

Reforming Igbo Women's Inheritance Rights: Supreme Court Cases Considered

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Abstract

This paper takes a look at the age old cultural practices and prejudices that militate against the inheritance and succession rights of women in Igbo land, the paper considers the effect of such practices on development. The paper notes that even though there is a shifting paradigm through judicial activism to recognise the right to inheritance of Igbo women, much is needed in the area of enlighten and empowerment to enhance the effective utilisation of law in empowering the Igbo women.

1. Introduction

In every society, ownership of landed property is a key indicator of success and development. Inheritance and succession are both means of acquisition of rights over landed property and for this reason, the laws and cultural practices that govern inheritance and succession in the community are important. Unfortunately, in many Igbo communities, age old customary laws and practices have continued to discriminate against women in matters of inheritance and succession to landed property.

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This discriminatory cultural stance has been in clear contradiction to the anti-discriminatory stance of section 42 of the 1999 Constitution as amended which provides the right to freedom from discrimination on the basis of sex *inter alia*. It has also been in contradiction to various domestic and international human rights instruments and covenants operating in Nigeria.

This paper takes a look at the age old cultural practices and prejudices that militate against the inheritance and succession rights of women in Igbo land, the effect of these practices on development and proffers solutions. It also takes a look at and lauds the recent Supreme Court decisions in the cases of *Anekwe and anor v Nweke*¹ and *Ukeje v Ukeje*² both of which have decisively struck down the Igbo customary law which denies women their inheritance rights. These decisions are indeed salutary and a triumph for Nigerian women. They have been applauded as being consistent with domestic and international human rights instruments and covenants.³ But, beyond the euphoria that has greeted these Supreme Court decisions, we agree with the notion that the battle is not yet over because the real tragedy of our judicial system is not lack of laws but lack of access to justice.⁴

How many impoverished village women are able to fight expensive legal battles in our law courts, even right up to the apex court? To an extent, the real battle to be won is a re-orientation of the menfolk (and sometimes the womenfolk as well) in whole Igbo communities who may or may not be ignorant of the anti discriminatory stance of the 1999 Constitution and the various relevant instruments operating in Nigeria, but are nevertheless

¹SC/304/2010, judgment delivered on 11th of April 2014.

²[2014] ALL FWLR (Pt 730) p. 1323.

³Igbo Women and Inheritance Rights, This Day Live, Monday 28 July 2014.

⁴*Ibid.*

unwilling to jettison discriminatory cultural practices and accept womenfolk as co-inheritors of landed property in Igbo land.

2. Legal framework for the protection of women against discrimination

Some of the International, regional and national legislation enacted and/or ratified by Nigeria in the effort to protect women against all forms of discrimination include the Universal Declaration of Human Rights (10th December 1948) and Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 18th December 1979). The regional instruments include the African Charter on Human and People's Rights (Banjul Charter, 17th June 1981) and its protocol, 2003 and also the Solemn Declaration on Gender Equality in Africa, 2004 amongst others. At the national level, the 1999 Constitution as amended is notable for its anti discriminatory stance and also the National Gender Policy 2006.

It therefore appears that there is little or no statutory discrimination against women.⁵ In fact section 15 in Chapter two and section 42 in Chapter four of the 1999 Constitution as amended specifically prohibit discrimination on grounds of sex. Yet, in most communities in Igbo land, women are barred from inheriting landed property on account of their sex. We shall now examine the customary law rules of intestacy and inheritance in Igbo land.

3. The customary law rules of intestacy and inheritance in Igbo land

Igbo land spans the geographical areas known as Anambra, Enugu, Imo, Ebonyi and Abia States in the Eastern part of Nigeria.

⁵Maureen Maxine Stanley-Idum, "Women's Rights In Nigeria: Cultural Challenges and Options," *CILJ* Vol. 3 No. 1 2012, p. 232.

