

## Women's Right to Land Ownership in Igbo Land: The Legal Perspective

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### Abstract

Various statutes, customs and traditions of the people guide Right to ownership of land. Culturally, women are seen as lower entities and can only be seen or heard through their husbands/fathers. This has led to the widespread quest for gender equality. Land ownership in Igboland has earlier on been discriminated against girls and women including married women. The 1978 Land Use Act of Nigeria established a state-owned land system that allowed opportunities for men and women to acquire or inherit land in Nigeria. The 1999 Constitution of the Federal Republic of Nigeria also provides for the right to freedom from discrimination resulting from the person's sex – this is a fundamental right of every woman. There are thus both judicial and statutory authorities that presently empower women/girls to own or inherit landed property in Nigeria. This is unlike before when a girl child cannot inherit her father's property, even a married woman then cannot inherit her husband's property. Infact, the woman is seen as a property that was bought over by the payment of the bride price -thus the men argue 'Can a property inherit a property'? Despite the 1999 Constitution, the Convention on the Elimination of All Forms of Discrimination against Women and other policies, the cases of *Ukeje v. Ukeje* and other judicial authorities; there are still many Igbo women who are abhorred from inheriting or possessing the land that is due to them. This could be as a result of ignorance, lack of will-power to fight for their right, educational background, discouraging public opinions and others. We shall thus recommend massive sensitization of women at the communities, churches and other places of worship, market places, schools and generally in social gatherings. The study is theoretically frame-worked with sources from the Statutes, the textbooks, articles, thesis, journal publications, newspapers and other oral testimonies and observations from the researcher and some members of the public.

**Keyword: Women, Land, Human Rights, 1999 Constitution**

### Introduction

A woman is viewed as an adult female human being, who could play the role of a mother, sister, daughter and/or wife. The role of a woman in the society can be affected by the diverse factors, which could be religious, geographical, cultural or otherwise. Women in Nigeria play major roles in socio-economic activities. Women are generally seen as a weaker vessel that should be under a 'man' in total submission. Some cultural backgrounds in Nigeria believe that women should not be seen (that is;

should not be public figures) or be heard but should live a silent and less influential life.

The Nigerian society is patriarchal because they incline more to the male folks and title to land is mostly traced through the male line. Women in their everyday life are faced with discrimination, male chauvinism and lack of respect in running their affairs of life just because they are women. Some men still believe they cannot stay under the leadership of a woman. In our society, many still see women as incomplete and unfulfilled especially when not married. Women in this 21<sup>st</sup> century are more entertaining and hardworking. Women cultivate the land, engage in business and politics and scale great height in their respective chosen careers. In most cases, women are faced with diverse impediments which constraint them from competing favourably with their male peer contemporaries- such impediments include: Marital crisis, Children Upbringing, Financial restraints, societal stigma, Cultural hindrances and so on.

Eniola (2018, p1) observed in (Olorunbunmi, 2015, p.395) that women are visually seen to be emotionally driven while men are goal oriented and can accomplish more physical activities and labour oriented task (Eniola, 2018, p.1).

### **Legal Rights of Women**

Eniola (2018, p.1) observed that women's rights form part of the fundamental human rights which are generally recognized by the International Human Rights Treaties. Despite the numerous International instruments to which Nigeria as a sovereign State has acceded, it is still unrealizable to apply those laws in Nigeria because most of them have not been domesticated in Nigeria. This could be as a result of few women in politics which leads to inadequate or unequal representation at the parliamentary attendance.

According to the World Economic Forum (2017), they noted that women own less than 20% of the world's land, yet more than 400 million of them farm and produce the majority of the world's food supply. She also noted that security and ownership of land is critical to social and economic empowerment.

Food and Agriculture Organization of the United Nation (2018) opined that once land rights for women are secured, there is a correlation that everywhere a woman is empowered, that yields positive outcome such as improved child nutrition, lower level of gender based violence etc. This FAQ of the United Nations gave some nuggets or key points concerning land ownership by women, they are:

- a. Evidence shows that women are significantly disadvantaged relative to men with regards to their land rights.
- b. Globally, less than 15 percent of all land holders are women. This ranges from 5% in Middle East and North Africa to 18% in America and the Caribbean.

- c. Women constitute a significantly smaller share of all land owners. This ranges from less than 20% in Honduras to slightly over 50% in Malawi.
- d. Most women do not have a legal document proving ownership of their plots of land.
- e. Women own a smaller share of all agricultural land than men.
- f. Fewer than 15% of agricultural land holders around the world are women and 85% are men.

North Africa and Near East is where inequality is most rampant, thus only 5% of the land holders are women.

