



INQUIRY INTO THE RIVERS STATE PROHIBITION OF CURTAILMENT OF WOMEN'S RIGHT TO SHARE IN FAMILY PROPERTY LAW NO 2 OF 2022

By

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ABSTRACT

The recognition and treatment accorded to the male and female have not been equal through times. In most parts of human society, including Nigeria, women's positions are defined by their male folk. There are attributes associated with being a male or female. This discriminatory treatment has affected many areas of women's lives including their right to property, successive or inheritance. This paper aimed at inquiring into the Rivers State Prohibition of the Curtailment of Women's Rights to Share in Family Property Law No 2 of 2022. Adopting the doctrinal research methodology, it is found that the Law vests in every wife the same rights and responsibilities in respect of the acquisition and ownership, management and administration, employment and disposition of the family property with her husband where the family property was jointly acquired. The Law equally prohibits all forms of discrimination against women in the distribution, allocation, or inheritance of family or community property. It is recommended that section 17 of the Law be amended to include a definition on what constitutes 'legally married' and 'family property.' Section 8 should be amended so that a woman who is divorced, whether she is remarried or not, will not be allowed to share in her divorced deceased husband's property.

Keywords: Rights, Women, Property.

INTRODUCTION

The formation of government all over the world is predicated upon the need to ensure peace, order and safety and to satisfy the interests of varied sexes in the society. The debate on women's right and gender equality is currently an issue of concern at the state, national, regional and international levels.¹ The United Nations for instance, is geared towards the promotion and protection of the dignity of the human person with a view to improving the respect for the principle of equal rights.² To that effect, its goal is to ensure equal rights for all

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¹ C.C. Wigwe, *International Law and Practice: The World Bank IMF and State Sovereignty* (Mounterest University Press, 2011) 154.

² United Nations Charter, 1945. Art. 55.



genders. Women's rights are human rights. Women are entitled to all forms of rights.³ In most of the societies, including Nigeria, gender inequality has been the practice where one group is always discriminated against and its rights being neglected and abused. In most cases, women find themselves being the victims of discrimination. Women are perpetually giving unequal treatment compared to men. Women are neglected and are being treated with prejudice in respect of the right of succession and the right of equal opportunity under various customary laws, including statutes.⁴ This prejudice is evident in women's right to inherit from their deceased husbands' or fathers' estate.⁵

Inheritance right of women differs from tribe to tribe, region to region and community to community⁶ based on the law applicable to the people. In Rivers State for instance, prior to this time, denial of women inheritance was prevalent among cultures and traditions. Rivers State is a multi-ethnic state. For instance, under the Ikwerre native law and customs⁷ the right of women and the girl child which are supposed to be integral, inalienable and indivisible parts of the Universal Declaration on Human Rights⁸ continue to be violated in very many ways. The Ikwerre People, who are found in Rivers State of Nigeria are collapsed into four local government areas of PortHarcourt City, Obio-Akpor, Ikwerre and Emohua.⁹

Generally speaking, the girl child under the Ikwerre native law and customs does not have any recognizable right to share in her father's property.¹⁰ The girl child is stripped off her right to inheritance. She is expected to leave her father's house upon maturity She is to marry into another family who will 'own' her so long as the bride price paid on her remains with her family.¹¹ This is against the position for the boy child who is entitled to inherit his father's properties upon the demise of his father.

³. C. Hill, 'Women's Rights is Human Rights' (2015) (16) (2) *Journal of International Women's Studies*.142.

⁴. Ibid. For Instance, the Marriage Act 1914 Cap. 16 LFN 2004; Matrimonial Causes Act (MCA) Cap 17 LFN 2004;

O.V.C Ikpeze, *Gender Dynamics of Inheritances Right in Nigeria Need for Women Empowerment* (Folmech Printing & Publishing Co. Ltd, 2009)143.

⁵. Ibid.

⁶. Ibid.

⁷. J. Effah and others, *Unequal Rights: Discriminatory Laws and Practices Against Women in Nigeria* (Constitutional Rights Project, 1995) 10.

⁸. UDHRs 1948.

⁹. G. O. Akolokwu, 'The Injustice of Customary Law to Women: Xraying Aspects of Ikwerre Customary Law (2016)(8)(2) *Journal of Jurisprudence and Contemporary Issues*, 22-32.

¹⁰. Ibid., 26.

