

Succession to, and Inheritance of Property under Nigerian Laws: A Comparative Analysis

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Abstract

Succession and inheritance are statutory and customary. In advanced jurisdictions such as United States and United Kingdom their legislatures have passed legislations to regulate both testate and intestate succession. In Nigeria, the Wills Act, various wills laws of the states and Administration of Estates Laws govern testate succession while the various customary laws/Islamic law regulate intestate succession in the different ethnic nationalities in the country. Islamic law regulates succession only amongst Muslims in the country. There are obviously variations in the legislative provisions and native law and customs that regulate testate and intestate succession and inheritance in Nigeria, United States and United Kingdom. These statutory provisions and customary law are explored in this paper with a view to pointing out their differences and the making of relevant recommendations to jurisdictions that are still lagging behind others for improvement and elimination of discriminatory practices on persons entitled to succession and inheritance. This work will be based on the backdrop of statutes of entitled beneficiaries such as children (males and females), wives, illegitimate children, parents, brothers and sisters, their descendants, grandparents, remote collaterals etc.

Keywords: Succession, Inheritance, Testate, Intestate, Customary, Property

Introduction

Succession to and inheritance of parents' property is as natural as man and the universe. It is so because God willed it through His biblical injunction that a man (a good man) should leave his inheritance to his children (Good News Bible, 1976); and also because under Indigenous rule and tradition his belongings constitutes family belongings. The rights and obligations of the children to their parents' property is put in abeyance while they are alive, but such rights and obligations take effect after the demise of the parents. The pivotal question is who are entitled to the succession and inheritance of man's or woman's property which he/she acquired while he/she was alive? In a situation where a man or woman executed a will before his/her demise, there are no problems; this is known as testate succession. Where a man or woman dies without executing a will, problems arise, particularly in local communities in Nigeria where their personal laws of inheritance are hazy and vague: this is

intestate succession. Cases abound where uncles and other extended family members had/have dispossessed a deceased man's widow and children of property he acquired while he was alive.

It is apposite to point out that while alive an industrious and sagacious man or woman acquires properties that can be classified into real and personal properties. Real property is immovable and includes land and all fixtures attached to the land while personal property is movable and includes cars, money, goods, trinkets, shares, clothes, titles etc. Both real and personal properties owned by a man or woman are jointly known as his/her estate. Legally, the children, widower and widow are recognized as a demised man's or woman's beneficiaries or successors, because they are entitled to the succession and inheritance of his or her estate.

Literature Review

Succession is defined as the passing of possessions to persons upon the demise of the proprietor of the possessions (Animashun & Oyenyin, 2002). The legal implication in this definition is that the deceased person does not merely pass only the property but also passes the rights and obligations attached to the property in law to his or her successors. The use of "persons" makes this definition vague because the "persons" are not definitive. It means that the deceased person could pass his property to the whole world. The hallmark of succession is that it is the law, natural or human, that confers the rights and obligations of succession and not the deceased owner of the property. Invariably, the law of succession transmits the rights and obligations of a deceased person over his property or estate to his successors or heirs, through the distribution of his property, and regulates the administration of the estate by his personal representatives and the state's participation. Testate Succession is when a person executes a will on the distribution of property amongst his or her successors or heirs before his or her demise. This type of succession is regulated by various legal frameworks as shall be seen infra. Sharon Crosby defines intestate succession as "a situation which occurs where a person dies without leaving a valid will" (Crosby, 2020). This definition suits only United Kingdom where a person could die leaving a legitimate will but does not share out all his property. In Nigeria, an intestate succession exists when an individual dies without writing a will (Animashun & Oyenyin, 2002). Inheritance means possessions obtained from a predecessor through laws of intestacy. Here, a person receives property by inheritance or devise. The verb form, to "inherit" also means to receive property under the laws of intestate succession upon the ancestor's death (Garnar & Black, 2019). From these definitions it can be clearly noted that inheritance does not cover testate succession, but only intestate succession. Succession, however, includes inheritance.

Reasons for Succession and Inheritance

There are many reasons why ancestors bequeath their properties to their descendants whom they pre-decease. Biblical injunction suggests that God has mandated a good man to leave his wealth (properties) to his children and grandchildren after his demise. This divine injunction forms part of the natural law which obliges a man to bequeath his properties to his children. It is pertinent to point out that the divine and natural law obligations which mandate a man to leave his wealth to his children and grandchildren does not discriminate among the children (whether male or female) that should succeed to or inherit their parents' property. Acosta (2014) posits that in United States the entitlement of getting property by bequest is not a natural right but a conception of law, the parliament of a state has plenary command or complete authority over the descent and allotment of possessions within the boundaries of the state in line with restrictions found in Constitutions and accords. The same author maintains that the transmission of possessions from ancestors to offspring has been documented and imposed since biblical eras. He also avers that succession in USA is obtained from the civil law as well as the English laws of distribution. Crosby (2020) also opines that the inheritance of moveable property in the United Kingdom is regulated by the law of the testator's domicile at the date of his/her demise, that is, the different inheritance statutes. Domicile is a concept under private international law which refers to the

state or country where an individual lives permanently or on indefinite basis. It need be observed and rightly too that in the UK it is mandatory for persons leaving their estate to any chosen beneficiaries to execute their wills before their demise.

