



WOMEN'S RIGHTS TO INHERITANCE AND THE PRIMOGENITURE RULE IN NIGERIA AND UGANDA: A MYTH OR REALITY

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Abstract

The principle of primogeniture is an age long tradition enshrined in customary concepts of rights to succession in land. This principle is practised in some parts of Africa including Nigeria and Uganda. It recognises the rights of the first male child to inherit property belonging to his father. Primogeniture stems from the predominant belief in the patriarchal system which asserts that promotion of women's rights could interfere with traditions and norms. Its application therefore subjugates the rights of the female gender. Despite various pronouncements of the courts on the discriminatory effects of this rule in both Nigeria and Uganda, elements of the practice still exist in these jurisdictions, and this restricts the rights of women to own property. This paper therefore comparatively examines the application of primogeniture rule in Nigeria and Uganda. It adopts a desk-based research approach to trace the evolution of the principle over the years and how the courts in both jurisdictions have interpreted its meaning. The paper finds that in Nigeria, the effect of primogeniture rule has been relaxed through judicial activism, thus enabling female children inherit property belonging to their fathers, however, elements of the tradition still exist due to the strong influence of culture and patriarchal belief system. In Uganda however, the practice of primogeniture was encouraged by the legislative enactments in the Succession Act until the recent enactment of the Succession (Amendment) Act 2022 which removed discriminatory aspects of rights to property in Uganda. The paper concludes that the primogeniture rule is a subjugation of women's rights and runs contrary to global best practices on women's rights.

Keywords: Primogeniture; Women's rights; Inheritance; Property rights in Nigeria; Ugandan customary law

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Introduction

Customary law refers to the set of practices and beliefs which are accepted as mandatory rules of conduct in a community.¹ It forms a part of the social and economic way of life of a particular community. The distinguishing factor about customary law is that the value system is shared collectively thus, customary laws showcase the identity of a group of people as it often determines the responsibilities, roles and obligations of individual members in matters relating to aspects such as marriage, land, cultural heritage, property and succession.² Although the reception of English law into the Nigerian Legal System has had a great influence on customary laws and its usage, nevertheless, the customary laws on inheritance and succession still exist in various parts of the country. Customary law of succession thus refers to the inheritance that is carried out in accordance with the customs and traditions of a deceased who died intestate. This implies that where an intestate person was an indigenous Nigerian who neither solemnized a Christian nor Act marriage, and had no child or spouse surviving him, his estate will be determined by the dictates of such customary law. Where he was a Muslim in his lifetime, then Islamic law would apply. Thus, a man who married under the Act or contracts a Christian marriage would have his property distributed in accordance with the Act. In actual fact, where marriage has been celebrated under the Act, the husband and wife may inherit each other's estate on intestacy.³

Generally, inheritance in Nigeria is ascertained by the customary practices applicable in the locality where the deceased hailed from in his lifetime.⁴ It is also recognised that in issues relating to the distribution of estate in Nigeria and in most parts of Africa, Africans do not make wills under customary law.⁵ Therefore, various rules are used in determining distribution of estate of the deceased. Generally, in matters relating to the distribution of estate of a deceased, four relevant factors have to be identified, the first is whether the deceased was survived by any children. The second is whether the distribution is subject to customary law or statute or by both. Thirdly, it is important to know if the estate comprises of movable or immovable assets and lastly, it is important to know whether the deceased had disposed of some of the property in his lifetime so that such property would not be reckoned with in the distribution of estate⁶

In some parts of Nigeria, especially among the Igbos and Binis of southern Nigeria, the right to the customary law of succession to the estate of the deceased lies exclusively with the eldest son of the deceased. This is known as the primogeniture rule. This rule is more pronounced amongst the Binis and Onitsha communities of south eastern Nigeria. The primogeniture rule allows the

¹ World Intellectual Property Organization 'Customary Law, traditional knowledge and intellectual property: an outline of the issues' <<http://www.wipo.int/export>> accessed 26 February 2023.

