

DYNAMICS OF CUSTOMARY PROPERTY RIGHTS AND ITS ECONOMIC EFFECT ON GENDER-BASED ACQUISITION OF PROPERTY AMONG THE PEOPLE OF AVIANWU, EDO STATE, NIGERIA

By

Mary-Ann. O. Ajayi *

Abstract

Customary inheritance rights to property form a major source of property acquisition under the African customary law. Women in many parts of the African society do not have equal inheritance rights compared to the men and this has a negative effect on their economic empowerment. This paper addresses the issue of gender as a determinant to access specific property using the Avianwu community in the Northern parts of Edo State Nigeria as a case study. One significant feature with respect to property rights in Avianwu is the determination of rights to inheritance based on gender, this practice tends to feminize poverty. Westernization has brought about changes in some customary inheritance practices but it has not been able to completely alter the inheritance practice(s) of depriving women inheritance to land. The paper concludes with the call that the provisions of the constitution that guarantee gender equality be functionally implemented and enforced.

Key words: Gender, Women Rights, Inheritance, Property, Economic Empowerment

Introduction

The internecine scramble for the distribution of the property of a deceased person has become a very serious societal problem. This situation is peculiar to both testate and intestate succession. Globally testate succession is a situation that occurs when a person writes a Will giving directives on how his/her property is to be shared after his or her demise.¹ This implies that upon the death of the person, he/she intends another person to retain control of his/her property. The global standards with regards to the validity of a will are similar and it is obvious that technicalities abound in the writing of wills. If these technicalities are not carefully observed they may render the Will invalid. These technicalities have frustrated the admission of so many wills into probate, and they end up being chaotic. This could lead to conflicts within the family because some family members would want to be appointed as administrators or even beneficiaries of the property of the deceased. Customary law of succession, however, is devoid of these technicalities. Onuoha argues that the law of succession and inheritance reflects Nigeria's plural system as the patterns of inheritance and succession particularly under intestate estate under customary law in Nigeria have almost as many variations as there are ethnic groups.

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* Ph.D. Senior Lecturer, Faculty of Law, Bowen University, Iwo, Osun State

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² Onuoha, R.A., 2011. *Discriminatory Property under Customary Law in Nigeria: NGO's to the rescue.* www.ici.org/.art_4.htm can also be retrieved in www.wlumi.org/bibliography/wrrc/con... Retrieved 10th December 2016

For the purpose of this study, inheritance will be used distinctively from succession. It has been observed that scholars like Kolajo have argued that the words “succession and inheritance” mean one and the same thing.³ Writers such as Emiola have advocated that the words are in no way twin words, he argues further that sociologist and social anthropologists are of the opinion that inheritance is the more appropriate terminology in relation to customary law, but he is of a divergent opinion that the concepts of levirate marriage and widow inheritance do not belong to the law of succession.⁴ Inheritance is limited to property and not the office of dignity such as chieftaincy titles as it applies to succession. Succession is the devolution of title to the property under the law of descent and distribution; it is the transmission of property vested in a person at his death to some other person or persons⁵. Custom must be differentiated from customary law. A custom is a rule of conduct that attains a binding or obligatory character before it becomes a customary law.⁶ The applicable laws governing intestate succession in Nigeria are the customary law rules of intestacy and the state laws on Administration of Estates as the case may be.⁷

In *Kharie Zaidan v Fatima Khali Mohssen*⁸, the Supreme Court in its judgment gave the definition of customary law as a system of law neither in the common law nor enacted by any competent legislature in Nigeria, but which is enforceable and binding within Nigeria as between the parties subject to its sway. Similarly, in *Bilewu Oyewumi v Amos Owoade Oginesa*⁹, customary law was defined as the organic or living law of the indigenous people of Nigeria, regulating their lives and transactions. In *Aku v Aneku*¹⁰, the Nigerian Court of Appeal defined customary law as the unrewarded tradition and history of the people which has grown with the growth of the people to stability and eventually becomes an intrinsic part of their culture. The customary law of succession in some communities in Edo State is based on the principle of male primogeniture and it entails that the eldest male descendant of the deceased inherits the estate.¹¹ This principle of male primogeniture also enjoys judicial recognition as stated in the cases of *Idehen v. Idehen*¹², *Olowu v Olowu*¹³, *Arase v Arase*¹⁴ (not limited to these three). In these cases it was decided that the family seat or the principal house of the deceased is customarily inherited by the eldest surviving son of the deceased after the performance of the second burial ceremony. The eldest son inherits the *Igiogbe* exclusively while the other children are entitled to the distribution of the estate. Any disposition of property done contrary or inconsistent with the law shall be invalid. Kawu JSC who read the lead judgment in *Idehen v Idehen*, said that the

³ Kolajo, A. A. (2005) *Customary Law in Nigeria Through the Cases* Ibadan: Spectrum Books Ltd.p.156

⁴ Emiola, A. (2005) *The Principles of African Customary Law*. Gbomoso: Emiola Publishers Ltd p.131

⁵ Kolajo, op cit 5. Asiimwe, F.A & Crankshaw, O. (2011) ‘The Impact of Customary Laws on Inheritance: A Case Study of Widows in Urban Uganda’ *Journal of Law and Conflict Resolution*, 3,1: 7-13

⁶ Allen C.K., 1964. *Law in the Making*. Oxford University Press.

⁷ Animashaun, T.O.G & Oyeniyi, A.B. (2002) *Law of Succession Wills and Probate in Nigeria* Lagos: MIJ Professional Publishers Ltd.

⁸ (1973)1 ALL N.L.R. p.86 at 101

⁹ (1900) N.W.L.R pt. 19 p.182 at 207

¹⁰ (1991) 8. N.W.L.R pt. 209 p.280

¹¹ Itua, O. P (2011) “Succession under Benin Customary Law in Nigeria : Igiogbe Matters Arrising “, *Journal of Law and Conflict Resolution* 3, 7:117-129

¹² (1991) 6 N.W.L.R pt. 198 p. 382

¹³ (1958) 3NWLR 372p. 147

¹⁴ (1981) N.S.C.C p.101

restriction is not the restriction of the totality of a testator to bequeath his estate but merely qualifies the subject matter of property that can be disposed of by will.

