

# Roofless Mansion: An Analysis of the Intestate Succession Rights of Women in Nigeria

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## Abstract

This paper examines the intestate succession laws applicable to women in Nigeria. It establishes the existence of a legal framework for intestate succession, with judicial interpretations geared towards the protection of succession rights in intestate situations. It however shows how women are disadvantaged by existing national laws: the Constitution that guarantees the right to own property and freedom from discrimination but is couched in gender insensitive terms; the Evidence Act that requires proof of custom that is already biased against women; and the Land Use Act that is inexplicit on the actual law to be considered when determining an intestate property. Further, it shows the inadequacies of the Marriage Act, the Matrimonial Causes Act, and the Violence Against Persons Prohibition Act in addressing intestate succession rights of women. In response, this paper argues that inheritance is a form of property ownership and so if the Constitution allows for the right to own property without discrimination, such right without fail, accrues to inheritance of property. Where succession laws are couched in gender insensitive words or biases against women therefore, it becomes difficult for women to actually inherit property in intestate situations. Ultimately, the paper posits that the existence of a legal framework on intestacy bereft of explicit provisions that guarantee intestate succession rights of women can be likened to a roofless mansion that continues to deteriorate under the watch of ignorant or negligent owners. The paper calls for a gender sensitive Constitution and more inclusive laws that promote women's agency while contributing to nation building.

**KEYWORDS:** Intestate, Women, Inheritance, Hardship

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## 1.1 Introduction

This paper examines the laws on intestacy in order to sift the succession rights of women in Nigeria. Building on the common knowledge that intestacy happens in the absence of a Will, and the principle that intestacy is rooted in custom,<sup>1</sup> I argue that the existing laws are inadequate and does not provide for equitable distribution of property between men and women in intestate situations. In canvassing this argument, the issues of male primogeniture (practice of inheritance through the male blood line), the traditional belief that formal courts are against custom, and the gender insensitive framing of the Constitution are discussed as perpetrators and enablers of unfair intestate succession in Nigeria.

Also, the paper examines the Violence against Persons Prohibition Act (VAPPA). It highlights amongst other things, the VAPPA provision that prohibits forced financial dependence. It then relates this provision to succession by arguing that the practice of access to but not ownership of intestate property leads a lot of women to financially depend on the families of their late husbands. This increases the hardship of such women who are subjected to obnoxious practices before given access to the intestate property whereas they may have contributed to acquiring such matrimonial property.

This paper is theoretically founded on equality, which is simply the treatment of everyone, whether male or female as the same. The concepts, succession and inheritance, will be used interchangeably to mean the same- a bequest. Although this paper will analyse intestate succession rights of women in Nigeria, it will make references to the South-Eastern (Igboland) succession practices in order to elaborate some points. The paper is divided into three parts. The first part interrogates national laws, that is, the Constitution, the Land Use Act, the Evidence Act, the VAPP Act, the Marriage Act and the Matrimonial Causes Act. In the second part, international treaties on the rights of women are interrogated in line with the subject matter of intestate inheritance. The third and final part is the recommendation and conclusion.

<sup>1</sup> The court will usually interrogate the custom of an intestate to determine how his or her property will be distributed. This means that where a person dies intestate, the customary law of that person is usually consulted to determine the estate, especially where such a person was only married traditionally. See Oni BA "Discriminatory Property Inheritance Rights under the Yoruba and Igbo customary Law in Nigeria: The need for reforms" (2014) 19(2) *IOSR Journal of humanities and Social Science* 30-43.

## 1.2 The National Laws

In this section, I discuss sections of the Constitution, the Marriage Act, the Land Use Act, the Evidence Act, and the Violence against Persons (Prohibition) Act in order to determine the extent these laws make provisions for the their provisions with regards to women in Nigeria.

### 1.2.1 The Constitution

The Constitution is the ultimate law in Nigeria. Its provisions are binding on all persons within the Federal Republic of Nigeria.<sup>1</sup> The provisions of the Constitution are binding on all intestate succession matters regarding women in Nigeria.

