

# A PRAGMATIC APPROACH TO RAISING THE BAR ON WOMEN'S RIGHTS IN NIGERIA

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## ABSTRACT

*The expeditious growth of human rights in Nigeria coupled with the fact that nation is a signatory to a virtually all the international instruments, conventions and treaties on human rights has heightened the expectation of Nigerian women to the enjoyment of human rights and their protection from barbarous, anachronistic and archaic customary practices that unfortunately and regrettably abuses their rights to succession, inhibits their political and economic ascendancy and discriminates against them contrary to the tenets of the Constitution of the Federal Republic of Nigeria, 1999. It is no longer news therefore that Nigeria has gained notoriety as a country where the inalienable rights of women are constantly abuse through domestic and gender based violence, deprivation from inheritance, subjugation, child marriage, female genital mutilation, sexual abuse, limited political representation and religious segregation amidst a host of others. This paper therefore examines these violations that have become entrenched to a ridiculous level due to our belief in the patriarchal system in which women in Nigerian have been placed in a precarious position in modern society. By employing the doctrinal method, issues were addressed via case by case review and comparative analysis between the protection of African women in South Africa and Nigeria and how the constitutional models in the two countries have given recognition and enforcement of two regional and international instruments on human rights in terms of raising the bar and protecting women's rights from harmful practices that has enthroned imbalance in the power relationship between men and women. In the end, the papers recommends amongst others, the practice of bilinear or double-descent system of inheritance and intestacy succession, joint ownership of properties between husband and wife, execution of testamentary instruments and judicial activism as pragmatic approaches to raising the bar on women's rights in Nigeria.*

**Keywords:** Abuses, International Instruments, Protection, Human Rights, Succession, Women.

## INTRODUCTION

Issues bothering on women's rights have gained eminent position at the local and international plain. It is of great concern to many scholars, legal practitioners, social commentators, public analysts and jurists inclusive of human right activists that in this 21<sup>st</sup> century women are still being deprived of their human rights due to certain cultural inhibitions and perceptions that view the female folks as second class citizens or the property of the men or the male folks (Taiwo, 2008).

These cultural practices that excludes women from ownership of property or succeeding as either heirs (female children) or wives of deceased fathers or husbands is summarized as the principle of primogeniture which is still obtainable in certain native laws and customs across

multifarious and diverse tribes and communities in the Nigerian federation. This is against the back drop of the United Nations Charter on the Universal Declaration of Human Right which stipulates that:

*“All human beings are born free and equal in dignity and rights”<sup>1</sup>*

The United Nations Charter that has been running for over seven decades enshrines the right of all persons in general (and women in particular) to be free from violence, slavery and discrimination; have qualitative education; own movable and immovable property; vote and be voted for; and to have economic empowerment by earning fair and equal wages. Despite the existence of these inalienable human rights that should be gloriously celebrated in a democratic setting like ours; women are on the contrary subjected to constant violation of their fundamental rights in different shades and forms<sup>2</sup>. Apart from the international instruments that equally guarantees these rights. At home the Constitution of the Federal Republic of Nigeria, 1999 has safeguarded the right of all citizens (women inclusive) to be free from discrimination on the basis of sex, religion, ethnicity, political affiliation or the circumstances of his or her birth.<sup>3</sup>

More so, Nigeria in a bid to raise the bar on women’s right took a further step in the protection of women’s rights by being a signatory to several global and regional legal instruments which include, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) that encourages nations to modify the social and cultural patterns of conduct of men and women with the view to eliminate inferiority and superiority of either sexes and stereotype roles of men and women,<sup>4</sup> several protocols, one of which is the Optional Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (ratified by Nigeria in 2004) that stipulates that:

*“A widow shall have the right to an equitable share in the inheritance of the property of her husband, the right to continue to live in the matrimonial home and those women and girls shall have same rights as men and boys to inherit in equal shares their parents’ properties”<sup>5</sup>.*

In addition, Nigeria went to the extent of domesticating the regional instrument on human rights that stipulated that:

*“States shall ensure the elimination of every form of discrimination against women and also ensure the protection of the rights of women”<sup>6</sup>.*

Even in the days where the patrilocal and patrilineal system was the predominant means of succession, the matrilineal system of succession equally existed as an exception to the general rule. To this end, children inherited movable and immovable properties through their mothers or the female folks (Ndukwe, 1997). It is therefore the pivotal concern of this paper to examine the historical background that deals with the rights of women in relation to modern day legal and constitutional interventions under the aegis of human rights and judicial activism that has helped in no small measure in the protection as well as raised the bar on women’s right and concluding with a pragmatic approach in form of making useful recommendations.

## The Patrilineal Systems of Succession as a Tool for the Deprivation of Women's Rights

The patrilineal or patrilocal system of succession otherwise known as the primogeniture's principle is understood in the context that only male children are entitled to inherit the property of their parents who die intestate. The simple implication of the foregoing is that, no female child was allowed to inherit the property of her parents or husband in those native laws and customs that practices the principle of primogeniture. In this regards, we can assert that women had limited or no right at all especially as it relates to intestate succession to immovable property like land whether as wives, daughters, ladies and/or widows (Kerr, 1990)<sup>7</sup>.

These practices that amount to deprivation under the patrilineal or patrilocal system in respect to intestate succession has been brilliantly and eloquently captured by Kaganas and Murray (1994) in these words below:

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. The male head of the household represents the family and a woman cannot generally contract or litigate without assistance. Husbands control virtually all the family's property while wives' rights are confined to things such as items of a personal nature. Women cannot initiate the divorce process but must enlist the help of the bride-wealth holder, who may have a vested interest in the continued existence of the marriage. Husbands, on the other hand, may simply unilaterally repudiate their wives or, if they wish to retain the bride-wealth, can rely on specified grounds. Finally, on divorce, the children "*belong*" to the husband's family.

