



Plural Laws but No Laws: An Overview of the Impact of Intestate Laws on Women and Children in South-East Nigeria

Nnenna Joy Eboh¹, Vivian Madu²

Abstract: The objective of this article is to uncover the discriminatory rigors of intestate succession in South-East Nigeria. This paper finds that the legal framework of intestate succession, that is, administration of the estate of a deceased who dies without a will, is scattered. Basically, the property of a deceased who died intestate may be administered considering his or her lifestyle, marriage, or the location of the property. This means that the personal law of the intestate will come to play when determining the estate. The process of determining how the estate of an intestate should be shared is cumbersome and discriminatory especially against women. This is in addition to insufficient laws on the subject matter. Our approach is doctrinal and the lapses or lacuna uncovered will breed recommendations that will impact positively on intestacy in the South-East of Nigeria. We find that the plural legal system does not impact on the right of women and children to intestate property in the South-East of Nigeria. As a result of discriminatory inheritance practices, women and children are disadvantaged economically. They are forced to overly rely on family members for survival. This paper adds value to the call for indiscriminate succession or inheritance practices in South-East Nigeria. It further calls for the review of the laws such that women and children are given explicit rights to intestate property.

Keywords: discriminatory inheritance; female inheritance; primogeniture

¹ Senior Research Fellow, PhD, Nigerian Institute of Advanced Legal Studies (NIALS), Abuja, Nigeria, Address: Supreme Court of Nigeria Complex, Three Arms Zone Central District Abuja, Nigeria, Corresponding author: nnennaucheeboh@yahoo.com.

² Associate Professor of Law, PhD, Nigerian Institute of Advanced Legal Studies (NIALS), Akoka, Nigeria, Address: University of Lagos Campus, Akoka, Lagos State, Nigeria, E-mail: vivian1st@yahoo.com.



Copyright: © 2024 by the authors.
Open access publication under the terms and conditions of the
Creative Commons Attribution-NonCommercial (CC BY NC) license
(<https://creativecommons.org/licenses/by-nc/4.0/>)

1. Introduction

Succession is an important part of life, and the law of succession is viewed as being at the forefront of constitutional development (du Toit, 2009). In the context of this work, succession means inheritance, which denotes the transfer of property on the death of the property owner. It encompasses the right to inherit, the order in which assets are bequeathed, and the condition precedent under which one can succeed another (Kerridge, 2009). The body of legal rules that govern the devolution of property is known as the law of succession. The law governing succession in Nigeria is divided into testate and intestate successions. This paper will focus on the law of intestate succession under customary law in South-East Nigeria, also known as Igbo land. This is because the succession practices in this region typify the research problem. To understand this problem, a brief explanation of Nigeria's legal system is required. Nigeria has over 300 ethnic groups, each of which possess a vast diversity of customs, religious norms and traditions (Otite, 1990). The British introduced the English legal system into Nigeria through the creation of the colony of Lagos in 1862 (Asien, 1997). This system eventually became the dominant legal order after the amalgamation of the northern and southern protectorates of Nigeria. Currently, Nigeria's legal system comprises the Constitution, variants of the imported English law, local legislation, Islamic or Sharia law, and mostly unwritten customary law. People may choose customary law in personal issues such as marriage and inheritance. This choice and the orality of customs make judicial interpretation difficult (Nwuche, 2010). The 1999 Constitution (as amended) is the supreme law. It stipulates that legislative powers are shared between the federal and 36 state governments. Significantly, the Constitution and other state laws of succession do not expressly guarantee the property rights of females. This situation causes hardship for women and children (Nwocha, 2016). While freedom from discrimination and other rights are purported to be guaranteed by the Constitution, the language of the draftsmen depicts gender insensitivity. The use of "he," "him" and "his" to qualify the recipients of rights impacts on egalitarian views of women as beings whose property rights should not be subsumed under the rights of men in order to be legally recognised (CFRN, S 42, 35(1), 36(4), 38(1)). In this context, the language of legislative texts requires amendment to better protect the rights of women in line with international best practices. Furthermore, the absence of a defined jurisdiction for customary courts in the Constitution arguably creates difficulties for judges and lawyers. The Constitution simply establishes customary law courts and their hierarchy in the order of courts. The areas where these customary courts should have jurisdiction over are not spelt out either in the body of the