However, some Igbo speaking people are also located in Rivers State and Delta State. The rules of customary law on succession and inheritance in Igbo land are not uniform, although there are many similarities.⁶ Most communities in Igbo land are patriarchal and men dominate all spheres of a woman's life. The birth of a male child is greeted with great joy because it means that an heir has been born. The girl child is not seen as an heiress because it is expected that she will marry into another family and is therefore a temporary member of her father's household.

When a deceased dies intestate, his personal customary law governs the distribution of his estate, regardless of where the property is situated⁷ except if the deceased adopted the law of the area of jurisdiction as his personal law⁸. But, most Igbo speaking people are known for their close attachment to their homeland no matter where or for how long they may have sojourned.

The cardinal principle of customary law of succession among the Igbos is primogeniture.⁹ This is the right by which the eldest son succeeds to his father's real estate.¹⁰ The eldest son is the "*diokpala*" in a nuclear family and he succeeds his father as the head of the family. He inherits his father's *obi* to the exclusion of his siblings, male and female. The *obi* is the house in which his father lived during his lifetime. The *diokpala* may however allow his siblings to live in the house with him, subject to his needs and that of his own family. The *diokpala* also inherits his father's personal *ofò*, objects of worship, walking stick and dresses for

⁶Babatunde A. Oni, The Rights of Women to Inheritance under Nigerian Law: An Evaluation, 2008 2 *NJAL* P. 40, www.iosrjournals.org, visited on 28th July 2014.

⁷*Tapa v Kukah* (1945) 18 NLR 5.

⁸*Olowu v Olowu* (1985) 3 NWLR (Pt 13) 372; (1985) 2 SC 84.

⁹Babatunde Oni, *op. cit.* P. 34.

¹⁰Oputa (JSC) Women and Children as Disempowered Groups, in Women and Children under Nigerian Law, The Federal Ministry of Justice Law Review Series, Vol. 6, Federal Ministry of Justice, Lagos, p. 9.

special occasions¹¹. If his father was a title holder in the community, and the title survives the holder, the *diokpala* also inherits the title. He is entitled to use the land within and surrounding his father's compound and to harvest the economic crops.¹² It is clear therefore that the *diokpala* is accorded special status and inheritance rights in Igbo land.

In the extended family, succession is through the eldest son of the ancestor and it continues in that line, regardless of age¹³. However, certain areas of Igbo land such as Afikpo and Bende in Ebonyi and Abia are bilineal.¹⁴

The general customary law rule of Igbo land is that women do not inherit landed property, neither as wives nor as daughters. Daughters have no right of inheritance over their mother's landed property or their father's either. As wives, they cannot also inherit from their husbands. Learned jurist, Oputa (JSC) summed it up correctly when he stated that:¹⁵

In many village communities, a woman cannot own land in her own right. She only has custody of any piece of land the husband permits her to cultivate. Or else she holds any land in trust for her children – male children that is.

The property acquired by a married woman after her marriage goes to her husband upon her death, if she predeceases

¹¹Babatunde Oni, *Op. Cit.*, p. 34

¹²*Ibid.*

¹³*Ibid.*

¹⁴Nwakanma Okoro, *The Customary Laws of Succession in Eastern Nigeria and The Judicial Rules Governing Their Application* (Revised Edition), Sweet and Maxwell, London (1966) pp 118 – 119 cited by Dr Babatunde Oni, *op. cit.* P. 34.

¹⁵Oputa (JSC) *Women and Children as Disempowered Groups*, in *Women and Children under Nigerian Law*, *op. cit.*

him. However, those she acquired before her marriage goes to her own family¹⁶. In this respect, Oputa (JSC) also noted as follows:¹⁷

With regard to other property acquired by her after marriage (including in modern times, her salary for paid employment) all these belong to her husband and she cannot dispose of them without the consent of her husband.

