

RIGHT OF WOMEN TO SHARE IN FAMILY PROPERTY: A MYTH OR A REALITY

By

Dr Jerry Amadi*

Dr Richard Gershon Chinda**

Abstract

Policies, traditions and practices that aim to improve the position of women relative to men are desirable not only on equity but also on efficiency grounds. While developing countries continue to improve economic opportunities for women, inheritance laws remain strongly biased against the girl child and women in many societies. Practically, when the distribution of inherited wealth is highly discriminated upon and given out unequally between the men and women or given amongst the men relatives alone, the effect of such disparity on the integrity and person of the girl child and woman is overwhelming. Family or parental bequest of material wealth to the children or members of the family should be made and distributed in such a manner devoid of discrimination. Although discriminatory practices appear to be the status quo from time immemorial, especially, with respect to sharing of properties both in the family and community levels. The practices in civilized nation and international legal instruments have rendered the discriminatory practices unlawful. Even indigenous legal regimes abhor the discriminatory practices. The Constitution of the Federal Republic of Nigeria which is the basic law in Nigeria voids discriminatory customary laws and practices that offends the fundamental right of the girl child or woman. This paper examined the rights of women to share in family properties as well as the rights of women under Nigerian customary practices. The paper also examined the compelling pronouncement of the courts in Nigeria as well as some legislative frameworks that give impetus to women rights in Nigeria. The paper further makes compelling recommendations to buttress the reality of the right of women to share in family property.

Keywords: Women, Rights, Family Property, Myth, Reality

Introduction

Gender issues are topical throughout the world as there seems to be an increasing demand for more equitable treatment of women in all human affairs. Numerous groups in the recent past at the local and international levels have been campaigning, organizing and working together towards promoting the rights of women at the family, community, national and international circles, to ensure that women are treated equally with the male folks.¹ In the quest for property rights, Nigerian women are usually faced with disadvantages. These difficulties are traced ancient to customs and traditions and the lack of judicial activism in the Nigerian legal system. Gender discrimination is no doubt an obstacle to the realization of equal access to property right.² In many African traditional societies, there exist diverse forms of deprivations and violations against women in respect of inheriting family properties.

* Dr. Jerry Amadi is an Associate Professor in the Department of Jurisprudence and International Law, Faculty of Law, Rivers State University, Port Harcourt, Rivers State, Nigeria 08035526491, iervvamadisilk@gmail.com

** Dr. Richard Gershon Chinda is a lecturer in the Department of Commercial and Industrial Law, Faculty of Law, Rivers State University, Port Harcourt, Rivers State, Nigeria 08036759338, richard.chinda@ust.edu.ng.

¹ B Valerie, *Feminist Debates: Issues of Theory and Political Practice* (New York: Palgrave 1999) 5.

² Y Olomojobi, 'Women's Right to Own Property'

<https://papers.ssm.com/sol3/papers.cfm?abstract_id=2716902> accessed 23 October 2022.

Unfortunately, these practices have become accepted as a norm due to the prevalent attitudes of the male dominance and female hapless subordination.³ Among the fundamental right as provided in our Constitution⁴ are the right to life, right to own property, right against discrimination amongst others. The Nigerian woman has suffered more deprivation of fundamental rights in the area of discrimination against the right to own or inherit family property. This discrimination is notably gender-based.

The violation of women's right to own property in all cases, begins from the family, which is a reflection of the larger society. This deprivation begins from the time of birth through adolescence to marriage life to widowhood.⁵ Incidentally, the closet relatives, to the woman, that is, father, brothers, husband and in-laws are the ones who champion the violation of the right of the woman. It is also important to note that there is no single set of customary laws of inheritance in Nigeria, this is simply because customary laws vary from one tribe to another and from one community to another. Despite the varying nature of customary laws, issues of inheritance is manifestly against the girl child and women in Nigeria.

Legal Frameworks for the Rights of Women in Nigeria

The fundamental rights as provided in the Constitution⁶ is applicable to both male and female citizens of Nigeria. Section 42(2) of the Constitution declares that: 'No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstance of his birth.'

