

REDRESSING WIDOWS' RIGHT TO INHERIT IMMOVABLE PROPERTY UNDER IGBO CUSTOMARY LAW

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ABSTRACT

Igbo customary law is generally conservative to the disadvantage of females. Under it, women and girls are considered inferior to men and boys. It sees women as part of the family chattels and inheritable estate of a deceased man which only the male folks can inherit. As such, a widow cannot inherit any immovable property of her late husband because she is 'a property' and cannot own property. This discriminatory customary practice was even approved by the old Nigerian Supreme Court. In recent time, the Supreme Court of Nigeria has reversed and redressed this violation. This paper underscores the consequentiality of judicial intervention in redressing discriminatory property inheritance rights. It also highlights incidental gaps in this judicial intervention, and makes apposite recommendations for promoting equality and non-discriminatory property rights of widows under Igbo

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customary law. This paper concedes that Islamic law is not a customary law, nonetheless, it highlights women's property rights under the Sharia.

Keywords: *Immovable property, Widows, Right of inheritance, Igbo customary law.*

1. Introduction

In most African societies, there are unwritten customary laws which demean and oppress women. For instance, among the Igbo tribe of Southeast Nigeria where the unwritten rules of male primogeniture² and patriarchy³ are commonplace, women and girls are considered inferior to men and boys,⁴ and treated as such, even in the devolution of family property.⁵ Widows are also denied the right to inherit the land or immovable property

² This rule of customary law permit the eldest male child and his brothers to inherit the land and immovable property the deceased while his female children are excluded. As such, a widow cannot inherit her late husband's immovable property or land because customary law even regards her as part of the deceased 'property' to be inherited by his male heir. The Nigerian Supreme Court endorsed this rule in the old case of *Nezianya v. Okagbue* [1963] All NLR 358 SC.

This line of judicial reasoning was also applied in another old case: *Uka v. Ukama* (1963) FSC 184 where the court upheld the patrilineal Igbo customary law which disentitled a widow and her daughters from inheriting their deceased's husband/father's land and immovable property, and that the property should devolve on the family, particularly where the widow had no male child who can sufficiently inherit the property according to custom.

³ Edu, O. K. (2016). A Critical Analysis of the Laws of Inheritance in the Southern States of Nigeria. *Journal of African Law*, 60(01), 141-155; Makama, G. A. (2013). Patriarchy and Gender Inequality in Nigeria: The Way Forward. *European Scientific Journal*, 9(17); Aloy Ojilere, & Gan Ching Chuan, (2015). Learning from the Indian Judiciary: New Directions for Securing Nigerian Women's Right to Dignity. *Asian Women*, 31(1), 81-106.

⁴ Nnadi, I. (2013). Son Preference-A Violation of Women's Human Rights: A Case Study of Igbo Custom in Nigeria. *J. Pol. & L.*, 6, 134.

⁵ Ajayi, M. A., & Olotuah, A. O. (2005). Violation of women's property rights within the family. *Agenda*, 19(66), 58-63.

of their deceased husbands,⁶ even if they were married under the Marriage Act⁷ or where her husband died testate.⁸

Prevailing Igbo customary law even promote the belief that women are “properties of men rather than their equals”⁹, and that they constitute an integral part of the deceased’s estate to be inherited exclusively by the male heir or male family members of the deceased.¹⁰ This kind of conservative gender bias obviously violate women’s dignity and human rights generally.¹¹ It also negate the fundamental rights guaranteed in Chapter IV of the Nigerian Constitution,¹² and other sources of Nigeria extant laws, such as the received English law, case law, Statutes and Islamic law.

Drawing inference and facts from a number of case law, especially the April 2014 judgement of the Supreme Court of Nigeria in *Anekwe v. Nweke*,¹³ this paper explores the latest

⁶ Eboh, M. P. (2016). The Woman Being: Its Nature and Functions. *Dialogue and Universalism*, (1), 7-17.

⁷ Ezeilo J. N. (1998-9). Law and practices relating to women's inheritance rights in Nigeria: An overview', 7 *Nigerian Juridical Review* 131-139.

⁸ In *Uwaifo v. Uwaifo* (2013) LPELR 20389 (SC), the Supreme Court of Nigeria held that in view of s. 3(1) of the Wills Law of old Bendel State, the *Igi-ogbe* custom of the Binis gives the eldest son of a deceased the exclusive right to inherit the family homestead, and that this custom overrides a father's testamentary wish to the contrary.

