



MATTERS ARISING FROM THE RIVERS STATE PROHIBITION OF THE CURTAILMENT OF WOMEN'S RIGHT TO SHARE IN FAMILY PROPERTY LAW, NO.2 OF 2022

By

Claribel Diebo Fab-Eme*

ABSTRACT

Discrimination against women is an intrinsic part of several cultures in Nigeria. In Rivers State, women are sometimes prevented from inheriting landed property from their husbands or parents. The rights of women is guaranteed by several international instruments to which Nigeria is signatory. These instruments include the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), the African Charter on Human and Peoples' Rights (ACHPR) and the Optional Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, (Maputo Protocol). In addition, the Constitution of the Federal Republic of Nigeria, s42 provides for the right to freedom from discrimination. Based on this constitutional provision, the apex court in Nigeria has upheld the right of women to inherit property; including landed property. In 2022, the Rivers State House of Assembly passed the Prohibition of the Curtailment of Women's Right to Share in Family Property Law. This article argues that the law as passed leaves room for abuse and is inadequate to address discrimination against women in the state. The article therefore recommends, among other things, that the Rivers State Prohibition of the Curtailment of Women's Right to Share in Family Property Law, 2022 should be amended to stipulate that women should receive an equitable share of the family property being inherited. To effectively address discrimination against women, all the institutions of society must be actively engaged in addition to the passage of robust legislation.

INTRODUCTION

Nigeria is a country governed by local statutes, customary laws, case law, and where there is a lacuna in local statutes, received English laws¹ are resorted to.² Under common law, a wife had no right to hold or deal with property. She could not legally retain her own wages, neither could

* Claribel Diebo Fab-Eme, Lecturer, Department of Private and Property Law, Rivers State University, Nkpolu-Oroworukwo, Port Harcourt.

¹ The received English laws are Common law, Doctrines of Equity and Statutes of General Application. 'Sources of Nigerian Law: The Received English Law' <https://www.edouniversity.edu.ng> accessed 2 June, 2023.

² See generally, Felicia Anyogu, *Access to Justice in Nigeria: A Gender Paerspective* (Ebenezer Production Nigeria Limited 2013) 71-85.



she enter into contracts nor initiate claims in court.³ This position changed with the passage of the Married Women's Property Act, 1882. This statute which is replicated in the Rivers State Married Women's property Law, recognises the capacity of a woman to hold property and enter into contracts in her own right.⁴ In addition to this, the Constitution of the Federal Republic of Nigeria, 1999 gives all citizens, including women, the right to own property in any part of the country. Furthermore, the Constitution of the Federal Republic of Nigeria, 1999 proclaims the principles of 'freedom, equality and justice' and prohibits discrimination on the grounds of sex.⁵ In the face of these egalitarian provisions, women are still discriminated against in Rivers State and across Nigeria.

The woman is treated as inferior across cultures in Nigeria. In some cultures, this is done subtly. In others, discrimination against women is pronounced. The list of discriminatory practices suffered by women in Nigeria cannot be exhaustively covered by this research, as they are legion. Some customary laws in Nigeria still disallow married women from holding landed property independently. If a married woman is to hold landed property, she is expected to acquire such property through her husband.⁶ Even though the property belongs to her, it is subject to the control of her husband, who is regarded as owning her person and consequently, whatever belongs to her. She can only dispose landed property with the consent of her husband.⁷ In some parts of Nigeria, landowners are prohibited from making outright gifts to women, and upon the death of her husband, the widow is not regarded as a part of the family but sometimes as part of the property to be inherited.⁸ Some of these discriminatory practices

³ 1 W. Blackstone, Commentaries p 430 cited in Deborah L. Rhode, 'The "No-Problem" Problem Feminist Challenges and Cultural Change' in Taylor, Betty; et al *Feminist Jurisprudence, Women and the Law: Critical Essays, Research Agenda, and Bibliography* (Littleton, Colo F.B Rothman 1999) 127.

⁴ MWPA 1882, s1; Rivers State MWPL, ss9 and 10.

⁵ See Preamble to the CFRN 1999 and CFRN 1999, s42.

⁶ *The Customary Law Manual*, paragraph 321(3)(b), 266 cited in Margaret C. Onokah, *Family Law* (Spectrum Books Limited, 2003) 253.

⁷ Ibid., 322 cited in Onokah, Ibid. 254; Anyogu (n2)359; Ngozi Oluchukwu Odiaka, 'The Concept of Gender Justice and Women's Rights in Nigeria: Addressing the Missing Link' [2013] (2)(1) *Afe Babalola University: Journal of Sustainable Development Law and Policy*, 200-205.

