

APPRAISAL OF SUCCESSION LAWS IN NIGERIA

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DECLARATION

I affirm that this research is the result of my individual scholarly endeavours, conducted under the guidance of DR. MAUREEN UJAH and has not been previously submitted for any academic qualification. All references have been properly identified and acknowledged.

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CERTIFICATION PAGE

This is to certify that this study titled ‘**Appraisal of Succession Laws in Nigeria**’ was carried by **DAVE-ONUOHA OLUOMACHUKWU JOAN** under our supervision and that the essay has not been submitted for the award of any degree in this or any other university.

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Date

(External Examiner)

DEDICATION

This work is dedicated to myself, to my family, and to God.

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I want to express my deepest appreciation to my dear parents, Mr and Mrs Dave Onuoha whose unwavering love, support, and encouragement have illuminated my academic path. Your sacrifices, wisdom, and unshakeable belief in me have provided the solid ground upon which I've built my dreams. I will always be grateful for your unwavering confidence in my abilities and your constant presence through every triumph and obstacle.

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Constitution of the Federal Republic of Nigeria 1999

Evidence Act 2004

Gender and Equal Opportunities Bill 2021 (GEO Bill)

High Court Law (Northern Nigeria)

High Court Civil Procedure Rules

Land Instruments Registration Law of Anambra State

Land Use Act of 1978

Marriage Act or Marriage Ordinance 1914

Public Lands Ordinance of 1903

Supreme Court Ordinance 1876

Wills Act 1837

Wills Amendment Act 1852

Wills Laws of various states (e.g., Lagos State, Oyo State, Kwara State)

LIST OF ABBREVIATIONS

CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women)

GEO Bill (Gender and Equal Opportunities Bill)

NHRC (National Human Rights Commission)

ABSTRACT

In this research, the focus is on succession laws in Nigeria with respect to their sources, enforcement methods, and the factors hampering the proper implementation of such laws. More specifically, it deals with the pluralistic system in Nigerian succession law, which encompasses statutes, customary law, and Islamic law. Furthermore, the paper discusses how these systems operate within estate management and distribution. From this study, it becomes clear that despite the availability of well-developed statutes like the Wills Act 1837 and State Administration of Estates Law, the customs law and Islamic law of succession also play a vital role and are practiced especially in the rural areas. Nevertheless, there always arise contradictions among these different legal systems, which create problems in practice. Additionally, it should be pointed out that despite considerable development made by the Nigerian courts in this matter see the examples of *Ukeje v Ukeje* and *Mojekwu v Mojekwu*, many issues, such as discrimination against women, delays in probating an estate, and excessive costs and bureaucratic procedures remain relevant. In conclusion, the study finds that Nigerian succession laws are developing on account of interpretation and constitutionally inspired reforms; however, they need further reforms for uniformity, efficiency, and equity. Harmonization of laws, effective probate administration, and enforcement of the constitutional rights of beneficiaries are some of the recommendations of the study.

CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND OF THE STUDY

Succession is the legal process by which the rights, obligations and property of a deceased person are transmitted to others either according to the deceased's will (testate succession) or by operation of law where there is no valid will (intestate succession). The practice of succession in Nigeria had already existed a long time ago before even colonization. The process also includes administration of the estate (probate, letters of administration) and regulation of beneficiaries' rights. The concept of succession practiced in Nigeria is mainly these three (3); the customary law, the sharia law and the statutory law. When a man dies his property that he has acquired through his lifetime both personal and real will be distributed to his successors either through the will or by succession. In the Western (Yoruba) and Eastern (Igbo) parts of Nigeria under the customary law there is discrimination among the widows and female children especially when it comes to distribution of properties in intestate succession. In the Northern (Hausa) part of Nigeria the Koran already set out the rules of succession in the Islamic law. In the western culture the female child can inherit property but the widow cannot inherit any property. In the eastern culture the sons are the ones to inherit the properties and the first son gets the largest share. In the case of *Mojekwu v. Mojekwu*¹, the plaintiff brought an action against the respondents claiming that since he is the only surviving male in the family that he has the right to inherit the property under the kola tenancy in Onitsha. The plaintiff claimed that he is entitled to inherit the property of the uncle who acquired the parcel of land from the mgbelekeke family from Onitsha through the kola land tenure system. The parties are from Nnewi and they practice the oli-ekpe custom. This

¹ (1997) 7 NWLR (PT.512) 238.

custom prohibits the female from inheriting any property but rather the male surviving child shall inherit the property and if there is no male child the brother or the male child of the brother shall inherit the property and if there is no male surviving child it shall go to oli-ekppe. The Court of Appeal held that the oli-ekpe custom is repugnant to natural justice, equity and good conscience. On further appeal to the Supreme Court in *Mojekwu v.*

*Iwuchukwu*² the court held that the law which should prevail is the mgbelekeke kola tenancy which provides that the female can also inherit the property. The Supreme Court upheld the judgement of the Court of Appeal because to them it was not a miscarriage of justice. The Supreme Court in the more recent case of *Ukeje v. Ukeje*³, where the deceased Lazarus Ogbonna Ukeje who was from umuahia, Imo state died intestate without a will. He had properties in Lagos and was also a resident in Lagos. The first appellant has been married to the deceased and they have four children from the marriage. After the death of the deceased the mother and son who respectively are the first and second appellants obtained Letters of Administration in respect of the deceased's estate. The plaintiff or respondent filed an action in the Lagos High Court where she claimed to be the daughter of the deceased and that he acknowledged that he was her father. She sought an injunction restraining the defendants from administering the estate of the deceased that the letters of administration should be granted to the plaintiff and second defendant. The respondent tendered her birth certificate and also a passport guarantor's form filed by the deceased where he acknowledged that he was the father of the plaintiff. The appellants opposed her assertion of being the daughter of the deceased and also challenged the validity of the birth certificate and the photographs. The trial judge ordered the defendants to hand over the estate to the Administrator General pending when the children would choose persons to apply for fresh letters of administration.

² (2004) 11 NWLR (PT.883) 196.

³ (2014) 11 NWLR (PT.1418) 384.

The defendants/appellants appealed to the Court of Appeal. The Court of Appeal agreed with the learned trial judge and dismissed the appeal due to lack of merit. The Supreme Court was of the opinion that the paternity of the plaintiff was the main issue in the appeal. The court held that the Igbo customary law which disentitled female children from inheriting land or immovable property of their deceased fathers is repugnant to natural justice, equity, and good conscience and also violates Section 42(1) (2) of the 1999 Nigerian constitution⁴.

1.2 STATEMENT OF THE PROBLEM

The main problem of succession is the discrimination based on gender and the exclusion of women. Many customs give the daughters and wives little or no share at all, it goes against the equality provisions of the constitution leads to lawsuits and calls for change.

Some state-specific customs lead to uncertainty; whether statutory or customary law is applicable may depend on factors including location, marital status, or the manner in which property was obtained. According to customary law, certain land is considered family property and cannot be freely distributed, making development and transfer more difficult.

Prolonged administration and value loss are frequently caused by the delay, complexity, and cost of probate/administration, grant applications, asset tracing, and family dispute resolution.

1.3 RESEARCH QUESTIONS

The following questions will be examined in this study;

1. What are the main sources of succession laws in Nigeria and how do they interact?
2. Do the succession laws in Nigeria adequately protect the rights of women and children especially the customary law aspect?
3. Do the current succession laws ensure fairness and justice in inheritance matters?

⁴ 1999 Constitution of the Federal Republic of Nigeria, (with amendments 2011) Chapter IV.

4. What challenges exist in enforcing wills and letters of administration in Nigeria?
5. How have the Nigerian cases influenced the interpretation and application of succession laws?

1.4 AIM AND OBJECTIVES OF THE STUDY

This research aims to critically analyse and examine the impact of succession laws in the legal practice in Nigerian legal system.

The following objectives also guide this study:

1. Succession laws in Nigeria include statutory law, customary law and Islamic law.
2. Statutory laws protects the rights of women, but customary laws still discriminate against women from inheriting property.
3. The Wills Act 1937, the Wills Law of various states in Nigeria, the Marriage Act, customary laws, Islamic laws these laws govern how the property can be distributed based on the deceased.
4. When it has to do with enforcement of wills and letters of administration the challenges can be that the costs are too high or some members prefer the customary practices over the enforcement of wills.
5. Some Nigerian cases have influenced the way succession is being looked at in some customary practices and have helped strike down discriminatory customs, promoting equality for women. They have tried to balance the tradition with constitutional rights.

1.5 SCOPE AND LIMITATIONS OF THE STUDY

This study focuses on the appraisal of succession laws in Nigeria, and it pays close attention to the three main legal regimes that regulate succession: **customary law, Islamic law, and statutory law**. This scope covers the principles governing testate and intestate succession, the procedures for obtaining probate and letters of administration, and the role of courts and

institutions in the administration of estates. It also examines the challenges in succession laws of Nigeria such as the conflicts among the different legal systems, gender inequality in customary succession, and procedural bottlenecks in estate administration.

This study focuses on the diversity of customary practices across Nigeria, it is not possible to provide an exhaustive account of the succession rules of all ethnic groups; but rather, emphasis is placed on some representative customs such as those of the Igbo, Yoruba, Hausa and Bini communities. Second, the research does not claim to cover every judicial decision on succession but highlights landmark cases that have shaped Nigerian succession law. Third, this study is doctrinal in nature and relies mainly on statutes, case law, textbooks, and journal articles, without extensive fieldwork or empirical data. Finally, this research is restricted to Nigerian legal frameworks and does not provide a comparative analysis with foreign jurisdictions, except where necessary for context.

1.6 SIGNIFICANCE OF THE STUDY

A thorough examination of how succession laws in Nigeria is essential to building a society that is just, equitable, and fair. The importance of this research is to know how the succession laws in Nigeria affects Nigeria's legal system and it will be examined in this essay.

This study will also provide insight into how the succession laws in Nigeria can improve access to justice and enhance efficiency in the legal system. This study empowers individuals to know that they have a right to inherit the deceased properties through the succession laws in Nigeria. This study also aims at making people aware about the discriminatory practices of inheritance against women under the customary law.

1.7 RESEARCH METHODOLOGY

This research will adopt the doctrinal research method; reference will be made to both primary and secondary sources. Primary sources such as judicial decisions, statutes and internet sources. Secondary sources such as textbooks, journals. References will also be limited to just Nigeria frameworks.

1.8 LITERATURE REVIEW

Succession laws in Nigeria suffer conflicts between modern legal principles and traditional customs. Some of the statutory provisions aim at modernizing inheritance law, meanwhile the customary and Islamic practices have remained unchanged and this has caused some challenges. Scholars agree that if the statutory, customary and Islamic laws could be reformed it would ensure justice and equity in succession matters. Legal pluralism also generates opportunities for negotiation, as women increasingly engage with formal and informal mechanisms to assert their claims. Some Women use legal literacy campaigns, civil Society support, and mediation through elders or community leaders to challenge Inequitable inheritance practices⁵. Numerous books have looked into the succession laws in Nigeria and the way they have advanced over the years in the Nigerian legal system.

B. O. Nwabueze⁶, in his book *Nigerian Land Law*, argues that succession laws are customary and not uniform; they rely heavily on the personal law and culture of the deceased person. He argues that inheritance, particularly land, is governed by customary law, which differs from one community to another. Secondly, he argues that succession laws are highly associated with families and lineages (patrilineal, matrilineal, or both); there is usually no concept of individual ownership of property but rather family possession of assets. In general, he argues that

⁵ Anne Nnenna Ezeogueri-Oyewole: *Women's Inheritance Rights in Nigeria: Cultural Discourses, Legal Structures, and Agency* Tropical Journal of Arts and Humanities, Volume 8 Number 1, 2026.

⁶ B. O. Nwabueze *Nigerian Land Law* (Enugu, Nigeria, Nwamife Publishers Ltd, 1982.) (Page 340-401).

succession laws are culture-based, which aim at preserving family identity. He views succession as an incident of landholding under customary law, he criticizes the discriminatory exclusion of women, and calls for reforms to align it with constitutional principles.

E. I. Nwogugu⁷ in his book *Family Law in Nigeria*, sees the law of succession as a pluralistic and complicated law system based on customary, statutory, and Islamic laws, depending on the circumstances surrounding the deceased. He points out that customary law is predominant, mainly in intestate succession, yet it differs significantly among different ethnic groups. Moreover, he points out the inconsistency between the two laws, especially when statutory laws supersede customary laws. According to him, problems such as legitimacy and the status of a family member are critical considerations in inheritance. More importantly, he finds some customary laws to be discriminatory to women and children, calling for reforms in the succession laws in Nigeria. He analyses succession under the statutory law, customary law and Islamic law, it also highlighted the conflicts and gender discrimination, he also stressed on the need for harmonization and equity. Section 42(1)(2) of the 1999 Nigerian Constitution⁸ provides for right to freedom from discrimination, which means that no citizen of Nigeria shall be discriminated against matter their gender, status or the circumstances surrounding their birth.

Iai Oshitokunbo Oshisanya⁹ in *An Almanac of Contemporary Judicial Restatements*, sees the law of succession as a complicated and dynamic field of law with elements of a mix of laws and principles from different legal systems. It is not seen as one homogenous legal system but rather an intricate concept allowing for different methods of transmission of property ownership after death. The most important aspect of the law of succession is its duality, encompassing two distinct concepts of inheritance testate and intestate succession. Testate

⁷ E. I. Nwogugu *Family Law in Nigeria* (Revised Edition, HEBN Publishers Plc.) (Page 393-434).

⁸ 1999 Constitution of the Federal Republic of Nigeria, Chapter IV.

⁹ Iai Oshitokunbo Oshisanya, *An Almanac of Contemporary Judicial Restatements with commentaries* (Spectrum Books Limited) (Page 432-463).

succession refers to the transfer of assets following the directions contained in the will, while intestate succession is the transfer of assets when there is no will. Succession law in Nigeria is characterized by the application of a plural legal system. This means that it operates on the basis of customary law, English law, and statute, including the Administration of Estates Law. Customary law, English law, and statute can apply simultaneously or individually, depending on various circumstances, including type of property, personal characteristics of the deceased, and social environment.

