

A Legal Appraisal of Property Rights of Women in Nigeria

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Abstract

Property whether tangible or intangible, moveable or immovable is the foundation for social, economic and political prestige. It is one of the most durable capital asset an individual can own. The right to hold and own property is an inherent right which every human possesses by virtue of being members of the human family. In Nigeria, property rights have been recognized, guaranteed and protected by a plethora of international, regional as well as national laws. However in most communities within Nigeria, women are not eligible to own properties, they still suffer serious infringements of their rights to own property, particularly, due to the patriarchal nature of the society. This paper seeks to discuss the impediments/restrictions to the actualization of women's property rights. The paper examines the relevant laws and their effectiveness. The paper recommends strategies that will ameliorate this issue and ensure the realization of property rights of women in Nigeria.

Keywords: *Legal, Appraisal, Property, Rights, Women*

1. Introduction

Most societies in the world are patriarchal, with the men determining the socio-political structure, thereby exercising control over women in almost all spheres of human endeavor: The recognition of women as equals to their male counterpart has continued to generate mixed feelings over the years. After decades of agitation, the world now recognizes women's rights as human rights, although gender bias still persists in most areas in the society. The emergence of gender specific legislation has not completely solved the problem. Women still suffer serious infringements particularly in relation to their property rights. One of the

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factors that has contributed to this inhibition is the patriarchal nature of the Nigerian society and the dominant role custom plays in accentuating discrimination against women. This explains why most of the laws in Nigeria are fashioned in favour of the men irrespective of the constitutional provision¹ that prohibits any form of discrimination coupled with the age-long practice of relegating women property rights to the background within the Nigerian society through the instrumentality of customary law and practice.

The right to own property is one of the rights accruable to every individual by virtue of Article 17 (1) and (2) of the Universal Declaration of Human Rights, 1948 which provides that “everyone has a right to own property alone as well as in association with others and no one shall be arbitrarily deprived of his property”. The constitution of Nigeria in section 43 further provides that “subject to the provisions of this constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria”. By virtue of these provisions, citizens irrespective of sex have a right to own property but in reality the situation appears different as women still grapple with the challenges of property rights. This ought not to be, considering the fact that the law already recognizes the rights of all citizens irrespective of sex.² This paper therefore seeks to examine critically the challenges women face in the actualization of property rights and to proffer possible suggestions for reforms.

2. Conceptual Clarification

To put this paper in proper perspective, some terms key to the discourse must be carefully outlined and clarified. An attempt will be made in this segment to define terms such as property, rights, human rights and property rights.

a. Property

The word “property” was defined by the Supreme Court in *R. O. Nkwucha v. Governor of Anambra State*³ to mean:

Ownership or title or sometimes the res over which ownership may be exercised. The land comprised in the territory of each state of the Federation is the res over which the Military Governor exercised ownership in trust. It is an immovable

¹ Section 42, Constitution of the Federal Republic of Nigeria 1999, (as amended)

² M. O. Izzi, “Repositioning the Girl – Child in Contemporary Nigeria: The Human Rights Perspective” (2005) 3 *Benin Journal of Public Law* p. 55.

³ (1984) 6 S. C. 362 @ 374.

property. It therefore comes within the meaning of property under Sec. 276(1) of the Constitution.

Property is simply defined as real estate which is made up of lands and houses⁴. According to the Black's Law Dictionary, property is the right to possess, use and enjoy a determinate thing (either a tract of land or chattel)⁵. It has also been defined as any item a person or a business has legal title over, affording owners certain enforceable rights over the said items⁶. Property may therefore be said to include goods that are tangible or intangible and are capable of being owned by an individual, group of persons or any other legal entity and to which they can exercise proprietary rights of alienation.

b. Right

The word “right” means moral, just or what the law supports or approves.⁷ It is an instrument used for the protection and advantage of an individual or group. Black's Law Dictionary defines right “as that which is proper under the law, morality or ethics”.⁸ A right is a claim which is justified, recognized and protected by law, any violation of it becomes unlawful. In *Ransome – Kuti v. Attorney – General of the Federation*⁹ a right was defined:

as that which stands above the ordinary laws of the land and which is in fact antecedent to the political society itself. It is a primary condition to a civilized existence and what has been done by our constitution since independence is to have these rights enshrined in the constitution so that the right could be immutable to the extent of the immutability of the constitution itself.

A right is a legal, social or ethical principle of freedom and entitlement, it is the fundamental normative rules that enables citizens to function in certain capacity under the protection of the law.

