

## **JUDICIAL ACTIVISM: A CATALYST FOR GENDER EQUALITY IN INTESTATE SUCCESSION\*<sup>1</sup>**

### **Abstract**

*The supposition that the role of the judiciary extends beyond ordinary interpretation of law to making laws through judicial activism is indeed true. This is largely owed to the inadequacy of laws, which have sometimes created a leeway for injustice. The court, being the last resort of the common man, have more often than not come to the rescue of aggrieved parties, thereby expanding the horizons of the law. On the other hand, gender equality has been a contentious subject matter within the context of intestate succession. This article considers how judicial activism has shaped the legal debacle of gender equality in matters of intestate succession. The study highlights how entrenched patriarchal customs and statutory ambiguities perpetuate discrimination against women, widows, and daughters in matters of inheritance, despite constitutional guarantees of equality and non-discrimination. This article adopts a doctrinal research methodology in analyzing legal statutes, case law, and customary practices to interrogate gender inequality in intestate succession within Nigeria's plural legal framework. Key findings indicate that judicial activism has played a critical role in addressing these entrenched inequalities. The courts, by interpreting constitutional and international human rights principles, have invalidated several discriminatory customs and affirmed the inheritance rights of women in landmark decisions such as *Mojekwu v Mojekwu* and *Ukeje v Ukeje*. Furthermore, the judiciary has demonstrated a balanced approach by upholding equitable customary practices, such as the Yoruba *Idi-Igi* principle, which promotes fairness in the distribution of estates in polygamous families. Nevertheless, challenges persist due to inconsistent enforcement, lack of legislative reform, and continued societal resistance to change. The article concludes that while judicial activism has been indispensable in promoting gender equality in intestate succession, sustainable progress requires comprehensive legislative action and broader societal engagement. It recommends that legislative bodies enact clear and equitable succession laws in line with constitutional and international standards, and that traditional and community leaders be included in reform initiatives. Public education and advocacy by civil society are also essential to foster acceptance of gender-equal inheritance practices. Ultimately, a collaborative effort among the courts, legislature, and society is necessary to achieve lasting justice and equality in Nigeria's succession regime.*

**Keywords:** Judicial Activism, Gender Inequality, Intestate Succession, Catalyst

### **1. Introduction**

Gender equality has been a contentious subject matter within the context of the Nigerian legal trajectory on succession. It has become even more pronounced following the advent of globalization, where nations have been able to come together to create treaties that will commonly bind them on sensitive matters such as gender equality. It suffices, therefore, that the contention on gender equality is not only peculiar to Nigeria, as it is a global phenomenon. However, there are ways in which the Nigerian situation in this case is distinct. At large, Nigeria operates a multiple legal system including statutory, customary, and Sharia'h, and each of these legal systems is driven by diverse ideological underpinnings. Consequently, obtainable principles of these legal systems have recurrently clashed, thereby creating an overlap in application, especially in the bid to determine which legal system bears preeminence over another. It is in view of these challenges that the courts have, from time to time, tried to clarify doubts and also establish best practices which have so far acknowledged the significance of customs without compromise for human rights. As such, it is believed that where there exist no legal provisions or where such provisions exist and it is inadequate, the court reserves the prerogative to legislate from the bench, typically highlighting broader social and public implications in the contemplation of a given matter.

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The foregoing serves as the basis of judicial activism; the horizons of the law are expanded deeper beyond its surface, sometimes beyond legislative intent, to accommodate public good. The implication of this is sometimes far-reaching with ripple effects. According to Sulyman,<sup>2</sup> giving further interpretations to a given law helps to restrain arbitrary practice while ensuring that constitutionality stands at the core of every practice.

Intestate succession in Nigeria is a complex and multifaceted issue that requires a comprehensive and nuanced approach. A pervasive issue in many Nigerian communities, particularly in rural areas where the majority of the population resides, the lack of clear and consistent laws and customs,<sup>3</sup> the marginalization of vulnerable groups, the complexities of the legal system, the lack of education and awareness, and the social and economic context all contribute to the conflicts and disputes that arise from intestate succession.<sup>4</sup> Customary law, unlike statutory law, is riddled with uncertainties, and as a result of this obvious lacuna, succession to the estate of a deceased man is subjected to all kinds of inhuman, discriminatory, and inequitable practices on the grounds of custom. While male descendants have unfettered rights over the estates of their deceased fathers, the womenfolk, however, do not enjoy these same unfettered rights over the estate of their fathers, particularly as it affects the real properties; this is in view of the fact that many communities, daughters, and widows do not acknowledge or consider them as rightful heirs.

