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The Supreme Court Decision in *Ukeje v. Ukeje* and the Jurisprudencial Implication Under the Constitution of the Federal Republic of Nigeria, 1999 (As Amended)

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ABSTRACT

The issue of succession affects everyone as all properties must pass to someone else on death, and death is an inevitable end of everyone. This is invariably why all societies, even the crudest of them, have over time evolved rules of succession for the devolution of properties of a dead person. In Nigeria, there are twin regimes in place to regulate the law of succession and they are: testate and intestate rules of succession[1]. The intestate rules of succession applies when a person dies without leaving a valid will or when the will left is invalid due to non-compliance with law. While the rule of testate succession, applies where a deceased person had died, leaving valid will. Moreover, it is shown in this work that the intestate rules of succession and inheritance in Nigeria is a reflection of the legal pluralism inherent in Nigeria legal system because it has almost as many variations as there are ethnic groups in the country, and many of the variations are discriminatory in practice, particularly to the female children or illegitimate children.[2] However, it was further revealed that the Supreme Court's decision in *Ukeje v. Ukeje*[3] has succeeded in altering almost all the discriminatory intestate rule of succession. In the light of the above, this work did examine the rule of succession in Nigeria and the extent to which the decision of the supreme court in *Ukeje v. Ukeje*[4] has successfully altered it. It is recommended that the courts as the major agents with respect to the development of the customary law should be active in the reformation of the various customary law rules of succession, so that it can meet with the changes in the society and it is equally concluded that testate succession is the most

efficient made of succession, while intestate succession is not quite efficient due to attitude of the society with respect to the attendant discriminatory practice attribute to it.

KEYWORDS
supreme; court; decision; jurisprudential; implication and constitution

1. Introduction

The judgment of the Supreme Court of Nigeria in *Ukeje v. Ukeje* [5], has held that unknown intestate succession under customary law of Igbo people in Nigeria is full of discrimination, especially to female and illegitimate children amongst others. In addition to this, the Supreme Court did invalidate the said custom on the grounds that it is inconsistent with public policy the paper tried to substantiate the celebrated case with the recent times, in contradiction with the pre-existing position before the judgment and the extent to which the decision has altered the original position.

2. The Facts of the Case

On 27th of December, 1981, Lazarus Ogbonnaya Ukeje a native of Umuahia in Abia State died intestate. He had real property in Lagos State and for most of his life was residing in the State. The first appellant married the deceased, Lazarus on December 13, 1956. There were four children of the marriage. After the death of Lazarus, the first and the second appellants (mother and son) obtained letters of administration in respect of the deceased's estate.

The plaintiff/respondent learnt about the development and filed an action in Lagos State High Court where she claimed to be a daughter of the deceased and by virtue of the fact, had a right to take part in the sharing of her late father's estate. She also sought an injunction restraining the defendant from administering the estate of the said L. O. Ukeje, an inventory/account of the estate; and that the letter of administration be granted to the plaintiff and the second defendant. Apart from her testimony on oath and that of her mother to prove that she is the daughter of L. O. Ukeje (deceased), the respondent tendered the following documents; her birth certificate by which her birth was registered in Lagos State in 1952 showing that the late Ukeje was one of her parent's passport guarantor's form filled by the deceased in which he acknowledged finally photograph showing the plaintiff and mother and the deceased[6].

The appellants opposed her assertion of being a daughter of the late Lazarus Ukeje and challenged the validity of birth certificate and photograph. Thirteen witnesses gave evidence for the defence, and thirty documents were admitted as exhibits. The learned trial judge, Fajiade J in a judgment delivered on January 1, 1992 found for the plaintiff and ordered the defendant to hand over the estate to the administrator general pending when the children would choose persons to apply for fresh letters of administration[7].

With regard to the authenticity of the birth certificate Bode Roheds JSC, who read the unanimous judgment of the court applied the presumption in section 114 (1) of the *Evidence* Act,[8] and found that a birth certificate is on the date stated, and the parents are those spelt out in that document. Also, that once the authorized government officially appends his signature and stamp on the document, the presumption of regularity will be ascribed to it.

Furthermore, on the issue whether the respondent is the daughter of L. O. Ukeje (deceased), the court held that family photographs may help in resolving the issue, but the birth certificate of the respondent is decisive in settling such an issue. It answered the questions a where the respondent was born and

who her parents are? In conclusion, the learned trial justice stated that:

> *No matter the circumstance surrounding the birth of a female child, such a child is entitled to an inheritance from her late father's estate. Consequently, the Igbo customary law which disentitles a female child from partaking in the sharing of her deceased father's estate is in breach of section 42 (2) of the Constitution, on fundamental rights provision guaranteed to every Nigerian. The said discriminatory customary law is void as it conflicts with section 42 (1) and (2) of the constitution. The inheritance right of the daughter recognized by the Supreme Court relates to both real and personal property. Consequently, she has a full right as other children.*