⁴The New Webster Dictionary of the English language lexicon Publications (1993) 801.

⁵B. A. Garner, Black's Law Dictionary 7th Edition

⁶www.investopedia.com/terms accessed 10th March 2022.

⁷M. Ikhariale 'The Jurisprudence of Human Rights' (1995) 5 *Journal of Human rights Law and Practice*.

⁸B. A. Garner, Black's Law Dictionary 9th Edition

⁹(1975) 2 NWLR (pt 6) 211.

c. Human Rights

Human Rights denote a broad range of rights, involving all the elementary preconditions for a dignified human existence. It is a representation of the legal expression of life, there cannot be an existence of human right without human life.¹⁰ Human rights indicate both their nature and sources as rights that one has simply by being human. They are those rights which are inherent in our state of nature and without which we cannot live as human beings.¹¹ Human rights may therefore be defined as those rights which are inherent to human nature and without which it is difficult to function as human beings.

d. Women Rights

Women's rights have been subject of controversy considering the peculiar nature and needs of women until recently, women's rights were subsumed under human rights. It may be defined as the rights of women to be treated equally in all areas of society.¹² According to Izzi and Fab-Eme,¹³ they are the rights claimed for women worldwide based on her peculiarities and needs.

e. Property Rights of Woman

Property rights of women may be defined as the right of women to own, acquire, manage, enjoy, administer and to dispose off their property, whether tangible or otherwise, moveable or immovable. It is the entirety of rights and entitlements arising from land, housing and property.¹⁴

3. An Overview of Land Ownership in Nigeria

From ancient history, land has always been one of the priceless commodities in Nigeria and its value has continued to appreciate. Land remains so valuable to individuals/communities and it is for this reason that most of our existence/activities are tied to land and its ownership.¹⁵ The concept of land under customary law has always generated controversy but it is imperative to discuss briefly land ownership and the capacity to own land in order to properly situate the property rights of women in Nigeria.

¹⁰ O. W. Igwe. Preliminary Studies in Human Rights Law (Lagos: Rings and Revolt Ltd, 2002) 1

¹¹ M. K. Pramod. *Human Rights: Global Issues* (India: Kalpaz Publication, 2001) 4

¹² Cambridge Dictionary <https://dictionary.org> accessed 12 March, 2022

¹³ M. O. Izzi and C. Fab-Eme, 'Widows and Inheritance Rights in Nigeria: Beyond the Letters of the Law' (2020) 8 (3) *International Journal of Innovative legal and Political Studies* 3.

¹⁴ V. Olomojobi *Human Rights on Sex, Gender of Law in Nigeria* (Lagos: Princeton and Associates Publishing Company, 2015) 163.

¹⁵ A. G. Karibi – Whyte, 'Nigerian Common Law' in J. A. Omotola, University of Lagos, Faculty of Law Silver Jubilee Lecturers (Ado Press Ltd, Lagos 1989) 27 @ 40 Cited in J. F. Fekumo, *Principles of Nigerian Customary Land Law* (F. & F. Pub. Nig. Ltd,

From time immemorial, land was initially acquired through the principle of first settlement whereby the first set of persons to settle on a portion of land became the owners. Land ownership in pre-colonial Nigeria was owned by communities and families in trust for all members of the community/family.¹⁶ During the colonial era, laws and regulations were initiated to regulate land ownership with the view to making land available to the colonial government. With the advent of colonial rule, pre-colonial land tenure system was eliminated and replaced by private ownership of land. Land began to be dealt with more liberally with individuals/groups having the leverage to sell, lease or mortgage land. The Land Use Act, 1978 was enacted to restructure the laws initiated by the colonial government regulating land ownership, land commerce and governance. The Land Use Act, through the application of uniform statutory regulation of ownership and control of land rights stimulates easier access to land for greater economic development.¹⁷ The Land Use Act was enacted primarily to redirect general philosophies of pre-existing land tenure system in Nigeria.

4. Property Rights of Woman in Nigeria: Historical Background

The position of women during the pre-colonial era was that of subjugation and subordination. The traditional Nigeria society was patriarchal in nature excluding the women from decision making process. The primary duty of women was basically restricted to child bearing and domestic chores. They also engaged in agricultural activities but they were not the owners of the land on which farming was done. They could only cultivate the land but could not dispose of such land as it belonged to their husbands or brothers. As Howard¹⁸ rightly observed:

In indigenous social structures in sub-Saharan Africa, women's rights and duties differed from men's and in many cases, rendered women unequal in family, lineage and the state of affairs. Such differences have been elaborated upon in the colonial and post-colonial era to create substantial legal, social, political and material inequalities between the two sexes.