⁸ Ibid.; J. Finine Fekumo, *Principles of Nigerian Customary Land Law* (F&F Publishers 2002)137-138.



are also found in varying degrees in some parts of Rivers State such as Okrika,⁹ Ikwerre,¹⁰ Ogoni, among others.¹¹

Globally, the journey towards securing the rights of women has been a long and arduous one spearheaded by the feminist movement. From lone agitations to mass protests, the feminist movement emerged out of a desire for better treatment of women. The first wave of agitations for women's rights took place during the late 19th and early 20th centuries. These agitations were on issues such as the right of women to vote and participate in politics. The second wave of feminism¹² began sometime in the 1960s and continued into the 1990s. During the second wave of feminism, issues such as sexuality and reproduction rights took centre stage. This stage experienced a boom in scholarship touching on the rights of women, sex and gender. This wave of feminism produced more women in leadership positions, secured abortion rights in some parts of the United States of America and legislative reforms, among others. The third wave of feminism began in the mid-1990s embracing femininity and women empowerment.¹³ The third wave of feminism produced Post-modern feminist legal theorists who de-emphasized gender constructions; arguing against traditional constructions of gender.¹⁴

In Nigeria, a discourse on the journey of women's rights would be incomplete without mention being made of the Aba Women's riot of 1929. This riot drew Igbo, Ibibio, Andoni, Ogoni, Efik and Ijaw women in the present day south eastern and south southern part of Nigeria in protest against socio-economic and political oppression. This protest, which spanned a period of about 2 months, caused the colonial government to drop its planned taxation of women, led to the abolition of the warrant chief system in 1930, and also resulted in the appointment of some women into positions of authority.¹⁵ Subsequently, women were elected as members of

⁹ Kennedy Margaret G. and Maxwell D. Eremie, 'Gender Bias: Roadblocks to Equal Distribution of Inheritance in Okrika Clan Rivers State, Nigeria: Implication for Family Counselling', [2016] (4)(4) *International Journal of Innovative Legal and Political Studies*, 30-36.

¹⁰ M.O Izzi and Claribel Fab-Eme, 'Widows and Inheritance Rights in Nigeria: Beyond the Letters of the Law' [2020] (8)(3) *International Journal of Innovative Legal and Political Science*, 7, <<https://www.seahipaj.org/journals/ijilps>> accessed 13 February, 2023.

¹¹ Umeh, Odo and Okoro, 'Females' Succession Rights under Naïve Law and Customs of Nigerian Societies: An Affront to Justice' [2021] (7) *MUNFLJ* 90, <<https://journals.ezenwaohaetorc.org>> accessed 13 February, 2023.

¹² England, Paula, 'The Impact of Feminist Thought on Sociology' [1999] (28)(3) *Contemporary Sociology* ProQuest Central, 263.

¹³ Martha Rampton, 'Four Waves of Feminism' <www.pacific.edu> 9 January, 2023.

¹⁴ Laura A. Rosenbury, 'Postmodern feminist legal theory' in Robin West and Cynthia Grant Bowman (eds), *Research Handbook on Feminist Jurisprudence* (Edward Elgar Publishing Limited 2019) 132-133.

¹⁵ 'Igbo Women's War' *Encyclopedia.com* <www.encyclopedia.com> accessed 9 January, 2023; Adaobi Onyeakagbu, 'The Real Story behind the Aba women's riot and the list of people that died' August 9 2022. *Pulse.ng* <www.pulse.ng.com> accessed 9 January, 2023.



Legislative Councils and in 1958, women in the southern part of Nigeria were granted the right to vote. Women in Northern Nigeria got the right to vote in 1978.¹⁶

Lending its support to the cause for recognition of the rights of women, the Rivers State House of Assembly passed the Rivers State Prohibition of the Curtailment of Women's Right to Share in Family Property Law No.2 of 2022, following a public hearing held on 16th March, 2022.¹⁷ The Law was assented to on the 15th day of September, 2022. This paper seeks to discuss the matters arising from this piece of legislation. To this end, the paper is divided into 5 parts. Part 1 provides a background to the paper. Part 2 highlights the international legal framework on the rights of women. Part 3 discusses some notable judicial pronouncements on the property rights of women in Nigeria. Part 4 explores matters arising from the Rivers State Prohibition of the Curtailment of Women's Right to Share in Family Property Law No.2 of 2022. Part 5 concludes the paper with recommendations.

