



## MODES OF INTESTATE SUCCESSION AMONG THE IKWERRE NATIONALITY; A COMMENTARY, A CRITIC AND AN EVALUATION.

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### ABSTRACT

The concept of customary rules of intestate succession is one very much known and litigated aspect of our laws. This scholarly examination undertakes a comprehensive analysis of the customary law governing succession to intestate estates within the Ikwerre nationality, with particular emphasis on the intricacies surrounding the demise of a father, a woman, and a polygamist. Situated within the context of Ikwerre cultural and traditional norms. I had observed in this work the history of the ikwerre ethnicity which contrary to modern suggestions that it has an Igbo origin, actually proceeded from the historical city of Benin and shares historical ties with the Ekpeye and Orashi people. This research elucidates the complexities and nuances inherent in the customary law of succession, highlighting the variegated modes of succession and the attendant implications for the distribution of intestate estates. Through a critical evaluation of existing literature, statutes, and judicial precedents, this study aims to contribute meaningfully to the burgeoning discourse on customary law and succession within the Ikwerre nationality. The findings of this research endeavour to provide actionable recommendations for legal practitioners, judges, and policymakers seeking to navigate the labyrinthine complexities of customary law in the Ikwerre nationality, thereby ensuring that the proprietary rights of beneficiaries are safeguarded and that the cultural integrity of the Ikwerre people is upheld. One of such recommendations of which is the fusion of the Egbema, Ekpeye and ikwerre climes into one unity forum to be termed the Alalaka's to serve as an umbrella of unity, the need for modification of those customary rules to adopt to modern complexities and the need for recognition of this customary practices in Our judicial system. Ultimately, this research seeks to illuminate the intersections between customary law, cultural heritage, and the administration of justice within the Ikwerre nationality, thereby advancing a nuanced understanding of the intricate dynamics governing succession to intestate estates in this context.

**KEY WORDS:** Customary Law, Succession, Intestate Succession, Ikwerre Nationality, Intestate Succession&Ikwerre Nationality.

### 1. INTRODUCTION

The focal point of self-actualization as a goal of every society is ensuring the availability of the material requisites of life. Indeed, all other iotas of self-actualization could be achieved through it. One of the ways in which in law, material items could be received or transmitted for receipt is through “Succession”. Succession may simply mean the transmission of the rights of the deceased in an estate or his obligation to a beneficiary who thereafter inherits the interest in such estate and the duty of such obligation. But inheritance strictly refers to property received from an ancestor under the laws of intestacy.<sup>1</sup> These concepts only apply to property which is the subject of individual ownership; as opposed to land held under family ownership.<sup>2</sup> Succession could be testate or intestate. Explaining this

<sup>1</sup> B A Garner (ed), *Blacks laws Dictionary*, (A Thompson Reuters Publication) 1445

<sup>2</sup> J F Fekumo, *Principles of Nigerian customary law* (F&F Publishers) 330



two forms of succession Fekumo noted that the succession to a landowners property will depend on whether the person had expressed in advance the mode of distribution of his property or the specific individuals he wants to obtain shares in his property, in writing.<sup>3</sup> In this vein, if he had made a valid will in writing conferring property rights on his selected persons before his death, succession is said to be testate. If he has not made a will it is said to be intestate.

Arguably, there is no problem where the succession is testate because where the deceased made a valid will before his demise the property will be shared according to the terms of the will. However, problems may arise where the succession is intestate which in such cases the property will be distributed according to the law of intestacy governing the distribution of his property.

Notably, the ikwerre has a peculiar law of intestate governing the distribution of the property of a person who dies intestate and it is couched in the customs and traditions of the people regarded in ikwerre as “*Ome n’eli*.”<sup>4</sup> This laws of intestate distribution of property has notably evolved to cope with societal standards while retaining some pertinent traditions with respect to the distribution. However, before commenting on the ikwerre law of intestacy, it is relevant at this point to clarify some concepts which underlies our discourse. This discussion on this concepts will be done having in mind that the body of this work will not solely focus on land but on properties generally.

## 2. MEANING OF CUSTOMARY LAW

In a long run there has been a number of difficulties encountered in the conception of what customary law entails. A conception of customary law by those who practise them and conception of customary law to by- standers who observe the practise would be a different description all together. Also the conception of customary law during a modern regime and a primordial regime would obviously vary. Thus in the first instance those who practise a custom may define it as right and justiciable while by-standers may have a contrary opinion; same as in a modern era where there are lots of developments and a primordial era where those developments were not in view. Generally, their conception of what the term entails would vary. To Malemi, customary law is the body of customs which from long use have acquired the force of law among the people.<sup>5</sup> Within the context of Nigeria, it is the indigenous law of the various people’s or ethnic groups of Nigeria, in the form of religious law, English law, statute law and so on. Customary law is the indigenous laws of the various people’s of Nigeria and Africa as opposed to English law, statute law and so forth.<sup>6</sup>

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<sup>3</sup>Ibid.

<sup>4</sup>Answers to Question at Interview with HRH. Eze Amb. Sunny Weli Chuku, Eze Elelenwo Etor, Rivers State.