¹¹. (n 9), 26.. Under the Concept of '*nye nwe nwere nwe ekwua*' (that is, 'he who owns or marries a woman owns all she has or proceeds from her including children born to other men during a period of separation)



According to Akolokwu;

A woman who is married under Ikwerre custom has no right to inherit any property of the husband at the demise because she is regarded as the property of her husband's family to be inherited by her husband's next of kin. The only privilege she enjoys is the right to enter upon family land for planting of farming purpose so she could provide for her needs and that of her immediate family. She cannot share in the property and cannot also join the male children in the discussion affecting the family. Among the 'Omuanwa' people in Ikwerre land, the girl-child is completely prohibited from inheriting landed property. If she remains unmarried, she stays in her mother's kitchen at the pleasure of her brothers who inherit every thing upon the death of their father.¹²

This customary practice which is not peculiar to only Ikwerre ethnic group in Rivers State is a gross violation in every sense of justice and the rights guaranteed under the Nigerian Constitution.¹³ The same practice is applicable to the Okrika¹⁴ where there are discriminatory practices against property rights of women and Ogoni customary laws. The children born out of wedlock by an unmarried daughter are regarded as part of their mother's family and treated as such. They do not enjoy commensurate right of inheritance and succession with children of married couple. The only time both children enjoy same inheritance rights in the father's family is where the children born out of wedlock are acknowledged by the biological father as a son the his life time.¹⁵ Therefore, marriage does not entitle any woman to inherit anything. Her interest in the family is only protected through her male and not the female children.¹⁶ Disinheritance of female children is therefore seen as one of the injustices of customary law to women in the various customs and traditions in Rivers State. To end such injustice, the Rivers State Government enacted the Rivers State Prohibition of the Curtailment of Women's Rights to Share in Family Property Law 2022.

¹² (n11).

¹³ Constitution of the Federal Republic of Nigeria (as Amended) 1999 ss. 43 and 44.

¹⁴ M.G. Kennedy and D. M. eremie, 'Gender Bias: Roadblocks to Equal Distribution of Inheritance in Okrika Clan

Rivers State: Implications for Counseling' (4(4))(2016) *International Journal of Innovative Legal and Political Studies*, 30-36

¹⁵ (n 9), 24.

¹⁶ Ibid.



CONCEPTUAL REVIEW

Words like rights, women and property are predominantly used in this paper. Defining them will help to situate their meanings in the context of this paper.

Rights

Rights refer to something that is due to a person by just claim, legal guarantee or moral practice.¹⁷ It could also be said that right is a legally enforceable claim that another will do or will not do a given act, a recognized and protected interest the violation of which is a wrong.¹⁸ From the above, a right could be correlative to duty. This appears true because where there is no duty, there can be no right. However, there may be duties without rights. Therefore, in order for a duty to create a right it must be a duty to act or forbear.¹⁹ Thus, amongst those duties which have rights corresponding to them do not come with duties, if there be, which call for an inward state of mind, as distinguished from external acts or forbearances.²⁰ It is only to acts or forbearances that others have a right.²¹

The term rights is covered by the wider concept of claims... that is wants, desires, aspirations people have and express... those claims which are also supported by or in accord with some objective standards (or some general theory), whether those of a code of morality or ethical theory, or those of political system or political theory, or those of a legal system, are usually and aptly called rights.²² Thus, a claim may be legal, political or moral, any of the two or all three.²³ It is legal when it can be legally implemented.²⁴ Legal rights are rights created or recognized by law; the breach of a legal right is usually remediable by monetary damages.²⁵ Also, the concept of rights can be absolute or qualified. An absolute right is a right that belongs to every human such as the right of personal liberty, a natural right. It is an unqualified right that cannot be denied or curtailed except under specific conditions.²⁶ Therefore, rights are legal,

¹⁷. B.A. Garner, *Black's Law Dictionary* (9th edn, A Thomson Reuters Business 2009) 1436.

¹⁸. Ibid.

¹⁹. J.C. Gray, *The Nature and Sources of Law* (Paragon, 1921) 8 – 9.

²⁰. Ibid.

²¹. Ibid. 9.

²². F. E. Dowrick (ed), *Human Rights, Problems, Perspectival and Texts*, (UK: Saxon House, 1979) 8 in U.O. Umozuoike, *African Charter on Human and Peoples' Rights* (Kluwer Law International, 1997) 2.

²³. Umozurike (n 22) 2.

²⁴. Ibid.

²⁵. Garner (n 17), 1437.

²⁶. Garner (n 17), 1437; Constitution of the Federal Republic of Nigeria 1999 (As Amended) Chapter iv.



social, or ethical principles of freedom or entitlement. Rights are the fundamental normative rules about what is allowed of people or owed to people according to some legal system, social convention or ethical theory.²⁷ It is the freedom, immunity, power or privilege due to and by agreement, birth, claim, guaranteed or by the applications of legal, moral or cultural principles.²⁸ Right is that which a person has a just or valid claim over, whether it is land, a thing or the privilege of either doing or saying something.