Women in rural areas play a critical role in agricultural production, but they are not accorded significant recognition by the society. Western modernity has challenged customary laws in many diverse ways but people have persistently resisted some of these changes. It should be acknowledged that in the past, succession and inheritance to properties or items except in relation to cooking utensils, female clothing and materials were exclusively inherited by the men.¹⁵ Customary law in some jurisdictions discriminated against women and female children in so many ways and this may not be the position as at today in some customs in Nigeria.¹⁶ Despite considerable progress on many aspects of women's economic empowerment through increase in enlightenment, there still exists deeply entrenched inequality as a result of discriminatory traditions and practices in Nigeria.¹⁷ Olubor identified the fact that most women do not have equal rights as men to resources.¹⁸ These inequalities could gradually metamorphose into threat to legal rights of others.¹⁹

In the society examined, interview with respondents revealed that patrilineal and matrilineal methods of inheritance operate side by side from the earliest years of the community's existence.²⁰ Female children were and are still allowed to inherit property from their mothers, except land.²¹ Land is an exclusive reserve of the male children in Avianwu community²² except were the male child is subject to cultural limitations, one of which is when a male child does not perform the *Okhe title*. (This is a mandatory initiation for every male child in Avianwu). Any male who refuses to take this title is treated like an outcast and is subject to so many limitations, including forfeiting his right to inherit his father's property²³. When a man dies in Avianwu without a surviving male child, his property is inherited by his immediate younger brother. Where there is no surviving younger brother, the property reverts to the family of the deceased.²⁴ Whether a female child can inherit land varies across Southern Nigeria. Under Benin customary law, it is only where there is no male child that female children are entitled to

¹⁵ Olubor, J. O. (2009) *The Legal Rights of the Vulnerable Groups vis-a-vis Customary Practices* The Refresher Course for Judges and Kadis Sept. 23-27, 2009

¹⁶ United Nations Human Rights Office of The High Commissioner (year of publication) *Realising Women's Rights to Land and other Productive Resources* www.jsd-africa.com/.../Women,%20land... Accessed 14th Jan, 2016

¹⁷ Isibor, P. O. (1999) *Women's Rights and Status Under Edo Native Law and Custom—Myths and Realities* Retrieved from <http://www.edoworld.net/womenrightandstatusunderedolawandcustom.html> Last Assessed 28th August, 2016

¹⁸ Olubor, J.O, op cit. page 13

¹⁹ Olubor, J.O.op cit page 2

²⁰ Interviews with Chief Willy Idode, (Sub-Clan Head and Traditional Ruler, Ogbonna Community, Avianwu); Alhaji Jackson Dauda ,(Oghie of Avianwu), Field work, 2015.

²¹ Interviews with Pa Joseph Omorhwa (Oldest man in Iraokho). This statement was corroborated by other respondents. Field work, 2015.

²² Interview with Chief Igbebo Ozimhede Patrick which was corroborated by all the traditional rulers interviewed in Ogbonna, Iraokho, Ivhinone and Ivhiarua.Field work, 2015

²³ Field work, 2015

²⁴ Field work, 2015

inherit land.²⁵ In contrast, in Yoruba customary law, female children are allowed to inherit, but widows are not allowed to inherit land.

It is against this background that it has become necessary to examine the customary laws as they appear to be quite notorious and readily accepted by those people subject to it. The recent quest for gender equality and cultural revolution has created a new dimension for issues bordering on succession and inheritance rights (property rights of women). Land is inextricably linked to women's access to use of and control over other productive resources, such as property, fisheries, livestock (UN, 2004). Women are discriminated against with respect to land because in many communities' men are heads of households hence they control and manage land. A woman is not regarded as a person who can hold property such as land because she usually would leave her family of orientation to marry into her family of procreation. It is assumed that women should not be allowed to take away the land meant to be retained in her family of orientation to her family of procreation. It is the consequent economic effect of these practices of denying female children property rights that this study addresses.

In order to understand the reason(s) for this disparity, the philosophy behind this female denial of certain property rights were investigated and presented in detail. The methodology adopted for this study is qualitative, descriptive and analytical and given its socio-legal outlook and anthropological foundations, the anthropological and legal methods of research were adopted. The researcher made use of both primary and secondary sources of data. The study is a result of a field work carried out in selected communities of Edo State between January and June 2015.

Statement of the Problem

Inheritance and succession issues are very important issues all over the world, since death is inevitable and unpredictable. The importance of these concepts cannot be underestimated because of the importance attached to property in every society as they form the bedrock for peace in every society. The importance of this concept has also been acknowledged by several writers, comparative jurists, social anthropologists and legal historians amongst others.²⁶ The view by Aguda that "every conceivable point about these concepts has been researched" is supported by many scholars.²⁷ The interesting features about several of these works is that majority of these scholars who have written about succession and inheritance rights in the neighbouring communities around Avianwu have dedicated their research to the study of male inheritance rights, with little attention to studies on women's succession and inheritance rights.²⁸

²⁵ *The Benin Traditional Council, A Handbook on Some Benin Customs and Usages* (Benin City: BTC, 1996), 12-15).

²⁶ Aguda, A. (1971) *Law Lectures and Papers*, Ibadan: Associated Publishers (Nigeria) Limited.

²⁷ Aguda 1971 op cit. page 1

²⁸ Eromonsele et al. (2016) *Inheritance Laws, Wills and Women: A Study of Esan People Of Edo State, South South, Nigeria* Third ISA Forum of Sociology. July 10-14. Retrieved, <https://isa.confex.co> paper 74597. Assessed, 27th, August, 2016

Ukhun et al. (2005) "Cultural Authoritarianism, Women and Human Rights Issues among the Esan People of Nigeria" *African Human Rights Law Journal Series* (volume and issue number) 129-147.

Ojior, O. T. (2001) *Etsako Traditional Political and Social System Georgia*: Afflactus Publications

Isibor, P. O. (2014) *Women's Rights and Status under Edo Native Law and Custom-Myths and Realities* Retrieved from <http://www.edoworld.net/womenrightandstatusunderedolawandcustom.html>. Last Assessed 28th August, 2016.

Igbe, S.O.U. (2006) *Edo Custom of Succession and Inheritance* Lagos: Hanon Publishers Ltd

Besides, scanty literature, majority of which are commentaries, exists with respect to inheritance and succession rights in Avianwu Community.

Even though women engage more in agricultural activities, only a few of them have legal control over the land that they cultivate. The long-standing inequalities in gender distribution of economic and financial resources are almost a global challenge that has placed women at a disadvantage compared to the men. This has affected their capability to participate in and benefit from their societies' development. In Nigeria, women have suffered various forms of discrimination and oppression during property sharing, especially in terms of land for economic purpose and other physical assets.²⁹

The scope of this study covers the dynamics of customary property rights and its economic effects on gender-based acquisition of property among the people of Avianwu, Edo State, Nigeria. This study investigates the customary property rights of the women in this community hence the findings are limited to intestate succession. References have been made to English law on the basis of comparison to identify the relationship and reconcile the customary law practices with existing legislations and judicial decisions.