⁹ Staveren, I. V., & Ode bode, O. (2007). Gender norms as asymmetric institutions: A case study of Yoruba women in Nigeria. *Journal of Economic Issues*, 41(4), 903-925 at 909 (citing Sa'ad, Abdul-Mumin. “Traditional Institutions and the Violation of Women’s Human Rights in Africa: The Nigerian Case.” In *African Women and Children. Crisis and Response* edited by Apollo Rwomire. Westport: Praeger, 2001).

¹⁰ *Ibid.* See also *Uka v. Ukama* (1963) FSC 184 (n. 2 *op. cit.*).

¹¹ Aloy Ojilere & Chukwumaeze, U. U. (2010). CEDAW and Gender-Based Discriminations against Women in Nigeria. *Nigerian Journal of Food, Drug and Health Law*, 3(1), 95-105; Aloy Ojilere (2009). Domestic Violence and the Law in Nigeria. *CWGS Journal of Gender Studies*, 1(4), 75-87.

¹² Ss 34, 42 and 43 CFRN, 1999 (as amended), guarantee the right to human dignity, the right to freedom from discrimination, and the right to own property anywhere in the country respectively.

¹³ *Onyibor Anekwe & Another v. Mrs Maria Nweke* (2014) 234 LRCN 34.

judicial intervention which reforms the old approach to women's right to inherit immovable property under Igbo customary law. It highlight gaps inherent in the intervention and make apposite general recommendations for promoting women's right to inheritance of immovable property under Igbo customary law.

The progress imminent in *Anekwe v. Nweke*, does not however, depart from the argument that in the face of entrenched cultural conservatism fuelled by the social rules of patriarchy and primogeniture across Igboland, only time will determine its ultimate impact, effectiveness and latitude, especially among rural folks.¹⁴ This is more so, as customary law is known to have existed in Nigeria before the enactment of formal laws, and had grown from the low level of behavioral norms to the present high level of accepted law recognized by people in parts of the country.¹⁵

This paper uses the doctrinal methodology to examine the consequentiality of judicial intervention in redressing discriminatory property inheritance rights of women in Igboland. It also highlights incidental gaps in those judicial interventions, and makes apposite recommendations for promoting equality and non-discriminatory property rights of widows under Igbo customary law.

Although the focus of this paper is on "customary law", it also highlights the formula for women's right to inherit property under Islamic law, even though Islamic law is not a customary law.¹⁶

¹⁴ Aloy Ojilere, Onuoha, R., & Igwe, T. (2019). New Directions for Securing African Women's Right to Property under Customary Law: The Case of Nigeria. *Asian Women*, 35(1), 95-119.

¹⁵ Aladetola, O. (2017). *Analysis of the Nigerian Supreme Court's constitutional duty regarding women's inheritance right under customary law* (Doctoral dissertation, University of Cape Town).
https://open.uct.ac.za/bitstream/handle/11427/24935/thesis_law_2017_aladetola_opeyemi.pdf?sequence=1&isAllowed=y (30/9/2019).

¹⁶ *Alhaji Ila Alkamawa v. Ajhaji Hassan Bello and Anor* (1998) 6 SCNJ 127.

2. Women's Dignity and Right to Inherit or Own immovable Property in Nigeria

S. 34 (1) (a) of the Constitution of the Federal Republic of Nigerian, 1999 (as amended),¹⁷ guarantees the right to respect for the dignity of "every individual", and accordingly prohibits the imposition of torture or inhuman or degrading treatment on any person. Its s.43 guarantees the right of every citizen of Nigeria to acquire and own immovable property anywhere in Nigeria.¹⁸

At the international level, Art. 2 of the United Nations Declaration of Human Rights, 1948 state that everyone shall have a right to enjoy all the rights contained therein, and this includes the right to own property irrespective of sex provided in Art. 17. The Convention on the Elimination of all forms of Discrimination against Women (CEDAW) Art. 16 also empower women to own or alienate immovable property anywhere. Similarly, Art. 2 of the African Charter on Human and People's Rights guarantees the right of *every individual* to enjoy the rights and freedoms recognized and guaranteed in the Charter *without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national or social origin, fortune, birth or other status*.