The Constitution guarantees the right to own property anywhere in the country. As such, section 43 provides that every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.<sup>2</sup> This right is guaranteed to all citizens of Nigeria without limitation by sex, ethnic group, religion, or social group. This means that women are also contemplated as recipients of this right to own property anywhere without limitation except the general limitation meted out to all other citizens of Nigeria.<sup>3</sup>

Again, by section 42 of the Constitution, no citizen of the country should be discriminated against. Therefore, combining the provisions of sections 43 on the right to own property with section 42 on the right to freedom from discrimination, the Constitution will read that every citizen has the right to own and acquire immovable property anywhere in Nigeria without discrimination on any ground. Flowing from these sections of the Constitution, the right to own property is also the right to inherit property. This is because inheritance is a form of ownership where all the rights of the original owner is transferred to the successor. Thus, in several decided cases, women's inheritance of immovable property (land) has been upheld by the courts.<sup>4</sup>

However, judicial pronouncements and affirmations on the right of women to inherit and own immovable property anywhere in Nigeria is hardly observed in practice, especially by custodians of traditions that are rooted in male primogeniture.<sup>5</sup> In places such as the South-Eastern part of Nigeria, women are allowed access to immovable property but are not allowed to inherit and subsequently own such property. This is largely for two reasons.

The first is the bias associated with patriarchy. Custodians of tradition believe that women whether born or married are transient in every family. To them, if a woman inherits immovable property, such property could be shifted to another family when she marries or remarries.<sup>6</sup> So, the practice of women accessing lands without the right to own same is widely practiced in Igbo land.<sup>7</sup> The courts may therefore need to address this social concern of what happens to property inherited by a woman who subsequently remarries or a daughter who inherited from her father and subsequently, from her late husband. This factor could be appended to the best interest principle as espoused by Diala over inheritance. In other words, in trying to find a balance of all interests to an inheritance, what principle should be applied where there is likelihood of dual inheritance?<sup>8</sup> This inquiry should be made in consideration of the right to own immovable property and freedom from discrimination.<sup>9</sup> In offering a

<sup>1</sup> Section 1(3) of the CFRN 1999. See also the provision of section 1(1) of the CFRN 1999 which states that the 'Constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria.'

<sup>2</sup> CFRN, section 43.

<sup>3</sup> For instance, section 43 (2) mentions circumstances where the right to own immovable property can be derogated from such as (a) for the imposition or enforcement of any tax, rate or duty; (b) for the imposition of penalties or forfeiture for breach of any law, whether under civil process or after conviction for an offence; (c) relating to leases, tenancies, mortgages, charges, bills of sale or any other rights or obligations arising out of contracts; etc.

<sup>4</sup> *Mojekwu v Mojekwu* (1997) 7 N.W.L.R., 283; *Ukeje v Ukeje* (2014) 11 N.W.L.R. (PT.1418) 384.

<sup>5</sup> Primogeniture is succession or inheritance through the male blood line. There is an existing practice in most parts of Igbo land that men and not women should inherit a deceased relative's property, especially land. See Nwogugu EI 'Emancipation of Female Rights to Intestate Succession under Igbo Customary Law, The Nigerian Juridical Review, Vol 12, 2014, 1. See also, *Nwafa v Ububa* (1966) 1 All N.L.R. 80; *Osolu v Osolu* (2003) All N.L.R. 252 SC.

<sup>6</sup> This was reiterated in *Nezianya v Okagbue*, (1963) 1 All N.L.R. 352. This decision however held before the enactment of section 39(1) of the 1979 Constitution on non-discrimination.

<sup>7</sup> Nwogugu EI 'Emancipation of Female Rights to Intestate Succession under Igbo Customary Law', The Nigerian Juridical Review, Vol 12, 2014, 2.

<sup>8</sup> See Diala's best interest of dependent argument in Diala AC, Reform of the customary law of inheritance in Nigeria: Lessons from South Africa, African Human Rights Law Journal, (2014) 14 AHRLJ 637-639.

<sup>9</sup> So, it is not just enough for the courts to uphold female inheritance. They are duty bound (because customary law forms part of the legal system in Nigeria) to acknowledge customary practices and then give reasons why such customary positions may

hypothesis, the major concern of this paper is whether the equality theory that this paper leans on, can be applied to allow women inherit in their fathers' homes and their matrimonial homes. The question therefore is whether it will infringe fairness to allow a wife to inherit from her late husband's estate even though she is already an heiress in her own father's estate. Again, will it be fair to transfer property and by extension, the wealth of a family to another family upon death intestate? Will it also be fair to disinherit the widow who contributed to the acquisition of such property? Through the lens of the equality, it will amount to unequal and unbalanced inheritance if one gender is allowed dual inheritance while the other has a single chance at inheritance. Such practice, if allowed, could lead to an unequal society where women become major owners, thereby shifting the hardship which this paper seeks to curb, to men.