Towing the same line of reasoning on the South African native law and custom and succession, the Supreme Court of Appeal in the case of "*Mthembu v Letsela*"<sup>8</sup> succinctly opined thus:

*"The customary law of succession in South Africa is based on the principle of male primogeniture. In monogamous families the eldest son of the family is heir failing, him the eldest male descendant. Where the eldest son has predeceased the family head without leaving male issue, the second son became heir; if he is dead leaving no male issue, the third son succeeds and so on through the sons of the family head. Where the family head dies leaving no male issue his father succeeds... women generally do not inherit in customary law."*

In explaining the historical background bothering on the evolution of the primogeniture's principle, Niekerk (2005) asserted viz:

*"The reason for the emergence of the rule was to ensure the continued existence of the family or the group. It is obvious that the primary goal of the rule of male primogeniture could not have been to prejudice certain members of the community. After all, in line with Ubuntu which is the foundation of the basic principles underlying indigenous law, the individual and the community are two sides of the same coin. The essence of Ubuntu is encapsulated in the belief that the welfare of the individual is inextricably linked to the welfare of the group or family; that, in turn, is linked to a harmonious relationship with the ancestors and with nature. The welfare of all members of the community guarantees the equilibrium and welfare of society. The group, family or collectively cannot be seen as an entity separate from its component members" (Niekerk, 2005).*

The foregoing South Africa customary law rule that recognized the application of the male primogeniture rule applies on all fours in Nigeria as rightly observed by a learned author who postulated thus:

*“The Nigerian systems or rules of inheritance of property are mainly patrilineal and patrilocal. There may be a few cases where matrilineal inheritance of a real property is practiced, but it would appear that the patrilineal remains the predominant method of succession throughout the greater part of Nigeria (Oluyede, 1989 & 1978)”*

Thus, in the judicial authority of *“Bolaji v Akapo<sup>9</sup>”* the court giving juridical blessings to the principle of male primogeniture succinctly held as follows:

*“The only person entitled to a grant of a letter of administration under Yoruba native law and custom which would be applicable by virtue of s.27 of High Court of Lagos Act, were the plaintiffs, four of the children of the deceased, but not the wives who are regarded as part of his estate.”*

In giving approval to the old position of the law on the application of the primogeniture of male rule, the Supreme Court in *“Nzekwu v Nzekwu<sup>10</sup>”* held that a widow who did not give birth to a male issue only possess the right to occupy the building of her death husband subject to her good behavior. According to the Apex Court, she can only deal with the property with the consent of the family of her late husband. Therefore, the widow’s interest over the house is merely possessory and does not graduate into proprietary interest with the effluxion of time. This decision implies that a widow cannot alienate interest in the land or house to third parties.

Similarly, in *“Osilaja v Osilaja<sup>11</sup>”*, the Apex court judicial notice of the fact that it was judicially established as a rule that a widow has no right to inherit that property of her deceased husband.

### **Women as Part of the Chattel of the Man**

The principle of primogeniture thrived partly because the woman is viewed as part of the chattel of the man. It is in the light of the foregoing that Jibowu posited in *“Suberu v Sunmonu<sup>12</sup>”* that it is a trite rule of the Yoruba customary law rule that a wife has no right to inherit her deceased husband’s property because she is seen like one of his chattel to be inherited by a relative of her husband.

### **The Woman is not the Same Blood with her Husband**

A wife was deprived of the right to inherit her deceased husband’s property on the ground that by customary law practices inures that devolution of property is hinged on blood. Thus, since a wife of a late husband cannot lay claim to his estate because she is not related to him by blood and the inheritance of her deceased husband belongs to his son or siblings who bear the family name and are to carry on the posterity of the family<sup>13</sup>.

### **Women were forced to Marry the Brother of her Death Husband**

It was the practice under several native law and customs in Nigeria that where a man dies, his wife is automatically inherited by his brother especially where the man died without a child at all or without a male issue to continue his family name. So, in a bid to raise seed for his late brother another member of the family is allowed to inherit his property inclusive of his wife or wives. But where the wife of wives refuse(s) to marry such a brother but chose to remarry man from another family she loses her privilege to live in the house of her deceased husband. Thus, in

“*Oloko v Giwa*<sup>14</sup>”, the court held that the room allotted to a wife becomes part and parcel of the real estate of her deceased husband as same is not vested in her. She has the privilege to use the property with the acknowledgement of her husband’s membership of the family, only if the wife does not remarry outside the family of her dead husband since she is not making use of the house as a member of the family.

This practice is known as the levirate union which implies the compulsory marriage of a widow to a brother of her deceased husband. It originated from the Latin word levir meaning husband’s brother. The custom has its root in ancient Hebrew wherein a man is placed under obligation to marry his brother’s widow. The tradition ensures that death does not disturb the relationship between the spouses’ families and that the widow capable of bearing children continue to give birth to children to keep on with her late husband’s patriline. It is akin to the sororate marriage which is a union between a husband and the sister of his deceased wife or a man having sexual relationship with the sister of his wife who is unable to bear children. While levirate is common practice under the Nigerian native law and custom; sororate is unknown to the customary law of Nigeria.

### **Women were Forbidden from Inheriting Property**

Under the Igbo customary law, a woman as a daughter, wife or widow is not entitled to succeed the personal or real property of a deceased father or husband as of right in intestacy. This practice strongly entrenched in patrilineal societies vest inheritance or succession to sons, males and the men to the exclusion of the daughters, females and women. This principle that represents the old position of the law was applied in the resolution of “*Nezianya v Okagbue*<sup>15</sup>” where the Supreme Court decided that under the rule applicable to Igbo customary law of succession women are forbidden from administering the estate of a deceased man and therefore the female folks are barred from inheriting personal or real property. This even extended to a married woman who is apportioned a piece of land during planting season does not automatically confer on her the right to inherit the plot of land on the demise of her husband (Ndukwe, 1999).

A similar practice obtains in the old position of the cognate principles applicable to Yoruba law and custom as stated by the court in setting aside the sale of a property sold by one of the wives of a deceased husband in the case of “*Ogunbowale v Layiwola*<sup>16</sup>”. The court was called upon to determine the correct position of the law concerning a wife and children of a Yoruba man in relation to his real property after his intestate death. The court in deciding the question held that under Yoruba custom, a wife could live in the house of her deceased husband but that since no property devolves on her at the demise of her husband, she inherited no estate in the real property of her late husband except the right to live or occupy the house as a widow therefore she could not validly convey interest over the land to the 2<sup>nd</sup> defendant because she herself is an object of inheritance.

### **Women Lacked Locus Standi**

This vexed issue reared its ugly head in the juridical authority of “*Ugboma v Ibeneme*<sup>17</sup>” where Egbuna J. held that since according to the general Igbo custom of which Awkuzu native law and custom of Anambra Local Government Area is a part, women were disentitled from inheriting their late father’s land. Therefore, the daughters of the later reverend Ibeneme being

women lacked the “*locus standi*” as plaintiffs to institute an action over interest in land against the defendant.