Adewale Taiwo¹⁰, in *The Nigerian Land Law*, describes the law of succession as the transmission of land and other properties from one person after death to another. He states that there is no consistent approach to succession in Nigeria because it is determined by customary law, statute law, and the individuality of the dead person. He further asserts that the customary law takes center stage since land is considered family property or communal property rather than private property. In this regard, the law of succession serves to safeguard family ownership of the land through generations. In general, he portrays the law of succession as a system based on property and guided largely by customs, which often leads to conflicts arising from legal inconsistencies.

Olomola O. Omolade¹¹, in his book *Family Law and Succession in Nigeria*, states that succession law in Nigeria constitutes an aspect of family law that deals with both the management and succession of the estate of a deceased individual in the context of the family. The succession law in Nigeria is thus aimed not only at the inheritance of property, but its proper administration for the benefit of those who have the entitlement. He points out that the Nigerian succession law comprises of a pluralistic legal system which consists of the

¹⁰ Adewale Taiwo, *The Nigerian Land Law* (Princeton & Associates Publishing Co. Ltd) (Page 194-217).

¹¹ Omolade O. Olomola, *Family Law and Succession in Nigeria* (Princeton & Associates Publishing Co. Ltd.) (Page 330-369).

customary, the statutory and the Islamic law systems. This means that depending on several considerations including the deceased's personal law, marriage and domicile, there can be various laws governing succession in Nigeria. He also underlines the importance of family considerations including legitimacy, dependence and status in determining inheritance entitlements. Additionally, he emphasizes the necessity of estate administration which covers issues relating to the identification of heirs, the settling of debts and the distribution of the property. Thus, the author portrays the succession law in Nigeria as a dynamic family law.

CHAPTER TWO

CONCEPTUAL AND THEORITICAL FRAMEWORK

2.1 Conceptual Framework

2.1.1 Succession

The Law of succession basically deals with the methods of distributing property that is left behind by a deceased person¹². Succession can be seen as the process by which the rights, obligations, and property of the deceased person are transferred to his heirs or to his or her personal living relatives. Succession can be the inheritance of property, rights, liabilities, and the interest that the deceased survived. Succession affects everyone as all property must pass to someone else on death¹³.

According to the Black's Law Dictionary, succession is defined as¹⁴

The act or right of legal or official investment with a predecessor's office, dignity, possession, or functions; also, the legal or actual order of so succeeding from that which is or is to be vested or taken.

In the case of *Olsan Bros. v. Miller*¹⁵, Succession was seen as the word when applied to realty denotes persons who take by will or inheritance and excludes those who take by deed, grant, gift, or any form of purchase or contract.

Black's Law Dictionary¹⁶ also explains that; succession not only includes the rights and obligations of the deceased as they exist at the time of his death, but all that has accrued

¹² Obafemi Awolowo University, Pluralistic Nature of Laws and Succession Matters in South Western Nigeria <<https://oaujioauife.edu.ng>> accessed 7th February 2026.

¹³ Obafemi Awolowo University, Appraisal of Law of Succession in Nigeria: An Overview.

¹⁴ Black's Law Dictionary (12th Edition Thomson Reuters) (Page 1599).

¹⁵ Tex Civ App, 108 S. W. 2d 856,857.

¹⁶ Black's Law Dictionary (12th Edition Thomson Reuters) (Page 1599-1600).

thereto since the opening of the succession, as also the new charges to which it becomes subject.

Succession can only occur after the person has died; when the person is still alive he has ownership over his property. Succession does not involve just the inheritance of property (personal interests and proprietary interests), it also involves inheriting certain obligations and playing the role the deceased had. The successor assumes the role of the deceased for both the assets and liabilities, such as if the deceased had a debt the successor shall be the one to pay back the debt.

2.1.2 Testate Succession

Testate Succession occurs when a person dies and leaves behind a valid Will¹⁷. It occurs when an individual dies leaving a valid will behind stating how his or her property will be shared or distributed among the successors who are still alive. It allows the testator to appoint an executor for the Will, select the beneficiaries of the Will, and also to dictate the distribution of the assets. The Will which the testator leaves behind shall be subject to the legal requirements of the Wills Act or Wills Laws of various states. According to E. I. Nwogugu¹⁸ in his book *Family Law in Nigeria* the rules of Testate Succession can be applicable to both the statutory (general law) and customary law.

There are some elements that must be available for testate succession to occur;

1. There must be an existence of a Will.
2. The Will must be valid.
3. There must be proper execution of the Will.

¹⁷ Law Teacher. Net <<https://www.lawteacher.net>> accessed 7th February 2026.

¹⁸ E. I. Nwogugu *Family Law in Nigeria* (Third Edition HEBN Publishers Plc) (Page 393).

2.1.3 Intestate Succession

Intestate Succession simply means the passage of not only the real and personal estate of the deceased, but also the responsibilities the deceased had towards the beneficiaries during their lifetime¹⁹. Intestate Succession is when an individual dies without leaving a Will to distribute his or her property among the remaining living relatives. When a person dies without leaving a Will behind it is said that they died intestacy. In intestate succession the law that governs the administration of estates of persons who married under the Marriage Act is known as the Administration of Estate Laws. In the case of *Salubi v. Nwariaku*²⁰, here the deceased (Chief Salubi) died without a will in September 1982 and he was survived by a wife that he married under the marriage act, two children by the widow and two children born out of wedlock. The two children that were born out of wedlock lived in the matrimonial home because they were accepted by the deceased and the widow. The letter of administration was granted to the deceased eldest son and also to the widow but the widow declined to serve. The first surviving child of the deceased who was the plaintiff sued the defendants for herself as a beneficiary claiming an order to set aside the letter of administration granted to the first defendant for mismanagement of property. The plaintiff claimed that the Administration of Estates Law of Bendel state and Section 36 of the Marriage Act governed the distribution for the defendants. The trial judge held that section 36(1) of the Marriage Act and not the Administration of Estates law of customary law applied to the administration. The first defendant appealed to the court of appeal while the widow cross-appealed, the court held that the applicable law for the administration of the deceased estates is Section 36(1) of the Marriage Act.

¹⁹ Obafemi Awolowo University, Pluralistic Nature of Laws and Succession Matters in South Western Nigeria <<https://oaujioauife.edu.ng>> accessed 7th February 2026.

²⁰ (2003) All NLR 548.

On further appeal to the Supreme Court, the main issue for determination was which law was applicable for the administration of the estate: whether Section 36(1) of the Marriage Act or the Administration of Estate Law of Bendel State. It was made known to the court that Section 36(1) was part of the Marriage Ordinance enacted in 1914 and it provided that where a person who is subject to customary law dies intestate and is succeeded by a widow, widower or children, their estate, which would have been disposed of by any Will, shall devolve in accordance with the law of England. Also, sub-section 3 of the Marriage Act limited the operation of the Section to the colony of Lagos State. Despite this limitation, the Supreme Court held that the English law had been repealed by the enactment of the Administration of Estate Law of Bendel State and that the appropriate and applicable law that should govern the intestate estate of deceased Salubi was Administration of Estate Law of Bendel State and not section 36(1) of the Marriage Act.

2.1.4 Sources of Succession

There are different sources of succession laws in Nigeria which can be categorized as

1. Customary Law of Succession in Nigeria: In Nigeria the customary inheritance law is complex and rooted in tradition, but it is evolving under the constitutional law. Customary law is the indigenous law of an ethnic group that governs how the property of the deceased will be shared by his living relatives upon his or her death. It is usually unwritten and it is evolved from traditions and local practices of the people. It regulates succession where the deceased was subject to customary law and did not make a valid Will.

There are two types of customary law of succession, which are;

- i. Patrilineal Succession: The property devolves through the male line. This is mostly practiced by the Igbos, Yoruba, and many other northern communities.

In the Yoruba community when a father dies intestate his property will devolve to his children and is shall be seen as family property as seen in the case of *Suberu v Sunmonu*²¹ which relates to the use of Yoruba customary law in dealing with succession in cases of intestacy. Property in question, namely number 15 Andrew Street, Lagos, once belonged to Igbekoyi, who had two sons, Abudu Raimi and Suberu. After the death of Suberu, there was a partition of the property between Abudu and Suberu's family, while the part belonging to Abudu was transferred to him officially in 1945. In 1951, Abudu died intestate and childless, thus leading to an argument among his maternal relatives and widows, against his paternal relatives and his nephew. The key questions that arose in this case concerned the issue of inheritance rights of Abudu's widows according to Yoruba customary law, the choice between succession by maternal or paternal relatives, and whether the source of the property in question matters. According to the opinion of the Supreme Court, Yoruba customary laws state that the widows do not have any rights of inheritance concerning the property left after their deceased husband. Additionally, the court reiterated that the source of the property is of utmost importance. Property coming from the male family should be succeeded by the relatives from the male side, whereas property received from the female side should be inherited by the female family members. This property being sourced from the father of Abudu, it was determined that the true heirs would be his relatives on the paternal side. Thus, the claims of the widows and female relatives were not upheld. In the case of *Ukeje v. Ukeje*²², the Supreme Court abolished the discriminatory Igbo

²¹ (1957) 2 FSC 83.

²² (2014) 11 NWLR (PT.1418) 384.

customary laws that says that the female children have no right to inherit their deceased father's property. The court held that the Igbo custom is repugnant to natural justice, equity and good conscience and also that it goes contrary to Section 42 of the 1999 constitution. In his book *Nigerian Land Law* B. O. Nwabueze²³ there are two main patterns of patrilineal succession which are; succession by all the surviving issue jointly and succession by a sole heir.

- ii. **Matrilineal Succession:** The property passes through the female line. This custom is mostly practiced in some parts of Cross River and Delta states. The inheritance is from the mother's line but the men can still inherit property from here.

Customary law is subject to statutory and constitutional limitations. Section 42 of the 1999 Nigerian constitution²⁴

B. O. Nwabueze²⁵ in his textbook *Nigerian Land Law* illustrated another type of customary law of succession, which is "Bilineal Succession" in this kind of succession both the matrilineal and patrilineal succession are recognized for inheritance. Yala and Yakurr ethnic group, Ejagham, Ubaghara, and Ehom in the Biase area, Afikpo and Ohafia in Igbo land practice bilineal succession.

2. **Islamic Law of Succession in Nigeria:** It applies to Muslims, and they are governed by the Quran, Hadith and Fiqh. It is recognized under the Nigerian law and is practiced in Sharia courts in the Northern part of Nigeria. Unlike statutory law, Islamic law does not recognise full testamentary freedom. A Muslim may only dispose one-third of his estate by Will. The remaining two-thirds must be distributed according to fixed Qur'anic

²³ B. O. Nwabueze *Nigerian Land Law* (Enugu, Nigeria, Nwamife Publishers Ltd, 1982.) page 381.

²⁴ 1999 constitution of the Federal Republic of Nigeria, (with amendments 2011) Chapter IV.

²⁵ B.O. Nwabueze *Nigerian Land Law* (Enugu, Nigeria, Nwamife Publishers Ltd, 1982.) page 401.

shares. This limitation ensures they comply with the divine prescription. The Heirs under Islamic law are classified into: Sharers (those entitled to fixed portions), Residuaries (those who inherit the remainder) and Distant kindred (who inherit in default of the first two categories).

A husband may receive one-half of the estate if there are no children or one-quarter if there are children. A wife may receive one-quarter if there are no children, or one-eighth if there are children. A male child generally receives twice the share of a female child. In the case of *Alkamawa v Bello*²⁶, which is related to the use of Islamic law, especially the concept of shuf'a (preemption). The appellant in the case, Alhaji Ila Alkamawa, was the immediate neighbor of the respondent, Alhaji Hassan Bello. Following the demise of his father, Bello tried to sell his late father's house to Alkamawa for 30,000 naira, a proposal that he turned down since it seemed unreasonable to him. Thereafter, Bello went ahead to sell the same house to another party by the name Malami Yaro for 26,000 naira. Not satisfied, Alkamawa filed an action before an Area Court in an attempt to exercise the right of shuf'a because he was the neighbor of the said property. The main issues raised in this case include the entitlement of the appellant to shuf'a as a neighbor, the applicable Islamic school of thought in Northern Nigeria, and whether Islamic law is synonymous to customary law. The Court unanimously struck out the appeal on the grounds that there was no right of preemption for Alkamawa. In its ruling, the Court made it clear that in the light of the Mālikī School of Islamic law, which is the relevant law in Northern Nigeria, the right of shuf'a applies only to co-owners or co-partnership in the property and not to neighbours. Also importantly, the Court ruled that Islamic law is different from customary law, stating that Islamic law is a complete system of law that applies to all tribes. The Supreme Court affirmed the validity of Islamic

²⁶ (1998) 6 SCNJ 127.

personal law in succession matters they also recognised Islamic law as a distinct and enforceable legal system within Nigeria's plural framework. Islamic succession operates automatically upon death, leaving little discretion for alteration beyond the permissible one-third testamentary portion.

3. Statutory Law of Succession in Nigeria: It is derived from the legislation enacted by the federal and state legislatures. It primarily applies to persons who contract marriage under the Marriage Act or who make Wills under statutory provisions. The major statute governing testate succession in Nigeria is the Wills Act 1837 and the Wills Amendment Act 1852, which is part of the received English law applicable in Nigeria. Various states have also enacted their own Wills Laws, such as the Wills Law of Lagos State. Under statutory law, testamentary freedom is recognised. A person of sound mind and at least 18 years old may dispose of property by Will, provided the Will satisfies formal requirements: it must be in writing, signed by the testator, and witnessed by at least two witnesses. However, testamentary freedom is not entirely absolute. For example, under some states Wills Laws, dependants may apply to court where reasonable financial provision has not been made for them. Where a person dies intestate under statutory law, the estate is distributed according to the relevant state Administration of Estates Law. These laws generally prioritise: Surviving spouse, Children, Parents, Siblings, Extended relatives.

If no relatives exist, the estate will escheat to the state. In the case of *Salubi v Nwariaku*²⁷, the court emphasised that the applicable law of succession depends on the personal law of the deceased. Where the deceased was subject to customary law and had not opted out through statutory marriage or Will, customary law would govern.

²⁷ (2003) All NLR 548.

This law provides a structured and codified framework for inheritance, promoting equality and certainty in estate administration.