¹⁶ *Amodu Tijani v Sec, Southern Nigeria* (1921) 3 NLR 24.

¹⁷ N. B. Udoekem, D. Odegwu and V. O. Onwumere, "Land Ownership in Nigeria: Historical Development, Current Issues and Future Expectation". *Journal of Environment and Earth Science* (2014) Vol. 4 No 21.

¹⁸ R. Howard, "Women's Rights in English – Speaking Sub Saharan Africa" in Welch and Meltzen *Human Right and Development in Africa* (Albany State University of New York Press (1984) p 45.

However, despite the subordinate role of women, they still had personal rights which entitled them to have access to personal property such as farmland; although they had no capacity to sell such farmland since they were not actual owners, the land belonged to their husbands or male relatives. It is important to state that the farming activities gave the women financial independence as it afforded them the opportunity to buy and sell. Women in this era were not eligible to own or inherit property whether in their birth or marital families¹⁹ instead upon the death of their husbands they become an object of inheritance.

The advent of colonialism further reinforced the subordination of women. The Europeans introduced new patriarchal systems of government that defined the social roles of women, isolating them from public political life with no financial independence. They had limited access to land and could not own property. The primary essence of the colonial government was to make land available for their own use by dismantling the existing pre-colonial land tenure system and replacing it with private land ownership system that was completely alien to the Nigerian land ownership system.

The post-colonial era witnessed constitutional developments that helped to shape the rights of women generally. After Nigeria gained independence, one common feature from the 1st to the 3rd Republics was the inclusion of fundamental human rights in the constitution. Under the Military Rule that followed, nothing significant was done in respect to women's rights. There was a turn of events with the advent of democratic rule in 1999 and the emergence of the 1999 Constitution of the Federal Republic of Nigeria. The Constitution made provision for human rights and prohibited discrimination in any form. Chapter 4 of the constitution guaranteed these rights with Section 43 stating that “every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria”. This constitutional provision forms the basis upon which property rights of women is premised.

For the purpose of this paper, the focus shall be on the rights of women to own property in Nigeria

5. Property Rights of Nigerian Women: Matters Arising

There is no statutory provision explicitly excluding women from owning real properties in Nigeria. The Land Use Act, 1978 which regulates land ownership in Nigeria clearly provides for the right of every individual irrespective of their sex, to acquire and dispose of land.

¹⁹ M. O. Izzi, “The Plight of the Girl – Child under Esan Customary law (2000) Vol. 3 *Journal of Commercial, Private and Property Law* 88 @ 90.

Section 11 of the Married Women's Property Act, 1882 also provides that under statutory marriage, women have the right to acquire, hold and dispose off property acquired before or after marriage upon divorce. In the event of a divorce, Section 72 of the Matrimonial Causes Act²⁰ provides for the settlement of property to which the parties are or either of them is entitled as the Court considers just and equitable in the circumstances of the case. The Courts are left with the discretion to decide what is just and fair in the interest of the spouses or their children. In Nigeria, there are few cases on settlement of property. For instance in *Patience Oghoyone v Daniel Oghoyone*²¹ the Court in its wisdom held that the claimant and the respondent had equal share in the property as well as the joint car business operated by both of them.

The tripartite system of marriage laws has adversely affected the property rights of women in Nigeria. The Constitution of the Federal Republic of Nigeria, 1999 (as amended) in Section 43 guarantees the right of every citizen of Nigeria to acquire and own immovable property in Nigeria and the Married Women's Property Act, 1882²² also gives rights to women of property acquired before or after marriage as if she were a femme sole. The Married Women's Property Act, as well as the Matrimonial Causes Act vest some property rights in women married under the Act but such rights have no effect on customary spouses. This position was reiterated by the Court of Appeal in *Nwangwa v Ubani*²³ where the court held that a woman whose marriage was dissolved under customary marriage lacked certain rights in contrast to those married under the Act.

The Marriage Act 1990 gives women married under the Act, equal rights to family assets acquired in the course of the marriage as well as those jointly acquired. They are also to be involved in their disposal during and after the marriage or upon the death of her spouse. Some Nigerian courts still deviate from ensuring equal share and distribution of property in a marriage merely because in some cases there was lack of sufficient evidence to prove that the wife had contributed financially to the acquisition of the property.²⁴ It is argued that this position taken by the courts is not equitable and against the principles of justice and fairness. The approach adopted by Justice Thrope in *Lambert v Lambert*²⁵ where the court noted that “marriage be treated as true and equal partnership” is recommended even if one spouse takes

²⁰ Cap M 7 L.F.N. 2004

²¹ (1976) FRN 78

²² Section 2(1) (2) and (3)

²³ (1997) in NWLR (pt 526) 559

²⁴ *Akinboni v Akinboni* (2002) 5 NWLR (pt 761) 564.

