



IMPACT OF UKEJE V UKEJE ON FEMALE RIGHT OF INHERITANCE IN IGBO LAND: A PERSPECTIVE*

Abstract

Land is a sacred object in Igbo land and it is mostly respected as such. Land has a spiritual value as the home of ancestors who, more often than is realized, play an active and important part in the daily life of those still living. Historically, land was not considered as a commercial object in Igbo land and women do inherit land but only for usufructuary and for the woman's lifetime. Most writers and researchers are oblivious of this fact and this informs the popular opinion that women have no direct right to land in Igbo land, Nigeria. The male primogeniture rule of inheritance is predominant in Igbo land and it is suggested that it is aimed at providing material support to deceased persons' dependents. This 'inheritance-with-responsibilities' principle is being eroded by socio-economic changes, such as urbanization, labour migration and acculturation, thereby causing hardship to widows, girls and younger male children. This study in using doctrinal research method observes that Igbo customary law relating to intestate succession tilts in favour of men while women are erroneously seen as part of the man's dependents. It is the recommendation of this study that women as well as men need land for economic reasons and the exclusion of women from outright ownership of land by inheritance is not an acceptable trend. This study concludes that the decision in *Ukeje v Ukeje* ought to be an affirmative force and not a derivative authority to women's right to property in Igbo land.

Keywords: Inheritance, Igbo Land, Right, Family, Family Land, Customary Law, Intestate Succession, Letter of Administration.

1. Introduction

The discussion of this study is exclusively on patrilineal society which constitute the bulk of Igbo land. It is pertinent to mention that women's rights and interests in land may be acquired in two ways: direct and derivative approach. The direct rights approach and interests in land are rights and interests women acquire independently of her social or legal relationship with any person like husband or parent while derivative rights approach and interest are those rights and interests women acquire or enjoy through their husband or parent.¹

It is a known fact that there are various means of acquiring land in Nigeria and Igbo land is not excluded. They are by:²

1. conquest, laches and acquiescence, allotment or apportion or rent.
2. grant
3. purchase
4. deed of gift
5. inheritance

These means of acquiring land in Nigeria are in agreement with and applicable to the direct and derivative rights and interests in land by women. This study is more interested in women acquisition of land through inheritance. Women, to a reasonable extent, had been inheriting land in Igbo land; just that some greedy family members allow the progenitor principle to take greater part of their

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¹ SNC Obi, 'Women's Property and Succession Thereto in Modern Ibo Law (Eastern Nigeria)' *Journal of African Law* (1962) (6) (1) 6-18, 6.

² SO Imhanobe, *Legal Drafting and Conveyancing: with Precedents* (Nigeria: Temple Legal Consult 2010) 290.



decision. This anomaly is nailed in *Ukeje v Ukeje*.³ Meanwhile, prior to the decision in *Ukeje v Ukeje*, women are entitled to right to land in Igbo land; though for usufructuary and during their life time.

2. A Woman's Direct Rights and Interest in Land

It is a popular opinion that women have no direct rights and interest in land. Forde and Scott assert that in Igbo land, women do not own land by direct purchase except they do so through a man. Thus, through a man, a woman may secure personal control over land by providing the money for the purchase or obtain a pledge of a piece of land, through a male proxy. Consequently, land held by women through this method, upon her death, passes to her husband who is regarded as a trustee for their sons and succession is restricted to male descendants of those sons.⁴

While this appears to be true, it is not actually the true position of women's right to property in Igbo land because of other means of acquisition as shown above. Nothing prevents a woman from acquiring land in Igbo land; just as the male counterpart. Migration, urbanization, acculturation and other factors led to land being classified as communal land and non-communal land. This became possible and acceptable by the custom as one of the features of custom is that it is not static but varies according to conditions and modifies itself when necessary. The various means of acquiring land is open to both men and women in Igbo land. The popular opinion that women have no direct or actual rights and interest in land can only be true of a communal land as women, in Igbo land, as revealed by this study, are permitted to exercise right over communal land for usufruct and during their life time.