3. The Jurisprudential Analysis of the Decision in the Light of Intestate Rule of Succession Vis-à-vis the Nigerian Constitution

The apex court involved the provisions of section 42 (1) (a) and (2) [9] while giving its judgment in *Ukeje v. Ukeje*[10]. The Supreme Court posited that;

> *42(1) a citizen of Nigeria of a particular community ethnic group, place or origin, sex, religion, political opinion shall not, by reason only that he is such a person. Be subjected to either expressly by or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethic group, places or origin, sex, religion or political opinion are not made subject. 42(2) no citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstance of his birth.*

The above constitutional provision relied upon by the court in this case exposed two paramount issues that must be distilled from the facts of the case. The first issue is that the respondent was born out of wedlock, which may hinder her from benefitting from the estate of her alleged father under certain rules of customary law in Igbo land.

A question may be posed as to why it is necessary for a child born out of wedlock to establish that he or she has been legitimized before he or she can inherit intestate since the Constitution already prohibits discrimination on any citizen merely by reasons of his or her birth. The answer is not farfetched because under the various customary laws, a person cannot qualify to inherit intestate from a testator or any basis outside being of the same blood with the testator, whether full or half. This is why it is absolutely necessary to prove that the illegitimate child has been legitimized before the child can inherit from the testator. The process of legitimation may be achieved by the subsequent marriage of the parents or by acknowledgement by the punitive father. Consequently, an illegitimate child may be legitimised by acknowledgement despite the fact that the parents are not married or have never been married. To constitute acknowledgement, the act or conduct of the father must be such as to indicate or establish his acceptance of the child's paternity[11]. Therefore, the requirement of proving legitimacy is necessary to avoid the possible incidence where a random person may claim to be a child of another so as to inherit intestate form him.

In *Ukeje v. Ukeje* [12], the paternity of the respondent was one of the basic issue raised for determination before the courts, "whether the respondent as plaintiff proved that she is the biological daughter of L.O. Ukeje (deceased)." It was on record that the respondent's birth certificate was tendered to prove acknowledgement of her paternity by L. O. Ukeje (deceased). A form of undertaking and guarantee was also tendered to further prove that her late father acknowledged her as his daughter. Other documents tendered by the respondent in this regard were judgment in her divorce proceeding, where she described herself as "Nee Ukeje" and family photographs. We are in total agreement with the courts that when the issue is whether other documents may help to resolve the issue, but the birth certificate of the respondent is decisive in setting such an issue. And since there were no evidence adduced to dispute the facts represented in the birth certificate, the presumption of regularity shall apply to give effect to the genuineness of birth certificate. This position of the court accords

with the spirit of the Constitution. In the words of His Lordship, George Adesola Oguntade JCA:

> *The issue whether there was a marriage between the deceased and the respondent's mother was irrelevant having regard in the provisions of Section 39 (2) of the 1979 constitution (now section 42 (2) of the 1999 Constitution) as (amended). This is because the circumstance of the birth of the respondent should not constitute a disadvantage to her in view of the clear provisions of section 39 (2) of the 1979 Constitution.*

The second issue is that the respondent is a female child, who may not be able to inherit from her late father under certain rule of customary law in Igbo land. Since the courts have resolved that the respondent is the daughter of the deceased, what was left is to determine whether she being a female child can partake in the sharing of the deceased estate.

It was the respondents case that she, as a daughter of one L.O. Ukeje (deceased), was the person entitled to the estate of her late father or one of the persons entitled to share in the said L.O. Ukeje (deceased). The issue that was raised in the Court of Appeal was: what is the applicable law to the distribution of the irrevocable property of the deceased person who died intestate and whether by that law, the plaintiff/respondent is entitled as a daughter to share in the estate of his late father L. O. Ukeje.

The Court of Appeal in resolving this issue considering the case of Olowu v. Olowu,[13] where the deceased, a Yoruba of Ijesha by birth lived all his life in Benin city. He married and acquired property there. He naturalized as a Beni man and died intestate. The Supreme Court applied the *lessitus* principle in holding that his estate should be distributed in accordance with Benin native law and custom. In the instant case, late L.O. Ukeje lived most of his life in Lagos and had real property in Lagos. The court of appeal in applying the *lessitus* Principle held that the deceased's estate should be distributed according to the Yoruba native law and custom, as the *lessitus*. According to Yoruba native law and custom, when a man dies intestate, his properties devolves on all his children who shall share same equally without any disparity as to sex and the eldest child assumes the position of head of the family and manager of estate on behalf of all the children.