However, in most parts of Nigeria, daughters are given responsibilities in their fathers' homes and these responsibilities are not taken away when they marry.<sup>1</sup> Sometimes, the proceeds of the property that married daughters inherit are ploughed back to their fathers' houses. Therefore, to ensure a fair balance of all interests concerned, the courts should always rule that all children should inherit equally in intestate situations using the equality benchmark.<sup>2</sup>

The second clog on the wheel of effective implementation of court rulings regarding women's land ownership and inheritance is the belief that formal courts are disdainful towards customs. Ordinarily, many local disputes are resolved using techniques such as traditional mediation. Oftentimes, informal adjudicatory methods such as taking the dispute to traditional leaders for possible resolution are relied upon.<sup>3</sup> As such, many custodians of tradition consider it an abomination for anyone to take a fellow kinsman to a formal court. The situation is worsened if a woman, who is expected to come under the authority of a man, goes to court to assert her property rights. Such women are projected as being untameable and face contempt and isolation even from fellow women in the same society. Thus, customs and traditions may pose as impediments to the implementation of the laws.<sup>4</sup>

Unfortunately, the hardship caused to women by traditional practices is exacerbated by the same Constitution that guarantees everyone freedom from discrimination. This is because the language of the Constitution is discriminatory, since it suggests that males are the only recipients of fundamental rights. The constitutional use of pronouns such as 'he', 'him' and 'his' in the bill of rights, especially regarding property rights,<sup>5</sup> only reiterate the conventional belief that men are superior to women. Women thus are prejudiced and must come under the rights of men before they can be recognized.<sup>6</sup>

Unlike the Constitution, the Matrimonial Causes Act is gender sensitive. It also determines intestate property by considering the type of marriage contracted by parties, as examined in the next section.

### *1.2.2 Matrimonial Causes Act*

The Matrimonial Causes Act (MCA), together with the Marriage Act regulates most marriages in Nigeria. The customary marriage, the statutory marriage and the Church or 'registered place of worship' marriage are all recognized by the Marriage Act, while matters emanating from marriages, otherwise called causes are regulated

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not apply specifically to the Court rulings. Ultimately, the rulings of the court gain customary acceptance when the people can relate with such rulings.

<sup>1</sup> I am a married Igbo daughter. Oftentimes, my married sisters and I are called to make contributions to our fathers' compound. The contribution ranges from paying dues to maintaining property in our fathers' compound. During traditional weddings, burials, chieftaincy conferment, etc. daughters are also called to show support to their fathers. Most times, the daughters make contributions and are expected to call their husbands to contribute too. In fact, during burial ceremonies, the daughters and their husbands are given a traditional list of to-do items. They are expected to religiously fulfill the contents of the list as though they weren't married, or their husbands were true sons of the land. Meanwhile, the call on daughters to support events in their fathers' compound is made whether they are married or not.

<sup>2</sup> For further insight on this, see Eboh NJ, Modernism and Intestate Inheritance in South East Nigeria: Rethinking the Distributive Justice Theory, University of Cape Coast Law Journal Vol Issue 2 Dec. 2021. Pp 375-394.

<sup>3</sup> Eboh NJ 'Revisiting Customary Dispute Settlement in the Quest for a peaceful Africa', OAU Law Journal, Vol 3(1) 2019, 368.

<sup>4</sup> See generally, Njoku JE 'The world of African women', London Scarecrow Press Inc, (1980).

<sup>5</sup> Section 43 of the CFRN, 1999 (as amended).

<sup>6</sup> Constitution of the Federal Republic of Nigeria, 1999, sections 36, 38, 40, 42, etc.

by the MCA.<sup>1</sup> On the subject matter of intestate succession of married women, section 42(2) of the MCA provides that-

Where a spouse dies intestate while there is a subsisting decree of judicial separation, the property of such spouse will devolve to his or her surviving spouse irrespective of the decree.

The above section of the law concerns intestate succession while there is a pending decree for judicial separation. In other words, the law states that if a decree for judicial separation has not been concluded before the death of one of the parties, the marriage between the two parties will be taken as still in existence and will therefore be treated as subsisting even when any of the parties die intestate. Section 42(2) of the MCA indicates that marriage is a major consideration in an intestate situation. Therefore, the next section will highlight how the type of marriage contracted by the parties will impact on the nature of inheritance.

