

REALISING FEMALE INHERITANCE RIGHTS IN SOUTH EASTERN NIGERIA: THE IMPERATIVENESS OF GOING BEYOND LEGAL RHETORIC

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Abstract: The decision of the Supreme Court of Nigeria in *Ukeje v. Ukeje* is regarded as the ultimate liberation of females, particularly in Eastern Nigeria from discriminatory customary law which disentitles them from inheritance in cases of intestate succession. While this decision buttresses the non-discriminatory provision of section 40 of the 1999 Constitution of the Federal Republic of Nigeria, making a judicial pronouncement is different from giving effect to same. The question, therefore, is how can this decision be effectuated especially in rural areas where the people jealously guard their traditional beliefs, values and customary practices? This paper, through desk-based method with reliance on primary and secondary sources of data, interrogates how the discriminatory inheritance cultural beliefs (*volksgeist*) and practices of the Igbo people can be synergised with the decision in *Ukeje v. Ukeje*. It argues that this will require extra-legal mechanisms like gender equality sensitisation campaigns, communal reorientation through enlightenment, and dialogue with traditional institutions. It therefore recommends dialoguing with traditional institutions and reorienting the community as measures to be adopted in effectuating the judgment in the rural Igbo communities where same is opposed to their *volksgeist* towards fostering gender equality which is central to Sustainable Development Goal 5.

Keywords: Discrimination, female inheritance right, intestate succession, primogeniture rule, Sustainable Development Goals, *Volgiest*.

1. INTRODUCTION

When a person dies intestate,¹ it is expected that the estate of the deceased would be distributed in accordance with his applicable personal law entitling his beneficiaries to share in the distribution of the estate through inheritance (Silas & Idachaba, 2020, pp. 15-26). However, under the Igbo customary law system of inheritance in the South Eastern part of Nigeria, females are not entitled to inherit where the deceased dies intestate

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¹ person is said to have died interstate when the deceased dies making a will.

(Onuoha, 2008, p. 28). Ajayi (2018, pp. 267-282) states that in some instances in some parts of Igbo land, the wife is driven from the home of her deceased husband and subjected to various degrees of degrading and inhumane treatments, including but not limited to trial by ordeal to prove her innocence in the death of her husband. While it is acknowledged that no one ever determines their sex, females under the Igbo customary system of succession are discriminated against because of their gender as was held in *Mojekwu v. Iwuchukwu* (2004). From time immemorial, female (women and girl child) are often perceived as second-class citizens within their communities, particularly in developing societies, of which Nigeria is one (Kekere, 2017, p. 202).

This obvious discriminatory customary practice has thrived for decades, despite the fact that it is diametrically opposed to the right to freedom from discrimination guaranteed under successive Nigerian constitutions. Nigerian courts have declared this discriminatory and abhorrent customary practice not only unconstitutional but repugnant to natural justice, equity and good conscience as was held in *Onyibor v. Anakwe* (2014). Ajayi (2016, pp. 244-254) examined some customary practices which revealed that in reality, some practices and the cultural reasons provided for indulging in them were in direct conflict with judicial pronouncements and legislations. In 2014, the Supreme Court of Nigeria in *Ukeje v. Ukeje* (2014) was invited to determine the constitutionality or otherwise of the Igbo customary law that prohibits females from inheriting in the estate of their deceased father who died intestate. The Court concluded that the custom is unconstitutional as it violates section 42 of the 1999 Constitution that protects all Nigerians from discrimination, particularly on the basis of their sex and circumstances of birth which was an issue in the case. This decision has been hailed as the final nail on the coffin of discriminatory customary inheritance practices in south-eastern Nigeria in particular and Nigeria in general (Adebayo, 2022, pp. 386-404).

It was an issue that, prior to this decision by the Supreme Court of Nigeria, there have been decisions of lower courts especially the Court of Appeal against such discriminatory customary inheritance practices, how then would this decision be different? This was particularly so because, the decision, as laudable as it was, seemed to be diametrically opposed to the (*volksgeist*) of the people (Igbos) especially those in the rural areas where this practice (i.e. female disinheritance) is ingrained and predominant, bearing in mind that their belief in this custom is deep rooted and held uncompromisingly. This paper argues that stemming the negative tides of discriminatory customary inheritance law and practices in Nigeria requires more than judicial pronouncements, has been done by the Supreme Court of Nigeria, given the unalloyed allegiance that the people, especially in rural South-eastern Nigeria have towards their customs. The article interrogates socio-legal means through which the inherent benefits of the decisions can be effectuated while harmoniously disembarking from the apparently discriminatory Igbo customary inheritance practice. Ajayi and Eyongndi (2018, pp. 184-197) have argued that this chauvinistic belief has persisted and is capable of suffocating the effects of these judgments.

At this juncture, it is apposite to state that the scope of this article is the Igbo customary law inheritance system although, other customary inheritance systems like that of the South West (Yoruba) and Northern Nigeria (Hausa-Fulani) are highlighted

succinctly. These systems are discussed in a comparative manner in order to demonstrate the inherent discriminatory nature of the Igbo customary inheritance system as a springboard for advocating its abrogation despite its socio-historical antecedence. It is pertinent to acknowledge the point that significant jurisprudential ink has been spilt on this subject (Kehinde, Iyaniwura, and Adimoha, 2022, pp. 345-369; Garuba, 2018, 84-99; Oni, 2014a, pp. 30-43; Nwakoby and Ilodigwe, 2022, pp. 223-229.) However, these great intellectual works have majorly focused on judicial and legislative intervention as means of addressing the quagmire despite the fact that it has persisted notwithstanding the existence of law prohibiting discrimination coupled with other judicial pronouncements. While this article recognises the importance of judicial and statutory interventions, it argues that it requires extra-legal mechanisms to holistically address the issue in order to achieve the desired outcome.

The paper is divided into seven parts; part one is the general introduction; part two examines the Igbo customary system of inheritance; part three explicates the right to freedom from discrimination highlighting its nuances; part four examines statutory and judicial strides towards curbing discriminatory customary inheritance practices while amplifying on the decision of the Supreme Court of Nigeria in *Ukeje v. Ukeje* (2014). Part five assesses the judgment against the backdrop of the *volksgeist* of the Igbo people of the South East Nigeria with an attempt to gain equilibrium between the two diametrical opposed positions. Part six concludes the paper while part seven provides the recommendations.

2. THE IGBO CUSTOMARY LAW SYSTEM OF INHERITANCE EXAMINED

This section of the paper examines the Igbo system of intestate succession *vis-à-vis* other predominant customary intestate inheritance systems in Nigeria, drawing from their similarities and marked differences. With main focus on the Igbo customary system, this paper highlights the distinctions and possible similarities in the systems of females' inheritance rights in Nigeria.