2.2 Theoretical Framework

Theories of Succession Laws in Nigeria

The theories of succession laws refer to the various ways scholars, jurists and prominent professors viewed succession laws. These theories include natural law theory, legal positivist theory and socio-legal theory.

2.2.1 Natural Law Theory of Succession

The Natural Law Theory of Succession belongs to the larger theory of jurisprudence that sees law as the expression of universal principles of morality obtained through reason, justice, and human nature. While legal positivism believes that the validity of law emanates from its creation by the state, natural law theory holds that laws must meet certain moral criteria before they can be seen as legitimate. For the case of succession, natural law theory gives a moral justification for the transfer of property after one's death based on concepts like justice and fairness towards family members.

According to natural law scholars like Thomas Aquinas and John Locke, laws must embody morality and natural justice. In light of this, succession is not just an institution, but also a moral one based on the natural rights and duties of man to his family. One of the fundamental premises of natural law theory is that individuals have natural rights, one of which being the right to hold property. According to Locke's theory of property through labour, individuals hold property rights in respect to mixing their labour into natural resources. Such a right is not extinguished at death but also includes the right to decide how to distribute such property. Therefore, it can be said that succession is a natural corollary of property rights. This theory of natural rights forms the basis for the concept of testamentary freedom which gives an

individual the right to dispose of property according to his/her will. In Nigeria, testamentary freedom is guaranteed through the Wills Act of 1837 as well as several State Wills Laws, whereby Section 9 of the Act provides for the formalities of executing a will. At the same time, natural law requires individuals to fulfil certain moral duties in regard to holding such rights.

The natural law philosophy emphasizes the role of the family as a basic unit of society. It acknowledges the obligation of an individual to act ethically towards his/her spouse, children, and dependants. Thus, in the laws of intestate succession, priority is given to family members during the partition of estates. In Nigeria, for instance, the Administration of Estates Laws of various states make provisions whereby the intestate estate will be divided mainly amongst the family members who include the spouse and children of the deceased. These laws comply with the spirit of justice and fairness in natural laws. In addition, case laws have further emphasized the right of the family in inheritance matters. In the case of *Nezianya v Okagbue*²⁸, which relates to the applicability of Onitsha Native Law and Custom in cases involving issues of inheritance and ownership of property. The subject matter of the litigation was a piece of land that was located at 9 James Street, Onitsha. While the appellants/plaintiffs in the matter were grandchildren of Mary Menkid, the respondents/defendants were the descendants of Okagbue, who was the brother of Ephraim Agha, who had once owned the property. In 1895, Ephraim married Mary by way of Christian Marriage Act, and had a girl child by the name of Josephine. Ephraim died in 1909 without leaving any male heir and Mary continued to have control over the property. The defendants contested the plaintiffs' case on the grounds that according to Onitsha Native Law and Custom, where the husband has died intestate, that is, without any issue or male heir, his widow could neither inherit nor sell off his estate. In their opinion, the estate in such a case should revert back to the

²⁸ (1963) 1 All NLR 352(p. 394).

husband's family. However, in response to this, the plaintiffs argued that Mary had acquired title by adverse possession. The Supreme Court dismissed the arguments raised by the appellants in their favour and maintained that Onitsha Native Law and Custom prevailed in the matter at hand. It ruled that the plaintiff could not have had adverse possession of the estate since her possession of it could never be adverse to her husband's family. This is because, according to custom, she was occupying the land being a member of the same family due to the bond of marriage. The widow has the right to occupy and manage the property of her deceased husband but she cannot own it. The Supreme Court made a ruling where it considered the application of customary laws in the regulation of family property, although such customs are expected to conform to justice. Another example is the *Amodu Tijani v Secretary Southern Nigeria*²⁹, in this case, which is a very important ruling on the concept of ownership of property under native law and custom in Nigeria, involved the appellant, Amodu Tijani, who was the head of the Oluwa family and also the Idejo Chief of Lagos. The legal issue in this case emerged out of the government's acquisition of some land at Apapa for public purposes pursuant to the Public Lands Ordinance of 1903. The respondent argued that he should be compensated since he raised several questions regarding who could claim compensation, and what interest in land was acquired. According to Lord Haldane, it should be noted that the concept of ownership of land under the native law and custom is communal rather than individual. Further, it was stated by the Court that the owner of the land is not the head or chief of the family but acts as its trustee. Another important point made was the difference between radical title and usufructuary title. Although the radical title belongs to the Crown, it was stated that the enjoyment of the land belongs to the community via the chief. Thus, compensation must be paid to the chief who acts on behalf of the community for the use of the land. This is an extremely important case because it laid

²⁹ (1921) 2 AC 399 at 404.

down important principles concerning land ownership, the position of the chiefs as trustees, and the concept of double land title in Nigeria.

Natural law theory has contributed immensely to succession law, especially through the concepts of justice and equality. The laws relating to succession must not only be legitimate; they must be just and non-discriminatory in their treatment of those concerned. In the country of Nigeria, there is a constitutional provision under Section 42 of the 1999 Nigerian constitution³⁰ that provides that no person shall be discriminated against because of his or her gender, religious views, or conditions of birth. The effect of this constitutional provision is that customary laws of succession that discriminate against women in respect of their ability to inherit have been found to be unconstitutional in Nigeria. One example of this is the case of *Ukeje v Ukeje*³¹ where the Supreme Court struck down customary law prohibiting daughters from inheriting the property of their deceased fathers. The reason provided for this decision was that the customary law was discriminatory and therefore violated the principles of justice and equality.

Similarly, natural law can be used to analyze the relationship between various sources of succession law in Nigeria. Although customary law takes into account cultural aspects, it should follow the norms of natural justice to make sure that culture is not above justice. In the case of *Lewis v Bankole*³², which has been a leading decision in regard to family property under Lagos Native Law and Custom. Chief Mabinuori died in 1874 and left behind twelve children, one of whom was an eldest daughter. During his lifetime, Chief Mabinuori owned three plots of land, one of which comprised of the family compound where he lived together with his wives and offspring, another consisted of houses for some of his children, while the

³⁰ 1999 constitution of the Federal Republic of Nigeria, (with amendments 2011) Chapter IV.

³¹ (2014) 11 NWLR (Pt. 1418) 384.

³² (1909) 1 NLR 81.

last plot of land served as the place for worship of the entire family. After the death of Chief Mabinuori, a dispute ensued among members of the family about their rights to the family compound. Some grandchildren and children of the founder who owned separate houses filed an action claiming that the family compound was family property. The Court held that the law of family property was still in force in Lagos. The Court stated that whenever the founder of a family dies, then the eldest surviving son (Dawodu) becomes head of the family. Upon the death of Dawodu, succession goes to the eldest surviving male descendant of the founder of a family, either male or female. The court also ruled that each of the families had their representatives in the family council and they were entitled to only one vote. It was also ruled that family property could only be rented but not sold, except for instances where the court ordered the sale of such property to benefit the family. All families were supposed to agree before any transactions regarding the property of the family took place. It was also ruled that grandchildren could not use family land to erect structures without the agreement of the family. Non-residents who belonged to the family also had restricted access to the family property. Nevertheless, contemporary courts have increasingly scrutinized customary laws in terms of constitutional provisions. Statutory law, however, offers formal processes through which natural law concepts can be realized. Under the Wills Act 1837 and Administration of Estates Laws, succession takes place in an organized manner. Although statutory law is positivist, it may contain natural law concepts of justice and equity.

Although there are many advantages to this theory, the theory lacks precision. The use of terms such as “justice” and “fairness” is highly subjective because these terms can mean different things from one culture to another. This begs the question as to whose morality standards would be used in evaluating the legitimacy of succession laws. In addition, the use of moral reasoning in making judgments may give rise to judicial activism. Even though judicial activism ensures that judges uphold justice, it is important to note that in some cases

it results in the violation of the rule of law. However, in pluralistic societies such as Nigeria, this theory plays an indispensable role.

Natural Law Theory of Succession provides an excellent ethical framework for succession laws, which include considerations about the rights of nature, familial obligations, and justice and equality. Its significance is reflected in various legislations like the Wills Act and the Administration of Estates Acts, and constitutional protection against discrimination.

Given the pluralistic nature of any legal system, the concept of natural law continues to provide an ethical principle that guarantees that succession laws regulate property transfer without breaching the essence of justice and equality.

2.2.2 Legal Positivist Theory of Succession

Legal Positivist Theory of Succession is premised on the idea of jurisprudence that law's legality stems from its formality of being made by a legally recognized body, not on moral or ethical grounds. This theory, which was advocated by legal philosophers such as John Austin and H. L. A. Hart, describes law as an established rule system which is created, recognized, and enforced by the government. From a perspective of the legal positivist theory of succession, the concept of inheritance does not belong to natural law but is established by law itself. According to this theory, the right to inherit does not have any existence without legal recognition. Rather, law decides how and whom to inherit property and from what conditions.

One of the key tenets of legal positivism is that law is defined as the command of the sovereign, enforceable through sanctions. This means that rights of succession emanate from laws set up by the state. Contrary to the theory of natural law where inheritance is seen as a right, positivism looks at it as an act of grace bestowed by the law. In Nigeria, this tenet is clearly demonstrated by succession laws. According to the Wills Act of 1837, there are specific formalities that must be fulfilled before a will can be recognized as legally valid.

Under section 9 of the Act, any will that does not meet the required formalities such as being written, signed, and attested by two or more witnesses is void. Such strictness in the formalities of making a will is consistent with positivism where legality lies in following certain formalities and not intentions or moral claims of the parties.

Legal positivism finds its most prominent manifestation in the law relating to testamentary succession. There exist certain formalities which must be strictly adhered to in order to create a legitimate will in terms of both certainty and fraud prevention. These formalities are not mere procedural requirements but, indeed, the key prerequisites for the validity of such a document. In the case of *Okelola v Boyle*³³, the testator and his two brothers inherited a property from their deceased father who died intestate, the property thereby became a family property under Yoruba customary law. In 1972 the testator made a will devising his undivided share of the property to the appellant. By 1976 the testator was entitled to the whole property because the two brothers died intestate and they did not have any children. He died without children in 1977. The appellant filed a caveat to the grant of probate and commenced the proceedings against the appellant. The court held that the will made in 1972 is void. The Supreme Court upheld the decision of the trial court and stated that a will is testamentary, they also highlighted that the adherence to strict legal procedures was crucial for the admission of a particular will into probate. Deviation from these procedures would automatically make the document invalid no matter how well-meaning the testator had been in making the will. Furthermore, the requirements concerning testamentary capacity outlined in the *Banks v Goodfellow*³⁴ case has become an essential basis for determining the existence of testamentary capacity, as well as the prerequisites for the validity of wills. The defendant in this case, John Banks, was a rich man with a considerable fortune. However, he had a

³³ (1998) 2 NWLR (Pt. 539) 533.

³⁴ (1870) LR 5 QB 549.

mental disorder associated with epilepsy and delusions. Although he suffered from this problem, he drafted a will in December 1863, according to which he bequeathed all his property to his niece, Margaret Goodfellow. Following the death of Banks and Margaret Goodfellow, the will was contested by William Banks, who was the heir of the testator. It is important to note that the central question of this case was to establish whether John Banks had a sound disposing mind when creating his will. The following principles were formulated during the resolution of this dispute: a person who drafts a will should understand its nature and consequences, be aware of the value of the property involved, and know those people who might have claims to the estate. Moreover, the testator should be able to comprehend the claims of such individuals and should not be under the influence of delusions or mental illnesses that might impair his rationality while distributing the property among individuals. The court after analyzing the facts came to the conclusion that despite the fact that Banks was mentally ill, it did not have any effect on the preparation of the Will. He comprehended the nature of his actions and was aware of the extent of the property that he had. Furthermore, he also recognized the claims of the individuals who would generally receive property after him. Therefore, it was decided that he was fit enough to prepare the Will.

In cases of intestacy, the concept of legal positivism has been captured through the implementation of laws relating to the Administration of Estates. In accordance with such laws, there exists a set of beneficiaries who benefit from an intestate's estate depending on the proportions assigned under those laws. Therefore, in intestacy cases, the succession is done according to the laws without taking into account moral considerations and preferences from different families involved.

Legal pluralism constitutes one of the most outstanding aspects in the context of the Nigerian legal system as statutory law, customary law, and Islamic laws exist within the same jurisdiction. The positivist concept explains this legal pluralism in the sense that the legality

of such laws is determined by the recognition of the state. Customary law plays a significant role in the succession process owing to its legality in the country. This has been affirmed by the Supreme Court of Nigeria in the case of *Alkamawa v Bello*³⁵, in this case, the court stated that Islamic law was neither customs nor mere traditions; rather, it formed part of the positive laws of Nigeria. This case clearly highlights one of the main principles of positivist theory, namely that laws get legitimacy not by moral justification but by formal validity. Moreover, according to the Privy Council's ruling in *Cole v Cole*³⁶ that addresses the relationship between English law and native law regarding succession and marriage within colonial Nigeria. John William Cole, a native of Lagos, entered into marriage with Mary Jemima Cole in Sierra Leone in 1864 according to Christian traditions. On return from Sierra Leone to Lagos after the marriage, John settled down until his death in 1897. At the time of his death, he left behind his wife and sole son Alfred Cole who was insane. Following the death, Abraham Benjamin Cole, the deceased's brother, sought to establish ownership of the property on the ground that he was customary heir and trustee of the lunatic son under Lagos native law and custom. Consequently, the claim by Abraham was upheld by the lower court leading to appeals by Mary Cole and her son. The main issue in the Supreme Court was whether succession to the estate in question would be governed by English law or native customary law. The case was argued based on the fact that the marriage was a Christian marriage and therefore should have attracted English law of succession. Nonetheless, according to the Court, through Brandford Griffith J., the Marriage Ordinance was not applicable since the marriage was performed outside the Colony. Hence, it meant that English law could not automatically be applicable for the succession in the estate. Moreover, succession depends on the domicile of the deceased. Given that the domicile of John Cole

³⁵ (1998) 8 NWLR (Pt. 561) 173.

