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The Impact of the General Rule of Intestate Succession on Igbo Custom of Inheritance: A Review of Ukeje v Ukeje

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Abstract

In succession matters, the general rule is that where a man dies intestate, the applicable law is the personal law of the deceased regardless of the location of the property in question. Applying this rule in Ukeje v Ukeje, the supreme Court voided the Igbo custom which denies women the right to inherit immovable property as being repugnant to natural justice, equity and good conscience. The supreme Court also held such custom to be contrary to Section 42 and 43 of the 1999 Constitution. The purview of this paper is that the custom of inheritance as practiced by Igbo people was based on very equitable considerations which still hold true in Igboland today. Problem arises when the rules are applied to personal property acquired by the deceased in urban areas especially outside Igboland. This work attempts to detangle the issues which seem to have bred confusion with regard to the application of the custom. The work holds that, the practice of the Igbo custom of inheritance is unsuitable for application outside Igboland as it fails to serve the initial purpose of the custom. This paper contends that it is unfair and unjust to judge the custom of a people viz a viz the Igbos with a standard and an environment that is foreign to the people.

Keywords: Conflict of Laws, Inheritance; Igbo custom; women's rights;

1. Introduction

To inherit means to come into possession by transmission from past generations or to receive, especially as a right; it is a hereditary succession to a property, title, office, etc., a continual right to an estate invested in a person and his or her heirs.[1]Succession has been loosely defined to mean inheritance, the right to inherit, the order in which inheritance is carried out, and the condition precedent under which one can succeed another party.[2]It is "the legal transmission of an estate, throne from one person to another, that to which a person succeeds as heir", in other words Succession is the transmission of rights and obligations of a deceased person in respect of his estate.[3]

The custom of inheritance and succession in Igboland is patrilineal. This fact has been bandied about, wielded., and brandished as a weapon in writings and speeches as though it was not only an epitome of discrimination, but also a crime in itself. The simple fact is that Igbos value marriage and family life a lot, and traditionally, it takes a man and a woman to form that unit. Therefore, inheritance could only run through one gender in order to avoid confusion. It is an already settled principle of law that customary law is not merely repugnant because it does not conform to the English law or is foreign to a person and appears to be unjust, but a custom will be repugnant if it clearly goes against the principle of natural justice, equity and good conscience.[4]

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[1] The New Shorter Oxford English Dictionary, quoted in 'Appraisal of Succession under Igbo Customary Law' <https://codemint.net> accessed 11 March 2024.

[2] F Atoyebi 'An Overview of the Law of Succession in Nigeria'<femiatoyebi.com.ng> accessed February 2024

[3]*Idehen v Idehen* (1991) 1 LRLR Vol 2 112

3 An Overview of the Law of Succession in Nigeria, *supra.*

[4] Igbo Law of Succession. <https://motun911.wordpress.com>2019/09/13>igbo-law-of-succession> accessed 05 May 24

In *Amodu Tijani v Secretary Southern Nigeria*[5]the Privy Council stated that an important fact to bear in mind in order to understand the native land law is that the notion of individual ownership is foreign to native ideas. Land belongs to the community, the village or the family. The above condition is still true in Igboland today, it is also the reason that family land is not subject to testacy.

In Nigerian law, the general rule is that when a man dies intestate, the personal law of the deceased is to apply regardless of the location of the property or where the death occurred. For instance, in the case of *Tappa v Kuka*,[6] a Mohammedan from Nupe in Northern Nigeria died intestate leaving a house in Lagos. Brook J. held that the applicable law was the Mohammedan law which was the deceased's personal law and not the customary law prevailing in Lagos. The said general rule was also applied in the case of *Ukeje v Ukeje* and the result is a miscarriage of justice (with due respect) in voiding Igbo custom of inheritance.

