

Succession to Property Rights in Nigeria: The Case of a Next-of-Kin

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Abstract

Globally, in one way or another, one is faced with the need for a next-of-kin to be provided for in the course of banking, hospital or healthcare, insurance and in some places of employment thereby making some persons use their spouses or their first male or female child or siblings as next of kin. Basically, this is so because of the erroneous notion that a next-of-kin upon any eventuality has succession rights and is to take over the management of the property as well as the benefit of the property of the deceased. This paper examines if a next-of-kin can actually take over the property of a deceased and the nature and extent of the rights and power of a next-of-kin in Nigeria. It is the finding of this paper that in Nigeria, succession rights to property are governed by laws such as the Administration of Estates Laws, Customary and Islamic Laws and the application of any of these laws is dependent on the type of marriage contracted by the deceased property owner. Recommendations were made on how to maintain the role, position and authority of the next-of-kin as well as making a next-of-kin, a beneficiary.

Keywords: Succession, Property, Rights, Next-of-kin, Beneficiary, Nigeria

1. Introduction

No matter the extent of property acquired, death is inevitable. However, how these acquired property are distributed upon the death of the owner is of great interest to such owners. Property is so important and strategic in human life that the right to property by way of

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succession or any other means is not toiled with. It is an interest that when it is created, it is protected, preserved and if infringed upon, becomes a subject of thorny legal activism by litigation and sometimes arbitration to determine the right to such property. One method of acquiring property rights is by way of succession.

Succession is the transmission or passing of property to persons upon the demise of the proprietor or owner of the property, that is, the process through which a person succeeds another or becomes beneficially entitled to a property or interest in the property of a deceased. Succession is most times used interchangeably with inheritance as both terms deal with the devolution and taking over of the property of the deceased owner. The passing of property via succession can be testate, that is, where a person executes a valid Will on how his or her property is to be distributed upon death. It can also be intestate which is where a person dies without leaving a valid Will. Black's Law Dictionary defined succession as the act or right of legally taking over, the acquisition of rights or property by inheritance under the laws of descent and distribution.¹

Property is anything that is owned by an individual or entity, it can be seen in diverse ways, it can be goods and services, land, stock, shares, jewelries, clothes and many more that can be possessed, owned and disposed of. Property determines one's wealth or capability and therefore there is always an interest or protection over it in life and death. It gives an individual an exclusive right to possess, use and dispose of property. It is the foundation of every right. Every claim for a right is a claim for something firstly, to hold or keep something. Property is divided into two types: real property which is an interest in land, real estate, growing plants or improvements on it and personal property which includes every other thing. A definition of property has been given as:

The right to possess, use and enjoy a determinate thing (either a tract of land or a chattel); the right of ownership... Also termed a bundle of rights; any external thing which the rights of possession, use and enjoyment are exercised...In the widest sense, property includes all of a person's legal rights of whatever description. A man's property is all that he is in law...²

¹ B A Garner, *Black's Law Dictionary*, (9th edn West Publishing Co. 2009) 1569

² *Ibid*, 1335-6

Right is any claim that is justified to be made, anything that is proper or due a person. Property rights are the rights to own or possess something and be able to dispose of it. It gives the owner or right holder the ability to do with the property whatever he wishes to do. Property rights include the right to use property, earn income from it, transfer, alter, abandon or destroy it and enforcement of these rights.

Property rights in Nigeria are protected under the Constitution of the Federal Republic of Nigeria, 1999 (as amended)³ where it provided in Section 43 as follows:

Subject to the provisions of the Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.

It is for this reason that some persons use their spouses or their first male or female child or siblings as next-of-kin basically with the notion that a next-of-kin upon any eventuality is to take over the management of the property as well as the benefit of the property. This belief has led many to dispense with executing valid Wills. A next-of-kin is a person or persons most closely related to a descendant by blood or affinity.⁴ A person's next-of-kin is his closest living relative who will serve as first contact in the event of emergencies or eventualities. A next of kin is empowered to make decisions for the person in times of need or where the person is not readily available or unable to make personal decisions. In the case of *Emsley v Young*,⁵ Knox C. J held that “it is not and I think cannot be disputed that the primary meaning of the expression, next-of-kin used *simpliciter* in a Will is the nearest blood relations of the Testator at the date of his death.” Next-of-kin is one word that has been subjected to diverse meanings and implications. For some, they believe though erroneously that a next-of-kin is one entitled automatically or qualified to inherit from a deceased person's estate and it is for this reason that most persons appoint or name their wives or first son or daughter or any other beloved one as their next-of-kin.⁶ In the case of *Joseph v Famjemalehin & Anor*,⁷ the Court held that a next-of-kin is one's nearest relative. It held as follows:

³ CFRN 1999 (as amended)

⁴ Garner (n1) 1142

⁵ (1835) 2 My & K, 780, 299 at 300

⁶ A Olanrewaju-Kadiri, 'Nigeria: Can a Next of Kin Automatically Benefit from an Estate Under the Law of Succession', accessed 16th June, 2022; C O Urama, 'Next-o- Kin: Is the Person Truly Next to the Deceased Property' <www.BarristerNG.Com> accessed 16th June, 2022

⁷ (2012) LPEL-9849

Let it be placed on record that the term, next-of-kin can be used in three senses. Firstly, it can be used to simply refer to the nearest blood relative or the person who is to be notified in case of any eventualities of life, such as accident, emergency or death. Secondly, he may be required to make medical decisions such as providing info or consent for the person who is incapacitated or thirdly, the term can be used to refer to an heir.

Those entitled to inherit a deceased person's estate do not automatically include a next-of-kin⁸ although where such next-of-kin has been expressly named as a beneficiary by a testator under an instrument of a document, the next-of-kin has a right to inherit on that basis. However, in the case of *Edem v Etubom*,⁹ a beneficiary was described as one who should benefit from a Will and to be qualified as a beneficiary in a Will or Codicil, the name of a beneficiary must be clearly spelt out. Black's Law Dictionary¹⁰ described a beneficiary as one designated to receive benefit or advantage as a result of a legal arrangement or instrument. A beneficiary is one set to inherit something such as money, possession, real property, stock and shares. Therefore, to be entitled to rights of inheritance, a beneficiary must be specifically expressed to be entitled in an Act, document or legal instrument under the authority of the owner.¹¹ This paper, therefore, examines if a next-of-kin actually takes over the property of a deceased and the nature and extent of the rights and power of a next-of-kin in Nigeria.

2. The Position of the Next-of-Kin With Respect to Succession to Property Under the Nigerian Legal Regime

In Nigeria, succession rights to property or inheritance of property of a deceased person by others are governed by laws. The different systems of laws that regulate succession or inheritance to property in Nigeria are the English Common Law, Local Legislation, Customary and Islamic Laws. The applicability of the appropriate law is tasking. However, the form of marriage contracted when the deceased was alive, plays a major role in determining the applicable law over property rights upon his demise.¹² The concern of this

⁸ *Ibid*

⁹ (2016) LPELR-41252

¹⁰ Garner (n1) 109

¹¹ Olanrewaju-Kadiri (n6)

¹² S O Umehet *al'*Female Succession Rights Under Native Laws and Customs of Nigerian Societies: An Affront to Justice' [2021] (7) *MUNFLJ*, 86

paper is with respect to property rights of a next of kin under Nigerian laws. What is the position of the next-of-kin with respect to being entitled to property rights under the Nigerian Law upon the demise of the person who named or appointed him? This is viewed from two perspectives;

- (a) where the person died living a Valid Will (Testate Succession) and
- (b) where the person dies without leaving a Valid Will (Intestate Succession).

(a) Where the Person Died Leaving a Valid Will (Testate Succession)

Testate succession is where a deceased person in his or her life time exercised the right of determining who succeeds his property upon his demise through a will medium. This type of succession is also known as testate succession and the maker of the Will is known as the Testator. Section 1 of the Wills Act, 1837 is to the effect that:

It shall be lawful for every person to devise, bequeath, all property, or dispose of, by his will, executed in manner hereinafter required, all real estate and shall be entitled to, either at law or in equity, at the time of his death...