Many cases which were decided before the fight for women's rights reached a crescendo validated these general customs in Igbo land notwithstanding that they were discriminatory of the womenfolk. For example, in *Ugboma v Ibeneme*,¹⁸ the court per Egbuna J held that amongst the people of Awkuzu in Anambra State as in the rest of Igbo land, women are not entitled to inherit from their deceased father's properties. They may be allotted land for farming purposes but such allotment cannot materialize into ownership by inheritance. Therefore, the female plaintiffs in the action had no *locus standi* in the action.

Thus, it is clear that under Igbo customary law, a woman may only have custody of a piece of land. Her husband may permit her to cultivate the land or else hold the land in trust for her male children.¹⁹ When the husband dies, the woman (his widow) may hold the properties in trust for her male children if they are still young, until such a time when they attain maturity²⁰. If the widow dies before the male children attain maturity, a male relation of the

¹⁶*Nwugege v Adigwe & ors* (1934) ALL NLR 134.

¹⁷*Ibid.*

¹⁸(1967) ENLR 251.

¹⁹Maureen Maxine Stanley-Idum, *op. cit.*

²⁰*Ibid.*

husband acts as the trustee in her place.²¹ Ikpeze²² surmises that under the various customs, a woman cannot inherit from her late husband because she herself is a property to be inherited by her deceased husband's male relatives as part of her husband's estate.²³ In *Onwuchekwa v Onwuchekwa*,²⁴ the court upheld a custom that a wife is owned along with her property by the husband as chattel.

Oputa (JSC)²⁵ recalled a story told of an immensely wealthy woman named Ikpeaku Ifeobu in his home town of Oguta. She threw a challenge to her husband to compare their wealth and possession to find out who was the richer. She narrated for hours on end all that she owned. It took her husband but one second to narrate his: "But I own you – need I go further?"²⁶ The learned jurist further recalled another story told of why the railways from Enugu to Port Harcourt did not pass through Owerri as planned. An influential Chief in Owerri successfully resisted the plan because he feared that his "slave wives" may escape by and through the railway! *Slave wives!*

In some parts of Igbo land, if a woman's husband dies and she has no male issue for her late husband, she may remain in the house belonging to her late husband subject to good behaviour. Her interest is however possessory, but not proprietary because she has no right to dispose of it. Her right to remain in the house is subject to the magnanimity of the extended family and if she has been of good behaviour, otherwise the house reverts to the

²¹*Ibid.*

²²Ikpeze, Ogugua V.C., Gender Dynamics of Inheritance Rights In Nigeria, Need for Women Empowerment,(Initsha: Folmech Printing and Publishing Co. Ltd., 2009), p. 44,

²³*Ibid.*

²⁴(1997) 10 NWLR (Pt 526) p. 5.

²⁵Oputa (JSC), *op. cit.*, P. 9.

²⁶*Ibid.*

extended family. Thus, in *Nezianya v Okagbue*,²⁷ the Supreme Court held *inter alia* that upon her husband's death, a widow who has no male issue has only a right to occupy the building or part of the building belonging to her husband, subject to good behaviour. She could possess the lands but no matter how long the possession lasted, she could never be the owner. The apex court stated as follows:

A married woman after the death of her husband can never under native law and custom be a stranger to her deceased husband's property; and she could not at any time acquire a distinct possession of her own to oust the family's right of ownership over the property. The Onitsha native law and custom postulates that a married woman on the death of her husband without a male issue, with the concurrence of her husband's family, may deal with the deceased property ... The consent may be actual or implied from the circumstances of the case, but she cannot assume ownership of the property or alienate it. She cannot by effluxion of time claim the property as her own ... her right to occupy it is subject to good behaviour.

Provided the widow is of good behaviour, the property will not be alienated without an alternative accommodation for her. Thus, in *Nzekwu v Nzekwu*²⁸ the Supreme Court struck down as repugnant to natural justice, equity and good conscience, the Onitsha custom which gives a person the right to alienate the property of a deceased person in the lifetime of his widow.