Laws of Succession and Inheritance in Nigeria, United States of America and United Kingdom

Succession and Inheritance Laws in Nigeria

Conservatively, Nigeria has about 500 ethnic nationalities each with its distinctive native law and custom or personal law that regulates inheritance and succession to property, some of which are still repugnant to natural justice, equity and good conscience even in the 21st century. The literacy level is still low and majority of the citizens of Nigeria live in rural areas with high levels of poverty, lingual franca impairment and limited abilities to read and comprehend as well as wallowing in many other forms of socio-economic inequalities, that hinder, litigations of discriminatory practices in property distribution of their demised ancestors. Execution of wills can only be found among the few rich and educated persons who are minded to protect their heirs and beneficiaries after their demise against discrimination in the distribution and outright dispossession of their devised property.

Succession and inheritance laws of some of the ethnic nationalities such as Efik, Ibo, Yoruba are explored hereunder.

Efik Rules of Inheritance and Succession

The Efik customary rules of inheritance is not strictu sensu, patrilineal or of primogeniture, that is, only male children can inherit their deceased father's property. This is informed by the practice of appointing even daughters as successors; hence they can not only inherit their parents' property, but can also be appointed as heads of their families (Kooffreh & Kooffreh, 2018). It need be emphasized that the patriarchal system practiced by the Efik has oriental origin, in which the patriarch among the Hebrew or Jewish people functioned both as father and ruler of the family unit. The patriarch in the Efik culture and tradition was the male head and ruler of the family. He exercised titanic powers with the assistance of his council of freemen.

Under the Efik indigenous law and tradition, the following constitute heritable property that can be inherited by the deceased's survivors: status and titles, moveable and immoveable property. Even though the general rule in a patrilineal system is that female children have no right of succession to their fathers' and mothers' estates, some Efik customs are permissive on this discrimination. In order to shut out members of extended families from the inheritance of such father's and mothers' properties such female children who are appointed as heads of their families are not expected to marry, but can beget children out of wedlock; their male children would be expected to perpetuate the lineage. The caveat is that the paternity of such male children must not be acknowledged by their biological fathers.

The dominant feature of the Efik customary law of succession is the democratic will of surviving members of a family which, invariably, overrides the principle of primogeniture, that is, the majority decision of the principal members of a family can overturn the nomination of a man as head of his family by a deceased testator.

The case of *Inyang v. Ita* (1929) is a locus classicus on the overriding influence of the family's democratic will over nomination of head of family by a deceased testator. In that case, the plaintiff claimed that as the eldest son of his father, he was entitled to the headship of the family by right of primogeniture, so the democratic election of the head of the family was contrary to Efik customary law. The court held that before the advent of the colonial government to Calabar with its establishment of law and order, headship of a family (house) belonged as of right to the senior male member of the family or house, who assumed such headship at his own peril. If he failed to secure support from family members, he either went on exile or was put to death if he elected to stay. Subsequently, the decision in *Inyang v. Ita* (1929) was criticized by Calabar District Court Judges who doubted the probative value of evidence adduced before the Judge that decided the case.

- i) Inheritance by minors: Under the Efik customary law, minors are children from 0-12 years; they cannot directly inherit their father's property, but it is held in trust for him by an adult member of the family. Trusteeship in this context is rudimentary and should not be construed as the English trusteeship system. Children from 13-17 years, and from the age of majority may and can inherit directly.
- ii) Inheritance by women: Daughters as earlier adumbrated can inherit, but widows have no right of succession to their deceased husbands' estates. At best the widow can be allowed to stay in the family house, if she had children for her deceased husband as well as remains of good behavior. She has no maintenance allowance from the family, but is taken care of by her children.
- iii) Inheritance by illegitimate children: All children born out of wedlock under Efik custom whose paternity was acknowledged by their fathers before their demise are entitled to inherit their father's property. However, legitimate children disowned by their fathers while alive for grievous offences and those whom their fathers had returned the dowries paid on the heads of their mothers after divorce could be disentitled by custom to inherit their deceased fathers' properties: *Cobham v. Cobham (1944)*.
- iv) Inheritance by adopted children/guardianship/stepchildren: Adoption of children is unknown to Efik custom, but guardianship and stepchildren are accepted. Step children and children under guardianship but not related to the head of a family, who exhibited good character and conduct while he was alive can inherit his property.
- v) Inheritance by strangers/former slaves: These may inherit property as a result of their long stay with a family, hence they acquire immunity as natives and receive protection from the family. The services rendered by them to the family must be commensurate with the immunity and protection they enjoy.

Ibo Rules of Inheritance and Succession

Although there may be slight variations in the rules of inheritance and succession amongst Ibo ethnic nationalities the dominant principle is primogeniture, that is, succession by the first male child, who is called the Okpala Or Diokpala (*Ngwo v. onyejera*, 1964). The primogeniture principle is strictly based on the patrilineal system. Hence on the demise of the deceased head or founder of the family the first male child assumes the position of the head of the family. He inherits his deceased father's dwelling house or "obi" and the immediate surrounding compound (*Nwatia v. Ububa*, 1965); *Ezeokafor v. Ubah*, 1975) and one distinct piece of land known as "aniisi obi". Other sons, however, inherit other lands and houses as a family unit. Females whether daughters or widows have no right of inheritance or succession under the Ibo Customary Law (*Ugbo Ma V Ibeneme*, 1967).

