

UKEJE V UKEJE: SETTLING OTHER ISSUES ON INHERITANCE IN NIGERIA***Abstract**

The Supreme Court of Nigeria in the above case abolished the Igbo customary law that prevented females from inheriting their husband's or father's property. Before now, the Supreme Court had in Mojekwu v Mojekwu axed down other Igbo customary rules militating against the rights of women to inherit property in Igbo land. Now that this issue of inheritance is settling down in the Igbo speaking areas of Nigeria, there is the need to settle the issue of the right of the first male (Okpala) to inherit exclusively the father's main house (obi). This paper is aimed at appraising the decisions of the courts in settling issues of inheritance in Nigeria. The paper adopted the doctrinal method of data collection. The paper found that despite the overreaching effect of the Court's decision in Ukeje v Ukeje¹ in settling the rights of the woman to inheritance of her deceased father who dies intestate, there is nagging controversy as to the sole right of the firstborn male child to inherit the deceased father's main house (obi) to the exclusion of his siblings. It is recommended that a law be enacted to restrict the right of the first born to the exact room the father lived in his life time. This paper argues that it is time for this naughty issue to be settled as 'obi' in Igbo land has ceased from being a hut of one room and parlour to duplex and at times multiple flats. It is therefore discriminatory to confer right of inheritance to the first male child especially where the main house (obi) is not only unprecedentedly big and remains the main or sole property of the deceased.

Keywords: Custom, Law, Inheritance, Rights and Discrimination

1. Introduction

Customary law is the law of the various indigenous peoples of Nigeria, before other systems of law, English or otherwise, came into the country to displace or modify customary law. In any given society, there are laws regulating the affairs of life. It is an established practice. Customary law is law which evolves from the established practices, customs and way of life of a people. Customary law is an important source of Nigerian law primarily because customary law governs many issues of the people's lives e.g. marriage according to native law and custom, divorce, succession or inheritance, land tenure and chieftaincy matters. Customary law and its enforcement system was the only legal system that existed among the indigenous peoples and communities, long ago before the colonial era. In terms of dispute settlement, family heads settled disputes informally in the immediate and extended family system. The kings such as Obas, Emirs, Obis or other rulers sat in council with their chiefs as court and heard and settled disputes and claims, and generally administered justice in such communities. Custom is a rule which in a particular district, has, from long usage obtained the force of law. The term "customary law" has also come up for definition in court in many cases. Customary law is a custom which is accepted as binding by a people. Customary law is the customs that have the force of law among a given people. It is the binding customs that regulate the affairs of a people. Customary law is a body of customs which from long use have acquired the force of law among a people. Customary law is the organic or living law of the indigenous people of Nigeria, regulating their

***By Benjamin O. IGWENYI, PhD (Nig.)**, Associate Professor of Law, Faculty of Law, Ebonyi State University PMB 053, Abakaliki - Nigeria Email: benigwenyi@gmail.com Phone: 08035446502;

***Eseni Azu UDU, Ph.D (Nigeria), PhD (NAU)**, Lecturer in the Faculty of Law of Ebonyi State University, Abakaliki – Nigeria. P.O. Box 1397, Abakaliki, Ebonyi State, Nigeria. Email: udu.eseni@ebsu.edu.ng Phone: 2348061397135; and

***Chinyere C. OGAH, PhD (EBSU)**, Lecturer in the Faculty of Law, Ebonyi State University. Email: ogahchinyerec@gmail.com Phone: 08033629710

¹[2014] 11 NWLR (Pt. 1418) P. 384

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 it. It is said that custom is the mirror of the culture of the people. Customary law is a practice or conduct, accepted as binding by the people subject to it. In the communal legal system, which obtained before the advent of modern legal systems, customary law was the law and it enjoyed respect and observance. Customs nowadays, do not enjoy the privilege of automatic enforcement in the modern court systems as was the case in the days when communal and village courts held sway. For a custom to be applied as a customary law in our contemporary court system, the custom must pass the validity test, which is a prerequisite for its application. The validity test is a reformation machinery of customary law. It allows, just, refined, dynamic and progressive customs to survive and remain, thereby continuing to make customary law a relevant and acceptable part of the legal system of Nigeria.

As a result of the sensitive nature of the topic, we shall first examine the basic concepts herein, that is customary law, *Obi* (main house), *Okpara* (first son), the right to discrimination in perspective with customary right, the position of customary law on the right of females in Igbo land to inherit late fathers' estates before the *Ukeje* case. We shall then delve into the reason why we want the right of the *Okpara* to inherit the late father's main building all alone to be reviewed before making our recommendations.