From inception, the customary law on rules of succession in Igbo land are not uniform although, certain similarities exist (Oni, 2019, p. 18). The Igbo customary law system of inheritance which is patrilineal is based on the principle of primogeniture, wherein the oldest male child has the right to succeed to the estate of an ancestor to the exclusion of younger siblings and other relations (Elias, 1971, P. 120). Where the deceased has no male child, devolution falls on the male sibling(s) of the deceased (Ogbu, 2013a, P. 105). The primogeniture rule is the predominant customary inheritance practice in the eastern part of Nigeria (Olomola, 2021, pp. 358-359); with the bilinear system in Afikpo and Bende areas of Ebonyi and Abia States, where women have full legal capacity to own lands and transmit their rights and interests to others either *inter vivos* or at death, being an exception to the primogeniture rule (Oni, 2008, P. 40). Upon the demise of the founder or head of the family, his eldest male son known as *Diokpa*, *Diokpala* or *Okpala* ascends the headship of the family. He inherits his father's title known as "*ofo*" where one exists, personal properties as well as his dwelling house known as "*obi*" as was held in *Nwafia v. Ububa* (1966). The land surrounding the dwelling house is his, as well as all the economic

trees within and outside the house (Nwambueze, 1974, P. 400). By his trustee position, the eldest male child exercises control over the estate of his deceased father for the benefit of the family, particularly his male siblings. The foregoing was upheld in *Ejikeme v. Ejikeme* (1972). Nwambueze has opined that in reality, the eldest male child -owner of the “*obi*”, is a matter of exclusive occupancy as the ownership jointly belongs to all the male children as family property. The court underscored this in *Onwusike v. Onwusike* (1962) when it held that succession to land is by all the male children hence, the *Okpala* is accountable to his male siblings and he must inform them when he desires to sell such land as they are entitled to share from the proceeds.

With regards to landed property, the eldest son can inherit to the exclusion of his brothers but would allocate lands to them upon request as is held in *Ejiamike v. Ejiamike* (1972). Seniority is the main criterion for ascending the headship of the family and an *Okpala* cannot be deprived of such without his consent. It is only the father or founder of the family that can deprive the eldest male child from becoming the family head upon his demise, and this takes place through a valid declaration made prior to his death. Where the *Diokpala* is incompetent or irresponsible, the position of the headship of the family bestowed on him customarily cannot be taken away by mere removal. The only option available to aggrieved member(s) of the family, especially his brothers, is to report the *Diokpala* to the extended family hoping for their intervention (Ajabor, and Ovreme, 2019, pp. 59-67).

Under the Igbo customary inheritance system, the female child and widows have no right to inherit as is held in *Mojekwu v. Mojekwu* (1997). A daughter can only inherit where she opts to remain unmarried and stay in her father’s house with a view of birthing sons in her father’s name as was held in *Mojekwu v. Mojekwu* (1997). This is usually done where the deceased father has no male child. The *urachi* (as such a daughter is called), inherits both moveable and immovable properties in trust for the male child that would be born and come into the inheritance as the heir of her deceased father. This practice is to ‘save’ her father’s name from extinction owing to the lack of male children who will carry on his name. The court in *Ugboma v. Ibeneme* (1967) held that under the Igbo customary inheritance system, women are not entitled to inherit land from their fathers hence, a female lacks the *locus standi* to bring an action with respect to title to land. A widow is entitled to live in her deceased husband’s house, subject to good behaviour or until she remarries as was decided in *Nezianya v. Okagbue* (1963). Even where her husband allocates a land to her while he was alive, unless it is proven to be an absolute gift, upon his demise, it devolves on the family as family property as was held in *Chinweze v. Masi* (1989). While a daughter is not entitled to inheritance, it should be noted that the person who inherits is under obligation to maintain the daughter of the deceased until she marries and becomes financially independent as was held in *Estate of Agboruja* (1949). There is also situation where a female child chooses or accepts to remain single in her father’s house and procreate sons in her father’s name. This seemingly barbaric, obnoxious, ridiculous, and anachronistic practice is what is known as the *nrachi* or *idigbe* institution (Nwogwugwu, 2014, P. 402) This practice is activated whenever the deceased leaves behind a significant estate but is without a surviving male child to inherit. The *urachi* or *Idigbe* is entitled to inherit both moveable and immovable properties of the deceased. The extent

of discrimination the Igbo customary inheritance practices towards women is ridiculous and bizarre. It is to the extent that a child fathered by another man is entitled to inherit the estate of a deceased instead of his biological child on the sole ground that the child is female. The Nigerian Court of Appeal has deprecated this awful and brutish customary practice in *Okeke v. Okeke* (2017) when it held thus:

A custom which enables a child born and fathered by another man to claim and inherit the property of a man who had died (sic) before he was even conceived by his mother and to disinherit the man's biological child because she is a female is certainly inconsistent with sound reasoning. It is repugnant to natural justice, equity and good conscience. It is an affront to the natural order of human life.

From the foregoing, there is no gain saying that the Igbo customary law of inheritance is blatantly discriminatory against females (Abdulraheem, 2010, pp. 83-93). It would appear that being a woman, within this system, is a taboo with uncountable deprivation despite the fact that no one ever decides his/her sex as argued by Attah (2013, pp. 81-94). In fact Ekpah and Onuh-Yahaya (2020, pp. 17-36) have pointed out the fact that there is an African folk song which goes thus:

*Why did you come, O girl?
When we wish for a boy?
Take the jar and fill it from the sea.
May you fall into it and drown.*

It is God who has the prerogative of determining the sex of any child, but females within the society keep suffering inexpressible deprivation and hardship, contingent on their gender. At a point, the courts had taken the position that this discriminatory and inhumane treatment of females is repugnant to natural justice, equity and good conscience but unfortunately, this position was sharply jettisoned by the Supreme Court of Nigeria in *Mojekwu v. Iwuchukwu* (2004). It should be noted that the stance taken by the court in most of these cases reflects the extreme chauvinist posture of the society as at the time the cases were litigated before the court. However, at present, there is a serious push-back and reorientation against this posture, and there has been significant progress. The influence of social media, education and enlightenment cannot be undermined in this socio-cultural renaissance in Nigeria. It is expected that this current wave of cultural resurgence will be sustained until these primitive and suppressive customs (and its counterparts all over Nigeria) are confined to the waste-bin of history where they rightly belong.

At this juncture, it is germane to examine the historical underpinning of the Igbo customary inheritance system as a 'justification' for its perpetuation. In the Igbo community, like in most African communities, women are regarded as "weaker sex or vessels." For instance, women do not form or join the army or warriors of a community to defend it against intruders. This is because they are believed to lack the sagacity and grit to engage in warfare. Thus, men are the only ones permitted to join and form the warriors/army of the community to defend its sovereignty. The role of women is confined

or restricted to domestic affairs of home making and child rearing. A man is expected to be the protector and provider for his household. Aside this, there is the belief that a man's family line is perpetuated and sustained by his male children who would remain in his "compound," marry wives and continue to live there after his demise. His female children are regarded as "strangers or tenants" who by the inevitability of marriage will "leave" his family (compound) to join that of their husbands, and children borne out of the marriage belongs to the husband's family and not her father's. Thus, upon marriage, it becomes imperative for a woman to divorce herself from her father's house by dropping his surname and taking up that of her husband's, whose family she has now become a significant and integral part of. This customary belief posits that, to prevent a man's wealth (property) from leaving his family to another, his daughter(s) should not be allowed to inherit immovable properties in particular since upon marriage these properties "cease" to belong to their father's family but the husband's.

The ancestral land of the founder of a family passes unto his son from generation to generation and it cannot be sold. However, where it becomes imperative for a man to sell the ancestral land, the practice is for it to be sold to a member of the close family known as *imenne* or a member of the extended family called *Umunna*, and never an outsider or stranger. In the man's compound, there is a rallying stool known as the *obi* which is like a palace where the family members hold meetings. Thus, during marriage, a man is expected to settle his daughter who will be leaving his family to join that of her husband. During this *idu ulo* ceremony (dowry payment), a man can give his daughter various gifts to take to her husband's house, save for the ancestral land which in reality, belongs to the family. This is not sellable, but it must be inherited by the male children so that it does not move to another family. It will seem that an Igbo man, during the *idu ulo* ceremony, can give various inheritances to his daughter, including lands especially those not situated in his village or forming part of the ancestral land.