### 1.2.2 Types of marriage and nature of inheritance

Given Nigeria's plural legal system, the type of marriage usually determines the nature of inheritance in an intestate situation. For instance, in the case of *Cole v Cole*<sup>2</sup>, the appeal court reversed a decision of the native court and held that a Christian native who was married by Christian rites outside the colony and protectorate will have his succession governed by the English law of succession.<sup>3</sup>

In another case, *Olowu and others v Olowu and Another*,<sup>4</sup> the issue was to determine the proper personal law of a deceased man of Yoruba origin but who was naturalised under the Benin custom. Part of what the trial and appellate courts considered in ruling that Olowu had naturalised as a Benin man was his marriage to several Benin women as well as his application to be naturalised as a Benin man. According to the letter of naturalisation marked as Exhibit Uzzi 3 in suit b/15-20/62/62 (Exhibit J) page 390, the then Oba of Benin wrote: *Mr. A.A. Olowu has applied to become a naturalized Benin. He has Benin women as wives, who have children for him. I have no objection to naturalizing him provided he submits to all Benin Customs and Laws.*

The Supreme Court therefore dismissed the appeal to have the Olowu's estate administered in the Yoruba customary law manner, emphasising that Olowu's successful naturalisation as a Benin man enabled his acquisition of property in Benin and so his estate will have to be administered in the Benin customary law manner. The court ruled amongst other things that-

- i. A person may change his personal law under Nigerian Law, either from Customary Law to English Law or vice versa, by changing from one cultural group to another.
- ii. A person may change his status under customary law (and consequently his personal Law) either by choice or by the process of assimilation. This change of personal status is called culturalization.
- iii. Where a person previously subject to Customary Law, undergoes a marriage celebration either by Christian rites or according to English Law or in accordance with the provision of the Marriage Act, he is deemed to have rendered himself subject to English Law for the purpose of the distribution of his estate upon intestacy.
- iv. Where a High Court determines that Customary Law is applicable in a given case, the court is under a duty to apply the particular Customary Law which is appropriate in that cause or matter.<sup>5</sup>

<sup>1</sup> Thus, section 1 of the MCA provides that "after the commencement of this Act, a matrimonial cause shall not be instituted otherwise than under this Act".

<sup>2</sup> (1898) 1 N.L.R. 15.

<sup>3</sup> John William Cole was a native of Lagos who was also domiciled in Lagos at the time. In 1864, he left Lagos for Sierra Leone and got married to Mary Cole. The marriage was celebrated in a Christian manner. 4 years afterwards, Mr. Cole returned to Lagos and in 1866, him and his wife had a mentally impaired son, Alfred Cole. Mr. Cole died intestate 1867, leaving his wife, son and his brother who in 1898, brought an action claiming to be declared the customary heir of the deceased and the trustee for Alfred Cole. The court of first instance declared Mr. A.B. Cole the customary heir of his late brother, being born of the same father as well as the trustee of the lunatic nephew. It was this decision that Madam Mary Cole appealed.

<sup>4</sup> (1985) 3 N.W.L.R., Pt. 13 at 372. See also *Adesunbokun v Yanusa* (1970) N.L.R. 92; *Onwudinjoh v Onwudinjoh* (1957) Vol. 11 E.R.L.R. p1.

<sup>5</sup> *Olowu v Olowu*, (1985) 1 N.W.L.R. (Pt. 13) 372, Per Bello and Oputa – J.J.S.C.

Again, in *Obusez v Obusez*, the appellate court held that succession to the estate of an intestate deceased person who is subject to customary law and who marries under native law and custom or died unmarried is governed by customary law.<sup>1</sup> However, the court pointed out that where a person who is subject to customary law contracts a marriage under the Marriage Act, there is a presumption that succession to his or her intestate estate shall be regulated by the Marriage Act. This presumption may, however, be rebutted by the manner of life of the deceased if the lifestyle is suggestive that the deceased wanted customary law to apply.<sup>2</sup>

