

## THE RIGHTS OF FEMALES TO INHERIT UNDER NIGERIAN CUSTOMARY LAWS: HOSTILE FACTORS EXOGENOUS TO CUSTOMARY LAWS\*

### Abstract

*Research female rights to inherit was found to have been concentrated on customary laws that hindered women from being co-heirs with their male counterparts in matters of claims for inheritance; and where such cultures allowed, women share of inheritance was found to be less than their male counterparts. No works have paid particular attention to the attitude of women and other parties that have been inimical to the inheritance rights of women. This work explored the religious factors, courts' attitudes among other things that are fertile grounds that allow women to be discriminated against in inheritance claims. The study combined the doctrinal and empirical research methods to achieve its aim. Juristic works in textbooks and journals; case law and statutes were consulted to attain its goal. The study, additionally, employed interview method in its search for information. It was the finding that female heirs have to overcome the fear of blackmail, intimidation; and courts must do away with religious sentiments in their application of the Constitution of the Federal Republic of Nigeria, 1999 (CFRN) and declare Islamic Law tenets void as in the cases of other rules of customary laws found to be unconstitutional. The work found the legal framework set for the actualisation of the inheritance rights of females but the challenge remains the attitudes of some persons/institutions. This work recommended, inter alia, that women rights groups socialise females in the matter of claims of their inheritance rights.*

**Keywords:** Inheritance, Females, Sharia, Discrimination, Customary Law.

### 1. Introduction

Inheritance is a universal mode of the acquisition of property rights. This mode of the acquisition of property rights dates back to antiquity. It is a fact of history that it was the cause of the call by Sarah, Abraham's wife for the expulsion of Ishmael and his mother (Hagar) from the household of Abraham.<sup>1</sup> The Quran has a laid down formula for the sharing of the property of deceased Muslims among their heirs.<sup>2</sup> These two religious books teach that females could inherit from their parents.<sup>3</sup> The background to this research shall be viewed from two fronts, the municipal or domestic front and the foreign front.

### 2. The Municipal Front

At the municipal or domestic front, the law on the property rights of women in the estates of their parents or husbands on their demise has either suffered complete denial or a partial grant under the various customary laws of Nigerian ethnic groups. This is in spite of the fact that statutory law frowns at such practices under native law and custom which includes Islamic law. Section 42(2) of the CFRN is explicit and emphatic in its preservation of the right of all Nigerians not to be discriminated against because of circumstances surrounding their births. This provision goes without saying that such circumstances surrounding one's birth include the gender status of a citizen. In spite of this provision, some of the customary practices do not still recognise the rights of female children to inherit. This hoary practice arose when female children were seen as subhuman who should have no equal rights with their male counterparts whether as children or as wives to their husbands; alternatively, they are seen as Notorious among ethnic groups with such customary practices are the Igbo ethnic group of Eastern Nigeria. In *Ukeje v Ukeje*,<sup>4</sup> the Supreme Court held that any customary law that disinherits a female

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<sup>1</sup> *Holy Bible*, Genesis 21: 9-12.

<sup>2</sup> *Holy Quran* 4:11, 12 and 176.

<sup>3</sup> *Holy Bible*, Job 42:15; Joshua 15:17-20.

<sup>4</sup> (2014) LPELR – 22724 (SC); (2014) 11 NWLR (Pt 1418) 384.

child is *null* and *void*. In the case of *Anekwe v Anekwe*,<sup>5</sup> the Supreme Court held a rule of the customary law of Awka that stood against a widow inheriting her husband as *null* and *void*. In spite of the constitutional provisions and the series of judicial interventions, this practice has flourished among ethnic nationalities in Nigeria as if it is legal.