constitution or in the schedules. There are also irregular decisions of the customary courts over similar issues which indicate that customary court judges are either struggling to define what issues are within the purview of customary law or they are still caught in the practice of determining customs using the repugnancy test introduced by the British in the 19th century. Finally, intestate succession laws applicable in South-East Nigeria lack a modern approach to the regulation of intestacy. We argue that while other laws from jurisdictions such as South Africa and Kenya have moved to conform with the demands of changing social circumstances, majority of the intestate succession laws in South-East Nigeria are archaic and lacking in best practices relating to gender equality and human rights generally. Historically, in Igbo land, it was customary for the *Okpala*, *Okpara* or *Diokpa* (first male child) to inherit property on behalf of other children of the family under the male primogeniture rule. This eldest male child ensured that members of the family were catered for using the proceeds from the inherited property. This system was prevalent during the pre-industrial periods, when property, especially land, was communally owned and families lived together in close-knit settlements for purposes of defence and agriculture (Diala, 2018). However, male primogeniture in the agrarian Igbo society sought to promote communal welfare and social wellbeing by promoting the best interest of the family (Niki, 1996). Family income was produced jointly and was managed with the intent to preserve wealth within the family as well as care for family members (Dials, 2019). The custom of male primogeniture was not peculiar to Igbo land. As observed by a writer, it regulates the personal matters of numerous ethnic groups in and beyond Nigeria (Emiola, 2005). Upon the advent of colonialism and industrialization, the custom of male primogeniture lost its foundational values of care, making male descendants to inherit the property of the deceased without an accompanying duty of care to the family (Diala, 2014). This loss unfairly prejudices the rights of women, girls, and younger male children. Ultimately, the problem as identified in this paper is that the exclusion of women from inheritance under the Igbo custom of male primogeniture creates hardship for them. Despite rulings holding such practices as discriminatory, the effectiveness of judicial intervention – measured against people’s practices – leaves much lacuna in the protection of the property rights of women and children. Given the present times where property (land or building) is seen as the first and most important factor of production, disinheriting women of property hinders them from partaking in major economic activities and cripples their contribution to society building. This paper therefore aims to correct this anomaly by lending a voice to the

call for review of the existing laws to accommodate the exclusive rights of women and children to intestate property.

1.2. Purpose of the Study

The plurality of normative orders guarantees the existence of many pathways to seek redress over infringement of rights in the society. This work therefore underscores the advantages of a strengthened plural legal framework on intestate succession in relation to women and children. It calls for a gender sensitive constitution that defines the jurisdiction of customary law and makes a further call for a review of intestate succession rules in South-East Nigeria. To remedy the inadequacy of rules and make for uniformity of decisions over succession matters, the paper proposes a guideline on intestate succession for customary courts in Nigeria's South-East, drawing lessons from South Africa's Reform of Customary Law of succession and Regulation of Related Matters Act, 2009. The objective is to ensure that only succession rules that comply with basic human rights standards in international instruments are upheld.

1.3. Research Questions

The central research question of this study is: What are the limitations of statutory laws of intestate succession in South-East Nigeria and in what ways do these laws cause hardship, especially to wives and girls?

2. Literature Review

Recognising that the rules of intestate succession differ among various societies, this literature review finds that an heir who is ordinarily entitled to a deceased relative's property is subjected to the rule of succession in the jurisdiction where the deceased was a citizen, died, or owned property. Thus, in intestate situations, inheritance may not be as straight forward as it is expected to be. Okoro was succinct in observing that succession under customary law is wider because it encompasses the status and obligations the deceased person held and was subject to in the society (Okoro, 1966). So, as espoused by Diala, the status and obligations of the deceased person would be inherited by his heir, with clear implications for maintaining the surviving spouse, children, parents, siblings, and other relatives who were dependent on the deceased