2. The Concepts of Customary Law, *Obi* and *Okpara*

Custom is defined under the law as a rule which in a particular district, has from long usage, obtained the force of law.² Customary law is the legal expression of custom which is accepted as binding by a people. It is the body of customs, which from long usage, have acquired the force of law among a people. Custom is the way of life. It is the way of life of people. It can be described simply as an amalgam of customs or habitual practices accepted by members of a particular community as having the force of law as a result of long established usage. It is the established pattern of behaviour that can be objectively verified within a particular social setting. Customary law exists where a certain legal practice is observed and the relevant actors consider it to be law.³ Customary law is therefore a custom that has the force of law. The Evidence Act defines custom as a rule which in a particular district has, from long usage, obtained the force of law. It is the indigenous law of the various peoples or ethnic groups of Nigeria before the advent of foreign laws into Nigeria. It is the indigenous laws, usually unwritten, of Africa. A custom must pass the validity test for it to be accepted as valid and obligatory in any given community. Accordingly, the validity test is a legal requirement and a condition precedent for the application of any custom, thus: (i) a custom must not be repugnant to natural justice, equity and good conscience; (ii) It must not offend public policy; and (iii) It must not be incompatible with any law for the time being in force. These legal requirements are the validity tests a custom must satisfy to be enforced as customary law. It is only when a custom satisfies the above legal requirements that the court could enforce it as a customary law of the community. Customary law is usually flexible and is either unwritten or partly written. A custom can be applied as part of the law governing a particular set of circumstances if it has been noticed judicially or it can be established by evidence to exist. Even where a particular custom is proved by evidence, it would nevertheless not be enforced if it is held to be contrary to public policy or repugnant to natural justice, equity and good conscience.⁴ Customary law is generally understood to be predominantly unwritten and therefore, non-legislated. It is enjoyed through long custom rather than positive law.⁵ It deals with the standard of community that have been long established in a

² The Evidence Act of Nigeria 2011, section 2(1).

³ Available at <<https://www.quora.com>>, accessed on 28th October, 2019.

⁴ Evidence Act, 2011, Section 14.

⁵ Available at <<https://www.wipo.int>> accessed on 28th October, 2019.

given locality. Customary law embodies norms of conduct that are practiced in society because they have been accepted for a long time and are regarded as obligatory. It is the oldest legal system, and some of the norms and institutions predate written law. Owing to the development of legislative activity of the state, the scope and application of customary law has diminished. However, a modicum of customary law still exists alongside the written law as a supplementary source of the legal order.⁶

Obi, as a term in Igbo customary law historically refers to a man's main house usually comprising of a parlour and a room, excluding the adjoining rooms inhabited by the respective wives. In the traditional Igbo setting, luxurious buildings such as duplex, triplex, gigantic buildings and sky-scrapers had not evolved. The buildings were in the form of huts, with the head of the family, i.e. the father having what seemed to be a special hut called *Obi* to his exclusive use while the rest of the family members shared the remaining hut(s). On the other part, *Okpara* refers to the firstborn male child who was so highly regarded over and above every other child of the marriage. In the traditional Igbo society, the *Okpala* was ranked next to the head of the family, and he had the right to succeed the father in many aspects, including chieftaincy stool. He also inherited the father's estate, including the *obi* to the exclusion of the rest of the children. In fact, it was an ill fate for a woman not to give birth to a male child, in which case, the woman's position in the family would remain weak.

3. Right to Freedom from Discrimination and Customary Rights in Perspective

The right to freedom from discrimination is based on the notion of the equality of human beings who are naturally born with equal and inalienable rights. Accordingly, a citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not by reason only that he is such a person be discriminated against in any form.⁷ This was given a judicial stamp in the case of *Adewale & Ors v. Jakande & Ors*,⁸ where the Lagos State Government made a proposal which tended to subject the citizens of Nigeria in Lagos State to a disability not obtainable in other states. Basing the schedule of fees on the state of origin of students was held to be unconstitutional. The principle of non-discrimination was accentuated by the court in *Adamu v. A-G Borno State*,⁹ where Islamic religious instruction was taught to the students irrespective of their religious inclination. Though the Christian students were at liberty to be instructed on Christian religion, the authorities only made available Islamic instructors or tutors. Christian Religion teachers could only be hired by Christians, not the Borno State government. So, the Christians in Borno State were made to pay for their children's Christian Religious Instructions from their own pockets. Relying on section 39(1) of the 1979 Constitution of the Federal Republic of Nigeria (now S. 42 of the 1999 Constitution), the appellate court held that the act of the Borno State Government offended the appellant's fundamental right.