In *Ejiamike v Ejiamike*,²⁹ Oputa (JSC) held that a widow of a deceased had no right under Onitsha customary law to administer the estate of her late husband, especially where there is a *diokpala*.

²⁷(1963) 1 ALL NLR 352.

²⁸(1989) 2 NWLR (Pt 24).

²⁹(1972) 2 ENLR 11.

The court found that the *diokpala* is entitled to manage and administer the real estate of his deceased father for the benefit of himself and his brothers.

Also, in some parts of Igbo land, if a man dies intestate and without sons, brothers or father, his nearest, eldest paternal male relation will inherit his estate³⁰. This is the *oli ekpe* custom. In *Mojekwu v Mojekwu*,³¹ the Court of Appeal per Niki Tobi (JCA as he then was) pronounced as discriminatory the *oli ekpe* custom of Nnewi in Anambra State, by which a surviving brother of a deceased is allowed to inherit the property of the deceased because the surviving wife has no son. However, upon further appeal, the Supreme Court in the same case (reported as *Mojekwu v Iwuchukwu*³² following a substitution of a party) held that the Court of Appeal was in error to have raised *suo moto* and pronounced the *oli ekpe* custom as repugnant without hearing from both parties on that issue. The apex Court ruled that it was unnecessary for the Court of Appeal to have pronounced on the *oli ekpe* custom, although the pronouncement had not occasioned a miscarriage of justice. The apex Court then ruled that the applicable custom in the matter was the Onitsha kola tenancy which permits both male and female children to inherit, not the *oli ekpe* custom. Uwaifo (JSC) however expressed concern that the pronouncement in respect of the *oli ekpe* custom “went too far to stir up a real hornet’s nest” and was capable of “causing strong feelings against all customs which fail to recognize a role for women”. This was judicial conservatism, not judicial activism.³³

Although generally, daughters do not inherit, they have the right to be maintained by the person who inherits their late father’s

³⁰Babatunde Oni, *Op. cit.*

³¹(1997) 1 NWLR (Pt 512).

³²(2004) 11 NWLR (Pt 883) 196.

³³See generally Maureen Maxine Stanley-Idum, *op. cit.*

estate, until they marry or become financially independent or dies.³⁴

In some parts of Igbo land, if a man has no sons and his daughter is willing to remain unmarried in her father's house and procreate in her father's name in order to raise sons for him, then she will be entitled to inherit her father's estate, but only to the extent that she holds such property in trust for her sons who will bear her father's name. Only her sons, but not her daughters will inherit in accordance with the principle of primogeniture. This custom is called *Nrachi* or *Idegbe* and the idea is to save the family from extinction. It witnesses a grand ceremony in areas where it is practiced and Ikpeze correctly notes that it is based on the customary prejudice that only a male child can inherit.³⁵

In many Igbo communities, when a woman is divorced, she must vacate the matrimonial home. She is expected to return to her own family or find alternative accommodation. She cannot lay claim to any landed property even if she may have made contributions towards their acquisition.³⁶ In *Nwanya v Nwanya*,³⁷ the wife in her divorce proceedings claimed for repayment of the substantial contribution she made towards the country home in Nnewi which was built by her husband. The action failed on technical grounds and the court made no pronouncement on whether or not the claim for beneficial interest could have succeeded.

4. Effects of Discriminatory Succession and Inheritance Customary Practices

4.1 Economic Effects

³⁴Babatunde Oni, *op. cit.*

³⁵Ikpeze, *op. cit.*, p. 97

³⁶Maureen Maxine Stanley-Idum, *op cit.*,

³⁷(1987) 3 NWLR (Pt62) p. 697.