<sup>5</sup>Ese malemi, *The Nigerian Legal Ssystem* (Rev. Edn: Princeton&Associates Publishing Co. Ltd.2021) 107.

<sup>6</sup> Ibid.



Obaseki, J.S.C in the case of *Oyewumi v Ogunsesan*<sup>7</sup> defined customary law as follow;

customary law is the organic or living law of the indigenous people of Nigeria regulating their lives and transaction. It is organic in that it is not static. It is regulatory in that it controls the lives and transaction of the community subject to it. It is said that custom is the mirror of the culture of the people. I would say that customary goes further and imports justice to the lives of those subject to it.

This definition tends to cover the aspects of customary law and it's peculiar characteristics. Customary law to him is organic because it is dynamic and prone to change and it is regulatory because it governs the people in their daily lives. It is worthwhile to note that the Nigerian constitution actually recognises the applicability of customary law through its provisions for the establishment of the customary court of appeal at both state and federal level<sup>8</sup> and also one of the requirements for the appointment of justices to the court of appeal and the supreme court is that there are persons learned in customary law and Sharia law.<sup>9</sup> Thus, it is not the interest of the Constitution to erode customary law, however, the courts would nullify any customary law which is unconstitutional, repugnant to natural Justice, equity and good conscience, incompatible with existing law or contrary to public policy.

Much more the idea of customary law is better appraised within the context of its characteristics of which one paramount entitlement of customary law is it's dynamism(ability to change). Quite catchy is the description of the dynamism of customary law by the courts in *Balogun v Oshodi*<sup>10</sup> where kingdom C.J said 'I am aware that native law and custom are living things and may change. Living things grow and change, so customary law is organic and flexible because it grows to keep pace with changes in society'. In *Alfa&Ors v Arepo*,<sup>11</sup> DuFFus J observed that customary law is not, however a static law and in my view, the law can and does change with the times and the rapid development of social and economic conditions.

### 3. MEANING OF SUCCESSION

According to Ichechi,<sup>12</sup> succession simpliciter, is the process of transmitting rights and duties of a deceased person pertaining to his estate, office and dignity to persons who succeed him such as his heirs, children, spouse or relatives in a manner sanctioned by law. After thus is done, it can now be said

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<sup>7</sup> (1990) NWLR 182 at 207.s

<sup>8</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended), Ss 280 and 265.

<sup>9</sup> Ibid., s 288(1) and (2).

<sup>10</sup> (1929) 10 NLR 36 at 57

<sup>11</sup> (1963) WNLR 95 at p. 97

<sup>12</sup> S Ichechi, *Testate And Intestate Succession In Nigerian Customary Law*, (Unpublished, Rivers State University Faculty Of Law Project 2024) 1



that those properties now belong to the beneficiaries that is, the properties have been inherited by the said beneficiary.

Notably, succession can be testate or intestate depending on the circumstances or the state of affairs of each deceased person. While testate succession refers to the affairs of a deceased person who made a will before his demise, intestate succession on the other hand obtains when the deceased person did not make a will before his death. The properties of a person who made a will before his death will normally be distributed in accordance with such will, but there is always a problem of fact for a person who died intestate without making a will. In such an instance, the splitting of such properties will considerably depend on the personal law of the deceased.<sup>13</sup> But the personal law of the deceased in a multifaceted legal environ may be difficult to discern (that is a system with Customary law, legislations and Islamic law operating harmoniously). Nevertheless, some yardsticks have been developed to measure the operational law in the case of intestate succession. We shall consider that when we discuss the concept of intestate succession.

However, whatever the rules of succession in any given society, they have one unique characteristic, which has been appropriately stated by Okoro;

A distinctive characteristic of the customary law of succession is the principle that a successor inherits not only the assets in the estate but also the liabilities in the estate. This means that a successor assumes the duties of the deceased with regards to the maintenance of the deceased dependents. In this way customary law of succession ensures that a deceased duties and obligations survive him... Customary law of succession in which intestacy is the norm, ensures that only the deceased successors within the lineage, and no one outside it, stands to gain or lose materially from the death of member of his lineage.

#### 4. INTESTATE SUCCESSION

As we had earlier clarified, where a person dies without making a will he is said to have died intestate and the property will be distributed according to the law of intestacy governing the distribution of his property. According to Fekumo, three patterns of succession and distribution of intestates property have been recognized. These are patrilineal, matrilineal and bilineal.<sup>14</sup> In the patrilineal pattern of succession, the line of inheritance is traced through the father and all those descended from a common ancestor from a patrilineage. In such case the heirs are the patrilineal next-of-kin. Under the matrilineal system, a child belongs to his mother rather than his fathers family; thus when a man dies, his property is not

<sup>13</sup> *Ayisatu v yanrata* (1945) 18 NLR 5.

<sup>14</sup> J.F Fekumo, *Principles of Nigerian Customary Law* (F&F Publishers) 332.



inherited by his own children but by his maternal relations.<sup>15</sup> In the billineal or double- descent pattern, each of the two lineages that is matrilineal and patrilineal, succeed to different parts of the estate.<sup>16</sup> Though, it appears that the modern system of inheritance does not follow this patterns of classification in some tribal units; we will limit our discussion to the ikwerre nationality.