Regrettably, abuse of the right to freedom from discrimination is prevalent across the country. After the inception of the fourth republic in 1999, the Government of Enugu State embarked on massive disengagement of non-indigene workers in the state without any form of compensation. This retrenchment policy was made on the pretext that the government wanted to create job opportunities for its own subjects. Worst hit in the wanton abuse of the right to freedom from discrimination are women and children. Studies

⁶ Available at: <www.encyclopediaofukraine.com,> accessed on 15th September, 2019.

⁷ Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 42.

⁸ (1981) N. C. L. R. 262.

⁹ [1996] 8 N.W.L.R. (pt. 465) p. 203.

conducted by the UN development systems and the World Health Organisation estimated the Female Genital Mutilation rate at approximately sixty percent among the nation's female population. The predominant number goes to the Southern and Eastern zones but those affected in the northern zone of this country experience the severe type of female genital mutilation known as infibulations. The age at which the women and girls are subjected to the practice varied from the first week of life until after a woman delivers her first child. Women's Centre for Peace and Development (WOPEd) believe that the practice is perpetuated because of a cultural belief that uncircumcised women are promiscuous, unclean, unsuitable for marriage, physically undesirable, and are potential health risks to themselves and their children, especially during childbirth. Women find it extremely difficult to acquire commercial credit or to obtain tax deduction or rebates as heads of households. They remain under-represented in the formal sector but play an active and vital role in the country's informal economy.¹⁰ There are no laws of employment, but the discrimination against women in terms of access to employment, promotion to higher professional positions, and in salary equality has been on the increase especially in the private sector.

In some customary land tenure systems particularly among the Igbo speaking tribe of the South Eastern part of Nigeria, women are discriminated against in owning land. Women could gain access to land only through marriage or family under customary practices. In addition, many customary practices such as *Osu caste* system, *Oli-ekpe* and *Nrachi Nwanyi* customary law of inheritance in Nnewi, Anambra State do not recognise a woman's right to inherit her husband's property, and many widows are rendered destitute when in-laws take virtually all the deceased husband's property. In other instances, a widow is considered a part of her husband's property, to be inherited by his family. Widows are subjected to unfavourable conditions as a result of discriminatory traditional customs and economic deprivation. 'Confinement' is the most common rite of deprivation to which widows are subjected. This practice occurs predominantly in the eastern part of Nigeria. Confined widows are under restrictions for as long as one year, and are usually required to shave their heads and dress in black or white. In many parts of the country, the girl child is discriminated against in access to education for social and economic reasons. It is believed that the educational training of a girl child is to the benefit of another man, i.e. the prospective husband or to her marital family.

It is encouraging to note that the judiciary has taken the bold step to nullify the barbaric customs and traditions which discriminates against women in the exercise of their rights. In *Muojekwu v. Ejikeme*,¹¹ the Court of Appeal held that the *Nrachi* ceremony¹² of Nnewi is inconsistent with public policy, repugnant to natural justice, equity and good conscience. Accordingly, Tobi (JCA as he then was) stated that the *Nrachi* ceremony encourages promiscuity and prostitution, the latter condemned in Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The *Ili-Ekpe*¹³ custom was also held to be repugnant to natural justice, equity and good conscience. On the validity of a custom that

¹⁰ U. S. Department of State, Country Reports on Human Rights Practices, 2003.

¹¹[2000] 5 N.W.L.R. (pt. 657) 403.

¹² The *Nrachi* custom/ceremony is the practice whereby a man, who could not procreate a male child, can keep one of his daughters unmarried perpetually under his roof to raise issues, especially males to succeed him.