Human right is an aspect of rights. These rights are not given by government. They are inherent, innate, inalienable rights that are given to man by virtue of the fact that he is part of the human community. It was in view of this that Anyakwee expressed that the term human rights means the conditions of life which men have right to expect by virtue of being a human being.²⁹ The Supreme Court, per Justice Kayode Eso describes a human right as:

A right which stands above the ordinary laws of the land and which in fact is antecedent to the political society itself. It is a primary condition to a civilized existence, and what has been done by our (Nigerian) constitution since independence is to have these rights enshrined in the constitution so that the rights could be immutable to the extent of the non-immutability of the constitution itself.³⁰

Human rights therefore are rights to be enjoyed by all, human beings, and not a gift by any government or constitution to be withdrawn, withheld or granted at someone's will or whims.³¹ They are rights derived out of the concept of natural rights. They accrue to all human irrespective of race, nationality, sex and so on.

Women

A woman is an adult human being,³² the female sex, the sex which conceives and gives birth to the young, also a member of such sex, because of her unique reproduction characteristics.³³ She is a human being thereby possessing similar character as the male and not an object, toy,

²⁷. P. Okoye, *Succession to Right in Land: The Position of the Female Children, A Case Study of Anaocha Local Government Area*, (A Unpublished Dissertation of the National Open University, 2017) 18.

²⁸. (n27).

²⁹. A. Nsirimovu, *Human Rights Education Techniques in Schools* (Lampon, 1994) 24.

³⁰. *Ransome Kuti v Attorney General of the Federation* (1995) 8 NWLR (Pt. 6) 211 – 230.

³¹. Y. Dankula, 'A critique of Economic, Social, Cultural and Development Rights and Their Implication on Poverty

Alleviation in Nigeria'(2010–2011)(4 & 5) *Journal of Private and Comparative Law*.28.

³². The law Webster's Dictionary of the English Language (Intl. edn, NY Publishers, Guild Group, 1995) 1130.

³³. Ibid.; R. Okpara and others, *Human Rights Law of Practice in Nigeria* (Enugu: Clienglo Limited, 2005) 36.



a commodity, or necessary part of home furniture which can be acquired or even illegally.³⁴ A woman is a female made as a helper and complement to them, to be loved, and cherished as the man's flesh.³⁵ The Bible supports the fact that a woman is someone who is 'taken out of the man.'³⁶ According to Toby and Nwauzi, a woman is the natural girl child, who at maturity becomes the woman who bears, cares, rears and grows the family units which in turn becomes strong societies and economics.³⁷ Continuing, her inner lying capabilities potential and abilities are utilized for self development and civilization of her environment.³⁸

A woman is not a cloned, surgically created woman, dolls or those with both male and female reproductive organs³⁹ and not gays who have chosen to live and behave like women. A woman is a natural girl child, who at maturity becomes the woman who bears children and grows the family units. Similarly and statutorily, the Rivers State Prohibition of Curtailment of Women's Rights to Share in Family Property Law⁴⁰ defines a woman to mean every female person including a girl child, but excludes a transgender. The same law defines a female child to mean a child of the female gender and includes an adopted female child born during the subsistence of a lawful marriage, or if born out of wedlock, whose paternity has been acknowledged by the father, but does not include a transgender.⁴¹

Family

Like other social constructs, the word family is not blessed with a universally acceptable definition. According to Nwogugu, the word 'family' does not have a precise meaning.⁴² It is a description of a variety of collection of persons with different gradations of relationship.⁴³ Nonetheless, considering the many or various definitions that have been offered by scholars, the word "family" can be viewed from three perspectives. They are the narrow perspective,

³⁴. L. Owei, 'Women as Expendables' (2016), The Vanguard Newspaper, 33' in B.G. Toby and L. Nwauzi, 'The Legal Protection of Feminism: The Rights of Women in Nigeria' (2019)(2)(1) *The Journal of Jurisprudence*

International Law and Contemporary Issues, 125-138.

³⁵. Holy Bible, Genesis 2 verse 18.

³⁶. (n35); Genesis 2 verse 23.

³⁷. B.G. Toby and L. Nwauzi, 'The Legal Protection of Feminism: The Rights of Women in Nigeria' (2019) (2)(1)

The Journal of Jurisprudence, International Law and Contemporary Issues, 125-138.

³⁸. Ibid.

³⁹. Like the hermaphrodites.

⁴⁰. Rivers State Prohibition of Curtailment of Women's Rights to Share in Family Property Law No 2 of 2022 s 17.

⁴¹. Ibid.