However, the application of the customary law of succession is complex because customary law varies from place to place and the principles which has been adopted is that the applicable customary law in a given case is the one to which the intestate was subject at the time of his death, irrespective of where the property is situated or where the death occurred.<sup>17</sup> It appears however that Sagayhad a more direct approach to the rule when he opined:

...if the intestate person was an indigenous Nigerian and he did not contract a Christian or Act marriage or even if he did, and no issue or spouse of such a marriage survived him, his estate will be distributed in accordance with the relevant Customary law. If the intestate was a Muslim, then Islamic law would govern. Also, where a person who is subject to Customary law or Islamic law does intestate, it is his personal law that will apply to the distribution of his property and not the *lex situs*.<sup>18</sup>

This submission suggests that the yardstick for determining the operational law for the transmission of property, is the law under which marriage was contracted. With due respect to the learned and revered author, the writer finds this position as not explicit as it does not apply to cases in which the deceased had no spouse but had adopted legally a child to his name and in such case the operational law may be difficult following this rule to discern. The proper position should be the law in which the deceased conducted most of his affairs, by this I mean the personal law of the defense and since marriage under the Act is an indication that the deceased had usually carried out his activities using Legislations it should be a persuasive consideration for reaching a conclusion for the operational law. This position is supported by the case of *Ayisatu Tapa v Yanrata Kuka*,<sup>19</sup> where a moslem from Nupe in Northern Nigeria leaving a house in Lagos, it was held that the applicable law was the Moslems law (which is also customary law) which was the deceased personal law, and not the customary law prevailing in Lagos.

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<sup>15</sup> N Okoro “*Intergration Of The Customary And The General*”

<sup>16</sup> Ibid

<sup>17</sup> *Olowu V Olowu* (1985)12 S.C 84 At144.

<sup>18</sup> E I Sagay *Nigerian Law Of Succession; Principles, Cases, Statutes And Commentaries* (1<sup>st</sup> Edn: Malthouse Press Ltd, 2006).

<sup>19</sup>(1945)18 N.L.R.5. See also *Re white* (1945)18 NLR 70.



Nevertheless the submission by the learned author Sagay appears to be somewhat supported by the case of *Salubi v Nwariaku*.<sup>20</sup>

## 5. THE LOCATION OF THE IKWERRE NATIONALITY

The Ikwerre people are found in the Rivers State of Nigeria. The Ikwerres are found in four local government areas of Port Harcourt, Obio/Akpor, Ikwerre and Emohua. They are essentially farmers specializing in the production of palm oil, hunting and cultivation of cassava, yam, cocoyam etcetera.

According to Ndimele and Williamson,<sup>21</sup> the Ikwerre people belong to the *Igboid* language group and are in fact the "largest language of the *Igboid* group represented in Rivers State". The Ikwerre language is not monolithic but is rather made up of mutually intelligible though varying dialects. Notably, historically the term ikwerre was described as "*Iwhnurohna*" some have suggested that the popular name "Ikwerre" was given to it by colonial masters for ease of pronunciation and reference. The learned historian, Alagoa while discussing historical origins of the Ikwerre people stated that the traditions collected from Ikwerre communities in recent times adopt two different history of migration. While one tradition claims their descent from Benin naming their ancestors Ochichi, Ekenta or Wezina (depending on the Ikwerre area) as being related to Akalaka, the acknowledged Benin Prince and founder of the Ogba ethnic group, the other group suggest the migration of the group from Arochukwu in Igboland.<sup>22</sup>

However, the former history of the Ikwerre ethnic tribe is better accepted than the latter by Ikwerre ethnicities and traditional rulers.<sup>23</sup> Whichever, way one unites is that Ikwerre has its peculiarities as distinct from its historical lines.

However a commentary of the history of Ikwerre was advanced by a learned professor and historian Amadihe noted thus:

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<sup>20</sup>(2003) ALL NLR 548. But this authority does not directly support his assertion since the Application of customary law was not in issue what was in issue was whether the operational law would be The marriage Act or the Bendel state Administration of Estates Law; *Obusez v Obusez* (2001)15 NWLR (PT.736)377 CA

<sup>21</sup> O Ndimele and K Williamson Cited in E A Algoa and A A Derefaka (ed) *The Land And People of Rivers State*;

*Eastern Niger Delta (Onuoha Research Publications,2002) 149-173*

<sup>22</sup>Ndimele and Williamson(n 21).

<sup>23</sup> (n 4).



Majority of the Ikwerre settlements have their roots traceable from the old Benin Empire.” Iwhnurohna people descended from the ancient Bini Kingdom. The name of the grand ancestor is Akalaka. Their relations in Rivers State are Ekpeye and Ogba people. The reigning Oba of Benin when Akalaka, the ancestor of Ihruoha (later called Iwhnurohna) fled was Oba Ewuare (Ogwaro). Akalaka, a member of the Benin royal family, fled in the 13<sup>th</sup> century on allegation of plotting assassination of the Oba. He died in 1462. Iwhnurohna his third son settled east of the Sombrero River by 1538 AD, as detailed below.