2. Ukeje v Ukeje

The facts of *Ukeje v Ukeje*,[7] are as follows: Mr. Lazarus Ogbonnaya Ukeje, a native of Umuahia in Abia State who lived most of his life and owned property in Lagos State, died intestate on the 27 day of December, 1981. Following his death, his widow and son sought and obtained letters of administration over his estate in Lagos, without the knowledge or consent of his daughter. The letter of administration excluded his daughter (the plaintiff/Respondent) from partaking in her father's estate. When the daughter became aware of this development, she filed an action against them at the Lagos State High Court, claiming that as a daughter of the deceased, she had an equal right of inheritance to her late father's estate and that she could not, therefore, be disentitled therefrom. She testified and called her mother as a witness to the fact of her birth and paternity. She also tendered evidence of her birth certificate showing that she is a daughter of the deceased. The defence also called witnesses who mainly testified that under Igbo customary law, daughters, and women generally, are not entitled to inherit immovable property. The trial court found for the plaintiff/respondent and ordered the defendants/appellants to surrender the letters of administration earlier issued to them, and hand over the administration of the estate to the Administrator-General pending when the deceased's children would choose 3 or 4 of them to apply for fresh letters of administration. Aggrieved with the decision of Lagos State High Court, the defendant/appellants took the matter to the court of appeal which dismissed the case. Again, they were not satisfied with the decision of the Court of Appeal and brought the matter to the Supreme Court where they also lost and the decisions of the lower courts were affirmed.

In its judgment, the Supreme Court held that the Court of Appeal, Lagos was right to have voided the Igbo native law and custom that disinherit female children. Justice Bode Rhodes-Vivour, who read the lead judgment, held that: "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)(a) and (2) of the Constitution…"

[5] (1921) 2 AC 399.
[6] (1914) 18 NLR 5.
[7] (2014) 11 NWLR (PT.1418) 384.

The judgment evoked mixed reactions from Ndigbo, particularly traditional rulers who are the custodians of the tradition and culture, as well as church leaders. In his reaction, the Bishop, Diocese on the Niger, Anglican Communion, Rt. Rev. Owen Nwokolo described the judgment as a welcome development. According to him, female children are not second-class citizens and should not be treated as such. Female children have and should be accorded the same rights given to their male counterparts and therefore should not be discriminated against.[8]

However, a prominent monarch in Nsukka and the grand patron of Enugu State Traditional Rulers Council, and the traditional ruler of Aji autonomous community in Igbo-Eze North Local Government Area of Enugu State, Igwe Simeon Osisi Itodo, said the Supreme Court ruling cannot abolish the tradition and custom of the Igbos. Itodo said that any attempt to implement such law in Igboland would provoke chaos and skirmishes among various communities. He argued that the custom is unique to the people of South-East Nigeria and should not be touched. Thus:

> *You can imagine a married woman coming back to her father's house to share his property with the sons. We will not allow it because it would breed chaos and troubles in our communities. If there are customs that allow such inheritance, let the people continue the practice but it won't work in Igboland. We would not abolish our unique customs because of court ruling. Just imagine, after the father of the House dies and they say that the most senior of his children who is a female child should inherit the family house of the father in the village. By the time, they want to implement this law in Igbo land it will cause a very big problem.*[9]

It is obvious from the foregoing reactions that to an Igbo person, inheritance refers to family land and house in the village and not property acquired elsewhere. For justice to be served therefore, it is of paramount importance that distinction between family land and property acquired by the deceased away from the family be made in every succession case. It is the submission of this paper that the supreme court was right to give judgement to the plaintiff/respondent in *Ukeje v Ukeje*,[10]but erred (with all due respect) in voiding the Igbo custom of inheritance. It is the considered opinion of the researcher, that a lack of understanding of the purpose behind Igbo custom of inheritance rights and the indiscriminate application of the general rule on customary succession are at the root of the irregular judgement.

3. Applicability of Customary Laws

In Nigeria today, before a rule of custom can be valid and applied by the court, the custom must pass the repugnancy test, incompatibility test and the public policy test.