The practices relating to the deprivation and discrimination against women are traceable to the custom and tradition of the people of Nigeria. Customary laws are indigenous laws of the people. They are founded on the social norms or cultures of the people, and indeed a true reflection of the habits and social attitudes of the people they govern, and of course, they derive their validity from the consent of the people they govern.⁷ Justice Kekere-Ekun JSC rehearsed the meaning of customary law in the case of *Ogbuji v Amadi*.⁸ According to his Lordship:

"Customary law generally means relating to custom or usage of given community. Customary emerges from the traditional usage and practice of a people in a given community, which by common habit, has acquired, to some extent, element of compulsion, and force of law with reference to the community. And because of the element of compulsion which it has acquired over the years by constant, consistent and community usage, it attracts sanctions of different kinds and is enforceable. Putting it in a more simplistic form, the relationship of members of a community are generally regarded as customary law of the people."⁹

³ M A Ajayi and A O Olotuah, 'Violation of Women's Rights Within the Family' <<https://www.jstor.org/stable/4066538>> accessed 23 October 2022.

⁴ CFRN 1999 (as amended) ss 33, 42 & 43

⁵ Ajayi and Olotuah (n 3)

⁶ CFRN 1999 (as amended) chap. 4

⁷ *Elek v Government of Nigeria* (1931) AC 662 PC, at 673

⁸ (2022) 5 NWLR (Pt. 1822) 99 SC.

⁹ At 137, paras C-E; this is a re-statement of the dictum of Tobi JSC in the case of *Nwaigwe v Okere* (2008) 13 NWLR (Pt. 1105) 445 SC, at 481, paras C-E

Although customary law has the force of law, it is subject to statute law.¹⁰ In the case of the Constitution, it is regarded in constitutional jurisprudence as the grundnorm, and therefore superior to all norms in the land. It has been repeatedly stated by the court that the rights enshrined in the Constitution are superior over local custom.¹¹ The Constitution proclaims its supremacy in the supremacy clause. Accordingly, section 1(1) and (3) of the 1999 Constitution proclaim that

(1) This Constitution is supreme and its provision shall have a binding force on all authorities and persons throughout the Federal Republic of Nigeria.

(3) If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void.

In relation to the question under review section 42(2) of the Constitution declares that ‘No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.’ In *Anode v Nmeka*¹² Saulawa JCA construed that:

By virtue of the provision of section 42(1) of the Constitution of the Federal Republic of Nigeria 1999, a citizen of Nigeria shall not be subjected to any form of disabilities or restrictions to which members or political opinions are not made subject.

The above provisions of the Constitution clearly demonstrate that the girl child and women are entitled to all rights and privileges as citizens of Nigeria, circumstances of birth notwithstanding. One of the obnoxious customary practices which held sway in post-independent Nigeria, and which came before the Court of Appeal for adjudication in the popular case of *Mojekwu v Mojekwu*¹³ is the *oli-ekpe* custom of the Nnewi people of Anambra State of Nigeria. The summary of the *oli-ekpe* custom is that it forbids female children of a deceased man from inheriting the estate of their deceased father. The custom however permits the nephews of the deceased man to inherit the estate in lieu of the deceased’s female chi Idren. In his leading judgment Tobi JCA (as he then was) queried ‘Is such a custom consistent with equity and fair play in an egalitarian society such as ours where the civilized sociology does not discriminate against women?’¹⁴

Justice Tobi submitted in answer to the question posed by him:

Day after day, month after month and year after year, we hear of and read about customs which discriminate against the women folk in this country, they are regarded as inferior to the menfolk, why should it be so, all human beings - male and female are born into a free world and are expected to

¹⁰ But see *Omokaro v Omokaro* (2021) 17 NWLR (Pt. 1806) 449 SC where the Supreme Court held that the Benin customary law on Igiogbe is superior to the English Wills Act 1837. This is a departure by the court from its earlier position in *Adesubokan v Yuntisa* (1971) ANLR 227 where the court held that the English Wills Act 1837 was superior to customary law on inheritance.

¹¹ *State v Chitkwu* (2022) 6 NWLR (Pt. 1825) 105 SC, at 171, paras A-C, per Peter-Odili, JSC; *Anigbora Uchejigbo* (2002) 10 NWLR (Pt. 776) 472 CA, at 488, paras A-C, per Okunola JCA; *Agbai v Okogbue* (1991) 1 NWLR (Pt. 204) 391 SC, at 415, paras F-G, per Nwokedi, JSC.