Chief N.M.T. Solomon in 2004, native of Ikodu Ubie in Ekpeyeland, in his narrative draws heavily from the now authenticated written historical records delivered by various informed sources including “Eketu (Weber) of Ubeta, assumed to have lived for over two hundred (200) years as the oldest man in all Ekpeye, Ogba and Iwhnurohna (or Ikwerre), at that time (and) was asked to narrate the history and customs of Ekpeye people” as unfolded in his lifetime. Here is what he said, which has been validated by the accounts of the current generation through responses to our questionnaires and direct interviews thereby increasing our level of confidence on the data: Ekpeye, born in Benin, was the first of the three sons of Akalaka. While in Ndoni, he married a second wife to gain the love and favour of the people. The new wife gave birth to a son, which he named Ogba. Akalaka was still in Ndoni when his first wife, the mother of Ekpeye, gave birth to his third son called Ihruoha (Ikwerre). Similar historical fact by J.N. Olise in 1971 averred that: “Akalaka, a member of the Benin royal family, fled with his wife from Benin to Ndoni, a community located close to the River Niger, to save the life of his new born baby (Ekpeye) ... While at Ndoni, Akalaka took a second wife. ... Akalaka had two sons, Ekpeye – born to him by his Benin wife, and Ogba – born to him by his Ndoni wife.

According to Otuwarikpo in 1994:

After the death of Akalaka in 1462 AD, his two sons, Ekpeye and Ogba had conflict, which compelled Ogba, the younger son, to move northwards where he founded Ohiakwo (Obigwe) and settled with his family. Ekpeye who remained at Ula-Ubie had seven sons – Ubie, Akoh, Upata, Igbuduya, Ekpe, Awala and Asa. The last three sons – Ekpe, Awala and Asa crossed to the other side of Sombreiro River (present day Ikwerreland and settled there since 1538 AD.”

He added that:



Ekpe migrated to present day Rumuekpe and spread through Elele (Alimini), Ndele, Rumuji and part of Ibaa. Awala migrated to present day Isiokpo...

Amadi-Nna in 1993 also said Akalaka migrated with his half brother called Ochichi from the area of Benin Empire. Ochichi sons were Ele (Omerelu, now Elele), Elu (Elumuoha, now Omerelu), Egbe (Egbeda) and Mini (Alimini, Isiokpo). The crucial point here, which is of great importance in tracing the joint origin of the ancestors of the Old Ahoada Division (in the Governor Diète-Spiff administration), is the mention of the number of children that Akalaka had, namely: Ekpeye, Ogba and Ihru o ha (Ikwerre). It is noteworthy that the pedigree and name of Ikwerre people, Iwhnurohna, obviously took its root from this original name – Ihruoḡha. Chief Solomon therefore establishes a very vital historical link, which has been missing in literature on Ikwerre origin that would assume more significance in the discourses of Ikwerre genealogy in the future – the fact that Akalaka was the direct father of Ihru oḡha (Ikwerre). Iwhnurohna, in Ikwere parlance, means the face of the community (town, city or village). Nigerian colonial history records that the name “Ikwerre” was given by the colonial administration when they wanted to acquire the Rebisi waterfront to build the wharf. Using an Ibo interpreter to talk to the illiterate Rebisi (Port Harcourt) chiefs, they asked them: Would you permit us to use the waterfront to build the wharf for ships to berth? And they answered: A KWERULEM , meaning – “We have agreed.”

What the white-man was hearing was “Ikwerre,” so he recorded it in the official gazette that the IKWERRE PEOPLE have agreed for the colonial administration to build the wharf. And since it was the official record of government, the name Ikwerre became the name of the Iwhnurohna people in all official documentations till date. Similar cases of Anglicization of native names in the NigerDelta region by the colonial administration are Benin for Bini, Okrika for Wakrike, Degema for Udekema, Abonnema for Obonoma, Brass for Gbara sni, Bonny for Ibani, Pepple for Perekule, Ahoada for Ehuda, and so, Even so, “... there were dissenting voices, ... who believed that Ikwerre origins lay outside Igbo land, ... in the Benin Kingdom of old. It is, therefore, obvious that the interminable debate about Ikwerre origins and migrations including the repudiation of the Igbo tradition is not a phenomenon of the post-civil war period. The controversy, as it were, is not necessarily the product of the present political realities wherein



groups which hitherto were seen to have cultural affinities now find themselves in different states or administrative systems.”