The succession rights under customary law are widely discriminatory against women, either as daughters or wives. While the custom economically recognizes and accords the daughters partial rights of inheritance over their late father's estates, the wives, on the other hand, are treated or regarded as chattels and or part of their husband's estates. Some customs like the Urhobo and Isoko people of Delta State distribute/allocate these wives as part of the estate of their husbands. The problem of this research therefore is that there is discrimination with respect to female inheritance rights as beneficiaries under the native law and custom in Nigeria and the problem still subsist in spite of the various legal framework for the protection of beneficiary right under intestate succession in Nigeria.

This article critically examines the prevailing concerns of customary practices that are anchored on widening the inequality gap, usually at the detriment of women. It examines how these traditional dispositions impact women's rights, particularly in matters of inheritance and succession, and assesses their implications for gender equality and social justice. To this end, this article acknowledges the resourcefulness of judicial activism and interrogates how this unintended role of the courts has come to shape intestate succession in Nigeria through the invocation of constitutional provisions and international best practices on human rights. It submits that the practice of judicial activism has tremendously filled the lacuna occasioned by inadequate laws and legal framework. Albeit it is reasonable to assume that there is the likelihood of role conflicts, as the rule-making powers of the judiciary may sometimes be seen as an affront on the role and powers of the legislature. But where the legislature lags in its constitutional duties of rule-making, who fills the gap? This article submits that judicial activism is largely indispensable as the law-making process in Nigeria is mostly low and requires a lot of bureaucratic considerations.

## **2. Customary Practices of Intestate Succession Necessitating Judicial Activism in Nigeria**

The embers of women's disinheritance in Nigeria have been continually fanned by entrenched principles of patriarchy, which have, for a long time, been the rule rather than the exception.<sup>5</sup> Across various ethnic

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<sup>2</sup> Y. Sulayman, 'Judicial Legislation: The Supreme Court of Nigeria's Model for Strategic Decision-Making?' [2025] 69 *Journal of African Law*, 233–251.

<sup>3</sup> A.A. Anthony and I.O. Agbede, 'Resolving Dilemma of Legal Pluralism in Western States' Laws of Succession', [2022] 3 (2) *Carnelian Journal of Law and Politics* 82.

<sup>4</sup> A. Animasaun, 'Reflection on Interpersonal Conflict of Law under Customary Law in Nigeria' [2023] 2(2) *African Journal of Law & Justice System*

<sup>5</sup> Y.A. Aluko, 'Patriarchy and Property Rights Among Yoruba Women in Nigeria' [2015] 21(30) *Feminist Economics*, 56-81; V. Onyebueke and Others, 'Patriarchal Restrictions and Maternal Manoeuvres: Igbo Women's Quest for Land Inheritance Rights' [2024] 1(1) *Gender and Sustainability in the Global South*, 23-52; M.G Allanana, 'Patriarchy and Gender Inequality in Nigeria: The Way Forward' [2013] 9(17) *European Scientific*

groups, inheritance is primarily viewed through a patrilineal lens, where property devolves to male relatives on the assumption that women, once married, belong to another family. In many Igbo and Bini communities, for example, daughters are excluded from inheriting their fathers' property, while widows are often denied ownership rights to their deceased husbands' estates. Similarly, in some Yoruba customary settings, although women may benefit indirectly through their children, they are not regarded as direct heirs. These practices, while culturally entrenched, perpetuate systemic discrimination and economic marginalization of women, conflicting with modern legal principles of equality and justice. To put it in perspective, the Nrachi custom presupposes that female children are required to remain in their father's house after marriage and care for their parents, particularly their father, in exchange for inheritance rights. The rationale is that where such a female is compelled to remain in her family house to enable her to possess inheritance rights, the family legacy is likely to be sustained. While the Nrachi custom does not preclude female children from marriage, the practice requires that a female child be set aside for the purpose of bearing a child (particularly, a son) who is expected to carry along the family legacies. This practice is viewed as discriminatory against women, as it often perpetuates patriarchal norms and limits women's autonomy and agency. According to Uche,<sup>6</sup> the nrachi practice potentially limits the rights of females and subjects them to possible promiscuity since, in some cases, arrangements are made for females to be impregnated.