3. Conceptual Clarifications

It is pertinent that some concepts relating to this study be explained to give more insight and understanding of the study. Thus, the following concepts are discussed:

3.1 Intestate Succession

The inevitability of death brings with it a plethora of challenges for the family of the deceased; apart from the burial rites and ceremonies, foremost on the list of challenges is what to do with the property of the deceased. This arises in most family notwithstanding the quantity of property owned by the deceased. In Nigeria, when a person dies, and leaves property, the property of that person is given to another person or people or an organisation as their inheritance. Who inherits this property is decided in different ways; a person can decide before he or she dies who should inherit his/her property. Under the English law, this is written down and signed in a document called a Will.

However, where there is no Will, laws of intestate succession guide the sharing of the property. Customary law is often used in this instance. Inheritance and succession under native law and custom are more appropriately and primarily determined by the customary rules of the place of origin of the deceased person and not by where he resides or where the property is situated (*lex situs*).⁵ In *Tapa v Kuka*,⁶ it was stated that while it is true that with respect to land matters generally, the Customary Law of the place where the land is situate (*lex situs*) is applicable, with respect to

³ (2014) NWLR (pt. 1418).

⁴ D Forde and R Scott, 'Native Economies of Nigeria' <<https://www.cambridge.org/core/journals/africa/article/abs/native-economies-of-nigeria-by-professor-daryll-forde-and-dr-richenda-scott-being-the-first-volume-of-a-study-of-the-economics-of-a-tropical-dependency-edited-by-margery-perham-published-under-the-auspices-of-nuffield-college-faber-and-faber-london-1946-pp-xxiv3124-maps-price-25s-net/BB6CCEB4EDDBDB028445FE2B531877CB>> accessed on 8/03/2022 at 2:46pm.

⁵ MA Bello, 'Principles and Practice of Succession under Customary Law' <https://nji.gov.ng/images/Workshop_Papers/2017/Refresher_Judges_and_Kadis/s4.pdf> accessed on 17/03/2022 at 9:57am.

⁶ (1945) 18 NLR.



inheritance, the appropriate Customary Law is the Customary Law of the deceased; unless the deceased changed his personal law by naturalization, acculturation/assimilation and his preferred customary law will so apply.⁷ In most parts of Igbo land, the derivative right of inheritance behooves on the first son who is meant to take care of his younger ones; including male and female. This practice conform to the primogeniture rule which is a system of inheritance or succession by the firstborn child, specifically the eldest son who consequently becomes the head of the family. He occupies the family house, holding same as trustee of the other children, male or female.⁸ The general rule of Customary Law where a land owner dies intestate is that his self-acquired property devolves on his children as family property.⁹ The eldest son may sell the house over the wishes of other children or treat it as his own property.¹⁰

The right of the eldest surviving son to succeed his father in the headship of the family is automatic in Igbo land. The native idea is that the eldest son plays the role of the “father of the family”¹¹ who has a legally binding obligation towards the children. This practice is not meant to pose any challenge if not for overzealous eldest son with penchant of converting all the properties entrusted to them as personal property, instead of for family use. Another factor that led to clamour for a shift in paradigm in respect of eldest son having the intestate property on trust is a situation where the family is bereft of a son and the kindred will support any of the extended family members to become the heir of the family as against the females. This led to the assertion by Hon. Justice Moses A. Bello¹² that in Igbo land, under intestate succession, where the deceased is not survived by a son, his estate is inherited by his surviving brothers of full blood or his father in that order. He went further to state that: “it is therefore unfortunate to note that under this system, wives and daughters of a deceased have no right to inheritance under the Igbo Customary Laws.”¹³ Though he acknowledged that a plethora of cases upheld the rights of the woman to inherit her father’s estate. With utmost due respect to MiLord, Hon. Justice Moses A. Bello, this is not the true position of female right of inheritance in Igbo land but evidence of work of existing authors and greedy litigants who want to enthrone male dominance which is aimed at suppressing the right of the women folk in the given society. It is the intense desire of not being suppressed that gave birth to decision in *Ukeje v Ukeje*.

Marriage under customary law extends beyond the life of the husband. The death of her husband does not dissolve the marriage. This is the exact situation under most tribes in Nigeria.¹⁴ Wife and husband of a statutory marriage inherit each other’s estate intestacy.¹⁵ This is not the same case in respect of wife of a customary law marriage. Widows married under customary law in Igbo land, as well as other climes in Nigeria find themselves in a desperate situation. No system confers on such a widow any beneficial rights of inheritance safe of course for benefits she may enjoys through her children’s right.¹⁶ In most part of Igbo land, during the marriage, a wife’s acquisitions

⁷ *Adeniyi Oluwo & Ors v Olabowale Oluwo & Or* (1985) 3 NWLR (pt. 13) 372.