⁴². E. I Nwogugu, *Family Law in Nigeria* (3rd edn, HEBN Publishers Plc, 2014) 3.

⁴³. Ibid.



wide and a middle range perspective. From the narrow sense, the term family means an association of persons consisting of a man, his wife and children.⁴⁴ According to Okpara,⁴⁵ in a more restricted connotation, family under English law refers to a small group consisting of a household that is the man, his wife and their children. This group is referred to as a nuclear family or immediate kindred and constitutes the fundamental social unit in a civilized society. This definition is not or may not be applicable under the Nigerian customary laws which allow the taking of more than one wife and considering the patrilineal structure of the African society.

From the wide or broad perspective, Okpara opined that the family may be defined as to include all persons with a common ancestor.⁴⁶ Under the patrilineal system, the family will include a man, his wife, his children, his father, his brother and sisters, grandfather, and his grand children, uncles and their children and so on.⁴⁷ A family refers to a group of closely related people, known by a common name and consisting usually of a man and his wives and children, his son's wives, and children, his brothers and half brothers and their wives and children and probably their other near relations.⁴⁸ In Nigeria, and other African societies, this view of family is often called the extended family. Family is the basic unit of the society.⁴⁹ This view of family is a type of family structure which includes all relatives by blood or marriage belonging to different generations, who live under the same roof in a close geographic proximity. This is the true sense of African family.

Apart from these two perspectives, there is equally a middle range idea of a family which is called the third perspective. According to Nwogugu,⁵⁰ there is yet another view as to the meaning of family.⁵¹ According to this scholar, in yet another context, family may refer to persons who live in a household some of whom are not necessarily related by blood such as domestic servants. This view appears very contemporary and reflects the present day urban settlement family structure or system. Gleaned from the above, a family can be defined as either comprising of a father, mother, and children in one context called immediate family or a group

⁴⁴. Garner (n 17) 6878; *Okulate v Anosanya* (2002)2 NWLR 530 at 542.

⁴⁵. G.A. Okpara, *Family Law* (Lecture Monograph on Family Law, Rivers State University of Science of Technology, Port Harcourt, 2016) 1.

⁴⁶. (n45).

⁴⁷. Ibid.

⁴⁸. R. Green, *Land Tenure in an Ibo Village Land* (London, Humphries, 1941) 2-3.

⁴⁹. Y. Gunnindi, 'Functions of the Family: Family Structure and Place of Residence' (2012)(4)(1) *Energy Education*

Science and Technology Part B: Social and Educational Studies. 549-556.

⁵⁰. (n 42).

⁵¹. Ibid.



consisting of a father, mother(s), children, grand children, grand parents under, aunts, and other blood relations called the extended family and every other occupant of the household whether related by blood and marriage or not.

Property

The deprived state of most women under various Nigerian customs emanates from the absence of property rights and key productive resources, such as the usage of land and property.⁵² Property means everything which is or may be the subject of ownership; everything that has an exchangeable value or which goes to make up wealth or estate.⁵³ The Rivers State Prohibition of Curtailment of Women's Rights to Share in Family Property Law defines property as assets and liabilities owned by the family, husband or parents includes land, buildings, money, stock and bond held in any financial institution, royalties, loan and leases, personal effects digital assets and other such intangible things acquired, inherited or bequeathed by a family, husband or parent.⁵⁴ Community property means every property owns by a community and includes parents includes land, buildings, money, stock and bond held in any financial institution, royalties, loan and leases, personal effects digital assets and other such intangible things acquired, inherited or bequeathed.⁵⁵

Ownership of property determines one's wealth.⁵⁶ Wealth guarantees one's ability to take care of oneself. So logically, property ownership will undoubtedly afford one the means to satisfy the basic needs of food, health, and shelter.⁵⁷ Property is a natural right.⁵⁸ Therefore, property is a valuable asset that everyone must possess. According to Hegel, there is an issue of ethics if a number of people are under privileged without property.⁵⁹ Going further, access to property is a crucial factor determining the empowerment and economic welfare of the individual

⁵². Y. Olomajobi, *Human Rights and Gender, Sex and the Law in Nigeria* (Rev. edn. Lagos: Princeton Publishing Company 2015) 161.

⁵³. Garner (n 17) 1233.

⁵⁴. (n 40).

⁵⁵. (n 40).

⁵⁶. F. Anyugo, *Access to Justice in Nigeria: A Gender Perspective* (2nd edn, Enugu: Ebenezer Production Ltd 2013)

353.

⁵⁷. Ibid.