However, under the customary law of some parts of Idemili Local Government Area of Anambra State of Nigeria daughters whom the Nrachi Ceremony has been performed upon can inherit their deceased fathers' property. This exception applies only where a deceased man had only daughters but no son(s). To perpetuate the deceased man's bloodline one of the daughters would be persuaded not to marry, but to remain in the family with the hope that she would bear a male heir (Nwogugu, 1996). Even though the general Ibo Customary Law precludes daughters from the inheritance of their deceased father's property, they have the right of maintenance from proceeds on the property as well as a farmland to meet their farming needs until they marry or leave the family or die. (Nwogugu, 1996)

As adumbrated above, it is clear that women, illegitimate and adopted children, strangers and former slaves have no right of inheritance under Ibo Customary Law. It has however, been judicially settled that a widow has some limited rights to her deceased husband's estate (*Nzekwu v. Nzekwu*, 1989) and that the oli-ekpe custom in Ibo land which discriminates against women in relation to inheritance of land is repugnant to natural justice, equity and good conscience (*Mojekwu v Mojekwu*, 1997). In settling the widow's case the Supreme Court postulated the following doctrines of law:

- a) The Onitsha Native Law and tradition which stipulates that a widow with no a male child may deal with the property of her deceased husband but with the concurrent consent of her late husband's family is equitable.
- b) The widow cannot by passage of time assert the property as her own, even though she has the right to dwell in a building or part of it, but, however, based on her good conduct.
- c) A widow who elects to remain in the late husband's house is entitled to occupy the matrimonial home and a share of the late husband's farmland for cultivation as well as maintenance by her husband's family.
- d) In the event, where the widow is not maintained by her late husband's family, she can let part of the building to tenants so as to maintain herself. It need be stressed that the widow's stake in her deceased husband's home and acreage is only possessory as against proprietary, hence she lacks the right to discard of them at her absolute discretion.
- e) The Onitsha custom which grants right to the okpala to divide the property of his deceased father in the life time of the widow is barbaric and such uncivilized tradition are repugnant to natural justice, equity and good conscience and non permissible.

The Supreme Court has declared that Customary practices which dispossess a daughter from her father's property or from her husband's possessions are repugnant to natural justice, equity and good conscience and needs to be abolished (*Anekwe v. Nweke*, 2014). The Supreme Court's pronouncement laid a foundation for the future statutory regulation of all Nigerian Customs particularly those that are still repugnant to natural justice, equity and good conscience in the 21st century; but who will bell the cat?

The Yoruba Rules of Inheritance and Succession

Under the Yoruba Customary law of inheritance and succession only the deceased's children (both male and female) can inherit. Both legitimate male and female children share equally. However, the eldest male child or Dawodu, is automatically in control, management and trusteeship of their deceased father's estate. This general Yoruba Native Law and Custom on inheritance and succession was given judicial validation in *Lewis v. Bankole* (1908) which laid down Yoruba rules of succession thus:

- i) When the founder of a family dies, the eldest existing son called the Dawodu succeeds to head the family residence and manage the family affairs.
- ii) When the eldest son dies, the next eldest surviving child of the founder (either male or female) succeeds as head of the family.
- iii) All branches of the family or representatives in the family council (children of the various wives of the deceased) must be consulted and their consent obtained before the family's property can be alienated.
- iv) Division of the property amongst the children is in equal shares irrespective of the branches of the family.
- v) The deceased founder's grand children can only inherit after the demise of their parents.
- vi) The founder's compound or house is preserved for posterity.

There are two basic ways of sharing a deceased man's estate under the Yoruba Native Law and Custom, namely; per stirpes (or Idi Igi) and per capita (or Ori Ojori). In the matter of *Danmole v. Dawodu* (1958) succinctly explained these methods of sharing property of the deceased man under Yoruba Customary Law as follows:

- i) that Idi-Igi is a vital part of the Yoruba indigenous law and custom relating to the distribution of intestate's estate;
- ii) that idi-igi is the general method of sharing except where there is a dispute among the offspring of the intestate as to the extent into which the estate should be divided;

- iii) that where there is such a disagreement, the head of the family authorized to decide should decide if ori-ojori should in the instant case to be used instead of Idi-Igi;
- iv) that Idi-Igi is in full force and adherence at the present time, and has not been abolished;
- v) That the decision of the head of the family over choice of method to be used in times of dispute prevails;
- vi) that ori-ojori is a comparatively modern manner of allocation used in times of expediency to avoid litigations.

It is pertinent to point out that the ancient Yoruba Native Law and Custom allowed collaterals to inherit a deceased man's property (*Adedoyin v Simeon*, 1929). In that case, the court formulated the following rules of distribution of a deceased man's estate as follows:

- i) if the deceased left siblings by the same mother, they have the right of succession to the segregation of the other relations.
- ii) Where there are no siblings by the same mother the parents are entitled, but usually the father would leave everything to the mother.
- iii) If the deceased is survived by only one parent, that parent takes everything.
- iv) Brothers and sisters of half-blood by the same father have no right of inheritance and succession despite that the property was inherited from their father. Collaterals can only inherit the deceased man's estate, if he died without children.