³⁶ (1898) 1 NLR 15.

was Lagos at the time of his death, then succession laws of the native Lagos custom became applicable. According to Sections 14, 17, and 19 of the Supreme Court Ordinance 1876, despite the introduction of English law into the Colony, the native law and custom shall apply in issues that concern native life and customs if they do not contradict natural justice, equity, and good conscience or Ordinances. *Nemo est haeres viventis* is another legal doctrine highlighted by the court which translates into no one shall become an heir while another is alive. It implies that since the son had rights to inherit, he was not entitled to do so while the other individual was alive. The decision made here is significant because it proves that native customary laws may apply even when individuals enter into marriages according to Christianity. According to the Privy Council the rules of English laws apply to those persons who marry according to statutory laws and thus determine succession rules. This further proves the fact that succession is guided by law rather than morality or society.

The most significant advantage of the positivist school of thought is certainty. This is because laws provide clear guidelines on which actions are permitted and which are not. This eliminates ambiguities and helps avoid many disputes. Succession involves dealing with properties. There is always a chance of dispute in such situations. The need for strict adherence to statutory provisions helps people know their rights and duties concerning a matter. It also makes it easy to administer estates since executors and administrators know what exactly to do.

Although legal positivism focuses on the supremacy of statutory law, its practice in Nigeria is anchored in the supremacy of the Constitution of the Federal Republic of Nigeria. According to the Constitution, all laws must be consistent with its provisions. In other words, Section 1(3) of the 1999 Nigerian Constitution³⁷ declares that any law that contradicts its provisions

³⁷ 1999 constitution of the Federal Republic of Nigeria (with amendments 2011).

is null and void. As such, legal positivism is subjected to limitations in that there is a need to consider all laws in relation to constitutional provisions. For instance, customary succession laws that discriminate against women have been annulled due to the presence of specific provisions in the Constitution of the country. In essence, although succession rights are created through laws, they should not contravene constitutional provisions. Hence, the inclusion of aspects of natural law in legal positivism becomes necessary. The concept of legal positivism has faced various criticisms for its limited scope and approach. First, it fails to recognize the importance of morality in establishing laws. It may even legitimize immoral laws as long as they are valid. In succession cases, the application of positivist principles can result in unfair and unreasonable laws. Moreover, the inflexibility of the positivist approach can impede the ability of the courts to adjust to the changes that take place in society. The socio-legal approach emerged from such problems as an effort to address them.

The Legal Positivist Theory of Succession can be considered to offer a systematic and authoritative approach to the regulation of inheritance issues. Through its emphasis on statutes, judicial pronouncements, and legal acknowledgment of certain rules, the legal positivism theory ensures certainty and predictability in inheritance cases. Nevertheless, the constitutional nature of this theory makes sure that issues of fairness and justice are not compromised. Although the theory of legal positivism plays an indispensable part in the regulation of succession, its drawbacks make clear the significance of adopting a moderate stance.

2.2.3 Socio-legal Theory of Succession

Inheritance law under the Socio-Legal Theory of Succession is analysed not only from a legalistic perspective but rather a social, cultural, and economic angle. In contrast to natural law, which is centred on morality, and legal positivism, which concentrates on the sovereign's

authority, the socio-legal theory takes into account how law functions in society and develops in accordance with changes in social circumstances. It is mainly concerned with academics like Eugen Ehrlich, who coined the term “living law.” The living law denotes that real law regulating individuals’ behaviour can be observed in social practices and not in written statutes. Inheritance laws in a sociological theory are seen as an embodiment of societal values, family relations, economic conditions, and cultural norms. This theory finds applicability in Nigeria because it is characterized by the presence of statutory, customary, and Islamic laws, all of which have a bearing on the succession laws.

The socio-legal theory also asserts that the law mirrors the societal structure and organization. Succession law in traditional Nigeria was formulated to fit the realities of the socio-economic conditions prevailing during its formation. Take, for example, the succession of property within agrarian-based communities whose main asset was land. The succession laws within such communities ensured that property was passed on within families in a manner that ensured the preservation of the property within the family unit. The customary law of succession amongst many ethnic communities followed a patrilineal system of succession. This was because the property within these societies was considered family property. This can be seen in the case of *Lewis v Bankole*³⁸, where the court recognized the presence of family property in customary law. This case highlights the socio-legal approach to succession law, recognizing the influence of the society on its formulation. Likewise, in the case of *Nezianya v Okagbue*³⁹, the Supreme Court of Nigeria recognized customary succession laws regulating property succession in Nigeria.

A significant characteristic feature of the socio-legal theory is the aspect of legal pluralism, involving the existence of several legal systems under one jurisdiction. For example, statutory

³⁸ (1909) 1 NLR 81.

³⁹ (1963) 1 All NLR 352 (p. 394).

law, customary law, and Islamic law govern succession in Nigeria. Application of the above mentioned laws is determined by the personal law of the deceased as well as the society and religion to which he belongs. The above mentioned example demonstrates the socio-legal environment where different value systems interact and depend on each other. A good illustration of the complicated nature of legal pluralism in Nigeria is presented in the case of *Salubi v Nwariaku*⁴⁰. According to the judgment of the Court of Appeal in that case, the relevant law of succession is the personal law of the deceased. As can be seen from the above mentioned example, in a socio-legal context of succession different factors play an important role. An example of the application of Islamic succession law in Nigeria is provided by the judgment of the Supreme Court in the case of *Alkamawa v Bello*⁴¹.

In the socio-legal approach, the theory recognizes that law is dynamic and changes to accommodate shifts in societal values. Through its interpretation of laws, the judiciary has played an integral part in ensuring that the law keeps pace with evolving societal values. One of the key areas that succession law in Nigeria has witnessed considerable development regarding gender equality. For a long time, women were discriminated against and denied inheritance of property based on customary practices. However, the emergence of new attitudes towards gender equality has brought about changes in succession law. *Ukeje v Ukeje*⁴² is one of the landmark decisions in which the Supreme Court struck down the constitutional validity of a customary practice that discriminates against women. The case illustrates the socio-legal approach that the law must be dynamic to accommodate changing societal values. Similarly, in *Mojekwu v Iwuchukwu*⁴³, the Supreme Court upheld the decision

⁴⁰ (1997) 5 NWLR (Pt. 505).

⁴¹ (1998) 8 NWLR (Pt. 561) 173.

⁴² (2014) 11 NWLR (Pt. 1418) 384.

⁴³ (2004) 11 NWLR (Pt. 883) 196.

of the Court of Appeal that the law that should prevail is the mgbelekeke kola tenancy which provides that females can also inherit property.

The economy is another important factor in influencing succession laws. In conventional societies, succession laws served the purpose of safeguarding the wealth of the family and maintaining financial security. On the other hand, economic shifts in modern-day Nigeria such as urbanization, commercialization, and personal ownership have affected the processes of succession. The enactment of statutory laws, including the Wills Act of 1837, Administration of Estates Law, and similar other legislation demonstrates the influence of economic factors on succession through promoting individualism and allowing testate succession. These laws enable an individual to bequeath his/her property as per his/her choice, thereby giving preference to an individualistic rather than collective economic system.

Even though the socio-legal theory is quite realistic concerning succession law, it also poses various problems. The existence of numerous legal systems creates confusion regarding succession, especially in situations where there are diverse laws governing an estate. In some cases, a situation can occur whereby someone who was traditionally governed by customary laws decides to use the statutory method to govern his property, thus creating doubts about which laws would be appropriate. Conflicts of this nature are solved through courts, such as in the case of *Salubi v Nwariaku*⁴⁴. Conflict between Cultural Practices and the Constitution. The other problem that arises in relation to succession law is the conflict between culture and the constitution. While customary laws are culturally-oriented, they do not adhere to certain values contained in the Constitution. The Constitution offers a solution to the problem of inconsistency because it makes sure that all laws adhere to certain fundamental values.

⁴⁴ (1997) 5 NWLR (Pt. 505) 442.

Various institutions are involved in the development of succession law. Courts are social agents in charge of changing society through the interpretation of the law by reference to contemporary values. Legislations and traditional authorities also help in succession law development. The Socio-Legal Theory of Succession gives an elaborate approach in understanding the inheritance law as a developing law which is characterized by social, cultural, and economic issues. The Socio-Legal theory is especially significant in the context of Nigeria as a result of the existence of a pluralistic legal system. The Socio-Legal theory eventually shows that the ideal of the law is that it should be flexible enough to accommodate culture yet promote justice, equality, and social justice at the same time.

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORKS

3.1 Legal Framework for succession law in Nigeria

Succession law in Nigeria governs the transfer and distribution of the estate of a deceased person to his or her beneficiaries after death. Nigeria operates a plural legal system, therefore succession laws are regulated by several legal frameworks that reflects the country's cultural diversity, colonial history, and religious traditions. These frameworks include constitutional provisions, statutory enactments, customary law, Islamic law, and judicial decisions. The

particular framework to be applied depends on the personal law of the deceased, the type of marriage contracted, and the circumstances surrounding the estate. Understanding the legal frameworks that regulate succession in Nigeria is also essential to appreciating how inheritance disputes are resolved and how the estates are administered to the beneficiaries after death.

The Constitution is the apex law of Nigeria, and Section 1(3) of the 1999 Nigerian constitution⁴⁵, provides that any law that is inconsistent with its provisions is void to the extent of the inconsistency. The supremacy of the constitution affects succession law, particularly in relation to discriminatory practices in customary law. Section 42 of the 1999 Nigerian constitution⁴⁶ provides that any citizen of Nigeria should live freely without any form of discrimination on grounds such as sex, ethnicity, religion, or circumstances of birth. As a result of this provision, customary law of succession that excludes the female children or other classes of persons from inheriting the estate of the deceased can be seen as unconstitutional. Nigerian courts have relied on this provision to invalidate the discriminatory customs. This can be seen in the Supreme Court case of *Ukeje v Ukeje*⁴⁷, where the court held that the Igbo customary law that denied the female children the right to inherit their father's estate was unconstitutional and also goes contrary to the provisions of Section 42 of the 1999 Constitution. Also, this can be seen in the case of *Mojekwu v Mojekwu*⁴⁸, the Court of Appeal criticized the "Oli-ekpe" custom that prevented female children from inheriting property. These court decisions demonstrate that the constitution is shaping the succession law in Nigeria.

⁴⁵ 1999 Constitution of the Federal Republic of Nigeria (with amendments 2011).

⁴⁶ *Ibid* section (42).

⁴⁷ (2014) 11 NWLR (PT.1418) 384.

⁴⁸ (1997) 7 NWLR 283.

The Statutory laws in Nigeria regulate both testate and intestate succession, particularly where the deceased contracted a statutory marriage or made a will. The most significant statutes is the Wills Act 1837, which is part of the received English law applicable in Nigeria. Some Nigerian states have also enacted their own Wills Laws to regulate testamentary succession within their own jurisdictions. But the other states that don't have their own Wills Law will rely on the Wills Act 1837. These laws specify the requirements for the Will to be valid. Generally, a valid Will must be in writing, signed by the testator, and witnessed by at least two competent witnesses. Statutory law recognizes the principle of testamentary freedom, which allows the individual to distribute his or her property according to their wishes after death. However, this freedom may be limited where the law provides for the protections of the dependants of the deceased who have not been adequately provided for in the Will.

In situations where a person dies without leaving a valid Will, statutory law will then provide rules for intestate succession. Intestate succession is governed by the various Administration of Estates Laws enacted by different State legislatures. These laws establish a hierarchy of beneficiaries that are entitled to inherit from the deceased. Typically, priority is given to the surviving spouse and children, followed by parents, siblings, and other relatives. If no relatives can be found, the estate will be reverted to the state by escheat. Statutory law provides a structured framework for distributing estates where there is no Will provided.

Customary law is also a major legal framework that regulates succession law in Nigeria. Customary law represents the traditional rules and practices of the various ethnic communities in Nigeria. It is largely unwritten and it varies from one community to another. In many Nigerian societies, particularly among the Igbo and Yoruba, customary law succession practices the patrilineal system of succession where the property is devolved through the male line. The eldest son often takes control of the family estate and becomes the

head of the family upon the death of the father. In some other communities, succession may follow a matrilineal system of succession where the property passes through the female line.

Customary law is not absolute. Courts may refuse to enforce a customary rule if it fails the repugnancy test. This doctrine of repugnancy provides that a customary law will not be enforced if it is repugnant to natural justice, equity, and good conscience or it is not compatible with any written law of Nigeria. The courts also determine whether a particular customary law is applicable to the parties involved. In *Salubi v Nwariaku*⁴⁹, the court emphasized that the applicable law of succession depends on the personal law of the deceased. Where the deceased lived under customary law and had not opted for statutory succession, customary law would govern the distribution of the estate.

Islamic law is also another framework that governs succession law in Nigeria, particularly among the Muslims in Northern Nigeria. Islamic law of succession is derived from the Qur'an, the Hadith, and also Islamic jurisprudence. Islamic law provides a detailed system of inheritance and also provides for fixed shares for the heirs. Islamic law also restricts testamentary freedom, it allows a Muslim to dispose of only one-third of his estate by Will, while the remaining two-thirds must be distributed among heirs according to what is provided in the Quran. The heirs under Islamic law are generally classified into sharers, residuaries, and distant kindred. The Islamic laws are applied in Sharia Courts, because they have jurisdiction over Islamic personal law matters in the northern part of Nigeria. The Supreme Court recognised Islamic personal law in Nigeria's legal system in the case of *Alkamawa v Bello*⁵⁰, this decision reinforced the legitimacy of Islamic succession rules in Nigeria.

Judicial decisions of the courts also helps in shaping the legal framework of succession in Nigeria. Courts interpret the statutes, they determine the law that would be applicable, and

⁴⁹ (2003) All NLR 548.

⁵⁰ (1998) 6 SCNJ 127.

they also resolve the conflicts between statutory, customary, and Islamic laws. Through the decisions of the courts they have gradually modernized succession law and invalidated discriminatory customary law and they have clarified the relationship between the different legal systems.

3.1.1 Analysis of the Laws regulating succession in Nigeria

Succession law in Nigeria governs the devolution of a deceased person's estate to the beneficiaries upon death. The Nigerian legal system practices a pluralistic approach to succession, and it includes customary law, statutory law, and Islamic law.