²⁵ (2002) <http://www.internationaldivorce.org> accessed 10th January, 2022

care of business while the other takes care of home stating further that there must be an end to the sterile assertion that the bread winner's contribution weighs heavier than the home maker. The case of *Shodipo v Shodipo*²⁶ gives an insight into the pathetic position of women where sharing of marital property comes up in divorce. For a marital property worth N10,000,000 (Ten Million Naira), the court refused to consider the wife's contributions to the 43 years old marriage and awarded her only a paltry sum of N200,000 (Two Hundred Thousand Naira). After spending most of her productive years in a marriage; the judge without taking into consideration the invisible contribution of the woman in the running of the home and her age gave her only a little fraction of the marital property unlike what is obtainable in other foreign jurisdiction where marital property is shared into two equal parts. In order to mitigate the hardship that women face after a failed marriage, it is important that the Nigerian courts borrow a leaf from other jurisdictions like United Kingdom and United States of America.

Under the Nigerian statutory law, it is quite clear that women actually have a right to own properties²⁷ but one of the factors that has continued to adversely affect the property rights of women is customary land ownership. It is a well-known fact that Nigeria due to the patriarchal nature of most communities, real properties are usually the exclusive preserve of the male members of the family or community, a practice that undermines the provision of Article 21(2) of the Maputo Protocol²⁸ which states that “women and girls shall have same rights as men and boys to inherit equal shares of their parent's properties”.

Unfortunately, in most Nigerian communities, the women have less right. Due to the discriminatory practice where customary land ownership is vested in the men, the women are usually disadvantaged and poor, with no access to funds nor land to meet their basic needs as human beings. The customary system of succession amongst most ethnic groups in Nigeria excludes woman from inheritance. Amongst the Benin and Esan people of Edo State the customary law of succession is based on the rule of primogeniture which bars females from inheriting real property.²⁹ The eldest surviving son upon the demise of his father steps into the shoes of his father and inherits the father's real property provided he performs all the customary funeral ceremonies at the burial of his father.³⁰ In the case of the Igbos, the court in

²⁶ (1990) WRN 98

²⁷ 542, Constitution of the Federal Republic of Nigeria, 1999 (as amended)

²⁸ The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003

²⁹ *Idehen v Idehen* (1991) 9 NWLR (pt 198) 352

³⁰ *Lawal Osula v Lawal Osula* (1995) 9 NWLR (pt 419) 259

*Ugboma v Ibeneme*³¹ maintained that inheritance in line with Igbo custom is the exclusive preserve of the men, Igbo women are not entitled to inherit land or real property from their father or husband.

In most communities, daughters and wives are excluded from inheritance³² except amongst the Yoruba's where daughters are allowed to inherit their fathers' property³³ but not the wives³⁴ because real property according to Yoruba custom devolves through blood.³⁵ This practice has been accepted by the courts. In *Oloko v Giwa*³⁶ the Court held that in Yoruba land, widows generally do not inherit their husband's property but they are allowed a portion of farmland and to remain in their matrimonial home. The widow under Yoruba Customary Law of inheritance only has possessive rights not exclusive rights. This practice is also found amongst the Igbos. In *Nzekwu v Nzekwu*³⁷ the Court in confirmation of that customary practice held that the woman is entitled to remain in her deceased husband's house subject of good behaviour. Her situation becomes worse if she failed to have a male child with her deceased husband,³⁸ she and her daughters are completely excluded from the property of their deceased husband and father.³⁹ Although the Courts have frowned at this practice and condemned it in very strong terms, it is still the order of the day in most communities. In *Mojekwu v Mojekwu*⁴⁰ the Court declared the *Oli-Ekpe* Custom of Nnewi, which permits the son or the brother of a deceased person to inherit his property to the exclusion of his female children is discriminatory. The practice is still prevalent contrary to the provisions of the Constitution which prohibits discrimination and Article 21 of the Maputo Protocol which states that a widow/widowers shall have the right to inherit each other's property in the event of death whatever the matrimonial regime.