Villa (2017, p.1-2) noted that women form half of the world population yet female farmers lack equal rights to own land in more than 90 countries not minding that over 400 million of women farm and produce the majority of the world's food supply. It has been observed that the United Nation Sustainable Development Goals reflect the importance of women's right to land and property, thereby setting out a specific target for equal rights to ownership and control over land by the year 2030. Also, some countries in the developing world have moved to enact new laws to encompass gender equality into land ownership (Villa, 2017, P.3). Land and property rights are a kind of special human rights that are economic burden to the women folk. Enyia & Otu (2019) observed that under customary Law, women are always subjected to the authority of a Patriarch, moving from the control of their guardians to that of their husbands. Husbands control all the family's property while the wives are confined to her personal belongings. The principle of primogeniture thrived in Igboland because the woman is seen as a chattel of the man and bought with a price (the bride price) (Enyia S. O. & Otu S. U. (2019).

### **Rights to Own Land/Property**

Jeremy Bentham (1864: 113) the famous English Jurist quoted that "property and law are born together. Before laws were made there was no property take away law and then property ceases". In the same vein, John Locke (Locke J. (1960) opined that property is a natural right and no individual is born with it rather we acquire them as property through our actions or transactions, Olomojobi (2015, P.2).

In Nigeria, the Land Use Act of 1978, now L5 Laws of the Federation of Nigeria, 2007 vested the proprietary rights to ownership of all land on the Governors of the respective States in Nigeria depending on where the land is located.

It is trite to know that in Nigeria, prior to the enactment of the Land Use Act; individual land owners had full right to their respective lands; however the Land Use Act accorded Deemed Rights of occupancy to those land owners. But presently due to the Act, which confers all land in the State to the Governor of the State, it only allows land owners to get Certificate of Occupancy which shall compulsorily bear the

Governor's consent (Sections 1 of the Land Use Act, 1978). Land forms part of every aspect of life; it is very important especially in traditional Africa (Ngwakwe E. C. (2013, P. 218).

The Black's Law Dictionary (1990, p.877) defines land to include any ground, soil or earth whatsoever including fields, meadows, pastures, woods, moors, waters, marshes and rock.

Land can also be seen according to Interpretation Act to include any building and any other thing so attached but does not include minerals (Section 18, Interpretation Act Cap 192, LFN, 1990, see also S.2 PCL of Western Nigeria States, 1956, Laws of Western Nigeria. The right of a land has to deal with the benefits and obligations imposed on a person and the succeeding entitlement to the land.

Land as we have seen is an asset which is greatly desired by both the poor and the rich. Land is largely regulated by the government through policies and programmes (Oluwatayo I.B & et al (2019).

Oluwatayo et al (2019) classified the Nigerian Land system into three, there are: pre-colonial, colonial and post colonial periods. During the pre-colonial periods, lands were solely owned by families and communities. It was being managed by the family head and community heads who allot portions to their subordinates based on their need and availability. During the colonial periods, the ownership of land was regulated by the colonial authorities. The colonial masters made several legislations which empowered them to take property rights out of the reach of the community leaders. Such legislature include Treaty of Cession (1861), Land Proclamation Ordinance (1900), Land Native Right Act (1916), Public Land Acquisition (1917), State Lands Act (1918), Town and Country Planning Act (1947).

On the other hand, after the colonial period (post colonial) Nigeria enacted two key legislations to regulate land, there are Land Use Act of 1962 and Land Tenure Law of Northern Nigeria of 1962. The Land Tenure Law of Northern Nigeria of 1962 stipulated that the minister responsible for land matter controls holds and allocates land to natives of Northern Nigeria. This guaranteed the right to land to be conferred only on the natives in the North except with the approval of the minister. However, the law was later repealed as the Land Use Decree of 1978 and was implemented.

In all these, what is the place of a woman in acquiring title to land? What about a woman's right to own or inherit land in Igbo land, Nigeria and even Africa as a whole.

### **Women's Right to Own Land:**

Unknown to many, the rights of women were fought for and obtained from time immemorial as was recorded in the Holy Bible. This was the case of Zelophehad's daughters who approached Moses (Their Leader) and Eleazar (the Priest). These

daughters of Zelophehad stated thus: “Our Father died in the wilderness...and had no sons. Why should the name of our father be done away from among his family because he hath no son? Give unto therefore a possession among the brethren of our father!” Moses took the matter to God Almighty who then said the Daughters of Zelophehad were right and thus instructed Moses to give them a possession of an inheritance and let the inheritance of their father pass to them. God further gave instruction that if a man dies without a son, his inheritance should pass to his daughters and if he has no daughters, it can pass to his brothers (Numbers 27:1-11).