Using the law as a vehicle of social engineering, the Court of Appeal Lagos Division stated the new position of the law that has changed the dynamics to the effect those women now has the “*locus standi*” to institute action to property family property<sup>18</sup>. This change in judicial reasoning qualifies as a pragmatic approach in raising the bar on women rights in terms of access to the temple of justice. Thus, in “*Princess Bola Jegede v Mrs. Elizabeth Oleshin*<sup>19</sup>” Hon. Justice Abubakar, JCA succinctly adumbrated as follows:

*“It was established and is beyond dispute that the respondent is the wife of the deceased, owner of the disputed land. She lived in the property with her children and the appellant is alleged to have trespassed on the land... a member of a family can sue to protect the family property. Therefore, I am of the firm view that the respondent has sufficient interest in the subject matter of the dispute in this appeal. This issue is therefore resolved in favor of the respondent”<sup>20</sup>”*

### **Male Superiority versus Female Inferiority**

It is without gainsaying the fact the customary law in Nigeria just like in South Africa and other African countries follow the patriarchal system that does not permit women to inherit real property because a woman is perceived to be inferior to the man who in turn is considered to be of a superior gender. Regarding her husband family, she is not seen as a blood descendant of her husband’s family and on that premise deprives her of the right of succession in her husband’s family. Concerning her place in her father’s house, she is culturally speaking, not allowed to transpose from her husband’s house to come and inherit her father’s property. In both circumstances, the woman end up losing on both sides (Taiwo, 2016).

A writer captured posited that, traditionally the position of women, throughout their lives, is that of minor children. Before they are married, they are the children of their father; after their marriage, they are the children of their husbands; and during widowhood, they are the children of their heirs (Duncan, 1960).

Lending credence to the aforesaid assertion, section 11(3)(b) of the South African Black Administration Act 38 of 1927 provides that African women married under customary law were to be regarded as minors under the guardianship of their husband. One way this played out in practical terms is the very fact that men exercised dominant power and played prominent role in the disposition of family property usually acquired in a man’s name as was stated in “*Nwanva v Nwanva*<sup>21</sup>”. The above inhibitions, constraints and limitations placed on the right of women in Africa in general and Nigeria in particular that informs the need to raise the bar of women’s right with a pragmatic approach.

### **Matrilineal System of Succession that Raises the Bar of Women’s Right**

The matrilineal system of succession and inheritance has long been described as one of the modes for determining the personal law of the deceased in intestacy. This system of inheritance involves the distribution of movable and immovable properties in which the right of succession resides through maternal or feminine affiliations. In Nigeria pockets of matrilineal system is practiced as an exception rather than the general rule and same obtains in Yakurr Local Government Area, Agwagune, Ejagham, Efiks and Quas of Cross River State; Ijaws of Bayelsa

State; Nkporo, Ohafia, Abiriba of Abia State and Ihechiowa, Abam, Edda and Afikpo communities of Ebonyi State (Ndukwe, 1999).

The foregoing portrays a clearly defined pragmatic approach under cognate principles of customary law that has recognized and raised the bar of women's rights in Nigeria even before the advent of colonialism. A good example to illustrate the *modus operandi* of the matrilineal system is presented by a learned author who coined the following hypothetical case to wit:

*“Let us assume that A is an adult female with B as her adult brother and C as A's husband. Let us also assume that C has an adult sister, D married to E, A's children both male and female belong to the same matrilineal. A's children both male and female will inherit the estate of C. B has family obligation to maintain the children of his sister A and not his own children. While C has a similar duty to the children of D, his sister and Matrikin. On B's death, his assets vest in A's children as members of his matrilineage. A's children and other members of the matrilineage are responsible for the funeral expenses and other liabilities of B in the event of his death. The same revolves on D's children in the event of the death of C and the same thing continues to E's Sister's children, etc. Thus, succession and inheritance is traced through the common female ancestress (Uche, 1991).”*

Matrilineage system practiced in some parts of Igbo land in the present day South East Nigeria that allows male and female children to inherit their late father's estate inclusive of land is a welcome development and serves as a pragmatic approach to raising the bar on women's rights under the Nigerian jurisprudence. The “*raison d'être*” for this exception to the patriarchal hegemony in Eastern Nigeria has been brilliantly and pictorially captured by Nsugbe (1974) in the following illuminating expressions:

*“If a man marries from the Ohafia Clan, then his children will belong to the matrilineage of his wife. Consequently, if the children were allowed to inherit the man's estate on his death, such children will take such estate to add to their mother's matrilineage and the man's matrilineage will lose out. But if the wife is from outside the clan then, the children and their mother will belong to the man's matrilineage.”*

As can be clearly seen, the practice encourages the fusion of both matrilineage and patrilineage as the children in a bid to inheriting their late father's estate which is an outright display of the primogeniture principle by the intermingling of their late father's matrilineage therefore women's right is recognized and enforced by giving rise to the double-descent or bilineal system particularly where their late father is not succeeded by sisters whose children should have carried on with posterity of the matrilineage.

### **Women's Rights Guaranteed from Time Immemorial**

The above position is not new to us as same has been in existence from time immemorial. A classic example is the biblical account of the Zelophehad's daughters who approached Moses and Eleazer when the children of Israel were in the wilderness. An excerpt of that record reads as follows:

*“Then came the daughters of Zelophehad Mahlah, Noah, Hoglah, Milcah and Tirzah of the families of Manasseh the son of Joseph stood before Moses and Eleazer the priest saying, 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 us therefore a possession among the brethren of our father. Moses brought their cause before the LORD [who] spoke unto Moses, saying, the daughters of Zelophehad speak right: thou shalt surely give them a possession of an inheritance among their father's brethren; and thou*

*shalt cause the inheritance of their father to pass unto them. And thou shalt speak unto the children of Israel, saying if a man die, and have no son, then ye shall cause his inheritance to pass unto his daughter.*"<sup>22</sup>

A critical content analysis would immediately show that women's rights to inherit movable and immovable property of their fathers or husbands existed from time immemorial. It is equally on record that women enjoyed political rights to aspire to positions of authority like Judges, prophetess, singers, leaders and queens. Two examples outstanding, they are the account of Athaliah the daughter of Ahab and Jezebel who reigned over the land of Israel in a predominantly patriarchal kingship system applicable to the land of Israel in those days.<sup>23</sup> Another example is that of Deborah who rose to become a national leader, Judge and singer in the land of Israel. She even led Barak and the Israeli Army to defeat Sisera the captain of Jabin's army, an enemy nation as can be seen from the excerpts from the account that reads:

*"Deborah a prophetess, the wife of Lapidoth, she judged Israel at that time. Barak said unto her, if thou wilt go with me, then I will go: but if thou wilt not go with me, and then I will not go. Then sang Deborah and Barak the son of Abinoam on the day saying, praise ye the Lord for the avenging of Israel, ...Awake, awake, Deborah: awake, awake, utter a song: arise, Barak, and lead the captivity captive, thou son of Abinoam...The inhabitants of the villages ceased, they ceased in Israel, until that I Deborah arose, that I arose a mother in Israel"*<sup>24</sup>

The plethora of Scriptural references examined above shows that the pragmatic theocratic approach to can be adopted in raising the bar of women's right by addressing menace of women's rights abuses in Nigeria.