In *Mojekwu v Ejikeme*,<sup>7</sup> it was the submission of the court that Nrachi system was unenforceable because it denied equality of women's rights to inherit property. The judgment emphasized that a female child doesn't need to perform the Nrachi custom to be eligible for inheritance. The court also reiterated that the practice promoted promiscuity and was against public policy. This decision aligns with the Nigerian constitutional principles of equality and non-discrimination. The implications of the court's disposition towards the Nrachi custom are far-reaching. The court's declaration that the custom undermines natural justice and equity has since set a precedent for challenging similar discriminatory practices in Nigeria. This decision promotes women's rights to inherit property and emphasizes the importance of equality and fairness in inheritance matters. By invalidating customs that violate fundamental human rights, the court has paved the way for more equitable treatment of women in Nigerian society.

The prejudice against women and their rights is shrouded in different dynamics. The levirate practice is one of such dynamics. Levirate is a cultural practice in many societies, where a widow is compelled to become her late husband's brother or a relative's wife. This practice is usually rooted in traditional and cultural norms, aiming to keep the family property within the family and ensure the widow's care. Nevertheless, levirate can be problematic, especially with regard to the exercise of women's rights and autonomy. This practice is very relatable with the conventional practices of Yorubas and Igbos, where the levirate is termed opo-sisu and nruchi, respectively.<sup>8</sup> Both concepts, though bearing different

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*Journal*; I.V Ougua and F.S Onyenirionwu, 'Exploring the Effects of Cultural Norms and Practices on Female Inheritance in Imo State, Nigeria' [2021] 2 *International Journal of Law and Clinical Legal Education*, 1; A.J Oluwole, 'Widows and Inheritance Hijacking Practices in Ilara Mokin, Ondo State, Nigeria' [2016] 9(1) *African Journal of Criminology and Justice Studies*, 9; J. Akpotor, 'Towards Gender Equality and the Elimination of Patriarchy in Nigeria' [2018] 12(2) *International Journal of Social Sciences*; C Nwokefor, 'Examining the Impact of Patriarchy on the Development and Advancement of Yoruba Women in Southwest Nigeria' [2020] *Benue State University*, 2020.

<<https://search.proquest.com/openview/a057f5a82d946fbbba2b6cbb702ed032/1.pdf?pq-origsite=gscholar&cbl=18750&diss=y>> accessed 5 October 2025.

<sup>6</sup>Charles Uche, 'The Controversial Nrachi Nwanyi Custom of the Igbo' (2017) <<https://jikistmove.medium.com/yesterday-i-engaged-my-father-and-my-eldest-brother-in-an-argument-2f47cbba7cf6>> accessed 3 October 2025.

<sup>7</sup> (2000) 5 NWLR 402

<sup>8</sup> T. Odumosu and F. Opebiyi. 'Opo-Sisu (Levirate Marriage): To What Extent Has the Yoruba Culture Survived Neo-Liberalism of the 20th Century?' [2021](3), *Journal of Commonwealth Law*, 101-125; S.O Ademiluka 'Isup: Assessing the Relevance of Deuteronomy 25: 5-10 in the Nigerian Christian Context, with Particular Reference to the Yoruba.' [2023] (79)(2), *HTS Teologiese Studies/Theological Studies*; N.E Ubochi and Others, 'Sexually Transmitted Infection (STI): A Malady with Skewed Marital Unfaithfulness, the Nigerian

appellations, are mostly on all fours. In practicing *nruchi*, a widow is compelled to remain in her deceased husband's family for reproductive purposes with the late husband's siblings.<sup>9</sup> The use of 'compel' in the foregoing portrays the fact that such an arrangement is made at the behest of the deceased family and often not of the free will of the women.<sup>10</sup> Simply put, women are coerced into undertaking the arrangement. It is reasoned that children resulting from such an arranged relationship will bear the family name of the deceased, thereby extending and consolidating the genealogy of the deceased.

Eze et al.<sup>11</sup> observed that the levirate arrangement is one of the unfortunate realities of widows in Nigeria. They noted that the demise of a Nigerian Woman's husband spelled so much doom and hardship. This hardship can be extensive with domino effects on the social and economic life of the widow. The intersection of levirate and inheritance law in Nigeria can have far-reaching implications for women's rights.<sup>12</sup> When a woman is forced into a levirate marriage, she may lose control over her late husband's property, as it is often managed by her new husband or his family.<sup>13</sup> This can perpetuate women's economic dependence and limit their capacity to make decisions about their own lives.

