

WOMEN AND RIGHTS TO INHERITANCE: A CRITICAL ANALYSIS

By

Eze-Obuzor, Nneka Esq.* and Dr. M. E. Nwanyanwu**

Abstract

This study seeks to critically analyze women's right to inheritance of their deceased husbands' properties. It is of utmost importance that this study is carried out due to perceived discrimination against women in intestate succession under customary law in Nigeria. Circumspectly, gender discrimination is currently receiving the attention of the world community. The researcher concluded with the recommendation that: there is need to make justiciable, the socio-economic rights (including women's right to inheritance) contained in chapter-two of the constitution; establishment of Rural Women's Policy Forum, to provide a space for dialogue between the rural women's sector, and government departments on policy issues to promote equality for women (widows) within a rural development framework; and appointment of a National Commission on Gender Equality, with the sole aim of advocating, and overseeing the advancement of gender equality in the public and private sectors.

Introduction

Inheritance is simply the practice of passing on ones' belongings, assets, and properties to ones' beneficiaries. Most times, when inheritance matters are brought up, it tends to be quite a sensitive subject for any family especially when it comes to intestate succession by women. In this regard, Wills Act establishes the fact that restrictions are not placed on women with regard to inheritance when it comes to testamentary disposition. Women as benefactors are treated equally with others. Testators under the Wills Act are free, irrespective of whether or not he is subject to customary law, to dispose all real or personal estate to whomever he wishes whether male or female- and it takes effect upon his death¹ However, inheritance is commonly patrilineal and sharing of assets

*LL. B (Rivers State University), BL, E-mail: nnekaechezulor@yahoo.com

** LL.B., (Hons.), LL.M., Ph.D., Lecturer, Faculty of Law Rivers State University, Port Harcourt.
Email: martinanwanyanwu11@gmail.com.

tends to be in favor of the male child. It is a cultural practice that cuts across the whole world. It is a critical mode of property transfer in many Sub-Saharan African countries² where inheritance distributions are culturally done through direct, and intimate interactions among family members.

Widowhood

On the African continent, particularly Nigeria, widows face seemingly insurmountable challenges. Widows - rather than being sympathized with and assisted, are subjected to near in-humane treatment in certain traditional ritual rites and practices such as solitary confinement, defacement, dis-inheritance (as seen in n cases like *Nezianya v. Okagbue*, where the Supreme Court upheld the argument that a married woman has no right to inherit her deceased husband's property³), and a relatively long mourning period. Many are stigmatized, blamed for their husband's death and displaced from their marital home. In Nigeria, like any other African Country, traditional practices like the issue of widowhood are still consciously and unconsciously upheld by significant proportion of the population. Widowhood practices are observed by almost all the ethnic groups in Nigeria, particularly among the Yoruba, Igbo and Hausas. The culture of widowhood has been in existence from time immemorial and transmitted from generation to generation.

Widowhood is the state of being a widow or widower, or the period of times during which someone is a widow or widower. Widowhood is a tragedy that befalls a married person as a result of the timely or untimely death of the spouse. In many cultures, widowhood in women is considered as stigma and widows as inauspicious.⁴ The issue of widowhood, particularly in Nigeria, appears to have gender implication as there are certain cultural imbalances in the practices of widowhood by widows and widowers. Traditions are particularly hard on widows because widowhood involves varying degrees of physical hardship, deprivation, ritual contaminations, emotional instability, socio-economic

¹ Married Women Property Act 1893 Cap. 129 Laws of the Federation of Nigeria (LFN) 2004 (Married Women Property Act) s. 3.

² UN Habitat, 'Women's Equal Right to Housing, Land, and Property in International Law' (2006) *United Nations Settlement Programme* 2-57

³ *Nezianya v Okagbue & Ors.* [1963] 1 All NLR p. 352.

⁴ S. O. Nwosu, 'Widowhood Practices and Religion in Nigeria' (A term paper presented to The Department of Sociology, University of Nigeria Nsukka, 2007)

and psychological trauma. Various tribes and cultures in Nigeria have diverse ways of practicing rites pertaining to burial, but traditions are particularly hard on women. Culturally, widowhood burial rites involve varying degrees of physical hardship, deprivation, ritual contamination, emotional instability, socioeconomic and psychological trauma.⁵ Widowhood Practices in Nigeria involve dehumanizing rites and rituals which women are mandated to follow. Widowhood is often the beginning of life-long oppression and misery for women. Widowhood entails the observance of certain rites by women that differ from culture to culture in Nigeria.

Widowhood and Inheritance

The inheritance rights of widows and divorcees are precarious and dependent on the benevolence of the family head. The situation of widows is determined by their willingness to remarry within the family and their fertility. If she obliges, the woman is allowed usage of her portion of the land allocated to her and to stay in her hut. If she opts not to marry but stay as family member and look after her children, she has the access to both her hut or room and the land, and she could go on farming to take care of the children. If she marries out of the husband's family, she loses all the rights and success she was entitled to. Childless widows on the other hand, are expected to return to their ancestral home on the death of their husbands.