Again, in II Kings 4:1-6, a poor widow inherited the debt and a jar of Olive oil left behind by her deceased husband. That is to say she inherited the assets and the liabilities. With the assets (jar of olive oil) in place, he was able to settle the liabilities.

Enyia Jacob Otu & Otu Sunday Usang (2019) observed that in Igbo custom, there is a belief that devolution of property should be hinged to blood. Thus when a man dies, they claim he is not of the same blood relation with his wife but with his children and his brothers or blood relation. Thus, the Igbos claim that a deceased man’s sons and brothers have better title of inheritance to his property than his wife and daughters.

Despite the constitutional provision of Section 42 of the 1999 Constitution of the Federal republic of Nigeria (As Amended) which stipulates against discrimination on the ground of sex, we still notice that women are still always sidelined whenever it relates to right to land and inheritance of property (especially land). In Nigeria, especially Igboland are patrilineal, they believe a lot in male chauvinism.

The Igbo ethnic groups which constitute 18% of Nigeria’s over 131 million populations classify property into three categories, thus: Land, commercially valuable trees and plants, and movable property (which include livestock, debts, money and household articles). The Igbos largely exclude females from rights of inheritance (Hanibal Goitom, Library of Congress (2014, p. 2).

Thus, should a wife not inherit her husband’s property because she is a woman, and should a daughter be deprived of her lawful inheritance in the family because she is a woman or female?

It is worthy to note that the Nigerian 1999 Constitution (Section 42 (1) & (2) stated thus:

1. 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 : (a) 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 or other communities, ethnic groups, places of origin, sex, religious or political

opinions are not made subject; or (b) be accused either expressly or in the practical application of any law in force in Nigeria or any such executives or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria or other communities, ethnic groups, places of origin, sex, religions, or political opinions.

2. No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

These rights to freedom from discrimination is also backed up by several International legislations such as Article 15 of the Vienna Declaration of Act in (1993) which provides *inter alia* that respect for human rights and fundamental freedoms without distinctions of any kind is a fundamental rule of International Human Rights law. Also Article 2 of the African Charter on Human and People's Rights prohibits discrimination of kind such as race, ethnic group, colour, sex, language, religion, politics or any other opinion. In addition, Article 2 of African Charter on Universal Declaration of Human Rights (UDHR) 1948 proves that everyone is entitled to all the rights in the declaration without discrimination of any kind, such as race, colour, sex, language, religion, political or other opinion, natural or social organs, property, birth or other status. Other legislations which provide for freedom from discrimination are contained in Article 2 of the International Covenant on Civil and Political Rights 1966 and International Covenant on Economic, Social and Cultural Rights 1966 (Nwazuo A. N. 2005).

Article 3 of the Declaration on the Elimination of Violence Against Women, 1993 Stated that women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural civil or any other field. (Falana F. 2008, P.174).

Thus, we have seen that a woman has the full legal backing to acquire and own her property, to inherit her father's or husband's property, to be the family head as the eldest child and even make first choices before the male children if the female child is theirs. There are a lot of judicial authorities especially from the western part of Nigeria (Yoruba) which shows that they have evolved a liberal policy towards female inheritance as succession.

In the case of **Lewis V. Bankole** (1879) I.N.L.R. 81, the father Chief Mabinuori died in 1874 in Lagos leaving a family of twelve children, the eldest of whom was a daughter. They contested on the right of a woman to be family head among the Yoruba. Osborne J. justified and accepted the evidence of the Lagos traditional chiefs that Yoruba native law does not discriminate against women on issue of inheritance and succession; he also invoked the status of the English Queen and that of Madam Tinubu as an immediate and local example. This he stated thus "...seeing that a wise great queen held away for long years over the British Empire, there seems no reason why, on the

ground of sex, a Lagos woman should not be capable of managing the domestic concerns of a family compound” Osborne C. J. Therefore upheld the woman’s right to be the head of a Yoruba family where she is the eldest. This case has become a *locus classicus* under the Yoruba Native Law and Custom.

Again in the case of *Nimota Sule V. M. A Ajisegiri* (1973) 13 N. L. R 146, the trial judge rejected the contention of the defendant that under native law and custom a male has a greater portion than a female in the distribution of the father’s estate. The trial judge Butler Lloyd J. held this “I prefer the reasoning of Mr. Justice Webber in *Andre V. Agbebi* & others. NLR Vol. 10 page 79 and I am not prepared to depart from the principle which has been followed in scores of partition actions before me and other judges or this court in accordance with which in cases of the proceeds of sale has been ordered equally between those entitled irrespective of sex.