⁸ P Oluyede, *Modern Nigerian Land Law* (Nigeria: Evans Brothers, 1989) 153.

⁹ *Suberu v Sumonu* (1957) 2 FSC p. 33; *Abeje v Ogundairo* (1967) LLR p. 9.

¹⁰ TO Elias, *Nigerian Land Law 4th ed.* (London: Sweet & Maxwell, 1971).

¹¹ SN Obi, *Family Law in Southern Nigeria* (1966).

¹² President Customary Court of Appeal, FCT-Judiciary.

¹³ MA Bello, (n 5).

¹⁴ IL Eburnoha, *Women’s Rights to Property: A Comparative Study of Nigeria, South Africa and India*, Thesis submitted for the award of PhD in Law at Enugu State University of Science and Technology, School of Post Graduate Studies, Faculty of Law, December 2021, 10.

¹⁵ IL Agbo, ‘Palm Tree Justice and Settlement of Matrimonial Property under a Statutory Marriage in Nigeria’ *International Review of Law and Jurisprudence (IRLJ)*, (2021) (3) (2) <<https://nigerianjournalonline.com/index.php/IRLJ/article/view/1536>> accessed on 17/03/2022 at 1:47pm.

¹⁶ MA Bello, (n 5)



automatically become her husband's property. In consequence, when the husband dies, a widow might stand to lose everything she contributed to the family estate. For instance, it is a fact that a widow without a son stands to lose the homestead, *obi*, of her husband. Although, the customary law did not leave the widow destitute, for the marriage was not immediately terminated by the husband's death. The widow's relationship with her husband's family could be kept going via a levirate union and, if that was not a viable option, the widow still had a right to insist that the heir maintains her out of the deceased's estate. There are restrictions to the right of the widow to be maintained: the widow has to reside at the deceased's homestead¹⁷ and continue to perform her wifely duties.¹⁸ In practice, this meant that she had to remain on good terms with the heir and his family.

3.2 Inheritance

To inherit means to come into possession by transmission from past generations¹⁹ or to receive especially as a right. Inheritance in legal parlance therefore is the entry of a living person or living persons into possession of a dead person's property.²⁰ Over time inheritance has come to mean anything received from the estate of a person who has died, whether by the laws of descent²¹ or as a beneficiary of a will or trust and it operates where private ownership of property exists as a basis of social and economic enhancement.

When a man dies, the devolution of his self-acquired property depends upon whether or not he has made a will. If he has made a will, the property will devolve according to the directions contained in the will. More so, where a Will is made in accordance with the law, the contents of the Will, will apply absolutely as nobody can change the wish of the maker of the Will.²² This type of succession is described as testate. If he has made no will, or has made one which at his death has become totally inoperative, he is said to die intestate, and the devolution of his property will be governed entirely by the rules of law prescribing the order of succession upon an intestacy.²³

Until the introduction of the English law practice of writing wills that brought about the concept of testacy, intestacy was the rule and it was governed by customary law. The only customary practice of the concept of wills was at the occasional instances of a dying man indicating by a death-bed declaration how his property was to be distributed after his death.²⁴ Most customary law wills are oral and therefore are nuncupative wills.²⁵ A disposition of property by will under customary law becomes effective only if the testator possesses full mental capacity at the time the will was made. Furthermore, the identity of the subject matter of the will must be specific so as to be easily identified. However, oral death bed declarations did not carry with it a force of finality; they were often modified and sometimes disregarded by the elders of the deceased family in situations where the application of such declarations can be seen as capable of causing great hardship to or disagreement amongst the family.²⁶ There are certain property that cannot be willed to any other person other than the first son in Igbo land. For instance, it is the eldest son that inherits the homestead (*Obi*) of the deceased.

¹⁷ *Sanamzi v Nosamana* (1914) 2 NAC 297; *Mavuma v Mbebe* (1948) NAC (C& O) 16.