Any person, literate or not that is above eighteen years is qualified to make a will subject to the Wills (Soldiers and Sailors) Act 1918 which allows those in military service or are sailors but under eighteen years to make wills. However, there are statutory requirements to be met for a will to be valid. Section 9 of the Wills Act, 1837 states as follows:

No Will shall be valid unless it shall be in writing and executed in manner hereinafter mentioned; (that is to say,) it shall be signed at the foot or end thereof by the Testator or by some other person in his presence and by his direction; and such signature shall be made or acknowledged by the Testator in the presence of two or more witnesses present at the same time, and such witnesses shall attest and shall subscribe the Will in the presence of the Testator, but no form of attestation shall be necessary.

Where a valid Will is made, property rights are easy to discern as the Testator must

have made declarations in the Will as to who his beneficiaries and executors are.¹³ A next-of-kin can only be a beneficiary if he is so expressly stated by the Testator in the said Will. Therefore, the right to benefit from an estate of a testator by a next of kin is not automatic.¹⁴ The right to succession to property is in accordance with the Testator's declarations in the Will.

(b) Where the Person Died Without Leaving a Valid Will (Intestate Succession)

Where a person died without making a valid Will as to the disposition of his property, his estate Will fall into Intestacy and the person is known as deceased intestate. The property of the deceased shall devolve on his successors based on the applicable Intestate Succession Rules. In the case of Intestacy, that is, where the person dies without a valid Will, for the sake of distribution of property upon death, a named next-of-kin is not automatically conferred with inheritance rights over the deceased property.¹⁵ Intestate distribution of property is regulated by law, the Administration of Estates Laws of the various States.¹⁶ It is also subject to the contraction of marriage under the Marriage Act.¹⁷ The courts take into recognition the nature of the marriage contracted by the deceased before the demise.¹⁸ Where a person subject to Customary Law Contracts a marriage under the Marriage Act, there is a presumption that the Marriage Act determines succession rights.¹⁹ Section 49 (5) of Administration of Estates Law of Lagos State provides:

Where any person who is subject to customary law contracts a marriage in accordance with the provisions of the Marriage Act and such person dies intestate after the commencement of this Law, leaving a widow or husband or any issue of such marriage, any property of which the said intestate might have disposed by Will shall be distributed in accordance with the provisions of this Law, any customary law to the contrary notwithstanding.

¹³ Umeh (n12)

¹⁴ *Ibid*

¹⁵ *Ibid*

¹⁶ Administration of Estates Law Cap 1 Laws of Western Region 1959; S 49(5) Administration of Estates Law of Lagos State, Laws of Lagos State 2003

¹⁷ Marriage Act, 1914 (MA), Cap M6 Laws of the Federation of Nigeria 2011

¹⁸ Urama (n6)

¹⁹ Olanrewaju-Kadiri (n6)

Customary Law will be inapplicable and the deceased estate will be distributed in accordance with the applicable Administration of Estates Law²⁰ or the English Law and not on the basis of who is the deceased's next-of-kin.

Under the English Law and the Administration of Estates Laws of the different States,²¹ the right to inherit property of the deceased is based on the following hierarchy:

- a. The surviving spouse of the deceased
- b. Children of the deceased
- c. Parents of the deceased
- d. Brothers and sisters of the deceased of full blood and their surviving children
- e. Brothers and sisters of the deceased of half-blood and their surviving children
- f. Grandparents of the deceased
- g. Uncles and aunties of the deceased
- h. Creditors of the deceased.

The beneficiaries first considered are surviving spouse of the deceased and their children.²² They have the right to inherit the estate of the deceased to the exclusion of every other person.²³ The surviving children include children born out of wedlock based on the provisions of Section 42 (2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)²⁴ which prohibits discrimination based on the circumstances of one's birth, gender or religion.²⁵

3. Customary Laws as it Applies to Succession Among Various Groups

Customary Laws and Practices backed with sanctions are the rules and regulations in the customary or communal setting. It is not easy to define customary law or practice due to variances in cultures and practices. Customary Law was however defined as:

The organic or living law of an indigenous people of Nigeria regulating their lives and transactions. It is organic, in that it is not static. It is regulatory in that it controls the lives and

²⁰ *Obusez v Obusez*(2007) 10 NWLR (Pt 1043) 430

²¹ (n16)

²² *Olanrewaju-Kadiri* (n6)

²³ *Salubi v Nwariaku* (2003) 7 NWLR(Pt819) 452; *Williams v Ogundipe*(2006) 11 NWLR (Pt990) 157

²⁴ (n3)

²⁵ *Duru v Duru* (2016) LPELR-40444; *Ukeje v Ukeje*(2014)11 NWLR (Pt 1418) 384; *Anekwe v Anekwe*(2015) LPELR-25530

*transactions of the community subject to it. It is said that custom is a mirror of the culture of the people...*²⁶

In the case of *Eshugbayi Eleko v The Government of Nigeria*,²⁷ Customary Law was referred to as unwritten customs and traditions, which have been accepted as obligatory by members of a community.