Avianwu Community

For thorough understanding of this area under review, it is necessary to give brief background information about the Avianwu people. The people of Avianwu come under a parent body known as Etsako. Four villages make up this community; they are Ivhiarua, Ivhinone, Ogbonna and Iraokho. The Etsako people, predominantly farmers, are found in the northern part of the present-day Edo State and the people were grouped into Etsako District when the Kukuruku Division was established in 1919 as an administrative unit in the former Benin Province, the other two districts being Akoko-Edo and Ivbisakon³⁰ The Etsako clans are strongly connected by common origin and they speak closely related dialects while also exhibiting other numerous similar cultural traits. They occupy an area of approximately 1,000 square miles and *Etsako* Central has a population of about 94, 228. ³¹ *Etsako* literally means 'those who chopped off their teeth'. 'Ako' means teeth and 'tse' means split. ³²

The Indigenous Property Rights of Women among the Avianwu of Edo State, Nigeria

Property may be defined as the right to possess, use and enjoy a determinate thing, land or chattel, the right to ownership. ³³ Property acquired during the lifetime of an individual may be moveable or immoveable. Land is regarded as real property and it extends to whatever sits on it. Field interview revealed that it is the first son of a deceased that inherits the property when his father dies, and it is the first daughter that inherits her mother's property when her mother dies. On further enquiry, as to whether this has been the situation from earliest times and the disposition of women towards this practice, the researcher interviewed the oldest men and women as well as senior palace chiefs in each of the four communities and they all said that the

Folarin S. F and Udoh O. D. (2014) "Beijing Declaration and Women's Property Rights in Nigeria" *European Scientific Journal* 10, 34: 239-249

³⁰ Eragbe, E.O., 2013. The Etsakor people of Afemai land. www.afemaipeople.com/etsako.people. Retrieved 19th January, 2016

³¹ 2006 National Population Census (National Population Commission of Nigeria).

³² Ojior, O. T. (2001) *Etsako Traditional Political and Social System* Georgia: Afflactus Publications page7

³³ Garner, B.A., 2004. Black's Law Dictionary (ed) West Publishing Company. 2004:1252

practice of the first daughter inheriting from her mother is as old as Avianwu., It was also revealed that men acquired property of a greater value than women in the past. The respondents replied that it was traditional for women to inherit through their mother's lineage and for men to inherit through their father's lineage. This has been the practice from earliest times till date and it has been practiced peacefully all these while and cannot be changed. A woman has no right to her husband's property except her son has a share in his father's property and she then accesses the property through her son.³⁴

The first-born daughter is expected to share inheritance with her other female siblings. Nothing stops her if she decides to share some of the properties with her male siblings, for she is only a custodian of the property. She can also not transfer such property on her demise to her children. This right is neither absolute nor automatic but subject to some limitations, some of them related to the qualifications she has to attain to enjoy such privilege³⁵. With respect to a situation where a woman dies without a surviving female child, the respondent said that other options are available for administering her estate. Traditionally, it is her immediate younger sister, if she has one, that inherits her property, or the property may be given to her first son's wife (daughter in-law). This situation is peculiar to all the four communities in the study area³⁶. The situation in Avianwu is quite different from what exists in surrounding villages. The major ethnic groups in Edo State are Benin, Esan, Afemai, Owan and Akoko Edo. Succession under the Benin laws for example is governed by the principles of primogeniture³⁷ and the freedom of testamentary power is restricted as much reliance is placed on section 3(1) of the Wills law 1958, which provides;

Subject to any Customary Law relating thereto, it shall be lawful for every person to devise, bequeath or dispose of, by his will executed in a manner hereinafter required, all real and all personal estate which he shall be entitled to, either in Law or in equity, at the time of his death and which if not so devised, bequeathed and disposed of would devolve upon the heir at law of him, or if he became entitled by descent, of his ancestor, or upon his executor or administrator.³⁸

The principle of primogeniture inheritance among the people of Esan applies in its purest form, thus vesting the eldest son with total rights in all the property of his deceased father after performing the funeral. This is at variance with the practice of the people of Benin where exclusive inheritance is limited only to certain types of property which is the *igiogbe* (house

³⁴ Interview with His Royal Highness (SURU), Thomas Uuimho Ilogho (Traditional Ruler and Sub-Clan Head, Ogbonna Community); His Royal Highness, Edward Nasamu Braimah (deceased) (Sub-Clan Head Ivhinone Community (Interview conducted January, 2015)

³⁵ Interviews with High Chief Godwin Igbanoi (The Eboikpise of Ivhinone community in Avianwu); Chief Moses Bandele Ogboala (High Chief Ogbonna Community); Chief A.B.C Nasamu (retired principal Ivhinone community); Chief Dennis Osikhena (Palace Secretary, Ivhinone Community), Chief Moses Itsoko Innocent (Second member Customary Court, Fugar). Field work, 2015.

³⁶ Interviews with His Royal Highness, Alhaji Jackson Dauda Abelere Etokhana (Oghie of Avianwu), Chief Hadiza Isa (second oldest woman Ivhinone Community; Catharine Omodibu (Oldest woman Ivhinone Community). Field work, 2015.

³⁷ Itua, O.P (2011) "Succession under Benin Customary Law in Nigeria : Igiogbe Matters Arrising ", Journal of Law and Conflict Resolution 3, 7:117-129

³⁸ Section 3(1) of the Wills law 1958,

where the deceased resided in his life time.³⁹ In Esan, the traditional burial rite, called “*itolimi*” or “*iluogbe*,” is an important event in every family, even the royal family is not excluded.⁴⁰ In every family, it was and still is customary for the first son to bury his father ceremonially. Where he fails to do it, he was not recognized by the people and he will not be fit to inherit his father’s property.⁴¹

Patriarchy in Avianwu

Several scholars have written extensively on the variations of structural differences and their effect on inheritance rights. Prominent among them is Khadiagala (2002) who said that denial of property rights to women was in fact a relatively recent development in Kabala district in South-Western Uganda. The author gave several reasons to establish how and what contributed to the gradual and final elimination of rights of women to inherit land in this district.⁴² The aim of investigating the reason for the adoption of patriarchy is to investigate if the women in Avianwu have the right to hold land without any form of hindrance. The property rights of women in the pre-colonial, post-colonial and the current era were examined. The factor that must have contributed to the loss of right to hold and inherit land and why men are vested with exclusive ownership of land was investigated. Findings generated from the field were also interrogated with Section 42(1) and (2) of 1999 Constitution of the Federal Republic of Nigeria and selected case law.

The indigenes believe that the customary law of inheritance in Avianwu is aimed at fairness and equality. They said it is practiced in this manner so that the women could inherit from their mothers while the men could inherit from their fathers. The idea is not to punish the women but to ensure that every child gets a share of the parent’s property in an orderly manner.

Marriage is a major determinant to a female child’s right to inherit property in Avianwu. With respect to inheritance rights, the practice of *amoya* or *onabo* and *adegbe* in its strict sense runs contrary to the provisions for protection of equal rights in Section 42(1) & (2) 1999 Constitution of Nigeria.⁴³ An *amoya* is an Avianwu woman who is married to a non Avianwu indigene, or a non-Avianwu lady who marries a man from Avianwu. The implication of this union is that by virtue of her marriage to a non-indigene, she cannot inherit her mother’s property. It is only an Avianwu woman who marries an indigene of Avianwu that is allowed to inherit her mother’s property. The philosophy behind these practices according to the field respondents is to protect family property within the communities. They as much as possible want to retain their property within the communities and not lose it to other families outside the Avianwu community. Even when the women are qualified to inherit property from their mother’s, they are not allowed to inherit land.⁴⁴ The women in these communities appear to be very comfortable with these

³⁹ Ughulu, E. O. (nd) *British Experience in Uromi About 1900A.D. Uromi (Esan) Esan Division*, University of Uyo, p. 44

⁴⁰ Ughulu E.O (nd) op cit page 45

⁴¹ Ughulu E.O(nd) op cit. page 45

⁴² Khadiagala, L., 2002. “Negotiating Law and Custom: Judicial Doctrine and Women’s Property Rights in Uganda” *Journal of African Law*, 46 (2002) 1-13. School of oriental and African Studies; UK 46 (1) 1-13.