¹⁸ *Sibanda v Dlokweni* (1936) NAC (C&O) 61; *Myuyu v Nobanjwa* (1947) NAC (C&O) 66.

¹⁹ Chambers 20th Century Dictionary Edition 1981.

²⁰ MG Yakubu, 'Property Inheritance and Distribution of Estate under Customary Law' in Bola Ajibola (ed.) *Towards A Restatement of Nigerian Customary Laws* (Federal Ministry of Justice Series 1991) 136.

²¹ The body of law that determines who is entitled to the property from the estate under the rules of inheritance.

²² *Igboidu v Igboidu* [1999] 1 NWLR (Pt 585) 27.

²³ BO Nwabueze *Nigerian Land Law* (Nigeria, Nwamife Publishers, 1972) 380.

²⁴ BO Nwabueze, *ibid.*

²⁵ Nuncupative wills are verbal wills that must be declared in the presence of two disinterested witnesses at least, and can only deal with the distribution of personal property.

²⁶ IO Smith, *Practical Approach to Law of Real Property in Nigeria* (Lagos, Ecowatch Publications, 1999) 69.



The qualification for inheritance is generally traced or dependent on blood relationship. A person cannot qualify to inherit from a deceased on any basis under Customary Law in Igbo land outside being of the same blood. As stated earlier, the primary heirs to a man's estate under the Customary Law are his children. Unfortunately, as we have seen from practices in some climes, the custom seeks to discriminate amongst the male and female; adopted children and children born out of wedlock. Court frowns at custom that disinherits female children of the deceased in favour of distant male relations.²⁷ More so, the decision in *Ukeje v Ukeje* is in favour of adopted female children of the deceased and children born out of wedlock. The Supreme Court, per Bode Rhodes-Vivour, JSC, held: "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."²⁸ This decision is in agreement with section 42 (1) and (2) of the Constitution, a fundamental rights provision which guaranteed freedom from discrimination upon every citizen Nigeria. Ogunbiyi JSC went further to posit:

that the Igbo native law and custom which deprives children born out of wedlock from sharing the benefit of their father's estate is conflicting with section 42 (2) of the Constitution of Federal Republic of Nigeria, 1999 (as amended)²⁹

The provision of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) reinforces the right of a woman over family properties. Importantly, section 43 of the Constitution provides: "Subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria." This section exclusively states that citizens of Nigeria are free to acquire and own immovable property, regardless of the location, locality, gender and tribe. Combined provision of sections 42 and 43 of the Nigerian Constitution goes without saying that the right to own properties is not restricted to gender. There is also no section of the Constitution that limits women's right to property and thus any custom or law that is contrary to the spirit and intent of the Constitution becomes null and void and of no effect whatsoever.³⁰

3.3 Right

The word 'right' has been a subject of confusion in the realm of jurisprudence. Jurists have put forward many theories, all in a bid to locate a precise meaning of the word 'right'. It is not the focus of this article to delve into the complicated jurisprudential controversy on the rights theories. Nevertheless, some of the definitions will be given, while adopting a simplistic approach for the purpose of our present study.

'Right' is derived from the Latin word *rectus*, which means correct, straight or opposed to wrong. It may also mean in accord with law, morality and justice.³¹ The word 'right' in the noun form means that to which a person has a just and valid claim, whether it be land, a thing or the privilege of doing something or saying something.³² In the legal parlance, a legal right is either the liberty (protected by law) of acting or abstaining from acting in a specific manner or the power (enforced by law) of compelling a specific person to do or abstain from doing a particular thing. A

²⁷ *Mojekwu v Mojekwu* (1997) & NWLR (pt. 512) 283.

²⁸ *Ukeje v Ukeje* (2014) NWLR (pt. 1418) 408.

²⁹ *Ibid*, 410.

³⁰ S. 1 (3) of the Constitution of Federal Republic of Nigeria, 1999 (as amended).

³¹ CA Oputa, *Human Rights in the Political and Legal Culture of Nigeria: 2nd Idigbe Memorial Lectures* (Lagos: Nigerian Law Publications 1989) 38.