during his or her lifetime (Diala, 2014). However, in Igboland, the status and obligations of the deceased, which translates to his or her property, is mostly inherited by firstborn male survivors to the exclusion of the women, girls and younger males. The adult male survivors usually appropriate the estate of the deceased on grounds that women have limited property rights under custom or tradition (Ezeilo, 1999). I agree with Ezeilo that this tradition or custom based differentiation is discriminatory against women on grounds of gender and is therefore unconstitutional (Ezeilo, 1999). In line with this notion, we further establish the right to freedom from discrimination as an absolute right over inheritance. This argument is in accordance with section 42 of the Nigerian Constitution. In probing the root cause of discriminatory inheritance, Ezeilo argues that the problem of discriminatory inheritance stems from the lack of a legal and policy framework empowering women and granting them explicit rights to land in their capacity as full citizens of Nigeria (Ezeilo, 2021). This is because the existence of plural legal systems (in this case state and customary laws) in Nigeria appear not to have aided the property rights of women and children in intestate situations. This research first establishes the general right of every citizen to inherit property in intestate situations without discrimination. This right to freedom from discrimination is a general right that should apply to all citizens of Nigeria irrespective of sex, ethnic group, etc. (Constitution, s. 42). Based on this right, the Supreme Court of Nigeria condemned the practice of disinheriting women under customary intestate succession in the case of *Ukeje v. Ukeje* (2014). The *Ukeje* case has generated a lot of opinions around the subject matter of intestate succession of women in Igboland. Diala commended the Supreme Court of Nigeria for deploying the Constitution (section 42) in arriving at the decision in *Ukeje v. Ukeje*, even though he believes the judgement merely affirmed the decision of the Court of Appeal (Diala, 2018). In an article, Oni opined that the judgments reflected the way people should live, remould obnoxious culture, and abolish primitive practices (Oni, 2014). Oni commends the judgment of the Supreme Court in the cases he reviewed, pointing out that while the preservation of culture and customs is proper, the Igbo customary law that disinherits women is obnoxious and has no legal basis. His position re-echoes the provision of section 42 of the Constitution of the Federal Republic of Nigeria, 1999. On a second look, one wonders if Oni's position is to simply state that the Igbo custom of disinheriting women has no legal backing in as much as he believes that customs should be preserved. It appears this recommendation is capable of dual interpretation, especially because the writer dwelt specifically on discriminatory customary inheritance. It would have been apt if the writer took a position against

the “obnoxious” custom. Edu expressed the need for a re-orientation of Nigerian men to respect the rights of women (Edu, 2004). He believes that men should be taught that the basis of the custom which denied property rights to women in the past is no longer sustainable in present day Nigeria. He went on to opine that if requisite measures are not put in place, mere statutory repeal and or abrogation of customary law and practice will not stop the obnoxious custom from thriving. This position appears to be apt, suggesting that a more practical approach needs to be adopted to deal with the problem of disinheriting women. Edu did not however particularly point to the necessary measures which ought to be taken to achieve success in the area. Meanwhile, Elias posited that the system of inheritance of the wife and children of the deceased man by his younger brother is a scheme of social insurance against neglect and hunger for the deceased dependents (Elias, 1953). Elias’ position gained support in the case of *Re the Estate of Agboruja* (1949), where the court held that the Igbo custom of appointing a half-brother as guardian for the deceased’s wife and children was widespread and equitable because such male relative would become a new father for the children and be responsible for their upbringing as if they were his own. Elias’ opinion may have been supported at the time he wrote, but presently, it appears archaic because women occupy top positions and take up responsibilities in a fast-changing society. The tasks of heading a family and handling the task of children’s upbringing is easy for a 21st century woman who is empowered. Onuoha called for a reformation of Nigeria’s customary laws, especially the parts that are discriminatory in nature (Onuoha, 2008). According to him, a society can be socially engineered in an effective way only if the law is fair, just, and humane. He recommended that to cushion the harsh effect of some of the customary laws and to fill the lacuna created by them, the agencies that implement the law should apply the principles of natural justice where injustice otherwise would result. Onuoha’s position captures part of what this research advocates for – a system that ensures that customs are checked but not entirely lost to such checks by the state laws. Thus, while the courts strike down obnoxious customs, it must also be seen to uphold those customs that have regard for human rights. For instance, most Igbo customs recognize and give inheritance to children born out of wedlock and who were recognized by their father before his death. This custom can be said to be line with section 42(2) takes into cognizance that no person should be discriminated against as a result of the circumstances of his birth and therefore, should be upheld by the court. Internationally, discriminatory intestate succession is impliedly condemned in the words of paragraph 5, Annex 1 of the Beijing Declaration:

“Determined to advance the goals of equality, development and peace for all women everywhere in the interest of all humanity... Recognize that the status of women has advanced in some important respects in the past decade but that progress has been uneven, inequalities between women and men have persisted and major obstacles remain, with serious consequences for the well-being of all people...”