¹³ The *ili-ekpe* custom demands that where a man (the deceased) has no surviving male issue, the son of a distant cousin has a right to inherit the estate to the exclusion of the deceased's daughters.

permits a woman to marry a dead man, the court in *Okonkwo v. Okagbue*,¹⁴ held it to be repugnant to natural justice, equity and good conscience. Accordingly, for a marriage to be meaningful, it is necessary for the husband to physically exist for it to be consummated. One of the essentials of marriage under customary law is the element of procreation. Thus, a custom that allows a woman to be 'married' to a deceased man cannot be said to be in accord with good conscience and public policy. This is because a dead man cannot give his consent which is an essential element of marriage, neither can he consummate with any woman purported to have been married to him.¹⁵

The right to freedom from discrimination has not been exercised in its absolute terms. The constitutional provision seems to be antithetical with the federal character principle in the composition and conduct of government and any of its agencies.¹⁶ Although the federal character principle is a non-justiciable provision under the Fundamental Objectives and Directive Principles of State Policy, it has always been given a practical effect by the various governments. Such a policy, it is argued, seeks to reduce inequality amongst different people in Nigeria especially by the introduction of quota system. It must be clearly noted that this right is an individual, not a group right. If this is so, the resources and official allotments should be disposed of on grounds of merit. The right to freedom from discrimination, on grounds of ethnic group, place of origin, sex, religion or political opinion, should be true to life. It is morally unjust to assess the citizens of Nigeria under different conditions.

4. Protection of Women's Human Rights

The protection of human rights has remained in the front burners of global discuss with particular reference to Human rights are those rights that every human being possesses and is entitled to enjoy simply by virtue of being human. All persons possess an inherent human dignity and that they are entitled to enjoy these rights regardless of sex, colour, language, national origin, age, class, or religious or political beliefs. Human rights are those rights that apply to both males and females alike, and are contained in general human rights instruments to wit: the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights, (ICESCR) among others, which entrench rights exercisable by all without discrimination of any form. There are also some that are specific to women or that need to be enlarged to suit women's situations. Such rights are found in specialised instruments like the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).¹⁷

Women's human rights movement was shaped by various factors including the emergence of the UN human rights system, which emerged at the very foundation of the UN itself in 1945. The UN Charter articulated the human rights principles in general form. These principles were further enunciated in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Traditionally, the focus of human rights was on civil and political rights in capitalist states rather than economic, social and cultural rights that have prevailing influence on women generally. Human rights were also set to curtail the powers

¹⁴[1994] 9 N.W.L.R. (pt. 368) 301.

¹⁵ O. Briggs, *et al*, (ed.) *Women's Rights through the Cases*, a publication of International Federation of Women Lawyers (FIDA) Nigeria, (Nigeria: Danbru Digital Press, 2005) pp. 13-15, 19-21.

¹⁶The 1999 Constitution of the Federal Republic of Nigeria, Section 14(3) and (4).

¹⁷M. Schuler and N. Flowers, *Women's Human Rights: Step by Step Facilitator's Guide*, published by Women, Law and Development International, Units 1-3.

of state positive actions to ensure women's human rights. Women were systematically excluded from public activities such as commerce, government, law and politics. Majority of women had their lives centred on the home and family where economic, social and cultural rights became crucial. This informs the struggle for the inclusion of women's human rights both in the mainstream of the UN human rights system and in other separate institutions.¹⁸

The recognition of women's right at the evolution of human rights system was impeded owing to the women's economic underdevelopment and the social inequalities that existed. They were excluded from access to technology and training, and the land reforms deprived women of ownership of interest in land. In fact, they were not adequately involved in the UN development agenda. This development displaces women from their traditional roles and as well disempowered them. However, later developments enhanced an income generation at the informal sector where women exercise dominant role. This laid the foundation for women's human rights activism. However, the evolving political struggles and human rights activism considerably engaged women in a new way and developed their skills. The struggles including the ousting of dictatorship government to gain independence from colonial rule served as the basis for bringing about social change. International human rights organisations such as Amnesty International, Human Rights Watch and the Helsinki Committees, including regional and national groups, emerged to monitor human rights violations. This consequently enhanced the awareness and observance of human rights of women.¹⁹

The development of gender theory institutionalized at higher levels of education analyses the differing constructs of social concepts and institutions created by the social position of women and the increasing consciousness of women's right. Gender specific theories in favour of women have been developed. These theories assert equality in gender roles to be essential to equality in development.²⁰ As women increasingly became politically active and enlightened of the concept of human rights, they began to realize their great marginalization from the human rights system and mobilized to change the system accordingly. Notably, the full range of defined human rights applies to women apart from the ones found in women-specific instruments. There is appreciable understanding of the link between the national and the international human rights systems. The United Nations have specifically addressed the issue with the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).²¹ Although Nigeria is a signatory to both the Convention and the Optional Protocol, it is yet to domesticate the Convention in order to render it enforceable in our national courts.