Although the Nigerian constitution and the African Charter do not make specific reference to women, it is naturally obvious that protections envisaged in both instruments equally cover the dignity and property rights of all women, especially those subject to Igbo customary law. This is further strengthened by the fact that the acquisition of immovable property in Nigeria is

¹⁷ CFRN or CFRN, 1999 (as amended).

¹⁸ This is in agreement with Article 16 of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), which empowers women to own or alienate immovable property anywhere. Further, Article 2 of the African Charter A similar right is guarantees to *every individual* the right to enjoyment of the right and freedom recognized and guaranteed thereunder *without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national or social origin, fortune, birth or other status*.

generally by purchase, by inheritance (both testate and intestate) or by gift, notwithstanding the beneficiary's gender. On the other hand, none of the local or international legal instruments preclude women from inheriting the immovable or other property of a deceased husband or father under customary law.¹⁹

S. 42 (1) CFRN also prohibit discrimination against a citizen of Nigeria for reason only that he is of a particular community, ethnic group, place of origin, sex, religion or political opinion. Its s. 42 (2) prohibit subjecting any Nigerian citizen to any disability or deprivation merely by reason of the circumstances of his birth.

This paper posits that apart from the word "sex" mentioned in s. 42 (1), the fact of being born female is also a "circumstance of birth" and neither of them should constitute a ground for discrimination in Nigeria. As such, the Igbo customary law which disentitle women and girls from inheriting the immovable property of a deceased by reason only that she is "female" is a gross violation of the fundamental rights to dignity and property ownership guaranteed by the Constitution and must, to that extent be void,²⁰ as confirmed in the celebrated cases of *Anekwe v. Nweke*²¹ and *Ukeje v. Ukeje*²²

Those decisions reversed the 'old Order' whereby previous Nigerian courts were almost timid in interpreting the latitude of women's right to dignity and property inheritance under most Nigerian customary laws. At that time the courts endorsed the legitimacy of certain controversial, obnoxious and discriminatory customary practices. For instance, in *Oloko v.*

¹⁹ Kolawole, T. O., & Adeigbe, K. Y. (2016). Gender discrimination and the Nigerian scenario: a review. *Gender and Behaviour*, 14(1), 7071-7084.

²⁰ Aloy Ojilere, Onuoha, R., & Igwe, T. (n. 14 *op. cit.*).

²¹ (2014) 234 LRCN 34. Here, the Supreme Court held that a widow whose husband died intestate, having only daughters and no son, was still entitled to inherit her late husband's estate with her daughters, and that the half-brothers of the deceased cannot inherit such property.

²² (2014) 11 NWLR (Pt. 1418) 384. Here, the Supreme Court held that the Igbo customary law which forbids a female from inheriting her late father's estate was void on the ground that it is discriminatory and in conflict with s. 42(1) and (2) CFRN, 1999 (as amended).

Giwa,²³ it was held that a widow had no right of succession or land ownership under customary law, and that she may only, subject to her good behavior, enjoy the right of residence in the family house for life.²⁴

Interestingly and in line with the quest for globalization of human rights, Nigeria's apex court recently set new parameters for defining women's right to inherit immovable property under Igbo customary law.²⁵

3. The Concept of Igbo Customary Law

In Nigeria, customary law is a generic term used to describe Islamic law of the predominantly Muslim-dominated Hausas of Northern Nigeria and parts the Yoruba of Western Nigeria. It also includes the native law and custom of the Ibos in the predominantly Christian-dominated Southeast including parts of Edo and Delta states.²⁶ Customary law is flexible and changes with the peoples' need and time.²⁷

Unlike Islamic law which is rooted in the Quran, most other customary laws,²⁸ including the Igbo customary law, are largely

²³ (1939) 15 NLR 31

²⁴ Similar conservative decision was reached in the old case of *Suberu v. Sunmonu* (1957) 2FSC, where the Supreme Court upheld the Yoruba customary law which disentitled a wife from inheriting her deceased husband's property.

²⁵ The cases of *Anekwe v. Nweke* (*supra*) and *Ukeje v. Ukeje* (*supra*) are now the *locus classicus* on this subject.

²⁶ Mudiaga Odje 'Integration in the field of the Law of Succession in the Midwestern Region of Nigeria' in *Integration of Customary and Modern Legal Systems in Africa*, 265-266.

²⁷ *Agbai v. Okogbue* (1991) 7NWLR (Pt 204) 391, per Nwokedi, JSC at 417.