The Igbo customary law that generally prohibits women from inheriting landed property is detrimental to the economic lot of women. This is more so when access to credit facilities is dependent on collaterals, which is usually landed property³⁸. Denying women the right to inherit landed property is one way of ensuring that they remain economically disempowered. Rural women are responsible for carrying out 70% of agricultural labour, 50% of animal husbandry related activities and 60% of food processing activities³⁹. But, access to the land they farm is dependent on the menfolk and this constitutes an impediment to their ability to maximize production.⁴⁰

There is no doubt that culturally dictated gender inequalities have contributed to the economic imbalance between men and women and the feminization of poverty.⁴¹ Of the 70% of the population estimated to be living below the poverty line, over 65% are projected to be women.⁴² We agree with Oputa (JSC) that “poverty kills what is most valuable in the body polity. Poverty is the worst form of oppression.” If therefore there is widespread poverty, the whole economy suffers. We agree with the learned jurist that we cannot afford to leave a majority of our rural women in perpetual poverty because a civilization can be judged by the way it treats its womanhood.⁴³

³⁸*Ikpeze, op. cit.*

³⁹Federal Ministry of Women Affairs and Social Development, Status of Gender Equality and Situation of Women In Nigeria, National Gender Policy, (Hazz Press Ltd), p.7

⁴⁰*Ibid.*

⁴¹Maureen Maxine Stanley-Idum, Cultural Practices That Affect The Rights of Women In Nigeria: A Case Study of the Abacha People of Idemili North Local Government Area of Anambra State, P. 159, 2007 LL.M (Thesis), University of Jos.

⁴²Federal Ministry of Women Affairs and Social Development, Status of Gender Equality and Situation of Women In Nigeria, *op. cit.*

⁴³Oputa (JSC), *op. cit.*, pp. 12 and 13.

4.2 Social Effects

Some women in a bid to escape poverty have resorted to unwholesome means of livelihood such as prostitution. This in turn exposes them to the risk of diseases such as HIV/AIDS. In *Mojekwu v Ejikeme*,⁴⁴ the Supreme Court took view that *nrachi* custom encourages promiscuity and is against the provisions of CEDAW. We agree entirely with the view of the apex court.

4.3 Psychological Effects

Economic disempowerment breeds insecurity and frustration. So does the idea that a widow is also a *chattel* to be inherited along with the deceased husband's other properties. Some widows have been so cowed by their late husband's relatives that they have left their matrimonial home in fear and frustration. Some others have abandoned any fight whatsoever over inheritance rights for fear of violence being visited upon them by the menfolk.

5. Recommendations

5.1 Specific Legal Framework

There is need for the introduction of specific legislation to provide for the rights of women to inherit landed property from their fathers and husbands estates. Women's Rights groups should bring pressure to bear on the legislature to enact relevant laws in this regard. The National Assembly and in particular, the State Houses of Assembly in the South Eastern States should be galvanized into positive action. Although section 42 of the 1999 Constitution as amended guarantees freedom from discrimination on the basis of sex etc, there is no specific legislation in Nigeria which

⁴⁴(2000) 5 NWLR (Pt 657) 413.

specifically provides for succession and inheritance rights of the womenfolk, particularly in Igbo land.

5.2 Judicial Activism

The judiciary has a central role to play in ensuring that women enjoy the same rights to succession and inheritance of landed property as the menfolk. The courts have hitherto applied judicially noticed customs based on the principle of *stare decisis*. As a result, discriminatory customs which were upheld decades ago have also been upheld in more recent times. The courts should only apply customs which pass the repugnancy test as provided in the various court laws⁴⁵ and the Evidence Act⁴⁶. Happily though, the recent decisions of the Supreme Court in the case of *Anekwe and anor v Nweke*⁴⁷ and *Ukeje v Ukeje*⁴⁸ have spelled the beginning of an era of reformation. In the light of these decisions, the apex court has embraced a more reformatory policy in respect of customs which discriminate against women. In *Anekwe v Nweke*,⁴⁹ after two decades of legal tussle, the Supreme Court finally affirmed a High Court and Court of Appeal decision giving a widow, with six female children the right to inherit her husband's property at Awka in Anambra State. Ogunbiyi (JSC) stated as follows:

The impropriety of such a custom which militates against women particularly widows, who are denied their inheritance, deserves to be condemned as being repugnant to natural justice, equity and good conscience.