Traditionally, women are said to be personal properties of their husbands, and as a result they lack the power of negotiation of safer sex. Consequently, some become victims of marital rape, polygamy, forced shaving of hair, widow inheritance, female genital mutilation, ear piercing, *nrachi nwanyi* custom where a girl is kept in the family to have male children for her parents, male child preference, cultural conditions and low socio-economic status of women that prevent them from negotiating safe sex, violence against

¹⁸These foundations of the UN human rights system preceded the emergence of the women's human rights movement, and this explains why women were essentially excluded from the process of defining the rights and creating the evolving structures for monitoring and enforcing the rights.

¹⁹ M. Schuler, *et al.*, *op. cit.*

²⁰*Ibid.*

²¹O. Briggs, *Women's Rights through the Cases*, *op. cit.*, p. 6.

women especially rape and sexual harassment by employer, lack of information and misinformation, cultural practices that encourage sexual freedom for males, cultural conditions that make women not to be assertive enough to talk, and denial of the right to education. The recent trend is geared towards strengthening of the traditional values, which are less favourable to the over 60 million women in Nigeria.²²

Under the UN regime, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) to which Nigeria is a party calls on State Parties to take measures to abolish all existing laws, customs and regulations that are discriminatory against women folk.²³ The Constitution of the Federal Republic of Nigeria prohibits discrimination against any person on grounds of sex, religion, tribe, etc.²⁴ The Constitution provides that a treaty shall have the force of law only to the extent to which it has been enacted into law by the National Assembly.²⁵ Traditionally, parties sign a treaty only to verify that it represents their true intentions before ratifying same, and thereafter, it becomes binding on them. Signature is followed by ratification which allows for second thoughts and for further consultations. This presupposes that states can sign but hesitate to ratify the treaty, and this shields the state concerned from being legally bound. The State is obliged to bring its laws including its Constitution to the level that enables it to carry out its international obligations.²⁶ It is trite law, however, that once a state party has signed and ratified the treaty, it becomes legally binding on the party. In other words, it is enforceable in Nigeria only when it has been incorporated into the national laws.

Although Nigeria has signed and ratified the CEDAW, it is not enforceable in Nigeria because it has not been incorporated into national laws. Suffice it to stress that a customary practice that allows a distant male relation of an intestate to inherit his estate to the exclusion of his widow and female children offends, not only the foregoing provisions of domestic laws and international conventions, but also our collective intelligence and sensibilities.²⁷ This customary practice encourages prostitution. In *Mojekwu v. Ejikeme*²⁸

²²B. Onah, *HIV/AIDS, Reproductive Rights Are Human Rights*, (Fourth Dimension Publishing CO. Ltd., 2004) pp. 6 and 44. This is a publication covering the proceedings of National Tribunal on the Violation of Reproductive health and Rights of Women in Nigeria, organized by the Civil Resource Development & Documentation Centre (CIRDDOC) Nigeria in Collaboration with the coalition of Eastern NGOs (CENGOS), held at Dannic Hotel, Enugu on Thursday, December 2, 2004.

²³ The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), Article 2

²⁴The Nigerian Constitution 1999(as amended), Section 42.

²⁵ The Constitution of the Federal Republic of Nigeria, 1999, Section 12.

²⁶ O. Nwankwo, *The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW): A Tool for Mobilizing Towards Enforcement of Women's Human Rights*, (a publication of Civil Resource Development and Documentation Centre – CIRDDOC, Nigeria, Fourth Dimension Publishing Co. Ltd, 2001) pp. 12-13; available at <http://www.cirdoc.org>.

²⁷O. Nwankwo, *Women & Customary Right of Inheritance: Mojekwu v. Mojekwu and other Landmark Cases*, (CIRDDOC Public Education Series No.1, Fourth Dimension Publishers, 2001) pp. vi – vii.

²⁸ (2000) 5 N.W.L.R. (pt. 657) p. 432. In *Mojekwu v. Mojekwu*, the appellants sued the respondents at the High Court as plaintiff and defendant respectively, Nnewi, claiming that as heirs to Reuben Mojekwu who died intestate. They are by virtue of Oli-ekpe custom entitled exclusively to the estate of their grandfather and great grandfather. They contended that the deceased acknowledged Chinwe and Uzoamaka (granddaughters born by one of his daughters while unmarried) as his own children entitled to inherit his property, land and personal goods. They also argued that Sarah, widow of the deceased, along with her