⁵⁸. Locke John, *Two Treaties of Government* (Cambridge: Cambridge University Press, Critical edn., 1960)

⁵⁹. G.W. F. Hegel, *Hegel's Philosophy of Right* (Oxford: Oxford University Press, 1967) 222



including women.⁶⁰ The infringement of women's right to land, housing, and property implies the lack of social status in society.⁶¹

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

Nigeria is a party to most of the conventions on non-discrimination against women⁶² wherein State-parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means a policy of eliminating discrimination against women.⁶³ To this end, States are tasked to embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure through law and other appropriate means, the practical realization of this principle.⁶⁴ States are equally tasked to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.⁶⁵ This validates the claim that Nigeria has agreed to propagate principles of gender equality in her Nigeria legal system and ensure proactive effects to abolish gender discrimination.⁶⁶ The Rivers State Prohibition of Curtailment of Women's Rights to Share in Family Property Law⁶⁷ was enacted by the Rivers State House of Assembly seeking to prohibit the curtailment of the rights of women to share in family property.⁶⁸ This inquiry covers the constitutionality, reasonable justiciability and the relevance of the law in the face of various court judgments on the subject matter.

CONSTITUTIONALITY OF THE LAW

Nigeria practices a federal system of government. This system of government allows powers to be distributed amongst the federal government at the centre and the federating units called

⁶⁰. (n 52), 164.

⁶¹. Ibid.

⁶². Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2008 (Maputo

Protocol); Convention on the Elimination of All Forms of Discrimination Against Women Adopted on 18 December, 1979 but came into force on 3 September, 1981; Declaration on the Elimination of All Forms of Discrimination Against Women 1967.

⁶³. CEDAW (n 62), art. 2.

⁶⁴. Ibid., art. 2(a).

⁶⁵. CEDAW (n 62), art. 2(c).

⁶⁶. (n 52), 84.

⁶⁷. (n 40).

⁶⁸. Ibid., General Statement of purpose.



States. The federal system of government enables Nigeria to effectively manage her multi-nationalities.⁶⁹ Legislative powers of the federation are equally shared amongst the various federal components. The National Assembly is vested with the powers to make laws for the peace, order and good government of the federation with respect of matters included in the Exclusive Legislative List.⁷⁰ Each State has a State House of Assembly vested with the power to make laws for the peace, order, and good government of its respective states⁷¹ on any matter not included in the Exclusive Legislative List.⁷² They equally have legislative powers over matter included in the Concurrent Legislative List⁷³ or any matter with respect to which it is empowered to make laws in accordance with the Constitution.⁷⁴

The recognition of the right of every woman and female child to freedom from every form of discrimination;⁷⁵ the right to respect for the dignity of her person⁷⁶ and the prohibition of any form of discrimination or deprivation in the distribution, allocation or inheritance of family or community property⁷⁷ falls within the constitutional power of the Rivers State House of Assembly to legislate upon. This is more so as such right to inheritance is not included in the Exclusive Legislative List. This milestone ended the many denials of women inheritance prevalent among cultures and traditions in Rivers State. The law equally draws inspirations from the Violence Against Persons (Prohibition) Act⁷⁸ which aims to prohibit all forms of violence against persons in private and public life and provides maximum protection and effective remedies for victims and punishment of offenders.⁷⁹

Part III of the Law prohibits oath taking to prove a woman's contribution to the acquisition of any property;⁸⁰ gives every woman or female child equal opportunity as a man or male child the right to express herself in respect of the family property.⁸¹ Every woman has the right to participate in decision making process of her family especially where the decision will affect

⁶⁹. N. Umoh and E.M. Adeyi, 'Social Integration: A Nation-B Building Strategy for Nigeria Federalism' (2019)(6)(3) *Review of Public Administration & Management*, 1-2.

⁷⁰. (n 27), s. 4(1)(2)(3)(4).

⁷¹. Ibid., s 4(7).

⁷². Ibid., s 4(7)(a).

⁷³. Ibid., s 4(7)(b).

⁷⁴. Ibid., s 4(7)(b).

⁷⁵. (n 40), s 1.

⁷⁶. Ibid., s 2.

⁷⁷. (n 40), s 3.

⁷⁸. Violence Against Persons Prohibition Act (VAPP) 2015.

⁷⁹. (n 40), pt iv provides for penalty and punishment.

⁸⁰. Ibid., s 9.