Meanwhile, as far back as the 70s, the court held that where a man who marries under the statute dies intestate, his estate can only be inherited by his wife, legally married under the Marriage Ordinance or the Marriage Act.<sup>3</sup> Thus, in *Okonkwo v Okonkwo*, part of what the court held was that where a man contracts a marriage under the Act, even though he contracts a customary marriage subsequently with another woman, the statute law would prevail over custom in the distribution of his intestate estate.<sup>4</sup> In other words, even where a person is subject to customary law and goes on to contract a marriage under the Marriage Act, there is a presumption that the Marriage Act will regulate succession to his intestate estate. In *Okonkwo's* case, the deceased and the appellant contracted marriage under the Marriage Act in addition to a church blessing. During the marriage, the deceased got another woman pregnant and subsequently bore four children by her. When the deceased died, this other woman, now the respondent relied on the provisions of section 120(1) (b) of the Administration of Estate of Deceased Persons) Law of Anambra state 1991 and the custom of Awka community to try to take over the estate of the deceased. While the trial court upheld the position of the respondents, The Court of Appeal quashed the position. The appellate court relied on section 42(1) (a) and 2 of the 1999, section 4(3) of the widowhood Law 2005 of Anambra state and Section 36(1) of the Marriage Act, section 71(2) (c) and (3) (b) of the Administration of Estate Law of Cap 4, 1991 to hold that there was a lacuna with the Administration of Estate Law of Anambra state because the law did not contemplate what the position of a childless widow would be in an intestate situation. It also held that although the deceased intended to live under the influence of custom and tradition, he lived as a Christian and married under both Christian rites and the Act. The court therefore held that in the instant case, equity must be implored to arrive at a just decision because,

a woman of suspicious character will not be allowed to reap the toils of a childless, legally married widow who had toiled to build an estate with her husband.<sup>5</sup>

Summarily, inheriting as a married woman is dependent on the type of marriage contracted with an intestate husband. The courts will always consider the type of marriage before taking a decision as seen in *Cole v Cole*, *Olowu v Olowu*, *Okonkwo v Okonkwo* etc. However, decisions of the courts as depicted above show that matters of intestate succession of married women even after establishing the nature of marriage with a deceased spouse are left at the discretion of the courts. For instance, in *Salubi v Nwariaku*, the court held that the practice whereby couples go through traditional ceremonies such as betrothal or engagement before the marriage proper is inconclusive as to translate such marriage into one governed by customary law. According to the Court of Appeal in a unanimous decision,

It is settled that mere payment of dowry and going through other preliminary customary practices before having a wedding in the Church or Marriage Registry would not make such a marriage one contracted under customary law. The prevailing practice whereby couples go through traditional ceremonies such as betrothal or engagement before the marriage proper is inconclusive as to translate such marriage into one governed by customary law. The legal principle governing the duplication of such marriage rites is that the Church or Court marriage supersedes the prior or subsequent customary unions. The latter is valid only if it stands alone. In the instant case, although it was alleged that the deceased paid £20 as dowry to the family of the 3rd respondent, no conclusive evidence was led in proof thereof and even if the couple had in fact gone through

<sup>1</sup> *Obusez v Obusez*, (2001) 15 N.W.L.R. (Pt. 736) 377. See also *Smith v. Smith* (1924) 5 N.L.R. 105 referred to in *Obusez's* case.

<sup>2</sup> These presumptions are all based on the interpretation of the court.

<sup>3</sup> *Osho v. Phillips* (1972) All N.L.R. 279

<sup>4</sup> *Okonkwo v Okonkwo*, (2014) 17 N.W.L.R. (Pt. 1435) 18

<sup>5</sup> *Okonkwo v Okonkwo* (2014) 17 N.W.L.R., per Agube JCA at page 57, paras C-F.



a form of customary law marriage before their Church marriage at the Holy Cross Cathedral, Lagos, the Church marriage would supersede the customary union.<sup>1</sup>

It becomes clear therefore that the court will most likely determine the type of marriage and subsequently the method of succession from the last known marriage contracted by the intestate. This determination by the court is mostly discretionary. Unfortunately, neither the Matrimonial Causes Act nor the Marriage Act fills this gap because their provisions are limited to tackle the question of applicable law for married women in intestate situations.

I now move to the next section to interrogate how the Land Use Act regulates the intestate succession of married women in South-East Nigeria.