It is necessary to point out that under Nigerian customary law a husband cannot inherit his deceased wife's property. It is the children who inherit. If she died without children her siblings or parents would inherit. Under Nigerian Native Law and Custom wills are also used to transfer property from parents to children but such wills are nuncupative or made orally. For such wills to be legally valid, they must be witnessed by one or more family members.

Rules of Inheritance and Succession in United Kingdom (UK)

In UK different inheritance rules regulate both moveable and immoveable property. While bequest of moveable property is administered by the law of the domicile of the testator or the country/state where the testator resides on permanent basis, inheritance of immoveable property is regulated by the law that applies at where the property is situated or *lex situs*. Contextually, immoveable property in UK consist of interests in land, mortgages etc. It need be stressed that succession or inheritance by intestacy in UK is statutorily regulated while that of testacy is governed by the will of the testator.

Bequest of immovable property is administered by the UK law of intestacy. The main laws that regulate inheritance of immoveable property are Administration of Estates Act 1925 (AEA) as amended, which sets out order of priority on intestacy in section 46 of the Act and Inheritance and Trustees' Powers Act 2014 (ITPA) which formulates rules for surviving spouses. Generally, if an individual dies intestate, the individual's moveable belongings will be inherited by the persons entitled under the law of the deceased's domicile at the time of death. Nonetheless, the succession to immoveable property of an intestate is administered by the law of the country where the immoveable property is to be found. For instance, if a Nigerian in UK dies intestate, and the individual has land or other possessions in UK, the UK law of intestacy will apply to that land and other property.

UK or Great Britain is a Multi-Unit state comprising of England, Wales, Scotland and Northern Ireland with different sources of law, inheritance laws also differ. In UK intestacy rules stipulate that:

- If a person dies leaving a spouse but no issue the spouse is entitled to the entire residuary estate. Where there is a surviving spouse and children the spouse is entitled to only the "personal chattels" such as moveable possessions but not money of the deceased husband and a statutory legacy such as the "Fixed Net Sum of £270,000 plus interest from the date of death of her deceased husband as contained in order 2020 of AEA 1925". If there is a residuary estate it would be equally divided between the spouse and all the children on 50%-50% basis. Before the enactment of ITPA 2014, the spouse's 50% residue was held on a life interest trust for her. AEA 1925 also provides

for the “survivorship period” of 28 days in which the spouse cannot inherit, that is, if she dies within 28 days of the death of her husband, she cannot inherit.

The following will automatically inherit an intestate property, if there is no surviving spouse: Before the enactment of AEA 1925 the offspring of the dead used to take delivery of the property. Children here consist of illegitimate, legitimate and legitimated children, but excludes step-children and foster children. Children below 18 years also inherit, but their property is held under legal trusts for them until they attain the age of majority or 18 years. If they die before 18 years, their share of the estate is redistributed among other beneficiaries.

Parents of the deceased are entitled in equal shares if both are alive or solely to the surviving parent, if there are no children of the deceased. If the parents were not married when the intestate was conceived, the father will inherit, except the father is not mentioned on the birth official document or any record of birth of the deceased, a presumption that the father, and any person related to the intestate solely through their father, died before the intestate unless otherwise (ITPA, 2014).

If there are no surviving parents, siblings of the “whole blood” of the deceased will inherit, that is, siblings who share both parents. Where a sibling dies before the intestate leaving children behind, his/her children will benefit by sharing the deceased siblings entitlement. Siblings of “half blood” inherit, if there are no siblings of “whole blood”. Where there are neither brothers or sisters of whole blood or half blood, grandparents of the deceased take delivery of equal shares of the property, and where there are no grandparents, aunts and uncles of the whole blood, their issues will be entitled to an equal share of the property. If there are no aunts or uncles of whole blood or their children, aunts or uncles of the half blood or their children, will be entitled to an equal share of the state.

Unclaimed estates are usually listed in the Gazette. These usually arise where there are no aunts or uncles of the half blood or their children who are entitled to the estate, hence the "Crown Duchy of Landshire or Duke of Cornwall, will inherit such property which is regarded as ownerless property or bona vacantia". The Treasury Solicitor deals with the estate on behalf of the Crown, Duchy or Duke. Generally, cohabitants or “common law spouses” are excluded under intestacy rules, as only married couples or those in a civil partnership are entitled to an estate. Strictly speaking, cohabitants could qualify as dependents in relation to a claim as stipulated by the "inheritance (Provision for Family and Dependents) Act 1975 or IPFDA". IPFDA has therefore expanded the maximum value of beneficiaries under intestacy to include ex- spouses, civil cronies and children regarded as children of the family or step-children. The "co-habitation Rights Bill 2017-2019" professes to take care of unmarried couples residing together in the future. The beneficiary who is responsible for the demise of the intestate is statutorily disentitled from benefiting from the estate as stipulated by the "Estates of the Deceased Persons (Forfeiture Rule and Law of Succession) Act 2011".

In both intestate and testate estate the family members of the deceased are allowed to rearrange the distribution of the estates by executing a legal document of family agreement, which must exclusively direct and record any redistribution of the property. It is submitted that all the beneficiaries entitled to the estate must concur to all amendments and have got to possess the capacity for such agreement. Other beneficiaries cannot alter the rights of a child or minor and an adult with mental incapacity except through a court order, which insists that the changes must be in the best interests of minors and mentally incapacitated adults.