⁸¹. Ibid., s 11.



her rights and interests in the family property.⁸² These rights are testaments of the Law's commitment to uphold the constitution right to dignity of human person and the right to expression.⁸³

This piece of legislation is the branch that draws her inspiration and validity from the vine, the Constitution. By Section 42(2) of the Constitution,⁸⁴ no citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of circumstances of birth. Section 43 of the Constitution⁸⁵ gives impetus to the right of women and female children to own and acquire properties when it provides:

Subject to the provisions of this constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.⁸⁶

RELEVANCE OF THE LAW IN THE FACE OF NUMEROUS SUPREME COURT JUDGMENTS UPHOLDING WOMEN'S RIGHT TO INHERIT PROPERTY IN NIGERIA

The Rivers State Prohibition of Curtailment of Women's Rights to Share in Family Property Law⁸⁷ is very apposite taken that Nigeria's judiciary has experienced a chequered history in dealing with women's right to inherit their deceased father's properties in the face of discriminatory customary and traditional practices.

The customary law of inheritance among the Igbo of Nigeria and most other parts is predominantly patrilineal.⁸⁸ Land and landed properties are basically inherited by the eldest son of a deceased man.⁸⁹ In other words, upon a man's death, the Ibo custom generally forbids property inheritance by women whether wives or daughters.⁹⁰ This unfortunate situation has arisen because in the majority of Ibo communities,⁹¹ the family grouping is strictly patrilineal and inheritance is based on primogenitor where the eldest son (Okpara) succeeds the father and

⁸². (n81)., s 10.

⁸³. CFRN 1999 (n 26), ss 34 and 39.

⁸⁴. (n83).

⁸⁵. Ibid.

⁸⁶. Ibid., s. 43.

⁸⁷. (n 40).

⁸⁸. Ikpeze (n 4), 156.

⁸⁹. Ibid.

⁹⁰. (n 55), 361.

⁹¹. The Exception th this rule are the Afikpo and the Aruchukwu Areas of the South-East of Nigeria.



holds the property in trust for himself and his brothers⁹² with the exclusion of the girls.⁹³ Upholding the above, Obi submitted that personal property including wives and slaves descend to the eldest son as heir or failing a son, to the oldest brother or male relatives.⁹⁴ Therefore, where there is no son or the son is not of age, the man's brother or uncle becomes the visible beneficiary.⁹⁵ The females of the family, whether as wives or daughters, can reside or utilize allotted parcels of land according to their needs but it is very temporary in nature.⁹⁶ This unfortunate situation of disinheriting the females was given effect in cases like *Nezianya v Okagbua*⁹⁷ and *Nzekwu v Nzekwu*.⁹⁸

In 1963 for instance, the Supreme Court held in *Nezianya & Anor v Okagbue and Ors*⁹⁹ that a widow is a recognized member of her late husband's family and not a stranger to it, and thus, permitted to live in her late husband's house but she was not permitted to dispose of the property by giving it out or selling it. Hence, women were stripped off their ownership rights over their deceased husband's properties. This judgment gave more impetus to the old Igbo 'Oli-Ekpe' custom which allowed only the eldest surviving male offspring to inherit their property of their late father and prohibited female inheritance.

In 1997, the Court of Appeal in *Mojekwu v Mojekwu*¹⁰⁰ was bold to hold the 'Oli-Ekpe' custom as being repugnant to natural justice, equity and good conscience. This judgment became a changing tide in the fortune of the Ibo daughters with respect to inheritance. In the later case of *Mojekwu v Ejikeme*,¹⁰¹ the Supreme Court acceded to the right of female children to inherit their father's property. According to Nike Tobi,

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 civilized world in which we all

⁹². *Ejiamike v Ejiamike* (1972)2 ENLR. 11 wherein the Court held that the eldest son can allocate land to his other siblings upon request.

⁹³. (n 56), 361.

⁹⁴. S.N.C. Obi, *Modern Family Law in Southern Nigeria*(Sweet And Maxwell African University Press 1996) 188.

⁹⁵. Ikpeze (n 4), 157.

⁹⁶. Ibid.

⁹⁷. 1963 ANLR 352.

⁹⁸. (1989)2 NWLR (Pt. 104) 373.

⁹⁹. (n 96).

¹⁰⁰. (1997)7 NWLR(Pt. 885)283 CA; *Mojekwu v Ejikeme* (2000)5 NWLR (Pt. 657)402; N. Eze-Obuzor and M.E.

Nwanyanwu, 'Women and Rights to Inheritance: A Critical Analysis' (3)(4)(2022) *Journal of Law and Policy*, 47-56.

¹⁰¹. *Mojekwu v Ejikeme* (n 101).