The appellate court based on the Yoruba native law and custom held that the respondent as the eldest child of her late father, L.O. Ukeje is entitled to share in the estate of her father by applying the *lessitus* principle. Having decided this, the court went further and held that the relevant Igbo native law and custom relating to intestate succession is not applicable to all immovable properties of the deceased estate situate in Lagos at No. 13, Norman William Street, South West, Ikoyi and No. 7, Awoyemi Close, Surulere, Lagos. In arriving at this decision, the court referred to some other relevant authorities on this point.[14]

It is point clear that these two issues are the live issues in the appeal before court of appeal and having resolved these issues in favour of the respondent, the court is precluded from delving into other issues that were not raised by the parties. At this juncture, it became relevant to ask whether the court was right to pronounce that the unknown Igbo customary law which disentitles a female child from sharing in her father's estate is against the principle of natural justice, equity and good conscience and also inconsistent with the Constitution[15]. In line with this assertion and with greatest respect we strongly opinionate with respect to His Lordship at the Court of Appeal and the Supreme Court that in as much as the fact that we greatly sympathize with the female folks on the discrimination meted on them, it is arbitrary and capricious to make the above pronouncement on the ground that it is not joined in issue by the parties judgment, only on issue joined by the parties.

At the Court of Appeal in *Ukeje v. Ukeje*[16], the appellate court was face with the same dilemma, it went through. In Mojiekwu v. Mojekwu[17] and on appeal to the Supreme Court, the apex court intervened and gave an erudite and resounding judgment in *Mojiekwu v. Iwuchukwu* [18] . One would have expected the apex court to maintain the brave and steadfast stand it took in Mojiekwu's case. A comparative analysis of *Mojiekwu v. Mojekwu* [19] is necessary in understating this review, since the issue that led to both judgments are similar. The brief facts of

the case of *Mojekwu v. Mojiekwe*[20] are as follow. Mr. Okechukwu Mojekwe died intestate leaving behind two female children, and his nephew claimed ownership of his estate under the native law and custom of Nnewi. The said estate was governed by Mgbeleke family kola customary tenancy. In addition, the nephew paid the necessary "kola" being the consideration to the Mgbeleke family which recognized him as a kola tenant. The issue of whether the native law and custom of Nnewi or Mgbeleke family kola customary tenancy apply to the inheritance of the deceased estate was raised. In determining the applicable law, both the trial court and the Court of Appeal considered the *lexsitus* principle in holding that the *Mgbeleke* family kola customary tenancy is the applicable law that governs inheritance of the (deceased) estate. After giving judgment in favour of the respondent under the *Mgbeleke* kola tenancy, the appellate court went further to declare the native law and custom of Nnewi known as "*Oliekpe*"[21]. Repayment of natural justice, equality and good conscience.

However, in *Mojekwu v. Iwuchukwu* [22] , the supreme court over ruled the judgment of the court of appeal in *Mojekwu v. Mojiekwu*[23], which declare the "*Oluiekpe*" custom of Nnewi repugnant to natural justice, equity and good conscience. The Supreme Court per Uwaifor J.S.C emphasized that:

> *In every case, issues must be joined by the parties and they should be heard upon those issues or when the issue is raised suomotu, the parties should be invited to address the court on it. The court should always limit itself to issues joined by the parties on their pleadings and to go outside those issues and pleading is an aspect of a denial of fair hearing*[24] *which may lead to a miscarriage of justice.*

We are in total agreement with the views of the Supreme Court in *Mojekwu v. Iwuchukwu* [25] in disapproving the judgment of the court of appeal in *Mojekwu v. Mojekwu* mentioned earlier. With due respect the Supreme Court in *Ukeje v. Ukeje* ought to have toed line of judgment as was espoused in *Mojekwu v. Iwuchukwu* because it is on record that the parties in *Ukeje v. Ukeje*[26] did not raise any issue as to whether the unknown Igbo customary law was inconsistent with the Constitution.

No doubt, the court was concerned and sympathetic about the perceived discrimination directed against women by the said custom and that it is quite understandable.

Assuming the parties had joined issues on the constitutionality of the said custom, the respondent would also have been victorious and her claims would have been granted by the court. This is because L.O. Ukeje (deceased) was a native of Umuahia in Abia State (formerly under Imo State) and is subject to the native Law and Custom of Abia State. According to the native law and custom of Abia State, which is bilineal, a woman has full legal capacity to own and transmit land. Moreso, the Supreme Court in *Ukeje v. Ukeje*[27], agreed with the trial Court of Appeal that the applicable custom was that of Yoruba native law and custom of *lexsitus*. The next action the court ought to take was to determine whether by the applicable law (Yoruba native law and custom), the respondent can share in the estate. The customary law of the *lexitus* (Yoruba native law and custom) permits female children to share equally in their father's estate. Looking at it either ways, the respondent would still be victorious.