In UK and Wales which have the same testacy and intestacy rules there is no “forced heirship” so a person can freely give away his/her property during his/her life time. It need, however, be noted that there is no jointly-owned matrimonial or community property under the UK inheritance law since the enactment of the Married Women’s Property Act 1882 which revolutionized the property rights of women in UK. In UK inheritance law a husband is entitled to benefit from the estate of the deceased spouse, for the protection he gave to her as well as taking care of her welfare during her lifetime. A beneficiary can disclaim his/her inheritance in which case he/her is legally treated as if he/she died before the intestate.

Intestacy rules in Scotland and Northern Ireland are depicted in the format below:

| Spouse/partner and children | Spouse/partnership but no children | Children but no spouse/partner | Neither spouse/partner nor children |
|--|--|--|---|
| Spouse inherits family home up to value of £473,000. If the worth is higher, it may need, it may need to be sold in Northern, it is £250,000 free of tax | Spouse/partner receives up to £473,000. In Northern Ireland, the spouse gets the first £25,000 then remainder is shared 50/50 between her and parents or surviving parents or siblings | Reminder of estate in equal shares or grandchildren, if deceased. In Northern Ireland whole estate is distributed equally between children or grand children etc | 50% to parents and 50% to siblings or 100% to either group. If no survivors from other groups. Passed to aunts/uncles, grandparents, great grand aunts/uncles or more distant relatives if no parents or siblings |
| Spouse/partner furniture up to the value of £29,000 | Spouse/partner receives up to £29,000 | | |
| Spouse/partner receives £50,000 in finances | Spouse/partner receives up to £89,000 in finances | | |
| Spouse receives one-third of the net moveable estate in legal rights one-third to children also. | Spouse/partner receives 50% of the net moveable estate | | |

The succession (Scotland) Act 1964 regulates intestate inheritance in Scotland. In Scotland and Northern Ireland, a surviving partner or cohabitant who was not married or in a civil partnership with the deceased has no automatic right to inherit the deceased estate. Their inheritance laws appear to be more democratic in pecuniary provisions than that of UK and Wales which appears to be too rigid and dogmatic.

It is settled that in UK, Wales, Scotland and Northern Ireland estates under testate are distributed through the execution of wills by testators. The formalities of the drawing up and implementation of such wills must comply with statutory requirements, so that they would be easily admitted to probate. Such statutory requirements include domicile of the testator, testamentary capacity. Will can be executed by a testator to distribute his/her moveable and immovable property located in the UK to his/her chosen beneficiaries. Dependents who are not effectively provided for under the will can apply to the court to claim reasonable provision for maintenance from the property such as income payments are for life or lumpsum. It is noted that the drafting and execution of wills is regulated by The Wills Act 1883.

Rules of Inheritance and Succession in United States of America (USA)

Rules of inheritance in USA vary according to the category of the state. States are classified into common law states (all other states except) and community property states such as Arizona, California, Idaho, Louisiana, Alaska Nevada, New Mexico, Texas, Washington and Wisconsin whose inheritance laws are derived from civil law.

- i) Spouses: In common law states generally, their inheritance laws do not disinherit the surviving spouse, as such a spouse claims one-third of the deceased spouse's estate, whether both spouses did or did not own the property jointly. In community property states (that is, property acquired by either spouse during marriage) the surviving spouse claims one-half of the marital property. However, separate interest in property acquired by a spouse through inheritance or gift, property acquired prior to marriage and an agreement between the spouses to keep the property separate from the marriage community are exceptions. It is submitted that each state in USA has enacted its inheritance and testacy legislations which make spouses statutory heirs. In USA marital status automatically confers the right of inheritance of deceased husband's/wife's estate

on the surviving spouse. Such a right is not conferred by contract, conveyance or other legal acts of the surviving spouse. The position of a living spouse as a statutory heir is mainly conferred by statutes. Most states have put an end to the common law doctrine of dower or fixed interest in landed property belonging to the deceased husband at the time of marriage. The wife could not inherit the fixed interest in landed property belonging to her husband until his demise. The contemporary position is that states have statutorily replaced the Dower with legislations which now allow surviving widows to take elective share or one-third in her deceased husband's estate as stipulated by statute. The implication of the widow's right of election is that she can either decide between the non-compulsory share (or her share under the laws of intestacy) or as stipulated under the deceased husband's will or either share which is larger.

Before the year 2000 surviving husbands had an inheritance by curtesy in their wives' real property to which they were completely entitled upon their death. Many states' jurisdictions have abolished this practice and have enacted legislations that have modified husband's rights of bequest, which relates only to properties that their wives held or possessed up until her death. Remarriage by either husband or wife does not affect a surviving spouse's rights of inheritance. The following acts of spouses can affect their rights of inheritance (a) waiver through antenuptial agreement which relinquishes the living spouse's right of bequest (b) express postnuptial agreement which is validated by the manifestation of a clear and clearly identifiable intent to dispense with such rights; it must be sustained by a valid and valuable consideration, it must be free and fair, just and impartial in its stipulations and devoid of deception and dishonesty. (c) separation agreement can affect a spouse's rights of inheritance in its provision for the mutual release of rights of each spouse in the other's estate. Separation agreement can either be express or implied (d) property settlement agreement dictated by divorce cannot affect a spouse's rights of bequest particularly where the decree absolute for divorce was not granted by the court before the death of the deceased spouse. Even an accord between spouses which contemplates their future divorce and in which specific items of property would be held by each of them disjointedly cannot affect their rights of inheritance. Finally, agreement for divorce between husband and wife that is tainted by lack of knowledge or error in relation to his or her lawful rights is not a bar to their rights of inheritance.