### 3. Judicial Activism and Intestate Succession in Nigeria

Judicial activism has emerged as a critical mechanism in confronting discriminatory customs and promoting gender equality in intestate succession.<sup>14</sup> The reason for this is plausible; in the absence of a

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Experience.' [2023] (15) (1) *Journal of Public Health and Epidemiology* 22-29; A.O Ogueche and Others 'Christianity and Emancipation of Women in Nsukka Cultural Zone of Nigeria' [2022] (4) (4), *Sapientia Foundation Journal of Education, Sciences and Gender Studies*, 155-156; G.C Nganwuchu and I. Obalum, and R. C. Kanu. 'Cross Family Relationship Amongst Deceased Couples in Aguleri: Implications to Contemporary Christians in Igbo Land', [2022] (6) (2) *Oracle of Wisdom Journal of Philosophy and Public Affairs (OWIJOPPA)*; C.Ogoke, 'Exploring the Practical Application of Polygamy as a Relevant Tool for Social Construction in Post-Colonial Igbo Land.' [2024] (9) (8) *Saudi J. Humanities Social Sciences*, 252-257.

<sup>9</sup> E.E Nwanmouh and Others, 'Public Relations Strategies and Harmful Cultural Practices against Widows Among the Igbos in Nigeria.' [2025] (18) (1) *African Journal of Humanities and Contemporary Education Research*, 320-349.

<sup>10</sup> G. I. Otubah, 'Challenges of Cultural Widowhood Practices Against Women in Igboland: The Biblical View, and The Way Out.' [2024] (2) (2) *Journal of Language Studies and Arts*.

<sup>11</sup> O.B Eze and U.B Egwuagu and D. O Namani. 'Widowhood and Harmful Traditional Practices against Women in South East Nigeria: Challenges and Prospects.' [2024] (15) (1) *Journal of Policy and Development Studies (JPDS)*, 159-174.

<sup>12</sup> C.P Onuorah and Others, 'The 'Not-Our-Gene Syndrome': Perceptions of Child Adoption in Igbo Culture of Southeastern Nigeria.' [2025] 6(1) *African Journal of Religion, Philosophy and Culture*, 233.

<sup>13</sup> *ibid*

<sup>14</sup> K.K Kodiyo, 'Intestate Succession in Kenya, Uganda, and Tanzania: The Role of Customary Laws and the Influence of Colonialism' [2024] PhD diss., University of Pécs (Hungary). <<https://pea.lib.pt.e.hu/server/api/core/bitstreams/5ee7ed87-d799-466e-9969-109e05c1ccea7/content>> accessed 8 October 2025; N.J Eboh, 'Modernism and Intestate Inheritance in South East Nigeria: Rethinking the Distributive Justice Theory' [2021] (1) (2) *University of Cape Coast Law Journal*: 375-394; D Antia, 'Analyzing the Impact of Judicial Activism In Human Right Protection' [2024] *Indian Journal of Law and Legal Research Volume VI Issue III/ ISSN: 2582-8878*; O.H Obi, and O.C Aduma, 'Contemporary Judicial Response to Women's Succession and Inheritance Rights in Nigeria: A Heave to Gender Discrimination' [2020] 1 *African Customary and Religious Law Review*, 42; B.N Okpalaobi and C.R Akorah, 'Discriminatory Inheritance Practices and the Rights of Women in Nigeria' [2023] 4 *African Customary and Religious Law Review*, 87; D.T.A Eyongndi and Others 'Realising Female Inheritance Rights in South Eastern Nigeria: The Imperativeness of Going beyond Legal Rhetoric' [2024] 22 7972 *The Age of Human Rights Journal*; E.N Aniekan and S.D Udom, 'Women Inheritance in the Ibibio Traditional Society' [2023] 20(1) *LWATI A Journal of Contemporary Research*, 243-260; S.O Umeh and B.U Odoh and J.T Okoro, 'Female Succession Rights under the Native Laws and Customs of Nigerian Societies: An Affront to Justice' [2021] 7 *Madonna University, Nigeria Faculty of Law Journal*; P.O Itua, 'Succession Rights under Esan Customary Law in Nigeria: The Problems of Applicability of Esan Customs and the Challenges of Fundamental Rights' [2022] 117 *Journal of Law, Policy & Globalization*, 71; J.O Enyia and S.U Out, 'A Pragmatic Approach to Raising the Bar on Women's Rights in Nigeria' [2019] 22 (5) *Journal Legal Ethical & Regulatory Issues* 1; A Ojilere, R Onuoha and T Igwe, 'New Directions for Securing African Women's Right to