²⁸ Islamic Law has a rather unique character in customary law discussions, especially in the light of the judgement in *Alhaji Ila Alkamawa v. Ajhaji Hassan Bello and Anor* (1998) 6 SCNJ 127, where the Supreme Court of Nigeria held *inter alia* that Islamic law is not a customary law because it does not belong to a particular group of people.

unwritten²⁹ yet they form part of the plural legal system which operates in Nigeria.³⁰

In *Kharie Zaidan v. Fatimah Khalil Mohsen*,³¹ the Nigerian Supreme Court defined customary law generally as:

“A system of law, not being the common law (of England), and not being a law enacted by a competent legislature in Nigeria, but which is enforceable and binding within Nigeria as between parties subject to its sway.”³²

And in *Oyewunmi v. Ogunesan*,³³ the court defined it as:

“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, is regulatory in that it controls the lives and transactions of the community subject to its sway.”

Igbo customary law is therefore the native law and customary practices of the indigenous people of Southeast Nigeria. Although Igbo customary law has no specific historical origin, its adherents simply believe them to be part of the sacred, divine and unchangeable heritage handed down to them by their ancestors³⁴ since time immemorial.³⁵ Otherwise, Igbo customary law lacks specific definition amongst jurists, anthropologists, lawyers or even its adherents.³⁶ Nonetheless, it

²⁹ Elias, T. O. (1972). *The nature of African customary law*. Manchester University Press, p. 2.

³⁰ Merry, S. E. (1988). Legal pluralism. *Law & society review*, 22(5), 869-896. The Nigerian legal system comprise the country's 1999 Constitution (as amended), the received English law (that is, common law), local legislation (Acts of the National Assembly), Islamic Shari'a law, and customary law.

³¹ (1973) All NLR 740 at 753.

³² *Ibid.*

³³ (1990) 3NWLR pt. 137 p.182 at 207 SC.

³⁴ Aloy Ojilere (2004). The Situs of Customary Law in the Historical School of Jurisprudence: The Imo State Customary Court System in Critical Perspective. In Chapter 10 of O. E. Nwebo (Ed.), *The Political Economy of Administration of Justice in a Developing Society* (pp. 228-246).

³⁵ *Agbai v. Okogbue* [1991] 7 N.W.L.R 391.

³⁶ White, C. M. N. (1965). African Customary Law: the problem of concept and definition. *Journal of African Law*, 9(02), 86-89.

is applied as a unique body of rules which govern the people's personal status, kinship, land tenure, inheritance and communal resources.³⁷ Other Nigerian societies/tribes as well as most African societies also have customary laws and native practices which are indigenous to them.³⁸

In reality, these customary laws allow widows a possessory right in the family estate for life.³⁹ However, Diala posits that women who are subject to Igbo customary law, have over time, suffered enduring deprivations and discriminations in relation to property inheritance.⁴⁰

These apex court definitions gave impetus to other judgements which upheld the denial of women's right to inherit immovable property in Igboland and other Nigerian cultures.⁴¹ It still explains why women may still face herculean tasks with regards to full equality in dignity and property rights in Igboland. In the opinion of Omoregie, inequality also make it nearly impossible for Nigerian women to enjoy any right of succession to traditional ruler-ship stools.⁴² Ojilere also wrote that a customary law which disentitle a woman the right to inherit immovable property (whereas she may acquire same by purchase for the male folks to *own* and inherit) is discriminatory, humiliating, abusive and demeaning of a

³⁷ Ese Malemi, (2012). *The Nigerian Legal Method*, Princeton publishing Co, 2nd edition, p. 153.

³⁸ Joireman, S. F. (2008). The mystery of capital formation in Sub-Saharan Africa: women, property rights and customary law. *World Development*, 36(7), 1233-1246.

³⁹ Attah, M. (2018). Divorcing Marriage from Marital Assets: Why Equity and Women Fail in Property Readjustment Actions in Nigeria. *Journal of African Law*, 62(3), 427-446.

⁴⁰ Diala, A. C. (2014). Reform of the customary law of inheritance in Nigeria: Lessons from South Africa. *African Human Rights Law Journal*, 14(2), 633-654.

⁴¹ (n. 22 *op. cit.*).