### 1.2.3 *The Land Use Act*

The Land Use Act regulates all land activities in the Federal Republic of Nigeria. It vests all land in the government of a state with the exception of land allocated to the Federal government or its agencies.<sup>2</sup> Land is the first factor of production and the most important property a person may acquire in traditional society.<sup>3</sup> As such, when the issue of inheritance or succession is raised, the first thing that comes to mind is land or buildings on land. This is the reason the Land Use Act forms an important part of the subject matter of intestate succession of married women.

Although the LUA does not specifically provide for intestate successions, it contains a salient provision that can be related to the intestate succession of married women. Section 24 of the LUA provides that the devolution of the rights of an occupier upon death shall in the case of a customary right of occupancy, be regulated by the customary law existing in the locality in which the land is situated, and in the case of a statutory right of occupancy, be regulated by the customary law of the deceased occupier at the time of his death. As a proviso to section 24, the LUA prohibits any customary law from depriving any beneficiary of the proceeds of the land under any rule of inheritance.<sup>4</sup>

By this provision of the LUA, customary law, which in practice allows mostly for male inheritance, is given the mantle to regulate intestacy.<sup>5</sup> The caveat to ensure that all beneficiaries of the intestate enjoy the proceeds of the inheritance appears to be a consolation to the women who will be mostly disinherited by the custom. As established in *Cole v Cole*,<sup>6</sup> marriage does not give a woman a right of inheritance to her husband's estate. Thus, this section of the LUA re-enacts patriarchy and consolidates the practice of merely allowing women access to the lands of their deceased husbands rather than outright ownership of such lands. The provision for customary law to regulate both customary and statutory right of occupancy in matters of intestacy therefore inflicts hardship on women. This is in addition to the hardship women face by Nigeria's gender insensitive Constitution.

Having explored the inadequacies of the LUA regarding the subject matter of intestate succession of married women, this research moves on to the Evidence Act to examine its provisions on the subject matter of intestacy of married women.

### 1.2.4 *Evidence Act*

The Evidence Act (EA) contains specific provisions dwelling on either the proof or admissibility of certain conditions. It is important to highlight some of these provisions for the purpose of determining whether the EA provides for the intestate succession of married women or not.

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<sup>1</sup> *Salubi v. Nwariaku* (2003) LPELR-2998(SC) (Pp. 12-13 paras. G).

<sup>2</sup> See the preamble to the Land Use Act, Chapter 202, Laws of the Federation of Nigeria, 1990.

<sup>3</sup> Elementary business studies teach that Land is the first factor of production. It is also a compulsory and valuable factor of production. Land is first needed before other factors such as Labour, Capital and Entrepreneur can be contemplated as a means of production. See Babatunde B *et al*, Premium Business studies and Entrepreneurship Education for Junior Secondary Schools 1, Foursquare Publishers, 2017, 51.

<sup>4</sup> LUA, Section 24(a).

<sup>5</sup> A writer observes that in majority of customs in Nigeria, mode of inheritance is traced through the male descent through forms like primogeniture, ultimogeniture, etc. See Adekile O, *Succession at Customary Law: Addressing the crossroads of constitutional conflicts in Nigeria*, (2009) 2NJAL 54.

<sup>6</sup> (1898) 1 N.L.R., 15.

Section 16 provides that customs must be proven before they can be admissible. This requirement of proof of custom sometimes protects the interest of married women who deal with issues associated with inheritance of the properties of their intestate husbands. However, the admissibility of customs based on the requirement of the repugnancy principle is suggestive that customs are inferior to state laws.<sup>1</sup> This is not entirely true because customary law exists side by side with state laws, which is a reflection of the plural legal orders coexisting in Nigeria. Therefore, scholars like Diala argue that to ensure proper legal pluralism involving a customary law that emerged independent of the state, the Constitution should not ignore customary law and the manner in which its values are applied.<sup>2</sup> His position is similar to Nwocha's who opines that deliberate and concerted steps should be taken along the path of restatement, codification and unification of customary laws in Nigeria.<sup>3</sup> Nwocha suggests that a restatement of customary laws in a document form under the authority of government would become part of, and may be cited as a public document under section 102(a) of the Evidence Act and such document, being a public document will attract judicial notice by the courts under section 16(1) of the Evidence Act.<sup>4</sup> These positions are apt especially because customary law has a wide application being the law that regulates transactions relating to marriage, inheritance and land tenure in Nigeria.<sup>5</sup> I will now proceed to examine the provisions of the Violence Against persons (Prohibition) Act and laws.