The following can be seen as laws that regulate succession laws in Nigeria;

1. The Wills Act 1837 and Wills Laws of various states

According to Iai Oshitokunbo Oshianya⁵¹ in his book *An Almanac of Contemporary Judicial Restatements* defined a will as;

A Will is a disposition or declaration by which the person making it (testator) provides for the distribution or administration of his property after his death.

A Will or Testament is therefore a legal document by which the testator, expresses his wishes as to how his property is to be distributed at death, and names one or more persons called the executor, to manage the estate until its final distribution⁵². The law governing testate succession in Nigeria is primarily derived from the Wills Act 1837, which applies as a statute of general application, alongside various State Wills Laws such as the Wills Law of Lagos State and similar enactments in other states. In the case where the laws are contradicting the Wills Act of 1837 shall prevail. Section 7 of the Wills Act 1837 provides that the minimum age for making a Will is 21 years, but

⁵¹ Iai Oshitokunbo Oshianya *An Almanac of Contemporary Judicial Restatements with Commentaries* (Volume II Spectrum Books Limited) (Page 451).

⁵² AO Legal, The Legal Requirement of a Valid Will < <https://aolegal.net/faqs> > accessed 10th June 2026.

Section 3 of the Wills Law of Lagos State provides that the minimum age for making a Will is 18 years.

These laws provides that, a Will is a legal declaration by which a person (the testator) directs how his property is to be distributed after death. The validity of a Will is governed by statutory requirements. Section 9 of the Wills Act 1837 provides that for a Will to be valid it must be: In writing, Signed by the testator or by another person that is present and at his direction, Done in the presence of at least two who are present at the same time, The witnesses must attest and sign the Will after the signature of the testator in the presence of the testator.

In the case of *Banks v Goodfellow*⁵³, the court established the test for testamentary capacity, holding that a testator must understand the nature of the act, the extent of his property, and appreciate the claims of those who might expect to benefit from the testator. The principle of testamentary freedom allows a testator to dispose of property as he wishes. However, this freedom is subject to statutory limitations. For example, under State Wills Laws, courts may intervene where reasonable provision has not been made for dependants. Section 3(1) of the Oyo state Wills Law provides that the will shall be subject to the customary law practices regarding succession laws. In the case of *Idehen v Idehen*⁵⁴, the testator late Joshua Idehen a Bini man, left a Will devising his igiogbe (the house he lived) to someone else other than the eldest surviving son. Under the Bini customary law the Igiogbe is inherited by the eldest son after the death of the father to maintain the family home and to also take over the role as the head of the family. Section 3(1) of the Wills Act which provided that a will shall be subject to the customary law of that particular state. The Supreme Court held

⁵³ (1870) L.R. 5 Q.B. 549 at 565.

⁵⁴ (1991) 6 NWLR (PT.198) 302.

that the Bini customary law of inheritance provides that only the eldest surviving son who has performed the burial rites shall inherit the Igiogbe. This means that the testator cannot give his will to any other person except the eldest surviving son. Also in the case of *Lawal-Osula v Lawal Osula*⁵⁵, the testator Chief Lawal-Osula was a traditional Bini Chief and he died in December 1972 leaving a Will. He was survived by a wife that he married under the Marriage Act. Among the children he had children born outside the statutory marriage. He devised several properties in his estate to the 1st respondent but he excluded his first son and other children. According to the Bini customary law when a chief dies the house he lived in (igiogbe) will go to the first son upon his completion with the funeral rites. the testator put a clause where he stated that his Will shall not be subject to the Bini customary law practices. The plaintiffs claimed that the Will was null and void for non-compliance with the Wills Law and also declared that the first son completed all the final burial rites of his father and automatically should be the head of the family. The Supreme Court held that the testator is subject to the Bini customary law and that the Igiogbe shall only be given to his eldest son. The Supreme Court brought out section 3(1) of the Wills Law which provides that a Will shall be subject to customary laws.

Thus, the Wills Act and State Wills Laws provide a structured legal framework for testate succession, ensuring certainty and enforceability.

2. Administration of Estates Laws

The Administration of Estates Laws of various states regulate intestate succession and the administration of estates where no valid will exists. These laws provide a

⁵⁵ (1995) 9 NWLR (PT.419).

systematic framework for the appointment of administrators and the distribution of the estate.

Under these laws, the court grants letters of administration to qualified persons, usually close relatives of the deceased. The administrator is responsible for collecting the assets, paying debts, and distributing the estate according to the law.

The order of distribution typically prioritizes; Surviving spouse, Children, Parents, Siblings, Extended family.

In the absence of any relatives, the estate may escheat to the state.

Judicial interpretation has clarified the application of these laws. In *Adesubokun v Yunusa*⁵⁶, the issue at hand is whether the provisions of the English Wills Act apply in determining the manner by which the property of a deceased Muslim testator should be distributed. In this case, the testator, Yunusa Atanda Saibu, died intestate and his properties were unequally distributed under the Will Act 1837. Some were given specific bequests while others larger amounts. After granting probate to the executor, the plaintiff contested the Will on the basis that being a Muslim, the deceased had no right to dispose of his property under the will. This claim was premised on the fact that Maliki Muslim law requires equality of share. However, the High Court Trial Judge agreed with the plaintiffs' argument and ruled that despite a Muslim being able to dispose of his properties through will in Northern Nigeria, he cannot leave his heirs nothing in accordance with the Wills Act. The Judge therefore revoked the probate because it violated Maliki Muslim law in that it did not provide equal distribution to all heirs. However, on appeal, the Supreme Court ruled differently. According to the Supreme Court, section 3 of the Wills Act 1837 gives a person total freedom to bequeath whatever property one may wish. In this case, the Supreme

⁵⁶ (1971) ALL NLR 227.

Court reiterated that the law provides that any native law or custom may only be applied if such a law or custom is not inconsistent with any written law existing in the jurisdiction. According to the interpretation of the section 34(1) of the High Court Law, the use of the phrase “such native law and custom” implies that only those laws or customs not opposed to any written law may be applied. In this case, the Maliki rule of equal distribution clashed with the Wills Act, hence it cannot prevail. It was also noted by the Supreme Court that no law existing in the Southern States compels application of Islamic law in probate proceedings. Accordingly, the deceased had the right to exercise the testamentary freedom conferred by the Will Act, thus making the probate previously granted legitimate. It was for this reason that the judgment of the High Court was overturned, thus dismissing the action filed by the plaintiff. The Supreme Court held that a Muslim in Nigeria can devolve their property by Will under the Wills Act 1837, even if it contradicts the Islamic succession rules. In the case of *Salubi v Nwariaku*⁵⁷, the court emphasized that statutory intestate succession rules will only apply where the deceased was subject to statutory law and had not retained his customary law status.

These laws ensure fairness, orderliness, and legal certainty in the administration of estates.

3. Customary Succession Rules

Customary succession laws are derived from the traditions and practices from Nigeria’s various ethnic groups. They govern inheritance primarily where the deceased was subject to customary law and died intestate.

In most Nigerian communities, succession practices a patrilineal system, where property devolves through the male line, and the eldest son assumes control of the

⁵⁷ (2003) 7 NWLR (Pt. 819) 426.

estate. In some communities, however, succession practices a matrilineal system where the properties will be devolved through the male line.

Customary law has been subject to judicial scrutiny, particularly where it conflicts with constitutional principles. The doctrine of repugnancy provides that any customary law that is contrary to natural justice, equity, and good conscience will not be enforced.

The courts have significantly reformed customary succession through case law. In the decided case of *Nezianya v Okagbue*⁵⁸, the Supreme Court recognized the validity of certain customary inheritance practices relating to family property.

In the case of *Damonle v Dawodu*⁵⁹, the Supreme Court of the Federation looked at how to allocate property according to the custom laws of the Yoruba people. The case originated from the death of Suberu Dawodu, a Yoruba man who died intestate, which means he did not leave a will. In his life, he had four wives and a few children. When he passed away, four administrators were appointed, with each being responsible for one of his wives and their respective children. The deceased's property, including rental income from his real property and personal property, was split evenly among the four branches of the maternal side of the family. This distribution pattern was embraced and implemented harmoniously by all family members for about ten years. However, at a later stage, some family members disputed the distribution system. The respondents believed that the allocation of the estate should be done using the "Ori-Ojori" principle, where each child would inherit equally irrespective of their mothers.

⁵⁸ (1963) 1 All NLR 352.

⁵⁹ (1962) 1 All NLR 702.

They argued that the property should accordingly be partitioned into nine portions for the total number of children and wherever any child has died before, such a deceased child's descendants should take his/her portion. According to the trial court judge, the respondents' views prevailed as the four-part partition scheme that was applied previously was an oversight. As a result, the judgment of the court was that from henceforth, the rents and other advantages derived from the property should be distributed using the Ori-Ojori principle. However, an appeal was lodged at the Federal Supreme Court. On appeal, the Court analyzed the concept of inheritance in accordance with the Yoruba customary inheritance law as well as the differences existing between the concepts of Idi-Igi and Ori-Ojori in relation to partitioning property. The Court found that Idi-Igi principle, involving the partitioning of receive equal portions of the property irrespective of the number of children within each particular branch. On the contrary, Ori-Ojori method, involving individual children taking property depending on the branches or wives of a person who dies, is the traditional and universal Yoruba custom. In the same way, all branches should equal portions, is more contemporary.

The Court made it very clear that where there are differences, the head of the family would have the power to decide which system to use under the given circumstances. Another important point that the court made was that the Idi-Igi system was not against natural justice, equity, and good conscience. What was important about the decision was that both males and females under Yoruba customary law were equally entitled to inherit from their parents.

In the Yoruba customary law both the male and the female children inherit properties, but family leadership is restricted to just the male heirs. In the case of *Adeniji v*

*Adeniji*⁶⁰, questions on vital aspects of Yoruba customary law of inheritance were raised. These included the role of the family head and the correct means of disposing of the deceased's estate when he dies without a will. In this case, Abudu Karimu Adeniji, a Yoruba male, died without leaving behind a will. He had been married to many women and had children, the oldest being female. After his death, disagreements broke out within the family over who should lead the family and how the estate of the deceased should be shared. Two critical questions were raised before the court. The first question was the identity of the person who should be the head of the family. The second question was what should be the mode of disposal of the estate of the deceased based on Yoruba custom, especially whether the estate should be disposed of using the *Idi-Igi* or *Ori-Ojori* method. In the case of *Idi-Igi*, distribution of the estate takes place depending on the branches or wives of the decedent. On the other hand, in the case of *Ori-Ojori*, each and every child gets an individual share. The lower court ruled that since the eldest child was a daughter, she cannot assume the position of headship in the family. Thus, the next eldest child who happens to be a male was made the head of the family. The court further ruled that estate distribution must take place through the *Ori-Ojori* system. The appellate court, while addressing the appeal, was critical of the method employed by the trial court. According to the court, the matter being considered by the court did not involve the issue of who between all the family members would be made the head of the family. On the contrary, there was only a disagreement between the two parties – the eldest daughter and the existing overall head of the family. It was wrong for the trial court to consider a third party and declare him as the head of the family. In addition, the court of appeal noted that the trial judge wrongly ordered inheritance using the *Ori-*

⁶⁰ (1972) 1 All NLR (PT 1) 298.

Ojori system. The correct procedure under Yoruba customary law is the Idi-Igi system, which would only be superseded by the adoption of Ori-Ojori upon an agreement from the head of the family that it is the preferred method of inheritance. In this case, since it was not clear whether the family head agreed to use the Ori-Ojori system, the trial judge could not make such an order. Customary succession is relevant but continuously evolves under the judicial and constitutional influence.

4. Islamic Succession Rules

Islamic succession law governs inheritance among Muslims and is derived from the Qur'an, Hadith, and Islamic jurisprudence. It is applied in Sharia Courts, particularly in Northern Nigeria. Under Islamic law, a testator is not bound to make a will in writing, neither the witness are bound to attest to it. A bequest in Islamic law may either be in writing or by words of mouth. In either case, it should at least be made before two witnesses⁶¹.

Islamic law provides a detailed and structured system of inheritance based on fixed shares. Heirs are classified into: Sharers; they are the primary heirs that are entitled to a fixed portion, quranically prescribed shares of a deceased person's estate.

Residuaries; they are the heirs that inherit the residue of an estate after fixed shares have been distributed. Distant kindred; they are blood relatives who are neither the quranic sharers nor the residuaries. They inherit only when they are no sharers or residuaries, excluding scenarios where a spouse survives, allowing them to take the remainder.

The main feature of Islamic succession law is the limitation of Muslims on testamentary freedom. A Muslim may only dispose of one-third of his estate by Will,

⁶¹ Project Topics, Will: A Comparative Analysis Under Common And Islamic Law
<<https://www.iprojectmaster.com>> accessed 10th June 2026.

while the remaining two-thirds must be distributed according to the provisions of the Quran.

In the case of *Jiddun v Abuna & anor*⁶², the Supreme Court held that the heirs are permitted to appoint a person who is learned in the Islamic practices to distribute the estate of the deceased according to the Islamic law.

The recognition of Islamic law within Nigeria's legal system has been affirmed by the courts. In *Alkamawa v Bello*⁶³, the Supreme Court held that Islamic law is a valid and enforceable part of Nigerian law, not merely a customary practice. In the case of *Ajibaye v Ajibaye*⁶⁴, the testator, a Muslim from Ilorin made a Will under the Wills Act, where he disposed of his properties in a manner that was not agreeable under the Islamic Law. The Will was challenged in court, the reason being that as a Muslim from Ilorin, Kwara State whose Wills Law contained the Islamic Law limitation, the testator could not dispose of his properties as he wished. The last wife who received the bulk of his properties claimed that her husband was not living his life according to the Islamic Law and could not be subject to it. The court of appeal agreed with the trial court that the Will made by the Muslim is void because it goes contrary to the Wills Law of Kwara state and he is subject to the Islamic law because said he was a Muslim, but he does not want to be bound by the Islamic law rather by the English law.

Islamic succession law is valued for its certainty and predictability, though it has been subject to criticism, particularly regarding gender-based distinctions in inheritance shares.

3.2 Institutional Framework for Succession in Nigeria

⁶² (2000) 10-11 S.C. 19 at P.35.

⁶³ (1998) 6 SCNJ 127.

⁶⁴ (2007) ALL FWLR PT 359, 1321.