Rights of inheritance can be forfeited by a surviving spouse under the following circumstances: abandonment, adultery, non-support, murder of spouse, divorce and bigamous marriage. Generally, a living spouse's misdemeanors either civil or criminal will not constitute a hindrance to his or her right of bequest of a deceased spouse's possessions. Many states have made laws of inheritance that preclude surviving spouses who are guilty of abandonment, adultery, non-support, murder of spouse and bigamous marriage from inheriting their deceased spouses' estate, while other states do not bar them. Forfeiture of rights of inheritance is grounded on abandonment, a conduct, by a surviving spouse that is deliberate, unjustified and continuous as provided by law. In some states their legislations bar a spouse who murders his/her wife or husband from inheriting his/her deceased spouse's property. Murder can either be intentional (which constitutes a strict bar) or occurs by negligence, accident or insanity which do not constitute a bar to inheritance by a surviving spouse. Differences in treatment of bigamous marriage and divorce depends on the legislations of the various states.

- ii) Children's Rights Of Inheritance: Apart from the inheritance rights of a surviving spouse who must at all material times take his or her legal share first, the children have superior rights of inheritance over parents, brothers, sisters, nephews, nieces as well as collateral family members of the dead spouse. This is explicable by the fact that children must take the remainder of the state which is allotted to them in equal shares or portions as stipulated by the law of descent and allotment.

Brothers, sisters, nephews and nieces can only inherit, if there are no surviving spouse, children, parents and grandchildren of the deceased spouse. As a general rule, paternal

and maternal grandparents share equally in the estate of intestate, if they are next-of-kin to the deceased. States' statutory provisions vary in this aspect of intestate. For instance, some States legislations stipulate that where the estate descended to the intestate from his or her father, the estate should be inherited by the fatherly grandparent leaving out of the motherly grandparent.

- iii) **Inheritance Rights Of Illegitimate And Step Children:** An illegitimate child is a child born to parents/friends who are not married to each other at the time of the child's birth. The subsequent marriage between the parents/friends do not legitimize the paternity of the child. In Nigeria the act of legitimization of such a child's paternity is the acknowledgement of the father's paternity over him while alive. In the USA before 20th Century illegitimate children were not granted the right to inheritance of the parents' estates, because they had no legal status in the society. This is reminiscent of the common law which denies illegitimate children rights of inheritance because they are not legal children of either parent.

The turning point in the inheritance rights of illegitimate children in USA can be traced to the large increase in the number of unwed couples with children in the 20th century and the USA Supreme Court's pronouncements in the case of *Levy v. Louisiana* (1968) and *Trimble v. Gordon* (1977). In these cases the Supreme Court while quoting the USA constitution's Equal Protection clause ruled that a state law that denies a child born out of wedlock inheritance right to his/her father's estate is unconstitutional. It need be stressed that these cases only granted limited rights of inheritance to illegitimate children.

It is, however, gratifying to note that today every state in USA has amended its inheritance laws which now entitle illegitimate children to the inheritance of either parent's estate. The conditions precedent to such inheritance are that:

- a. paternity must be established by the father during his life time through his legal acknowledgement
- b. proof of paternity in court through documentation of a subsequent marriage to the child's mother
- c. positive DNA match after the father's death
- d. Provisions of uniform probate code/uniform parentage Acts.

As a general rule stepchildren are not included in the definition of children under intestate succession laws particularly in the state of California. Stepchildren are described as children of blended families. Nevertheless, under California's 1985 intestate succession law step children can inherit under the following exceptional situations:

- a) The relationship between the stepchild and stepparent started when the former was still very young and impressionable, and this relationship subsisted throughout their lifetimes.
- b) The stepparent intended to adopt the stepchild but was confronted with legal challenges such as pushback from the child's other biological parent. These conditions must be conjunctively proved by the stepchild to enable him/her lay claim to the inheritance of his/her deceased stepparent's estate. Besides intestate succession laws, testate succession in USA can be through execution of wills, trust, joint ownership device or estate planning device as regulated by Estate Planning legislations.

Comparative Analysis of Inheritance of Property Legislations

Taking a cursory look at the development of intestate legislations in USA and UK, one garners that they passed through a long road to maturity or advancement. The periods of the laws of inheritance and succession in USA can be categorized into the colonial period, post revolutionary period, 19th century and 20th century. During the colonial period the colonies adopted the English law of inheritance as depicted under common law. However, some of the colonies also passed legislations to alter common

law treatment of inheritance of land, kin succession and limitations on testamentary freedom. Most colonies out rightly rejected the English doctrine of primogeniture but instead passed laws which allowed younger children to inherit from their parents' estates. Widows were granted rights to personality.

During the post revolutionary period, most states codified common law doctrines on intestate succession through enactment of legislations which made some changes to English law and procedure. Most states passed laws which enabled widows to receive cash sums instead of dower in their husbands' lands; the inheritance rights of illegitimate children were also addressed by their legislations. In the 19th century the distinctive practices in relation to inheritance laws and rights became discernable between the common law states and community - property states which derived their inheritance laws from civil law. The distractive feature of this period is the passing of legislations by most states which gave married women instead of their husbands ownership and control over all personal and real property either before or during marriage. Other features are the granting of equal intestacy shares to spouses, replacement of widows' and widowers' lifetime tenure in realty with fee-simple, abolition of dower and curtesy and absolute ownership.