### **The Bilineal or Double-Descent System as a Form of Pragmatic Approach to Raising the Bar on Women's Rights**

In reality, the double descent or bilineal system of succession seems to represent the current trend as exemplified by established principles of the law on testate and intestate succession under the Nigeria legal system. This system of inheritance states that:

*"Children of both descent and sexes can inherit from their patrilineal and matrilineal lines."*

It is on this score that we advocate the bilineal or double-descent system of succession as a pragmatic approach to raising the bar on women's rights while agreeing with Olowoye who posited that neither the matrilineage nor the patrilineage could be said to be the sole customary law of a particular society to the complete exclusion of the other in matters of inheritance (Olowoye, 1974; Ojiako, 1990).

To this end, the simultaneous existence of patrilineal, matrilineal and bilineal systems of succession and inheritance in our customary practices is another pragmatic approach to raising the bar on women's rights when fully integrated into the Nigerian consciousness. Our legal submissions finds support in the case of "*Lewis v Bankole*"<sup>25</sup> where the court held that a woman can inherit property and occupy the position of the family head and Osborne CJ in that case held that there is "*nothing inequitable in this recognition of women's right*". Thus, according to Yoruba native law and custom females can succeed and inherit their father's property to the exclusion of other blood relations on his intestacy<sup>26</sup>.



This position is equally true of the law in South Africa that provides that women married under customary law are no longer minors subject to their husband's guardianship. The simple legal implications of the aforesaid legal changes which represents the extant position of the law are that the hitherto bar on women's rights have been erased. Women can now have equal legal and contractual capacity in terms of the disposal of assets, litigation, political and commercial transactions<sup>27</sup>. It is on this note that the Married Women's property Act 1883 applicable in Nigeria as a statute of general application has long accorded recognition to a surviving wife's right of inheritance to the position of the legacy of her husband who predeceased her.

### **Personal Law of the Deceased as a Pragmatic Approach to Raising the Bar on Women's Right**

The concept of the personal law of the deceased can be imported into women's right as a *modus vivendi* of raising the bar thereof by way of pragmatic approach in addressing the constraints on women's right inherent in most of the Nigerian customary laws. Thus, in matters of intestate succession, the court can choose to apply the personal law of the deceased in the determination of women's entitlement to inherit the property of their deceased parents<sup>28</sup>. This line of reasoning informed the court's decision in the case of "*Ghamson v Wobill*<sup>29</sup>" In that case, the West African Court of Appeal held that Fanti native law and custom as the personal law of the deceased woman from where the plaintiff's mother inherited the house that was the subject of litigation as against relying on the "*lex situs*" rule was the applicable law in the determination of the right of inheritance and succession.

### **Raising the Bar on Women's Right through Fine Tuning our Customary Laws**

Native law and custom otherwise known as customary law is still part and parcel of the traditional practices that suffices as the organic living law of the indigenous people of Nigeria in the regulation of their rights, lives, obligations and transactions as well as used in resolving disputes between parties seeking for justice in the rural setting.<sup>30</sup> While we do not encourage the treatment of our customary laws as inferior to English or written laws which stems from advocating for the fine tuning of the Nigerian native law and custom by exorcising its barbaric and obnoxious content while retaining its fineprints in accordance with modern day reality and mechanism for attaining human rights and social justice for all persons (women, ladies, females, girls, daughters, sisters, widows and wives inclusive) (Okom, 2015).

It is on this score we rely on the juridical blessings of the Apex Court in "*Agbai v Okegbue*<sup>31</sup>" where Nwokedi, JSC brilliantly posited thus:

*"The opportunity to fine tune customary laws to meet changed social conditions where necessary more especially as there is no forum for repealing or amending customary laws... when however customary law is confronted by a novel situation, the courts have to consider its applicability under existing social conditions."*

The above flexible nature of customary law that makes it amenable to reforms and adaptations when fully harnessed by the courts and other relevant institution for administering social justice can help in no small measure as one of the pragmatic approaches to raising the bar

on women's right in Nigeria. It is perhaps this mindset that influences the decision of the court in "*Owoniyi v Omotosho*<sup>32</sup>" where the court held that:

*"Their lordships entertain no doubt that the more barbarous customs of earlier days may under the influence of civilization become milder without losing their essential character as custom, however, in the milder form they are still recognized in the native community as custom."*

### **Mode of Celebration of Marriage as a Pragmatic Approach to Raising the Bar on Women's Rights**

The law is trite that a woman who contracts or celebrates her marriage in accordance with the provisions of the Marriage Act<sup>33</sup> or the Matrimonial and Causes Act<sup>34</sup> has strong indications that she intends to change her personal law from that of native law and custom to English Law which will in turn entitle her, her female children or sisters to inherit her movable and immovable property as of right on her demise. This position enjoys the statutory approval of the provisions of section 36 of the Marriage Ordinance 1958 provides thus:

*"When any person who is subject to native law or custom contracts a marriage in accordance with the provisions of this Ordinance, and such person dies intestate, subsequently to the commencement of this Ordinance, leaving a widow or husband, or any issue of such marriage; and also where any person who is the issue of any such marriage as aforesaid dies intestate subsequently to the commencement of this Ordinance. The personal property of such intestate and also any real property of which the said intestate might have disposed by will, shall be distributed in accordance with the provisions of the law of England relating to the distribution of the personal estates of intestate, any native law or custom to the contrary notwithstanding."*

Thus, in "*Ajayi v White*<sup>35</sup>", Baker, Ag CJ held that whilst not unmindful that the fact that a woman who has contracted a marriage in accordance with Christian rites is a strong evidence that she desires that the succession to her property should be regulated by English law, in my opinion, however, it is not conclusive and is a presumption that can be rebutted and the question of what law should be applied depends on the circumstances in each and every case.

A similar view was held by Bello, JSC in the case of "*Olowu v Olowu*<sup>36</sup>", that it may be observed that change of personal law choice is not new to our legal system it has been with us since 1898. The classical case of "*Cole v Cole*<sup>37</sup>" which has been followed by a plethora of cases since then converts into an English man or Woman for the purpose of distribution of his or her estate upon his or her customary law who contracts a marriage by Christian rites or according to English law.