Customary Law in Nigeria is not settled as it is diverse and varies from place to place. By section 18 (3) of the Evidence Act,²⁸ its admissibility, enforceability and applicability by a Court is dependent on that particular customary law satisfying the validity tests of:

1. Not being repugnant to natural justice, equity and good conscience.
2. The customary Law must not be incompatible either directly or by implication with any law for the time being in force.
3. The customary Law must not be contrary to public policy.

Succession can be patrilineal or matrilineal under Nigerian customary law. However, customary rights of succession are predominantly patrilineal. Patrilineal succession is succession through the father's lineage as practiced by the Yoruba's whereas matrilineal is through the mother's lineage as seen amongst the people of Ohafia, Abiriba and Afikpo of Eastern Nigeria.

In the case of marriage contracted under Customary Law, the deceased's customary law will determine how the property will be distributed.²⁹ The customary law of the locality where the property is situated does not apply to succession rights of the property of the deceased. The deceased is at liberty during his lifetime to change to another customary law. Hence, it is the deceased's personal customary law that governs succession rights to his property. It will be apposite to discuss some of these customary laws of succession below.

i. Yoruba Customary Law of Succession

The Yoruba Customary Law on Succession has been found to be non-discriminatory as it favours a certain degree of equality between male and female children.³⁰ It was observed by the Supreme Court in the case of *Okelola v Adeleke*,³¹ that:

²⁶ *Oyewunmi and Anor v Owoade* (1990) 3 NWLR (Pt 196) 182 @ 207 per Obaseki JSC

²⁷ (1931) AC 662

²⁸ Evidence Act, 2011

²⁹ Umeh (n12) 86

³⁰ O. O. Olomola, *Family Law and Succession in Nigeria* (Princeton and Associates Publishing Co. Ltd. 2021) 357

³¹ (2004) 13 NWLR (Pt 890) 307

Where a person dies intestate, leaving children surviving him, in accordance with Yoruba Customary Law, all his real property devolved on his surviving children to the exclusion of other blood relations.

In the case of **David v Rahman-Davies**³² the Court of Appeal reaffirmed the custom vehemently when it stated thus:

...the parties who are of Yoruba extraction were on common ground that when a Yoruba person dies intestate, title to his property devolves on all his surviving children in equal shares and the eldest son (Dawodu) assumes the position of the head of family and manager of the estate for and on behalf of other siblings.

All the children of the deceased intestate are entitled to succeed to the estate of the deceased irrespective of age or gender.³³ Where the deceased did not have children, then, his relations take over succession rights over the deceased property. It is to be mentioned here that succession to a deceased property under Yoruba custom follows blood, therefore, a widow cannot have succession rights to her deceased husband's property.³⁴

However, there are two methods of sharing the property of a deceased under this custom. There is the *Idi-igi*, which is the sharing of the property of the deceased among his children per stripe, that is, distribution according to the number of wives the deceased had. Next is the *Ori-ojo* which is the sharing of the property of the deceased among his children per capita. Here, there is distribution of property among the children of the deceased equally. This method of sharing has been said to be used usually in monogamous families where the deceased has just one wife or in polygamous families where the deceased has enough property to go round the children of all his wives.³⁵

ii. Edo State Customary Law of Succession

In Edo State, especially amongst the Binis, it is the practice of primogeniture which