³² O N Ogbu, *Human Rights Law and Practice in Nigeria: 2nd Revised Edition vol. 1* (Enugu: Snaap Press Nigeria Ltd. 2013) 1.



legal right is thus the capacity residing in one man or a group of men of controlling, with the assent and the assistance of the state, the actions of others, or even the state.³³

Yinka³⁴ asserts that the words ‘right’ and ‘title’ mean one and the same thing. To buttress this he referred to the case of *Ibrahim Sakati v Jabule Bako and Anor*³⁵ where Ngwuta JSC stated that: ‘of the various explanations of right the one most appropriate to the facts of this case is in a narrower signification an interest or title in an object of property, a just and legal claim to hold, use or enjoy it, or to convey or donate it, as he may please’³⁶ On the other hand, he defines title to mean *inter alia* : ‘The union of all elements which constitutes ownership’.³⁷ The words ‘right’ and ‘title’ are synonymous just as the words ‘shut’ and ‘close’.³⁸

3.4 Customary Law

There are various definitions of customary law. Customary law which has affected women drastically, has been defined as a set of norms which the actors in a social situation abstract from practice and which they invest with binding authority.³⁹ Customary law has also been described as that which is recognized as law by members of particular ethnic groups.⁴⁰ Customary law has also been defined as ‘a mirror of accepted usage’.⁴¹

Customary law is an important source of Nigerian law primarily because it governs many issues concerning the people's lives; for instance, marriage, divorce, succession or inheritance, land tenure and chieftaincy matters. It was the only legal system that existed among indigenous peoples and communities before the advent of colonial rule. 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.⁴² Customary law is intrinsic to the life and custom of indigenous peoples and local communities. What gives a practice the status of “custom” and what amounts to “customary law” as such will depend very much on how indigenous peoples and local communities themselves perceive these questions, and on how they function as indigenous peoples and local communities.

As earlier mentioned, there are various definitions of customary law but the definition in the case of *Owoniyi v Omotosho*,⁴³ and *Oyewunmi v Ogunesan* are germane to this study. In *Owoniyi v Omotosho*, Bairamian FJ defined customary law as: “A mirror of accepted usage, among a given people. In *Oyewunmi v Ogunesan*,⁴⁴ Obaseki JSC said:

Customary law is the organic or living law of the indigenous people of Nigeria, regulating their lives and transactions ... it is organic in that it is not static; regulatory in that it controls the lives and transactions of the community subject to it. It is said that custom is the mirror of the culture of

³³ CA Oputa, (n 31) 38-39.

³⁴ Y Olomajobi, *Human Rights and Civil Liberties in Nigeria: Discussions, Analyses and Explanations* (Lagos: Princeton & Associate Publishing co. Ltd. 2016).

³⁵ (2015) LPELR – 24739 (SC).

³⁶ Black's Law Dictionary Special Deluxe (Fifth Edition) 1189.

³⁷ *Ibid*, 1331.

³⁸ *Ibrahim Sakati v Jabule Bako and Anor* (2015) LPELR – 24739 (SC), p. 27 paras. B-E.

³⁹ I Hamneth, *Chieftainship and Legitimacy: An Anthropological Study of Executive Law in Lesotho* (London: Rutledge & Kegan Paul, 1975) 10-13.

⁴⁰ *Eshugbayi Eleko v Govt. of Nig.* (1931) AC 662 at 673.

⁴¹ *Owoniyin v Omotosho* (1961) 1 ALL NLR 304 at 309.

⁴² T Niki, *Sources of Nigerian Law* (Lagos, MIJ professional publishers Ltd. 1996) 103-104.

⁴³ [1961] 1 All NLR 304.

⁴⁴ (1990) 1 NWLR (Pt. 134) 184.



the people. I would say that customary law goes further to import justice to the lives of those subject to it

Thus, customary law is the accepted customs and culture of a given people or community which after a long usage acquire a legal backing. Customary law has constitutional validity by virtue of section 315 of Nigerian Constitution which provides as follows: “Subject to the provisions of this Constitution, an existing law shall have effect with such modifications as may be necessary to bring it into conformity with the provisions of this Constitution ...”⁴⁵ Section 2 of Evidence Act⁴⁶ defines custom as “a rule which in a particular district, has, from long usage, obtained the force of law.” Thus, customary law consists of customs accepted by members of a community as binding among them.⁴⁷