International Legal Framework on Women's Rights

Several international and regional instruments to which Nigeria is a signatory provide for equal rights for men and women. These instruments include the Charter of the United Nations,¹⁸ the Universal Declaration of Human Rights,¹⁹ the International Covenant on Civil and Political Rights (ICCPR),²⁰ the International Covenant on Economic, Social and Cultural Rights (ICESCR),²¹ The Convention on the Elimination of all forms of Discrimination against Women (CEDAW) the African Charter on Human and Peoples' Rights (ACHPR)²² and the Optional Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, (Maputo Protocol).²³ Art 2(1)(c) of the Optional Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa provides that

¹⁶ 'History of Women's Right in Nigeria *Chaman Law Firm* <www.chamanlawfirm.com> accessed 9 January, 2023.

¹⁷ The public hearing was attended by Nigerian Association of Women Journalists (NAWOJ), International Federation of Women Lawyers (FIDA), African Women Lawyers Association (AWLA), Christian Lawyers Fellowship of Nigeria (CLASFON) among others.

¹⁸ See Art 1(3).

¹⁹ See Arts 1 and 2.

²⁰ See Art 3.

²¹ See Arts 2(2) and 3

²² See Arts 2, 3 and 18(3).

²³ See Art 2. This Optional Protocol is also known as the Maputo Protocol. It was adopted by the second ordinary session of the General Assembly of the African Union on the 11th of July, 2003, and came into effect on 25 November, 2005. <https://au.int>; Nigeria has ratified this Protocol. 'Status of Implementation of the Protocol to the



States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures. In this regard they shall integrate a gender perspective in their policy decisions, legislation, development plans, programmes and activities and in all other spheres of life.²⁴

In addition, Maputo Protocol, Art 17(2) provides that ‘States Parties shall take all appropriate measures to enhance the participation of women in the formulation of cultural policies at all levels.’ The Universal Declaration of Human Rights, (UDHR) Art 1²⁵ proclaims the equality of all citizens irrespective of sex, race, colour, religion or status. The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)²⁶ which entered into force as a treaty in 1981,²⁷ reaffirms the equal rights of men and women. The International Covenant on Civil and Political Rights (ICCPR),²⁸ Art 3 provides for the equal rights of men and women in the enjoyment of their civil and political rights.²⁹ Civil and Political rights include the rights to own immovable property and to be free from discrimination on the ground of sex. The preamble to the International Covenant on Economic, Social and Cultural Rights (ICESCR)³⁰ reaffirms the ‘equal and inalienable rights of all members of the human family’. Art 2(2) of the Covenant requires state parties to ensure that the rights contained in the covenant are exercised without discrimination as to sex. In Art 3 of the covenant, state parties ‘undertake to ensure the equal rights of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.’ The African Charter on Human and Peoples’ Rights, (ACHPR) 1981,³¹ Arts 2 and 3, domesticated in Nigeria vide the African Charter on

African Charter on Human and People’s Rights on the Rights of Women in Africa’ <<https://reliefweb.int/report/world>> accessed 2 June, 2023.

²⁴ Similar provisions are contained in Arts 2(1)(d), 8(f), 9 and 13(m) of the Optional Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa.

²⁵ Adopted by the General Assembly of United Nations on 10th December, 1948

²⁶ This instrument was adopted in 1979 by the United Nations General Assembly. Nigeria ratified this convention on the 13th of June, 1985.< <https://tbinternet.ohchr.org>> accessed 2 June, 2023;<<https://www.aacoalition.org>>accessed 2 June, 2023.

²⁷ *Convention on the Elimination of All Forms of Discrimination against Women*, < www.un.org> accessed 2 June, 2023.

²⁸ This treaty was adopted by the United Nations General Assembly in 1966 and came into force in 1976. ‘Compass: Manual for Human Rights Education with Young People’ <www.coe.int> accessed 2 June, 2023.

²⁹ Nigeria ratified this treaty on 29 July, 2009. <<https://tbinternet.ohchr.org>> accessed 4 June, 2023.

³⁰ This covenant was adopted by the UN General Assembly in 1966 and came into force in 1976. www.ohchr.org accessed 2 June, 2023. Nigeria ratified this treaty on 29 July, 1993. <<https://tbinternet.ohchr.org>> accessed 2 June, 2023.

³¹ The African Charter on Human and Peoples’ Rights 1981 is domesticated in Nigeria in accordance with CFRN 1999, s12(1).