In Nigeria there are laws that governs how succession laws are practiced, as well a wide variety of institutions and organisations that work toward this end. The responsibility of these entities is to look into how this laws are practice in the different communities.

3.2.1 Probate Registry

The Probate Registry is the administrative arm of the High Court charged with the responsibility of processing matters relating to the administration of estates. Its powers and functions are derived from State Administration of Estates Laws, State Wills Laws, and the Rules of Court. The administration of estates law are the cultural laws as well as principles that regulates the real and personal property of Nigerians concurrently. The Probate Act of 1925 provides the framework for the probate procedure in Nigeria, regulating probate and administration in cases where there is a will or an intestacy of property. The power to grant probate according to Section 2 is vested in High Courts, thus providing legal protection by ensuring that the will is legally validated and that executors are appointed. The filing of inventories of the estate according to Section 10 poses a challenge especially in the rural setting because of limited legal assistance.

The Probate Registry is responsible for granting probate where a valid will exists and letters of administration where the deceased died intestate. The probate registrar of the State High Court is responsible for granting a probate after application is done. It can be collected either by the person who is named in the Will or by their legal practitioner.

People who are entitled to grant probate are thus: The executor, Any residuary legatee or devisee holding in trust for any other person, A residuary legatee or devisee for life, A residuary legatee or devisee whose legacy is vested in interest.

There can also be a double probate where a person has applied for a grant of probate after the executor has been given a grant earlier.

According to Omolade O. Olomola⁶⁵ in his book Family Law and Succession in Nigeria,

Probate refers to the legal process in which a will is reviewed to determine its validity and authenticity. A letter of administration on the other hand is a document given to a person by a Probate Court, this document confers on an administrator the authority to administer the estate of the deceased person who dies intestate.

In testate succession, the Registry ensures that the Will is in compliance with Section 9 of the Wills Act 1837, which provides that a valid Will must be in writing, signed by the testator, and shall be attested by at least two witnesses.

The Registry also ensures that executors named in the Will are properly identified and qualified before issuing probate. In intestate cases, it verifies the entitlement of applicants for letters of administration and may require the provision of sureties to protect the estate. The importance of compliance with probate procedures has been emphasized in judicial decisions. In the case of *Idehen v Idehen*⁶⁶, the Supreme Court held that a Will that fails to comply with statutory requirements cannot be admitted to probate. Similarly, in the case of *Okelola v Boyle*⁶⁷, the Supreme Court established that there must be proof that there was due execution of the will which are essential before probate can be granted. Thus, the Probate Registry plays a fundamental role in ensuring that estates are administered in accordance with the law and that fraudulent or invalid claims are prevented.

3.2.2 Courts

The courts are the central institutions in the administration and adjudication of succession matters in Nigeria. Their authority is derived from the Constitution of the

⁶⁵ Omolade O. Olomola *Family law and Succession in Nigeria* (Princeton & Associates Publishing Co. Ltd) (Page 360).

⁶⁶ (1991) 6 NWLR (Pt. 198) 382.

⁶⁷ (1998) 1 SCJN 63.

Federal Republic of Nigeria. By virtue of Section 6 of the 1999 Nigerian Constitution⁶⁸, which provides for the judicial powers that are vested in the courts, while Section 272 of the 1999 Nigerian Constitution⁶⁹ confers jurisdiction on State High Courts in civil matters, including probate and administration of estates. The State High Courts have exclusive jurisdiction to: Grant probate and letters of administration, Determine the validity of Wills, Resolve disputes relating to inheritance and estate distribution.

In addition, Customary Courts and Sharia Courts also have jurisdiction over succession matters governed by customary and Islamic law respectively. The constitutional provision for Sharia Courts of Appeal is found in Sections 260–264 of the 1999 Nigerian Constitution⁷⁰. The Constitutional for the Customary Court of Appeal can be found in Sections 265-269 of the 1999 Nigerian Constitution⁷¹.

The courts also determine the applicable law of succession in any given case. In the case of *Salubi v Nwariaku*⁷², the Court of Appeal held that the applicable law depends on the personal law of the deceased, thereby resolving conflicts between statutory and customary succession. Furthermore, the courts ensure that succession laws conform to constitutional provisions. In the case of *Ukeje v Ukeje*⁷³, the Supreme Court declared unconstitutional a customary law that excludes female children from inheritance, and the court relied on Section 42 of the 1999 Constitution, which guarantees freedom from discrimination. The courts also determine issues of testamentary capacity and validity of Wills. In *Banks v*

⁶⁸ 1999 Constitution of the Federal Republic of Nigeria (with amendments 2011).

⁶⁹ *Ibid*, section (272).

⁷⁰ *Ibid*, sections (260-264).

⁷¹ *Ibid*, sections (265-269).

⁷² (2003) 7 NWLR (Pt. 819) 426.

⁷³ (2014) 11 NWLR (PT.1418) 384.

Goodfellow⁷⁴, the principles governing testamentary capacity were established and have been applied in Nigerian courts.

Thus, the courts serve not only as adjudicators but also as guardians of constitutional rights and arbiters in conflicts of laws.

3.2.3 Legal Practitioners, Executors, and Administrators

Legal practitioners and estate administrators are very essential in the institutional framework of succession in Nigeria. Their roles ensure that there is an effective implementation of succession laws in Nigeria. Legal practitioners assist in the drafting of wills in compliance with statutory provisions, particularly the Wills Act 1837 and State Wills Laws. They ensure that these Wills that are drafted will satisfy the requirements of validity, thereby reducing the likelihood of disputes among the beneficiaries of the Wills. They also facilitate the administration process by preparing applications for probate and letters of administration, as well as representing the parties in court during inheritance disputes. Their role ensures compliance with procedural and substantive legal requirements. Executors and administrators are responsible for the actual administration of estates. An executor derives authority from the Will, while an administrator is appointed by the court under the Administration of Estates Laws. Their duties include: Collection and management of the deceased's assets, Payment of debts and liabilities, Distribution of the estate to beneficiaries.

Their activities are subject to judicial supervision to prevent abuse. In *Okelola v Boyle*⁷⁵, the Supreme Court emphasized that executors must strictly adhere to the wishes of the testator and the provisions of the law.

⁷⁴ (1870) LR 5 QB 549.

⁷⁵ (1998) 2 NWLR (Pt. 539) 533.

Where there is no suitable person available, the office of the Administrator-General may be appointed to administer the estate in accordance with statutory provisions.

CHAPTER FOUR

CHALLENGES IN THE APPLICATION AND ENFORCEMENT OF SUCCESSION

LAW IN NIGERIA

4.1 Enforcement of Succession Rights in Nigeria

The enforcement of succession rights in Nigeria is the system by which successors, dependants, executors, administrators, and other stakeholders can exercise and enforce their rights in connection with the estate of a deceased. Succession rights become exercisable upon the demise of a person; the management of his or her estate becomes controlled by the statutory law, customary law, and Islamic law applicable to the individual deceased. As Nigeria runs a mixed legal system comprising statutory law, customary law, and Islamic law, the enforcement of succession rights differs depending on the particular legal system that governs the estate. Nonetheless, irrespective of the legal system, the courts shall always remain the principal institutions that shall ensure that rights of succession are enforced. In statutory succession, the main statutes governing the enforcement process include the Wills Act 1837, Will Laws of the various states of the federation, and the Administration of Estates Laws, along with the High Court Civil Procedure Rules. The other document that has significance in the enforcement of succession rights is the Constitution of the Federal Republic of Nigeria 1999. Section 6 of the 1999 Nigerian constitution⁷⁶ grants judicial power in the court while Section 272 of the same constitution⁷⁷ provides the jurisdiction of State High Courts in probate and administration of estates matters. In addition, Section 42 of the same constitution⁷⁸ prevents discrimination based on gender or circumstances of birth, and therefore affects customary inheritance practices. Another institution that has immense significance in the enforcement of succession rights is the Probate Registry. This Registry acts to supervise and ensure that probates and letters of administration are applied and that there is strict compliance with statutory requirements. Probate is granted when the deceased has left behind a valid Will whereas letters of administration are granted when there is no

⁷⁶ 1999 Constitution of the Federal Republic of Nigeria (with amendments 2011).

⁷⁷ *Ibid* section (272).

⁷⁸ *Ibid* section (42).

Will. In *Okelola v Boyle*⁷⁹, the Supreme Court underscored the significance of a good probate process and stated that executors should act in accordance with the wishes of the testator and according to the law. Likewise, in *Idehen v Idehen*⁸⁰, the Supreme Court underscored the need for the will to adhere to the stipulated procedural formalities for a grant of probate. It ruled that any failure to meet the conditions may render the document invalid. Lastly, the beneficiary may enforce his or her right through court action. Such court action includes declaration of title to inherited property, suit for determination of the validity of a will, application for revocation of probate, and suing executors or administrators for failing to fulfill their obligations. The Court of Appeal in *Salubi v Nwariaku*⁸¹ ruled that the proper law of succession should be determined by the personal law of the deceased. This is an important case in this regard since it sheds light on how the courts approach issues in cases of succession. Under customary law, implementation of decisions takes place through the family heads and customary courts. However, customs themselves cannot override the repugnancy rule, which provides that only those customs that are not against natural justice, equity, and good conscience can apply. The repugnancy rule has allowed courts to invalidate oppressive customs regarding succession. The application of Islamic succession rights in Nigeria is largely done in Sharia Courts in those states where Islamic law operates. Sections 260 to 264 of the 1999 Nigerian Constitution⁸² acknowledges the jurisdiction of Sharia Court of Appeal. There are fixed shares in Islamic law for the beneficiaries, and it is ensured by the courts. Consequently, the process of enforcing succession rights involves both statutory process and court orders among others. In spite of problems like delay, conflict of law and discrimination

⁷⁹ (1998) 2 NWLR (Pt. 539) 533.

⁸⁰ (1991) 6 NWLR (Pt. 198) 382.

⁸¹ (2003) 7 NWLR (Pt. 819) 426.

⁸² 1999 Constitution of the Federal Republic of Nigeria (with amendments 2011).

that may be encountered in dealing with succession rights in Nigeria, courts remain active in Nigeria.

4.1.1 Procedure for Obtaining Probate and Letters of Administration

The procedure for issuing probate and letter of administration is an essential element in Nigerian succession law. Such procedures ensure proper administration of the estate of the deceased, and distribution of property to beneficiaries according to the law. In probate, the court certifies that a Will is legally valid and grants the authority to the executors appointed by the testator to administer the Will. Letter of administration comes into play when a person dies without having made a Will and where there are no executors to administer the estate. Nigerian probate and administration laws include the Wills Act 1837, Will Laws of states, Administration of Estate Laws, Probate Rules, and High Court Civil Procedure Rules. The process starts with the filing of an application to the Probate Registry of the High Court. The document should include the original Will, death certificate of the deceased, list of assets, photographs of executors, and affidavits. Under Section 9 of the Wills Act 1837, a Will should be in writing, duly signed by the testator and witnessed by at least two other persons. The Probate Registry examines the document to confirm that the statutory requirements have been met.

Upon filing the application, the Probate Registry evaluates the value of the estate in order to compute probate fees, which must be paid by the executors before the grant of probate. If there is any reason to suspect that the Will may be invalid, those who stand to benefit may enter a caveat against granting probate while the matter is pending in court. The law relating to testamentary capacity was laid down in *Banks v Goodfellow*⁸³. In that case, the court ruled that a testator must be aware of the nature of the act, comprehend the extent of his property,

⁸³ (1870) LR 5 QB 549.

and appreciate the claims of possible beneficiaries. When an individual passes away intestate, interested parties, like the husband or wife, offspring, or nearest kin, can seek letters of administration. Usually, the applicants have to secure sureties, which will ensure that the estate is properly administered. The Administration of Estates Laws set out the order of priority in the granting of letters of administration. Typically, priority is given to the spouse and children of the deceased person. When probate or letters of administration have been granted, the executors or administrators become the personal representatives of the deceased. The duties of the personal representative include asset recovery, payment of debts, settlement of any outstanding tax issues, and distribution of the estate to the beneficiaries. Executors and administrators have a fiduciary duty to the beneficiaries, who can sue them for any wrongdoings or carelessness. Moreover, probate or letters of administration can be rescinded where they were issued under fraudulent or wrongful circumstances. The courts have the inherent power to rescind grants when the case requires such an action. It is clear that probate is critical in making estate administration efficient and safeguarding the interests of the beneficiaries. While probate can be cumbersome and complicated at times, it ensures clarity and regulation in matters of succession.

4.2 Challenges to the Enforcement of Succession Laws.

While there are legislative provisions on succession law in Nigeria, there are still some difficulties that stand in the way of effective implementation of the law on succession. These include:

Firstly, the conflict between statutory, customary, and Islamic laws. Since there are different regimes of succession, the question of what regime should apply to different people can give rise to conflicts. One of the other difficulties is the continuation of discriminatory custom. Women and illegitimate children continue to be barred from inheriting property despite the

constitutional provisions. This problem has been discussed by the Supreme Court in the case of *Ukeje v Ukeje*⁸⁴, wherein the court ruled against a discriminatory customary law which denied inheritance to female offspring. Also, in the case of *Okonkwo Timothy v. Sunday Oforka & Anor.*⁸⁵, the Supreme Court of Nigeria re-established the primacy of the Constitution over any discriminatory customary laws which sought to limit the rights of women and children to own land. It all started in Oraifite, Anambra State. In this place, the defendants/respondents, Sunday Oforka and his daughter, Martina Oforka, were asserting ownership of a piece of land that their late father, Chief Ezenwammadu Okafor Oforka, had bequeathed to them. Martina Oforka was occupying the land and had even constructed structures on the land. However, Okonkwo Timothy disputed the ownership of the land, citing the native law and custom of Oraifite which he said limited the rights of women and children to own land. In response, the respondents filed an action alleging that the actions of the appellants violated their rights under the 1999 Constitution of the Federal Republic of Nigeria to dignity of human person, personal liberty, freedom from discrimination, and the right to acquire and own immovable property under sections 34, 35, 42, and 43 respectively. The decision made at the trial court was for the respondents. Aggrieved by the decision made at the trial court, the appellant filed an appeal. His main contention was that the evidence presented by the respondents in support of their case, which was Exhibit A, was inadmissible as it had not been registered under the provisions of the Land Instruments Registration Law of Anambra State. In addition, the appellant stated that the respondents could not claim ownership of the land. This appeal was struck down by the Court of Appeal and the decision upheld. It ruled that even though unregistered land instruments cannot be admitted as proof of legal title, the same documents can still be used to establish an equitable interest in the land.

