

**WOMEN AND PROPERTY RIGHTS UNDER CUSTOMARY LAW
IN NIGERIA**

PRESENTED BY

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Protocol

1. Introduction

I consider it a great honour and privilege to be one of the resource persons at this induction course for newly appointed Judges and Kadis. I wish to humbly express my profound gratitude to His Lordship, the Chief Justice of Nigeria, Hon. Justice I. Tanko Muhammad CFR, JSC, Chairman of the Board of Governors, N.J.I the Administrator, N.J.I, Hon. Justice R.P.I Bozimo, OFR and the Education Committee of the N.J.I for affording me this unique opportunity of sharing my thoughts and experience with the newly appointed judicial officers.

I wish to congratulate you all, for your elevations to higher bench.

The topic of our discussion is "***Women and property rights under Customary law in Nigeria***".

From time immemorial, customary law have been exclusively for the benefit of man and woman has been treated as subservient and dependent on male support. Women represents a very substantial number of the population of Nigeria. It is common knowledge that women are mostly responsible for rural households yet, our various Customary law practices subject women to conditions of inequality with the male counterparts. Masculine voices dominate at community meetings. In many communities, because of the norms, religious traditions, social customs, women are prohibited from owning, renting or inheriting property in their own names, and their access to and control over

property, are either limited or depended on their relation to male relatives.

The objective of the paper is to present evidence on the ways in which women in Nigeria are deprived of inheritance by customary practices. The paper provides a discourse on the patriarchal nature of our customary laws with its attendant barrier on ownership of property by women. The paper will also explore the nature of primogeniture system among a few selected cultures.

Conscious effort will be made to examine the vital role the Courts have played in voiding some of the crude customs. The statutory provisions on ownership of property in Nigeria will equally be discussed and then, suggestions will be proffered on the way forward.

2. **Clarification of terms/key words**

I will approach the topic by defining or clarifying the operative words therein i.e. *property, rights, customary law* and then *women*.

2.1 **Property**

The word property is used in different senses. Property consists of goods and services that society gives an individual or group, the exclusive rights to possess, use and dispose of it.

Property is something that is scarce and which one owns, that is, it involves possession and ownership of things owned. It is basically the foundation of every right we have because, every claim for a right, is firstly a claim for something i.e. to hold or keep

something. Property is also defined as anything that is owned by a person or entity.

Property is divided into two types, [i] *real property*, which is any interest in land, real estate, growing plants or the improvements on it. While [ii] *personal property*, (personality) which includes every other things else commonly referred to as *intangible* property.

2.3 **Rights**

A right, in the context of this paper, is any claim we are justified in making. It is something a person has which people think should not be taken away from him. Property rights are rights to own or possess something and to be able to dispose of it as one chooses. It is synonymous with exclusive right to ownership.

The property rights give the owner or right holder the ability to do with the property whatever he wish to do with it. The importance of property rights cannot be understated. Right to property is a natural and inherent right of an individual.

There are four property rights (*bundle of rights*) defining an owner's right, these are;

- i. The right to use it,
- ii. The right to earn income from it
- iii. The right to transfer, alter, abandon or even destroy it and
- iv. The right to enforcement of these rights.

2.4 Women

According to the Oxford English Dictionary, 'woman' is defined as an adult female human being. Woman is the counterpart of man. The plural 'women' is sometimes used for female humans regardless of age. According to *Otaluka A.O.*, in her article '*Protection of women under the law*', defines a woman as "..... an adult female human being physically weaker than the man exhibiting feminine characteristics quite distinctive from the opposite sex".

In the context of this paper too, a woman is a person of female gender, whether or not of age or marital status.

2.5 Property Rights and the Constitution

Property rights are the right to own, acquire (through purchase, gift or inheritance), manage, enjoy and dispose tangible and intangible property including land, house, money and other assets. It would be of no avail, if property once acquired could not be utilized or enjoyed. The right of acquisition, disposal, and sole dominion of property rights must be protected. The *Constitution of Nigeria 1999* as amended protects rights under its section 43 thus:

"Subject to the provisions of the Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria".

It is pertinent to note that the protection of property gives every person the right to peaceful enjoyment of their possessions. The

Constitution is the supreme law of the land, therefore any other law in conflict with it, is invalid. What it means is that, any customary law practices which run against the spirit of the Constitution will not be enforced.