The Ogbakor Ikwerre Convention, a cultural organization of Ikwerre people, in a paper presented to the Human Right Violation Commission headed by Rtd. Justice Chukwudifu Oputa on 10 October 2001, said: “Ikwerre ethnic nationality is not and has never been a subgroup of any other tribe in Nigeria including Ndi-Igbo. There is no doubt that the advent of the British and later regionalization put Ndi-Igbo at the helm of affairs in Eastern Nigeria. This brought Ndi-Igbo into Ikwerre land. In course of time, the Igbo took advantage of their position in the then Eastern Regional Government to grab land in Ikwerre and occupy political positions such as the mayor of Port Harcourt. In the process, Ikwerre along with other minority groups were marginalized and driven to the background.” Professor Godwin Tasié noted that in 1913 the Rt Rev Herbert Tugwell, the Anglican Bishop on the Niger, undertook an experimentation tour of Ikwerre towns and villages assumed to be Ibo-speaking to test the Union Ibo Bible Nso being introduced in Iboland. “Tugwell discovered from the tests he carried out that although the Ikwerre were often regarded as Ibo... the Union Ibo Bible translation, surprisingly, was not easily understood by the Ikwerre.” This is obviously why Igbo vernacular was compulsorily introduced and taught in all schools in Ikwerre land before the Nigerian Civil War to the assimilation (i.e. destruction) of the Ikwerre language.

This also obviously led to the Rumuomasi Declaration in 1965. ” ... in their meeting at Rumuomasi in 1965 the Ikwerre had, under the umbrella of a highly promising new body that was to get the Ikwerre together as a people of new and clearer vision, they had declared themselves as a people of the distinct identity of Ikwerre Ethnic Nationality – not Ibo, not Ijo, not anything else but Ikwerre, Iwhnuròhna. This was the historic Rumuomasi Declaration of 1965 (G.O.M. Tasié, 2000). The full implication is that Ikwerre people began to assert themselves forcefully as an ethnic nationality of their own and not Ibos or Ijos, and efforts were made to revert to the original Ikwerre names for families, villages, communities and landmarks. For instance, there was the change from Umuola to Rumuola, Umuoro to Rumuoro , Umukrushu to Rumuokwurusi , just to name a few.”<sup>24</sup>

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<sup>24</sup> E Amadi, *History of Ikwerre People In Nigeria*, Edo World.<Safari.Com>



From the historical considerations of the ikwerre people it is clear that contrary to the position that the ikwerre people are of Igbo origin they are actually not but can trace their ancestry to the great Benin kingdom and the language similarities was as a result of religion. It appears that one can now from the learned professors commentary see the foundation of the similarities in tongues between the ikwerre and the Igbo clans.

#### **(A) Modes of Intestate Succession Among the Ikwerre Nationality**

Land is so important to the Ikwerre ethnic nationality to large extent for example, the Ikwerre natives regards *Ali* (Earth) as a deity.<sup>25</sup> The Ikwerre inhabits four Local Government Areas in present day Rivers State of Nigeria namely: Emohua, Ikwerre, Obio/Akpor and Port Harcourt City. The Ikwerre ethnic nationality is arguably the most vibrant in agriculture and the largest

From times stretched far back as old as the origin of Ikwerre people could be traced, land has always been the crux of their economic and social and native machinery for existence.

Historically, the Ikwerre ethnic people have developed a relatively sustainable system of customary and social mechanism by which fair and equitable distribution of lands and other properties were guaranteed along various hierarchy of communal and family administration.

"The relationship between the group and the land it held was complex, since the rights of individuals and the group with respect to the same piece of land often co-existed within the same social context."<sup>26</sup> The indigenous Ikwerre people of Nigeria has a long custom of ancestry which involves handing down of lands from one generation to the other in a family and community configuration. Therefore, many in Ikwerre communities dies intestate with their personal laws being used to decide and apportion inheritance of land.

Formerly, under the ikwerre customary rule of intestacy, on the death of the deceased, the property devolves to the family head known as "*Ekpara*," for the benefit of himself or other siblings." The status of "*Ekpara*" may be acquired by birth or subsequently. Consequently, the first male child of the deceased is the *Ekpara*. However, where the *Ekpara* dies, during the lifetime of his father, the status will devolve on the next male son of the father called the "*Orlu*." The *Ekpara* inherits his father's

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<sup>25</sup> Amadi (n 24) in some localities land is described as "*Eli*".

<sup>26</sup> Oludayo Gabriel Amokaye, *The impact of the Land use Act On Land Rights in Nigeria*, in Home, Robert (2011)(ed) *Local case studies in African land law*, (Pretoria University Law Press (PULP))



personal “*Owhor*” and other objects of worship. In cases where a title survives the holder, the *Ekipara* inherits the father’s title, he is also entitled to the insignia of the hereditary office which he has no right to sell, they being family property.<sup>27</sup>

The position before that an *Ekipara* is entitled to all the properties of the father and that he can decide whether to share it or not has changed. Now the distribution of properties are done in a family meeting; however some properties of the deceased man are still reserved for the first son. Note that the *Ekipara* cannot inherit the “*Obiri*” of the father because it is regarded as family property, he can only inherit his fathers dwelling room and parlour. Today it appears that his inheritance of the fathers room is only effective when the wife of the man is dead. What is being said here is that ikwerre custom today how distribute properties unlike the past practice where it was automatically conferred on the first son.