⁴³ Section 42(1) guarantees the right to freedom from discrimination on account of ethnic group, place of origin, sex, religion etc. Section 42(2) “provides that no citizen of Nigeria shall be subjected to any disability or deprivation merely by reason or circumstances of his birth”.

⁴⁴ Field work, 2015

practices. The responses generated during the fieldwork revealed the fact that the women have accepted these practices as their ways of life.

Marriage as a Determinant to Property Rights of Women under the Avianwu Customary Law

Traditional marriage is a union of two families, not two individuals, and both families are involved in the relationship from its anticipation to its culmination in formal union. They also continue to retain a supervisory role to ensure the survival of the marriage.⁴⁵ Emiola states that the African concept of marriage is at variance with the Western perception of marriage as merely a legal union of a man and a woman as husband and wife.⁴⁶ It needs to be added that same sex marriages are now legal in many countries in Europe (including the United Kingdom) and the USA.

There are two forms of marriages in Avianwu, and the weight attached to them is unequal. The two forms of marriages are “*Adegbe*” and “*Amoya*” or “*Onabo*”. An “*Adegbe*” is a woman who marries a man within the four communities in Avianwu. When a woman marries within the Avianwu community, on her demise her corpse is usually returned to her mother’s family for interment. The man who marries an “*Adegbe*” cannot claim her body upon her demise. He is in fact actually informed and warned during the marriage celebration that he must return her body for internment in her mother’s compound upon the wife’s demise. On the demise of the mother of an “*adegbe*”, if she happens to be the first child, she can exercise her full customary rights and inherit her mother’s property. She is to take custody of the property and share it amongst her other sisters. A woman in her lifetime possesses the right to give her property to any of her female children that she feels could be disadvantaged after her demise. This is irrespective of the form of marriage that the daughter may have contracted. A woman can also set some properties aside and give specific instructions that such properties should be given to a named child after her demise and her wish must be upheld as it is held sacrosanct.

The respondent further stated the position as it is today. Female children are no longer interested in inheriting their mother’s clothing’s or cooking utensils. What they now do is to share such properties amongst their deceased mothers’ relatives who are interested in taking possession of such materials. The female children are rather more interested in inheriting landed properties, jewellerys, cars and other items of significant value.⁴⁷ The type of marriage contracted by the deceased to a large extent determines the rights of the surviving spouse and children to inherit the deceased property upon his/death.⁴⁸

In Avianwu, findings revealed that in practice, the form of marriage contracted by a woman determines her right to inherit her mother’s property. It is the first-born daughter who inherits property and she is only a custodian of the property thus inherited, she is expected to share the property with her female siblings. It is only the nature of marriage she conducts that can strip her

⁴⁵ Ibidapo-Obe 2005. *A Synthesis of African law*. Concept Publications Ltd, Lagos p.154

⁴⁶ Emiola, 2005. Op cit page 89

⁴⁷ Interview conducted with the Sub-Clan heads in each community of Avianwu (Ogbonna, Iraokho, Ivhinone and Ivhiarua), Focus Group discussions with women and men in the four communities that make up Avianwu. Field work, 2015.

⁴⁸ Field work, Ozalla Community of Edo State 2015.

of this right.⁴⁹ This was the position in the case of *Salubi v Nwariaku*⁵⁰ where it was held inter alia that where a person subject to native law or custom marries under the Marriage Act and dies intestate, the applicable law for the distribution of the deceased estate would be the Marriage Act not the Administration of Estates Law or customary law. In *Avianwu*, the first-born daughter of a woman who marries a man outside Avianwu automatically loses her right to inherit her mother's property. This right reverts to her younger female sibling. Where no daughter qualifies to inherit her mother's property as a result of marriage, the property reverts back to her mother's family.⁵¹ Field respondents revealed that whoever inherits property only hold it in trust for her female siblings. She is expected to share the property with her other female siblings. However, with the influence of westernization, female children predominantly from monogamous families now share property with their female and male siblings. In the other geopolitical zones in Nigeria, at the demise of a person, the first step that should be taken in determining the beneficiaries is to find out what type of marriage the deceased person had contracted in his lifetime. The marriage could be in accordance with the Marriage Act or Customary Law, or it could be an Islamic marriage.⁵²

Talbot also opined in his work that among the Membe and the Kalabari of Ijaw in Rivers State, there are two types of customary law, the names of which he presented as 'yaa Iyaa and Igwa or egwa' which translate to small dowry and big dowry marriage. He stated further that by virtues of the big marriage "iyaa" the wife becomes a full member of the husband's family and is under a legal duty to live with her husband and perform all the domestic duties attendant thereto and her children by her husband as of right belong to the husband while in the case of the small dowry, the wife may remain in her parent's house and the man has no legal right to the children of this said marriage.⁵³ Okoro⁵⁴ and Hubbard⁵⁵ also have recognized this form of marriage in their various scholarly works.

In the case of the Yoruba, there are the "idi igi" and the "ori ojori" systems. These have been given judicial recognition in the case of *Vincent v Vincent*⁵⁶, where the court held that there are two methods of distribution of the estate of a man under Yoruba tradition, namely "idi-igi", known as per stripes and the "ori-ojori" known as per capita. The *idi-igi* method distributes the estate per the number of wives the deceased had, no matter the disparity in the number of children among his wives, while the *ori-ojori* on the other hand considers the number of children and distributes the property equally among the children.⁵⁷

Customary law marriage has been recognized and endorsed in Nigeria under Section 35 of the Marriage Act and it provides inter alia that 'any person who is married under this Act, or whose marriage is declared by this Act to be valid, shall be incapable during the continuance of such

⁴⁹ Field work, 2015

⁵⁰(1997) NWLR. 505, 442 pt 447

⁵¹ Field work, 2015.

⁵² Azinge, E. (2013) *Reinstatement of Customary Law of Nigeria* Lagos: Nigerian Institute of Advanced Legal Studies

⁵³ Talbot, P.A. (1923) *Tribes of Niger Delta*. Sheldon Press. P. 437

⁵⁴ Okoro, N. (1966) *The Customary Law of Succession in Eastern Nigeria and the Statutory and Judicial Rules Governing Their Application*. Lagos: Lagos Press. P.149.

⁵⁵ Hubbard, J.W 1948. *The Sobo of Niger Delta* Zarna: Gaskiya Corporation P.191

⁵⁶ (2008) 11 NWLR Pt 1097, p 35-49

⁵⁷ Smith, I. O. (1995) *The Law of Real Property in Nigeria* .The Law Centre, LASU Page69

marriage, of contracting a valid marriage under customary law, but save as aforesaid, nothing in this Act contained shall affect the validity of any marriage contracted under or in accordance with any customary law, or in any manner apply to marriages contracted.’ It is important to state that where a person who is subject to customary law contracts a marriage under the Act, the devolution of his estate upon his demise where he dies intestate will not be by customary law.