2.6 Customary law

Briefly stated, *Customary law* is a body of customs, norms and traditions which regulates various kinds of relationship between members in a community. See *OYEWUNMI V. OGUNESAN (1990) 3 NWLR (Pt. 137) 182*. Apparently, customary laws are rooted in the history, tradition and culture of people. It is indeed the indigenous law of Nigeria. The law essentially developed out of tradition and practices of the people in response to their circumstances and challenges in life but basically differs from one ethnic community to the other.

Therefore, the term Nigerian Customary law does not suggest that there exist a single customary law which is followed by all communities (over 250 tribes) in Nigeria.

To qualify as customary law, it must according *Park (1963)* be *existing* native law and custom and not that of *'by gone days'*.

Generally, Customary laws still remain uncodified. The point was suggested by *Allot (1970)*, "*Essays in African Law*", when he said.

"first the law is unwritten. There is no written memory of that edict. --- they exist only in the mind of those who administer and those who are subject to the customary law".

There is a strong reason why communities observe customary law. The observance is perhaps rooted in the belief of ancestral spirits. Generally a failure to comply with the customary law/rules for living may lead to punishment by the ancestral spirits because such disregard or deviation is regarded as disgracing or neglectful of the ancestors.

It is pertinent to note that, the recognition and enforcement of customary law is provided under section 34(1) of the High Court Laws of Cap 49 of Northern States.

The provision is to the effect that;

"The High Court shall observe and enforce the observance of every native law and custom which is not repugnant to natural justice, equity and good conscience, nor incompatible either directly or by necessary implication with any law for the time being in force, and nothing in this law shall deprive any person of the benefit of any such native law and custom"

The above provision has two major effects; firstly, it recognizes customary law as a form of law, and secondly, it provides for the regulation of customary law subject to its enforcement.

Regrettably, Customary law is a branch of law most complained of in matters of women's property rights in Nigeria. A lot of concern had been expressed that Customary law is inequitable and more often than not leads to injustice to women folk.

3.0 **Women Property Rights**

Women's property rights are property and inheritance rights enjoyed by women. The property may be hereditary/ancestral, self acquired land, developed house or matrimonial property. Most Customary laws in Nigeria are patriarchal, and as a patriarchal society, properties are vested in the name of the male.

Customary laws of several communities impose conditions that make women's access to land only through male relations. More often, women are even regarded as property and therefore cannot own property themselves.

In the case of ***SUBERU Vs JIBOWU (1957) SCNLR 45***, The Court held that:

"it is a well settled rule of native law and custom of the Yoruba people that a wife could not inherit her husband's property since she herself is like a chattel to be inherited by a relation of her late husband".

3.1 **Nature of the Property**

In some customs or traditions, the property rights of women are discriminatory and arbitrary, notwithstanding the constitutional guarantee of equality and fairness. These customs created institutions or traditions that restricted women's property rights on ethnicity or which part of the country or community the woman hails from, as there is no uniformity in the practice affecting women's property rights. One of the most prevailing systems on devolution of property under customary law is the primogeniture rule.

3.2 Primogeniture Rule

Primogeniture is the right by custom, of the first born son to inherit the entire estate to the exclusion of younger siblings and of course, the effect is that women are denied inheritance or succession.

Women identity rested with the man in their lives, first with their father and then with their husband.

Under the primogeniture, the head of the family is the eldest male child of the deceased who occupies the family house and holds same as trustees of other children. But the rule differ in certain localities.

For instance in Bini communities, the deceased's property devolves to the eldest son exclusively in accordance with the rule under which the eldest son is expected to care for the young siblings and may dispose the family house over the wishes of other children or treat the property as his own.

The customary law of succession in Benin is similar to the customary law of succession among the Igbos on the basis that they both apply the primogeniture which bars women from inheriting real property.

The difference between the rules applicable in Benin and in Igbo land is based on the fact that in Benin the eldest son upon the demise of his father succeeds to all real property belonging to his father to the exclusion of his siblings. However, he becomes responsible for the upbringing of his family and continues to cater for his household. This is illustrated in the case of *EHIGIE v.*

EHIGIE where the court held that in Benin, the eldest surviving son of a deceased person who performs all the customary funeral ceremonies at the burial of his father succeeds to his deceased father's real property.

4. Igbo customary inheritance

Generally, the eldest son of the deceased succeeds to the estate. This mode is known among the Igbos as "*Okpala* or "*Diokpa*".

The *Okpala* who is the eldest son steps into his father's shoes upon the death of the latter and become head of the family. Where however, the deceased father had more than one wife, the eldest sons of each of the wives takes part into the sharing of the estate. In cases where the deceased is not survived by a son, his brothers of full blood or his father in that order. Wives and daughters are completely exempted from inheritance.