³² (2018) LPELR-46557

³³ *Salami v Salami* [1957] WNLR 10

³⁴ *Ogunbowale v Layiwola* (1975) 3 CCHCJ/HC 327OF 1PTH March, 1975

³⁵ Motun911, Yoruba Law of Succession <<https://motun911.wordpress.com>> accessed 27th April, 2022

is the inheritance of land by the first born son.³⁶ This is however based on the performance of the second burial of the deceased father by the first son consequent upon which he inherits the father's house (*igiogbe*) and lives in it to the exclusion of his other siblings. In the case of *Ovenseri v Osagiede*,³⁷ the Court held that no one including the eldest surviving son can inherit the deceased's estate until the second burial ceremony is undertaken. The eldest surviving son inherits the estate of the deceased to the exclusion of his brothers and sisters but in most cases for sanity to prevail, he holds the estate except the *igiogbe* on trust for the purpose of maintaining his brothers, sisters and other dependants.³⁸ Like the Yoruba's, the Benin Customary Law of Succession follows blood and therefore, a wife is not entitled to succeed her husband property. There are emerging modifications with respect to the *Igiogbe* Customary Law of Succession amongst the Binis to be in tandem with realities of contemporary times.³⁹

iii. Igbo Customary Law of Succession

Amongst the Igbo's in the Eastern Region of Nigeria, intestate succession is also predominantly primogeniture as the first son, Okpara/Opara, is the major channel of succession.⁴⁰ He enjoys the property of the deceased father to the exclusion of his brothers though he may grant his siblings living rights in the said house. The deceased personal staff, *ofò* other items of worship, title, and place where the deceased lived (*obi*) before his death are inherited by the eldest son.⁴¹ In a situation where the deceased had more than one wife, the eldest sons of the wives inherit jointly.⁴²

Igbo customary law has been found to be discriminatory as it favours only the male child because the female child is believed will get married and go to her husband's house. The judicial activism and interventions by the Apex Court in Nigeria through some cases such as *Anekwe v Nweke*⁴³ and *Okonkwo v Okonkwo*⁴⁴ signify a rejection of the discriminatory Igbo custom and gives the female child as well as a

³⁶ Olomola (n30)

³⁷ (1998) 11 NWLR (Pt 577) 1

³⁸ T O G Animahaun and A B Oyeneyin, *Succession, Wills and Probate in Nigeria* (MIJ Professional Publishers Limited 2002) 17

³⁹ PO Itua, 'Succession Under Benin Customary Law in Nigeria: Igiogbe Matters Arising' (3) (7) *Journal of Law and Conflict Resolution* 117

⁴⁰ Olomola (n30)

⁴¹ Animahaun and Oyeneyin (n38)

⁴² *Ibid*

⁴³ (2014) 234 LRCN 34

⁴⁴ (2014) NWLR (Pt 1435) 1854

widow succession rights to property.

Towing the position of Supreme Court, the Court of Appeal in the recent case of *Ugbene v Ugbene*⁴⁵ held that:

By the above provision of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) the custom of Egede people and of Igbos as a whole which discriminates against children of Benjamin Ugbene from inheriting their father's estate in the property in dispute on ground of sex or gender is inconsistent with Constitution apart from being repugnant to natural justice, equity and good conscience and the current public policy of this nation.

These no doubt have set the proper tone that women and men are entitled to succession rights to property in Igbo land as well as the entire Nigeria as a country.

v. Northern Customary Law of Succession

There exist different modes of succession in Northern Nigerian Customary Laws. The generally acceptable mode is the sons being first in line to succeed and next the brothers.⁴⁶ The females are excluded from inheriting a deceased man's property though they can inherit their mother's movable properties.⁴⁷ Land owned either by male or female is inherited only by males.⁴⁸ In some communities in the North, there exists the practice of *ultimo geniture* where the inheritance devolves on the youngest son.⁴⁹

In the case of marriage under Islamic laws, Islamic laws under the Quran will apply and only those entitled to the deceased property under Islamic laws will inherit, not necessarily the next-of-kin.⁵⁰ In the case of *Ajibaye v Ajibaye*,⁵¹ it was held that subject to the dictates of Islamic Law of Inheritance which does not allow a Muslim to dispose of his property anyhow as the property must be distributed strictly in

⁴⁵ (2016)LPELR 42110

⁴⁶ Animahaun and Oyeneyin (n38) 18

⁴⁷ Animahaun and Oyeneyin (n38)

⁴⁸ *Ibid*

⁴⁹ Olomola (n30)

⁵⁰ Olanrewaju-Kadiri (n6)