It is worthy to note that the rationale for considering females as "part time" members of a man's family is tied to the sanctity of marriage. The Igbos believe that marriage is meant to succeed against all odds. Thus, disallowing a woman from inheriting immovable properties will encourage her to work harder and ensure that her marriage succeeds, seeing that there is no property for her to fall back to if she leaves her husband's house for her father's. The Igbos and most customs in Nigeria believe that the success of a marriage is significantly dependent on the woman, and this is synonymous to the biblical prescription that a wise woman builds her home while a foolish one tears it down with her own hands (Proverbs, 14:1). This belief, is believed would induce a woman to bear with the natural difficulties associated with marriage and not "find a way of escape." Unfortunately, the laudable and noble intendment of this customary belief has been negatively exploited by the males, as most women are subjected to various forms of despicable and unexplainable domestic abuses knowing that they would not be welcomed back home. Thus, even in cases of domestic abuse, most women married under native laws and customs are "encouraged" to remain or even coerced back to their matrimonial homes where they have suffered severe injuries or even paid the unjustifiable supreme price of untimely death that could have been avoided. Since an Igbo man can settle the daughter during the *idu ulo* ceremony, it is advisable for that occasion to be used judiciously and

deliberately like a form of gift *inter vivos* to compensate the daughter for the ancestral land (and sometimes, landed properties in general especially those within his ancestral town) which she cannot inherit. This ceremony is a leeway to this disinheritance and should be taken advantage of by Igbo fathers to the advantage of their daughters.

2.1 Customary Exceptions to the General Rule of Inheritance in Igboland and Others

While the general position in Igbo land is that females do not inherit, it should be noted that there are certain communities within Igbo land where females are allowed to inherit immovable properties. For instance, in Abriba community in Abia State, females have the same inheritance right as the male. They can inherit from their father's and mother's estate although, the ancestral land as well as the headship of the family devolves on the eldest male child. Also, the Ngwa community in the Abia State has the same inheritance rule. The justification for the eldest male child inheriting over and above his siblings, males inclusive, is not far-fetched. As the heir apparent, the image maker of the family and the custodian of the customs and tradition, he needs an estate that is commensurate with his status in order to assert his authority and influence in the community and in the family.

Notwithstanding the above position on Igbo customary inheritance practices, there are other customary inheritance practices in Nigeria, owing to her legal pluralism, that are worthy of holistic examination to ascertain their effects on the society and need for amendments, if any. For instance, discrimination against women is not limited to the Igbo customary inheritance system. In Northern Nigeria, the indigenous Hausa custom generally permits only the male children to inherit all the assets of a man who dies intestate. The female children do not inherit any property and the widow is considered as a property to be inherited, as a result, the widow is therefore not entitled to inherit because a property cannot inherit but only be inherited. The foregoing notwithstanding, there are few exceptions of Hausa communities that have commendable customary inheritance practices that are gender balanced and permit the female children to inherit. For instance, the *Gandu* community in Jigawa State practises a common holding of land system comprising of two variable kinship patterns consisting of; a man, his wife(s), and other family members; his married sons and their family; or two or more siblings and their families. The head of the *gandu* controls the properties and allocates to members. He is responsible for the socio-economic wellbeing of all the unit members. Upon the demise of the head of a *gandu*, the sons who live in the compound may continue to occupy same and farm thereon until their own sons marry and partitioning becomes necessary. Where the members of the *gandu* choose to partition the land, same is partitioned equally among all the beneficiaries by the eldest son or the brother of the deceased family head. Where the deceased has widows, the unallocated land of the *gandu* is quickly distributed, but where he only left a wife, the allotment is postponed till her demise -if she elects to live in the deceased's home. Where one of the male siblings in the *gandu* dies leaving offspring(s) that are still minor, the senior surviving siblings take up paternal responsibilities towards the children and hold their inheritance in trust for allocation upon attaining the age of majority. In most cases, the deceased surviving male siblings adopt their nephews and nieces and assume control over their late father's compound and land to their benefit.

Unlike in some Hausa communities where female children and males who die without male children are disentitled from inheritance, the custom of the *Jaba* community in Kaduna State permits the community head to inherit, who in turn distributes same to the community members as he deems fit. In addition, widows and daughters are allowed to inherit where there are no male relative successors. Thus, such female successors can apply to the village head to take over a piece of land so long as they demonstrate that if the land is allotted to them, it would be cultivated. In Kebbi State, where a man dies intestate, the male children are entitled to inherit, alongside the eldest male who is given the responsibility of coordinating the estate. Subject to good behaviour, a piece of land(s) from the estate is allotted to the widow, while the remaining asset is shared amongst his extended family members as was held in *Shehu Dalibi v. Ahmadu Tela* (2000).

It should be noted that Islam, which is predominantly practiced in Northern Nigeria and is often the personal law of Muslims, greatly impact the customary inheritance practices of this region (Animashuan, & Oyeneyin, 2002, P. 8). The foregoing assertion has been emphasised by Ajaguna (2021, P. 359) who opined that intestate inheritance in Northern Nigeria is predominantly based on Islamic dictates, owing to the fact that most persons within that region are Muslims who are subject to the Islamic injunction contained in the Quran. It is not by any stretch of imagination being contended that once a person is a Muslim, Islamic law will automatically apply in succession to his estate. The person must manifestly demonstrate that he wants Islamic law to apply in the devolution of his estate upon his death as was decided in *Lawal-Osula v. Lawal-Osula* [1993]. The Holy Quran 4:8 lays down the Islamic inheritance formula to be adopted upon the demise of a person subject to Islamic law:

For men, there is a portion in the estate of their deceased parents and close family and for women, there is a share in the estate of their deceased parents and close family, may be it little or plenty. It is defined as inheritance.

The Holy Quran allows a person to bequeath up to one-third (1/3) of his estate to whoever he chooses, provided the beneficiaries are to partake in the two-third (2/3) that is left over. Whether the estate is large or small, a person's estate has the following mandatory distribution: (a) payment of funeral expenses, (b) payment of any bequeaths, and (c) the remaining is divided amongst the beneficiary as pre-determined in the holy writ. Where the husband dies without being survived by any issue, the wife gets one-fourth (1/4), and if he was survived by children, she gets one-eighth (1/8) of the estate. If the deceased had two daughters or more sons, they would get two-third (2/3) of the total estate. If there is only one daughter and no son, she gets half (1/2) of the estate. The predetermined quota of inheritance under Islamic law has been given judicial approval by the Court of Appeal in *Ibrahim Hamza v. Lawan Yusuf* (2006). It should be noted that the Quran is not averse to Muslims making will. Hence, Quran 2:181 provides thus:

When death approaches one of you, it is your duty to make a will for parents and close family members in the matter of your estate fairly. This is an obligation of the righteous.

This notwithstanding, whether a Muslim can make a will has remained extremely controversial under Nigerian Islamic inheritance jurisprudence as exemplified by the

decision in *Yunusa v. Adesubokan* (1971). The foregoing, notwithstanding, is evident that succession under the Islamic injunction is fair to all the inheritors as none of them is discriminated against.