In the 20th century intestacy legislations were amended to treat spouses relatively more favourably than children and other relatives. Fifteen states have, however, retained dower through statutory provisions which generously allow widows to take fee interest instead of life interest. The present state inheritance laws in USA indicates that hardly two states that can be found to be exactly alike. There exist in reality fifty different schemes most of which, when analyzed are not built upon a single adequate interest that is given to the surviving spouse, but instead she/he is given a bit of homestead, a bit of widow's allowance, and in addition a bit of dower or some statutory substitute (Acosta, 2014). In the UK the dominant doctrine of intestate succession was primogeniture as practiced under common law. Until the enactment of the Married Women's Property Act of 1870, women who possessed property of any kind were required to give up all rights to it to their husbands on marriage. The Married Women's Property Act 1882 therefore altered the property rights of married women while the 1922 Law of Property Act granted rights to both husband and wife to inherit each other's property, and equal rights to inherit the property of intestate children.

Before 1925 when a new property legislation made easy England's outdated legal regimes on real possessions, the law of intestate primogeniture was statutorily practiced. Under this doctrine only the oldest son has legitimate right over real possessions whereas daughters were limited to inherit real property, if there was no male heir. Divorced females could not inherit marital property. Today intestate legislations have been passed which have clearly streamlined the distribution of intestate property of the deceased spouse to the surviving spouse, children, parents, relations and other collaterals.

In Nigeria intestacy is predominantly still governed by native law and customs which are discriminatory and repugnant to natural justice, equity and good conscience. Apart from Yoruba ethnic group, daughters cannot inherit intestate property. Widows cannot inherit their deceased husbands' property but are given limited right to possession only. Husbands cannot inherit their deceased wives' property. Nigeria has not, like USA and UK modified its intestate customs and unwritten laws into enacted legislations, hence the development of the Nigerian legal system in this aspect appears to be in a state of flux. We are in the 21st century which is a digital age, so Nigeria does not need to spend hundreds of years as USA and UK to develop its intestacy laws. It should urgently take a cue from both countries.

Discriminatory practices in intestacy distribution of property amongst statutory heirs have to a large extent been abolished in USA and UK whereas in Nigeria such practices are still prevalent amongst the ethnic nationalities inspite of Constitutional and International treaty provisions that ban such discriminately practices. Women, illegitimate children, strangers, husbands etc are evidently discriminated against in intestacy distribution of property inspite of the constitutional provision for the right to freedom from discrimination in section 42(1) of the 1999 constitution (as amended). It is

submitted that Native law and custom as practiced by ethnic nationalities in Nigeria have become obsolete and outdated in the 21st century that has globalized the world. The USA and UK societies are advanced in science, technology and education, hence most of their citizens are litigation-driven. Obversely, Nigeria is still bedeviled with high illiteracy rate with concomitant consequences for litigations. Litigations in Nigeria are not common because of the following factors: poverty, high illiteracy rate and ignorance, culture and traditions etc. Intestate succession in USA, UK and Nigeria are markedly influenced by the nature of property ownership. In USA and UK individual ownership of real property holds sway. The sociological concept of individualism which is practiced in these countries gave rise to individual ownership of real property.

In Nigeria the primordial community, village and family ownership of real property still exists till today. Individuals only have possessory rights over community, village and family and real property. The head of the community, village and family only holds real property in trust for himself and other members of the community, village and family. He accounts for all dealings on the real property to other members of the community, village and family. Communal, village and family ownership of real property is informed by the pristine concept of communalism that is endemic to African societies.

The UK practice of assigning specific monetary amounts to spouses, children of the intestate is defective. Assignment of intestate estate to beneficiaries should be done in percentages to avert shortages and problems. The Nigerian intestate practice which is still rooted in Native law and custom has become anachronistic in the 21st century because of its discriminatory nature. The USA intestate is fraught with permissiveness because it enables some beneficiaries to reap where they did not sow, for instance, in some, if not all the states, their statutes grant inheritance rights to divorced spouses.

The customary rule of primogeniture in Nigeria is unconstitutional because it excludes women from inheritance on the basis of gender. It is reinforced by the past disadvantage patterns foisted on a vulnerable group by the society which holds sway the ancient notions of patriarchy. It is therefore contrary to the Nigerian constitutional provisions of equality amongst all Nigerian citizens and the right of women to dignity. It subjects women to the exorable position of minority and control by men because of their sex and gender, inspite of Married Women's Property Act 1882 which has evolved new kinds of economic activities for women, introduced different forms of property and family arrangements for men and women, and changed values concerning gender roles in society. The resultant effect of the perpetuation of primogeniture rule is that the rule has been formalized and fossilized. The Nigerian constitutional provision against discrimination on the ground of birth also extends to illegitimate children. The customary rule of primogeniture also offends constitutional provisions on the right to dignity as it denies them the right to inherit from their deceased fathers estate. It is submitted that these customary law limitations imposed on women and illegitimate children which deny them the right to intestate inheritance are unreasonable and unjustifiable in a democratic society like Nigeria whose constitutional purpose is to promote good government and welfare of all persons in Nigeria on the principles of freedom, equality and justice.