3.1 The Repugnancy Test

The Repugnancy Test requires that a custom should not be repugnant to natural justice, equity and good conscience. Natural justice is a divine rule of justice whose main components are fair hearing and neutrality in the adjudication of cases before a judge. Equity has to do with fairness, right sense of justice and equality. Good conscience has to do with clear conscience. Hence, any custom that contradicts these senses of justice and fairness will be deemed by the court to be

[8] <https://www.vanguardr.com/2020/08/supreme-court-decision-on-female-inheritance-divides-igbo/>accessed 21 February 24.
[9] *Ibid.*
[10] *Supra.*

repugnant and thus, inapplicable.[11]Under this test, any custom that is perceived to be heinous, barbaric or obnoxious will be void therefore unenforceable. This fact has been given judicial blessings in the case of *Mojekwu v Mojekwu.*[12]

3.2 Incompatibility Test

This test is of the view that for any particular law or custom to be valid, such law or custom must not clash or conflict with any provision of an existing law. Where a given custom conflicts with or is incompatible or inconsistent with the provisions of an existing law, such custom shall to the extent of its inconsistency be void. This was the position of the court in *Adesubokan v Yinusa*[13]

The law referenced in this regard is Section 42(1), (a), of the 1999 Constitution which states that:

"42(1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person: -

(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups places of origin, sex, religious or political opinions are not made subject.

Section 43 of the constitution provides for and guarantees the right of every Nigerian citizen to acquire and own immovable property anywhere in Nigeria. referencing this particular law was unnecessary because women can and have been known to buy land in Igboland. However, they cannot take over their father's house for reasons already trashed above.

3.3 Public Policy Test

A custom having passed the Repugnancy and Incompatibility Tests, the court will also subject it to public opinion to see if the custom is agreeable with public policy. Section 18(3) of the Evidence Act 2011 provides that in any judicial proceedings where any custom is relied upon, it shall not be enforced as law if it is contrary to public policy, or is not in accordance with natural justice, equity and good conscience.[14]

In resolving matters of conflict of laws in Nigeria, the general principle is that customary law is applicable in matters between natives. Succession under customary law in Nigeria is determined by the customary rules of the place of origin of the deceased person and not of the place he resides or of the place the property in question is located. The researcher considers this particular rule to be responsible for the perceived discrimination against women in succession matters involving people of Igbo origin.

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[11] *Guri v Hadeijia Native Authority* (1954) a FSC 44., quoted in Akin Olawale Oluwadayisi , 'Questions and Anwers' (2nd edn, Princeton & Associates Publishing Co. Ltd, 2021).

[12] (1997) 7 NWLR Pt. 512, p 283 CA. This case and such cases have gone to court because of greed and impatience. The widow was supposed to live out her life and the daughters were supposed to marry and leave. This would have left the property empty and naturally melt back into the family land. After all, the daughters might have had plans of having and raising children on the property.

[13] (1971) All N.L.R 227

[14] PC Amadi, 'Examining the Effect of the Supreme Court Decision in *Ukeje v Ukeje* (2014) 11 NWLR (Pt 1418) 384 on Ikwerre Native Law and Custom. <linkedin.com/pulse/examining-effect-decision-ukeje-v-ikwerre> accessed 29 April 24.

4. Detangling the Issues

It is important to note that immovable property in Igbo land basically means land. It is also important to note that in Igboland, land is basically not viewed as an economic or financial venture or investment but as family heritage to be held in trust and passed to future generations of the family.

4.1 The Structure of Igbo Custom of Inheritance

Igbo custom of inheritance is predicated upon well thought out and equitable foundations. Primarily, the word 'inheritance' as regards ancestral or family land is a bit misleading. The land is actually held in a form of trust arrangement. A father hands the land to his son which he would hand over to his son/sons. A piece of the family land is given to a son of the family when he is of age to start his own family. That piece of land is called obi-uno (homestead) or ani-obi (land for homestead). The primary duty of a male child is to have and raise the next generation of the family on that portion of land entrusted to him (this is of paramount interest to Igbos). Any family member who proves unable to accomplish this purpose by producing an heir or heirs is dispossessed after their death. This ideology is vividly manifested in the fact that male children who decide to join the catholic priesthood order do not get a share of their father's land for the simple reason that their life calling or vocation denies them the prospect of marrying and raising children on the land. They are seen as being unable to fulfil the purpose of inheritance and are therefore disqualified from inheriting a portion of the land. Women likewise, who marry and leave their father's house for their husband's house are also unable to fulfil that purpose and are therefore disqualified from inheriting in their father's house. This is a matter of ideology and purpose and not discriminatory against anyone as male issues of female children born outside wedlock also have a stake in the land.