It is parenthetical to note at this juncture that there is a clear difference between Christian marriage simpliciter and the celebration of statutory marriage or marriage under the Act. In the light of this, Palmer J. made the following remarks in the case of "*Obiekwe v Obiekwe*<sup>38</sup>", thus:

*"...So far as the law of Nigeria is concerned, there is only one form of monogamous marriage and that is marriage under the Act. Legally a marriage in a church (of any denomination) is either a marriage under the Act or is nothing. In this case, if the parties had not been validly married under the Act, then, either they are married under the native law and custom or they are not married at all... in either case, the ceremony in the church would have made a scrap of difference to their legal status."*<sup>39</sup>

In the light of conflicting authorities<sup>40</sup> on this subject or legal issue, women of marriageable age should in a bid to safeguard their right in a matrimonial union ensure that their

marriage is celebrated in a licensed place and certificate issued by the Marriage Registry in addition to customary rites particularly in States where there is prevalence of the abuse of women's right to inherit their deceased husband's properties. Women (wives) can raise the bar to protecting their rights by insisting that their monogamous marriages (which is the order of the day) is celebrated under the Act and not just church wedding. In this regards, the services and advice of a sound legal practitioner may be consulted and utilized as part of the proactive approaches on the issue.

In the light of the foregoing, section 21 of the Marriage Act provides that marriage under the Act or statutory marriage to be valid it must be celebrated in licensed place of worship Marriage may be celebrated in any licensed place of worship by any recognized minister of the church, denomination or body to which such place of worship belongs, and according to the rites or usages of marriage observed in such church, denomination or body: Proviso as to times and witnesses Provided that the marriage be celebrated with open doors between the hours of eight o'clock in the forenoon and six O' clock in the afternoon, and in the presence of two or more witnesses besides the officiating minister.

### **Execution of Testamentary Instruments as a Means to Raising the Bar of Women's Right in Nigeria**

By virtue of the express provisions of the Wills Act 1837 amended by the Wills Act 1852, which are statutes of general and application due to the incidence of colonialism in Nigeria, every person has the full capacity to make a will in case her or she may decide to dispose of his movable and immovable properties according to his or her wishes. This legal position was approved by the Supreme Court in the case of "*Adesubokan v Yinusa*<sup>41</sup>" when it held that every Nigerian citizen has the legal right to make a Wills Act irrespective of any customary or Islamic rule or inclinations to the contrary.

The above decision overrules the former position of the law as was stated in "*Taylor v Williams*<sup>42</sup>" to the effect that under cognate principle of customary law, a member of the family does not possess the power to dispose of his interest in family property by will<sup>43</sup>. It is on this note that a learned author has opined that:

*"Thus, a will to have effect of excluding the application of customary law, the property must be self-acquired and not family property. This is in line with the legal principle of "nemo dat quod non habet". Also, a Nigerian cannot make a will to disinherit his eldest son from inheriting the "Obi" or "Igiogbe". That is the father may not deprive his sons of their right to inherit the house where he lived and died (Ndukwe, 1999)"*

The position seems to have however different in the present day south western and part of south states of Nigeria due to the express provisions of section 3(1) of the Wills Law<sup>44</sup> that provides that a devise or bequest may become void if it found to have contravened a customary law rule. Without concerning ourselves with the legal debate on this issue, we are of the humble submission that the execution of testamentary instruments nuncupative will or gift "*inter vivos*" as a pragmatic approach in raising the bar to women's rights in Nigeria and on the Supreme Court's authority of "*Adesubokan v Yinusa*", Section 3(1) of the Wills Law may be null and void today.

## **Invoking the Repugnancy Doctrine as a Pragmatic Approach to Raising the Bar on Women's Right in Nigeria**

The invocation of the validity test can serve as a pragmatic approach to raising the bar on women's right particularly when a customary law is to be proven as evidence before a superior court of record by virtue of sections 16 and 18 of the Evidence Act 2011. The courts apply the validity test in determining whether to uphold or declare a particular customary law rule to be null and void and of no legal consequence whatsoever. The law that guides the court is section 18(3) of the Evidence Act 2011 that provides that:

*"In any judicial proceeding where any custom is relied upon, it shall not be enforced as law if it is contrary to public policy, or is not in accordance with natural justice, equity and good conscience"<sup>45</sup>.*

The aforesaid statutory provision is a clean indication by Nigerians that they do not wish that some customary practices such as the one violating women's right to continue. Elias succinctly assessed a similar provision in the following words:

*"The phrase justice, equity and good conscience can thus be seen as a convenient term that is ready to hand for the refashioning of certain out dated rules of customary law and although the practical application of the rules to particular cases has sometimes been surprising and even unjustifiable, the results have been on the whole salutary and enlightening (Osinbanjo & Kalu, 1991)."*

Expressing is disappointment, Bello, JSC lamented on the deprivation of women's right to inheritance as follows:

Under some of our native law and customs, a woman has no right to share in the inheritance of the estate of her husband. The worst degrading aspect of her status is not only that she has no right to inherit any share of the estate of her husband but that she is treated as a chattel forming part of her husband's estate to be inherited by his heirs (Bello, 1985).

The validity test or repugnancy doctrine therefore, is not to be viewed as an anachronistic task master who is whipping all customary law practices into conformity with English Law. Rather a food for thought and call to take practical, pragmatic and proactive approach for Nigerians in the advancement of massive social, economic, cultural and political changes that would help raise the bar on women's right. Our position is support by Nwokedi's, JSC observation in the case of *"Agbai v Okegbue"<sup>46</sup>* when he held as follows:

Customary laws were formulated from time immemorial as our society advances; they are more removed from its pristine social ecological. They meet situations which were inconceivable at the time they took root. The doctrine of repugnancy in my view affords the courts the opportunity for fine tuning customary laws to meet changed social conditions where necessary, more especially as there is no forum for repealing or amending customary laws. I do not intend to be understood as holding that the courts are there to enact customary laws. When, however, customary law is confronted by a novel situation, the courts have to consider its applicability under existing social environment.