¹² (2008) 10 NWLR (Pt. 1094) 1 CA, at 18, paras G-H

¹³ (1997) 7 NWLR (Pt. 512) 283 CA

¹⁴ At 304, para H

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 antithesis.¹⁵

His Lordship contended that we need not travel all the way to Beijing to know that the oli-ekpe custom followed and observed by the Nnewi people is inconsistent with practices of civilized nations. 'In my humble view' Justice Tobi asserted 'it is the monopoly of God to determine the sex of a baby... I believe that God, the creator of human being, is also the final authority of who should be male and female'.¹⁶

The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)¹⁷ clearly states that efforts are needed from the family in order to achieve equality between the man and the woman. It further calls for the establishment of the new economic order based on equity and justice, which will be a panacea for the promotion of equality between men and women in the Nigerian society.

CEDAW¹⁸ condemns in entirety the deprivation and discrimination against women and girls and then obligates state parties to the Convention to take actions to modify customs and eliminate prejudices which are based on inferiority or superiority of either sexes or stereotyped roles for men and women. Marsh in his words stated that: 'The examination of custom, the elimination of prejudices and the development of measure to promote equality in practice as well as in law are tools for justice'.¹⁹

CEDAW²⁰ also made an express provision to the effect that both men and women are equal before the law and have equal right to administer property. On the strength of the above, it therefore remains clear that women's right to inherit family property in all circumstances, should be unhindered irrespective of any custom existing in any part of our country. Going further to article 16 of CEDAW, State Parties are required to ensure equality of men and women, the same right for both spouses in respect of ownership, acquisition, management, administration, enjoyment and disposition of property.

These concerns were also anticipated in the Matrimonial Causes Act²¹, to the effect that the courts in the exercise of their powers in proceedings with respect to settlement of property in matrimonial matters should adopt measures, the court considers just and equitable in the circumstances of the case. At present some States in Nigeria have legislative framework to guarantee rights of women to share in family property. The Government of Rivers State joined the movement with the enactment of Prohibition of the Curtailment of Women's Right to Share in Public Property.²² The law makes provision for the freedom from discrimination, and it entitles every woman or female child the freedom from discrimination and the right to dignity to her person.²³ The law further provides that no woman shall be subjected to any form of discrimination or deprivation in the distribution, allocation or

¹⁵ At 304-305, paras H-B

¹⁶ At 305, paras B-C

¹⁷ CEDAW 1979, article 2

¹⁸ *Ibid*, article 5

¹⁹ F A Marsh, 'Women Development and Justice, Using the International Convention on Women's Right' in O J Megbele (ed.), 'A Comparative Study of Women's Right of Inheritance in Nigeria, under Islamic Law' (Unpublished Dissertation Submitted to the Faculty of Law, Delta State University, Nigeria 2016).

²⁰ CEDAW 1979, article 15

²¹ Cap. M7, LFN 2004, section 72(1)

²² Law No. 2 of 2022

²³ *Ibid*, Part 1, sections 1 and 2

inheritance of family or community property.²⁴ The provisions of the law reinforce the constitutional abhorrence of the practice of discrimination and deprivation against women.²⁵ Sections 3-5 of the Law provide to the following effect:

3. Discrimination, deprivation in the distribution of family property: No woman shall be subjected to any form of discrimination or deprivation in the distribution, allocation or inheritance of family or community property.

4. Right to inherit subject to parent's Will: Every woman is entitled to share in the inheritance of her parent's property, except as otherwise expressly stated in the Will of the parent.

5. Law, regulation, etc. constituting discrimination void: Any law, regulation, custom or practice which constitutes discrimination against a woman is void.

The provisions of the law extend to possessing the same rights and responsibilities in respect of the acquisition and ownership of family property with her husband and in respect of management, administration, enjoyment and disposition of same where such property was jointly acquired.²⁶ The climax of the provisions of the Law is the criminalization of acts or omissions amounting to discrimination or deprivation of a woman or a girl child in the distribution or allocation or inheritance of family or community property. The offence is created in section 13 of the Law, and the consequence is for a term of 5 years or a fine of ₦4500,000.00 or both. The enactment of the Law received the applause of various human rights advocacy groups.

The Property Rights and the Woman or Girl Child in Nigeria

One of the numerous entrenched rights under the 1999 Constitution is the right to acquire and own immovable or real property anywhere in Nigeria. Section 43 deals with this right. Section 43 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.' There is no doubt that one of the commonest modes of acquisition of land in Nigeria is by inheritance from the family or from the community. In other words, property may be acquired by inheritance, by purchase or by other means known to law.²⁷ The prevailing practice in Nigeria is the fact that customary law in Nigeria is patriarchal. This means that properties under such practices are vested in the name of the males.²⁸ Unfortunately, such practices in several communities impose some conditions that make women's access to land only through the husbands or their male siblings. More worrisome is the fact that women are often regarded as property and therefore cannot own or share in the family property.