Male children are custodians of family heritage. This is simply because they are stuck with the land and the family. They have no prospect of marrying off and going far away to find a better land, home or family. A male child is a constant in Igbo land, whether married or unmarried he is tied to the land. A female child however has the power to remain single in which case she has the same chance with her brothers to produce a male child to who a portion of family property can be entrusted; or marry in which case she has chosen to tie her fortunes with another viz her husband. She can divorce and return to her father's house thereby reclaiming her rights in her father's house. She can also try her fortune elsewhere by remarrying.

In the event a man has only daughters, the daughter (or any of the daughters may elect to marry and leave the land empty or have children out of wedlock, or have children in their father's house before getting married. [In the first instance, the land melts back into the family land to be given to another member of the family; while in the second or third instance, any male issue from the daughter retains a hold on her father's land.

Though the general Ibo Customary Law precludes daughters from the inheritance of their deceased father's property, they have the right of maintenance from proceeds on the property as well as farmland to meet their farming needs until they marry or leave the family or die.[15]

In ancient times, barren women or women with only female children were known to marry for their husbands (in his lifetime or even after his death) in a bid to produce male children who would take over the compound and his portion of land. In more recent times, such women or men

[15] E I Nwogugu, *Family Law in Nigeria*, (Nigeria: Ibadan, Heinemann Educational Books, 1996).

without male issues do adopt male children to carry the man's name. Children so adopted take over the man's property but cannot inherit from the larger family since they are viewed as strangers.

Igbo culture has great respect for marriage and family. At the point of marriage, a female child leaves her father's house to her husband's house which becomes her home. She loses her right to her father's property because she has a share in her husband's property. If a woman has the right to share in her husband's property and is also entitled to share her father's land with her brothers, that would be very unfair to the brothers in question.

As it is, there is only one point of inheritance for either male or female and that is equitable and the bulk of Igbos regard it as such. It is worthy of note that the case of *Ukeje v Ukeje* and similar cases went to trial for one out of two reasons. It's either the property in question was not in Igboland or the relations of the plaintiff greedily tried to take property before the system had run its cause.

4.2 Distinction between Family Land and Self Acquired Land

Family land is land given to the deceased by his predecessors to hold in trust for his next generation while personal land is property acquired by the deceased through purchase or any other means.

It is pertinent to note that in Igboland, family land is not subject to testacy, this is because the nature of inheritance is more of possession than ownership; it cannot therefore be disposed by a Will as there is already a set rule of custom regarding inheritance. Every male child born in Igbo land already has his predetermined share and his position in the scheme of things, which he will occupy when he is of age. He has as much right to the property as does his father just by virtue of being born, the only difference would be size or percentage if he was not the only male child. Therefore, with regard to family land, the issue of 'when a man dies intestate' does not arise as family land is not subject to testacy. The view therefore that 'where a man dies testate, his testamentary instrument which is his Will automatically supersedes the laws of inheritance, whether statutory or customary laws of succession'[16] is erroneous as far as Igbo custom of inheritance is concerned.

This stance is supported by the Supreme Court in the case of *Agidigbi v Agidigbi*[17] when it stated that "Under the Benin native law and custom, the eldest son of the deceased person or testator is entitled to inherit without question the house or houses known as 'igbiogbe' in which the deceased or testator lived and died. Thus, a testator cannot validly dispose of the 'igbiogbe' by his Will except to his eldest surviving male child. Any devise of the 'igbiogbe' to any other person is void." The only property an Igbo man is free to share as he pleases via a Will or otherwise is property he acquired with his own money; shares, gratuity, shops, etc are also in this category.

It must be noted that in Igboland, land was not regarded as merchandise but a symbol of family, of belonging and as home to all family members. Family home is where each member of the family (male or female) has the right to return regardless of any circumstance. Every Igbo man or woman, even children born by Igbo women in faraway lands have the right to come back to their

[16] Y Olomojobi, *Human Rights on Gender, Sex and the Law in Nigeria,* (Lagos: Ikeja, Princeton & Associates Publishing Co. Ltd,2021) p 356.
[17] (1996) 6 NWLR 302-303

father's house. A female of Igbo descent can always come back to her father's house if her marriage doesn't work out. Her children also have a stake if she was to return with them. Where the father of her children is unknown, they belong to her father and have right over the land.