In the South Western part of Nigeria which is occupied by the Yorubas, Fadipe (1970, pp. 28-44) states that intestate succession practice is generally fair and equitable. If a person dies intestate, pursuant to Yoruba native law and customs, his children (both male and female) succeed the estate as a single entity as was decided in *Lewis v. Bankole* (1909). Hence, as joint owners, all the children of the deceased have the right of ingress and egress. The eldest son known as the *Dawodu* possesses the managerial responsibilities over such properties for the benefit of all others. He has no right to dispose of such properties as they are trust properties. One may wonder why the headship of the family devolves on the eldest male child and not just any child or female assuming a female is the first child? While the family headship devolution may seem discriminatory, it is not. The rationale for the headship of the family always devolving on the eldest male child of the deceased is because female children by virtue of marriage will leave the family to start a new family with their husband, and cannot therefore be reasonably expected to take up and continue the headship of their deceased father's family. This is impracticable, as a married woman is not expected to abandon her husband to administer her late father's estate. In *Salami v. Salami* (1924), it was in contention whether the plaintiff's right to inherit her father's property under the Yoruba customary inheritance system was diminished by the fact that she is female. The court held that her right to inheritance was not affected by virtue of her gender, as the Yoruba customary inheritance system recognises her inheritance right. In *Ricardo v. Abal* (1926), the court upheld the inheritance right of a female child (woman) under the Yoruba customary inheritance system and emphasised that where a man dies intestate, leaving a male and a female child and two houses, the female child being the senior has the right of first choice as to which of the houses she prefers when the property is being partitioned as was held in *Barreto v. Ontiga* (1961).

The mode of distributing the intestate estate amongst the Yoruba could either be by the *idi igi* (per stripe) or *ori ojori* (i.e. per capita) (Nwogwugwu, 2014, pp. 311-312). By the first mode of distribution (i.e. *idi igi*), the property is distributed according to the number of wives the deceased has, then the wives can redistribute to their children as in *Dawodu v. Danmole* (1962). The rationale for this pattern is to ensure that no wife feels jealous of another, as each wife is considered to constitute a branch of the family as was held in *Taiwo v. Lawani* (1961). The shortcoming of this pattern is that: a wife who has fewer children or one child stands to benefit more than a wife who has many children; the number of children does not determine the quantum of the inheritance. For the *ori ojori* pattern on the other hand, the deceased properties are divided equally amongst the children. In summation, both male and female children are entitled to inherit from the estate of their deceased father under the Yoruba customary inheritance system. Female children (women), unlike in the Igbo inheritance system, are not discriminated against.

The Efik customary inheritance system shares striking similarities with the Yoruba. Under the Efik system, women succeed to a man's moveable and immoveable properties even if they are subsequently married. The eldest child of the deceased (male or female) succeeds the headship of the family. The widow of the deceased who does not remarry is

entitled to right of use over the deceased husband's property. Thus, in sharing the deceased estate, the children (male and female) take priority over the deceased siblings. In fact, in Cross River State located in the South-South geopolitical zone, the issue of inheritance discrimination catered for by the Efik customary inheritance system has been given legislative fortification by virtue of section 1(1) 2, and 3 of the Cross River State Female Person's Inheritance of Property Law, 2007. The Law provides thus:

Notwithstanding any native law or custom to the contrary, a female person has the right to acquire and own property. Subject to any other written law and notwithstanding any native law or custom to the contrary, a female person shall share in the intestate estate of her deceased father, mother or husband in accordance with the provision of the law. A female person may be the administrator or one of the administrators of her father's, mother's or husband's estate.

The enactment by the Cross River State House of Assembly to give judicial fortification and amplification of the non-discriminatory Efik customary inheritance system is laudable and *in tandem* with modern civilisation. It is imperative that states in the South-West geopolitical zone of Nigeria which have non-discriminatory customary inheritance practices adopt the same pattern as the Cross River State. This will ensure that the customary practices are statutorily insulated. Women rights organisations such as the Ministry of Women Affairs and female professional organisations like International Federation of Women Lawyers; Nigeria Association of Women Journalists, Nigerian Bar Association Women Forum, etc. can engage in campaigns promoting the enactment of laws like the Cross River State at the federal level, starting with states that have the non-discriminatory customary inheritance practices in the South West. The same campaign in form of enlightenment and literacy can be engaged and sustained in areas where the inheritance system is skewed against females. The enlightenment that such campaigns would engender can become launching pads for the abrogation of such discriminatory practices (Omoleye & Bolanle, 2017, pp. 357-361).

3. THE NUANCES OF THE RIGHT OF FREEDOM FROM DISCRIMINATION UNDER NIGERIAN LAW

This section of the paper discusses the nuances of the right to freedom from discrimination from the domestic and international perspectives. It is important to point out that the subject of rights under the Constitution of the Federal Republic of Nigeria, 1999 is divided into two categories: the justiciable and non-justiciable rights. The latter category, contained in Chapter 2 of the Constitution of the Federal Republic of Nigeria, 1999 (known as Fundamental Objectives and Directive Principles of State Policy) are generally regarded as unenforceable, i.e. they are incapable of activating the adjudicatory process of the court as was held in *Attorney General of Ondo State v. Attorney General of the Federation & 35 Ors.* (2002). Thus, the former category is justiciable; meaning that upon a threat or actual violation of any of the rights the aggrieved party can approach the court to seek legal redress *Bobade Olutide & Ors. v. Adams Hamzat & Ors* (2016); (Oputa, 1989, P. 19). However, where a law is made on any matter contained in Chapter

2, creating an obligation to perform or forbear, that matter is automatically elevated to the status of any matter contained in chapter 4 to the extent that it becomes justiciable Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v. Federal Republic of Nigeria & Universal Basic Education Commission (2007), *Socio-Economic Rights and Accountability Project (SERAP) v. Federal Republic of Nigeria* (2008), (Govindjee and Taiwo, 2011, pp. 92-94).

Section 42(1) of the Constitution of the Federal Republic of Nigeria, 1999 provides that a citizen of Nigeria of a particular community, ethnic group, sex, religion or political opinion, place of origin or sex shall not suffer any form of deprivation, disability or restrictions which others are not subjected to *Uzoukwu v. Ezeonu II* (1991). Thus, in the application of any law, executive or administrative order, no citizen shall be accorded privileges which are not accorded to others *Lafia Local Government v. Government of Nassarawa State* (2012). Since no one ever determines the circumstances of their birth, the section further provides that no one shall be subject to any deprivation *Anzaku v. Governor, Nassarawa State* (2005). In Nigeria, section 42(1) of the Constitution of the Federal Republic of Nigeria, 1999 contains the prohibited grounds or degree of discrimination in Nigeria which is subsequently discussed hereunder. From the opening sentence of section 42, it should be noted that the right is only guaranteed to Nigerian citizens whether the citizenship is by birth, naturalisation or registration in accordance with section 25 of the same constitution. The rationale for the reservation of this right to only Nigerian citizens is not far-fetched. This is because the items to which the right relates (e.g. property, governance, employment, etc.) are proprietary in nature. Hence, only citizens do have and can enjoy such right/benefits. This is by no stretch of imagination advocating that persons who are lawful residents of Nigeria, but who are not citizens would be discriminated against as the law has pigeonholed their rights and bestowed on them certain rights for their comfortable residence in Nigeria. The question may be asked: what is discrimination? The United Nations Human Rights Committee under the International Covenant on Civil and Political Rights 1966 defined discrimination in an elaborate manner as any distinction, exclusion, restriction, or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms. Thus, these practices persistently violate fundamental human rights despite the surfeit of laws prohibiting discrimination on account of sex (Ajayi, 2013, pp. 47-57).