Preliminarily it is noteworthy that succession to the intestate real estate is determined by the nature of the particular property. The *Ekipara* inherits as of right of the late father’s dwelling house called the “*Oronda*” and immediate surrounding compound.<sup>28</sup> Moreso, in ikwerre customary law, only one recognized mode of distribution of the intestate estates is recognized – per capita. In ikwerre local custom this mode of distribution applies both in polygamous homes regardless of the number of wives<sup>29</sup>. In distribution per capita, the estate is distributed amongst the individual sons. Notably when distribution is done per capita, heirs take their respective shares in order of seniority so that the eldest son has the right to take before others. In the cases of plants on the land, as a general rule, economic plants and trees are inherited collectively by the sons of the deceased. Again with regards to farm produce, the sons of the deceased are entitled to inherit them. However, note that the ikwerre customary law allows separate ownership of land on one hand and Economic trees planted thereon on the other hand. Thus the distribution of the intestate economic plants and trees will depend on whether they are owned along with the land. However, there is a pattern of distribution for which this distribution of property per capita is subject to.

Firstly, the brothers of the deceased can come to an agreement on how they are to share the property in a family meeting in the presence of witnesses. However, where there is a dispute on how the property may be shared the Elders of the community or the family may be called to intervene in making the decision. In modern times, the validity of such native arbitration will be subject to the consent and submissions of the parties to the native arbitration and absence of coercion. Where parties have consented, the Elders which may be the “*Oji – Owhor*” will call for a family meeting called

<sup>27</sup> (n 4); Although in most parts of Ikwerre like Elelenwo the title of an Eze does not succeed him.

<sup>28</sup> *Osulu v Osulu (2003) ALL NLR 525 (SC)*.

<sup>29</sup> (n 4).



“*Odasikata*” with them presiding and inquire about the properties of the man. Therefrom, the property of the man ascertained asides the customary rites of the first son, will be divided into partitions with the share of each ranking according to seniority of the sons. Note that properties of the man like the “*Obiri*” cannot be shared to any one.

Further from this, where the man dies without a male child and without alienating his property to his daughters, then the property goes to the deceased younger brothers. Also note that where the only son of a man is an infant, then in such case the property may be entrusted on any of the family members in trust for the infant. The member holds the property for the benefit of the young child.

## **6. INHERITANCE BY A FEMALE UNDER THE IKWERRE NATIVE LAW AND CUSTOM**

Further more, generally speaking, the girl child under the Ikwerre native law and custom does not have any recognizable rights of inheritance in her father's house. She is not regarded as an equal to the boy child who in the absence of the father can hold the homestead while the girl child is expected to leave her father's house upon maturity and marry into another family who will 'own' her so long as the bride price paid on her remains with her family under the concept of '*nye nwe nwere nwe ekwua*' (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).

The girl child under ikwerre native law and custom cannot hold the family 'owhor' (symbol of authority and kingship). They cannot be made the family chief or head even in the absence of male children. Formerly, in history a woman who is married under Ikwerre custom has no right to inherit any property of the husband at his demise because she is regarded as the property of her husband's family to be inherited by her husband's next of kin. This is no longer the customs of ikwerre, the woman is not regarded as a chattel now but as a part of the man's family.<sup>30</sup> She is allowed access to family land for farming purposes to take care of her needs and those of her immediate family. She can neither inherit such lands nor build on them as of right nor transfer title to them to another person. The women have no right to share in the family property in any form and are not allowed to join the males in any discussions affecting the family or carryout any rituals or ceremonies on behalf of the family. Among the Omuanwa people of the Ikwerre

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<sup>30</sup> (n 4).



extraction the girl-child does not inherit landed property at all; she is only entitled to a share of her mother's personal property and if unmarried stays in her mother's kitchen at the pleasure of her brothers who at the demise of their parents become entitled to everything.<sup>31</sup>

Also in cases, where she remains unmarried, the deceased by a Declaration during his life time, that is, *inter vivos* may alienate the property to the daughter or at his death bed in presence of witnesses in which case, it will operate as a nuncupative will. In this case where the man by words of mouth alienate to the property to a daughter the operational rule will be that a property shared to any child when the deceased was alive cannot be reshared.<sup>32</sup>

The children born out of wedlock by unmarried daughters in Ikwerreland are regarded although their rights to inheritance of the family stool and kingship are qualified especially where their mother's unmarried state is not by the design of the father. They do not enjoy commensurate rights of inheritance and succession with products of married couples. Any child born out of wedlock by an Ikwerre man may not have a right of inheritance in the father's family except he is acknowledged by the biological father as a son in his life time. Children who fall within this group may identify with the mother's family and enjoy limited rights of inheritance where the biological father's acknowledgment is lacking.

### **Where the Demise Owner of The Intestate Estate is a Woman**

In discussing the Ikwerre intestate customary mode of distribution, it should be borne in mind that, the Ikwerre customary law of succession is bilineal subject to some qualifications. In the bilineal or double-descent pattern, each of the two lineages that is matrilineal and patrilineal, succeed to different parts of the estate.<sup>33</sup> Though, it appears that the modern system of inheritance does not follow this patterns of classification in some tribal units; we will limit our discussion to the Ikwerre nationality.