The case of *Lewis V. Bankole* was re-echoed after about eighty years in the case of *Abibatu Folami V. Flora Cole* (1986) 2 NWLR (H.22) 367. In this case, the Appellants sued the respondents in the Lagos High Court over a piece of land sold by the 1<sup>st</sup> respondent Flora Cole to the 2nd respondent who then sold to the 3rd respondent. Upon the death of the founder of the family all surviving children were females, the eldest of whom was Flora Cole. The issue for determination was whether Flora Cole had to be elected as the head of the family by her sisters or could assume the headship of the family automatically. The trial judge held in favour of the respondents, dissatisfied the appellants appealed to the Supreme Court and still lost. At the Court of Appeal, Kolawale JCA held thus “... According to the testimony of the white capped chiefs in *Lewis V. Bankole* on the death of the eldest surviving son called “Dawodo” the eldest surviving female succeeds to the headship of the family. Where there was no son, it follows that Flora Cole the eldest female succeeds to the headship of the family of Adisatu Aina. The question of election or appointment would not arise. The case of *Lewis V. Bankole* is in substantial compliance with Section 14 of the Evidence Acts because the custom that an eldest surviving female of the founder of a family succeeds to the headship of the family where there is no eldest son or Dawodo has been judicially noticed and has been proved by evidence.

However it is to be noted that the Supreme Court narrowed their decision to only Yoruba custom and did not stamp it as a principle to be applied nationwide to avoid inequality and discrimination to women in line with the constitutional provision on right to freedom from discrimination.

With these numerous authorities the Yorubas had a breakthrough and aligned their culture to accommodate women favourably. What then is the fate of Igbo women whose customs and tradition forbid them from the rights of inheritance over their father’s/husband’s property. Also the right to succession of a deceased’s estate rest on

the first or eldest son (who serves as a Trustee) to the exclusion of others (Joel P. (2016, p. 2).

In the case of *Ejiamike V. Ejiamike* (1972) 2 E.N.L.R p.11, the court held that the eldest surviving son automatically succeeds the headship of the family after the demise of their father. It is pertinent for us to have a recast that previously in Western Nigeria (Yoruba), there was even a Supreme Court decision that stated that a wife cannot inherit her husband's property. This was decided in the overruled cases of *Oshilaja V. Oshilaja* (1973) CCHCJ P.11 and *Suberu V. Sunmonu* (1957) 12 F.S.C. p.33.

However, these judicial authorities have been declared repugnant to natural justice, equity and good conscience.

It is however with great joy that we receive the Supreme Court judgment on *Ukeje V. Ukeje* (unreported). SC.224/2004 which was declared in July, 2018. In this case Mrs. Gladys Ada Ukeje (the deceased's daughter filed an action against Mrs. Lois Chituru Ukeje (wife of the deceased) and Enyinnaya Lazarus Ukeje (deceased's son) claiming to be one of the deceased's children and so sought to be included among those to be included among those to administer their deceased's father's property. The trial High Court held against the plaintiff stating that as a daughter, she was also entitled to benefit from her late father's property. Even the Court of Appeal upheld the decision of the trial court, Mrs. Lois Ukeje and son appealed again to the Supreme Court and erudite Justice Bode Rhodes-Vivour upheld that "no matter the circumstances of the birth of a female child, such a child is entitled to an inheritance from her late father's estate. The Supreme Court also voided the Igbo Customary law which prevents a female from inheritance as being voidance in conflict with section 42(1) and (2) of the constitution. This Supreme Court decision is indeed a judicial breakthrough for the Igbo people.

### Conclusion

It is a notorious fact that our ground norm- the 1999 constitution provides for the right against discrimination based on sex (male or female). This provision had ever been in the Nigerian Constitution including the 1979 Constitution. However, its enforcement has suffered major setbacks as it battled with cultural impediments which see men as a more superior entity and must be preferred compared to a woman. This discrimination against women as it pertains to ownership of land had been on from time immemorial. However, our courts/justice system had intervened to liberate womanhood from these land entitlement setback/shackles. Thus, the Yoruba custom first had a breakthrough in the case of *Lewis V. Bankole* (supra) where it was held that an eldest daughter can be the head of a Yoruba family. Recently in 2018, the Igbo custom received a shocker in the Supreme Court case of *Ukeje V. Ukeje* where the apex court declared null and void, the Igbo customary law, which prevents a female (woman) from having the right

of inheritance. This has been applauded by many enlightened Igbo leaders and Igbo women in general are so impressed with this development.

### Recommendations

We therefore recommend that more sensitization exercises through diverse local mediums and social media platforms should be carried out so that more women (including girls and widows) not minding the age should know their legal right to landed property both in Igbo land and across Nigeria; and these include: Right to inheritance, Right to acquire or sell land and Right to use land for any legal purposes whatsoever, just like their male counterparts.

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