Female Persons Right of Inheritance of Property Law, 2022.⁷⁰ The law seeks to ensure that women inherit properties in their families just like men and to end all forms of discrimination against women in the family.⁷¹ It is believed that by virtue

⁶⁷ See section 43 of the 1999 Constitutions of the Federal Republic of Nigeria (as amended). See also CS Nwakoby and IN Mariah, 'Culture and gender issues on inheritance rights in Nigeria' (2022) 8(40) *International Journal of Law*, 224.

⁶⁸ See section 1(3) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

⁶⁹ E Sessou, 'Denying Females Rights to Inheritance Unjust, Inequitable - property lawyer' <<https://www.vanguardngr.com/2023/11/denying-females-rights-to-inheritance-unjust-inequitable-property-lawyer/>> accessed 6 march 2024.

⁷⁰ No. 2 of 2022.

⁷¹ R Ayodele, 'Gov. Ikpeazu signs Women Inheritance Bill into Law in Abia State' <<http://www.dailypost.ng/2022/12/01/gov-ikpeazu-signs-women-inheritance-bill-into-law-in-abia>> accessed 9 April 2024.

of the new legislation, women (female children and widows) will begin to inherit family property in Abia State, a right that they hitherto did not enjoy and which belonged exclusively to men. The Abia State law followed the enactment in neighbouring Rivers State of a similar legislation which grants women the right to inherit property on equal basis with men.

The Rivers State Prohibition of the Curtailment of Women to Share in Family Property Law, 2022,⁷² was passed to bring to an end the disinheritance of women in parts of the state where, by native law and custom, only male children could inherit family property. It is pertinent to mention that the Rivers State law was quickly tested in the Rivers State High Court in an action instituted by four sisters, Chinyere Abel, Perpetual Abel, Bertha Abel and Josephine Abel, in that court against their three brothers.⁷³ The sisters had been disinherited by their brothers who distributed their late father's estate among themselves to the exclusion of the ladies. The sister relied on section 42 of the Constitution and the then just enacted Rivers State Prohibition of the Curtailment of Women to Share in Family Property Law to challenge their disinheritance. The Rivers State High Court held that the disinheritance of the ladies is illegal and awarded ₦72 million damages against the defendants.

The Challenge of Die-Hard Custom

The decisions of the courts declaring Igbo customs that deny women the right to inherit family property unconstitutional and repugnant to natural justice equity and good conscience have evoked mixed reactions. While some hold the view that such decisions are a welcome development,⁷⁴ others are of the view that those decisions will upset customs that have existed from time immemorial, customs that have ensured peace and stability in families in Igboland.⁷⁵ The former think that those decisions will radically change the way women are regarded in the Igbo society, while the latter fear that they have the potential to cause upheavals in families and adversely affect family relationships.

⁷² S Nwakanma, 'Abia Women get Right to Inherit Parents' Property' <<http://www.punchng.com/abia-women-get-right-to-inherit-parents/>> accessed 9 April 2024.

⁷³ A Okonkwo, 'How Abel Sisters won Family Inheritance Case' <<http://www.tribuneonlineng.com/how-abel-sisters-won-family-inheritance-case>> assessed 10 April 2024.

⁷⁴ *Ibid.*

⁷⁵ T Okafor, 'Female Inheritance; Supreme Court, Igbo Culture in Head-on Collision' <<http://www.punchng.com/female-inheritance-supreme-court-igbo-culture-in-head-on-collision/>> accessed 12 April 2024.

But beyond the consequences of those decisions for family relations among the Igbo, there is the challenge of die-hard custom. History shows that certain customs become so entrenched among the people that not even judicial decisions and legislation could abrogate them in communities where they apply. This brings us to the question whether innovations in the law, whether by way of judicial dynamism or by way of legislation, would bring an end to the second-class citizenship foisted on women under Igbo native law and custom as regards inheritance. In other words, to what extent have these developments in the law inhibited discriminatory inheritance practices among the Igbo?

These legal developments, especially the decision of the Supreme Court in the *Ukeje* case, have already received protestations from individuals, especially traditional rulers who think that such changes in the law cannot have significant impacts on the age-long custom. For example, a prominent Igbo traditional ruler, Igwe Simeon Osisi Itodo, has maintained that the decision of the Supreme Court in the *Ukeje* case will never displace the Igbo custom that disinherits women in the distribution of family property.⁷⁶ According to the traditional ruler, any attempt to implement the decision in Igboland would provoke chaos and skirmishes in Igbo communities. Insisting further on the difficulty of enforcing the decision in Igbo communities, the traditional ruler asserted:

There are traditions which had existed before law. Before the emergence of law courts, Igbos had their traditions and customs which cannot be wiped out because of the Supreme Court ruling. There are so many things we have in common which cannot be stopped because of [a] court verdict. We are not against the ruling but we would not abolish our customs and traditions which all of us met. You can imagine a married woman coming back to her father to share his property with the sons. We would not allow it because it would breed chaos and troubles in our communities. ... In India, women pay the dowry but the reverse is the case here. We would not abolish our unique custom because of [a] court ruling.