### 3. The Foreign Front

Nigeria is a member of the international community and a signatory to conventions that protect the rights of women. It is conceded that international statutes do not enjoy automatic application in Nigeria except they go through the procedure of domestication i.e. be passed through the law-making procedure of the National Assembly and be assented to by the President of the Federal Republic of Nigeria,<sup>6</sup> yet Nigeria would not want to lose its estimation in the eyes of members of the international community. Nigeria is a signatory to international treaties such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),<sup>7</sup> whose articles 2 and 5 obligate state parties to eliminate discrimination against women in all matters relating to marriage and family relations, including inheritance.<sup>8</sup> The African Charter on Human and Peoples' Rights, domesticated in Nigeria, also guarantees equality and dignity of women in its provisions.<sup>9</sup> Be it noted that the domestication of this charter has placed it above all other national laws of the Federal Republic of Nigeria in case of any conflict between its provision and the provision of any such other law.<sup>10</sup> Academics have devoted time to address the injustice of the exclusion of the female gender from the rules of inheritance of any ethnic group. They have not spared ink in telling the world how unlawful and unequitable any such rules of customs are.<sup>11</sup> Gender inequality in the scheme of the various customary laws of inheritance is not only a constitutional aberration,<sup>12</sup> but is also affront to the rule of law and all that it stands for.<sup>13</sup>

### 4. The Research Problem

From the above background, it is clear that ancient laws, domestic statutes, judicial decisions and international statutes all favour the right of women to inherit. In spite of these, the problem remains, why do women still suffer these malpractices in various societies or ethnic groups in Nigeria till today? This is the question that reveals the problem that has necessitated this research. In order to do justice to this inquiry, the factors that constitute the setbacks to the full actualisation of the rights of women to inherit either fully or at all shall be enumerated and examined in no particular order. It must be borne in mind that every factor to be so considered is not necessarily common to all ethnic groups but some of them are.

**Religion:** Religion is a factor that makes people blow up themselves believing they are doing God a service. It is no wonder at all if it would have a place in the list of setbacks to the actualisation of the rights of women to assert their rights to inherit among their male counterparts in equal proportion or at all. The Quranic verses referred to above<sup>14</sup> certainly place the right of a woman to inherit property along her male siblings at half of the entitlement of the male. This is a flagrant violation of the section 42(2) of the CFRN, at variance with the decisions of courts cited above<sup>15</sup> and a violation of the female right

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<sup>5</sup> Unreported Suit No SC 129/2013, Judgment delivered on the 11 April 2014.

<sup>6</sup> *Fawehinmi v Abacha* (1996) LPELR – 1258 (SC).

<sup>7</sup> Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981).

<sup>8</sup> *ibid.*

<sup>9</sup> African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap A9 LFN 2004, art 18(3).

<sup>10</sup> (n 7)

<sup>11</sup> Rebecca J Cook, *Human Rights of Women: National and International Perspectives* (University of Pennsylvania Press 1994) 13.

<sup>12</sup> Hilary Charlesworth, 'What Are 'Women's International Human Rights'?' (1994) 15 *Human Rights Quarterly* 58, 62. See also N O Odiaka, 'The Concept of Gender Justice and Women's Rights in Nigeria: Addressing the Missing Link' (2013) (2) (1) *Afe Babalola University Journal of Sustainable Development and Policy*, 190-100.

<sup>13</sup> Alvert Venn Dicey, *Introduction to the Law of the Constitution* (Macmillan and Co, 1885).

<sup>14</sup> (n 3)

<sup>15</sup> *Ukeje v Ukeje* (n 5) and *Anekwe v Anekwe* (n 6).

to be treated with dignity under section 34 of the CFRN and provisions of other international statutes.<sup>16</sup> The Muslim simply sees nothing wrong in this unfair deal since accepting it is submission to the injunction of her creator contained in the Quran. She sees any protest against this position as rebellion against the commandment of her creator. A Christian woman has been taught that if she is sued for her cloak, she should yield her coat as well;<sup>17</sup> and that godliness with contentment is great gain.<sup>18</sup> A combination of such scriptures necessarily slows down the agitation tendency in women to struggle for what is rightfully theirs.