⁸⁴ (2014) 11 NWLR (Pt. 1418) 384.

⁸⁵ (2008) 9 NWLR (Pt. 1091) 204.

Most importantly, the court ruled that the Oraifite customary law adopted by the appellant was unconstitutional because it discriminates against females and children. As such, the sections of the Constitution 42 and 43 provide that all Nigerians, without regard to age or gender, have the right to freedom from discrimination and the acquisition of immovable property anywhere within Nigeria. It is thus on this basis that the court ruled that no custom or indigenous law that discriminates against women's ownership of land could survive the supremacy of constitutional laws. It was for this reason that the appeal was dismissed in favor of the rights of the parties to the land. This landmark case demonstrates a clear judicial rebuffing of discriminative practices in customary laws and is very much relevant as far as constitutional rights of equality are concerned.

Undue delay in the administration of estates has also become another important concern. The probate process can take years before distribution of estate takes place. Problems with the internal administration of the Probate Registries have led to such delays. Valuation, payment of fees, notice, and authentication of documents may make probate a tedious process. Proper record keeping, on its part, may become inefficient owing to corruption in the country.

Besides, family conflicts may cause more delays in the distribution process. Lack of awareness also poses another challenge as many people die without leaving behind any will. They do not know the consequences of dying intestate hence causing disputes within families. Financial challenges also influence the implementation of succession laws since the process entails huge costs that might discourage beneficiaries from enforcing their rights. At times, it becomes a challenge owing to the existence of both customary law and statutory law. The two legal systems conflict in some instances with some customary practices conflicting with constitutional provisions. The doctrine of repugnancy has been adopted by courts to nullify oppressive customs, although there have been instances where traditional societies

resist. In the case of *Edet v. Essien*⁸⁶ is a famous customary law case of Nigeria that analyzed the legality of a customary law and whether repugnancy rule applies to that law. This case was related to the people of Efik of Calabar presently in Cross River State, who followed a customary rule that a woman should remain the lawful wife of the man paying the bride price until the bride price is paid back irrespective of any marriage the woman might later marry. In this case, the plaintiff had married the woman called Inyang when she was young and had paid her customary bride price according to the laws of native Efik customs. Later, Inyang left the plaintiff and married the defendant. Essien had paid bride price for her marriage to Inyang. During this second marriage, she had borne two children with Essien. The bride price paid by the plaintiff to marry her was never paid back. Hence, Inyang was considered to be the lawful wife of the plaintiff as the marriage was never dissolved. Based on the above customary law, the plaintiff argued that the two offspring born through Inyang to the defendant were the property of the latter as per customary law rules. It is on that ground that the plaintiff petitioned the court to award custody to him regarding the children. The Native Court gave judgment in his favor and gave orders for delivery of the children to him. Nevertheless, following the transfer of the case to the Provincial Court, its decision was reversed. Frustrated by this, the plaintiff appealed to the Divisional Court. This case was decided by Justice Carey, whose duty was to find out if the customary law practice of declaring the paternity of the plaintiff despite the fact that he was not the father of the offspring could be upheld. According to the court, it was contrary to natural justice, equity, and good conscience. This means that it was not fair to take away the rights of a person over his own offspring just because another earlier bride price had not been refunded. What makes this case unique is the use of the repugnancy test on custom law. This was done to establish the principle that any customary law would not be applied by the court when it leads to

⁸⁶ (1932) 11 NLR 47.

outcomes that are unjust, unconscionable, or against natural justice and equity. It also argues that courts faced with such customs should subject them to the repugnancy test contained in the Evidence Act 2004, the Constitution of the Federal Republic of Nigeria 1999 and other international conventions to which Nigeria is party⁸⁷.

*Okonkwo v. Okagbue*⁸⁸ is an important Nigerian Supreme Court ruling concerning the validity of customary law and repugnancy doctrine. The issue before the court involved determining the legality of the custom that allows for the dead man to enter into a marriage and have children with another woman and regard children born out of his marriage as his heirs. The conflict stemmed from the estate of one Nnanyelugo Okonkwo of Onitsha who died in 1931 and did not have any offspring at that time. Many years later, several sisters of the deceased, after his death, arranged for a customary marriage between him and another woman. It is alleged, according to the respondents, that such marriage is legally permitted according to the custom of Onitsha. The woman in question had six children from her subsequent unions with other men, but those were recognized as the children of the deceased with the right to inherit his estate. As a relative of the deceased, the appellant attacked the legitimacy of the agreement. According to him, it was impossible for a deceased individual to enter into a marriage, and that children born by other individuals could not inherit or succeed from the estate of the deceased. This prompted the appellant to seek a declaration that the marriage was invalid and that the children had no right of inheritance or succession. The Supreme Court upheld the appeal and ruled the claimed custom invalid. The court argued that marriage entailed an association between two living persons who are capable of undertaking marital responsibilities. Therefore, a custom that authorizes a woman to get married to a deceased individual and considers that the children produced by other individuals as his/her

⁸⁷ Cambridge University Press and Assessment, *A Critical Analysis of the Laws of Inheritance in the Southern States of Nigeria* <<https://www.cambridge.org>> accessed 10th June 2026.

⁸⁸ (1994) 9 NWLR (Pt. 368) 301.

own offspring runs counter to public policy and breaches the principles of natural justice and equity. The court further explained that notwithstanding the fact that customary laws form part of the laws of Nigeria, such laws should meet the repugnancy requirement before they are enforceable by the court. The importance of this case is the recognition of the doctrine of repugnancy as an effective means through which the courts exercise their power to control customary law. This case ruled that no custom that contradicts justice, morality, and public policy will be recognized by the courts in Nigeria. This case is still an authoritative decision in matters concerning succession and customary law. Religious and cultural sentiments also influence succession disputes. In some cases, families resist statutory intervention and insist on applying customary rules. In the case of *Yunusa v. Adesubokan*⁸⁹ is a supreme court ruling of Nigeria on the question of whether a will written by a Muslim is valid under the Wills Act, and the interaction between Islamic law and statutory law on the subject of inheritance. In this case, there was a dispute about the distribution of the deceased person's estate after the will had been drafted by Yunusa Atanda Saibu, a Muslim, under the Wills Act of 1837. In the will, he made provision for the transfer of specific property to some of his children. The plaintiff was one of his sons, who brought an action against the defendant, who was the executor of the will, seeking to have the grant of probate cancelled on the grounds that, since the deceased was a Muslim, he was not permitted to divide his estate in such a way as to leave anything out for any of the heirs. In the trial court, it ruled in favor of the plaintiff's submission that even though a Muslim had the capacity to prepare a will pursuant to the Wills Act, he could not exclude the heirs from their entitlements under Islamic law. The court therefore revoked the previous probate order granted pursuant to the will. Unhappy with the ruling, the defendant appealed in the Supreme Court. In the case, the major point for determination was whether Islamic law could prevail over the provisions of the Wills Act

⁸⁹(1971) All N.L.R. 227.

where a Muslim made a valid will. The Supreme Court allowed the appeal. The court ruled that under section 3 of the Wills Act, a testator has the liberty of disposing of his/her real and personal properties as he/she sees fit. The court also ruled that under Maliki Islamic laws, equal share requirements were contradictory to the provisions of the Wills Act. Under section 34(1) of the High Court Law, only those customary or Islamic laws that are not inconsistent with the existing statutes can be applied. As the Islamic law in this case contradicted the Wills Act, then it was not binding. The probate was thus reinstated, while the claim by the plaintiff was rejected by the court. The precedent set out by the ruling was that the law of the Statute will override any conflicting Islamic/customary law, especially when there exists a valid will under the Wills Act.

Another challenge is the problem of forged wills and fraudulent administration of estates. Unscrupulous individuals sometimes manipulate documents or conceal assets in order to deprive beneficiaries of their rights. The courts have attempted to address these challenges through judicial activism and constitutional interpretation. Nevertheless, effective enforcement still requires legal reform, administrative efficiency, and public enlightenment.

4.2.1 Conflicts between Customary and Statutory Laws.

Another one of the key issues that make the application of succession laws difficult in Nigeria is the conflict between customary and statutory laws. Nigeria is a pluralistic legal system, with the existence of statutory law, customary law, and Islamic law allowed. Consequently, there exist instances whereby a particular estate may be governed by two sets of laws, each prescribing different procedures for the administration of the estate.

Customary law is based on local custom and traditions, while statutory law is based on legislation made by the state. There are cases where people who come under the jurisdiction of customary law adapt themselves to statutory laws, for instance, contracting a statutory

marriage under the Marriage Act and owning property individually. The conflict of laws in Nigeria was dealt with in *Cole v Cole*⁹⁰, where the court ruled that English law would apply to the estate of an individual who contracted marriage under the Marriage Act. This decision showed that marriage under statutory law could change the applicable succession law.

Customary laws usually favour community or family interest while statutes favour individualism and testamentary disposition. This results in conflicts. Customary law in some cases does not allow the free disposition of family properties by way of testament. But statute allows testamentary freedom through the Wills Act and State Wills Law. By section 3 of the State Wills Laws, testamentary freedom cannot operate where there is a customary law that binds the property. Therefore, the courts need to harmonize customary right with statute.

*Idehen v Idehen*⁹¹ is an instance in which the Supreme Court reiterates the significance of complying with the statute. A further source of conflict is discrimination against women as regards inheritance under some customary laws. While statutory law and the Constitution emphasize equal treatment, some customary laws discriminate against female children and widows. Section 42 of the 1999 Nigerian Constitution⁹² forbids discrimination based on sex. This section has been used in invalidating customary laws.

Land is another area where conflict exists. Under customary law, land is seen as common property; under statutory law, it is seen as an individual possession. The situation is made worse by the Land Use Act of 1978, which vests land in the governors of states but retains the custom of rights of occupancy. Judicial resolution attempts have been made by the court to solve such conflicting systems. Nevertheless, there remains tension between cultural

⁹⁰ (1898) 1 NLR 15.

⁹¹ (1991) 6 NWLR (Pt. 198) 382.

⁹² 1999 Constitution of the Federal Republic of Nigeria (with amendments 2011).

preservation and constitutional supremacy. In summary, conflict between customary and statutory laws poses great difficulties for succession in Nigeria.

4.2.2 Gender Discrimination in Customary Succession.

Gender discrimination is one of the most contentious issues concerning customary succession laws in Nigeria. In several communities, customary laws have historically been discriminatory towards women by not allowing them to inherit family property, especially daughters and widows. There are many instances where widows are denied inheritance of property after the death of their spouses. This may leave them insecure both socially and financially.

As such, this customary law is subject to the repugnancy doctrine as well as international conventions aimed at fighting discrimination. One of these conventions is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), an international convention laying out norms for equality between women and men. Adopted by the United Nations General Assembly on 18 December 1979, this convention came into force on 3 September 1981. CEDAW serves as a blueprint for creating equality norms suited to different national settings. In addition, this international bill of rights for women is a plan of action for securing those rights.

There have been attempts to address such practices through legal reforms like the Gender and Equal Opportunities bill 2021(GEO bill) which was first introduced in 2021 but faced legislative hurdles and strong religious and socio-cultural opposition, it was designed to protect the rights of women. The National Human Rights Commission (NHRC) called the senate to urgently pass this bill. However, this does not change much since discrimination continues even today. This practice has been deeply entrenched in traditional patriarchal societies where inheritance is seen as a right reserved for men alone. Some customary laws

only allow sons to inherit family property, while daughters are supposed to marry out. The practice contravenes contemporary constitutional provisions of equality and non-discrimination. Section 42(1) of the 1999 Nigerian constitution⁹³ stipulates that no citizen can be discriminated against on account of his or her sex, ethnic group, or condition of birth. On the death intestate of a husband, dispute often arises as to whether his widow can inherit his Property. Whether a widow can inherit the intestate estate of her husband will depend on the customary law of his property. Unless it is an outright gift is proved, the property allocated to the wife will on the death of the husband still pass as a family property⁹⁴.

The Nigerian judiciary has progressively used this section to invalidate customary laws that are discriminatory. In *Mojekwu v Mojekwu*⁹⁵, the Court of Appeal declared the custom of Oli-ekpe in Nnewi repugnant to natural justice, equity, and good conscience. Furthermore, in *Ukeje v Ukeje*⁹⁶, the Supreme Court ruled the practice under Igbo customary law that disallowed daughters from inheriting from their fathers' estates unconstitutional. Such discriminatory treatment was a violation of section 42 of the Constitution. A relevant Nigerian succession law case is *Re Estate of Agbonuja (Deceased)*⁹⁷, which is a case that addressed the issue of inheritance rights in respect of Yoruba customary law, especially the inheritance rights of females to the property of a deceased person. This judgment is often referred to by courts to establish that under Yoruba customary law, females cannot be excluded from inheritance on the grounds of gender. The background to this case is that Agbonuja passed away intestate (without leaving any will). In consequence, the family of the deceased raised questions as to who would inherit the estate of the deceased. The main

⁹³ 1999 Constitution of the Federal Republic of Nigeria (with amendments 2011).

⁹⁴ Dr Babatunde Adetunji Oni, Discriminatory Property Inheritance Rights Under The Yoruba And Igbo Customary Law In Nigeria: The Need For Reforms.

⁹⁵ (1997) 7 NWLR (Pt. 512) 283.

⁹⁶ (2014) 11 NWLR (Pt. 1418) 384.