⁴⁵S. 20(1) HCL Cap 61 Laws of Eastern Nigeria.

⁴⁶S. 18(3) Evidence Act 2011.

⁴⁷*Supra*.

⁴⁸*Supra*.

⁴⁹*Supra*.

In *Ukeje v Ukeje*,⁵⁰ the Supreme Court in its salutary judgment held that the Igbo native law and custom which disentitles a female from inheriting her late father's estate is void as it conflicts with section 42(1)(a) and (2) of the 1999 Constitution as amended. The respondent is a female child, born out of wedlock, and Rhodes-Vivour (JSC) delivering the lead judgment stated as follows:

No matter the circumstances of the birth of a female child, such a child is entitled to an inheritance from her late 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, a fundamental rights provision guaranteed to every Nigerian. The said discriminatory customary law is void as it conflicts with section 42(1) and (2) of the Constitution.⁵¹

5.3 Access to justice

Measures should be put in place to allow illiterate indigent females easier access to the courts to seek redress. For economically disadvantaged women, the road to justice appears long, arduous and sometimes inaccessible. The financial cost of legal representation and delay in our courts may constitute a hindrance in the quest for justice. In *Anekwe and anor v Nweke*⁵², it took over two decades of legal battle which began from the High Court of Anambra State in 1991 and ended at the Supreme Court in April 2014, before Mrs Maria Nweke a widow with six female children, got a Supreme Court judgment in her favour entitling her to inherit her late husband's property. Also in the case of *Ukeje v Ukeje*,⁵³ it

⁵⁰*Supra.*

⁵¹p. 1341 paras A-B.

⁵²*Supra.*

⁵³*Supra.*

took years of legal tussle which began at the Lagos High Court and ended at the Supreme Court, before Gladys Ada Ukeje could obtain a landmark ruling entitling her to inherit from her late father's estate. How many indigent women in our rural areas can afford such lengthy and expensive legal battles? It is true that the Legal Aid Act obliges States to provide legal aid services, but it is limited to indigent accused persons in criminal trials. It should be extended to indigent women in Igbo land seeking justice by bringing civil claims to inherit from their fathers and husbands.

5.4 Education

Without the necessary education, the average illiterate rural woman in Igbo land will remain ignorant about her constitutionally guaranteed rights not to be discriminated against whether in matters of inheritance or in any other matter, on account of sex. Lack of education breeds ignorance and ignorance ensures acceptance of the *status quo*. Women must be encouraged to get an education.

5.5 Cultural Reforms and Enlightenment Programmes

There must be some cultural reforms in Igbo land, a paradigm shift in the thought patterns and male mind set as regards the rights of women to inherit landed property. Natural justice and custom must work in harmony. In all societies, discord between the two breeds frustration. The Non Governmental Organizations and the governments of the South Eastern states have a lot of work to do in this regard. They should partner to launch public enlightenment campaigns to educate the populace in Igbo land about the far reaching reforms we hope that the recent decisions of the Supreme Court in *Anekwe's* case and *Ukeje's* case will necessarily set in motion. Traditional rulers and their Council of Elders have to be carried along. They should be encouraged to harmonize natural justice and custom and also enlighten their subjects about the

reformatory stance of the recent Supreme Court decisions. The time has come for a definite change in the *status quo*.

6. Conclusion

In conclusion, centuries old traditions and cultural practices are hard to let go. It may take some time. But, man and culture must keep evolving for the better. If the recommendations we have made above are implemented, they will go some way in fast tracking the much needed cultural reforms in Igbo land as regards women's inheritance rights.