Existing Property Rights (Inheritance Rights) With Respect to Land

Under the Nigerian customary law, land is of great importance to the existence of individuals, clans, families and communities and it can be used for various purposes such as agriculture, farming, and erection of houses for personal and commercial purpose.⁵⁸ In describing land under customary system, Professor Azinge argues that land law under customary law meant soil and soil only; this argument is supported by Azinge.⁵⁹ A building erected by a person, even by a trespasser, on the land of another did not become attached to the land but remained the property of the builder. Land can be defined to include not only the surface of the earth and subsoil, but all the appurtenances permanently attached to it, including buildings, trees, streams and ponds (*Quidquid plantatur solo, solo cedit*).

According to Albert, land can be acquired by pledge, renting, inheritance, purchase, gift, community holding, borrowing and share cropping.⁶⁰ Judicial decisions that give credence to such forms of land holding under the customary law are enunciated in the cases of *Idanmwekhai v Braimah*⁶¹ and *J.E. Ehimare v Okaka Emhonyon*⁶². Land can also be owned by conquest as decided in the cases of *Nwuba Mora v H.E Nwalusi*⁶³ and *Echi v Nnamani*⁶⁴. Land can also be acquired through long possession, of which the cases of *Nwokenye v Ojunwabude*⁶⁵, *Dagaci of Dere v Dagachi of Ebwa*⁶⁶ and *Oduwole v LSPDC* are examples.⁶⁷ There is also the issue of customary tenancy which in practice is that however long the customary tenant is in occupation it does not transfer ownership of the land to such a tenant neither can such a land be transmitted to the heir. This is illustrated in the cases of *Nous v Uche*⁶⁸; *Mojekwu .v. Wachukwu*⁶⁹; *Lewis v Bankole*⁷⁰ and *Chicer v Okogbue*.⁷¹

Landmark decisions of the Court of Appeal and the Supreme Court have been examined in this study to give credence to these various methods of land holding. The courts have taken judicial notice of these various methods of acquiring temporal rights to land in the following cases,

⁵⁸ Azinge, E. (2013) *Reinstatement of Customary Law of Nigeria* Lagos: Nigerian Institute of Advanced Legal Studies Page 203

⁵⁹ Azinge op cit. page 203

⁶⁰ Honlonkou, A. (2014) *Property Rights, Land Management and Agricultural Productivity in Benin*.

Mento@lavu.org Last assessed 27th June, 2016

⁶¹ Unreported Appeal No CA/B/9.88 of 16/11/90. Court of Appeal Benin

⁶² (1985) 2 SC 42 at 70

⁶³ (1962) 1 ALL NLR P. 168

⁶⁴ (2000) 8 NWLR Pt. 667

⁶⁵ (2001) SUIT NO. DCC .8A/99. CCA

⁶⁶ (2006) 7 NWLR Pt. 979

⁶⁷ (2004) 9 (NWLR Pt. 878 p. 382-410

⁶⁸ (2005) 17 NWLR Pt. 995

⁶⁹ (2004) 11 NWLR Pt. 883

⁷⁰ (2007) 11 NWLR Pt 1247 P. 572-590

⁷¹ (2000) 12 NWLR Pt. 681

*Oyakojo v Ibadan District*⁷² where the courts have held that where land is acquired for use as a market, no compensation is payable. This decision confirms the fact that communal land can be used as a market. With respect to land being used as a pledge, the Supreme Court has settled this in the case of *Okoioke & Ors v Esadalue & Ors*⁷³ where it was held that in principle in Delta State, a pledge is not a sale under customary land transactions, thus lending credence to the fact that under customary law, land can be pledged. Thus, this form of land holding cannot be transmitted to an heir. In the case of *Agbejakwe v Osunde*⁷⁴ whilst determining the Abavo customary law in Delta State, the court held that the pledgor had a reversionary right on the land and emphasized the fact that the pledge of a piece of land does not translate to the sale of that land.

Ebimotureh v Inekembagha is also another case where the courts had lent its support to the recognition that communal land can be used for agriculture.⁷⁵ With respect to communal land being given as a gift, the courts have held in the case of *Anyaegebunam .v. Osaka*⁷⁶ that a gift is complete when the donee accepts the fact that he has transferred his right in the land and such donee has no right to revoke the gift. In *Ekpa v Utong*⁷⁷ and *Oguejiofor v Osaka*⁷⁸, the same position has been held that a person lacks the power or competence to revoke a gift of land made *inter vivos* by his ancestor unless he can show that the gift had been subject to a condition which had been broken. Where there has been an outright gift it puts into extinction the rights of those who claim through or under the donor. Subsequent paragraphs will examine the methods by which individuals can acquire family lands and transfer such to their heirs under customary law. Customary land consists of customary and communal land and cannot be inherited unless it is partitioned among the constituent families or partitioned among the members of the family in a situation where a family is involved.

Findings from the field revealed that women in Avianwu can acquire land by outright purchase but when it comes to inheritance of land by a daughter from a mother, the situation is a bit different. If a woman gets married outside the Avianwu communities, she becomes an *amoya* or *onabo* and cannot share in the inheritance of her mother. One of the respondents who is the oldest man in Iraokho stated that in the past, land was not valued as something important in Avianwu. He said they never used to wear clothes; they used to pick cowries about on the floor and they used to buy and sell. Land was communally owned and was in abundance. When a person got tired of farming on a land he or she could move to another vacant land to farm. He said that the men farmed in the thick bushes, while the women farmed within the village and everything was peaceful and there were hardly issues with respect to land.⁷⁹ The researcher examined the position of women with respect to ownership and inheritance of land in the four communities and the findings from the interviews have been produced in accordance with the responses generated from each community.

⁷² (1959) WNLR p. 304 at 305.