The views tendered in this right-up are supported by the documentation of Igbo culture as done by an Igbo community in the recent past. The Igbo community is Nkpologwu, Aguata Local Government Area, Anambra State, Nigeria. The Igwe (traditional ruler) in Council, in 2001, came up with a document entitled Nkpologwu Customs and Traditions, which treated a lot of issues, including our present preoccupation. It states thus, "where a man dies leaving behind wife and/or only daughters, the wife and the daughters should remain bona-fide owners of the man's share of land until the wife dies and the daughters are married away". The Cabinet also considered what should happen should a man be married to two wives and one of them is unfortunate not to have a male issue before or even after the man's death. It resolved that such a woman without a male issue should also be given land and trees for their use until she dies and all her daughters are given out in marriage.[18]

A researcher[19] carried out a physical interview of respectable people from some Igbo States and they all agree on some certain points as regards the Igbo custom of inheritance and the place of women.

1 Immovable property in Igbo land includes land and trees.
2 A woman's portion is in her husband's house.
3 An unmarried daughter has right to the use of property in her father's house till death.
4 Daughters cannot inherit landed property from family land in the village but can inherit property acquired by their father or husband in urban areas as those are financial ventures.
5 Land acquired by a man other than family land can be passed to a man's wife and daughters but a man's share of family land cannot.
6 If an unmarried daughter has a son outside of wedlock, her son has as much right to the family land as her brothers.
7 A widow who has only female children has a right to enjoy her husband's property until her daughters all get married and she dies, at which event the property will pass to her husband's closest brother.

5. Conclusion and Recommendations

Considering all the above, it is the considered view of this researcher that Igbo custom of inheritance is neither discriminatory to women nor inequitable. Most of the cases that have gone to trial are due to a miscarriage of customary justice incited by greed and impatience.

However, this conclusion will seem untenable when applied to property outside Igboland, in urban areas or property acquired by the deceased. Therefore, the researcher opines that Igbo custom of inheritance should not be applicable to property in the said locations or situation. What this analysis translates to is that ultimately, the rules of Igbo custom of succession are Igbo

[18] Quoted in "The Women's Place in Family Inheritance in Igboland: A Rational and Legal Critique"
[19] P O Azuakor in "The Women's Place in Family Inheritance in Igboland: A Rational and Legal Critique', Nnadiebube Journal of Social Science: January-June, 2021; Volume 1 Number one <https://nnadiebubejss.org>njss> accessed 10th May 2024.

ancestral-land specific, it does not lend itself to equitable and judicious application outside Igboland. Therefore, to attempt to apply the rules to property outside Igboland or even outside Igbo family land is misguided; a nullification of Igbo custom of inheritance based on this misguided attempt is unjust.

Having regard to the structure of Igbo custom in succession and inheritance law, it will pose a grave injustice to extend the general rules of succession to property outside Igboland and in fact outside family property.

The submission of this paper is that such cases should be treated, not as succession issue but as land and property issue.

This is because while the Igbo customary rules of succession are equitable and non-discriminatory when applied to family property in Igboland, they fail the test of equitability when applied to property in urban areas or outside Igboland for lack of similar purpose. It is the researcher's view that an exception be entered for Igbo succession rules. They should apply only to Igbo family land. Cases abound where extended family members dispossess a deceased man's widow and children of property he acquired during his lifetime. The researcher considers this a fallout of the application of this general rule of customary succession in intestate situations.

The view that the inhibitions placed on women in the family and inheritance laws systematically prevent the full realization of economic rights and poverty is the resultant consequence[20] cannot apply to Igbo custom of inheritance because family land is not viewed as an economic venture and cannot be alienated without the interrogation and interference of other family members.

The researcher therefore recommends that the distinction between family property and property acquired by the deceased should always be made in cases of inheritance and succession. Moreover, the general rule of succession under customary law should apply only to ancestral family property as any extension of the rules to property acquired by the deceased in urban areas will not serve the purpose of the custom and only breed inequality.

[20] O M Adekile, 'succeession at Customary Law- Addressing the Crossroads of Constitutional Conflict' (2010) 1 (1) Olabisi Onabanjo University Law Journal. Pp. 21-47. Quoted in Y Olomojobi, Human Rights on Gender, Sex and the Law in Nigeria, *supra*