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 the divine truth, I believe that God the creator of human beings, is also the final authority of who should be male or female. Accordingly, for a customary law to discriminate against a particular sex is to say the least an affront to the Almighty God himself. Let no body do such a thing. On my path, I have no difficulty in holding that ‘Oli-Ekpe’ custom of Nnewi is repugnant to natural justice, equity and good conscience.¹⁰²

In *Ukeje v Ukeje*,¹⁰³ the Supreme Court clarified on the rights of all genders, including women to participate in the inheritance of their parents’ properties. Bode Rhode Vivour ruled that no matter the circumstances of the birth of a female child, such a child is entitled to an inheritance from her late father’s estate. The effect of this landmark judgment which is binding in all parts of Nigeria is that females have an equal stake to inherit their parents’ properties as do their male counterparts. It thus settled beyond doubt the fundamental rights of a female to participate in the inheritance of her deceased father’s estate.

What then is the relevance of the Rivers State Prohibition of Curtailment of Women’s Right to Share in Family Property Law¹⁰⁴ in the light of these decisions of the Supreme Court? This law has simply ended the financial burdens women suffer in first approaching the courts just to validate their rights to inheritance. In *Ukeje*’s case for instance, Gladys Ukeje spent about 31 years of her life in court just to establish her right to inheritance. The tortoise-like justice system in Nigeria is a massive blockade to women who are demanding justice when they are prevented from sharing in their father’s properties. Not every women will have the financial viability to institute an action and pursued same from the High Court through to the Court of Appeal and finally to the Supreme Court for over 31 years. Not every woman will be courageous and persistent enough to stand up for her right like Gladys Ukeje. The justice system is not swift enough for a woman who may not have enough resources and time to spend in litigation.

Many women across cultural and traditional divides are still ignorant of their rights to inherit their fathers’ properties. They are equally not aware that their daughters can inherit properties and relatives are not allowed by the law and judgments of courts to seize their late husband’s properties because they do not have male children. This law has diminished all ignorance and limitations. The law in black and white serves as enough education and awareness purposes to

¹⁰². (n101)., 305.

¹⁰³. (2014) 11 NWLR(Pt. 1418) 384

¹⁰⁴. (n 40).



every woman and female child. It is a signpost pointing them to their rights to share in family properties. To this end, women no longer need to go through the tortoise-like court system to inherit their family property. The law in Rivers State is a warning to relatives of deceased husbands and male siblings that the days of gender marginalization in sharing and distribution of family properties are over.

The Rivers State Prohibition of Curtailment of Women's Rights to Share in Family Property Law¹⁰⁵ has equally given enough impetus and boldness to judges who, *hitherto*, lacked the courage to declare such discriminatory customs and traditions null and void. Rivers State has set the pace for other States in Nigeria to follow. The law has ended the many years of discrimination perpetuated by the absence of a legal framework and policy empowering women and granting them explicit right to land in their capacity as citizens of full legal capacity. This law reinstated the rights of women in various international treaties and conventions.¹⁰⁶ This law has put Rivers State on the international scene in her quest towards the protection of women's right to inheritance. The law has set Rivers State as a mirror that other States in Nigeria must emulate by replicating same law in their respective jurisdictions to end all forms of discriminatory practices against women.

Finally, this paper holds that this piece of legislation is very relevant in the light of the tenets of the Positivist theory of law. Positivist theory of law is a philosophical part of the meaning of law which regards law as a formal concept subject in no way to moral proposition or ideology.¹⁰⁷ The choice of the word 'formal' and the phrase 'subject in no way to moral proposition or ideology' suggest that law is always in an established form of writing. Law making is the primary duty of the parliament or the legislative arm of government.¹⁰⁸ A section of the society cannot afford to continue to suffer marginalisation due to the absence of a legal framework. Women cannot continue to suffer and wait for 31 year for the judiciary to establish a their right to inheritance when the law makers owes the society that duty and can perform this duty within a short period of time. The Rivers State House of Assembly has lived up to its responsibility of law making by expressly stating the law in black and white. This piece of legislation satisfies this requirement.

¹⁰⁵. (n106).

¹⁰⁶. United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979 and the Protocol to the African Charter on Human and Peoples' Rights of Women in Africa (Maputo Protocol), 2003.

¹⁰⁷. C.C. Wigwe, *Jurisprudence and Legal Theory* (Ghana: Readwide Publishers, 2011) 224

¹⁰⁸. CFRN 1999 (n 26) s 4.



It was based on this legal framework that it is now easy for the judiciary to be bold enough to uphold the rights of women to inherit property. For instance, the Rivers State High Court in the case of *Ms. Chinyere Abel & Anor v Mister Goodspower Abel & Ors*¹⁰⁹ on Wednesday, March, 29, 2023 delivered a judgment in favour of four (4) sisters, Chineye, Perpetual, Bertha and Josephine Abel who were disinherited and discriminated against in the sharing of the family properties. Hon. Justice Augusta Kingsley Chukwu who delivered the judgment held that such cultural practices violate the Constitution as well as the recently enacted Rivers State Prohibition of Curtailment of Women's Rights to Share in Family Property Law which gives women the rights to share in family property. The court awarded ₦72,000,000.00 (Seventy Two Million Naira) damages in favour of the claimants, asked the defendants to render public apology to the claimants in a national newspaper and 2 local newspapers and ordered the Defendants to redistribute the estate i=of the deceased to accommodate the claimants adequately.