⁷³ (1974) 3 S.C. 15

⁷⁴ (2011) APPEAL NO. DCCA/27A/2010

⁷⁵ (1998) 3 NWLR Pt 543, P 548 at 577

⁷⁶ (2000) 3 SC 1 at 14; (2000) 5 NWLR PT 675 P.386 at 400

⁷⁷ (1991) 6NWLR PT.197 258 at 284

⁷⁸ (2000) 3SC P.14

⁷⁹ Interview with, Oldest man in Iraokho, Field Work, 2015

In the earliest years, during the pre-colonial and colonial era, land was not considered as something of so much value. There were hardly instances where people had issues with respect to land. Women were free to stay on any available land and plant crops like, *iyopa*, (special type of beans which is very small in size), groundnut, and cassava. Farming as a profession, according to a respondent, was only a recent development introduced to the Avianwu women by the infiltration of the Yoruba people into their community.⁸⁰ It is settled that women never inherited male property in Avianwu, so a woman could inherit her mother's land. In a man's life time, he may choose to divide his land amongst his wives for farming. On the demise of the man, the women cannot claim ownership of the land because the land remains the property of their husband. It is the deceased's first son that has the right to inherit the property. In recent times, women, can now acquire land by purchase and their daughters can inherit such land.⁸¹ It is worthy of mention that this latter position exists only in Ogbonna community.⁸² The Sub-Clan head of the community said during an interview session that

By our tradition, anything that belongs to the mother belongs to the daughter. In the past, land did not belong to anybody, nobody bought or sold land, but now it is good business. The idea behind denying women the right to inherit their mother's property (land) is because they do not want the woman to transfer the land to her in-laws. I ensure that female children inherit land owned by their mothers because by tradition they are supposed to inherit all that their mothers owned. It is out of greed that the men deprive the female children right to inherit land.⁸³

However, the contrary is the case with respect to the other three communities. This was the response given by one of the respondents:

Women cannot own land in Avianwu, however a woman can acquire land by outright purchase. If it comes as a gift from the father or mother in their life time, if such a daughter does not build on this said land, her brothers whether younger or older can take the land away from the woman after the death of her father or mother. If a woman is an *amoya*, she cannot inherit the land of her mother and if she is given the land as a gift in her mother's life time, her brothers could also take the land away from her after the demise of her mother.⁸⁴

The findings stated above corroborate the position of Khadiagala. She investigated the Kabale custom in the South-Western Uganda stated that in it was only of recent (late 1960s) that women were deprived the right to acquire land and inherit land. She attributed the cause of this development to the value newly attached to land.⁸⁵

⁸⁰ Field work, 2015

⁸¹ Interview with a Palace Secretary, Ivhiarua Community

⁸² Interview with Chief Willie Idode (Sub-Clan Head, Ogbonna Community).

⁸³ Interview with The Sub-Clan Head, of Ogbonna Community, Fieldwork, 2015

⁸⁴ Interview with The Egboikpise (Palace Chief) of Ivhinone, this position was corroborated by thee Sub-Clan heads of Ivhiarhua, Ivhinone and Iraokho communities. Field Work, 2015

⁸⁵ Khadiagala, L. (2002) "*Negotiating Law and Custom: Judicial Doctrine and Women's Property Rights in Uganda*" Journal of African Law 46, 1: 1-13

The Effects of Property Rights on the Economic Empowerment of Women in Avianwu Community

Women play critical roles in agricultural production in developing countries, where they make up the majority of the agricultural workforce. Land as the main source of livelihood is also a source of power and social status; furthermore, it is an indicator of the people living on it. Women's access to land is important because it guarantees reduction in poverty and ensures food stability. In the community examined (Avianwu), it was observed that most of the women were predominantly farmers that relied extensively on farm produce to feed their families and sell to assist their spouses in the home. A woman who farms in this community is guaranteed of food security for her family. Findings revealed that women's denial of access to permanent land use was influenced by the present value attached to land in the society. This is against the insinuation that it was influenced by patriarchy. All the elderly respondents interviewed stated that from earliest times women had access to land and could transfer such land by way of inheritance without any inhibition by the male members of their family⁸⁶. The position is different today in Avianwu, except for *Ogbonna* Community. Women are not allowed to inherit their mother's land and the reason given for this is the 'need' to retain the land within the possession of the family.⁸⁷

In Avianwu, many negative effects arise from depriving women rights to own and transfer property at will. Literature reviewed revealed that women who are deprived the right to inherit land are at a more disadvantageous position compared to men. Women's right to inheritance is a very vital issue as it relates to the underlying causes of high levels of poverty. Inheritance is vital to the transfer of wealth in a society and protecting a woman's right to land is inextricably linked to her economic autonomy.⁸⁸ Adekile states that "the inhibitions placed on women in the family inheritance laws systematically prevent the full realization of economic rights and poverty is the resultant consequence."⁸⁹ However, the prevalence of discriminatory customary practices against women in Nigeria notwithstanding, in many communities, women can own property.⁹⁰ In Benin Kingdom and Esan part of Edo, many women own their own property, separate from their husbands.⁹¹ Furthermore, Isibor highlights cases where women have instituted cases to protect their parcels of land held under Benin customary law. The cases include *Madam Agbonifo v Aiwerioba & anor*⁹² and *K.S. Okeayya-Ineeh v Ekomado*.⁹³ Women in neighbouring

⁸⁶ Interview with key informants and In-depth interviews in each of four communities in Avianwu.

⁸⁷ Interview with Chief Willi Idode, Sub Clan Head of Avianwu and other Sub-Clan Heads. Field work, 2015

⁸⁸ Scholz, B. (2004) *Women's Inheritance Rights*, The Centre on Housing Rights and Evictions (COHRE) Geneva

⁸⁹ Adekile, O. (2010) *Property Rights of Women in Nigeria as an Impediment to Realization of Economic and Social Rights* (place of publication and publisher) page 4.

⁹⁰ Ekhaton, E. O. (2015) 'The impact of the African Charter on Human and Peoples' Rights on Domestic Law: a Case Study of Nigeria' *Commonwealth Law Bulletin* 41. 2: 253-270.

⁹¹ Isibor, P. O. (2014) *Women's Rights and Status under Edo Native Law and Custom-Myths and Realities* Retrieved from <http://www.edoworld.net/womenrightandstatusunderedolawandcustom.html>. Last Assessed 28th August 2016. Page 8.

⁹² (1988)19 NSCC .pt. 1. P. 237

⁹³ !1970) ANLR 1

communities surrounding Avianwu could acquire land distinct from their husbands' and can transfer such property to their children in the form of inheritance.⁹⁴

Findings from the field revealed that some women in Avianwu also acquired and still acquire landed property separate and distinct from their husband's property. The practice from the pre-colonial era was that such property could be transferred after the demise of a mother to her female children so long as they are qualified to inherit such property by virtue of their marriage. However, with the advent of colonization, the Avianwu people became aware of the value attached to land and the practice of depriving female children the right to inherit landed property started from that era.⁹⁵ This situation found in Avianwu is contrary to the view held by Isiobo that "it is correct to conclude that under customary law of most parts of Edo State, a woman is not deprived the opportunity or right to acquire, hold and enjoy property". Field interviews conducted in 2015 revealed the fact that a female child in Avianwu can inherit her mother's property less her land. However, findings further revealed that the women have found a smart way to avert this occurrence by selling off the land in their life time. Women and female children who have been denied the rights to inherit property are forced to abandon their lands and they have to seek alternative solutions such as petty trading. Majority of the female respondents interviewed said they preferred farming rather than petty trading. They complained that people bought items on credit and until such monies were paid they had no access to funds. The reverse would be the situation if they had alternative and stable source of income such as farming.