**Intimidation:** This is common among the ethnic and religious groups in Nigeria. The authors interacted with a woman, whose husband died sometime in 2024 and the deceased brothers came to make away with everything and left her without anything with her few months-old only daughter. It was her disclosure that she was first threatened that she was responsible for her husband's death because she wanted to hold onto his properties.<sup>19</sup> The only fruit of the marriage that she held dear was threatened with death should she resist what they wanted to do. She gave up. The place of the Quran in the life of a Muslim in Nigeria is such that no Muslim would want to be publicly accused of the violation of the provisions of the Quran. It could lead to instant execution of such person by extremists. This peril puts the female folk of the Islamic faith in a situation of accepting it as a matter they have no option. In this state of unfairness to the Muslim female, the further misfortune is that, although Islamic law is the customary law of the Muslims, it is not subjected to the validity test that other rules of customary law must pass before they are applied. In its repugnant state of unfairness to women, it is still applicable by courts without questioning.<sup>20</sup> Such is the peril of faith to the inheritance/property rights of women and the CFRN that guarantees those rights.<sup>21</sup> Consultation with females from both religions yielded over Ninety per cent of response to submission to religious teachings as reason that they cannot put up a fight in situations of unfairness to them in claims of inheritance rights. Over seventy per cent entertain fear for their lives or the lives of their children should they put up any resistance to the dominant gender's claim of exclusive right to inherit or to half of what a female should take as inheritance.<sup>22</sup> The problem therefore has a dual legged stand, faith and fear.

**Blackmail:** The fear of blackmail is mostly though not exclusively from the flank of religion. To a Christian female pushing for such claims she could easily be branded as being careful for the things of the world. She could be the object of gossips in church and at home. Her Muslim counterpart could easily be pointed at every turn of the community as one that is at war with the tenets of Sharia. The fear of all these accusations is a discouragement factor to females that have genuine claims. Interactions with some elite Muslim females when confronted with the fact that their counterparts of the Igbo ethnic extraction pursue such claims to the Supreme Court level were unanimous in saying that their socio-cultural backgrounds vary. It is their position that if they try that in the north even their descendants would be stigmatised.

**Judicial Attitudes:** One may wonder how judicial attitudes towards the claim of females for equal rights of inheritance could be of any consequence in an inquiry such as this. After all, cases have been cited showing that the apex court frowns at discrimination against women in inheritance claims.<sup>23</sup> A query like this may sway an argument in other customary law claims of inheritance in favour of females where they assert the unconstitutionality of unequal rights of inheritance with male siblings or the lack

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<sup>16</sup> (n 8,9 and 10). See also Dakas CJ Dakas and Nankin Bagudu editors, *Human Rights: A Compendium of International Instruments and Internet Resource Guide* (Dales Press Ltd, 2004).

<sup>17</sup> Holy Bible, Luke 9:3.

<sup>18</sup> Holy Bible, 1 Timothy 6:6.

<sup>19</sup> Musa Y Suleiman, 'Some religio-Cultural Practices Against the Property Rights of Women and Children in Nigeria and Specified African Countries' *Journal of International Law and Jurisprudence* (2019) 10(1) 166, 171.

<sup>20</sup> *Osagie v Osagie* (2009) LPELR-4533 (CA)

<sup>21</sup> Musa Y Suleiman 'Islam and Constitutionalism in Nigeria: 1999 Constitution and the Challenges of Islamic Law and Practice' *Journal of International Law and Jurisprudence* (2019) 10(2) 155/161

<sup>22</sup> Cf *Rono v Rono* (2008) KLR G & F 803 where the custom of Keiyo people that gave more share of inheritance to males more than females was held to be discriminatory. See also Musa Y Suleiman (n 20).

<sup>23</sup> (n 15)

of the right of females to inherit. The attitudes of courts have shown that this position is hardly maintainable in Islamic law. We have seen that the test of the compatibility of customary law with natural justice, equity and good conscience and the provisions of the any written law for the time being in force is not applicable to Islamic Law.<sup>24</sup> In Islamic law, it is settled that a female claim in the estate of her deceased father can only be half of that of her brother. The guiding Quranic injunction on this is chapter 4 verse 11 which provides:

God commands you as regards your children's (inheritance): to the male, a portion equal to that of two females; if (there are) only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. For parents, a sixth share of inheritance to each if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers (or sisters), the mother has a sixth. (The distribution in all cases is) after the payment of legacies he may have bequeathed or debts. You know not which of them, whether your parents or your children, are nearest to you in benefit; (these fixed shares) are ordained by God. And God is Ever All-Knower, All-Wise.<sup>25</sup>