Similarly, Article 18 of the African Charter on Human and People’s Right provides:

“The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.”

Meanwhile, to create a balance and avoid a wipe-out of customary law by state law, there have been different suggestions. Diala believes that since customary law in Nigeria emerged independently of the institution of the state, the Constitution should not ignore customary law and the manner in which its values are applied (Diala, 2017). Diala’s position is in line with that of Nwocha, who believes that deliberate and concerted steps should be taken along the path of restatement, codification and unification of customary laws in Nigeria (Nwocha, 2016). He suggests that a restatement of customary laws in a document form under the authority of government would become part of, and may be cited as a public document under Section 102(a) of the Evidence Act and such document, being a public document will attract judicial notice by the courts under Section 16(1) of the Evidence Act. These positions are apt because customary law has a wide application as the law that regulates transactions relating to marriage, inheritance and land tenure in Igbo land and Nigeria. This research aligns with Diala’s position that the failure of the Constitution (state law) to provide an enforceable right to culture weakens the status of customary law and constrains the pace of social change (Diala, 2019). This opinion is in furtherance of the earlier argument that mere establishment of customary courts and their position in the hierarchy of courts in the Constitution is insufficient. There is need for a defined status of customary law in the Constitution that will allow customs to develop as living customary law. Onwuamaegbu believes that the succession laws of Nigeria are complicated because the laws promote English laws that feature individualistic notions of property ownership as well as the customary idea of group ownership of property (Onwuamaegbu, 1966). To him, the issue is the simultaneous application of both the customary law and the English laws

(state laws) in succession matters. Onuamaebgu's position in my view is right to the extent that there is an undefined mix of both customary law and English law over succession matters. Perhaps, what the state law ought to do is to align customary laws on succession to modern realities or as du Toit opined, the infusion of common law with constitutional values such as equality and human dignity (du Toit, 2012).

3. Technical Solution (Method Used)

To facilitate an effective evaluation of the research questions, this study adopted the equality theory and analysed it in the context of non-discrimination. This approach enables a researcher to weigh the practice of female intestate inheritance with male intestate inheritance. In this context therefore, we examined the meaning of inheritance within the definition already provided by Kolajo as the devolution of title to property under the law of descent and distribution (Kolajo, 2005). Significantly, male primogeniture is the focus of most research on the customary law of succession in Nigeria. Our focus on intestate succession uncovers the interface between customary intestate succession and statutory intestate succession, the latter being likened to intestate situations where a statutory marriage exists between the deceased and a surviving spouse. However, as this research progressed, we found that even though intestacy is also observed in customary law, custom itself is subject to statutory rules of succession, as well as the formal courts in any jurisdiction. So, whether in the form of customary intestate succession or statutory intestate succession, the courts still apply the same laws. Therefore, we discussed the two terms as intestate succession.

4. Results

On the interaction of Nigeria's plural laws, Ukeje is of the opinion that the relationship between customary and English law arises from the institution of marriage and affects the rules of inheritance and succession and therefore creates problem in an intestate succession (Ukeje, 2007). As far back as 1867, the courts tried to resolve issues around which law to apply over an intestate succession matter. Accordingly, in the case of *Cole v. Cole* (1898), the appeal court reversed a decision of the native court and held that a Christian native who was married by Christian rites outside the colony and protectorate will have his succession governed by the English law of succession. This decision of the court received several criticisms. Firstly, Justice Tobi, observing the impact of marriage on inheritance and succession