⁹⁷ 19 N.L.R. 38.

question that came up before the court was whether the female children of the deceased were qualified to inherit the estate of the deceased in addition to male heirs. It was common practice in some regions of Nigeria that customary laws favoured male heirs when issues of inheritance arose. In addressing the issue before it, the court considered the customary Yoruba law dealing with intestate successions. According to the court, under the customary Yoruba law, male and female children are members of the family and have the right to receive a share from their dead father's estate. In other words, the court did not entertain the possibility that a woman should be prevented from inheriting an estate by virtue of her gender. Therefore, the daughters of the deceased were treated as heirs who should inherit property alongside sons. This case is important because of its recognition of the relatively liberal aspect of customary Yoruba law concerning the inheritance rights of daughters. Contrary to some customary laws in which inheritance was limited to sons, the law on inheritance in the Yoruba tradition permits a daughter to inherit property from their parents' property. The legal doctrine laid down in this case has remained relevant even now in the context of succession and gender issues in Nigeria. It has been often referred to by academicians and jurists while addressing the status of women according to the provisions of customary laws of inheritance. It reiterates the principle that it would be unjust to deprive a person of her/his inheritance simply because he/she is a woman. According to the customs of the Yoruba community, daughters have the right to inherit the property left behind by their dead parent(s).

One other notable case is *Anekwe v Nweke*⁹⁸, which was brought before the Supreme Court of Nigeria the question of the inheritance rights of women in customary law. It involved a piece of property located in Amikwo Village in Awka, Anambra State. The respondent was arguing for her right to own the property following the death of her husband. The appellants, who were children and relations of the deceased, on the other hand, were questioning the woman's

⁹⁸ (2014) LPELR-22697(SC).

right to ownership of the land based on customary law. The appellant's argument was that according to the particular native custom, there was male primogeniture when it came to inheriting family property. As such, they argued that the respondent was not entitled to the property since she had no male heir to carry on the property within the family lineage. The respondents on the other hand were maintaining their position that they were entitled to owning the property considering that they were the lawful wives of the deceased. Any native custom that prevented women from enjoying inheritance on grounds of gender discrimination was unjust and unjustified. The case was decided in favour of the respondent by the High Court and her claim on the property was upheld. The Court of Appeal agreed with this decision and said that any customs which discriminate against women regarding inheritance were against the principles of natural justice, equity, and good conscience. Being dissatisfied with the judgment, the appellants appealed to the Supreme Court. The appeal filed by the appellants was dismissed and their claim was once again dismissed by the Supreme Court as well. This is because the findings of facts by both the High Court and Court of Appeal concurred with each other and could not be interfered with as they were not perverse and had some facts backing them. It is, however, pertinent to note that the Supreme Court severely condemned any custom which deprived women of inheriting property merely because they are women or do not have male offspring. Such customs were regarded as repugnant to natural justice, equity, and good conscience. The judgment is considered a landmark case in Nigerian law due to the enhancement of gender equality in inheritance cases. The case shows how the Nigerian judiciary can declare certain traditions null and void if they violate modern notions of justice and equity by denying women equal rights in inheritance. Nonetheless, despite efforts by the courts to ensure that discrimination based on gender is prohibited, discriminatory practices have continued to thrive in most rural areas for several reasons.

One group of people that has suffered significantly under customary laws is widows. In some places, a widow may not inherit her husband's estate, while others may not allow widows access to the properties of their dead husbands. Some may even subject the widow to widowhood rites.

While there are laws in Nigeria that provide for the protection of surviving spouses and children in cases of intestacy for example Administration of Estates Laws, State Wills Laws, amongst others, implementing these laws may prove to be challenging in areas with entrenched customary practices.

Consequently, the judiciary has emerged as a powerful tool in ensuring gender equality in the area of succession. The use of constitutional interpretation and the repugnancy doctrine has enabled courts to declare oppressive customs invalid.

However, laws alone are not enough. It is imperative that there be public awareness, education, and cultural change in order to do away with gender discrimination in the matters of succession. The struggle against discriminatory inheritance customs is thus a significant stride towards the realization of social justice.

4.2.3 Delay and Cost in Administration of Estates.

Time-consuming and costly processes form one of the main challenges to the effective management of estates in Nigeria. The process of obtaining probate and letters of administration entails many processes which include document filing, asset valuation, paying certain amounts, posting notices, and verification from the Probate Registry. Such processes tend to be hampered by inefficiencies in record-keeping, poor staffing, and inefficiencies in general.

It takes beneficiaries several years before accessing their inheritance. Such delays could be very costly, especially when there are dependents who rely on the property. The cost of

probate is another challenge in probate procedures. Usually, probate fee depends on the value of the estate, hence it is always costly. There are other costs associated with probate such as legal fees, valuation costs, travel costs, and filing fees. The costs that one may incur in getting a probate and managing an estate may turn out to be quite high, involving costs incurred during court processions, legal costs, among others. In order to solve this problem, reforms must be made.

Moreover, family disagreements also play a role in the delay. If relatives dispute the authenticity of a Will and dispute the appointment of administrators, the proceedings can drag on for several years. As stated in *Okelola v Boyle*⁹⁹, disagreements concerning the administration of the estate contributed to delaying the probate procedure.

Corruption and bureaucracy in certain Probate Registries have also played an important role. There have been occasions when the files have gone missing or the application process was deliberately delayed. Additionally, there is no digital database of records in several states.

The courts have realized the need for efficiency in the administration of estates. Nevertheless, system reforms are needed to avoid delay. Several states have instituted reform measures geared towards making probate processes simpler and more efficient by recording documents in electronic form. Such reforms are meant to increase transparency.

Alternative dispute resolution measures like mediation can assist in reducing disputes as well. Public education on estate planning and making of Wills is also crucial in reducing conflict and making estate management easier. In essence, avoiding delay and reducing costs in estate management is critical in ensuring that succession rights are adequately enforced in Nigeria.

⁹⁹ (1998) 2 NWLR (Pt. 539) 533.

4.3 Judicial Approach to Succession Disputes.

The judiciary is pivotal in the evolution and enforcement of succession laws in Nigeria. The judicial function entails interpreting statutes, adjudicating disputes, and ensuring that the succession process conforms to constitutional principles. Judicial decisions show that Nigerian courts have taken a very progressive stance regarding issues surrounding succession, especially those involving discriminatory practices of custom. Examples of landmark judicial decisions in this regard include that of the case of *Nzekwu v Nzekwu*¹⁰⁰ is a famous judgment by the Supreme Court of Nigeria pronounced on 10 March 1989. The main subject of discussion in this particular case is customary law, rights of widows to matrimonial property, and proof of native law and custom in Nigerian courts. A family dispute was started because of a struggle between the parties for the ownership and possession of some land and matrimonial home. The appellant brought an action against the widow of his relative seeking an order of ejectment on the grounds that the widow did not have any legal right to possess the property under native law and custom after the death of her spouse. In turn, the respondent maintained that she had been living on the premises for many years and had no right to be ejected from there in accordance with customary law and equity rules. The trial court gave its decision in favour of the respondent, allowing her to occupy the property. The judgment of the Court of Appeal also went in favor of the woman. In determining these questions of law, there were several significant points of law that emerged from this case. First, the Supreme Court noted that customary law was indeed a matter of fact which needed to be expressly raised and proved except in cases where it was notorious and well known to enable the court to take judicial notice of it. It cannot be assumed that customary law applies if there is no evidence to prove it. Second, the rights of a widow under customary law were considered. In this regard, such rights cannot be ignored at will. When a widow possesses the

¹⁰⁰ (1989) 2 NWLR (Pt. 104) 373.

property belonging to her late husband, it cannot be forcibly removed from her without proof that there is another superior customary right of another person. In the final analysis, the decisions of the lower courts were affirmed. The Supreme Court confirmed the right of the respondent to be in possession of the property in question. In summary, this case has continued to be an important precedent in the Nigerian laws of property and customary law. It highlights the importance of having proof of customary law, the importance of possessing property, and the function of the courts in ensuring that the customary practice is just and equitable.

For instance, the court has always maintained that customs have to meet the dictates of natural justice, equity, and good conscience. This is evidenced by the judgment in the case of *Mojekwu v Mojekwu*¹⁰¹ where the custom of Oli-Ekpe was held invalid for being discriminatory against women. Another example is the judgment in the case of *Ukeje v Ukeje*¹⁰² where the Supreme Court of Nigeria overturned a custom that barred female children from inheriting family property.

The judicial arm has also insisted on strict adherence to statute in matters relating to probate. The decision of the Supreme Court in *Idehen v Idehen*¹⁰³ is evidence of this principle where the court stated that a will must comply with statutory formalities for probate to be granted. Similarly, in the case of *Okelola v Boyle*¹⁰⁴, the duties of an executor were highlighted. Judicial courts have also been instrumental in deciding what laws should apply in cases of conflict between customary and statutory law.

¹⁰¹ (1997) 7 NWLR (Pt. 512) 283.

¹⁰² (2014) 11 NWLR (Pt. 1418) 384.

¹⁰³ (1991) 6 NWLR (Pt. 198) 382.

¹⁰⁴ (1998) 2 NWLR (Pt. 539) 533.

In *Salubi v Nwariaku*¹⁰⁵, the Court of Appeal decided that the law would depend on the personal law of the deceased. The judiciary arm also has supervisory jurisdiction over executors and administrators who may face revocation of grants obtained by fraud.

Regarding succession by Islamic law, Sharia Courts follow Islamic law, within the confines of constitutional restrictions. The doctrine of repugnancy still stands out as a potent judicial mechanism for curbing oppressive customs. Customary laws which are repugnant to justice and equity are struck down by the courts of law.

This judicial perspective on succession issues thus represents a blend of both cultural traditions and constitutional values. By judicial activism and construction of constitutional provisions, Nigerian courts have continued to influence the development of succession law and justice in inheritance cases. Finally, the judiciary will forever be the custodian of succession law in Nigeria.

¹⁰⁵ (2003) 7 NWLR (Pt. 819) 426.

CHAPTER FIVE

SUMMARY OF FINDINGS, RECOMMENDATIONS, AND CONCLUSION

SUMMARY OF FINDINGS

The study analyzed the issues of nature, applicability, and implementation of succession laws in Nigeria within the ambit of its pluralistic legal system. This study was aimed at analyzing statutory laws of succession, customary laws of succession, Islamic laws of succession, interactions among them, and judicial determination of inheritance cases.

It emerged that laws of succession in Nigeria have diverse sources, and these include statutory law, customary law, Islamic law, and constitutional law. Statutory laws include Will Act of 1837, Will Laws in several States, and Administration of Estates Laws, and they provide for testate succession and intestate succession. Customary laws deal with laws of succession in indigenous communities whereas Islamic laws cover succession by people subjected to the principles of Sharia in certain States. The laws co-exist in the country under pluralistic legal system but conflict arises due to their interplay since customary laws tend to conflict with statutory and constitutional provisions.

It is important to mention that the study has shown that succession laws in Nigeria partially protect women and children. While statutory and constitutional laws prohibit discrimination based on gender, customary law in many communities does not allow women and female children to inherit. However, the judicial process proved to be very important in addressing such issues. At the same time, there have been many problems with enforcing these laws because of cultural opposition to changes.

It is possible to say that the study has shown that succession laws in Nigeria are aimed at achieving equality and justice when it comes to inheritance distribution; however, there are certain issues related to their implementation. First, the statutory and constitutional system aims at ensuring fairness, while customary and Islamic laws are mainly about traditions and religion. Sometimes, this creates inconsistencies in practice. Nevertheless, there is some judicial activism that helps to ensure justice in the field of inheritance distribution.

It was determined that major hurdles arise in enforcing wills and letters of administration in Nigeria. The difficulties involved range from delay in probating wills, high cost, administrative and legal bottlenecks, absence of computerized registers, corruption in some probate registries, and family quarrels over estate property. Estates have stayed unadministered for years, putting their beneficiaries in a state of suffering.

The study shows that Nigerian case law has immensely shaped the interpretation and development of succession laws. Judicial precedents have been used in clarifying legal principles, resolving conflicts between customary and statutory laws, and affirming constitutional supremacy. Some courts have made decisions that the law to apply to the succession of property depends on the personal law of the deceased. In some cases there been advancement made regarding gender equality in inheritance of property.

RECOMMENDATIONS

On the basis of the results from this study, the following recommendations are suggested with regard to succession laws in Nigeria.

Firstly, it is necessary to harmonize the succession laws with regard to the statutory, customary and Islamic succession laws, since the existence of multiple legal systems causes uncertainty, and leads to the prevalence of litigation. The creation of a uniform legal system will contribute to improving the effectiveness of succession laws.

Secondly, it is important to eradicate those customary practices that discriminate against women and girls in terms of inheritance rights. Even though such customs are invalid because of previous judicial decisions, they persist in rural communities. Effective implementation of Section 42 of the Nigerian Constitution is of particular importance.

Thirdly, probate administration must be modernized by means of computerization of registry documents and personnel of Probate Registry Offices.

Fourth, the cost of obtaining probate and letter of administration must be lowered because the high cost of obtaining probate and letter of administration leads to wrong management of estates and informal transfer of property. The costs that one may incur in getting a probate and managing an estate may turn out to be quite high, involving costs incurred during court processions, legal costs, among others. In order to solve this problem, reforms must be made.

Fifth, there is a need for creating more awareness on estate planning and making of wills because most conflicts are caused by death intestacy.

Sixth, there is a need to find alternative ways to resolve conflicts through mediation and family arbitration so as to avoid unwarranted litigation of inheritance cases. Alternative dispute resolution measures like mediation can assist in reducing disputes as well. Public education on estate planning and making of Wills is also crucial in reducing conflict and making estate management easier.

Seventh, there must be an improvement in legal aid so that those who require it, particularly widows, orphan children, and poor heirs, can use their rights to the maximum.

Finally, judges must be trained regularly in order to create uniformity in the application of succession laws.

CONCLUSION

Succession law in Nigeria is an ever-evolving field of law that is influenced by statutory laws, customs, and even Islamic law. While the presence of these systems is evidence of the cultural diversity in Nigeria, it also presents legal difficulties when administering estates. It is concluded from the research that although there is an existing and well-elaborated legal system governing succession in Nigeria, implementation of such a system faces challenges like legal pluralism, inefficiency, exorbitant fees, and even discrimination within the customary law practice. These challenges delay the process of justice and estate distribution. However, the courts in Nigeria have taken on an important role in solving these problems. In conclusion, the future of succession law in Nigeria will depend on reforms and developments in these fields. There needs to be a balance between valuing cultural beliefs and conforming to constitutional values such as equality, justice, and human dignity. With improved practices in all these fields, there will be an efficient succession law practice in Nigeria.

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