Development is skewed in favour of men with respect to economic empowerment as women are deprived their rights to access land. It should be noted that depriving women of land rights negates the principle of gender equality as provided in both domestic and international laws. In 1995, the World Summit held in China and other recent summits for social development took gender equity as the core strategy for social and economic development.⁹⁶

Besides the challenges stated above, younger and middle-aged women interviewed revealed that the inheritance practice of not allowing female children access to land increases the burden of poverty on women. Where a woman is deprived equal opportunity to inherit land like men, her right to gender equality has been violated. The resultant poor financial status could be unbearable. Women contribute to a very large extent to the house upkeep, yet they are accorded little or insignificant recognition compared to the men in Avianwu communities. This situation corroborates the position of Olubor, where he states:

It is a common knowledge that women are virtually responsible for rural households. In spite of this, our customary practices subject them to conditions of inequality with their male folks. Most women do not have equal rights as men to resources. Most of

⁹⁴ Ekhaton E.O., 2015. "The Impact of the African Charter on Human and Peoples Rights on Domestic law: A case Study of Nigeria". *Common Wealth Law Bulletin*. 41.2: 235-270.

⁹⁵ Interview with Chief Igbebo Ozimhede, Chief Willie Idode (Sub-Clan Head, Ogbonna Community); oldest men and Women in each of the Community. This information was corroborated by other respondents interviewed, Field work, 2015.

⁹⁶ Fourth World Conference on women held in Beijing, 1995 Eragbe, E.O., 2013. The Etsakor people of Afemai land. www.afemaipeople.com/etsako.people. Retrieved 19th January, 2016 cited in Aigbovo, 2015:21 op. cit

them rely on men for their physical wellbeing, economic security as well as social status.⁹⁷

One of the basic requirements to obtain a bank loan is the production of collateral, which often comes as a Title Deed which must belong to the intended recipient of the loan. Where a woman has no land, she will be deprived of access to loan facility. Denying a woman, the right to certain properties due to cultural inclinations is a violation of her rights to equality. There are certain cultures where widowhood rites expect a widow to be re-married to a male member of her late husband's family. Avinwu has a similar custom, so where a widow refuses to re-marry she will be denied her right to use her deceased husband's property, most especially the dwelling home and land⁹⁸. In Avianwu, a woman is expected to remarry a man within her late husband's family to be able to continue to enjoy and use her late husband's property. In pre-colonial era, this new marriage was expected to be consummated. The position today is different: the new marriage is only symbolic, and consummation is optional left to the discretion of the woman. The woman was also expected to mourn her husband for three years, doing no work and thereby raising no income throughout this era. This position has also been modified to suit the present social and economic demands. The woman is only expected to observe three months' mourning, thereafter, resuming her daily activities but maintaining a sober decorum, wearing dull clothing's for three years.⁹⁹ The factors that have contributed to and influenced these changes can be attributed to westernization.¹⁰⁰

Conventions on Women's Rights in Nigeria

International Conventions and State laws that oppose discrimination and prescribe equal treatment of women and respect for Fundamental Human Rights have moved steadily into the national sphere. In Nigeria, Sections 39 and 42 of the 1999 Constitution provide that no citizen of Nigeria shall suffer any discrimination on grounds of sex, race, religion etc. While Section 1 nullifies any action in totality or to the extent of its inconsistency any action or actions that violate the provisions of the constitution.

The Nigerian Constitution has in fact anticipated the panoply of women's rights, which have been expansively articulated under international law, particularly the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) (Ibidapo-Obe, 2005: 176).¹⁰¹ CEDAW is one of the governing laws on women's rights internationally for all state parties that have ratified the convention. Nigeria became a signatory to CEDAW in 1984 and it only became operative in the country in 2004 but it is yet to be domesticated in Nigeria. The preamble to the convention states thus: "Concerned that, despite these various instruments, discrimination against women continues to exist...Aware that a change in the traditional role of men as well as the role of women in the society, and in the family is needed, to achieve full equality between men and women...". The convention contains guarantees of equality and freedom from discrimination by the state and by private actors in all areas of public and private life. To a large extent, it codifies the existing gender-specific and general human rights

⁹⁷ Olubor, J. O. (2009) *The Legal Rights of the Vulnerable Groups vis-a-vis Customary Practices* The Refresher Course for Judges and Kadis Sept. 23-27, 2009

⁹⁸ Interview with Key Informants, Fieldwork, 2015

⁹⁹ Interview with key Informants and Focus Group Discussions in Avianwu, Fieldwork, 2005

¹⁰⁰ Interview with Key Informants, Focus Group Discussions with Women. fieldwork, 2015

¹⁰¹

instruments containing guarantees of freedom from discrimination on the ground of sex, although it adds some significantly new provisions. It requires the state parties to ensure that women enjoy equality in the fields of civil and political rights, as well as in the enjoyment of economic, social and cultural rights. Nigeria being a state party to CEDAW has successfully relied on it and other Conventions to strike down offending customary law practices.

In Avianwu, the effect of these conventions is insignificant and field findings revealed that the provisions of CEDAW and other Conventions on discrimination against women is at variance with the culture of the people. There was to a large extent, awareness of this law, but the respondents interviewed insisted that customary law was also a source of law and can therefore not be overridden by English law. In the Focus Group sessions held within the four communities, non-verbal responses suggested that the young female respondents were not comfortable with this condition, but the older female respondents all declared their support for this cultural practice.

The UN Commission for Status of Women (CSW) under the Economic, Cultural and Social Council (ECOSOG) of 1946 provides that men and women should be treated equally in all spheres of life where the same conditions prevail. The establishment of CSW led to the subsequent adoption of the Universal Declaration of Human Rights (UDHR) in 1948. The African Charter on Human and Peoples Rights (ACHPR), 1982 provides in its Article 2 & 3 that every individual shall be entitled to enjoyment of rights and freedom recognized in the present charter without distinction of any kind such as race, ethnic group, language and sex. This charter was domesticated in Nigeria in the form of the African Charter on Human and Peoples Rights (Enforcement and Domestication) Act Cap 10, 1990. The Section 18 of the International Conventions and State laws that oppose discrimination and prescribe equal treatment of women and respect for Fundamental Human Rights have moved steadily into the national sphere. In Nigeria, Sections 39 and 42 of the 1999 Constitution provide that no citizen of Nigeria shall suffer any discrimination on grounds of sex, race, religion etc; while Section 1 nullifies any action in totality or to the extent of its inconsistency any action or actions that violate the provisions of the constitution.

The Section 18 of this Act makes the provisions of the Charter enforceable in any court of law in Nigeria. Article 21 of The Protocol to the Charter on Human and Peoples Rights ratified by Nigeria in 2004 protects the rights of widows and gender equality. The International Covenant on Civil and Political Rights (ICCPR) 1966, in its Article 3, provides that state parties should ensure equal rights of men and women to the enjoyment of civil and political rights. Article 26 provides for a right to equal protection of law for all persons. The Protocol of the African Charter on Human and Peoples Rights of Women in Africa provides that state parties should combat all forms of discrimination against women. Its Article 5 condemns all forms of harmful practices. Articles 20 & 21 provides that women and men have the right to inherit, in equitable shares, their parent's property. On May 5, 2015, the Nigerian government passed a bill into law prohibiting violence against women. The law is titled Violence against Persons Prohibition Act (VAPP). The VAPP provides for a legislative and legal framework for the prevention of all forms of violence against persons especially women and girls. The Act makes the provisions of the Charter enforceable in any court of law in Nigeria.