⁴² Omoregie, E. B. Ending Gender Discrimination in Succession to Traditional Ruler-ship in Nigeria. Available on pdf: http://ijgws.com/journals/ijgws/Vol_3_No_1_June_2015/14.pdf (accessed 24/1/2017).

woman's dignity and self-worth.⁴³ Ayodele⁴⁴ describes such discrimination as *inheritance hijacking* by men against women while Adegoke, Adegoke & Oyedola⁴⁵ rightly concluded that such discriminatory customs is also a major reason why women hardly participate in home ownership across Nigeria.

It is particularly noteworthy that the cultural conservatism and discrimination in women's dignity and property rights in Igboland and parts of Nigeria and sub-Saharan Africa derives specifically from the rule of primogeniture, a rule which was properly described as a deliberate act of *privatization* intended to institutionalize patrilineal control of land in the hands of male family heads and community leaders who can verily lay claim to land under customary land tenure system, to the exclusion and disadvantage of women.⁴⁶

It is noteworthy that under the Sharia law, women can acquire and own their own property, and can inherit from their deceased parents, husbands, brothers, sisters, daughters and other relations. They can also pass valid title of same to their heirs. Under Sharia Law, a sole surviving daughter receives half the net estate, whereas sole surviving son receives the entire estate.

The personal law code of Sharia prescribes that a female's share of inheritance shall be half as much as the male heirs. It also entitles a widow to get one-quarter of the estate if her deceased husband has no heirs. If there are heirs, she is entitled to one-eighth of her deceased husband's property but if the deceased

⁴³ Ojilere, A. N. (2015). *Quest for a sustainable legal framework for the protection of women's right to dignity in Nigeria: Lessons from India and South Africa* (Doctoral dissertation, University of Malaya).
http://studentsrepo.um.edu.my/6384/1/ALOY_OJILERE-2015_SUBMITTED_FINAL_PHD_THESIS.pdf (18/2/2017).

⁴⁴ Ayodele, J. O. (2016). Widows and Inheritance Hijacking Practices in Ilara Mokin, Ondo State, Nigeria. *African Journal of Criminology and Justice Studies: AJCJS*, 9(1), 116.

⁴⁵ Adegoke, B. F., Adegoke, O. J., & Oyedele, J. B. (2016). Factors influencing women participation in home ownership in Nigeria. *Property Management*, 34(1), 67-78.

⁴⁶ Lastarria-Cornhiel, S. (1997). Impact of privatization on gender and property rights in Africa. *World development*, 25(8), 1317-1333.

died a polygamist, the prescribed one-eighth portion of his estate is shared between them.⁴⁷

4. Reversing Cultural Conservatism in Igbo Women's Right to Inherit Immovable Property

As earlier stated, women have no right to inherit immovable property under Igbo customary law. Some other Nigerian customary laws share this discriminatory practice, as seen in several cases including the old case of *Oloko v. Giwa*,⁴⁸ where the court held *inter alia* that a widow had no right of succession or ownership of immovable property of her deceased husband under the customary law. The courts even upheld the contention that women were an integral part of the inheritable estates of their deceased husbands and therefore not entitled to primary inheritance or ownership of land or immovable property.⁴⁹

This discriminatory practice which is still shared in parts of Africa invoke poorly defined property rights which create uncertainty in women's right to acquire, own or use land. It also impeded effective economic development, growth and investment in property as well as the management of land in the continent.⁵⁰ Most fundamentally, such discrimination demean womanhood.

However, in April 2014 the Supreme Court of Nigeria gave two landmark judgements which revolutionized women's property rights by setting new approaches for securing women and girls' right to inherit immovable property under Igbo customary law.

⁴⁷ Prince Joel, "WOMEN'S RIGHT TO INHERITANCE IN NIGERIA".

October 19, 2016, ijebulekkilawyer.com.

<http://www.ibejulekkilawyer.com/women-inheritance-right/> (20/12/2019).

⁴⁸ (1939) 15 NLR 31

⁴⁹ *Nezianya v. Okagbue* (1963) All NLR 358 SC; *Nzekwu v. Nzekwu* (1989) 2 NWLR (Pt 104) 373; *Obusez v. Obusez* (2001) 15 NWLR 377.

⁵⁰ Joireman, S. F. (n. 38 *op. cit.*).

One of the cases is *Anekwe v. Nweke*⁵¹ which is the crux of this paper.