Hence, as it relates to women's rights on inheritance, freedom from discriminatory treatment, succession, ownership of movable and immovable property, etc. One of the best approaches is to make efforts at eradicating these problems by pruning our customary laws and practices via judicial activism and eradicating traditions depriving women of their rights which are in themselves repugnant to natural justice, equity and good conscience. It is on this basis that

Niki Tobi, JCA (as he then was) re-emphasized the right of women in Igbo land to succession and inheritance of the property of their husbands and fathers brilliantly, viz:

*“We need not travel all the way to Beijing to know that some of our customs, including the Nnewi ‘Oli-Ekpe’ with our civilized world in h we all live today, including the appellant. In my humble view, it is the monopoly of God to determine the sex of a baby and not the parents. Although the scientific world disagrees with this divine truth, I believe that God, the creator of human being is also the final authority of who should be male and female. Accordingly, for a custom or customary law to discriminate against a particular sex is to say the least an affront on the Almighty God himself. Let nobody do such a thing. On my part, I have no difficulty in holding that the ‘Oli-Ekpe’ custom of Nnewi, is repugnant to natural Justice, equity and good conscience<sup>47</sup>”*

To this end, the arguments that the repugnancy test should be determined by those who practice the culture, customs and traditions as to its barbarous nature or not instead of foreigners is not a pragmatic approach to raising the bar on women’s right because those involved can only approach the matter from a myopic and subjective view (Aboki, 1991). The aforesaid can be glaringly seen in the criticism leveled against the pronouncement of Niki Tobi, JCA by Uwaifo, JSC in *“Mojekwu v Mojekwu”* when the Apex Court held in *“Mojekwu v Iwuchukwu<sup>48</sup>”* as follows:

*“I cannot see any justification for the court below to pronounce that the Nnewi native custom of ‘Oli-ekpe’ was repugnant to natural justice equity and good conscience...the learned justice of appeal was no doubt concerned about the perceived discrimination directed against women by the said Nnewi ‘Oli-ekpe’ custom and that is quite understandable. But the language used made the pronouncement so general and far-reaching that it seems to cavil at, and is capable of causing strong feelings against all customs which fail to recognize a role for women. For instance the custom and traditions of some communities which do not permit women to be natural rulers or family heads. The import is that those communities stand to be condemned without a hearing for such fundamental custom and tradition they practice by the system by which they run their native communities.”*

The above dictum by Uwaifo, JSC with the greatest respect portrays the Supreme Court as a court that is sympathetic of customary practices that discriminate against women and subjugate them since that is the way of life of the people concern. In this regard, it is hoped that instead of being seen as supporting customs that suppress women’s rights, the Apex Court will revisit the issue and make its position much clearer in favor lifting the bar against women’s rights. This can be easily achieved by invoking the repugnancy doctrine in declaring null and void customs, traditions and practices that have become anachronistic, barbaric and uncivilized in modern society. Also, the Supreme Court can borrow a leaf from South Africa where the enforcement of customary law rule is weighed against the provisions of the South African Constitution and Bill of Rights<sup>49</sup>.

It is on the premise of the foregoing that the Court of Appeal Lagos Division is commended for declaring customary laws that discriminates against female children in terms of inheritance to be repugnant to natural justice, equity and good conscience in the case of *“Motoh v Motoh<sup>50</sup>”*. Hon. Justice Aboki, JCA that read the lead judgment remarked as follows:

*“In the instant case, I have no difficulty in holding that the native law and custom of Umuana, Awka which discriminates against female children of the same parent and favors the male child who inherits all the estate of their father to the exclusion of his female siblings to be repugnant to natural justice, equity and good conscience. It is observed in evidence before the lower court which is not in*

*dispute that the late Jeremiah Anagor Motoh was survived by six daughters from his wife married under the Marriage Ordinance, some of whom were born long before the purported marriage under native law and custom to the respondent's mother."*

### **Joint Ownership and Contribution to Family Properties**

It is without gainsaying the fact that women contributes to the acquisition of family properties due to the demands of modern times. Therefore, disinheriting a wife of the properties she has made substantial contributions in an intestate succession is most outrageous, unfair and inequitable. In this respect Meide (1999), has remarked that generally speaking, African women contribute to their families' economic wealth in the same manner as do their husbands and non-African counterparts. Yet during a customary union they are legally prevented from maintaining a separate estate, and should the union be dissolved, the law is such that they leave it virtually empty-handed.

It is therefore suggested that women should advice their husbands and insist on acquiring properties especially immovable ones in either the names of their wives or joint names. Such an approach will not only lift the bar on women's right but give the wife a satisfactory sense of belonging in this regards, her right of ownership will be safeguarded in the event of intestate demise by her husband. However, to avoid being misunderstood or unscrupulous fellows taken this position to the extreme; the author are not in any way advocating for another feminine ideology but only advocating for a practical, progressive, proactive and pragmatic approach aimed at raising the bar on women's right as it is the current trend amongst enlightened and civilized men even in Nigeria.

### **Constitutional Models as a Pragmatic Approach to Safeguarding Women's Rights**

The enforcement of constitutional provisions that guarantees the right of women by the courts in South Africa and Nigeria is a welcome development. Thus, in "*Nonkulukeko Bhe v The Magistrate, Khayelisha*<sup>51</sup>" Ngwenga, J in upholding the right of women to inherit the property of their husbands as wives or as daughters to their fathers held "*inter alia*":

We should make it clear in this judgment that a situation whereby a male person will be preferred to a female person for the purpose of inheritance can no longer withstand constitutional scrutiny. That constitutes discrimination before the law. To put it plainly, African females, irrespective of age or social status, are entitled to inherit from their parents' intestate like any male person. The exclusion of women from inheritance on the grounds of gender is a clear violation of section 9(3) of the Constitution. It is a form of discrimination that entrenches past patterns of disadvantage among a vulnerable group, exacerbated by old notions of patriarchy and male domination incompatible with the guarantee of equality under this constitutional order<sup>52</sup>.

The above holding agrees with the provisions of section 42(1) of the Constitution of the Federal Republic of Nigeria 1999 that expressly prohibits the discrimination of persons on account of sex, place of origin, ethnic group or circumstances of birth. Therefore, the discrimination of women on the account of their gender by disinheriting them from their parents' or husbands properties is unconstitutional, null and void and of no legal consequence whatsoever<sup>53</sup>.

## Enforcement of Legislative Enactments as a Pragmatic Approach to Raising the Bar on Women's Rights

The judicial authority of “*Cyprian Peter Obusez v Mrs. Sylvia Teckia Obusez*<sup>54</sup>” is very instructive when legal discourses are carried out on the right of women to succession and inheritance under the Nigerian legal system. We take the liberty to reproduce the facts of the instant case which is that Mrs. Sylvia married her late husband under the Marriage Act in 1972 and the said union was blessed with five children he died intestate. During the lifetime of her husband, he took out a life policy insurance wherein the Cyprian Obusez the 1<sup>st</sup> Appellant and the two children of the deceased that were born at that time as beneficiaries. After his demise, his widow wife who is the 1<sup>st</sup> Respondent prayed the Lagos State High Court to make a declaration that only she and her five children is the person entitled to the benefit from the estate of the deceased. She further prayed the court to issue her and one of her death husband's friend with the letters of administration to which the 1<sup>st</sup> Respondent counter-claimed for similar prayers.