This means that customary law just like any other source of law, is subject to such necessary modification that will bring it into conformity with the Nigerian Constitution. It is in this line that Rivers State House of Assembly proposed a Bill in 2021 for the Prohibition of the Curtailment of the Rights of Women to share in Family Property sponsored by Honourable Michael Okechukwu Chinda. This Bill was passed into law by Rivers State House of Assembly in 2022. It is equally this constitutional validity of customary law that spurred the Supreme Court to hold in *Ukeje v Ukeje* that:

No matter the circumstances of the birth of a female child, such 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.⁴⁸

3.4.1 Features of Customary Law

Native custom is not static but varies according to conditions and modifies itself when necessary. In the case of *Lewis & Ors v Bankole*⁴⁹ Osborne, C. J (as he then was), opined that:

One of the most striking features of West African native custom is its flexibility; it appears to have always been subject to motives of expediency and it shows unquestioned adaptability to altered circumstance.

This decision buttresses the fact that customs up till now were neither rigid nor inadaptable. Customary law has the ability to adapt to changes in order to solve perceived problems or to tackle novel difficulties facing the people who are bound by it.

A fundamental characteristic of customary law is that it is unwritten and is therefore flexible. Osborn CJ in *Lewis v Bankole*⁵⁰ said: ‘one of the most striking features of ... African native custom ... is its flexibility; it appears to have been always subject to motives of expediency, and it shows unquestionable adaptability to altered circumstances without entirely losing its character.’ An illustration of this feature of flexibility is found in the customary land law. Under the customary land

⁴⁵ Section 315, 1999 Constitution of the Federal Republic of Nigeria (as amended).

⁴⁶ Cap. E14, Laws of Federation of Nigeria (LFN), 2004.

⁴⁷ AO Obilade, *The Nigerian Legal System* (Ibadan: Spectrum Books Ltd. 2001) 83.

⁴⁸ *Ibid*, p. 408.

⁴⁹ [1908] 1 NLR p. 82.

⁵⁰ (1908) 1 NLR 81 at 100-101.



law of the Yoruba, absolute alienability of land was not permitted.⁵¹ The land belonged to the family and no individual family member could own any piece of land absolutely.⁵² But this custom had been changed in response to the social needs of the community. Consequently, the Yoruba customary law now recognizes the absolute transfer of title to land to individuals.⁵³ Initially, any transaction involving the use of writing was considered to be outside the province of ethnic customary law. This position has now been changed; thus, customary law may now govern a written agreement.⁵⁴ There are increasing instances of the recording of rules of customary law. Local governments are authorized by the appropriate laws in most states of Nigeria to make declarations or modification of customary law rules applicable to any particular matter within their respective area of authority.⁵⁵ Such declarations or modification of customary law which are to be in a written form then apply within the jurisdiction of the particular local government. State governments have equally taken some steps to whittle down the application of some customary practices in Nigeria.⁵⁶

4. Igbo Customary Law of Inheritance and *Ukeje v Ukeje*

In Nigeria, Igbos inhabit an area referred to as Igboland, which is divided into two sections along the lower River Niger. They live in most or all parts of five states: Abia, Anambra, Ebonyi, Enugu and Imo, as well as minor parts of Delta, Rivers and Benue states. Small Igbo communities are also found in parts of Cameroon and Equatorial Guinea.⁵⁷ The Igbo rites classify property into three categories: land, commercially valuable trees and plants, and movable property (household articles, livestock, money, and debts).⁵⁸ The classification of land in Amawbia by Ifediora Osita is ideal to this study. Land tenure in Amawbia and in most part of Igbo land can be classified into: community/communal or land owned by the entire Amawbia community (*Ana Obodo*), Village land/tenure (*Ana Ogbe*), clan land/tenure (*Ana Umunna*), the family land/tenure (*Ana Ezi na Ulo*) and the individual land tenure. Outside these is also ones dedicated to the gods of the land or otherwise known as “*Ofia Alusi*” or “*Ani Alusi*.”⁵⁹

In most Igbo traditional societies, females are assumed not to exercise rights of inheritance over their father’s property. Though they could benefit from their father’s estate or property (individual land), such gestures are normally extended to them by their father out of his personal consideration while he is alive. And even at that, such gesture cannot include any portion of land within his ancestral home. This is more exhibited in the case of *Ukeje v Ukeje* where the land in contention is situated at Lagos where the deceased lived. Though, there is no mention that the deceased had other individual land in the village but it is the submission of this study that outright right of inheritance would not have been given to the plaintiff if the land was to be a communal land, village land or clan land.