In that case, the plaintiff, Mrs. Maria Nweke, was a widow whose husband died intestate. They had six daughters and no son. The defendants were half-brothers of the plaintiff's late husband. The plaintiff inherited a parcel of land from her late husband and in 1991 she filed an action against the defendants at the *Awka* Division of the High Court of Anambra State, seeking a declaration that she was entitled to statutory right of occupancy of the said parcel of land. The defendants had insisted that the plaintiff must vacate the property because she had no son, and that under the Igbo customary law of the *Awka* people of Anambra state she could not inherit immovable property or land because she has no male child. The defendants contended that the plaintiff could only exercise a right of ownership over land if she acquired same by purchase with her own money.

The plaintiff refused to vacate the land and insisted that under the said *Awka* customary law, the fact that a widow has no male child does disentitle her from inheriting her husband's land or immovable property. She averred that the traditional elders' Council of *Awka* people known as *Ozo Awka* society had even arbitrated in the dispute and confirmed that she had the right to inherit and remain on the land even as she has no male child. She further averred that both the High Court and the Court of Appeal had earlier given judgements in her favour against the defendants, namely, *inter alia*, that no matter the circumstances of the birth of a female child, she was entitled to an inheritance from her late father's estate.⁵² The defendants were not satisfied with the judgement, hence, their present appeal to the Supreme Court.

⁵¹ *Supra*.

⁵² Ajayi, M. A. O., & Amechi, E. P. (2018). Corruption in Nigeria: Protection of Women and Children. *African Journal of Criminal Law and Jurisprudence*, 3. <http://journals.ezenwaohaatorc.org/index.php/AFJCLJ/article/download/507/470> (30/9/2019).

The Supreme Court identified the core of the appeal, namely, whether the plaintiff/respondent who had no male child can inherit the property of her late husband? In its judgement, the Court also found for the plaintiff/respondent widow. It affirmed that a widow has the right to inherit her late husband's estate and immovable property even though she had no son for him.

The Supreme Court⁵³ strongly condemned the instant customary law and practices of *Awka* people pleaded by the appellants as punitive, uncivilised, and merely intended to promote men's selfish domination of women as well as men's desire to suppress the inheritance rights of women.⁵⁴ The court went on to make the following specific remarks:

1. It is sordid and barbaric for the brothers of a deceased man, relying on certain customary law, to throw his widow out of her matrimonial home where she had lived all her life with her late husband and children, simply because she had no male child.
2. A custom or practice of this nature in the 21st century global village will only tend to portray the absence of the realities of human civilisation.
3. In our present age and time, any customary law or practice which disinherits a widow from her deceased husband's property or a daughter from her father's estate by mere reason of God-given gender differential should be punitively dealt with as a deterrent against the perpetrators.⁵⁵

⁵³ *Per* Ogunbiyi, JSC 36-37 paras A-B.

⁵⁴ Ogunbiyi, C. (2014). Inheritance: How Supreme Court voids discrimination against females in Igboland. www.vanguardngr.com/2014/04/inheritance-supreme-court-voidsdiscrimination-females-igboland/ (accessed 2/4/ 2016).

⁵⁵ The *Anekwe v. Nweke* decision is remarkable because it was handed down by the apex court and thus forms part of Nigeria's property jurisprudence. It therefore strengthens similar earlier judgements of lower courts such as *Uke .v. Iro* [2001] 11 NWLR (pt. 723) 196, where the Nnewi Customary law

This judicial progress has been applauded and commended by many across board,⁵⁶ and it may well be likened to the rise of judicial governance in India,⁵⁷ where courts commonly play the effective transformative role of social change by insisting that the sacrosanct constitutional right to life is worthless without dignity.⁵⁸

Critique of *Anekwe v. Nweke*

Despite commendations and applause by scholars like Chinwuba that the *Anekwe v. Nweke* decision reflects a *refreshing position* in reforming the dignity and property rights of women under Igbo customary law,⁵⁹ the decision is still critiqued on certain grounds. For instance, Diala expressed skepticism on the possibility of the judgement to finally and permanently resolve the primogeniture issue against women

which disentitles a woman from giving evidence in relation to title to land was struck down for being unconstitutional and repugnant to natural justice, and offending all decent norms of civilized cultures which protect the equality of all sexes. Also, *Obusez v Obusez* [2001] 15 NWLR (pt. 736) 377, where the Court of Appeal struck down the Native law and Custom of the *Agbor* people of Delta State which denied a widow who was married under the marriage Act, a right to administer and manage the estate of her deceased husband with five surviving children. The court emphasized that the surviving spouse of a deceased was his lawful widow and thereby entitled to first priority in the grant of letters of Administration of his estate.