The Customary Inheritance of the Ikwerres of Rivers State is not too different from what is obtainable in most parts of Nigeria, Widows are not allowed to inherit from their husband's estate. However, recently in *Ordu v Elewa*⁴¹ a window of opportunity has been made available for women to inherit in Ikwerre land. To further give credence to this paradigm

³¹ (1967) FNLR 251

³² This Customary Practice was Confirmed in *Salami v Salami* (1924)5 NLR 43 where the Court held that the Plaintiff had a right to inherit her father's estate along with her two brothers.

³³ (1939) 15 NLR 31

³⁴ *Folani v Cole* (198) 4 SCMJ 13

³⁵ *Sogunro – Davies v Sogunro Davies* (1929) 2 NLR 79

³⁶ (1939) 15 NLR 31

³⁷ (n.31)

³⁸ *Anekwe v Nweke* (2014) 9 NWLR (pt 1412) 393

³⁹ (1997) 7 NWLR (pt 883) 196.

⁴⁰ (2018) 17 NWLR (pt 1649) 514.

⁴¹ *Yimusa v Adesobokan* (1971) All NLR 226.

shift, the Rivers State House of Assembly enacted the Rivers State Prohibition of the Curtailment of the Rights of Women to Share in Family Property Law in May 2022. The law allows women to inherit family property which is in line with international best practices and a positive step in the realization of Women's Property Rights. A similar law had also been passed by the Cross-River State House of Assembly in 2007.⁴² The Law known as the Cross-River State Female Persons Inheritance Law No 10, 2007 provides for the right of a female person to own property and to inherit property notwithstanding any Native Law or Custom to the contrary. The Law also grants rights to women in polygamous marriages to be entitled to a share of their deceased husband's property; where there were two widows it was to be shared equally amongst them.

The Moslem Customary Law appears to treat women better because there is provision for widows and the female children in the family to have a share of their deceased husband/father's property but the problem is that the distribution is not equitable as the male children get twice the share of the female children in violation of the Nigeria Constitution which is the grundnorm of the country and ought to take precedence over every other law. It is argued that if law is to continue to be relevant in any society, it must be demystified and must also respond to the diversity of human experiences. Customary practice must cease to be custom as long as they are repugnant to natural justice, equity and good conscience. Nigeria must address the oppressive attitude of culture in denying women the right to enjoy their property rights. Nigeria judiciary should borrow a leaf from the Constitutional Court of South Africa⁴³ that came down strongly against practices that discriminate against women inheritance since it cannot be reconciled with the current notions of equality and human dignity as contained in the Bill of Right. It is posited that the principle of equality should be promoted based on the principles of freedom, equality and justice as provided for in the preamble of the constitution of the Federal Republic of Nigeria, 1999 (as amended). At this point, it is imperative to remind the Nigerian government of the provisions of international and regional instruments that places responsibility on state parties to put measures in place to ensure that men and women are treated fairly.

6. Conclusion

Although men and women are guaranteed equal rights by the Nigerian Constitution, in reality, women in most communities are perceived as inferior with less right and are treated

⁴² *Nonkululeko Letta Blu v Magistrate Khoyelitsha* (2005) CHR 31.

differently under the guise of culture and the value system of the society. This paper has revealed the right of women with regard to property rights which is infringed on by customary law and tradition. Despite legislative intervention by way of international legislation and domestic laws, the property rights of women in Nigeria is still trampled on as these customary practices continue to exist. The Court must be commended for positive steps to address this injustice through judicial activism although the women are yet to benefit significantly from these judicial pronouncements due to the problems of enforcement and the strong influence of culture on the society. Another problem has been the absence of a national legal/policy framework empowering women and granting them explicit right to own land in their capacity as citizens with full legal capacity as guaranteed by the African Charter on Human and People's Rights, 1981 which Nigeria ratified in 1984. Any custom that deprives women of their right to own and acquire property should be declared repugnant to natural justice, equity and good conscience as it has no relevance in the world today. Also, the provisions of the Matrimonial Causes Act on settlement of marital property in cases of dissolution of marriage should include all marriages conducted in Nigeria whether it be under statutory law or customary law.

From this discourse, it is garnered that property rights is not just an ordinary right but a nostrum for societal identity, security, freedom and equality. It is obvious that there is still a conspicuous disparity between the letters of the law and reality, as women still find it very difficult to own property in Nigeria. It is argued that this situation needs to be redressed urgently with a high level of commitment from all stakeholders. The time to act is now. Women should be conferred with rights of succession irrespective of the nature of marriage contracted. Appropriate laws must be made at the national and state levels to address property rights of women in Nigeria.