In the celebrated case of *Suberu v Sunmonu*,²⁹ the court maintained that:

²⁴ *Ibid*, section 3

²⁵ CFRN 1999 (as amended), section 42.

²⁶ CFRN 1999, Section 6.

²⁷ *Idundun v Okumagba* (1976) 10 NSCC 445; (1976) 9-10 SC 227

²⁸ J Idrisu (Former President, Customary Court of Appeal, Nasarawa State) 'Women and Property Right under Customary Law in Nigeria' (Unpublished Lecture at the Induction Course Organised by National Judicial Institute, Abuja for the Newly Appointed Judges and Kadis, 24th March 2021) 13.

²⁹ (1957) 2 FSC 33, at 34, per Jibowu, FJ

.. it is a well settled rule of native law and custom of the Yoruba people that a wife could not inherit her husband's property since she herself is like a chattel to be inherited by a relation of her late husband.

The majority of the customs and practices in Nigeria which disrespect the right of women to share in family property, can best be described as discriminatory, arbitrary and against the constitutional guarantee of the 1999 Constitution.³⁰ It is doubtful if the Yoruba custom proclaimed in *Suberu v Sunmonu* can still hold sway today, or the various discriminatory customary practices having regards to the express provisions of section 42 of the 1999 Constitution or other allied statutes. It may be important to survey the practices in some of the geographical blocks in Nigeria.

Benin Inheritance Practice and the Place of Women and the Girl Child

Primogeniture is the right by custom, of the first-born son to inherit the entire estate of his deceased father to the exclusion of younger siblings. The effect is that women are denied right of inheritance or succession. This practice prevails in Benin, the Southern part of Nigeria. Women identify rests with men such as their fathers or their husbands. Under the practice of primogeniture, the head of the family is the eldest male child of the deceased who occupies the family house and holds same as trustee for other children. The rule differs in certain localities. For instance, in some communities, the deceased person's property devolves to the eldest son exclusively. In accordance with this rule the eldest son is expected to care for the younger siblings, and he may dispose any part of the estate against the wishes of the other children, or treat the property as his own.

The customary law of succession in Benin is similar to the customary law of succession among the Igbos on the basis that they both apply the primogeniture standard which bars women from inheriting property. The difference between the rules applicable in Benin and in Igbo land is based on the fact that in Benin the eldest son upon the demise of his father succeeds to all real property belonging to his father to the exclusion of his siblings. However, he becomes responsible for the upbringing of his siblings and continues to cater for the household. The practice was judicially noticed in the case of *Ehigie v Ehigie*³¹ The facts of the case are that the parties are the first daughter and first son of one Ehigie Edise who died intestate. The deceased was buried by the eldest son in accordance with Benin native law and custom. After the burial the respondent, the first son shared the estate to his siblings. The appellant entered upon a section of the property and claimed ownership of it. The respondent commenced action at the customary court. The court found in favour of the respondent whereupon the appellant appealed. Fatayi-Williams, J (as he then was) confirmed the applicable customary practice in these words:

The share that the brothers and sisters receive are gift from their eldest brother. Title to all the properties of the deceased passes by operation of law on the conclusion of the funeral ceremonies to the eldest surviving son. The responsibilities for the care of the household and upbringing of the younger children of the deceased also pass to the eldest surviving son, until they are of age. His position becomes that of the father of the family.³²

³⁰ 30 CFRN 1999 (as amended), section 42

³¹ (1961) ANLR 871

³² (1961) ANLR 871At 875

It would appear that the right of women to inherit family property is recognized under Benin customary law, but this right seems to be subject to the discretion of the eldest son. The first son need not be older in age to the female children. In other words, the right of inheritance of a female child under Benin customary law may be subject to the discretion of her younger brother who is the first son of their father.