the *nrachinwanyi* custom which enables a man to keep one of his daughters unmarried perpetually under his roof to raise issues especially males, to succeed him was before the court for determination. Overruling the decision of the lower court, the Court of Appeal held that the *nrachi custom* of Nnewi is inconsistent with public policy, repugnant to natural justice, equity and good conscience. Tobi JCA (as he then was) stated that the *Nrachi* ceremony encourages promiscuity and prostitution, which is condemned in Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and also interferes with the girl's right to marry and found a family. It is in all ramifications discriminatory against the women folk. The Court further held that where there are children or even grand-children and great grand-children, directly traced or traceable to the ancestor, it will be wrong to hold that the lineage is extinct, unless the generation gap is so wide that history and tradition cannot relate sociological contiguity. Note that under the *Oli-ekpe* custom, a widow who has no sons has no right to direct inheritance of her husband's property. However, if the marriage is blessed with only daughters, the husband's estate would go to a brother or to a distant relative of the husband rather than the widow or the daughters. This is regrettably at variance with the English principle of primogeniture. However, the case of *Ukeje v Ukeje* has made a swift turn from the *oli-ekpe* custom, holding, *obiter*, that the surviving female child is entitled to inherit the deceased father's estate.²⁹ Accordingly, section 42 of the Constitution of the Federal Republic of Nigeria 1999 guarantees freedom from discrimination. A child must belong to a family and should not be rendered homeless for a situation he did not create. Therefore the custody of any child born out of wedlock follows that of the mother in the absence of any person claiming custody of the child on the basis of being the natural father. Under the foregoing custom, a female child has cannot inherit from her father's estate and as such has to get married. She is deprived of even partaking from her husband's estates in the event of his death especially if she has no male child or that her children are still very young. This could be worsened by the activities of the shylock relatives who would want to take undue advantage of her situation to have everything to them.³⁰ Female children in Igboland have suffered so much neglect and exclusion from being involved in their family inheritance due to our cultural beliefs and tradition which invariably position the women as temporary children. In Igboland, they are subconsciously seen and treated as less important to the family, yet when serious needs arise in the family they are looked upon for solution; the reason being that male children perpetuate their father's generation, unlike the woman who gets married and bears the name of her husband. Notwithstanding, Igbo women are expected to remain in their husbands' house no matter any maltreatment meted out on them by their spouses or family members because they, as women,

children – Comfort and Virginia performed the burial ceremony of the deceased and therefore entitled to inherit his property. Appellants contended that *Nrachi* custom was performed on Virginia (Mother of 3rd appellant and grandmother of first appellant) by the deceased. This means that Virginia would remain in the family, giving up marriage and raising issues, especially male issues, to succeed her father. Appellants contended that they were not closely related to respondents who unlawfully trespassed into the compound of their late grandfather and great grandfather. Appellants lost at the High Court and appealed to the Court of Appeal. In upholding the appeal, the appellate court held that the *Nrachi Nwanyi* customary practice of Nnewi which enables a man to keep one his daughters unmarried perpetually under his roof to raise issues, more especially males, to succeed him encourages promiscuity, and prostitution, and is discriminatory.

²⁹ The facts that the appellants were born out of wedlock is immaterial. It cannot be used against them in inheriting the estate of the deceased. Thus, as blood relations the property of the deceased should devolve on the appellants. In the light of the above Constitutional provision, the *Oli-ekpe* custom which discriminates against Virginia, daughter of the deceased, is unconstitutional.

³⁰ O. Briggs, *Women's Rights Through the Cases, op. cit.*, pp. 13-15.

do not have a place in their fathers' houses. This has often brought untold suffering to most of our women, especially the uneducated ones. There have been cases where Igbo women end up begging in streets or spending the rest of their lives in strange lands because they cannot go back to their fathers' houses after being sent away by their husbands' families. At times, the husband's family arranges and marries a younger lady for the man in order to have male children and the first wife, who actually laboured with the man is relegated to the background and eventually pushed out of the house when the male child eventually comes from the other woman. Until recently that our women are taking up career jobs and can actually live independently and acquire landed property, some Igbo women were marrying men that were far older than their age while some ended up as second or third wives, just to have a home. The Igbo claim to practise the Jewish tradition, where women are seen as second fiddles. In the first instance, we believe that we have Jewish origin. In Jewish tradition, in most cases women are not considered as eligible beneficiaries of their father's heritage. In our understanding, women do not remain permanent in their fathers' houses; they are married out to their spouses, so there is no reason to inherit their father's properties any more. It is only problematic where a woman neither lives in her husband's house nor in her father's. Any married woman should focus on her husband's house and not think of inheriting her father's property too. If a married woman loses the husband, automatically she becomes the next of kin, and her husband's property should be shared to her too. But in a case where the widow may have maltreated her husband to death, the Umu-Ada and the Umu-Nna may want to pay her back by denying her the right to her husband's properties. We, Igbos, condemn a situation where some families deny the widow her right for no just cause, saying, it is not always good to intimidate women in their husband's houses. Give to every woman her due right for peace to reign. For a married woman to come and struggle for her fathers' properties, we do not agree to that, because it shows greed. Civilization has introduced will, in which a man (owner of the property) chooses who inherits any of his properties when he dies.³¹