A widow of a customary law marriage, on the death of her husband is completely disinherited under the various customary laws in Nigeria.⁶ No system of customary law in Nigeria confers a beneficial right in a widow in the deceased husband's estate, except indirect benefits through her children's right, if any. This is all the more so apparent given that the widow is property to be inherited.⁷ However, the rules of inheritance in Igbo land are not uniform but there are certain similarities. The oldest son of a deceased has exclusive rights to the entire estate left behind. He is entitled to a special property by virtue of being the eldest son. He has the right to manage and administer other properties of his deceased father for

⁵ S. O. Nwosu, 'Widowhood Practices and Religion in Nigeria' (A term paper presented to The Department of Sociology, University of Nigeria Nsukka, 2007)

⁶ Finine Fekumo, *Principles of Nigerian Customary Land Law*. (1st ed. Port Harcourt: F & F Publishers, 2002)

⁷ C. M. Olaniyi, 'Problems of widowhood practice among Nigerian widows' (PhD Dissertation, Ekiti State University 2010)

the benefit of himself and his brothers and sisters. When a woman dies, whatever property she acquired before marriage, goes back to her family⁸. Under Igbo Customary Law, the female child was excluded from inheriting the property of their father or their husbands. This however stirred some discussion and in a Supreme Court decision in April 2014 (*Ukeje v Ukeje*), the Court found that the Igbo inheritance rules that exclude women from inheritance violates the country's 1999 Constitution which guarantees freedom from discrimination.

In the case of *Ukeje v Ukeje*,⁹ The Supreme Court has voided the Igbo law and custom which forbids a female from inheriting her late father's estate on the grounds that it is discriminatory and conflicts with the provision of the constitution. The court held that the practice conflicted with section 42(1) (a) and (2) of the 1999 constitution. The trial court found out that she was a daughter to the deceased and that she was qualified to benefit from the estate of her father who died intestate in Lagos in 1981. The Court of Appeal, Lagos, to which Mrs. Lois Ukeje and Enyinnanya Ukeje appealed, upheld the decision of the trial court, prompting them to appeal to the Supreme Court. In its last judgment, the Supreme Court held that the Court of Appeal, Lagos, was right to have voided the Igbo's law and custom that disinherit female children. Justice Bode Rhodes-Vivour, who read the leading judgment, held that no matter the circumstances of the birth of a female child, such a child is entitled to the inheritance from her late father's estate.¹⁰ 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.¹¹ The said discriminatory customary law is void as it conflicts with section 42(1) and (2) of the constitution. In the light of all that has been said, the appeal was dismissed.

⁸ *Ibid*

⁹ *Ukeje v Ukeje* [2014] 11 NWLR (Pt. 1418) 384

¹⁰ D. Umoh, 'Violence against Women: Widowhood Practices and the Church. Towards the Construction of a New Culture of African Womanhood' (2018) 5(7) *Advances in Social Sciences Research Journal* pp. 123-135.

¹¹ Constitution of the Federal Republic of Nigeria 1999 (as amended) Cap. C23 Laws of the Federation of Nigeria 2004 (CFRN) 1999 S. 42

Prime Issues in Inheritance and Succession

In a society in which inheritance exists, two issues are of prime importance for the distribution of wealth and for the social and political structure of the society: the issue of the extent to which owners of property shall have the power by their own decision to determine the course of inheritance and the issue of whether or not estates shall be allowed or even required to pass undivided to one single heir.¹²

The power of an owner of property to determine who is to have it upon his death is thought to stimulate economic activity: it is also considered desirable that a property owner be allowed to modify the rigid rules of the intestacy laws so as to adapt them to the particular situation of his family by preferring, for instance, a disabled child over one of proven capacity. The freedom to disinherit a child may be used to induce filial obedience, but freedom of testation also implies the freedom of making provision for charity. The possibility of abuse for ends of spite, arbitrariness, or whimsy is the price society has to pay for such power. Freedom of testation developed slowly, and nowhere does it exist without limitations.¹³

Causes of Widowhood

Poverty acts as a primary cause of widowhood in three ways: through hazardous work (often the only option for poor males), personal behavior or psycho-social tendencies causing early death, and poor health and disease caused by inability to afford required nutrition and medical care in countries without effective free healthcare, lack of adequate housing, and lack of clean water and sewage systems. Poverty as a cause of widowhood is of special interest because of the prematurity of the widowhood caused.¹⁴ Premature widowhood is a particular concern because it has intergenerational consequences, characterized by women with dependent children. It is also a concern given the high reported incidence of widows under age 60 in developing countries. These women have been partly or wholly dependent on husbands and partners as the primary source of economic support and premature widowhood is more