The relevance of this law nonetheless, this paper identifies some pitfalls. First, for every right, there is a corresponding duty and responsibility. Apart from the right given to women to share in family properties, wives are equally given a responsibility in respect of the acquisition and ownership of family property with husband.¹¹⁰ This equal right and responsibility in the management and administration and disposition of family property with the husband only applies 'where the family property was jointly acquired.'¹¹¹ The above provisions appear to suggest that where a wife did not contribute to the acquisition of such property, and the property was not procured in their joint name, she loses her equal right to management, control and disposition. The Law does not state what 'joint acquisition' means. Will labour or supervision during the development of the property by the wife be accounted for joint acquisition especially under customary law where properties are acquired orally? It appears difficult to establish that a wife contributed to the acquisition of any family property under customary law.

Section 8 provides that equal rights and responsibilities of a wife and as co-owners of a family property applies to a legally married woman and where a woman is divorced or widowed, it

¹⁰⁹. SUIT NO. PHC/3455/CS/2022 of the Rivers State High Court, Port-Harcourt on 29th March 2022.

¹¹⁰. (n 40), s 6(1).

¹¹¹. Ibid., s 6(2).



shall apply where she has not remarried. However, the Law fails to define what constitutes ‘a legally married woman.’ Does it mean marriage under the Act or customary law? This paper holds that a definition of a legally married woman under the Law would have diminished every doubt and imagination. The application of Part 11 to women who are divorced appears to be discriminatory at the expense of the divorced husbands. Properties of most couples are usually settled upon divorce. Therefore, to allow a divorced wife to take part in the sharing, management, administration, enjoyment and disposition of the estate of her divorced deceased husband will amount to double inheritance at the expense of his dependants; that is, relatives or new wife and children of the deceased divorced and new wives. This is irrespective of whether or not the woman is remarried.

What constitutes family property is not defined by the Law. However, community property is defined as every property owns by a community.¹¹² Whether or not this community property is better suited in to the concept of family property, it appears no. However, to diminish every doubt with regards to the meaning of family property, the Law defines property as assets and liabilities owned by the family, husband or parents includes land, buildings...and other such intangible things acquired, inherited, or bequeathed by the family, husband or parent.¹¹³

Finally, the penal provision of an imprisonment term of 5 years ‘or’ a fine of #500,000.00 (Five Hundred Thousand Naira) upon conviction against any person who contravenes the provision of the Law¹¹⁴ appears quite ridiculous and paltry. Section 16 seems to have remedied this inadequacy by placing a duty on such convicted person to in addition to the fine or imprisonment term, surrender to the complainant every asset and other entitlement in the family property that she was deprived of. However, this paper holds that such surrender is only possible where the deprived property has not been disposed of or dissipated by the convict.

CONCLUSION

This piece of legislation has ended the many decades of property marginalization of women in Rivers State by prohibiting all forms of discrimination and bestowing on women and female children the right to share in family property. The Law equally restores the dignity of women by prohibiting any act that require or compel a woman to take an oath to prove that she

¹¹². (n 40), s 17(1).

¹¹³. Ibid.

¹¹⁴. Ibid., pt iv, ss 12, 13, 14 and 15.



contributed to the acquisition of any family property. It is an elevation on the social and economic status of women. It is a giant legislative measure that put in place a legal framework for the protection of women's right and closing the gender gap and imbalance in the State.

RECOMMENDATIONS

It is recommended as follows:

1. Part II of the Law needs to be amended. Specifically, section 8 should be amended so that a woman who is divorced, whether she is remarried or not, will not be allowed to share in her divorced deceased husband's property.
2. The phrase, Section 17(1) of the Law needs to be amended to incorporate a clear definition on what constitutes 'family property.'
3. Section 17(1) of the Law requires an amendment to include an express definition of what constitutes 'a legal marriage.'
4. Part IV of the Law dealing with penal provisions needs to be amended to include more stringent penal terms that will serve a deterrent to relatives and male children of a deceased husband or father. Specifically, the fine should be increased to #10,000,000.00 (Ten Million Naira). Such fine should not be an option but an addition to the term of imprisonment. This amount would be able to put the disinherited female child or woman in her former position especially where the property had been disposed of or dissipated by the relatives or male siblings and cannot be surrendered.