comprehensive legal framework and legislative reforms, the courts and indeed the judiciary have undertaken a proactive role by interpreting existing laws in ways that align with constitutional and international human rights principles. This approach is rooted in the constitutional guarantee of equality before the law and freedom from discrimination pursuant to Section 42 of the 1999 Constitution. Through strategic judicial reasoning, courts have demonstrated that these constitutional provisions can be invoked to validate or invalidate customary rules. As such, this has been instrumental in determining customs that are repugnant to natural justice, equity, and good conscience, thereby advancing the protection of women's inheritance rights. In its judicial approach toward inheritance practices concerning women, the courts have mostly been faced with the dilemma of balancing cultural practices of a people that have been generally accepted as binding over them and contemporary values of an egalitarian society, which is built on equality, equity, and good conscience.<sup>15</sup> In its determination of what is fair and represents equity/equality, the courts have moved beyond reason, as it is typical for cultural practices to be tied to a certain basis. The courts have mostly weighed the social, economic, and legal implications of these practices.<sup>16</sup>

On social implications, the disinheritance of women orchestrates the widening of the social inequality gap, promoting a system where one gender is perceived as superior to the other. On the economic divide, it is commonplace for women, especially in Nigeria, to be dependent on the financial goodwill of their husbands, a circumstance that makes many women grapple for sustenance in the event of a spouse's death.<sup>17</sup> Cultural practices like *Nrachi* and *Oli-Ekpe* are dominant aspects (mostly aimed at disinheriting women),<sup>18</sup> in which case, the judiciary has had to intervene in numerous cases. This copious practice of axing women's rights and, in this case, disinheriting women within the context of intestacy has sometimes found its way into mainstream statutory provisions, thereby giving a ground for 'statutory inequality'.<sup>19</sup> According to Umenweke and Okolo,<sup>20</sup> statutory inequality exists when a given provision of a statute or clause attributes a benefit to one entity at the expense of the other. In *Okonkwo v*

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Property under Customary Law: The Case of Nigeria' [2019] 35(1) *Asian Women*, 95-119; H Dancer, 'Women in Law and Justice in Africa' [2020] *Oxford Research Encyclopedia of African History*.

<[https://sussex.figshare.com/articles/journal\\_contribution/Women\\_in\\_law\\_and\\_justice/23474609/1/files/41183738.pdf](https://sussex.figshare.com/articles/journal_contribution/Women_in_law_and_justice/23474609/1/files/41183738.pdf)> accessed 7 October 2025; I.N Worugji and Rose O. Ugbe. 'The Supreme Court has Cleared the Customary Law Inhibitions on the Inheritance Rights of Women in Nigeria.' [2016] 2(3) *International Journal of Law*, 27-32;

L. Okafor, O Olugasa and O Oladeji, 'Conceptual and Theoretical Framework of Inheritance Rights of Women and Children in South-Eastern Nigeria' [2023] 3 *Redeemer's University Journal of Jurisprudence & International Law* 1; K.O Fayokun, 'Gender Justice in Nigeria: Incoherence of Global Treaties and Customary Law' [2015] 12 *US-China Law Review*, 676; I. N Worugji, 'Judicial Protection of Women's Rights in Nigeria: The Regrettable Decision in *Mojekwu v. Iwuchukwu*' [2013] 16 *University of Botswana Law Journal*, 59.

<sup>15</sup> H. Sahin and, N. P Ayoub and M. Hassmann. 'Legal Pluralism in Contemporary Societies: Dynamics of Interaction Between Islamic Law and Secular Civil Law.' [2024] (1)(1) *SYARIAT: Akhwal Syaksyah, Jinayah, Siyasah and Muamalah*, 1-17; < <https://doi.org/10.35335/cfb3wk76>> assessed on 7 October 2025.

<sup>16</sup> J.C Botero, 'The Three Faces of Justice: Legal Traditions, Legal Transplants, and Customary Justice in a Multicultural World.' A thesis submitted in partial fulfillment of the requirements for the degree of Doctor of Juridical Science (S.J.D.) at the Georgetown University Law Center [2013] available at SSRN:<<https://ssrn.com/abstract=3169450> or <http://dx.doi.org/10.2139/ssrn.3169450>> accessed 7 October 2025

<sup>17</sup> E.E.P Essien and Others. 'Effects of Widowhood Practices on the Physiological Well-Being and Socio-Economic Stability of Women in Nigeria.' [2020] (48)(3) *Journal of the Social Sciences* 568-576; A.B Okoli and L. Okwuosa. 'The Role of Christianity in Gender Issues and Development in Nigeria.' [2020] (76)(4) *HTS Theologise Studies/Theological Studies*.