5. Appraising the Rights of Primogeniture under the Igbo Customary Law

The term, primogeniture refers to the status of being the firstborn child among several children of the same parents. The right primogeniture is the right of succession belonging to the firstborn child. Usually, in Igbo land, the whole real estate of an intestate passes on to the eldest son by operation of customary law.³² Historically, land descends to the oldest son. Under the feudal system of medieval Europe, primogeniture generally governed the inheritance of land. The purpose of primogeniture was to keep the estate, which ownership implied power, from being partitioned into smaller parcels of land.³³ Primogeniture was also a rule of inheritance at Common Law through which the estate of the deceased father devolves to the oldest male child to the exclusion of his siblings male and female as well as his relatives whether close or distant relatives.³⁴ It was a principle under the English law that made the oldest son heir to a family estate in the event that the head of the family died intestate or without providing for some disposition of his property.³⁵

³¹ Available at <<http://obindigbo.com.ng/2015/12/women-and-property-inheritance-in-igboland/>>, accessed on 26th October, 2019.

³² Available at <https://www.merriam-websters.com>, accessed on 18th October, 2019.

³³ Available at <<https://www.history.com>>, accessed on 15th October, 2019.

³⁴ Since the Norman conquest of England in the 11th century, it was presumed that the kings would simply pass the power to rule to their firstborn son. This stream of succession was also used to determine non-royal heirs to property and wealth.

³⁵ Available at <<https://www.ncpedia.org>>, accessed on 18th October, 2019.

Primogeniture is status of being the firstborn child among several children of the same parents. A rule of inheritance at common law through which the oldest male child has the right to succeed to the estate of an ancestor to the exclusion of younger siblings, both male and female, as well as other relatives. Under the English law is the right, by law or custom, of the firstborn legitimate son to inherit his parent's entire or main estate, in preference to shared inheritance among all or some children, a child other than the eldest male, a daughter, illegitimate child or a collateral relative. In some cases the estate may instead be the inheritance of the firstborn child or occasionally the firstborn daughter. The descendant, often the son, of a deceased elder sibling typically elder brother inherits before a living younger sibling by right of substitution for the deceased heir. In the absence of any children, brothers succeed, individually, to the inheritance by seniority of age. Among siblings, sons usually inherit before daughters. In the absence of male descendants in the male-line, there are variations of primogeniture which allocate the inheritance to a daughter or a brother or, in the absence of either, to another collateral relative. The principle has applied in history to inheritance of real property as well as inherited titles and offices, most notably monarchies, continuing until modified or abolished. Variations on primogeniture modify the right of the first-born son to the entirety of a family's inheritance (see appanage) or, in the West since World War II, eliminate the preference for males over females (absolute primogeniture). Most monarchies in Western Europe have eliminated male preference in succession: Belgium, Denmark, Luxembourg, Netherlands, Norway, Sweden and the United Kingdom. Primogeniture has not been the only form of inheritance in monarchies. The Holy Roman Emperor was selected for enthronement by a small number of powerful prince electors from among Europe's Christian males of inherited nobility. Currently, succession to the Saudi Arabian throne uses a form of lateral agnatic seniority, as did the Kievan Rus' (see Rota system), the early Kingdom of Scotland (see Tanistry), the Mongol Empire (see lateral succession) or the later Ottoman Empire