At the international plane, the right to freedom from discrimination is recognised by several international legal instruments. Article 2(1) of the Universal Declaration of Human Rights 1948 recognises this right. Articles 2(1), 20(2) and 26 of the International Covenant on Civil and Political Rights recognise this right (Olomjobi, 2018, pp. 297-299). Article 1 of the United Nations Declaration on the Elimination of All Forms of Racial Discrimination prohibits all forms of discriminations. Article 1 of the United Nations Convention on the Elimination of All Forms of Discrimination against Women 1979 prohibits all forms of discriminatory practices against women while Article 2 enjoins state parties to enact laws abolishing all existing discriminations against women (Ezeilo, 2011, pp. 50-58). Articles 2 of the African Charter on Human and Peoples Rights and the Protocol

to the African Charter on Human and Peoples Rights on the Rights of Women in Africa prohibit all forms of discrimination particularly on the account of sex and circumstances of birth. It is apposite to note that the right to freedom from discrimination is intrinsically tied to the right to equality (Olomojobi, 2018, pp. 30-31). In fact, the failure of equality will result in discrimination. The United Nations Humans Rights Commission had observed that non-discrimination together with equality before the law and equal protection of the law without any discrimination constitutes the basic and general principle relating to the protection of human rights (Human Rights Committee General Comments, 1989).

It has been stated that Section 42 of the Constitution of the Federal Republic of Nigeria, 1999 contains the prohibited grounds of discrimination. Ogbu (2013b, P. 379) has opined that the unacceptable criteria for discrimination which the constitution forbids are based on a citizen's ethnic group, place of origin, sex, religion, political opinion or the circumstances of one's birth. In *Adamu v. A.G. Borno State* (1996), the appellant (and other parents) were made to pay a fee for their children to study Christian Religious Knowledge while Gwoza Local Government paid teachers teaching Islamic Religion Knowledge. The Court of Appeal held that although education is a non-justiciable right however, where a government chooses to implement any non-justiciable right, it cannot do so in a discriminatory manner else, the aggrieved citizen has a right to seek redress. It concluded that the action of the respondent amounted to an infraction of the appellant's right to freedom from discrimination and religion enshrined in sections 42 and 39 of the Constitution of the Federal Republic of Nigeria, 1999.

The discrimination in this instance falls under the prohibited range. In *Igbozuruike & Anor v. Onuador* (2015) where the respondent was denied the right to the title of Mgbala which was bestowed on him by his mother on the ground that he was born out of wedlock, the Court of Appeal held that, the denial was unacceptable as it pertains to the circumstances of the respondent's birth which is offensive to Section 42(2) of the Constitution of the Federal Republic of Nigeria, 1999. In *Lafia Local Government v. Government of Nassarawa State* (2012) where the Governor of Nassarawa State directed all members of the unified Local Government staff serving in various Local Governments Councils other than theirs to relocate to their own Local Government, the Supreme Court held that the directive runs afoul to Section 42(1) of the Constitution of the Federal Republic of Nigeria, 1999 as it is discriminatory on account of ethnicity and place of origin. In *Mojekwu v. Ejikeme* (2000) where the daughter of the deceased was disallowed from inheriting her deceased father's estate on the basis of being a female, the Court of Appeal held that the customary disentitlement of the daughter was averse to Section 41(1) of the Constitution of the Federal Republic of Nigeria, 1999 because it amounted to gender discrimination.

It should be noted that Section 42 of the Constitution of the Federal Republic of Nigeria, 1999 could be invoked where the discrimination is premised on any law, quasi-judicial, executive or administrative action as was held in *Anzaku v Government of Nassarawa State* (2005). The point should be made that the act of discrimination especially based on gender is tantamount to violation of the dignity of the human person of the individual it is directed at. Human dignity requires that every human being is treated

humanely and fairly. To this end, any treatment, either by commission or omission that is capable of eroding, prejudicing or lowering the esteem of a human being in the eyes of ordinary members of the society, causing the victim to have a feeling of being less human or undeserving is impugning the dignity of the human person of the individual.

It should also be noted that the right to human dignity which is tacitly infringed through the act of discrimination is expansive and explosive in nature. Section 34 of the Constitution of the Federal Republic of Nigeria, 1999 which provides this right, envisages that no person shall be subjected to torture or inhumane or degrading treatment. This prohibition is patterned after the provisions of Article 3 of the Universal Declaration of Human Rights, Article 5 of the 1981 African Charter on Human and Peoples Rights, and Articles 3 and 4 of the 1950 European Convention on Human Rights. Torture within the prism of Section 34(2) of the Constitution of the Federal Republic of Nigeria, 1999 is not limited to means by which intentional severe physical pain is inflicted on a person but encompasses emotional, psychological and mental pain. The prohibition here relates to acts/omissions that are capable of inflicting both physical and mental/emotional pains which discrimination is (Ogwuche, 2008, pp. 815-816). Every human being, irrespective of sex or any distinguishing feature, has an inherent modicum of self-worthiness, respect or feeling of being human and should therefore, be treated in a way that does not impinge on this self-worthiness. Therefore, when a person is discriminated against on the basis of gender (as it is mostly the case under the Igbo customary inheritance system, where females are disentitled from inheriting), the feelings a victim has is that of being considered less human or unfortunate. The pains (emotional and psychological) that such feelings inflict are unquantifiable and unbearable.

From the foregoing, it should be noted that a discriminatory act/omission only becomes opprobrious, reprehensible, morally objectionable and legally unsustainable once it is based on considerations that are irrelevant. For instance, giving of preference or certain advantages to persons with disability would not be viewed as negatively discriminatory or attract opprobrium from the citizenry because such preference or advantage is relevant and justifiable in the circumstance (Feldman, 1993, pp. 854-855). In this regard, Ogbu (2013a, P. 375) has rightly posited that the outlawing of certain types of discrimination is justified on the basis of the simple premise that there are certain criteria for treating people differently which should never be regarded as normally relevant, or which are relevant in an admissible way only in restricted range of situations defined under the law. Adelakun and Ajayi (2020, pp. 244-251) have argued that discrimination is a violation of the dignity of the human person. According to Ajayi (2017, pp. 39-54) it erodes the self-worth and esteem of the victim in an atmosphere of “not for someone like you or people like you.” It tends to leave the victim with the false imposed thought of unworthiness. At times, it is done at the expense of competence while promoting mediocrity or other unjustifiable considerations.

The point should be stressed that Section 42(3) of the Constitution of the Federal Republic of Nigeria, 1999 is an exception to the non-discriminatory regime. It provides that a law shall not be invalidated by reason that it imposes restrictions with respect to the appointment of any person to any office under the state or as a member of the armed forces,

Nigerian police force or a body established by law in force in Nigeria. This provision gives impetus to sections 14 and 15 thereof, which jointly project the doctrine of federal character as defined in section 318 of the Constitution of the Federal Republic of Nigeria, 1999. Interestingly, the derogation from section 42(1) of the Constitution of the Federal Republic of Nigeria, 1999 shall only be unassailable if it is premised on a law as expressly stated in the proviso (Odikpo, 2020, P. 68). The implication of the foregoing is that the proviso cannot be effectuated based on administrative or executive action. One may wish to interrogate the propriety of Section 55 of the Labour Act, 1974 *vis-à-vis* Section 42(3) of the Constitution of the Federal Republic of Nigeria, 1999 which prohibits women from underground and night work except as nurses or in managerial capacity. While the prohibition would appear as seeking to protect women, same is blatantly discriminatory in nature. Restrictions should not be imposed on where or when a person can work simply on the account of gender. Today, we live in an adventurous world where gender roles and occupational choices are fast disappearing as there is hardly any profession or vocation that can be strictly termed as fitting for male or female. Thus, denying women the opportunity to be employed in underground work or work at night save as managers or nurses under the guise of protection is discriminatory as one cannot wish away the possibility that there may be women who desire and would really want to work in such an undertaking or at such hours but have been disallowed. Eyongndi (2022, pp. 1-25) has opined that the section ought to have allowed everyone the opportunity to work when and wherever they desire without placing any form of chauvinistic restriction. This is discrimination in disguised cloak, and it is worrisome that the same has statutory flavour. Gender equality is one of the United Nations Sustainable Development Goals, its actualisation is of enormous developmental benefits, especially given the historical subjugation of women in African societies, particularly in Nigeria. The actualisation of this Sustainable Development Goal is an indication of wholesomeness and civilisation as both men and women are endowed with abilities, which if properly cultivated and given the right opportunity for exploitation, humanity would immensely benefit.