<sup>18</sup> H. Obi and Y.C Ifeamah. 'An Overview of Women Rights Over Land in Selected Jurisdictions in Nigeria.' {2024} (7)(1) *African Journal of Law, Ethics and Education (ISSN: 2756-6870)*; H.O Obi and O. C. Aduma. 'Contemporary Judicial Response to Women's Succession and Inheritance Rights in Nigeria: A Heave to Gender Discrimination.' [2020] (1) *African Customary and Religious Law Review* 42

<sup>19</sup> M.N. Umenweke and R. C. Okolo. 'A Critique of the Legal and Institutional Frameworks for Property Succession in Nigeria.' [2024] (15)(2) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 179-189.

<sup>20</sup> *ibid*

*Okonkwo*,<sup>21</sup> the court was faced with an instance of statutory inequality, especially with regards to interpreting the provision of section 120(1)(b) of the Administration and Succession Law of Anambra State 1991, which provides that where a deceased dies intestate and with no proven letters of administration, only one third of the deceased's estate shall be handed over to a surviving spouse who reserves total interest in the case of a husband and until a remarriage in the case of a wife. The court observed that the provision of section 120(1)(b) above creates a dichotomy between husbands and wives, which is inconsistent with the constitutional mandate against discrimination of persons in section 42(1)(a) of the Constitution. Like in the instant case of *Okonkwo*<sup>22</sup> above, the judiciary has had to balance the implementation of customary principles of intestacy with the need to protect the rights of women, often relying on constitutional provisions and appropriate underpinnings of international human rights law to guide its decisions.

In the case of *Mojekwu v Mojekwu*,<sup>23</sup> the court was confronted with dissecting the intricate issue of widows' inheritance rights; it was held at the Court of Appeal that *Oli-Ekpe* Custom belonging to the people of Nnewi was repugnant to natural justice, equity, and good conscience. Upon further appeal, the Supreme Court, citing procedural discrepancies, discountenanced the holding of the Court of Appeal. It warned against the crude naming of traditional customs as being repugnant to natural justice. Conversely, the Supreme Court in 2014 delivered a resounding judgment on women's inheritance rights, affirming the constitutionality of widows' and women's rights in inheritance. According to the Supreme Court per Rhodes-Vivour JSC, it is immaterial the circumstances of 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 right provision guaranteed to every Nigerian. It follows therefore that the said discriminatory customary law is void as it conflicts with Section 42(1) and (2) of the Constitution.<sup>24</sup>

Therefore, the Courts have also relied on the position of the Supreme Court in *Mojekwu* 's case to set the tone how matters of similar facts are to be determined in subsequent matters. In *Ukeje v Ukeje*,<sup>25</sup> the deceased, a native of Imo State with significant ties to Lagos State, had four children with the 1<sup>st</sup> Appellant, of whom the Respondent is one. After the deceased's passing, the 1<sup>st</sup> and 2<sup>nd</sup> Appellants obtained letters of administration for the estate. The Respondent subsequently filed a Court action, asserting her inheritance rights as the deceased's daughter. The Lagos State High Court ruled in her favour, finding that she was indeed the deceased's daughter and granting some of her requested reliefs. Although the Court of Appeal later dismissed the case, the Supreme Court made a landmark decision upon further appeal. Citing Section 42 of the Nigerian Constitution, the apex court affirmed that female children have the entitlement rights to inherit from their father's estate, regardless of their birth circumstances. The court declared that the prevalent Igbo practice, which denies female children inheritance rights, is unconstitutional and void due to its conflict with the fundamental rights clauses of the Constitution. This ruling, again reiterated the importance of upholding constitutional guarantees of equality and non-discrimination.