In the case of ***UKEJE v. UKEJE (2014) SC 224/2004*** the court held that; *the Igbo native law and custom which prohibited women to share of her deceased father's estate is void as it conflict with section 42 (1) & (2) of the 1999 constitution as amended.*

In ***Mojekwu v. Mojekwu (1997) 8NWLR (Pt. 512) 283***, The Nnewi customary law of *Oliekpe* was struck down under the repugnancy principle by the unanimous judgment of Enugu Division of Court of Appeal. The basis of the decision was that the

customary law in question which permits the son of the brother of the deceased person to inherit the property of the deceased to the exclusion of the deceased's female child was a clear discrimination and hence inapplicable.

However, the euphoria which came with this judgment was short-lived as it was overtuned on appeal at the Supreme Court. (See ***Mojekwu V. Iwuchukwu*** (2004) All FWLR) (Pt 211) 1406.

In Igboland also, a woman married under customary law can only inherit her husband's estate if the husband made a valid will and the property is not family property. However, her male children can inherit the man's property where he dies interstate. If however, the woman is childless or has only female children, then neither she nor her children can inherit anything at all. This principle was illustrated in the case of *NEZIANYA V. OKAGBUE* (1963) 1 ALL NLR 352 where the court held that by native law and custom, possession by the land by the widow can never be adverse to the rights of her husband's family so as to enable her acquire an absolute right to possession of it against the husband's family. This being so the plaintiff could not acquire any rights to the land through the widow.

In other words, a widow's possession of her deceased husband property, however long, does not make her owner, but she only have the right to occupy the property or part of it subject to her good behaviour.

The only situation or exception where females can inherit is under the '*Nrachi*' or '*Ige'gbe*' institution. Under this practice, where a man dies without a male child to inherit his estate, the daughter will remain unmarried in her father's home. The legal interest in the deceased father's estate vests in her until she gives birth, and only her children can succeed the deceased according to the rule of primogeniture.

Where the female child is married, any property she acquired before marriage reverts back to the maiden family while properties acquired after marriage goes to her husband and his family upon her death, but personalities like cooking utensils, clothes etc of a deceased wife goes to the daughter.

5. Yoruba customary property rights

Under the Yoruba custom, two methods of distributions are settled to be in place. These are *Idi-igi* method where property is shared per stripes i.e. according to the number of wives, and the *Ori-Ojori* method where the property is distributed per capita i.e according to the number of children. It was held that the universally accepted mode of distribution in Yoruba land as the *Idi-igi* method. See the case of *DADOWU V. DANMOLE (1958) 3 FSC 46*, where the court stated that the method was not repugnant but that the modern method of *Ori-Ojori*, was only used to avoid litigations.

In the light of the above, it is to be noted that children are entitled equally to inherit their father's property irrespective of sex under the Yoruba custom.

The courts have clearly reinstated the custom when it held in *AMUSA V OLAWINMI (2002) 12 NWLR (Pt. 780) 30.*

that both the male and female children of a deceased have equal rights to inherit their father's estate that was the decision

6. Conclusion

In the quest for property rights, women are faced with disadvantages. These difficulties have been traced to customs and traditional practices in the various communities.

Law being a living organism, its utility depends on the vitality and ability to serve as sustaining pillar of society. As civilization and culture advances, it is expected that the contour of customary law must keep changing. The customs must undergo change with march of time. The time is now for women to succeed to estate of their parents, brothers, husbands as heirs by interstate succession and inherit the property with equal shares with male heirs with absolute right under any of the customary law. The Courts should make necessary pronouncements that are capable of whittling down women's vulnerability. No custom should override any right protected by the Constitution. Judges are enjoined to interpret customary provisions with a view to meeting the expectation of justice to all and sundry. Therefore, it is suggested that the courts should rise to save the situation by always giving effect to the statutory provisions governing the application of customary law,

by resorting to the application of the repugnancy doctrines, as an instrument of social engineering and change. Furthermore, in addition to the Constitutional protection of rights of women, there should be reliance by the Courts on international declarations and Conventions of All Forms of Discriminations against Women (CEDAW) and the universal declaration of human rights that call for gender just legal system and equal rights for women.

It is also recommended that those customary law practices that disempowered the women's property rights be abolished.

This is the assignment for the legislative houses to so enact such laws. By so doing, many of the obnoxious customary laws militating against the full rights of women will give way.

Until these are done, the women will continue to be denied opportunities for growth in the name of the archaic traditional and cultural practices.

Thank you my Lords.

Justice Jibril Idrisu (rtd)

Former President Customary Court of Appeal, Nasarawa State.