The judicial tilt of mind on Islamic matters that are outrightly antagonistic to constitutional and other statutory provisions leaves one with no doubt that this Quranic provision as a provision of Islamic Law would never be declared *ultra vires* the CFRN. This assertion is not without basis. In the Indian Muslim case of *Chawdhury v Chaudhury*,<sup>26</sup> it was held that a child born out of wedlock had no inheritance by the tenets of Islamic law. This position was maintained in the Tanzanian Muslim case of *Mbonde v Selemani*.<sup>27</sup> Courts in Nigeria have never relented in holding the evidence of a female witness as half the evidence of man;<sup>28</sup> the evidence of relations or friends to parties in a suit or even the evidence of the parties themselves as inadmissible by the provisions of Islamic Law. These are completely inconsistent with the provisions of section 200 of the Evidence Act, 2011 which does not require the number and/or sex of witnesses to prove a matter except in few cases which Islamic Law is not part of.

**Poverty and Ignorance:** The majority of the females that suffer discrimination in inheritance matters are the poor rural dwellers. These are not only poor but are also ignorant of their right to claim from the estates of their deceased parents. In the environment they find themselves, the customary practice of female denial of inheritance is what they were born into, lived with and have accepted same as the way of life of their people. Where, however, they could be advised on the need to put up a judicial fight to assert such rights, they are held back by poverty. They cannot afford the services of legal practitioners especially when the adverse claimant is better placed financially. This makes the female heir resign to fate.

## 5. Conclusion and Recommendations

This work is focused on areas that are unfriendly to the female claims as heirs of the estates of their deceased parents. Traditionally, academics have directed their attacks on the various native laws of the parties concerned to shown how the female folk is mistreated in matters of the claims against the estates of their parents and sometimes their husbands. The courts have not hesitated to deal with such unfair situations in fair judgments that has seen the female claimants smiling out of judgment halls. There is on the subject matter of the inheritance rights of females that has long been over due to be attended to but has not; and that is the areas that are antagonistic to female claims from the estates of either their deceased parents or spouses that are out of the zone of their hostile customary laws and practices. Those are the areas that this work has identified and dealt with above. Chiefly in these areas that needs particular mention at this point is the unfair treatment that female Muslims receive from the operation of the Sharia Law system. The work found some of the factors subsisting in the plural customary law

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<sup>24</sup> (n 19).

<sup>25</sup> Qur'an, Surah An-Nisā' (4:11).

<sup>26</sup> (1921) BOMLR 636.

<sup>27</sup> (1988) TLR 254.

<sup>28</sup> *Akande v Atanda* 1 Sh LRN 194, *Sule v Arewa* (1986) 5 NWLR (Pt 44) 744, *Ummaru v Bakoshi* (2006) 3 SLR (Pt 1) 80, 101, *Kaka v Nagwanja* (2006) 3 SLR (Pt 2) 1. See also Hannafi A Hammed, *Islamic Law of Evidence and Administration of Justice in Nigeria* (Princeton and Associates Publishing Co, 2022)220-221.

and practices system of Nigeria as a result of the indulgence granted them by the same females that they work against; alternatively, as a result of the blindfold that religion has been to some of the female heirs. The above findings and the back ground of this work necessitate the following recommendations: Members of the bench should overcome the failure and/or neglect to order practices of Sharia Law to its appropriate place below the provisions of the CFRN and other laws either of states or the Federation. This has been the condition precedent of the application of customary laws which Sharia law is part of. Practices such as see a female receiving half the share of a male in matters of inheritance, having her oral testimony before Sharia courts treated as half the evidence of a man should be condemned in totality for being discriminatory and unconstitutional; and at war with the clear provisions of the Evidence Act, 2011 particularly section 175 on the competence of a witness and section 200 on the number of witnesses required to prove a fact before a court of law. Feminist rights groups should embark on enlightenment campaigns to educate the female folk on their rights to inheritance on the same footing as their male siblings; and to harbour no fear of intimidation or blackmail when they choose the noble path of seeking for remedies for actual or anticipated breach of their rights to inherit their deceased parents or spouses. Feminist rights groups to embark on support to those claimants that are financially weak to champion their causes before courts of law.