⁵⁶ Ekhaton, E. O. (2015). 2 Protecting and Promoting Women's Rights in Nigeria: Constraints and Prospects. *Women's Studies*, 285; Chinwuba, N. N. (2015). Ending Inequality in Nigeria: A Refreshing Approach from the Nation's Judiciary. *International Journal of Law, Policy and the Family*, 29(3), 341-350; Diala, J. C. Implications of the Disconnection between Law and Practice in the Context of Gender Inequality in South-East Nigeria. <https://pdfs.semanticscholar.org/87ef/c4c99a69c762cf832b03f78e7984788a764d.pdf> (29/9/2019).

⁵⁷ Mate, M. (2015). The Rise of Judicial Governance in the Supreme Court of India. *Boston University International Law Journal*, 33, 169-224.

⁵⁸ *Bandhua Mukti Morcha v. Union of India*, AIR 1984 802, and *Khedat Majdoor Chetna Sanghat v. State of M.P.*, (1994) 6 SCC 260: AIR 1995 SC 31.

⁵⁹ Chinwuba, N. N. (n. 55 *op. cit.*).

across Nigeria.⁶⁰ He argued, and rightly so, that the judgment should have specifically and unequivocally abolished the male primogeniture rule applicable across Southeast Nigeria. He equally critiqued the judgement for being parochial by not making reference to protecting the inheritance rights of women in other parts of Nigeria.⁶¹

This paper however disagrees with Diala on this note, and posits instead that it would not have been proper for the Supreme Court to provide a blanket cover affecting the inheritance rights of women in other parts of Nigeria because *Anekwe v. Nweke* was not instituted as a class action litigation on behalf of all Nigerian women. Doing otherwise would imply that the court has granted remedy to a party who is not before it, or granting to a litigant what was not prayed for.

It is within the constitutional power of courts to invalidate laws which conflict with the CFRN. In *Anekwe v. Nweke* the Supreme Court almost made an overkill by invalidating the Igbo custom on inheritance for being repugnant to natural justice, equity and good conscience rather than merely invalidating the infringing aspects of the customary law as stipulated by the Constitution. Accordingly, the court failed to balance the need for preservation of non-discriminatory customary law as stipulated by the Constitution,⁶² more so, as customary law is a valid aspect of the Nigerian legal system.⁶³

5. Recommendations for Robust Widows' Inheritance Rights under Igbo Customary Law

Nonetheless, Aniekwu has stated that Nigerian laws on women's rights are particularly inadequate, misinterpreted, unenforceable, and lack overall "willingness to promote

⁶⁰ Diala, A. C. (n. 40 *op. cit.*). Reform of the customary law of inheritance in Nigeria: Lessons from South Africa. *African Human Rights Law Journal*, 14(2), 633-654.

⁶¹ *Ibid.*

⁶² Aladetola, O. (n. 15 *op. cit.*).

⁶³ John O. Asein 'Introduction to Nigerian Legal System' 2ed at 73.

women's right.”⁶⁴ Therefore, to achieve a robust socio-legal regime for securing the inheritance rights of widows under Igbo customary law, some critical issues need to be addressed.

1. The CFRN should be amended to grant to original jurisdiction to the Supreme Court on matters of fundamental rights enforcement. This will provide a one-stop court for widows to litigate violations to their inheritance rights by cutting the cost of litigation from the High Court through the Court of Appeal. The Indian Constitution of 1950 provides a classical example in this regard. Ironically, the long distance between the Supreme Court in Abuja and most villages outside Abuja and parts of the North, as well as the endemic poverty in those rural areas may still hinder the overall capacity of violated widows to litigate fundamental rights breaches, except through legal aid, *pro bono* legal support or other assistance from relevant persons, groups or NGOs.⁶⁵
2. Relatedly, the CFRN should be amended to make provision for NGO participation in the monitoring and reporting of violations to the dignity and property rights of widows and women generally. Fiscal support may be made to promote the constitutional activities of such groups. For instance, s. 184 (3) of the 1996 South African Constitution requires relevant state organs to furnish the South African Human Rights Commission (SAHRC) with “information on the measures they have taken towards the realization of the rights in the Bill of Rights” (this includes equality in dignity and property rights). Unfortunately, successive Nigerian governments would sometimes rather view human rights and allied

⁶⁴ Aniekwu, N. I. (2006). Legalising Cairo: Prospects and Opportunities for Reproductive Rights in Nigeria, 1 & 2 CODESRIA Bulletin 49 (quoted in Okeke, U. P. “*A Case for the Enforcement of Women's Rights as Human Rights in Nigeria*”, The Women's UN Report Program & Network (WUNRN) <http://www.wunrn.com> (16/7/2014).