Also responding to the decision of the Supreme Court in the *Ukeje* case, Okene-Ogene, Anambra State Chairman of the apex Igbo socio-cultural

⁷⁶ See A Okoli and Others, 'Supreme Court's Decision on Female Inheritance Divides Igbo' <<http://www.vanguardngr.com/2020/08/supreme-court-decision-divide-on-female-inheritance-divides-igbo>> accessed 9 April 2024.

organisation, Ohaneze Ndigbo, stated that the Supreme Court judgement would be difficult to implement in Igboland.⁷⁷ For him, it is unthinkable that in Igboland, a female child who would marry and leave the family would inherit ancestral land which would then become, not just her property, but that of her husband. He argues that since, in Igboland, daughters are gifted properties by their fathers when they are marrying, the fact that they do not inherit property upon his demise should not be an issue. Thinking along the same line, Igwe Chijioke Nwankwo, traditional ruler of Nawfia and Umunri in Anambra State of Nigeria opined that any law that seeks to enable women to inherit land in Igboland would be difficult to enforce.⁷⁸ This, according to the traditional ruler, is because, in Igboland, land belongs to the dead, the living and members of the family yet unborn. If given to a daughter, upon marriage the parcel of land leaves the family and may enter into the hands of persons through whom it may be lost to the family forever.⁷⁹

It is pertinent to observe that, even some women in Igboland, in whose favour these legal changes were introduced through legislation and court decisions, do not think that Igbo native law and custom under which women are prevented from inhering properties in their maiden families should be interfered with. For example, Ngozika Iheagwam, an Igbo housewife, has protested that the Supreme Court has no business interfering with the custom of female disinheritance in Igboland.⁸⁰ It is her view that the decision of the apex court in the *Ukeje* case is bound to cause chaos in many Igbo communities. She insists that once married, daughters should not seek to share family properties with their brothers but rather make do with what they have in their matrimonial homes.⁸¹

Despite judicial decisions to the contrary, and despite legislative interventions, this study has shown that the custom by which women are disinherited in the distribution of family property among the Igbo has persisted rather than abated. Little or notice has been taken of the judicial decisions abolishing the custom or the laws enacted in Rivers and Abia States as life has continued as usual in localities where the custom of female disinheritance is entrenched. This is, no doubt, a clear case of custom dying hard and can be analogised to other customs of the Igbo people of Nigeria that have proved over the years that die-hard customs do survive

⁷⁷ Okafor (n 75).

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

innovations in the law.

In 1956, in response to the discriminatory *osu* caste system in Igboland whereby people are stratified into the *Diala* (freeborn) and the *osu* (outcast), the then Eastern Region of Nigeria House Assembly had enacted the Abolition of *Osu* System Law, 1956.⁸² The law declared everyone who was previously an *Osu*, including children born to them, free. It also made it an offence punishable by law to refer to or treat anyone as an *Osu*.⁸³ Despite this important piece of legislation, the *osu* system has continued to be practised in Igboland till today. Members of the community grouped as *osu* have continued to undergo discrimination in marriage, association, interaction, business, etc. Neither the 1956 law nor constitutional guarantees under successive Nigerian constitutions have been able to abolish the system. Mgbada observed the persistence of the caste system among the Igbo when he wrote that:

It appears to have become the norm to be judicially noticed even in courts of law, for there is no level of consciousness and radical approach that has not been tried to eradicate the social dichotomy to no avail. In maximum secrecy every Igbo clan maintains a clear distinction between the freeborn and the *osu*.

In the same 1956, the same Eastern Region of Nigeria House of Assembly enacted the Limitation of Dowry Law, 1956.⁸⁴ The law sought to place a ceiling on the amount of bride price payable to the bride's family in order to conclude the marriage contract under Igbo native law and custom. This was in response to the increasing amounts being demanded as bride price at the time.⁸⁵ Like the Abolition of *Osu* System Law, the Limitation of Dowry Law proved impossible to enforce in Igboland. The entrenched customary law freedom of the Igbo to set the quantum of pride price payable to the bride's family ensured that the law was not efficacious.

The opposition already ranged against the legal steps taken to eradicate female disinheritance among the Igbo and the failure of efforts made in the past to eradicate the *osu* caste system and regulate bride price indicate that it may require more than legislation and judicial decisions to really abolish

⁸² No. 13 of 1963.

⁸³ OT Abia, NS Amalu and CK Ariche, 'Osu Caste System and Human Rights in Igboland' (2021) 20 *Global Journal of Social Sciences*, 75.

⁸⁴ No. 23 of 1963, now Cap 76, Laws of Eastern Nigeria, 1963.

⁸⁵ H Boparai, 'The Customary and Statutory Law of Marriage in Nigeria' (1982) 46 *The Rabel Journal of Comparative and International Private Law*, 537.

female disinheritance. The opposition to and failure of these legal efforts to eradicate these customs seems to lend credence to the view that, the people subject to a particular custom and not the courts can validate or invalidate that custom.⁸⁶ They tend to show that the true abolition of those customs will be actualised by endogenous rather than exogenous factors.