The importance of this case is to the effect that a wife has the legal right to exclude relations of her deceased husband from being co-administrator of his estate as a matter of law simpliciter. It was canvassed that such a wife can be aided by the court in excluding her husband's immediate relations who are willing and bring in strangers to administer the estate. In fact in the instant case, the twin brother in whose personal house the husband was buried was held to be disentitled to be co-administrator of the estate of his deceased twin brother. The Supreme Court upheld the arguments of counsel to Mrs. Sylvia Obusez to the effect that Agbor native law and custom was not the applicable law. In enforcing the provisions of the Administration of Estate Law of Lagos State in raising the bar of women's right which is given effect to a legislative enactments the Apex Court in upholding the judgment of the Court of Appeal elaborately decided that:

The substance of the appellants' argument is that the Agbor native law and custom and not the Administration of Estate Law should apply. At page 165 of the record, the court below restated the purport of section 49(5) of the Administration of Estates Law when it said:

*“I am satisfied that the clear intention of the lawmaker as manifested in the passage underlined above is that customary law should be excluded in relation to the estate of persons to which the provision applies”*

The court after restating a portion of the judgment of the trial court, and “*Salubi v Nwariaku*<sup>55</sup>” said:

*“It would suffice to appreciate that the Bendel State Legislature meant to and did legislate to exclude the applicability of customary law on the intestacy of a person who married under the Marriage Act. I agree entirely with the reasoning of the court below on the non-applicability of the Agbor native law and custom in the administration of the estate of the deceased”<sup>56</sup>.*

In the commendable judgment of Onnoghen, JSC in *Obusez v Obusez*, which has contributed to the growth and advancement of women's right. The following remarks depicting of judicial activism grant women right to intestate succession were made, to wit:

*“To me, ...section 49(5) of the Administration of Estates Law of Lagos State is the Applicable Law...enact that in the event of a spouse married under the Act, dying intestate and being survived by his*

*spouse and children, the surviving spouse shall succeed to two-thirds thereof and that this automatically makes the spouse a beneficiary of the estate and a qualified person to apply for letters of administration of the estate of the deceased spouse.”*

## **Implementation of Human Rights Instruments as a Proactive Step in Raising the Bar of Women’s Right**

Nigeria is a signatory to some human rights instruments that has made specific provisions on the universality of the principle of gender equality between the males and the females that when fully implemented will greatly assist in promoting women’s right in the country. For instance, article 3 of the African Charter on Human and People’s Rights makes provisions for the equality of all persons before the law and that same regional human instrument went on to provide that:

*“States shall ensure the elimination of every form of discrimination against women and also ensure the protection of the rights of women<sup>57</sup>”.*

In a similar tone the article 26 of the International Convention on Civil and Political Rights 1996 states as follows:

*“All persons are equal before the law and are entitled without discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property birth or other status.”*

In the same vein, the tenure of articles 2 and 5 of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) that encourages nations to modify the social and cultural patterns of conduct of men and women with the view to eliminate harmful practices, discrimination and human right abuses against women as well as the elimination inferiority and superiority of either sexes and stereotype roles of men and women<sup>58</sup>. If Nigeria as a signatory to the Convention can muster the courage to fully implement all the regional and global human rights instruments that guarantees the rights of women that would automatically act as a pragmatic voyage towards the enhancement of women’s rights in Nigeria.

## **RECOMMENDATIONS**

In the light of endemic poverty in Nigeria for which women are the worst hit especially in the northern part of the country that in turn deprive women access to affordable resources like shelter, clean water and nutritious food. Thus, women should be empowered in terms of educational and entrepreneurship training in order to equip them for economic independence; enhance their competition with the men and expose them to employment opportunities as a pragmatic approach to raising the bar on women rights. In fact, what is right without money and education? As the women cannot fight and win in poverty and illiteracy. The key factors that will help women in realizing their rights are education and economic resources being at their disposal.

Another pragmatic approach to raising the bar on women’s right is exercising the needed political will to fully implement the provisions of the Constitution, statutory and international



instruments that prohibit the discrimination or deprivation of women of their rights across the length and breadth of Nigeria.

Women themselves should challenge the obnoxious and barbaric practices that deprive them of their right in court of law. In this regards, women should follow the bold step of other women who have fought for their human rights to inheritance, political and social status, etc., like the celebrated cases of “*Mrs. Olufunmilayo Ransome-Kuti v Attorney General of the Federation*”<sup>59</sup>, *Mojekwu v Mojekwu* and *Obusez v Obusez*. Women should enforce their rights by utilizing the provisions of Chapter IV of the 1999 Constitution; articles 2 and 5 of the Convention for the Eradication of Discrimination against Women (CEDAW); International Convention for Civil and Political Right (ICCPR); African Charter on Human and Peoples Rights and the United Nations Charter on Human Right<sup>60</sup>.

More so, the time has finally come for sensitization, conscientization and education of men and women; old and young on the urgent need to eradicate barbaric and uncivilized customary practices that discriminate against women as well as deprive them of their human rights. This pragmatic approach can be achieved via campaigns, workshops, seminars and public lecture organized by Faith-Based, Community Based and Non-Governmental Organizations for the purpose of reorienting members of the society on women rights and dignity.

Furthermore, international instruments that Nigeria has ratified as a signatory should be domesticated by the National Assembly as a pragmatic approach to addressing women rights issues by the legislature. While the State Houses of Assembly yet to domesticate the Violence against Persons Act 2015 should do so without further delay in order to curb gender base violence which is an aspect women’s right abuse.

## CONCLUSION

The central place occupied by women’s rights in the light of prevalent uncivilized and barbaric customary and domestic practices deserves a better comprehension within the legal framework of international treaties, standards and best practices. The paper has therefore analyzed the native laws and customs by bringing out their shortcomings and strengths in the enhancement or inhibition of women’s rights protection in Nigeria. Form our observations, Nigeria has plethora of laws that guarantee the rights of women but the challenge is lack of the political will on the part of government institutions for enforcing these rights; lack of knowledge and unavailability of resources on the part of the women that have been greatly incapacitated. It is on this score we advocate judicial activism through the invocation of repugnancy doctrine in deserving cases.