The rule of primogeniture still subsists in places where there are hereditary monarchies. In Nigeria, primogeniture is a customary rule practiced across the varying tribes particularly among the South Eastern part of Nigeria (Igbo land). The Constitution of the Federal Republic of Nigeria provides that the state shall protect, preserve and promote the Nigerian culture which enhance human dignity and are consistent with the fundamental objectives as herein provided.³⁶ Customary law is recognized by the Nigerian Constitution. The legal and constitutional basis of customary law is section 315(3)-(4)(b) and (c) of the Constitution of the Federal Republic of Nigeria. By virtue of these provisions, customary law which includes customary arbitration is an existing law which is in force immediately before and after the coming into force of the 1999 Constitution. However, customary law just like any other source of law, system of law or law is subject to such necessary modification as will bring it into conformity with the Nigerian Constitution. Therefore, customary law which is a mirror of acceptable usage or conduct is one of the sources of Nigerian Law. The Constitution establishes the Customary Court of Appeal and also empowers the States to establish a customary court system. It is a source of law which is no less important in comparison to any other source or system of law. It is not the intention of the Nigerian Constitution to destroy customary law or reduce it to the background in the Nigerian legal system. Neither is it the intention of Nigerian statutes which make provision for application of customary law to erode or abolish customary law. However, the courts will nullify any customary law which is unconstitutional, repugnant to natural justice, equity and good conscience, incompatible with existing law, or contrary to public policy. It was held in *Kperanisho v Aloko*³⁷ that where a principle of native law and custom is yet to gain notoriety for the court to take judicial notice of, it is a matter of evidence to be proved in any

³⁶The Constitution of the Federal Republic of Nigeria, *op. cit.*, section 21(a).

³⁷[2015] 14 N.W.L.R. (Pt. 1478) 153 at 156.

particular case. In *Ozoemena v Nwokoro*,³⁸ proof of ownership of land in accordance with principles of customary law is an incidence of customary law. The proof of a case is a matter of law and since area courts administer customary law, failure to prove a case therein means failure to prove it in accordance with customary law. The implication is that the onus of determining what norm becomes customary law shifts from the people to the court. The repugnancy test is applied alongside the incompatibility test. The incompatibility test was aimed at subjecting customary law to the provisions of the provisions of municipal legislation. Primogeniture is customary right which is acquired by custom. A fundamental aspect of primogeniture is the right of the male firstborn to inherit the deceased father's main house referred to as the *obi*. Although the court in the case of *Ukeje v Ukeje* has reformed the rule of primogeniture to include the female child in the customary inheritance scheme of their deceased father, the court insists that the deceased main house (*obi*), no matter the nature and size, remains the exclusive inheritance of the first son. In *Mba v Mba*,³⁹ the Supreme Court held that under the native law and custom of Amansea town in Awka North Local Government Area of Anambra State, a man's compound, where he lived, died and was buried is inherited and owned by his first son (*Diokpala*), irrespective of whatever structures that are erected thereon by any of the deceased sons or any other person. This position is clearly discriminatory against the siblings who are products of the union but subjected to denial and deprivation on account of the circumstances of their birth. The fact that they are females or that they are males but birthed in succession to the first son are no equitable grounds for such denial especially where the main house (*obi*) is the only estate of the deceased and where it is too huge to be appropriated by the first son only.

6. Conclusion

Primogeniture is the right of the first son to inherit the parent's entire or main estate. It is the right of succession belonging to the firstborn child, and it prevailed in the customary laws of most jurisdictions. Although it still practised in some customary climes such as the Igbo speaking tribe of the South Eastern part of Nigeria, primogeniture is however, no longer a preferred rule of succession. In England, the British parliament in 1925 abolished the rule of primogeniture as the governing rule in the absence of a valid will.⁴⁰ This paper argues that it is time for this naughty issue to be settled as 'obi' in Igbo land has ceased from being a hut of one room and palour to duplex and at times multiple flats. In the United States, the practice of entail, which guaranteed that a landed estate remain in the hands of only one male heir was often practised in conjunction with primogeniture. However, Virginia abolished both entail and primogeniture in 1776 and 1785 respectively.⁴¹ Regrettably, the Nigerian Supreme Court has rather, in the case of *Mba v Mba*,⁴² strengthened the primogeniture rule by conferring sole inheritance of the deceased main house (*obi*) on the first male child to the exclusion of his siblings irrespective of the nature of house in question. This is rather discriminatory to the deprived siblings, thus, contrary to the section 42 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). It is recommended that a law be enacted to restrict the right of the first born to the exact room the father lived in his life time. Nowadays, an estate is shared equally between and among all the children of the deceased regardless of the gender of the children.

³⁸[2018] 17 N.W.L.R. (Pt. 1648) 203 at 210.

³⁹[2018] 15 N.W.L.R. (Pt. 1641) 177 at 179.

⁴⁰ Available at <https://www.stylist.co.uk>, accessed on 17th October, 2019

⁴¹ Available at <https://www.history.com>, accessed on 18th October, 2019.

⁴²*Supra*.