⁵¹ (2007) ALL FWLR (Pt 359) 1321

accordance with Islamic law after the lawful heirs have been identified. The mode of distribution is provided for in Chapter 4 verses 11 and 12 of the Quaran. In the case of *Yinusa v Adesubokan*,⁵² the Court decided that in the distribution of the estate of a deceased Muslim, the sons must get equal shares while the females have half a share each. Under Islamic law, the distribution of estate is based exclusively on *per capita* system of distribution.⁵³

According to Olomola,⁵⁴ the general rules of distribution are thus:

- a) Widows are entitled to one quarter of the estate, where there are no children or grandchildren; and one-eighth if there are. This ration for widows is fixed even where there are multiple widows.
- b) Surviving husbands inherit half the estate of deceased wives if there are no children and one quarter if there are children.
- c) One daughter inherits half of the estate and more than one daughter gets two-thirds jointly in equal shares.
- d) An only son gets the whole estate after settling existing liabilities.
- e) Where there are other children, they jointly inherit the entire estate.

Customary Law of Succession therefore imposes heirs on the deceased. A next-of-kin in that is not entitled to inheritance rights cannot inherit under a custom that does not permit a next-of-kin to inherit.⁵⁵

4. Competence of the Next-of-Kin to Maintain an Action over Estate of a Deceased Person

The institution of an action must be by a competent juristic person. With respect to a deceased estate, the competent person to maintain an action is the Trustee, Executor or Administrator of the Estate as was decided by the Court of Appeal in the case of *Union Bank v Mkena*.⁵⁶ The Court held as follows:

*It is not a fact in dispute that the Respondent, as Plaintiff before the lower court sued the Respondent/Defendant as:
“Ker Mkena (suing as next-of-kin of the late Dr. Terlumun*

⁵² Suit no SC/1970

⁵³ Olomola (n30)

⁵⁴ *Ibid*

⁵⁵ Olanrewaju-Kadiri (n6)

⁵⁶ (2019) LPELR-47197

Mkena).” Therefore, the bone of contention is whether the suit before the court was competent having been so initiated. By a long line of decided cases, it is incontrovertible that where a party purports to bring an action in respect of the estate of a deceased person, in order to be competent, such an action must be instituted by the Trustee, Executor or Administrator of Estate and no other.

Going further, a next-of-kin has no *locus standi* to bring or defend an action in a representative capacity as an administrator of a deceased's estate except he has been granted letters of administration. The right to defend or bring an action is conferred by the grant of a letter of administration. In the case of the *Estate of General Sani Abacha (Deceased) v Eke-Spiff*,⁵⁷ the Supreme Court held thus:

I go further to say that a person does not have the locus standi. Indeed, he lacks competence to bring an action in a representative capacity as an administrator of the estate of a deceased person until he has been granted the letters of administration.

The next-of-kin has no legal authority and can at best only ensure that requisite steps are taken towards obtaining letters of administration in the case of the demise of the person who named the next-of-kin.

5. Conclusion

In Nigeria, as far as succession or inheritance rights over properties are concerned, there is nothing fantastic about a next-of-kin. A next-of-kin from the above indications is not the person next to the deceased's property, when one is listed as next-of-kin, property does not automatically become theirs. Next-of-kin is one who can be reached or called upon in an emergency situation. The provisions of vital information and making of certain decisions on behalf of the one who named him is the principal function of a next-of-kin and not to inherit estate upon the demise of the deceased that named him as next-of-kin. A next-of-kin can only inherit if named as a beneficiary by the testator or falls under the class of those entitled to succession rights of the deceased under the prevailing law. The impression people have is

⁵⁷ (2009) All FWLR (Pt 471) 1

that once you are named a next-of-kin, you are automatically a beneficiary which is totally wrong. In Law of Succession and Inheritance, everything depends on the relationship between the next-of-kin and the deceased on the one hand and the wishes of the deceased as expressly stated by him or her on the other. For purposes of administration of estate, a next-of-kin is relevant to bring together relatives of the deceased to ensure compliance with relevant steps to obtain letters of administration and probate. The availability of a valid Will automatically dispense with the role of a next-of-kin as the executors of the said Will are named therein.

6. Recommendations

1. Where a next-of-kin is intended by the deceased to have property rights, it is recommended that a valid will be executed.
2. There is the need to re-orientate the Nigerian populace that the next of kin so named is not an automatic right to property.