⁵¹ *Lewis v Bankole* (1908) 1 NLR 81.

⁵² *Amodu Tijani v Secretary Southern Nigeria* (1921) 2 AC 399.

⁵³ *Alade v Aborishade* (1960) 5 FSC 167; *Oshodi v Balogun* (1936) 2 All ER 1632.

⁵⁴ *Alfa v Arepo* [1963] WNLR 97; *Rotimi v Savage* (1944) 17 NLR 77.

⁵⁵ Local Government Law, 1976 (Anambra State) section 60; Local Government Law, 1977 (Kano State) section 48.

⁵⁶ See the following State Laws: The Female Circumcision and Genital Mutilation (Prohibition) Law, Edo State, 1999; The Prohibition of Infringement of Widow’s and Widower’s Fundamental Rights Law, Enugu State, Law No.3, 2001; A law to abolish Traditional Practices Against Women and Children, Ebonyi State, Law No. 10, 2001; Dehumanizing any Harmful Traditional Practices Law, Rivers State, No. 2, 2003 and many others.

⁵⁷ Adejoke Adeboyejo, ‘An Introduction to Nigeria’s Igbo People’ *Culture Trip* <<https://theculturetrip.com/africa/nigeria/articles/an-introduction-to-nigerias-igbo-people/>> accessed on 7/03/2022 at 3:38pm.

⁵⁸ SNC Obi, *The Ibo Law of Property* (London: Butterworths, 1963) 30.

⁵⁹ I Osita, ‘An Analysis of Igbo Traditional Land Tenure System in Amawbia (Amobia), Awka South Local Government Area of Anambra State’ *International Journal of Engineering Science Invention*, (2014) (3) (1) 24-38.



Although, there is no express definition of what constitutes a family land under Rivers State Prohibition of The Curtailment of Women's Rights to Share Family Property Law, No. 2 Of 2022; it is the submission of this study that by virtue of sections 12, 13 and 14 of the Rivers State Prohibition of The Curtailment of Women's Rights to Share Family Property Law, No. 2 of 2022 which penalized discrimination or deprivation of a woman or female child or a widow from inheriting or partaking in family property, family property could be said to mean property acquired by a man or a woman either independently or in conjunction with his wife or her husband during the subsistence of their marriage. This position is also buttressed by the fact that family land refers to land which is collectively owned, managed, and enjoyed by members of a family, and usually passed down through generations with all individual members having the right to enjoy it. In a multicultural society like Nigeria, family land holds significant cultural, social, and economic value as it represents identity, history, community bonds and wealth⁶⁰ and women remain integral part of a family. Women or female child should not be discriminated and are in fact, not expressly discriminated from inheriting family land in Igbo land. It must be mentioned that female right of inheritance is biblical. Females are conferred with inheritance rights as contained in the Holy Bible where Moses gave right of inheritance to the daughter of Zelophehad.⁶¹ And females are expected to carry on with the properties so inherited even after marriage.⁶² Igbo women had always inherited from their parents, if not out rightly, for usufruct.

There is no denial that inheritance rules in Igbo land appear to largely favour male offspring over female offspring of a deceased person. For instance, although many local variations exist, inheritance of land generally follows the principle of primogeniture where the eldest son no matter his age and position in the family is expected to be the head of the family and as such, he gets the largest share of his deceased father's individual land; with other sons sharing the rest equally.⁶³ If the deceased does not have sons, his land is expected to devolve to his brothers to be shared according to seniority.⁶⁴ This is mostly the case in other land tenure system in Igbo land; except where the land transcends from the tenure listed herein to individual land. However, some gluttonous relations tend to extend the inheritance concept of other land tenure system to include individual land and this led to majority of cases decided by court where the witness will testify that women do not inherit land in Igbo land without making reference to the exception.