Yoruba Inheritance Practice and the Place of Women and Girl Child

Inheritance right under Yoruba customary law is more egalitarian in nature than in other cultures in Nigeria. In the first place, Yoruba custom admits of women being the head of the family against their male counterparts. This practice was judicially acknowledged over a hundred years ago in the case of *Lewis v Bankole*.³³ Speed, CJ observed:

The first point for consideration is as to the headship of the family, and the main question here at issue is whether or not a woman can be head. The supporters of the old school and the Yoruba witnesses this, but the Lagos Chiefs hold a contrary view. Lagos is not the only part of His Majesty's dominions where the female sex are seeking for recognition of their capabilities; and seeing that a wise and great queen held sway for long years over the British Empire, there seems no reason why, on the mere ground of sex, a Lagos woman should not be capable of managing the domestic concerns of a family compound. There seems to be no importance attached in Lagos to the headship of a family, outside the family circle, and the attempts that have been made to show that a male must be head for political reasons have not convinced me.³⁴

'What are available as decided cases including *Lewis v Bankole*' asserted Belgore, JSC 'suffice for the court to take notice judicially that a female child could be head of the family.'³⁵

The right of women to inherit family property under Yoruba customary law is, therefore, an absolute right, that is not subject to the whims and caprices of male discretion. In fact, when a female is the head of the family she superintends over family property, and has the right to decide what each member of the family, including the male members get as share from family property.

What seldom causes disputes over inheritance under Yoruba customary law is the principle to be applied in the distribution of family property where there is plurality of wives or kitchen and multiple children in a household. The Yoruba customary law developed two systems either of which can be used to distribute family property. The first is the *Idi-igi* system. Under this system family property is shared according to the number of wives of the deceased founder of the family. The other is *Oro-ojori* system under which family property is shared according to the number of the children of the deceased. These systems of distribution of family were judicially confirmed by the Federal Supreme Court in *Danmole v Dawodu*.³⁶ Abbott, FJ who delivered the judgment of the court affirmed that '*Idi-igi* is not repugnant

³³ (1908) 1 NLR 81

³⁴ At 101-102. The dictum of Speed, CJ was affirmed 80 years later by Kolawole, JCA in the leading case of *Folami v Cole* (1986) 2 NWLR (Pt. 22) 367 CA, at 373, paras C-F, and by the Supreme Court on further appeal, see *Folami v Cole* (1990) 2 NWLR (Pt. 133) 445 SC, at 452-453, paras B-F, per Belgore, JSC

³⁵ *Folami v Cole* (supra), at 455, paras F-G.

³⁶ (1958) 3 FSC 46

to natural justice, equity and good conscience', but he acknowledged that 'Ori-ojori is a relatively modern method of distribution adopted as an expedient to avoid litigation'.³⁷

Igbo Inheritance Practice and the Place of Women and the Girl Child

Igbo native law and custom, though somewhat egalitarian in nature, does not allow headship of a family by a woman. A woman could lead women group, but she cannot lead the men. This practice is gradually giving way owing to the modern practices where women of honour have been installed as traditional or ceremonial chiefs in their communities.³⁸

Historically, Igbo custom does not permit a female child to inherit her father's landed property, especially, where such a female child has married out. This practice came to the limelight in the famous Court of Appeal case of *Mojejwu v Mojekwu*.³⁹ Here, the Court of Appeal examined the *oli-ekpe* custom of the Nnewi people of Anambra State. The *oli-ekpe* custom postulated that the female children of a deceased cannot inherit the deceased's real estate, but the nephew of the deceased can inherit the estate. In the leading judgment Tobi, JCA (as he then was) made the following landmark statements:

Is such a custom consistent with equity and fairplay in an egalitarian society such as ours where the civilized sociology does not discriminate against women?

Any form of societal discrimination on grounds of sex, apart from being unconstitutional, is antithesis 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 civilized view, it is the monopoly of God to determine the sex of a baby and not the parents. Although the scientific world disagrees with this divine truth. I believe that God, the Creator of human being, is also the final authority who should be male and female. 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 own part, I have no difficulty in holding that the *oli-ekpe* custom of Nnewi, is repugnant to natural justice, equity and good conscience.⁴⁰

Another very important case in which the constitutionality of the Igbo customary law on inheritance was judicially tested is the Supreme Court case of *Ukeje v Ukeje*.⁴¹ The facts are that one Lazarus Ogbonnaya Ukeje from Imo State died intestate leaving real property in Lagos State. Letters of administration were issued to the appellant, the widow and a son of the deceased. The 1st appellant with the deceased had four children among which is the respondent. The respondent commenced action at the High Court of Lagos State claiming that as a child of the deceased she was entitled to share in the estate of the deceased. The High Court found for the respondent. The appellants' appeal at the Court of Appeal was unsuccessful, whereupon the appellants appealed to the Supreme Court. The Supreme Court

³⁷ At 49

³⁸ F A Olasupo, 'Female Traditional Rulers in Eastern Nigeria: Eze-Ogo Alu Ibiam as a Case Study' [2015] (3)(2) *International Relations and Diplomacy Journal*, 116-122.