rules in *Cole v. Cole*, noted that the mere fact that Mr. J. W. Cole contracted a Christian marriage was not enough reason to distribute this intestate estate under English law as there was no evidence to show that he intended not to be bound by customary law (Tobi, 1992). Okoro questions whether the Christian marriage of J. W. Cole made him to stop being an indigene of Lagos state (Okoro, 1966). According to him, a person born into a customary law remains under it until he moves partially or totally from its operation and this movement can only be made through a legal process. He adds that marriage is not a process for avoiding the customary law of intestate succession. To the extent that the court decided not to apply the marriage ordinance over the said property, we share the opinion of the writer that the pathway to the decision was erroneous. A married woman is subject to the personal laws of her husband, particularly in the case under review where Mrs. Cole got married to J. W. Cole and willingly followed him back to Lagos. Thus, there is an implied free-will submission to her husband's local laws. However, the notion that *marriage is not a process for avoiding the customary law of intestate succession* is not totally true, in our opinion. What other evidence of lifestyle would have been used by the court to determine Cole's change of personal law from customary law to English law if not his choice of being married in the English Christian way? Griffin J's decision to adopt English law in devolving the said property should have been informed by the type of marriage the deceased submitted himself to while alive and not by his being married outside the protectorate of Lagos. Accordingly, in *Olowu & others v. Olowu & Anor* (1985), the Supreme Court held that where a person previously subject to customary law, undergoes a marriage celebration either by Christian rites or according to English law or in accordance with the provision of the marriage Act, *he* is deemed to have rendered himself subject to English law for the purpose of *his* estate upon intestacy.

5. Further Research

As shown above, varying decisions of the courts show that matters of intestate succession are left at the discretion of the courts that have to rely partly on perception and partly on insufficient laws to give their rulings. This situation exposes the gap in our laws regarding intestate succession, which impacts negatively on women. Ewelukwa captures this succinctly in these words:

“Inconsistencies, contradictions, and confusion inherent in the Nigerian legal system, a product of

Nigeria's colonial past, jeopardise the position of women generally and prevent a meaningful resolution to the problem of widows..." (Ewelukwa, 2002).

Invariably, discriminatory inheritance practices are linked to the inadequacies of the Nigerian legal system because control of inheritance depends on the interplay of customary and statutory laws (Nwabueze, 2010). Therefore, concerted effort must be made to ensure that the legal system, which is the pillar that holds inheritance practices in Nigeria, is strengthened. In seeking for a strengthened legal system, we agree with Diala and Kangwa that a constitutional amendment that includes the recognition of customary law, its defined interaction with state laws, and significant provisions on matrimonial property rights and the right to culture are needed in sub-Saharan Africa (Nigeria included) (Diala & Kangwa, 2019). This is especially because there is an increasing recognition of customary law in the constitutions adopted or amended in the last twenty years. This means that older constitutions like the Nigerian Constitution will need a review in order to catch up with modern realities.

6. Implication of Study

The study highlights the challenges faced by women and children due to the coexistence of multiple legal systems—customary, religious, and statutory laws—governing inheritance. Despite statutory protections, customary laws often prevail, frequently denying women and children their rightful inheritance. This legal pluralism creates uncertainty and fosters discrimination, leading to economic hardship and social marginalization for widows and orphans. The study underscores the urgent need for legal reforms and stronger enforcement mechanisms to ensure equitable inheritance rights and protect vulnerable groups in South-East Nigeria.

7. Limitation

The limitations of this study stem from several factors, including the unavailability of comprehensive and updated legal records on intestate succession in South-East Nigeria. The pluralistic nature of the legal system—comprising customary, statutory, and religious laws—creates inconsistencies that make it difficult to establish a uniform framework for analysis. Additionally, the study relies on secondary data and qualitative insights, which may not fully capture the lived experiences of women and

children affected by intestate laws. Cultural sensitivities and reluctance to discuss inheritance disputes also pose challenges in obtaining first-hand accounts, potentially limiting the depth of empirical findings.

References

African Charter on Human and Peoples' Rights, Article 18(2), adopted June 27, 1981, entered into force October 21, 1986. Domesticated in Nigeria by the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Chapter A9 (Chapter 10 LFN 1990).

Asien, O. J. (1997). *Introduction to Nigerian Legal System*. Ibadan: Sam Bookman Publisher.

Beijing Declaration and Platform for Action. (1995). *The Fourth World Conference on Women*, Beijing.

Cole v. Cole, 1898, 1 N.L.R. 15.

Constitution of the Federal Republic of Nigeria, 1999, Sections 42, 35(1), 36(4), 38(1).

Diala, A. C. & Kangwa, B. (2019). Rethinking the interface between Customary Law and Constitutionalism in Sub Saharan Africa. *De Jure Law Journal*, 52(1), 203-206.