Human and Peoples Rights (Ratification and Enforcement) Act, 1983³² provide for equality of all persons before the law. Art 14 guarantees the right to own property. In the same vein, Art 18(3) provides that 'The state shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.'³³

In spite of the provisions of these legal instruments and international standards, discrimination against women persists.³⁴ Over the years, the shackles of discriminatory customary laws over women have been gradually loosened using the instrument of the judiciary and legislature.

Judicial Intervention on the Property Rights of Women in Nigeria

The courts in Nigeria had, in times past, upheld some discriminatory customs. For instance, in *Ugboma v Ibeneme*³⁵ the court upheld the Ibo custom that disallows female children from inheriting landed property. In *Nezianya v. Okagbue*³⁶ the court upheld another Ibo custom that disallowed widows from inheriting their husband's property. The court, in a later case, held that the widow could be allowed to remain on the said property subject to good behavior.³⁷ Furthermore, in some parts of Ibo land, where a man dies intestate, not survived by sons, brothers or a father, his estate devolves on his eldest paternal male relation. The said relative is referred to as the *Oli-Ekpe* or *Iri-Ekpe*. The first denunciation of this custom by the Court of Appeal was in *Mojekwu v Mojekwu*³⁸ where Justice Niki Tobi, (as he then was) famously declared that

We need not travel all the way to Beijing to know that some of our customs, including the Nnewi "Oli-ekpe" custom relied upon by the appellant are not consistent with our civilised world in which we all live today, including the - appellant. In my humble view, it is the monopoly of God to determine the sex of a baby and not the parents. Although the scientific world disagrees with this divine truth, I believe that God, the Creator of human being, is also the final authority of who should be male and female. Accordingly, for a custom or customary law to discriminate against a particular sex is to say the least an affront on the Almighty God Himself. Let nobody do such a thing.

³²Dakas CJ Dakas, 'Beyond Officialdom: Fallacies and Hypocrisy in Economic, Social and Cultural Rights Discourse and Implementation In Nigeria' in A.A. Yusuf (ed.), *African Yearbook of International Law*, 44.

³³ See also ACHPR 1981, Art 28.

³⁴ See generally, Izzi and Fab-Eme, (n10).

³⁵ 19 (1967) *FNLR* 251.

³⁶ (1963) 1 *All NLR* 352.

³⁷ *Nzekwu v Nzekwu* (1989) 2 *NWLR* (Pt 104) 317.

³⁸ (1997) *LPELR*-13777(CA); (1997) 7 *NWLR* (Pt.512) 283



This pronouncement was, on appeal,³⁹ held not to have been derived from the pleadings of the parties to the suit and therefore could not be binding. The Court reasoned that as the parties did not join issues on the repugnancy or otherwise of the *Oli-Ikpe*. Justice Niki Tobi was therefore, in error to have raised it *suo motu* without inviting the parties to address the court on it before his pronouncement. Nonetheless, in 2008, the Court of Appeal in *Timothy v Oforka*,⁴⁰ pronouncing on the same custom that disallows females from owning and acquiring landed property held that ‘the Oraifite native law and custom which does not allow women to deal in land is not only unconstitutional but repugnant to natural justice, equity and good conscience.’ In 2014, the Supreme Court, in one day⁴¹ gave 2 landmark judgements on the right of women to inherit landed property; in *Anekwe v Nweke*⁴² the Supreme Court, per Clara Bata Ogunbiyi, JSC pronouncing on a custom that disallows a daughter from inheriting her father’s landed property or a wife from inheriting her husband’s landed property held thus,

I hasten to add at this point that the custom and practices of Awka people upon which the appellants have relied for their counter claim is hereby out rightly condemned in very strong terms. In otherwords, a custom of this nature in the 21st century societal setting will only tend to depict the absence of the realities of human civilization. It is punitive, uncivilized and only intended to protect the selfish perpetration of male dominance which is aimed at suppressing the right of the womenfolk in the given society. One would expect that the days of such obvious differential discrimination are over. Any culture that disinherits a daughter from her father's estate or wife from her husband's property by reason of God instituted gender differential should be punitively and decisively dealt with. The punishment should serve as a deterrent measure and ought to be meted out against the perpetrators of the culture and custom. For a widow of a man to be thrown out of her matrimonial home, where she had lived all her life with her late husband and children, by her late husband's brothers on the ground that she had no male child, is indeed very barbaric, worrying and flesh skinning. It is indeed much more disturbing especially where the counsel representing such perpetrating clients, though learned, appear comfortable in identifying, endorsing and also approving of such a demeaning custom.