In the ikwerre customary rule of intestate succession it is a bilineal system. properties of the man are inherited by his children including his step children which are derivable from him. This equally applies to the woman. However in the case where the demise owner of the intestate estate is a woman, her property first goes to her husband based on the belief that *Nye weru newer we ukwua* (meaning that he who married a woman owns her belongings) however where the husband dies her properties will be

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<sup>31</sup> G O Akolokwu 'The Injustice Of Customary Law To Women; X-Raying Aspects Of Ikwerre Customary Law' (2016)(8)(2) *The Journal Of Jurisprudence And Contemporary Issues*, 27

<sup>32</sup> (n 4).

<sup>33</sup> N Okoro, "Intergration of the Customary and the General Customs"



shared amongst her own children from her side. Thus if her husband married more than one wife, the children of the other wife cannot benefit from that property. This is because her property is her family's own and not that of the husbands.

### **Where the Demise Owner of The Intestate Estate is a Poligamist; Discuss The Modality of the Succession Of Estate**

In Ikwerre customary law, only one recognized mode of distribution of the intestate estates is recognized – per capita. Note that if applied per stripes first, that is the first sons of all the wives get a share in the property first and then distribution per capita for the other children. In Ikwerre local custom this mode of distribution applies both in polygamous homes regardless of the number of wives.<sup>34</sup> In distribution per capita, the estate is distributed amongst the individual sons. Notably when distribution is done per capita, heirs take their respective shares in order of seniority so that the eldest son has the right to take before others.

Under the Ikwerre native law the property of an intestate deceased who is a polygamist will be shared according to the sons of the woman in the order of seniority. Thus where a wife of the man does not have a male child, she will not be entitled to any property from the deceased estates.<sup>35</sup> This is also true where all her children are females.

## **7. ELIMINATION OF THE IKWERRE CUSTOM AGAINST FEMALE INHERITANCE**

### **Judicial Intervention**

As noted earlier in the customs and tradition of the people of Ikwerre the right of a woman to inherit property from a deceased estates was alien to them. In modern times however, with the influx of reasoning into the legal system it has been reasoned that a custom which discriminates girls from inheriting their father's property is barbaric and should be abolished.<sup>36</sup> The supreme court of Nigeria had in its landmark and celebrated case of *Ukeje v Ukeje*<sup>37</sup> now guaranteed the rights of female children to the inheritance of their fathers property. The court in the instant case affirmed that the daughter of an intestate member of the Igbo tribe which is patrilineal, was entitled to inherit her father's landed property. In this case the widow and the son of an intestate member of the Ibo tribe, which has a patrilineal inheritance system, obtained letters of administration for his estate after his death. The daughter objected and her claim for a share of her father's estate was upheld. The supreme court of

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<sup>34</sup> (n 4).

<sup>35</sup> Ibid

<sup>36</sup> G O Akolokwu 'The Injustice Of Customary Law To Women; X-Raying Aspects Of Ikwerre Customary Law' (2016)(8)(2) *The Journal Of Jurisprudence And Contemporary Issues*, 27.

<sup>37</sup> (2014)11 NWLR (PT 141)



Nigeria unanimously annulled the Ibo customary law which disentitles female inheritance of land because it breached Section 42(1)(2) of the Nigerian Constitution which relates to fundamental rights against discrimination.

This is a welcome development to the Nigerian customary law Jurisprudence. However this decision was viewed with dissatisfaction by some learned authors.<sup>38</sup> To them it only abolished the patrilineal inheritance systems in most customs but it have not addressed the matrilineal inheritance system predominant in most tribes in Nigeria. However as submitted that despite the limitations of the Ukeje's case, it's effect is the recognition of the right of the female child to the properties of her father, although nothing in this case or any other case as at today purports to abrogate the exclusion of certain properties which by customs is reserved for certain class of person such as the dwelling house of the deceased otherwise referred to as "Obi" and the agriculture crops. What is being said there is that a female child has a share in her father's intestate property.

Also with reference to the Ikwerre custom, in *Ordu v Elewa*,<sup>39</sup> 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.”

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<sup>38</sup> Maureen O'Sullivan, Rose Ohiana Ugbe, Mabel izzi, Emuobo Emudainonwo and Uche Jack osimiri, *Annulment Of Discriminatory Custom And It's Impact On Matrilineal And Patrilineal Societies/People* (African Journal Of International And Comparative Law)235; It was noted thus “it is doubtful if Ukeje's case abrogated

*the 90 percent patrilineal and 10 percent matrilineal communities Customary inheritance laws in ibo land. It is unclear whether their cultural diversities of inheritance have been merged into a hybrid system.*

<sup>39</sup> (2018)17 NWLR (pt. 1649) 514 at 547



The trial court however found that the plaintiffs were descendants of, and were claiming through Wadanma's husband who was a son of Owhani 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. Although this case appears to be a modification and not a total abolishment. In this case it was held that male children born to an unmarried woman are entitled to a share in the grandfathers property.

**Augie, JSC** expounds on this custom thus;

Fortunately, I had the privilege of having stayed in Elingbu 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 am. 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 Owhor holder ship....<sup>40</sup>

Customs such as that stated above are clearly contrary to the provisions of the Nigerian Constitution.