⁶⁵ Onouha, R. A. (2007). Discriminatory property inheritance under customary law in Nigeria: NGOs to the rescue. *Int'l J. Not-for-Profit L.*, 10, 79.

NGOs as opposition elements and “enemy institutions” seeking the collapse of existing political *status quo*.⁶⁶

3. The government of Nigeria may well introduce special courts to adjudicate on Human Rights issues including the violation of widows' rights. This will promote judicial expediency because justice delayed is justice denied. On this note, useful lessons may be drawn from the Constitutional Court of South Africa and the Supreme Court of India, both of which are special first instance courts with respect to matters of fundamental rights.⁶⁷
4. Nigerian courts should also exhibit creativity and populist proactivity in the interpretation of fundamental rights and allied matters. This is achievable by syncing all other fundamental rights with the right to life and treating them with equal importance. By this approach, all violation of rights, including the dignity and property rights of widows under Igbo customary law, will be interpreted as an implied violation of the sacrosanct right to life. This is the standard in India and may be accordingly borrowed by Nigeria.
5. Civic education on the special rights of women and girls should also be introduced in Nigerian schools and encouraged in places of worship, workplaces and local group/communal meetings with the interplay of civil society groups as well as mainstream/social media. This will strengthen the general study of civic education which currently exist in some schools. This is necessary for disseminating vital information for guaranteeing the

⁶⁶ Ogunniran, I. (2010). Enforceability of Socio-Economic Rights: Seeing Nigeria through the Eyes of Other Jurisdictions. *Unizik Journal of International Law and Jurisprudence*, 1(September 2010), 73-87, at 87.

⁶⁷ The *epistolary jurisdiction of courts* in India permit courts to take cognizance of, and hear *writ* petitions based even on media reportage of violations or a personal letter addressed to a judge alleging violation of fundamental rights.

overall development of women and girls.⁶⁸ It will also promote their *independence*⁶⁹ bearing in mind that silence in the face of discrimination against women in dignity property inheritance, as well as their emotional harassment is said to occur often *because women are not sensitized about their rights*.⁷⁰

6. Conclusion

The violation of the property rights of widows under Igbo customary law invariably amounts to a violation of the right to dignity. Such violations based on age-long belief in social myths are also common among rural folks in other Nigerian communities especially those that recognize the succession rule of male primogeniture.

This kind of discrimination and inequality cuts across the lives of both the educated and non-educated widows, and it takes personal and financial courage to litigate against the violations in a male-dominated Igbo society. Thus far, and despite criticisms, the Supreme Court of Nigeria endorsed a new approach to widows' rights of inheritance to immovable property under Igbo customary law *vide* its landmark decisions in *Anekwe v. Nweke*.⁷¹

It is hoped that this new approach will be sustained, notwithstanding the dogged conservative belief in the irreversibility of age-long traditional practices by most adherents of Igbo customary law, especially the beliefs in

⁶⁸ Ogunniran, I. (2015). Gender issues and the Nigerian constitution: a ray of light, or twilight on the horizon?. *Gender Questions*, 3(1), 114-132.

⁶⁹ Bala, R. (2017). Women Empowerment by Education about Their Rights. *International Journal of Scientific Research*, 5(10).

⁷⁰ *Ibid.*

⁷¹ That judgement give impetus to cases like *Mojekwu v. Mojekwu* (1997) 7 NWLR (pt. 512) 283 where the Court of Appeal, Enugu Division, by a unanimous judgement, struck down as being discriminatory and repugnant to natural justice, equity and good conscience, the Nnewi customary law of *Oli-ekpe* which entitles the son of the deceased's brother to inherit his land and immovable property to the exclusion of the deceased's female child.

patriarchy and primogeniture which fuel the violations to women's dignity and property rights in Igbo Customary law.

This paper further concludes that, compared to Igbo customary law, the practice of women's property rights in Islamic law is unique and consequential because it offers defined expansive rights of ownership to Muslim widows/women.