Similarly, in *Ukeje v Ukeje*⁴³ the court, per Ogunbiyi, JSC pronouncing on a custom that disentitles female children and children born out of wedlock from inheriting from their father’s estate held that ‘the Igbo native law and custom which deprives children born out of wedlock

³⁹ *Mojekwu v Iwuchukwu* (2004) 11NWLR (Pt 883) 196; (2004) LPELR-1903(SC).

⁴⁰ (2008) 9NWLR (Pt 109) 204.

⁴¹ 11th April 2014.

⁴² (2014) LPELR-22697 (SC).

⁴³ (2014) LPELR 227241 (SC).



from sharing the benefit of their father's estate is conflicting with section 42(2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).⁴⁴ The court, per Rhodes-Vivour, JSC further reaffirmed the findings of the trial court and the Court of Appeal that the Igbo custom which disentitles a female child from inheriting from her late father's estate is void and unconstitutional.⁴⁵

In *Ordu v. Elewa*,⁴⁶ the defendants asserted that under Ikwerre native law and custom, a male descendant of a female who did not marry could not inherit alongside the male descendants of a male in the family. Reacting to this claim, Eko, JSC, stated as follows,

The appellants, as the defendants at the trial court, posit that the plaintiffs/respondents are not entitled to inherit on the grounds, only, that the parent through whom they claim title, being a woman (one Wadanma) had no right of inheritance, a fortiori the plaintiffs as descendants of the daughter of their common ancestor/grantor are not entitled to assert any right to the title of the disputed land. (The enactment of section 39 of the 1979 Constitution, in pari materia with section 42(2) of the 1999 Constitution providing that “no citizen shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth”, by the way would appear to have rendered this rule of customary law asserted by the appellants a nullity on grounds of repugnancy.

The trial court however found that the plaintiffs were descendants of, and were claiming through Wadanma's husband who was a son of Owahani family by birth. Nonetheless, this case throws up some of the discriminatory practices suffered by females in some parts of Rivers State, with regard to family property. In *Ordu v Elewa*, the custom referred to was one where the woman herself was not considered when it came to inheriting family property, but if she had a son while unmarried, that son could share in the inheritance of family property alongside other males in the family. Augie, JSC expounds on this custom thus,

Fortunately, I had the privilege of having stayed in Elimgbu Magisterial District for about 5 years and dealt in matters pertaining to this custom of the Ikwerre people to such extent that I could take judicial notice of it. That is that male descendants of a female, who did not marry, are treated like the male descendants of males in the family in relation to inheritance and even the taking of titles, including the deeply traditional Owbor holder ship....⁴⁷

⁴⁴ Ibid. 37.

⁴⁵ (n44).

⁴⁶ (2018) 17 NWLR (Pt 1649) 514 at 547.

⁴⁷ Ibid. p544.



Customs such as that stated above are clearly contrary to the provisions of the Nigerian Constitution and the Rivers State Prohibition of the Curtailment of Women's Right to Share in Family Property Law.

Matters Arising from the Rivers State Prohibition of the Curtailment of Women's Right to Share in Family Property Law No.2 of 2022

The Rivers State Prohibition of the Curtailment of Women's Right to share in Family Property Law comprises 18 sections spread across 5 parts. Part I of the Law restates some of the fundamental rights that accrue to women by virtue of their humanity. These rights include the right to freedom from discrimination⁴⁸ and the right to dignity.⁴⁹ Sections 1,3 and 4 of the Law all border on the right of the woman to freedom from discrimination. These provisions reflect not only the constitutional provisions on discrimination but also judicial pronouncements by the apex court in Nigeria in cases such as *Anekwe v Nweke*⁵⁰, and *Ukeje v Ukeje*.⁵¹

Part II of the law elaborates on the property rights of women. S.6 bestows on a wife equal rights as her husband with respect to the acquisition, ownership, management, administration, enjoyment and disposition of family property. S.7 secures these rights for widows. S8 restricts the application of Part II of the law to 'a legally married woman, and where a woman is divorced or widowed, it shall apply only where she has not been remarried.' S. 9 protects the woman from being compelled to take an oath to prove co-ownership of any family property. Ss.10 and 11 give women equal responsibilities as men to express themselves in respect of family property. This may be interpreted to mean that a woman should be allowed to take part in the decision making process regarding family property among other issues. Part IV contains penal provisions and Part V contains provisions on interpretation.