In the US the intestate system is not satisfactory because of the multiplicity of schemes which tend to diminish surviving spouses interest to a homestead, an allowance and a bit of dower which has supposedly been abolished by legislations. Besides, it does not specify inheritance in relation to personal and real properties as UK does. Intestate in some states encourages crimes such as murder and bigamy. some bigamous spouses and murderers are allowed to inherit.

Recommendations

It is recommended that Nigeria should urgently embark on judicial and legal development of the various customary laws of not only those affecting intestacy but also all the extant customary rules. This will mean enacting them into legislations thus enhancing their certainty through the legal reforms. One of these methods can be adopted, namely, codification, official declarations and restatement.

Salmond (1966) defines codification as the reduction of the whole corpus juris of subject matter as far as practicable to the form of enacted law. It is used to update the law, remove uncertainties and the controversies of case law in a legal system or establish a new legal order in the era of modernization. It is undoubtedly one way of forging uniformity of laws in a plural society (Woodman, 1984) such as Nigeria. Codification brings the law closer to the ordinary educated man (Bennett & Vermeulen, 1980). For the codification of Nigerian customary law to be effective, it must be comprehensive and contain the rules and principles that regulate one area of law in the various ethnic nationalities. Besides, enacted law possesses many advantages. Enacting the different Nigerian customary rules will elicit technical improvement, certainty, uniformity and simplification of this unwritten aspect of Nigerian law.

Official declarations of customary law is the means of gradually reducing customary law into writing. Official declarations have been judicially made in some Nigerian cases on chieftaincy matters such as *Adefulu V Oyesile* (1989) 5 NWLR (pt 122) pp 377 & 422. Official declarations of customary law have been statutorily formalized in the South West and Northern Nigeria through section 4 of the Chiefs Law, CAP 25 Laws of Oyo State and section 49 of the Native Authority Law, CAP 77 laws of Northern Nigeria. These laws direct local councils to make declarations of customary laws governing the choosing of recognized persons who should hold chieftaincy titles in Oyo State, and declarations on customary laws on marriage and other matters connected therewith in the North.

The third method is restatement of Nigerian customary laws. Restatement usually graduates into codification. It has been defined as “the rearrangement in an improved form, statement for a characteristically complex law, in an authoritative manner, with a practice purpose in view but lacking the force of law” (Marshall, 1971). Restatement is only suitable for use in only homogenous societies like Kenya and Tanzania. Nigeria is heterogeneous, so codification rather restatement is suitable and relevant to its social reform and foundation of a new socio-legal order as canvassed in this article. Many African States have used the restatement of their customary laws through the Restatement of African Law Project (RALP).

In spite of arguments against codification by some writers such as Allot (1970) who asserts that codification hinders the growth of customary law, through ossification etc. It is canvassed in this article that Nigeria should use it urgently to enact its various customary laws into statutes. The legal and judicial implication of this recommendation is that only lawyers will be appointed as presidents and members of Customary Courts in Nigeria. Besides, discrimination against women and illegitimate children will be taken care of. In the US, states that are too permissive to statutorily empower criminals who murder their spouses and those who practice bigamy to inherit from their deceased spouses' estates, should amend such obnoxious and vexatious legislations to disentitle them from such inheritance. UK should amend its intestacy legislations and provide for percentages in inheritance by spouses and children in relation to personal estates of deceased spouses. Codification of Nigerian customary laws into written legislations will obviously enlarge the corpus of Nigerian statutes. The queries are whether the extant weak enforcement machinery for Nigerian legislations will cope with the enlarged corpus juris. Currently, enforcement of legislations in Nigeria is plagued with many challenges such as the use of reactive instead of the proactive and collective participatory approach to enforce laws. While the reactive approach is not a suitable prerequisite for enforcing legislations in the 21st century, the proactive and collective participatory approach has increasingly become more suitable because of its adequacy. Other challenges endemic corruption of both leadership and citizenry, inadequate skilled and trained staff, lack of political will by leaders who are themselves non-transformational and weak in nature, non-deterrent statutory penalties, weak judicial system, lack of government commitment, insecurity, inadequate funding, lack of awareness, illiteracy and poverty, cultural and legal factors, non-preparedness of Nigerian legislations for emerging risks and technologies etc. It is submitted to the Nigerian leadership, citizens and institutions require urgent and comprehensive or holistic overhaul to cope with an enlarged corpus juris as well as a change in the socio-legal order to meet up with economic, social, political and legal modernization.

Conclusion

There is no gainsaying the fact that inheritance reduces crime in the society, ensures cohesion and continuity of the family unit which is a microcosm of the larger society as well as perpetuates the progeny of the deceased and his unborn generation. Testate and intestate succession have biblical origin and are backed up by law, either written or unwritten legislations. In Nigeria, Intestate succession is predominantly regulated by Native law and Custom, hence it is replete with discriminatory practices. Intestate legislations of some States in the US that appear to promote crimes such as murder, manslaughter and bigamy should be repealed. Nigeria needs to urgently codify its various Customary laws on Intestates Succession as well as empower the Federal and State Ministries of Justice to carry out intensive enlightenment programmes on testate succession amongst its citizenry.

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