Diala, A. C. (2014). Reform of the customary law of inheritance in Nigeria: Lessons from South Africa. *African Human Rights Law Journal*, 14(2), 633-654.

Diala, A. C. (2017). The concept of living customary law: a critique. *African Customary Law*, 1, 13.

Diala, A. C. (2019). Legal Pluralism and Social Change: Insights from Matrimonial Property Rights in Nigeria. In C. Rautenbach (Ed.), *In the shade of an African Baobab: Tom Bennett's Legacy* (pp. 155-174). JUTA & Co.

du Toit, F. (2009). The constitutional family in the law of succession. *South African Law Journal*, 126(3), 463-488.

du Toit, F. (2012). Constitutionalism, public policy and discriminatory Testamentary Bequests- A good fit between common law and Civil Law in South Africa's mixed Jurisdiction? *Tulane European & Civil Law Forum*, 27, 97-131.

Edu, O. K. (2004). A Review of Laws of Inheritance in the Southern States of Nigeria. *The Journal of Private & Property Law*, 24.

Elias, T. O. (1953). *Nigerian Land Law and Custom*. London: Routledge & Paul K.

Ewelukwa, U. U. (2002). Post colonialism, Gender, and Customary injustice: Widows in African societies. *Human Rights Quarterly*, 24, 428.

Ezeilo, J. N. (1999). Law and Practices relating to Women's inheritance rights in Nigeria: An overview. *Nigerian Judicial Review*, 7, 131-139.

Ezeilo, J. N. (2021). Rethinking Women and Customary inheritance in Nigeria. *Commonwealth Law Bulletin*, 47(4), 706-718.

Interpretation Act, Cap. 89, Laws of Nigeria and Lagos 1958, Section 45(1).

- Kerridge, R. (2009). *Parry & Kerry: The law of succession* (12th ed.). London: Sweet and Maxwell.
- Kolajo, A. A. (2005). *Customary Law in Nigeria through the cases*. Ibadan: Spectrum Books Ltd.
- Lewis v. Bankole*, 1908, 1 N.L.R. 81, 100-101.
- Nigerian Institute of Advanced Legal Studies. (2013). *Restatement of Customary Law of Nigeria*. Safari Books.
- Nwabueze, R. (2010). Securing Widows' Sepulchral Rights through the Nigerian Constitution. *Harvard Human Rights Journal*, 23, 144.
- Nwauche, E. S. (2010). The constitutional challenge of the integration and interaction of customary and the received English Common Law in Nigeria and Ghana. *Tulane European & Civil Law Forum*, 25.
- Nwocha, M. E. (2016). Customary Law, Social Development and Administration of Justice in Nigeria. *Beijing Law Review*, 7(4), 430-442.
- Obilade, A. O. (1991). The relevance of customary law to modern Nigerian society. In Osinbajo & Kalu (Eds.), *Towards a Restatement of Nigerian customary laws*.
- Okoro, N. (1966). *The Customary Law of Succession in Eastern Nigeria*. Sweet and Maxwell.
- Oni, B. A. (2014). Discriminatory property inheritance rights under the Yoruba and Igbo customary law in Nigeria: The need for reforms. *IOSR Journal of Humanities and Social Science*, 19(2), 30-43.
- Onuoha, R. A. (2008). Discriminatory Property Inheritance Under Customary Law in Nigeria: NGOs to the Rescue. *The International Journal of Not-for-Profit Law*, 10(2).
- Onwuamaegbu, M. O. (1966). *Nigerian Law of Landlord and Tenant*. Sweet and Maxwell.
- Otite, O. (1990). *Ethnic pluralism and ethnicity in Nigeria*. Ibadan: Shaneson.
- Ozoemena, R. (2014). Living customary law: A truly transformative tool? *Constitutional Court Review*, 6(1), 147-163.
- Re Estate of Agboruja*, 1949, 19 N.L.R. 38.
- Reform of Customary Law of Succession and Regulation of Related Matters Act 11 of 2009, Assented to 19 April 2009. (2009).
- Tobi, N. (1992). *Cases and Materials on Nigerian Land Law*. Mabrochi International.
- Ukeje, V. I. N. (2007). *Intestate Estates Law and Practice in Nigeria*. Women Aid Collective (WACOL).