Conclusion/Recommendations

The Igbo custom that denies women the right to inherit family property does not only violate the constitutional provisions that prohibit discrimination, it also dehumanises women and reduces them to the unfortunate status of second-class citizenry. It offends all decent norms as applicable in a civilised society aspiring to equality of sexes.⁸⁷ Women's access to and realisation of their potential are hampered when they, as singles, married women, or widows, are denied property rights. It is, therefore, morally appropriate to grant women the full rights to inherit in order to improve their socio-cultural, political, and economic status in their communities.⁸⁸

It is pertinent to state that this discriminatory custom has damaging effects on women which include perpetual impoverishment, lack of self-esteem, prostitution, involvement in social vices, as well as psychological and health challenges. It must, however, be stated that all hope is not lost in the fight against female disinheritance in Igboland considering the fact that there are a good number of steps that may be taken to emancipate women from the shackles of the unjust practice. There is an urgent need for reforms geared towards tackling this obnoxious, discriminatory cultural practice in Igbo societies. It is our view that the prescriptions made below would go a long way in eradicating the custom in Igboland and ensuring justice between men and women in succession to family property.

There is a pressing need to carry out extensive public enlightenment in Igboland, especially in the rural communities, on the evil of discriminating against women in the distribution of family property. Government at all levels, religious bodies and Non-Governmental Organisations (NGOs) must collaborate in this regard to ensure a re-orientation of the people. This

⁸⁶ See AO Enabulele and B Bazuaye, 'Validity and Enforceability of Customary Law in Nigeria: Towards a Correct Delimitation of the Province of the Courts' (2019) 63(1) *Journal of African Law*, 1.

⁸⁷ *Uke v Iro* (2007) 11 NWLR (Pt. 723) 196 at 203.

⁸⁸ KM Adekile, 'Property Rights of Women in Nigeria as Impediment to Full Realisation of Economic and Social Rights' <https://www.researchgate.net/publication/228275686_Property_Rights_of_Women_in_Nigeria_as_Impediment_to_Full_Realisation_of_Economic_and_Social_Rights> accessed 3 March 2024.

becomes imperative in view of the fact that court decisions and statutory law have not achieved much in the quest to arrest the obnoxious Igbo custom. Massive public enlightenment will increase awareness, not just in women to assert their rights, but also in men as to the unfairness of relegating women to the status of second-class citizens when it comes to property rights.

Female education and empowerment in Igboland have become necessary in order for women to develop the capacities needed to be able to assert their rights and challenge discriminatory acts against them. Education and empowerment of women will encourage them to participate in the political process, hold political offices and be in positions where they could influence law and policy. The more the number of educated and enlightened women in Igbo communities, the more the chances of challenging customs that discriminate against women in those communities.

Other Southeastern states should, as a matter of necessity, enact their respective state laws criminalising the disinheritance of women in succession to family property. Such law should make inheritance in the family a right of female children and widows which they alone could waive. Since, as shown above, legislation is not enough for the purpose of addressing the challenges posed by such an obnoxious, die-hard custom as female disinheritance, more attention should be paid by government to implementation. Legislation should not only vest the right to inherit family property on women, but must also provide for an effective mechanism for enforcing the right in communities. Such legislation could create bureaus in Local Government Councils the responsibility of which would be to ensure compliance in communities. Such laws should also impose stiff penalties against persons involved in this obnoxious practice and those that aid and abet it.

Considering that traditional and religious institutions play a vital role in the sustenance, preservation and enforcement of customs, there is a need to sensitise and conscientize them on the injustices and social problems that female disinheritance produces in their communities. Since they are closer to the people and wield considerable influence over them than government, they are in a better position to conscientize their people on the need to bring the discriminatory custom to an end. This being the reality, State and Local Governments should work closely with these institutions, providing them with the support needed to successfully eradicate the practice in communities in Igboland. Until traditional rulers to whom the people look up to for guidance in matters relating to custom appreciate the evil inherent

in the dichotomy between male and female children in the inheritance of family property and denounce the dichotomy, much cannot be achieved in the quest to eradicate the custom.

There is also the need to initiate orientation and reorientation programs on the obnoxious nature of female disinheritance and the need to embrace universality of human rights. Regular meetings should be organised by Governments, NGOs and religious bodies with rural dwellers to discuss the dangers inherent in the practice of female disinheritance. Individuals who are aware of their right to inherit will be more inclined to pursue legal action in the event that their rights are violated.⁸⁹ For a smooth implementation of this, Federal and State Governments, NGOs, legal practitioners, journalists, educationists, professionals, etc, must be actively involved. Radio and television programmes geared towards discouraging female disinheritance should be regularly aired. In view of the critical role that the social media plays in the dissemination of knowledge and information, social media platforms should be widely used to disseminate the evil of female disinheritance, its consequences, the position of the law, and the sanctions prescribed for disobedience.

⁸⁹ A Ajayi, 'Disinheritance: Widows in Igboland battle against Culture that Men love to Preserve (Pt. 2) <<https://www.icirnigeria.org/disinheritance-widows-in-igboland-battle-against-culture-that-men-love-to-preserve-part-2/>> accessed 13 March 2024.