The Law is the outcome of legislative efforts to curb discrimination against women in the face of judicial decisions upholding the rights of women to inherit landed property, and in recognition of Nigeria's international obligations to do eliminate discrimination against women. Below are issues that need to be addressed to further promote the rights of women in Rivers State.

⁴⁸ Ss 1,3 and 4; Also provided for in CFRN 1999, s42.

⁴⁹ CFRN 1999, s34.

⁵⁰ (2014) *LPELR*-22697 (SC).

⁵¹ (2014) *LPELR* 227241 (SC).



Distribution ratio:

The Optional Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003 affirms the equality of men and women and provides, in Art 21 that

A widow shall have the right to an *equitable share* in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it. Women and men shall have the right to inherit, in *equitable shares*, their parents' properties.⁵²

In spite of the laudable efforts of legislators in passing The Rivers State Prohibition of the Curtailment of Women's Right to share in Family Property Law, the law as passed is, in itself inadequate to address issues of discrimination against women. The Law bears imprints of a society reluctant to treat women equitably. Ss. 12 and 14 of the Law are silent on the share to be given to women. S.12 of the Law merely states that 'A person who discriminates or deprives a woman or female child in the distribution, allocation or inheritance of family or community property commits an offence and is liable on conviction, to imprisonment for a term of 5 years or a fine of N500,000, or both.' S. 14 of the Law provides that 'A person who deprives a widow of her right to inherit or partake in the family property owned by her husband, commits an offence and is liable on conviction to imprisonment for a term of 5 years or a fine of N500,000, or both.' Thus, an inconsequential and inequitable share given to a woman may be held to be a fulfilment of the requirements of the Law. These provisions as couched detract from the potency of the Rivers State Prohibition of the Curtailment of Women's Right to share in Family Property Law.

To promote equity and minimize confusion and injustice in the administration of estates, the Rivers State Administration of Estates Law; a law that deals with the administration of estates of persons who die intestate, or partially intestate, and who contracted a valid monogamous marriage and are survived by a spouse or issue of that marriage,⁵³ stipulates the fraction of a

⁵² See also Optional Protocol to the ACHPR on the Rights of Women in Africa, 2003, Art 20.

⁵³ Rivers State AEL, s1(2). This law does not apply 'to the estate of deceased persons, the administration of which is governed by Islamic law.' Rivers State AEL, s(1)(1)(b).



deceased's residuary estate that can be inherited by a spouse.⁵⁴ Similarly, under Islamic law on intestate succession, the share to be inherited by a woman is fixed.⁵⁵ At the public hearing held before the passage of the law under review, this fact was stated in the presentation made by a representative of Muslims in Rivers State.⁵⁶ In addition, the Christian Lawyers Fellowship of Nigeria, (CLASFON), in its memorandum proposed a sharing pattern of equal or near equal shares.⁵⁷ In spite of these submissions, the lawmakers passed the above mentioned ambiguous provisions prone to abuse by a patrilineal society.

The role of women in the administration of family property:

Family property is a recurrent concept in the Rivers State Prohibition of the Curtailment of Women's Right to share in Family Property Law. It is therefore pertinent to define this term. Family property has been defined as 'any form of property the radical title of which vests in the family as a corporate body.'⁵⁸ In *Ayiratu Iyabo Ogundairo v Madam Amiratu Abeje*,⁵⁹ the court defined family property as 'property which devolves from father to children and grandchildren under native law and custom...'. Family property may be created by Will, operation of law, by gift, by purchase or by occupation of vacant land by the family.⁶⁰ It is created for the purpose of perpetuating a property in a family⁶¹ and sometimes, to provide accommodation for family members who need it. A family may be made up of persons who become members of the family by birth, marriage,⁶² or adoption. Every member of the family possesses certain rights in the family property. These rights include

- (a) right to the natural produce of the land; (b) right of ingress, egress and regress in relation to farm land and residential land; (c) right of allocation of annual farm plots; (d) right of exclusive occupation of both farm and residential land; (e) right to be consulted; (f) right of

⁵⁴Rivers State AEL, s47 and second schedule.

⁵⁵ E.I Nwogugu, *Family Law in Nigeria* (3rd Edition, HEBN Publishers Plc 2014) 433-434.

⁵⁶ The author of this paper was in attendance at this public hearing.