4. EXPLICATING THE SCN DECISION IN *UKEJE V. UKEJE*

This section of the paper contains a brief fact of the Supreme Court of Nigeria in *Ukeje v. Ukeje* (2014) and its implication on the Igbo customary inheritance system as a precursor to the preceding section, which seeks to create a balance between the decision and the *volksgeist* of the Igbo people. In this case, one Lazarus Ogbonnaya Ukeje died intestate in 1981 leaving real properties in Lagos where he had resided most of his life. The wife of the deceased and his son obtained Letters of Administration over his estate. When the plaintiff became aware of this, she filed an action at the High Court of Lagos State wherein she claimed to be the daughter of the deceased and by virtue of this she was entitled to share in the estate of her late father. She testified and called her mother to testify in support of her claim. The respondents contended that the plaintiff is not their late father's child and even if she was, she was born out of wedlock and being a female she cannot inherit real and immovable property under Igbo customary law which regulates the devolution of the deceased estate. In its judgment, the trial court found that the plaintiff/respondent was the daughter of the deceased and is therefore entitled to share in the distribution of his estate. Being dissatisfied, the appellants appealed the decision of

the trial court to the Court of Appeal, which dismissed the appeal as being unmeritorious as it seeks to discriminate against the respondent. Further dissatisfied, they appealed to the Supreme Court of Nigeria. The Supreme Court of Nigeria Coram Rhodes Vivour JSC (as he then was), held that irrespective of the circumstances of the birth of a female child, she is entitled to an inheritance from her late father's estate. Consequently, the Igbo customary law which disentitles a female child from partaking in her deceased father's estate is in breach of Section 42(1) and (2) of the Constitution of the Federal Republic of Nigeria, 1999 fundamental rights provisions guaranteed to every Nigerian. Thus, the court concluded that the said discriminatory customary law is void as it conflicts with Section 42(1) and (2) of the Constitution of the Federal Republic of Nigeria, 1999 *Ukeje v. Ukeje* (2014). This judgment bequeaths inheritance right to moveable and immovable properties to females. Ogunbiyi JSC poignantly described the customary law in question as uncivilised and primitive, which tends to perpetuate male dominance, as well as punish the course of nature, as no one is capable of choosing his or her sex but their creator. The law lord admonished that those who fan to flame the embers of this barbaric culture should be deprecated by the society, especially in this 21st century.

Several legal pundits have hailed this decision as the final nail on the inglorious coffin of the dastardly discriminatory Igbo customary law (Aladetola, 2020). The judgment is a judicial reinforcement of the position earlier taken by the Court of Appeal per Niki Tobi Justice of the Court of Appeal (as he then was) in *Mojekwu v. Mojekwu* (1997) wherein it declared as being contrary to natural justice, equity and good conscience, the Nnewi *oli-ekpe* customary law practice, which entitles the son of the brother of the deceased to inherit the deceased's property, to the exclusion of his biological female children since the primogeniture rule does not recognise the right of females to inherit Ajilere, (2020, pp. 30-36). Although, this decision was reversed by the Supreme Court, the decision in *Ukeje* is a welcome return to it. It has established beyond any iota of doubt the discriminatory nature of the Igbo customary inheritance system, and affirmed the unassailable right of females irrespective of the circumstances of their birth as was held in *Odum v. Uchendu* (2015). The judgment has established the *locus standi* of female children to institute proceedings for inheritance since it has removed hitherto, the customary barrier placed on them. The reason is that, by the pronouncement, the Supreme Court of Nigeria has clearly established that any biological child of the deceased including females can bring proceedings to protect their estate or share in it as was decided in *Alaribe v. Okwuonu* (2015).

In fact, Kekere (2017, pp. 212-214) has described the decision in *Ukeje's Case* as the panacea to discrimination against women and female children under the Igbo customary law inheritance system. The learned writer further argued that, from the religious standpoints, both Islam and Christianity support female inheritance. For instance, the Holy Quran prescribes the share male and female children and close relations of a deceased are entitled to. In the same vein, the Holy Bible records that when Zelophehad died intestate, having only female children who were prohibited from inheriting under the primogeniture nature of Hebrew customary law of inheritance, the deceased daughters approached Moses and demanded for their father's inheritance. Upon inquiry from God, Moses was ordered to grant their request hence, they were

given their father's inheritance despite being females, and contrary to the prevailing customary inheritance practices as recorded in the book of Numbers 27:1-8. However, a further reading of the Biblical account referenced by the writer, shows that God directed Moses to grant the request of the daughters of Zelophehad (and pronounced it a law in Israel) but emphasised the need for the inheritance to remain in the deceased's tribe/family. This is the underlying philosophy of primogeniture. It is to guide against transference of inheritance from one tribe/family (as the case may be) to another. The belief of primogeniture adherents is that, a man's property should not be moved or taken over through the instrumentality of marriage by another family that has not laboured for it. Thus, it is believed that permitting a female to inherit her father's properties especially immovable properties will be tantamount to moving or transferring the ownership to her husband, who is not related by blood to the deceased because, a man's properties should remain within his family. This belief is deeply rooted and strong and it will take more than a judicial pronouncement or renunciation to eradicate it (Unigwe, 2021).

The point must be made that disinheritance in Igboland is prominent and nourished by customary practices as argued by Ajayi (2021, pp. 1-32). Where a deceased has executed a valid will, it is safe and logical to conclude that disinheriting any person who has been made a beneficiary under the will is impracticable. Thus, testate succession or gift *inter vivos* is a leeway through which a man can make adequate provision for his wife and female children, since customary practices cannot override such statutorily recognised and edified practices. While there is a general apathy amongst Nigerians (elites inclusive), it would appear that making a will is an escape route from this form of discrimination. Thus, it is imperative for literacy and enlightenment to be aggressively undertaken to educate persons on the need for and importance of making a will. The possibility that most persons are unaware of the benefits of making a will cannot be overemphasised, just as the importance of executing one cannot as well be over emphasised. This is not to say that a person's testamentary capacity is untrammelled or absolute as same is delimited by his applicable personal law. However, where such personal law seeks to disinherit a beneficiary, the existence of a will gives the court impetus to declare same unfair and inapplicable. One of the ways to stem this practice is to galvanise the power of social media through the activities of social media influencers deprecating this customary practice. Also, the need to engage socio-cultural activities by women right crusaders and defenders amongst young persons and youths in the South Eastern will lead to reorientation against this practice. The ultimate is that all hands must be on deck in the fight against this cultural menace.

5. RECONCILING *UKEJE V. UKEJE* WITH THE IGBO *VOLKSGEIST* THROUGH EXTRA-LEGAL MECHANISMS

The point should be made that the aim of this section is to evolve a synergy between the judgment of the Supreme Court and the prevailing Igbo customary inheritance system (using the concept of the *volksgeist*) which has been discussed above. As has been reiterated, this inheritance system disentitles females from inheriting immovable properties of a deceased progenitor, particularly the ancestral land. It is believed that, so long as the beliefs of the Igbo people, and by extension other customs,

remain diametrically opposed to the position enunciated in the judgment, which is likely to persist, the citizenry will remain in a socio-legal dilemma. Hence, it is important to create a symbiotic coexistence.