³⁹ (1997) 7 NWLR (Pt. 512) 283 CA

⁴⁰ At 304-305, paras H-A; 305, paras A-C; see also *Anekwe v Nweke* (2014) 9 NWLR (Pt. 1412) 393 SC

⁴¹ (2014) 11 NWLR (Pt. 1418) 384 SC

Justices unanimously dismissed the appeal. In the leading judgment, to which the Justices concurred, Justice Rhodes-Vivour, JSC came to the following conclusion:

No matter the circumstances of the birth of a female child, such a child is entitled to an inheritance from her father's estate. Consequently, the Igbo customary law which disentitles a female child from partaking in the sharing of her deceased father's estate is in breach of section 42(1) and (2) of the Constitution.⁴²

"It is settled law that the Igbo native law and custom which disentitles a female from inheriting her late father's estate" declared Abundaga, JCA, "is in conflict with section 42(1) and (2) of the Constitution."⁴³

The discrimination against women in matters of inheritance as practiced among the Igbos is not limited to the female child. It extends to widows, especially, widow who did not have male children for their deceased husbands. This aspect of Igbo custom has also been struck down by the apex court. The leading case here is the celebrated case of *Anekwe v Nweke*.⁴⁴ The view of Justice Ngwuta, JSC, an Igbo man, is worthy of note. According to his Lordship:

My noble Lords, the custom pleaded herein, and is a similar custom in some communities wherein a widow is reduced to chattel and part of the husband's estate, constitutes, in my humble view, the height of man's inhumanity to women, his own mother, the mother of nations, the hand that rocks the cradle. The respondent is not responsible for having female children. The craze for male children for which a woman could be denied her rights to her deceased husband or father's property is not justified by practical realities of today's world. Children, male or female are gift from the Creator for which the parents should be grateful. The custom of Awka people of Anambra State pleaded and relied on by the appellant is barbaric and takes the Awka community to the era of caveman. It is repugnant to natural justice, equity and good conscience and ought to be abolished.⁴⁵

Nigerian Courts and the Right of Women to Share in Family Property

The pronouncements of Nigerian courts over the recent past appear to be a radical departure from the ancient customs of the people which the courts in the past seem to have upheld. In other words, the courts have not only struck down barbaric customs of the indigenous Nigerian people, the courts have also departed from their earlier positions.⁴⁶ The following reasons can be advanced for the radical change in the law:

- 1) international treaty provisions which provide for women rights, which Nigeria is a signatory to⁴⁷,
- 2) the provisions of the constitution relating to the rights of women⁴⁸,

⁴² At 408, paras C-E

⁴³ *Chiduluo v Attorney* (2020) 6 NWLR (Pt. 1719) 102 CA, at 123, para A

⁴⁴ (2014) 9 NWLR (Pt. 1412) 393 SC.

⁴⁵ At 425, paras E-H.

⁴⁶ *Nezianya v Okagbue* (1963) ANLR 358 SC; *Subem v Sunmonu* (1957) 2 FSC 33

⁴⁷ See *Abacha v Fawehinmi* (2000) 6 NWLR (Pt. 660) 228 SC

⁴⁸ Section 42(1) and (2); *Nzekwu v Nzekwu* (1989) 2 NWLR (Pt. 104) 373 SC

- 3) awareness raised by human right bodies,
- 4) activities of women groups such as FIDA,
- 5) the practice among civilized nations, etc.

According to Tobi, JCA (as he then was):

We need not travel all the way to Beijing to know that some of our customs, including the Nnewi Olikepe custom relied upon by the appellant are not consistent with our civilized world in which we all live today, including the appellant.⁴⁹

The enactment of statutes by states on rights of women in recent times is therefore a recognition of the obvious change in the law. The enactment by the Government of Rivers State of the Statute on the Prohibition of the Curtailment of Women's Right to Share in Public Property, is therefore, simply a restatement of the current legal culture. The question then is whether the right of women to share in family property can now be regarded as a reality, or it remain a myth, and to this we now turn.