⁵⁷ Memorandum on the Rivers State Prohibition of the Curtailment of the Rights of Women to share in Family Property Bill, 2021 submitted by The Legislative Monitoring Directorate of the Christian Lawyers' Fellowship of Nigeria, Port Harcourt Branch, 3.

⁵⁸ SNC Obi, *Modern Family Law in Southern Nigeria* (Sweet and Maxwell 1966) 43 cited in Ajuzie C. Osondu, *Modern Nigerian Family Law and Practice* (Printable Publishing Company 2012) 37.

⁵⁹ [1967] *L.L.R.* 9; See also *Kasali v. Alagbede* (1979) 1-3 *CCHCJ* 273; Fekumo, (n8) 134-139; Nwogugu, (n55) 436-438.

⁶⁰ Obi (n58) cited in Osondu, (n58) 38-42.

⁶¹ GBA Coker, *Family Property among the Yorubas* (2nd ed African Universities Press 1966) 94 cited in Osondu, (n58) 37.

⁶² Osondu, *Ibid.* 47.



disposition both inter vivos and at death, and (g) right to intestate succession.⁶³

Preventing a woman from inheriting from a parent or spouse merely by reason of her gender denies her full membership of her family. This issue has over the years been treated with levity by the persons who perpetuate these discriminatory customs. Kastina-Alu, JSC aptly opines that, ‘Disinheritance, viewed from any perspective is a very serious matter which must be treated with the seriousness it deserves.’⁶⁴ The Rivers State Prohibition of the Curtailment of Women’s Right to share in Family Property Law made attempts to address this serious cultural problem of discrimination faced by women in spite of laudable decisions of the apex court condemning customs that discriminate against women on the grounds of sex.

The administration of family property, although the responsibility of the family head, also requires the input of principal members of members of the family depending on the size of the family. Thus, partition or alienation of family property must be with the consent of the head of the family, and principal members of the family. Also, a sale by the family head without the consent of principal members of the family is voidable at the instance of the aggrieved principal members.⁶⁵ Whereas a sale by principal members without the consent of the head of the family is void.⁶⁶ Where a family head and principal members of the family delegate some members of the family to carry out a sale on behalf of the family, such a sale is valid even if the head of the family does not sign the document conveying the land.⁶⁷ Alienation may be by way of sale, lease, or mortgage of the family property.⁶⁸

In Rivers State, being a patrilineal society, it is common to find that women occupy a subordinate position in the family hierarchy.⁶⁹ Where a founder of a family has just one son and daughters, even where the son is the youngest child, in patrilineal societies, he steps into the shoes of his late father and becomes the head of the family, sometimes inheriting all his father’s landed properties to the exclusion of his sisters,⁷⁰ who are usually encouraged by

⁶³ Osondu, 47-48

⁶⁴ *Okene v. Orianwo* [1998] 9 NWLR (Pt 566) 444.

⁶⁵ *Fayehun v. Fadoju* [2000] FWLR (Pt7), 1218 at 1226.

⁶⁶ *Ibid.*; *Babayeju v. Ashamu* [1998] 9 NWLR (Pt 567) 546 at 554-555.

⁶⁷ *Fayehun v Fadoja*, *Ibid.*; *Adenuga Odu Sewoniku v. Mojidi Orotiosakin* (1986) 5 CA (Pt1) 372

⁶⁸ Osondu, (n58) 50.

⁶⁹ See generally, *Anekwe v Nweke* (2014) 9 NWLR (Pt 1412) 393.

⁷⁰ Osondu, (n58) 39.



extended family members to accept their fate and support their brother. In the extended family structure, across the ethnic groups in Rivers State, it is indeed rare to find a woman occupying the position of the head of a family or head of a unit. The absence or near absence of women in these positions leads to the absence or near absence of the input of females in the administration of family property. From the above principles governing the partition and alienation of family land, it is clear that, in large families; families comprising more than one unit, principal members of a family occupy a prominent position in issues pertaining to family land. These principal members are often heads of their family units. Traditionally, these positions are rarely occupied by women. Hence, for the law under review to be effective, there has to be deep sensitization in communities. Before decisions are reached concerning sharing of family property, the opinion of women should be sought, obtained and given serious consideration. In addition, there is need for traditional institutions to encourage women to take up principal positions in the family.

It is worthy of note that it was when Nigeria had a female chief justice that the landmark decisions of *Ukeje v Ukeje*⁷¹ and *Anekwe v Nweke*⁷² were delivered.⁷³ This underscores the need for women to be strategically positioned to influence decision making.