## ENDNOTE

1. Article 1 of the United Nations Charter on Human Right, 1948.
2. Global Fund for Women, Women’s Human Rights and Gender Equality <https://www.globalfundforwomen.org/women’s-human-rights/> Accessed 1<sup>st</sup> October 2019.
3. Section 42 of the Constitution of the Federal Republic of Nigeria, 1999.
4. Article 5 of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) adopted in 1979, signed and ratified by Nigeria in 1984 without reservation.
5. Article 21 of the optional protocol to the African charter on Human and People’s Rights on the Rights of Women in Africa 2003 ratified by Nigeria in 2004.

6. Article 18 (3) of the African Charter on Human and Peoples Rights (Enforcement and Ratification) Act Cap A9, LFN, 2004.
7. *“Madolo v Nomawu”* (1896) 1 NAC 12; *“Mahashe v Hahashe”* (1955) NAC 149 (5) 153; L. Mbatha, Reforming the Customary Law of Succession [2002] SAJHR 259-261, posited that under customary law system where the patrilineal system applies, devolution follows the masculine lineage in terms of the administration and control of the family property as the heir. The author went on to describe the heir as an individual who steps into the shoes of a deceased family head in order to administer and inherit family property.
8. 3 SA 867 (SCA) 876 Per Mpati Aja (2000).
9. NMLR 203; *“Akinubi v Akinubi”* [1997] 2 NWLR (Pt. 486) 144; (1997) 1 SCNJ 202 (1968).
10. 2 NWLR (Pt. 104) 373 [1989].
11. 10 SC 126 (1972).
12. 2 FSC 31 (1957).
13. *Davies v Davies* (1929) 2 NLR 79 at 80.
14. 15 NLR 31; *“Ogunkoya v Ogunkoya”* Suit No.: CA/L/46/88 at 56 (unreported) 1939.
15. 1 All NLR 252 (1934).
16. 3 CCHCJ/HC 323 of 19 March 1975 (1975).
17. 15 NLR 78 (1940).
18. *“Nnoli v Nnoli”* (2013) LPELR-20633 at Pp. 17-18, paras. F-A per Tsammani, JCA.
19. All FWLR (Pt.847) 555 Per Tijjani Abubakar, JCA (2016).
20. *“Taiwo v Adegboro”* (2011) All FWLR (Pt.584) 52 per Rhodes-Vivour, JSC.
21. (1987) 3 NWLR 697 (1987).
22. Numbers 27:11; 2 Kings 4:1-7 wives of the sons of prophet inherited her late husband’s estate.
23. 2 Kings 11: 1-14, King James Version of the Holy Bible.
24. Judges 4:4-24; 5:1-31, King James version of the Holy Bible.
25. 1 NLR 81; *“Folami v Cole”* [1986] 2 NWLR (pt. 22) 367 (1908).
26. *“Adeseye v Taiwo”* (1956) 1 FSCR 84.
27. Section 6, Recognition of Customary Marriage Act 120 of 1998 which is a South African Law that came into force on 15 November 2000.
28. *“Olowu v Olowu”* (1985) 3 NWLR (Pt. 13) 372 SC.
29. 12 WACA 181 (1947).
30. *“Oyewunmi Ajagunbade III v Ogunesan”* (1990) 3 NWLR (Pt. 137) 182 at 207; *“Aku v Aneku”* (1991) 8 NWLR (Pt. 209) 280 at 292.
31. 7 NWLR (Pt. 512) 283; (1991) 9-10 SCNJ 49 (1991).
32. 1 All NLR 304; C. O. Okonkwo, Introduction to Nigerian Law (Landon: Sweet and Maxwell 1900) 41 (1961).
33. Cap M6, LFN, 2004; *“Coker v Coker”* (1943) 17 NLR 55.
34. Cap M7, LFN, 2004; *“Administrator-General v Ebuna”* (1945) 18 NLR 1.
35. 18 NLR 41; *“Re Adadevoh”* (1951) 13 WACA 304 [1985] 3 NLR 41 (1946).
36. 3 NWLR (Pt. 13) 372 at 390 SC; *Asiata v Goncalo* (1900) 1 NLR 10 (1985).
37. NLR 15 (1898).
38. 8 ERLR 196 at 199 (1963).
39. *“Onwudinjoh v Onwudinjoh”* (1957) 2 ERNLR 1 at 4-5.
40. *“Cole v Cole”* (1898) 1 NLR 15; *“Smith v Smith”* (1924) 2 NLR 105.
41. All NLR 77 (1971).
42. 12 NLR; *“Ogunmefun v Ogunmefun”* (1931) IQ NLR 82 (1935).
43. *“Idehen v Idehen”* (1991) 6 NWLR (Pt. 198) 386-387.
44. Cap 172, Laws of Bendel State and Wills Law of Western Nigeria 1959; *“Davies v Ogunvo”* (1936) 13 NLR 15.
45. Similar provisions can be seen in section 20 (1) of the High Court of Cross River State Law Cap H2 Laws of Cross River State, 2004; Section 18 of Supreme Court Ordinance No. 4 of 1876.
46. 9 NWLR (Pt. 307) 326-327; *“Laoye v Oyetunde”* (1944) 10 WACA 4; *“Eshugbayi Eleko v Officer Administrating the Government of Nigeria”* (1931) AC 662 at 673 (1994).
47. *“Mojekwu v Mojekwu”* (1997) 7 NWLR (Pt. 283) 296.

48. 4 SC (Pt II) 1 (2004).
49. Section 31(2) of the South African Constitution 1996 provides to the effect that the rights in section 31(1) should not be enforced in a manner inconsistent with the provisions of the Bill of Rights. Also section 211 (3) of the Constitution makes provisions to the effect that the courts should apply customary laws subject to the provisions of statutory instruments and the Constitution dealing with customary law.
50. All FWLR (Pt. 584) 73 (2011).
51. Unreported Suit No: 9489/2002 Judgment of the Cape High Court delivered on 25 September 2003.
52. “*Brink v Kitshoff No*” (1996) 6 BCLR 752 (CC) 44 per O’ Regan, J.
53. “*Ukeje v Ukeje*” (2014) 11 NWLR (Pt 1418) 384.
54. All FWLR (Pt 374) 227 (2007).
55. All FWLR (Pt 154) 401; (2003) 20 WRN 53 SC at 69 per Ayoola, JSC (2003).
56. “*Obusez v Obusez*” at Pp. 230-231 per Tabi, JSC.
57. Article 18 (3) of the African Charter on Human and Peoples Rights (Enforcement and Ratification) Act Cap A9, LFN, 2004.
58. Article 5 of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) adopted in 1979, signed and ratified by Nigeria in 1984 without reservation.
59. 2 NWLR (Pt. 6) 211 (1985).
60. “*Sani Abacha v Gani Fawehinmi*” (2001) 51 WRN 29.

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