¹² O.M. Kuforiji, 'Recent Development on Inheritance Law in Nigeria: E-Legal Aid' (26 October 2015), < <http://bit.ly/2LwtNuE> > accessed 2 May 2022

¹³ O.M. Kuforiji, 'Recent Development on Inheritance Law in Nigeria: E-Legal Aid' (26 October 2015), < <http://bit.ly/2LwtNuE> > accessed 2 May 2022

¹⁴ Loomba Foundation, 'Causes of Widowhood' (2011), < <https://www.theloombafoundation.org/our-work/research/world-widows-report/causes> > accessed 26 April 2022.

frequent in countries where state welfare in the form of income support and free healthcare is poor or not available at all, and in several regions.

Also, Work is another cause of widowhood.¹⁵ The International Labour Organization (ILO) estimates that each year there are 2.3 million deaths of workers. Work deaths are defined as deaths arising from accidents and work-related illness. The ILO states that “work kills more people than wars.” Globally, this costs four percent (4%) of GDP, while the accident rate has been increasing in developing countries where an unknown number of work -deaths go unreported because a large proportion take place in the informal sector of the economy.¹⁶

Disease as a cause of widowhood does not operate on its own in a social vacuum.¹⁷ Social norms leading to socially learned behaviors are crucial facilitators of disease as a killer of men and hence as a cause of widowhood. When fused with poverty, they produce a lethal combination. Malnutrition caused by poverty- especially extreme poverty- reduces the body’s natural defenses to diseases such as HIV/AIDS, with skin on critical surfaces of the body becoming fatally impaired in its ability to resist disease. Chronic poor health, brought on by inadequate nutrition, access to healthcare, housing and lack of clean water and sewage infrastructure, is the leading outcome of poverty -with greatest intensity but not exclusively in developing countries. Crucially, chronic poor health aggravates the progression of serious diseases such as HIV/AIDS and tuberculosis (TB), the effects of which can be seen in differences between high- and low-income countries in male mortality figures and causes.

Furthermore, Psycho-social response deaths in men are a pertinent area for consideration. The term psycho-social response deaths as used here distinguish these deaths as inflicted by individuals on themselves, so focusing on the individual as the cause of death. The underlying cause of death, however, is from the male psychological response to reduce economic circumstances. This is a factor whether the deaths result from a prolonged process- as in the case of alcoholism- or when immediate, as in

¹⁵ *Ibid*

¹⁶International Labor Organization, ‘Partnerships Through Globalization’ (2004), <https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-moscow/documents/generic-document/wcms_305873.pdf> accessed 26 April 2022

¹⁷ Loomba Foundation, ‘Causes of Widowhood’ (2011),< <https://www.theloombafoundation.org/our-work/research/world-widows-report/causes>> accessed 25 April 2022.

the case of suicide or non-military community violence. A significant cause of premature deaths of males aged 15-59 is alcoholism as a psychosocial response to economic collapse, which has epidemiological characteristics due to its society-wide incidence.¹⁸ This has been observed in Russia since the early 1990s, following the collapse of the Soviet economy and welfare state. It has been so pronounced that the adult male death rate has increased dramatically, reducing male life expectancy to 58 years.¹⁹

Conflict as a cause of widowhood can be inter-communal, such as in Kenya in 1992, 1997, and 2007, due to the contested presidential elections; in Northern Ireland since the 1970s; the case of the Gujarat massacre of Muslims in India in 2002; massacres and targeted killings in Indian Kashmir in addition to military confrontations; or the Shia-Sunni conflagration of post-Baathist Iraq following the US-led invasion. Nigeria is not excluded from this, as so many has lost their lives as a result of chaos perpetrated in the country till date.

Factors Influencing Widowhood Practices

There are notable factors influencing the unhealthy widowhood practices in every part of the country. The notable factors include; male-dominance and patriarchal influence, poverty, lack of education, and inferior social status,

Male dominance and Patriarchal influence: Male dominance and patriarchy primarily influence the practices of widowhood and the inferior status of women in society. Men usually remarry shortly after the death of their wives while women mourn for months and subjected to inhumane torture. In addition, the act of bride price payment by men has made them regard women as commodities exchanged for material things. The law of creation has been misunderstood, so was the gender roles. Women are excluded from the decision-making process both in their parental and matrimonial home which has a great influence on the oppression of widows.²⁰

¹⁸Loomba Foundation, 'Causes of Widowhood' (2011), <<https://www.theloombafoundation.org/our-work/research/world-widows-report/causes>> accessed 25 April 2022.