Consequently, there was no basis for the consideration and the subsequent pronouncement of the court on the "unknown" Igbo customary law which was not even in issue. There is no doubt that the Supreme Court was too swift and whimsical in declaring the custom unconstitutional, their pronouncement has put an end to the discrimination mated by the Igbo customary law of succession on female children particularly, the one that bars them from inheriting their parents property. The decision has been noted in our principle of *stare decisis* and will continue to exist as binding precedent on the law court until another decision of the court comes up to either overrule or uphold it. Finally, the decision will serve as a standard for discouraging similar customs that are discriminatory to the female fin Nigeria.

4. Recommendations

Having laboured extensively on the rules of succession in Nigeria, and the inheritance status

of our female children, vis-à-vis the illegitimate children it is our recommendation that there should be enlightenment campaign to educate people on their rights. Many persons are ignorant of the rights afforded to them under the law and if such laws are to have their desired impact, then it will be expected to launch extensive educational as well as legal aid programmes. Legal literacy is an invaluable tool for the empowerment of those who are ignorant of their rights and provides essential information that allows them to exercise their rights through channels of legal assistance to seek redress but may cause those who know of the existence of such laws to refrain from such prohibited customary practice and educate people on the possibility of circumventing the limitation of customary statutory marriage.

Also, the different ministries of gender affairs and social developments in the state of the Federal Republic of Nigeria should be encouraged to open zonal offices in all the local government areas, where they can have direct access to the grassroots and provide legal aid enlightenment campaign and support to women and children who are unable to afford the exorbitant legal fees for litigation geared towards the discrimination of paternity of their children wherever such a dispute arises.

Finally, the courts should take a progressive approach against perpetrators of these antiquated customs by awarding exemplary and punitive damages. This was aptly suggested by the court in *Anekwe v Nwke.*

5. Conclusion

It is well known that the Constitution has to a large extent mitigated the substantial disabilities that exist under customary law by prohibiting discrimination. It has been a major agent of development of customary law of intestacy and the driving force for upholding these sacrosanct provisions of the Constitution. The Courts have made giant strides in reforming our customary law of the intestacy especially as it relates to inheritance rights of women, illegitimate children, family properly and other customary practices relating to intestacy.

It is in this regard that the bold step taken by the Supreme Court in *Ukeje v. Ukeje* [28] is highly encouraged. But the to the courts, they should always endevour to act in accordance with the rule of law as opposed to acting based on their whims and caprices.

6. References

[1] II NWLR (pt. 1418) 384.

[2] Section 42 of *the Constitution of the Federal Republic of Nigeria, 1999 (As Amended).*

[3] Section 42 of *the Constitution of the Federal Republic of Nigeria, 1999 (as amended).*

[4] Section 1 (3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which provides that any law that is inconsistent with the provisions of this constitution shall be void to the extent of the in consistency. This is the hallmark of the Supremacy of the Constitution.

[5] Laws of Federation of Nigeria, 2011.

[6] *The Constitution of the Federal Republic of Nigeria, 199 (as amended).*

[7] Youn v. Young (19530 WACA p. 19).

[8] Supra mentioned.

[9] (1985) 3 NWLR (pt 13)372.

[10] A.V. Dicey and H.C. Morris, The Conflict of Laws (10th Edition) Volume 2, (London; Sweets and Maxwell, 1980) p. 612; Duncan V. Lanson (1889) 41 Ch.D 344; Mojekwu v Mojiekwu (1999) 7 NWLR 9pt 512) 283 a5 299.

[11] Sections 1 (1) and (1) (3) of *the Constitution of the Federal Republic of Nigeria, 1999 (as amended).*

[12] Section & (3) of *the 1999 constitution (As Amended).*

[13] (1997) 7 NWLR PT. 512, P. 283.

[14] See section 360 of *the Constitution of the Federal Republic of Nigeria, 1999 (As Amended).*

[15] (2004) 11 NWLR pt. 883, p. 196.

[1] II NWLR (pt. 1418) 384.

[2] Section 42 of *the Constitution of the Federal Republic of Nigeria, 1999 (As Amended).*

[3] *Ibid.*

[4] *Ibid.*

[5] *Ibid.*

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[10] (*Supra*).

[11] Youn v. Young (19530 WACA p. 19).

[12] *Supra mentioned*.

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[15] Sections 1 (1) and (1) (3) of the *Constitution of the Federal Republic of Nigeria, 1999 (as amended).*

[16] *Supra* note 14.

[17] *Supra*.

[18] *Supra* note 17.

[19] *Supra*

[20] Section & (3) of *the 1999 constitution (As Amended).*

[21] *Supra*.

[22] *Supra*

[23] (1997) 7 NWLR PT. 512, P. 283.

[24] See section 360 of the *Constitution of the Federal Republic of Nigeria, 1999* (As Amended).

[25] (2004) 11 NWLR pt. 883, p. 196.

[26] *Ibidi*.

[27] *Ibidi*.

[28] *Supra* note 26.