The coinage “*volksgeist*” is indisputably associated with Fredrick Karl Von Savigny who is the pioneer of the historical school of jurisprudence (Wigwe, 2011, P. 247). He rejected in its entirety, the postulations on positive and natural laws Dias, (1985, pp. 376-377). Although, the concept of *volksgeist* was originated by Savigny, it should be noted that he was inspired by the earlier jurisprudential efforts of Thibaut of Heidelberg, who in 1814 had advocated for the codification of Roman law on the lines of the Code of Napoleon. Aside the stimulus by Thubaut, that led to the rise of the Historical school, other factors such as the unhistorical assumption of the positive and natural law schools, which were considered shallow and untrue, thereby necessitating realistic investigations into historical truths strengthen the position. The attempt to found legal systems based on reasons without reference to historical or present circumstances had culminated into revolutionary outcomes which Savigny, as a conservative statesman was averse to. He studied the development of Roman law in Medieval Europe; he was not against reforms, but maintained that reforms that went against the stream of a nation’s continuity were doomed. Thus, an essential prerequisite that he maintained for the reform of Roman law was a deep knowledge of its history (Mahajan, 1987, P. 486). He warned that legislators should look before they leap, by ensuring that legal reforms are predicated on history of the society (Ladan, 2010, P. 60).

According to Savigny, the nature of any particular system of law is a reflection of the spirit of the people who evolved it. A law is the manifestation of the common consciousness of the people. The broad principles of the legal system are to be found in the national spirit of the people, otherwise referred to as the *volksgeist*. The *volksgeist* is a unique ultimate and often mystical reality, which is inseparably linked to the biological trait of a people (Adaramola, 2008, P. 298). The *volksgeist* phenomenon is anchored on the belief that, all laws originate from customs juristic activity(ies) and must only be cautiously superimposed upon it, so as to ensure the continuous action of the national spirit on its development. Law, born with the nation, state or locality, grows and dies with it. He therefore concludes that, since custom (*volksgeist*/national spirit) not only predates and precedes legislation, but is at the same time superior to it, legislation is indubitably subordinate to *volksgeist*/national spirit, and must therefore inexorably conform to the popular consciousness. In fact, the *volksgeist* has negatively impacted many penal laws in Nigeria. For instance, the offence of bigamy created by section 370 of the Criminal Code of Nigeria has no reported case in Nigeria where someone has been prosecuted despite its numerous occurrences (Lateef & Adegbite, 2017, pp. 91-118). The likely explanation for this lack of prosecution is the general belief of Africans in polygamy, and anything which impinges on this *volksgeist*, stands the risk of opposition.

This concept would require that, both legislation and judicial decisions (which is law in the form of judicial precedent or the prophecy of the court as Holmes puts it) must necessarily align with the customs/traditions of the people which represent this national consciousness (*volksgeist*). Any law, whether as enacted by the legislature or

judicial pronouncement, which is antithetical to the *volksgeist*, is likely to be rejected or rebelled against by the people, since it is a representative of their popular or national consciousness.

It is beyond contestation that the *Ukeje's case* is a welcomed development in this jurisprudence of inheritance in Igbo land. In fact, judicial activism and creativity are *sine qua non* in accentuating female dignity and property rights as been done by the Supreme Court of Nigeria. The issue however is, are judicial pronouncements invalidating the apparently discriminatory customary inheritance practices the end of discussion? Or is it *uhuru* as commonly asked in the Nigerian parlance?

From the preceding section, it has been observed that Igbo *volksgeist* on inheritance generally disinherits females. This custom permeates significant parts of Igbo land, and is promoted by strong adherents (Ephraim-Chukwu, 2019, pp. 264-272). In fact, this customary practice continues to prevail particularly in the rural areas despite opposing legislative and judicial intervention including the Supreme Court of Nigeria pronouncement in *Ukeje's case*. The adherents to this custom or “the customary people” are placed in a somewhat middle way between their unalloyed allegiance to these customary beliefs and practices alongside the legislative cum judicial pronouncements annulling same. Of course, this judgment can be easily exploited in urban areas like Lagos, Ibadan, Port-Harcourt, Kano, Asaba, Oweri, etc. owing to the overwhelming influence of education, civilisation and possible public opprobrium if the contrary is dared, but the same cannot be said of core remote and typical ancestral ethnic enclaves in the rural areas, which is where these discriminatory practices are rigorously practised (Okwuchukwu, 2021, 75-83).

In fact, Oni (2014b, pp. 138-155) has reported the biases of some prominent community leaders in the South Eastern part of Nigeria regarding the judgment. For instance, the traditional ruler of *Uhokaihs* Autonomous Community in Obingwa Local Government Area of Abia State commenting on the judgment stated as follows:

The judgment will be subjected to traditional principles and practices of inheritance. Our community does not have any business with the Supreme Court, before the verdict, the community had an existing and generally acceptable way of dealing with such issues. The culture of the will fight those judgments, it is not the people that will fight those judgments but their culture will fight those judgments. The judgment looked at fundamental right of the individual. The culture of the people must prevail.

In the same vein, the traditional ruler of Okwo Aja Community, Eze Clement Offia Chukwu, described the judgment as “judicial jingoism.” He noted that the judgments did not take into consideration the culture of the Igbo people before they were delivered.

It is obvious that the decision of the Supreme Court seems opposed to the *volksgeist* of the adherents of the primogeniture customary inheritance practice of Eastern Nigeria. The thesis here is not whether the decision is desirable, as that is beyond contestation, it

is rather, how the decision can be exploited in areas of the society where this practice is predominant and the adherents are likely to be resistant.

It should be recalled that the infamous *osu caste* system in the Eastern part of Nigeria persisted even when judicial pronouncements declared it discriminatory and repugnant to natural justice, equity and good conscience. However, extra-legal measures were adopted such as enlightenment campaigns by various opinion shaping groups (especially religious leaders), to abate its continuous abrasive practice (Nwokeoma, 2018). The influence traditional and religious leaders' play in sharpening public morality, especially in Nigeria where there is enormous respect for religious and traditional institutions, cannot be overemphasised. Hence, same should be maximised. The importance and impact of public enlightenment as a means of reorientation cannot be overemphasised. It is needless to argue that most Igbos, even the educated ones, despite the blatant absurdity of the general discriminatory intestate inheritance practice towards females, they feel overpowered or are subdued by this practice or are sentimentally attached to its pervasiveness. It is our considered view, that while the decision is a welcomed development, its implementation will require more than just having a court judgment. It will require more than "mere" court pronouncement to abrogate the practice as it is an ideology deeply rooted among its adherents. To abrogate customary ideologies such as this practice, it requires rigorous reorientation through public enlightenment. Thus, there is a need for various stakeholders, particularly the Ministry of Women Affairs at Federal and State levels, Non-Governmental Organisations, Women Rights Organisation like International Federation of Female Lawyers, Nigeria Association of Women Journalists, etc. to adopt extra-legal interventions, through enlightenment campaigns to core areas where this practice is ingrained with a view to educating the populace of its adverse effect.