Article 21 of The Protocol to the Charter on Human and Peoples Rights ratified by Nigeria in 2004 protects the rights of widows and gender equality. The International Covenant on Civil and Political Rights (ICCPR) 1966, in its Article 3, provides that state parties should ensure equal rights of men and women to the enjoyment of civil and political rights. Article 26 provides for a right to equal protection of law for all persons. The Protocol of the African Charter on Human and Peoples Rights of Women in Africa provides that state parties should combat all forms of discrimination against women. Its Article 5 condemns all forms of harmful practices. Articles 20 & 21 provides that women and men have the right to inherit, in equitable shares, their parent's property.

Some African countries have relied on these International Declarations and Conventions in striking down discriminatory customary law rules. In *Ephraim v Pastory*¹⁰², the Tanzania High Court relied on the Tanzanian Constitution and International Human Rights conventions to uphold the rights of females to inherit land. Similarly, in the Botswana case of *Ramantele v Mmusi*¹⁰³ the Court of appeal also upheld the rights of women to inherit the family home, noting the supremacy of the constitution.

Conclusion and Recommendation

Judicial pronouncements, for example, *Asika v Atuaya*¹⁰⁴ and several human rights provisions, for example, Section 42, 1999 Constitution of Nigeria, Article 16, Universal Declaration of Human Rights, African Charter on Human and Peoples Rights (Ratification and Enforcement Act) 1983 to mention a few, are beginning to have a positive influence because the study revealed that some beneficiaries in recent times in Avianwu have developed the practice of sharing inherited property with their siblings irrespective of the sex.¹⁰⁵ The female beneficiaries now share some of their mothers' properties with their male siblings while some male beneficiaries also share some of these properties with their female siblings. This is particularly predominant where the family is monogamous in nature.

Sex of the deceased plays a determinant role in determining who inherits from a deceased person. Section 42 of the 1999 Nigerian Constitution and a host of so many other Conventions that Nigeria has ratified¹⁰⁶ frown at inequality ascribed to the female gender. The study revealed that right from earliest times, women have property of much lesser value than the men. Hence, the women inherited items that were insignificant and of no value compared to the men. The trend is gradually shifting because women now acquire property of significant value, but this is only a recent development.

One of the most recent cases is that of *Onyibor Anekwe v. Maria Nweke*¹⁰⁷ where the Court of Appeal held that no matter the circumstances of the birth of a female child, she is entitled to an

¹⁰² (2001) AHRLR 236 (TZHC) 1990. The court relied on Article 26 of the International Covenant on Civil and Political Rights (ICCPR) which prohibits discrimination based on sex. The Court also relied on CEDAW and Article 7 of The Universal declaration on Human Rights which discrimination based on sex.

¹⁰³ Unreported Judgment of Botswana Court of Appeal. Delivered in Gaborone, Sept 3, 2013. Cited in Aigbovo, 2015

¹⁰⁴ (2008) 17 NWLR pt. 1117 p.484, Ukeje v Ukeje

¹⁰⁵ Interview with Chief Igbebo Ozimhede. Field Work, 2015

¹⁰⁶ CEDAW; African Charter on Human and Peoples Rights (Enforcement and Domestication) Act Cap 10, 1990, Violence against Persons (Prohibition Act) (VAPP) 2015;

¹⁰⁷ (2014) 9 NWLR (pt.1418) p. 393 at 399

inheritance from her late father's estate. There is also *Ukeje. v. Ukeje*¹⁰⁸ where the Supreme Court held on July 1, 2016 that the Igbo customary law, which forbids a female from inheriting her late father's estate is void on the ground that it is discriminatory and conflicts with the provision of Section 42(1) and 2, 1999 Constitution. The judgment was an appeal filed by Mrs. Lazarus Ukeje (wife of the late Lazarus Ogbonna Ukeje) and their son Enyinnaya Lazarus Ukeje against Mrs. Gladys Ada Ukeje, the daughter of the deceased. Gladys sued the wife and the son of the deceased before the Lagos High Court, claiming to be one of the children and seeking to be included among those to administer the deceased father's estate. The High Court and the Court of Appeal delivered their judgment in favour of Mrs. Ada Gladys Ukeje and this prompted the wife and the son of the deceased to appeal to the Supreme Court. The Supreme Court upheld the decision of the Court of Appeal and held that the Court of Appeal was right to have voided the Igbo native law and custom that disinherits the female child. Justice Bode Rhodes-Vivour, who read the lead judgment held *inter alia* that no matter the circumstances of the birth of a female child, such a child is entitled to inheritance from her late father's estate. Justices Walter Samuel Nkanu Onnoghen, Clara Beta Ogunbiyi, Kumai Bayang Aka'ahs and John Inyang Okoro who were part of the panel agreed with the lead judgment.¹⁰⁹

In *Uke .v. Iro* the court held that the Nnewi customary law that disentitles a woman from giving evidence in relation to title to land is inconsistent with constitutional provisions and is repugnant to natural justice. It also offends all the decent norms applicable in a civilized culture where the rights of all sexes are protected under the constitution.¹¹⁰ In *Obusez .v. Obusez* the Court of Appeal upturned the Agbor native law and custom which denies a widow who was married under the Marriage Act and with five surviving children a right to the management and distribution of the estate of her deceased husband. The court held that the surviving spouse who is the lawful widow should get priority to a grant of letters of administration of the estate.¹¹¹, Despite the availability of several international and state laws, gender discrimination still continues to persist. This paper has created a blueprint for understanding the complexity of women's inheritance rights and its effect on women's economic empowerment using the Avianwu community as a case study. Women economic empowerment can be achieved in Avianwu through massive education campaigns and gradual re-orientation. Women should be given equal access to land and control of economic resources. The succession and inheritance rights in Avianwu should be reviewed to reflect gender equality in compliance with the existing laws. The provisions of Fundamental Human Rights in our Constitution will be merely theoretical if they cannot be made to create an environment where no citizen is or feels oppressed. Constitutional provisions will not by themselves create this enabling environment when there still exist customary walls and barriers built over centuries which encourage and sustain gender inequalities.¹¹²

¹⁰⁸ SC. 224/2004, decided July1, 2016

¹⁰⁹ Ekhaton E.O. (2015). "The Impact of the African Charter on Human and People's Rights on Domestic law. A case Study of Nigeria ". *Commonwealth law Bulletin* 41. 2:253-270

¹¹⁰ (2001) 11 NWLR (pt. 723) 196

¹¹¹ (2001) 15 NWRR (pt. 736) p. 377

¹¹² Jadesola 1990, cited in Isibor, P. O. (1999) Women's Rights and Status Under Edo Native Law and Custom— Myths and Realities Retrieved <http://www.edoworld.net/womenrightandstatusunderedolawandcustom.html> Last Assessed 28th August 2016