Right of Women to Share in Family Property: A Myth or a Reality

One feature that is common with customary practices in Nigeria is that customary law is dynamic, and changes with time in order to meet the social and economic changes of any given society.⁵⁰ Unfortunately, the customary practice of inheritance which deprives women and the girl child of the right to inherit the property of their deceased husband and father continues to apply in the rural communities owing to ignorance of the rural people or the lack of will to ventilate their rights by women. In other words, in the rural settings, barbaric customary practice are still prevalent notwithstanding the express provisions of the Constitution as well as settled case law on the issue. So, there is dichotomy between the state of the law and the will of the women folks to pursue their well-recognised rights. The docility to ventilate the rights of women with respect to inheritance of family property can be traced to the following factors:

- 1) lack of funds to pursue expensive litigation,
- 2) slow dispensation of justice which is characteristic of Nigerian court system
- 3) fear of stigmatization
- 4) fear of ostracization
- 5) lack of awareness
- 6) ignorance, etc.

⁴⁹ *Mojekwu v Mojekwu* (1997) 7 NWLR (Pt. 512) 283 CA, at 305, para B

⁵⁰ *Agbai v Okobue* (1991) 7 NWLR (Pt. 204) 391 SC, at 417, paras D-E; *Lewis v Bankole* (1908) 1 NLR 81, at 100-101, per Speed, CJ

Going by the current state of the law it cannot be disputed that the right of women to share family property is a reality. However, the various factors that inhibit the pursuit of this right give it a mythical hue.

The Way Forward

The recognition and entrenchment of women's right to share in family property and proclamation of this right by superior courts in Nigeria should evoke the sense of duty in e\ Nigerian to ensure that women enjoy this right, as a matter of a generally accepted norm.' Nigerian polity should accept the decisions of the courts on the matter as binding on all pers and authorities throughout the Federal Republic of Nigeria as contemplated in section 287 (2) and (3) of the 1999 Constitution.

In *Agbai v Okogbue*⁵¹, Nwokedi, JSC counselled that 'When however customary law confronted, by a novel situation, the courts have to consider its applicability under exist social environment.' This counsel applies to everybody operating within the so environment in Nigeria to recognize the novel situation as it affects women right to share family property. The following are recommended as the way forward.

- a) Systematic education of the custodians of customary law in the local communities of current legal position. This will enable them to enforce the new legal culture within the domain.
- b) Grassroot awareness and mobilization of the women folks to demand for their right; where necessary ventilate the right in court.
- c) Establishment of NGOs to drive the defence of women rights
- d) Enforcement of the judgment relating to women rights by the appropriate agencies of government.
- e) Application of the judgments of the courts on the right of women by subsequent courts as a universal rule notwithstanding the section of the country where the question arises.
- f) Free legal services in respect of matters that fall under the category. Since the legal regime on free legal services⁵² is not generous to cover matters relating to the right of women to inherit family property, it is suggested that the Act be amended to incorporate the subject.

Conclusion

In the quest for property rights, women are faced with enormous disadvantages. These have been traced to customs and traditional practices in the various communities all over Nigeria. Law being a living organism, depends on the vitality and ability to serve as the sustaining pillar of society. As human civilization advances, it is expected that the contour of the law, including customary law must adapt or keep pace with the advancement in society. It is not possible that custom that held sway in dark ages

⁵¹ (1991) 7 NWLR (Pt. 204) 391 SC, at 417, para F. In *Mohammed v Minister, Federal Ministry of Environmer, Housing and Urban Development* (2018) 16 NWLR (Pt. 1644) 179 CA, at 189, para G, Ogakwu JCA assei that 'the law is alive. The law has a life. The law affects lives. The law grows. The law has growth. Ther evolution in the law.'

⁵² Legal Aid Act, Cap L9, LFN 2004.

should drive a modern society. The time is now for women to succeed to the estate of their parents, brothers, husbands as heirs by interstate succession and inherit the property with equitable shares vis-a-vis their male counterparts. The courts have overwhelmingly laid the rule that no custom should override any right guaranteed by the Constitution. All authorities and persons are therefore bound to enforce customary law provisions with a view to meeting the expectation of justice to all and sundry irrespective of sex or any other vagary. The legislature should therefore seal the new legal policy by stipulating in appropriate legal regimes penal sanctions for the violation of women right as entrenched in the Constitution and declared by the judicial department of government. The guarantee of the right of women to share in family property should end with mere judicial declaration. There ought to be some coercive to compel the enjoyment of a right which the supreme law of the land has guaranteed.