### 1.2.5 Violence Against Persons (Prohibition) Act/ Laws

The Violence against Persons (Prohibition) Act (VAPPA) was enacted as a result of many gender-based violence and human rights abuse happening in Nigeria, including rape, murders, maiming of spouses, forceful ejection from homes, forced isolation, and acid attacks. It was passed into law in May 2015. The Act is an improvement of the penal and criminal code in relation to violence against persons. It also provides for compensation to victims as well as the protection of their rights. The VAPPA makes no specific provision on intestate inheritance by married women, but it contains provisions that ensure that married women are not unfairly treated. For instance, section 4 of the VAPPA makes it an offence for anyone to wilfully place a person in fear of physical injury. The offender is liable on conviction to a term of imprisonment not exceeding 2 (two) years or a fine of 200,000 (two hundred thousand) naira or both.<sup>6</sup> The VAPPA also prohibits forceful ejection of a husband or wife from their home.<sup>7</sup> It however limits the offence to spouses. The law should have contemplated situations of inheritance where one is forcefully ejected by another who does not want them to inherit.

Importantly, section 12 of the VAPPA prohibits forced financial dependence. According to the law, a person who causes forced financial dependence or economic abuse of another commits an offence and is liable on conviction to a term of imprisonment not exceeding two years or to a fine not exceeding 500,000 (five hundred thousand) naira or both.<sup>8</sup> Arguably, the practice of allowing women access to land alone without the liberty to own such lands completely and alienate same if they choose to, is a pathway to forced financial dependence. This is because the practice of access without actual ownership keeps the women perpetually tied to

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<sup>1</sup> The repugnancy principle subjects customary laws to a test of reasonableness and conformity to European principles of morality. Section 18(3) of the Evidence Act, 2011 Cap 112 Laws of the Federation of Nigeria 2010 states that "where any custom is relied upon, it shall not be enforced as law if it is contrary to public policy or is not in accordance with natural justice, equity and good conscience." It is a technique of state law limitation on customary law, which feeds into the criteria of admissibility of customs. These criteria require litigants to show that a custom is provable, has been taken judicial notice of, and can be traced to reputable books and manuscripts, or by assessors before it can be admitted in court. See Section 16 (1), 57(2) and 59 of the Evidence Act.

<sup>2</sup> See Diala AC, the concept of living customary law: A critique (2017) 1 at 13.

<sup>3</sup> Nwocha ME Customary Law, Social Development and Administration of Justice in Nigeria (2016) Beijing Law Review, 7,430-442.

<sup>4</sup> See Nwocha ME, (2016).

<sup>5</sup> A book project was undertaken in 2013 by the Nigerian Institute of Advanced Legal Studies (NIALS) on restating the customary laws in Nigeria over 4 main areas of customary Chieftaincy, Succession, Land and Marriage in Nigeria. The book, Restatement of customary law of Nigeria, seeks to amongst other things, fill the yawning gap for the scholarship in customary law as a result of its oral tradition. Perhaps, this book is like that contemplated by Nwocha. See Restatement of Customary Law of Nigeria, Nigerian Institute of Advanced Legal Studies (NIALS), 2013.

<sup>6</sup> Sections 4(2), 4(3), and 4(4) of the VAPPA also make it an offence to attempt, aid and abet, or assist and receive the offender. This provision is replicated in section 6 of the Anambra state Violation Against persons (Prohibition) Law, 2017 and section 10 of the Ebonyi state Violation against Persons (Prohibition) Law, 2018.

<sup>7</sup> See VAPPA, section 9, replicated in Section 11 of the Anambra VAPP, and section 15 of the Ebonyi State VAPP Law.

<sup>8</sup> See also section 14 of the Anambra VAPP and section 18 of the Ebonyi State VAPP Law.

the family of their late husbands, such that their continued access to such property is dependent on ‘being of good character’ in addition to not remarrying.