Criminalisation of such practice with heavy punitive sanction is an extra-judicial measure that is potent in stemming the ugly tide. Punishment has both deterrence and retributive potencies. Where an act/omission is criminalised with well-defined sanction, anyone that runs afoul is sanctioned. The effectuation of sanction positively constrains the culprit from further default, while deterring others from similar infractions. In addition to the measure of reorientation through enlightenment, the Houses of Assemblies of the various States in the South East of Nigeria should enact laws prohibiting this practice. Ajayi and Eyongndi (2023, pp. 205-224) have opined that the government has the duty to ensure that discrimination, in whatever form, does not thrive in Nigeria. This culturally inspired and sustained discrimination deserves urgent governmental legislative attention.

Government agencies, charged with human rights protection and promotion, such as the National Human Rights Commission should invoke its inherent powers under the enabling law to sensitise, investigate and apprehend cases of violation, and make recommendations to the Attorney General of the Federation (or his nominee) for possible prosecution. These means permit the people to express their apprehension on their perceived attack on their customs and thereafter lay bare their idiosyncrasies. Thus, realising female inheritance rights in South East Nigeria goes beyond legal rhetoric and requires socio-legal approach. It has become imperative to aggressively sensitise Igbo men of the need to execute wills, because the issue of disinheritance is likelier and higher

in cases of intestate succession compared to testate successions. However, where the deceased had executed a will, upon his demise, the will, like common law, will speak from the grave dictating how his estate is to be distributed. Unfortunately, most persons erroneously believe that once one makes a will, death is nearby. This fallacious belief has repelled many persons from making a will despite its many benefits. Subject to recognised customary laws, once a testator has validly executed a will, his estate would be shared and ministered in accordance with his dictates as contained in the will. By this, a father can make adequate and necessary arrangements for his vulnerable dependants, especially his wife and daughter(s). It is imperative for women in Nigeria to intensify the campaign against all forms of anti-women practices. In Nigeria, there is a history of women resistance to injustice and discrimination in the pre-colonial and post-colonial eras. For instance, the Egba women in 1914 and 1947 vigorously protested colonial tax regime which culminated in the formation of the Abeokuta Women's Union in 1946. The Union comprised of elites and non-elite women of the Egba extraction. Thus, between 1925 and 1928, women from Calabar, Aba and Owerri called the Dancing Women Movement resisted cultural imposition, introduction of adverse system of governance and payment of taxes by women, and in 1953 the Nigerian Women Society was formed, while the National Women Council was inaugurated in Ibadan in 1959 (Oniyide & Ayo, (2015, pp. 167-182).

6. CONCLUSION

Extrapolating from the above analyses, it is clear that the Igbo customary inheritance system, which is based on primogeniture, disentitles females from inheritance. This practice has been held to be discriminatory as it runs afoul of section 42 of the Constitution of the Federal Republic of Nigeria, 1999 which prohibits discrimination against any Nigerian citizen on the basis of sex. The decision in the case of *Ukeje* has been embraced in the jurisprudential development of the inheritance system. Despite being a welcomed development, the decision is a disruption of the *volksgeist* of the adherents of this customary practice, which might pitch them against same. Thus, the implementation of the judgment faces an ideological challenge. It is therefore imperative to explore socio-legal measures to ensure that the gains of the decision are maximally realised, especially in rural areas where this discriminatory practice is egregiously entrenched. Unless the *volksgeist* of the people synthesises with the spirit of the judgment, given that both are ideologically opposed, they will continue to subsist as strange bed fellows instead of the desired symbiotic co-existence.

7. RECOMMENDATIONS

Based on the findings above, it is recommended that Non-Governmental Organisations, the Federal Ministry of Women Affairs, as well as its states' counterparts organise sensitisation programmes in the rural areas where this practice is vociferous, and also engage the adherents with a view to enlightening them on the ills of this practice. This presents an opportunity to disabuse the mind of the adherents, and allay their fears and suspicions of disruption and displacement of their cherished cultural practice by civilisation.

There is a need to engage with the traditional institutions represented by the traditional rulers and Chiefs (title holders) in the communities, where this discriminatory inheritance practice is being practised to garner their support in abrogating such customary practices. The chiefs and traditional title holders are the custodians of customs and traditions and the controlling minds of the community. There should be a gradual reorientation of these elders, since they are the custodians of traditions. Custom has been described as flexible, however evidence abounds that it could be selectively flexible. It is only when there is a belief in the need for a change that the custodians of custom will call for a change.

There is a need for the National Assembly to give legislative fortification to the decision in the case of *Ukeje*; and this can be achieved by amending the Criminal and Penal Codes to insert provisions that specifically criminalise these acts. The fear of criminal sanctions is capable of achieving deterrence.

Moreover, the power of the social media in enlightenment and reorientation in the 21st century cannot be overemphasised. It is almost impossible to come across a young Nigerian who does not use the social media. Thus, women rights groups should deploy social media through the use of social media influencers to reorient the young persons and youths in the areas in the South East where this harmful discriminate cultural inheritance practice is prevalent.

Women rights and interest groups such as the International Federation of Women Lawyers and Nigeria Association of Women Journalists should aggressively engage in enlightenment and sensitisation campaigns of women on the legal implications of the judgment and the need for them to assert their equality to inheritance. This will enable women who are victims to speak out. Also, *pro bono* legal services, including litigation where it becomes inevitable, should be accorded to women.

Furthermore, through social programming, these women rights groups and defenders should sponsor socio-cultural and edutainment activities amongst young persons and youths within the areas where this inhumane and inhuman discriminatory cultural practice is prevalent in the South East. Such activities, will serve as the springboard for social reorientation towards persuading the next generation to abandon such practices with the hope that, sooner than later, same will die a natural death.

The print and electronic media, as the conscience of the society, should be saddled with the responsibilities of publicising and sensitising the public on the implications of the judgment, and creating awareness amongst the populace who might be adversely affected. The awareness created is capable of forestalling disobedience of the judgment due to ignorance which in anyway is not an excuse to a legal obligation.

It is also recommended that the National Human Rights Commission should invoke its inherent powers under its enabling statute to come to the aid of vulnerable girls and women who might be victims of this discriminatory practice. This can be achieved when

the Commission conducts surveys, enlightenment campaigns and investigations with a view to reporting to the AGF or his nominee of any infraction for necessary action.

Moreover, Igbo men should be encouraged to write wills. Once a testator has validly executed a will, upon his demise, subject to his prevailing customary law which regulates his testamentary capacity, his estate will be shared in accordance to his will. Most men still have the misconception that making a will is equal to a death sentence. Nothing is farther from the truth than this. Making a will is capable of preventing rancour with regards to the sharing and administration of the deceased's estate.

The Federal Government of Nigeria through the Ministry of Gender and Women Affairs, as well as the federating states, should design and implement programmes aimed at achieving goal 5 of the Sustainable Development Goals i.e. gender equality through enlightenment campaigns and empowerment of women in general. Reduction of poverty amongst women, as well as political empowerment are panaceas to the menace of gender discrimination, especially through propagation and promotion of campaigns against inhumane, barbaric and dehumanising cultures and customary practices like female disinheritance.

Also, Igbo men should be encouraged to take advantage of the *idu ulò* ceremony (dowry payment) that takes place during marriage ceremony, as this allows them to settle their daughters at the point of marriage as a reasonable compensation to them (inheritance wise) for the ancestral land (and indeed, landed properties in general) which they are not allowed to inherit.

Furthermore, there is the need for the State Houses of Assembly within the South-East geopolitical zone to enact penal legislation criminalizing women/female disinheritance. The fear of sanction is capable of achieving deterrence. This should serve as complimentary to sensitisation of the populace on the negative impact of such practice(s).

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