Holistic Approach to Addressing Discrimination Against Women:

The subordination of women is grounded in biology, culture and religion. It reflects in societal practices such as those that prevent women from being priests or Imams; in some religious denominations, it is forbidden for a woman to occupy certain offices. This happens even in some religious denominations that were founded by women. It has been reasoned that the subjugation of women should be analyzed in relation to production, reproduction, sex and the socialization of children. There is need for a holistic approach to education on the rights of women. Relational feminism demands that ‘the values traditionally associated with women be valued and that legal strategies focus on transforming social institutions rather than just assimilating women within them.’⁷⁴ This can be achieved through education targeted at the

⁷¹ (2014) *LPELR* 227241 (SC).

⁷² (2014) *LPELR*-22697 (SC).

⁷³ ‘Past Chief Justices of Nigeria’ www.njc.gov.ng accessed 1 June, 2023; Ijeoma Opara, ‘How Marriage affects the rise of female judges’ *International Centre for Investigative Reporting*, www.icirnigeria.org accessed 1 June, 2023; ‘Women Chief Justices Across Africa’, www.africanwomeninlaw.com accessed 1 June, 2023; Josephine Dawuni and Alice Kang, ‘Her Ladyship Chief Justice: The Rise of Female Leaders in the Judiciary in Africa’ (2015) *Africa Today*, 53.

⁷⁴ Rhode, (n3) 176.



various social institutions. While at the earliest levels of education, children are taught gender equality at school, at work, parents should be taught to respect the values and social roles associated with each gender. Of note is the International Covenant on Economic, Social and Cultural Rights, Art 13 which provides that ‘... education shall strengthen the respect for human rights and fundamental freedoms.’ There should therefore, be effective use of the mass and social media in ensuring that women are accorded equal treatment on matters of inheritance among other matters.⁷⁵ Transformation in all institutions of society is critical as the absence of positive transformation in one social structure could have a negative impact on other structures.⁷⁶

CONCLUSION

The Rivers State Prohibition of the Curtailment of Women’s Right to share in Family Property Law is a noble piece of legislation that is generally in line with international instruments on human rights and the Constitution of the Federal Republic of Nigeria, 1999. This statute also reflects the position of the apex court on the rights of women to inherit property, whether moveable or immovable as stated in the celebrated cases of *Ukeje v Ukeje*⁷⁷ and *Anekwe v Nweke*⁷⁸. However, the silence of the statute on the fraction of the property that should be inherited by females, leaves room for inequitable distribution of the estate in a manner that discriminates against females and in effect curtails the rights of women to share in family property. This shortcoming goes against the provision of Article 21 of the Maputo Protocol which provides that ‘Women and men shall have the right to inherit, in *equitable shares*, their parents’ properties.’⁷⁹ This inadequacy threatens to make mockery of the Rivers State Prohibition of the Curtailment of Women’s Right to share in Family Property Law.

There is need for a holistic education on gender equality. This education should be simultaneously targeted at all the social institutions as neglect of any institution may detract from the effectiveness of the education being carried out. The subject of gender equality should

⁷⁵ See generally, Izzi and Fab-Eme, (n10).

⁷⁶ Juliet Mitchell, ‘Women: The Longest Revolution’, [1966] (40) *New Left Review* 11, 13–17; 29–36 cited in Cynthia Grant Bowman, ‘Socialist Feminist Legal Theory: A Plea’ in Robin West and Cynthia Grant Bowman (eds), *Research Handbook on Feminist Jurisprudence* (Edward Elgar Publishing Limited 2019) 93, 95–96; ‘The Concept of Social Structure in Sociology’ www.thoughtco.com assessed 1 June, 2023.

⁷⁷ (2014) *LPELR* 227241 (SC).

⁷⁸ (2014) *LPELR*-22697 (SC).

⁷⁹ See also Optional Protocol to the ACHPR on the Rights of Women in Africa, 2003, Art 20.



be introduced in the curriculum at the earliest levels of formal education. When this is effectively done, it will be easier to achieve the aim of the Rivers State Prohibition of the Curtailment of Women's Right to share in Family Property Law, ss 10 and 11, which gives women equal responsibilities as men to express themselves in respect of family property. It will also be easier for women to occupy key positions in their families. All conditions that encourage the subjugation of women must be addressed if the Rivers State Prohibition of the Curtailment of Women's Right to share in Family Property law is to be effective and efficacious.⁸⁰

⁸⁰ Rhode, (n3) 181.