The ideal means to create a family land by operation of law in Igbo culture is where the family head, usually the father of the family, dies intestate.⁶⁵ Members of a family have property rights that arise from the family's ownership of a land. These rights can be enforced against even the family head⁶⁶ and other principal members of the family who have or seek to deprive a family member of such rights. Family property ownership is similar to the concept of '*tenancy in common*'.⁶⁷ When a tenant in common dies, his/her interest in the family property passes to his/her

⁶⁰ AO Kadri, O Ehinmosan & O Ayinde 'Cultural and Legal Considerations in Family Land and Property Inheritance in Nigeria <CULTURAL AND LEGAL CONSIDERATIONS IN FAMILY LAND AND PROPERTY INHERITANCE IN NIGERIA - S.P.A. Ajibade & Co (spaaajibade.com)> accessed on 17 April 2024 at 2:38pm

⁶¹ Numbers Chapter 36:2 KJV.

⁶² Numbers Chapter 36:3 KJV.

⁶³ SNC Obi, *op cit*, 199.

⁶⁴ GA Wigwe, 'Igbo Land Ownership, Alienation and Utilization: Studies in Land as a Source' in GM Umezurike *et al.* (eds.) *Igbo Jurisprudence: Law and Order in Traditional Igbo Society* 1986 32, 39.

⁶⁵ Where a landowner whose estate is governed by customary law dies intestate, his land devolves on his heirs in perpetuity as family land. This is a general rule of customary law and an example of family property created by operation of law.

⁶⁶ Usually the eldest male son.

⁶⁷ This is a form of ownership in which two or more people own separate shares of the same property. In tenants in common circumstances, each person holds an individual, undivided ownership interest, which gives them an equal right to use the property or transfer their ownership interest.



heirs or successors. This is so because the tenant in common's share of the family property is his/hers to dispose as he/she wishes. However, ownership of family property is different from a tenancy in common in that no individual member of the family can dispose of the family property in his/her will until the property is partitioned. Conversely, the *joint tenancy* concept involves a right of survivorship; if one of the joint tenants dies, his/her interest passes to the surviving tenant.

5. Conclusion and Recommendations

Customary law is recognized as a source of law in Nigeria. Land ownership among the Igbos is highly controlled by existing customs and norms. One of the foremost features of customary law in Nigeria is adaptability. However, a custom sought to be enforced must not be repugnant to natural justice, equity and good conscience. Any custom that purports to deny women right to inheritance is antithetic to the Constitution of the Federal Republic of Nigeria which is the grundnorm and it acknowledges the right of a woman to own movable and immovable properties and the freedom against discrimination by reason of some factors including sex. By virtue of sections 6 and 8 of the Rivers State Prohibition of The Curtailment of Women's Rights to Share Family Property Law No. 2 of 2022, a legally married woman possesses the same rights and responsibilities in respect of the acquisition and ownership; management and administration; enjoyment and disposition; of the family property with her husband, where the family property was jointly acquired. A widow, in so far as she is legally married and did not remarry after her husband's death, shall not be deprived of her rights and responsibilities in respect of the family property, notwithstanding the fact that she had not child for her deceased husband.⁶⁸

Case law, which is recorded in Law Reports series, provides the bulk of law in the Nigeria and acts as a source of law through the mechanism of the doctrine of judicial precedent. According to the doctrine of judicial precedent, a court is bound by the decisions of a court above it and, usually, by a court of equivalent standing. Superior courts have the power to overrule decisions of lower courts and in certain cases to overrule their own decisions.

Inheritance is one of the commonest ways for women to acquire or access land. However, the pursuit of gender equality in inheritance rights has been one of the most difficult challenges in rights-based approaches owing to the complexity as well as well entrenched patriarchal characteristics of socio-economic, cultural and religious practices. There have been increasing calls from human rights mechanisms and UN bodies to strengthen women's rights to property, land and other resources through effectively addressing discriminatory laws and practices. It is highly recommended that there should be an acknowledgement that women had been partaking in sharing of family land, though for usufruct and during their life time. It is further recommended that women's right to property under native law and custom in Nigeria transcend from usufructuary and life time usage to outright use as socio-economic situation demands. Thus, the decision in *Ukeje v Ukeje* ought to be an affirmative force and not a derivative authority to women's right to property in Igbo land.

⁶⁸ Ss. 7 and 8 Rivers State Prohibition of The Curtailment of Women's Rights to Share Family Property Law No. 2 of 2022.