Nwogugu, in trying to describe the system of inheritance through the *Okpala* (eldest male member of the family) reiterated the decision in *Ejiamike v Ejiamike*,<sup>1</sup> noting that the *Okpala* holds the intestate’s estate in trust for himself and other male members while the females, whether as widows or daughters, have no succession right whatsoever to the estate of the deceased person.<sup>2</sup> Again, in *Nezianya v Okagbue*,<sup>3</sup> the Supreme Court held that a widow cannot assume ownership of her late husband’s real estate or alienate it. Although this was a decision before the coming into effect of section 39(1) of the 1979 and section 42 of the present 1999 Constitution on right to freedom from discrimination, it is important because it traces the historical practice of discriminatory inheritance of women. Some of these old decisions still have relevance in some customs in Igbo land. This accounts for some recent cases such as *Ukeje v Ukeje*.<sup>4</sup> Indeed, Ukeje (the son) would not have dragged the matter up to the Supreme Court if he did not think the judgment would favour him by disinheriting his sister (Ukeje the daughter). The Ukeje case clearly indicates that even as recent as 2016, some people still had that belief that women cannot inherit property in Igboland.

Meanwhile, harmful widowhood and traditional practices are prohibited under section 15 and 20 of the VAPPA.<sup>5</sup> Thus, a person who subjects a widow to harmful traditional practices commits an offence and is liable on conviction to a term of imprisonment not exceeding two years or to a fine not exceeding 500,000 naira or both.<sup>6</sup> Other offences relating to intestate inheritance by married women include intimidation,<sup>7</sup> stalking,<sup>8</sup> emotional, verbal and psychological abuse.<sup>9</sup>

### 1.3 Recommendations

By analysing the various laws applicable in the South-East Nigeria with regards to the intestate succession of women, this paper has already made certain recommendations in its arguments. However, for clarity, the recommendations are summarised in two paragraphs below.

The statutory laws governing intestate succession in South-East Nigeria are a combination of several laws made up of the Constitution, federal, and state laws. It is difficult to consult all statutory laws in order to resolve issues of succession and intestacy. The need for an easy-to-access law on intestacy is therefore vital. I therefore recommend a federal intestate succession law that will address key issues on intestate succession.

The laws on intestate succession in South-East Nigeria prejudice women with gender insensitive provisions. The state laws are couched in masculine terms, while the customary laws only give women and children access to inheritance without more. In a world where women are becoming major contributors to the finances of families, it is unfair and inequitable to still have laws that limit women’s inheritance rights, while at the same time granting full rights to inherit to men. Therefore, I recommend a review of section 42 of the Constitution to reflect gender friendly terms. This review should be reflected in other state laws as well.

### 1.4 Conclusion

This paper analysed the intestate succession rights of married women through the lens of Nigeria’s legal framework on intestacy applicable in the South-Eastern (Igbo) states. This framework includes the Constitution, the Land Use Act, the Evidence Act, the Matrimonial Causes Act, and the Violence against Persons Prohibition Act. The paper argued that these laws do not expressly prohibit discrimination against women in Nigeria or the sub nationals. It canvassed the argument that patriarchy, the practice of inheritance through the male blood line, and the belief that formal courts are against customary tenets, all combine with the gender insensitive framing of statutory laws to reinforce unfair intestate succession practices on women in Nigeria. It also examines the provision on forced financial dependence, arguing that a defective law enables a situation of forced financial

<sup>1</sup> *Ejiamike v Ejiamike*, (1972) 2 E.C.S.L.R. II.

<sup>2</sup> See Nwogugu EI, ‘Emancipation of Female Rights to Intestate Succession under Igbo Customary Law’ (2014) 12 *Nigerian Juridical Review* 1-12.

<sup>3</sup> *Nezianya v Okagbue*, (1963) 1 All N.L.R. 352.

<sup>4</sup> *Ukeje v Ukeje* (2014) 11 N.W.L.R. (Pt. 1416).

<sup>5</sup> See also section 17 and 22 of the Anambra State VAPP and section 21 and 26 of the Ebonyi State VAPP law.

<sup>6</sup> See section 15 of the VAPPA.

<sup>7</sup> VAPPA, Section 18; Anambra state VAPP Law, section 20 and Ebonyi state VAPP Law, section 24.

<sup>8</sup> VAPPA, section 17; Anambra state VAPP section 17 and Ebonyi state VAPP Law, section 23.

<sup>9</sup> VAPPA, section 14, Anambra VAPP Law section 16 and Ebonyi VAPP Law, section 20.



dependence of women in intestate situations and further increases the hardship of married women who may have contributed to acquiring matrimonial property. Ultimately, the paper exposes the insufficiency of Nigeria's legal framework in safeguarding inheritance rights and addressing the question of whether women have the right to inherit the property of their intestate husbands in Nigeria.

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