#### 8. CONSTITUTIONAL INTERVENTION:

The rights of a person to be free from discriminatory treatments is a fundamental right captured in Section 42(1)(2) of the Constitution.<sup>41</sup>This section provides that

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:-<sup>42</sup>

Be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject;<sup>43</sup> or

Be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other

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<sup>40</sup> (n 31), 544

<sup>41</sup>Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>42</sup>Ibid, s 42(1).

<sup>43</sup> Ibid, s 42(1)(a).



communities, ethnic groups, places of origin, sex, religious or political opinions.<sup>44</sup>

No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth<sup>45</sup>.

Thus the constitution of Nigeria condemns discrimination against any person by reason of his sex or religion or practice even where this is done by the government itself or by its laws or by any person. This is a fundamental right and it applies equally to females in inheritance cases.

## 9. STATUTORY INTERVENTION:

In Rivers State, statutorily, this custom discriminating against a woman has been abolished by the and the Rivers State Prohibition of the Curtailment of Women's Right to Share in Family Property Law.<sup>46</sup>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 eliminate discrimination against women. 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 discrimination and the right to dignity. 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.

Part II of the law elaborates on the property rights of women. Section 6 bestows on a wife equal rights as her husband with respect to the acquisition, ownership, management, administration, enjoyment and disposition of family property. Section 7 secures these rights for widows. §8 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. Section 9 protects the woman from being compelled to take an oath to prove co-ownership of any family property.

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<sup>44</sup> Ibid, s 42(1)(b).

<sup>45</sup> Ibid, s 42(2).

<sup>46</sup> Rivers State Prohibition of the Curtailment of Women's Right to Share in Family Property Law No 2 of 2022.



Sections 10 and 11 give women equal responsibilities as men to express themselves in respect of family property.

## 10. CONCLUSION

This research examined the modes of intestate succession of interstate estates under Ikwerre nationality. The study analyzed the distribution of property among family members and relatives upon the demise of a loved one, highlighting the complexities and nuances of Ikwerre customary law. The research revealed the following key findings in the Ikwerre native custom; the eldest son called the “*Ekpara*” inherits a larger share of the estate including his customary rights such as the fathers “*Owhor*,” the surviving wife of the man is entitled to the man’s room till her demise; the estate is distributed among relatives in a hierarchical order of priority according to seniority. Others are; the children of the father and mother are entitled to inheritance both from the mothers side and the mothers side; Ikwerre customary law can vary across different communities and families; the *obiri* is the family property and cannot be inherited by the first son (*Ekpara*); female child whether married or unmarried cannot inherit her fathers property who dies intestate unless it was shared to her by a declaration *inter vivos* and that the Ikwerre ethnic clan is indeed historically traced or linked to the great city of Benin and not Igbo as claimed by most persons. .

Indeed, a consideration of the Ikwerre rule of intestacy reveals the rich traditional heritage of the Ikwerre people indigenously known as the “*ihuru oha*”. Indeed, the tradition of the people are laudable and commendable. The role of traditional arbitration in resolving family property distribution in cases of disputes is indeed a laudable fact of the Ikwerre native customs. This customs and traditions are guiding lights to their application; and most times they are abolished by traditional rulers where superior reasoning emerge.<sup>47</sup> Indeed, most times where it becomes an issue to abolish the rules in chambers, the gods of the land are invoked to explain the custom or vary it.

As good as the Ikwerre custom in land distribution of intestate estate, some criticisms have been levied on it. It has been said to have discriminated against women’s right to inheritance. Frankly, the legal regulations in Nigeria have remedied the situation guaranteeing the rights of a female to inherit the deceased intestate estate.

## 11. RECOMMENDATION

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<sup>47</sup> (n 4).



Against the backdrop of this research, certain recommendations are considered worthwhile. Based on the research findings/conclusion, the following recommendations are made:

1. **Unity of the Egbema and Ekpeye with the Ikwerre:** that since the Ekpeye and Egbema are patrilineal heirs with the Ikwerre, they could unite into a body called the “Akalaka’s” to form a strong ethnic block to compete with other ethnicity.
  2. **Recognition of Customary Law:** The Nigerian government should recognize and respect the customary laws of the Ikwerre nationality, including those related to intestate succession. Not all Ikwerre laws are repugnant to natural justice so the courts and legislation should be weary of abolishing this rules
  3. **Documentation of Customary Law:** Efforts should be made to document and codify Ikwerre customary law to prevent its erosion and ensure its continuity. The rich amalgam of the Ikwerre customary rule of intestate succession needs to be documented for ease of reference.
  4. **Sensitization and Education:** Legal practitioners, judges, and policymakers should be sensitized and educated on the intricacies of Ikwerre customary law to ensure its proper application.
  5. **Community Engagement:** Community engagement and participation are essential in ensuring that customary law is respected and applied in a manner that is consistent with the values and traditions of the Ikwerre people.
1. **Discretionary application:**These customary rules should be discretionary in its application and be imposed considering their reasonability.