The contemplation of judicial activism supercedes the mere process of expunging discriminatory customs; to this extent, it has also served to validate equitable customary practices. The courts have recognized and upheld traditions such as the Yoruba *Idi-Igi* principle, which distributes an intestate's property among wives and their children in a balanced manner. In *Danmole v Dawodu*,<sup>26</sup> the deceased, Suberu, died intestate, leaving his surviving nine children by four wives married according to Yoruba customary law. There were also a number of grandchildren. During the trial, the plaintiffs were unable to provide sufficient proof that a valid Will existed. Instead, they relied on the Yoruba Native Law and

<sup>21</sup> (2014) 17 NWLR (Pt. 1435)

<sup>22</sup> *ibid*

<sup>23</sup> *Mojekwu v Mojekwu* [1997] LPELR-13777(CA)

<sup>24</sup> *Ukeje v Ukeje* (2014) LPELR-22724(SC)

<sup>25</sup> (2014) 11 NWLR (PT.1418) 384

<sup>26</sup> [1962] 1 W.L.R. 1053.

Custom of Lagos, known as Idi-Igi. Under this customary principle, the estate of an intestate is distributed not per child but per mother, such that the estate is divided according to the number of wives the deceased had, with each wife's children sharing equally in their mother's portion. The defendants, however, disputed this claim and argued that the applicable customary law in Lagos was Ori Ojori, which prescribes the distribution of the estate strictly according to the number of children, without regard to the number of mothers.

On appeal, the Federal Supreme Court examined the two competing principles of Ori-Ojori and Idi Igi. It was determined that applying Ori Ojori in the particular circumstances of the family would be inappropriate, as it would disregard the family structure based on multiple wives. The Court therefore upheld Idi-Igi and ordered that the estate be partitioned into four shares, each corresponding to one of the deceased's wives, with the children of each wife dividing her share among themselves. This decision underscored the Court's recognition of Idi-Igi as the more equitable method of distribution in polygamous families.

The case of *Taiwo v. Lawani*<sup>27</sup> reaffirmed this principle, explicitly recognizing Idi-Igi (also referred to as Igi kan kan) as a well-established and legitimate Yoruba customary law of succession in Lagos State. According to this custom, each wife is regarded as forming a distinct branch of the family for succession purposes. Importantly, the rule ensures parity among the branches: an only child of one wife receives the same share of the estate as the multiple children of another wife, since each wife's branch is entitled to one equal portion. This branch-based distribution system reflects both the social recognition of polygamous households and the importance of fairness among the wives' families. The Court further held that the Idi-Igi rule is not repugnant to natural justice, equity, or good conscience, which are the tests commonly used to assess the validity of customary law under Nigerian jurisprudence. Rather, the rule promotes a form of fairness that acknowledges the realities of polygamous family structures, ensuring that each wife's lineage is equally represented in the inheritance process. By affirming Idi-Igi, the Court demonstrates a nuanced judicial philosophy that seeks not to erase culture, but to reform it, distinguishing between practices that are oppressive and those that advance fairness and family cohesion.

Judicial activism has also played a pivotal role in harmonizing Nigeria's customary law with international legal standards. Courts have drawn on the provisions of international instruments such as the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). As established in *Fawehinmi v. Abacha*<sup>28</sup> once domesticated, international treaties become enforceable in Nigerian courts. By invoking these treaties in succession disputes, the judiciary has reinforced the notion that women's inheritance rights are fundamental human rights, deserving of equal protection and respect under both domestic and international law.

While the afore-discussed submissions of the court is laudable and portray a considerable quantum leap in the jurisprudence of widows and women's rights, there are still obvious gaps in practical terms. It is interesting to note that even with the pronouncement of the court in the case of *Mojekwu* in 1997, the discrimination against women did not cease, as other cases with similar facts have been determined by the courts. As such, it is troubling to observe that discriminatory practices militating against women's rights to inheritance have continued to persist in the face of stern opposition by the judiciary. According to *Adeleke and Diala*,<sup>29</sup> available legal trends in Nigeria are disproportionate with obtainable practices in other jurisdictions. They advocated for a much more robust legislation that centrally addresses the rights of women to inherit the estate of their deceased spouses. They noted further that many of the interventions with widows and women's inheritance rights have mostly been through the courts, with little efforts made to have a clear and unambiguous federal legislation to navigate issues of women's

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<sup>27</sup> (1961) ALL NLR 733.