¹⁹ *Ibid*

²⁰ R. A. Ogundipe, 'Psychosocial Factors as Correlates of Adjustment among widows in Southwestern Nigeria' (PhD dissertation, University of Ibadan 2009)

Poverty:

Women's lack of economic freedom and inability to fend for themselves make them vulnerable to oppression and exploitation by in-laws, clans, village heads, or villagers. Hiding under customs and traditions, these people subject women to unwholesome practices which include; demanding the late husband's properties and in most cases, selling some in the name of raising funds for the burial of the deceased.²¹

Lack of Education:

Lack of formal education serves as a huge setback to women as they usually do not know their rights. Lack of awareness prevents them from resisting the cultural pressure, humiliation, and inhumane abuse in the name of widowhood rites, or disposition of their husband's properties.²²

Inferior Social Status:

With widowhood, many women lose their social status. Widowhood is a risk for transition into poverty. The imposition of restrictive and extensive mourning, seclusion, mandatory dress-codes have great implications on the socioeconomic status of widows. Additionally, because of lack of income and financial security, widows are unable to provide children's education, adequate food, secure accommodation, and maintain the households.²³

Summary of Findings

The findings from this study have been codified in an unambiguous approach, for inductive purpose:

1. Women's right to inheritance is mainly influenced by the origin of the property in question. For instance, tribal or family land may be treated differently from purchased land. .
2. That multiple laws intersect on the question of women's right to property and inheritance hence very problematic.

²¹ Comfort Adeyemo, 'Widowhood and Its Harmful Practices: Causes, Effects and the Possible Way out for Widows and Women Folk' (2016) 3 (2) *World Journal of Educational Research*, 380

²² C. M. Olaniyi, 'Problems of widowhood practice among Nigerian widows' (PhD Dissertation, Ekiti State University 2010)

²³ Comfort Adeyemo, 'Widowhood and Its Harmful Practices: Causes, Effects and the Possible Way out for Widows and Women Folk' (2016) 3 (2) *World Journal of Educational Research*, 380; C. M. Olaniyi, 'Problems of widowhood practice among Nigerian widows' (PhD Dissertation, Ekiti State University 2010)

3. That when it comes to women's right to inheritance, tribal or customary laws which are not codified are first applied especially the uneducated women in rural areas

Conclusion

Overall, The Jurisdiction of Nigeria is internally consistent with protecting the right of women in intestate succession especially, the Wills law of Rivers State 1988. Although there has been progress by the jurisdictions of Nigeria in abrogating discriminatory inheritance practices against women, but there is need for much more work to totally resolve this issue, as there is clear disparity between what the law says and what is obtainable in reality. Illustratively (as part of the progress by the jurisdiction of Nigeria), in the year 2016, the Supreme Court in a landmark judgment of Mrs Lois Chituru Ukeje (widow of late Lazarus Ogbonna Ukeje) and their son, Enyinnanya Lazarus Ukeje against Mrs. Gladys Ada Ukeje (the deceased's daughter), nullified the Igbo law and custom which disallows women from inheriting their father's estate.²⁴ This practice was ruled by the apex court as being discriminatory, and in conflict with the provisions of the Nigerian Constitution (a breach of Section 42 (1) (a) and (2) of the 1999 Constitution). Similarly, in recent time, The Rivers Assembly passed 'Prohibition of Curtailment of Right of Women in Family Property Bill 2022',²⁵ to ensure justice, equity, and fairness. It can be said without mixing words that Nigeria is not in short supply of laws that protects the right of women in intestate Succession. However the implementation of these laws is the main issue.

²⁴ *Ukeje&Anor v Ukeje* [2014] 11 NWLR (Pt. 1418) 384.

²⁵ Samuel Ajurunwo, 'Rivers Assembly Passes Prohibition of Curtailment of Right of Women in Family Property Bill 2022' (May 2022), <<https://nigerdeltaconnect.com/rivers-assembly-passes-prohibition-of-curtailment-of-right-of-women-in-family-property-bill-2022/>> accessed 27 July 2022.

Recommendations

1. Before actions are taken to amend discriminatory laws, it is imperative to speak to women about the rights so that the amendment is driven by what is feasible, possible and desired by the women that the intervention seek to assist. Policies like 'The Rural Development Policy', which guarantees provision of rural micro credit, and capacity development activities to only women can be adopted to assist in reducing inferiority complex of women in the country - and overtime, can make women courageous enough to stand for their right.
2. There is need to create awareness on the role a woman plays in the society, this will in turn create the need to need to allocate both tribal and family land to women. The government and the community can help by allocating lands in the name of the woman hence the woman will gain more power in the household and be less prone to abandonment and mistreatment in the event of spousal death.
3. Rural Women's Policy Forum can be formed to provide a space for dialogue between the rural women's sector and government departments on policy issues to promote equality for women (widows) within a rural development framework. This should be effective in coming to a point of harmonization between customary practices and statutes of Nigeria regarding intestate succession and better implementation of the extant laws be made a priority.