<sup>28</sup> (2000) 6 NWLR (Pt. 660) 228,

<sup>29</sup> V. Adeleke and A.C Diala, 'The Right of Women to the Inheritance of their Husbands' Estate in Nigeria' [2024] 11 *Journal of Law, Society and Development* 20.

inheritance rights in light of acceptable global practices. While acknowledging the efforts of the judiciary, this article notes that there is a need for law making entities to do more for the court to be properly guided. Moreover, the act of making laws from the bench is sometimes tantamount to usurping the powers of the legislature – a practice sometimes perceived as undue interference.<sup>30</sup> Thankfully, Rivers State has become the first state in Nigeria to take an appositive leap by passing a law<sup>31</sup> that allows women to partake in the sharing of family property. This positive step by the Rivers State House of Assembly is worthy of emulation by the other states and indeed a Federal Legislation is of great necessity in this regard. Due to cultural resistance and poor enforcement mechanisms, the need to conduct a routine check on customary laws to repeal clauses that are inimical to the fundamental rights of women is also of great importance.

However, the success of judicial activism in promoting gender equality in intestate succession is not without challenges. Cultural resistance, inconsistent enforcement, and the reluctance of lower courts to follow progressive precedents continue to hinder uniform application. Many Nigerians still view inheritance as a matter best governed by tradition rather than law, and patriarchal attitudes persist in rural communities. Furthermore, judicial pronouncements, while impactful, cannot substitute for comprehensive legislative reform. Without codified succession laws that reflect equality principles, the progress achieved through case law remains fragile and vulnerable to reversal.

#### 4. Conclusion

This customary system which seeks to exclude female children from inheriting from their father's estate, though culturally justified, has increasingly come under judicial scrutiny, leading to a gradual but transformative shift in Nigeria's legal landscape. As such, instances abound where the courts have intervened in reimagining practices of gender inequality which has characterized intestate succession in Nigeria. The operation of intestate succession in Nigeria is shrouded in stark gender discrimination, often at the detriment of women, widows and daughters. Judicial activism has proven to be an indispensable tool in addressing the deep-seated gender inequalities embedded in Nigeria's customary practices of intestate succession. The judiciary, as the guardian of justice, has stepped in to bridge the gap left by the legislature's slow response to evolving social realities. Through progressive judgments, courts have not only invalidated discriminatory customs but have also expanded the frontiers of women's rights to property and inheritance. By invoking constitutional and international human rights principles, the judiciary has ensured that equity and fairness prevail over traditions that perpetuate systemic subjugation of women. While this article argues that judicial activism sometimes borders on judicial overreach or encroaches upon the legislative domain, such intervention becomes necessary when legislative inertia or political considerations hinder the protection of fundamental rights. The Nigerian legislature has often failed to enact timely a comprehensive reform to address gender-based discrimination in succession matters. In such circumstances, the judiciary becomes the only effective institution capable of enforcing constitutional guarantees. By creatively interpreting the law to reflect modern values and human dignity, the Courts perform not a usurpation of power but a fulfillment of their constitutional duty to safeguard justice and uphold the rule of law.

To consolidate the gains achieved through judicial activism, there is a pressing need for legislative collaboration and institutional reform. The National Assembly and State Houses of Assembly should take cues from judicial precedents and codify equitable succession laws that align with constitutional guarantees and international human rights standards, such as those embodied in CEDAW and the African Charter on Human and Peoples' Rights. This will reduce reliance on litigation and ensure consistency in protecting women's inheritance rights across all regions of Nigeria. Moreover, traditional

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<sup>30</sup> C.F Chilaka and O. U. Obianua and H.I Adewale, 'The Legislature in Nigeria: Origin, Significance and Relationship with Other Arms of Government' in *Two Decades of Legislative Politics and Governance in Nigeria's National Assembly: Issues, Achievements, Challenges and Prospects*, (Springer Singapore, 2021); A Aluko and O Idowu, 'The Future of Democracy in Developing Countries: A Study on Legislative and Judiciary Relations' [2023] 4(1) *Journal of Social Political Sciences*, 20-37.

<sup>31</sup> The Rivers State Prohibition of the Curtailment of Women's Right to Share in Family Property Law No.2 of 2022.

institutions should be engaged in reform dialogues to foster community-level acceptance of gender equality in inheritance practices.

In the same vein, it is apposite to encourage and promote public awareness, including public legal education which have the potential of sustaining these reforms. Civil society organizations, human rights advocates, and the media must continue to challenge discriminatory norms and empower women with knowledge of their legal rights. Judicial activism has paved the way for a more inclusive legal order, but its gains must be fortified through continuous advocacy, policy reform, and social reorientation. Therefore, while the judiciary's proactive stance remains indispensable in promoting gender equality, a synergistic effort between the courts, legislature, and society at large is essential to achieve lasting justice and equality in Nigeria's intestate succession framework.