² Ibid.

³ Titus K. Adekunle 'Succession and inheritance law in Nigeria: resolving the discriminatory possessory rights of widows and children' (2016) Property Law Review pp. 1-3; See also Moses A. Bello 'Principles and Practice of Succession under Customary Law' (paper read at the Conference workshop of the National Judicial Institute held on 8th May 2015) <nji.gov.ng/workshoppapers> accessed July 22, 2021.

⁴This has been established in a plethora of cases such as *Julie Nezianya v Okagbue* [1963] 1 All NLR 358, *Johnson v Johnson* [1961] 2 All NLR, 743 and other cases. However, in the Supreme Court Case of *Adeniyi Oluwo & Ors v Olabowale Oluwo & Ors*, it was held that a man could give up his own personal law and acquire the customary law of his place of abode.

⁵ Akintunde Emiola, *The Principles of African Customary Law* (Emiola Publishers 2011) 185.

⁶ Ibid.

eldest son to succeed to the property of the deceased, where applicable, upon the death of an individual, his estate passes on to his eldest son or his eldest son's eldest male descendant.⁷ This rule excludes female children or widows and other male children from succession rights. In Benin Kingdom, primogeniture had been in part of the customary laws of succession as far back as 1463 during the reign of Oba Ewuare.⁸ The rule originates from the widely held belief that the eldest son upon the death of his father steps into the shoes of being a father to the younger children. It is thus believed that he holds the property in trust on behalf of his younger siblings, in addition to having a morally binding obligation towards them.⁹

Primogeniture has been in existence in Africa since the early times, although some scholars have argued that its existence is not limited to Africa alone. Its practice has been said to cut across Western societies and even oriental Societies. It has also been said that primogeniture has been indirectly endorsed by various legislations. This has been the case in Uganda where the succession Ordinance of 1906 and subsequent legislations preserved and recognised the application of discriminatory aspects of customary law.¹⁰

This article therefore comparatively examines the primogeniture rule and its application under the customary laws in Nigeria and Uganda. It examines this in relation to women's rights and the changing conceptions of this primogeniture rule. The article posits that primogeniture rule is largely discriminatory against women's rights in Nigeria and this rule still holds sway despite the criticisms against its application and judicial responses to its application. It identifies how judicial interpretations of the rule have attempted to whittle down its effects in the Nigerian Legal System, and how the recent enactment of the Ugandan Succession Act of 2022 has attempted to further uphold women's rights to inheritance in compliance with the Constitution of Uganda. This article adopts the liberal feminist theory and radical feminist theory to argue that women as well as men are rights bearing individuals and as such, should not be allowed to suffer from the oppression that arises from the patriarchal system. This article also highlights the areas of divergence in the judicial responses to primogeniture in Uganda and Nigeria.

Modes of Succession to inheritance in Nigeria

Nigeria consists of 36 states, with Abuja serving as the Federal Capital Territory.¹¹ These states are further separated into the north-east, north-west, north-central, south-east, and south-south geopolitical zones. Islamic law predominately rules succession and inheritance in Nigeria's northern regions, whereas customary inheritance law controls succession in Nigeria's western and southern regions.¹² Customary law of inheritance in the western parts of Nigeria generally applies the best interests of dependants' principle.¹³ According to the various customary laws in Nigeria,

⁷ Adewale Taiwo, *The Nigerian Land Law* (Princeton Publishing 2016) 196.

⁸ Obi Syracuse, *Modern Family Law in Southern Nigeria* (The Government Printer 1977) 337.

⁹ Omotola Jelili 'Primogeniture and Illegitimacy in African Customary Law: The Battle for Survival of Culture' [2003] *Speculum Juris* 181-185.

¹⁰ *Ibid*

¹¹ [Nigeria High Commission 'About Nigeria', retrieved 28 February 2023 at: <https://www.britannica.com/>]

¹² Anthony C. Diala 'Reform of the customary law of inheritance in Nigeria'[2014] *African Human Rights Law Journal* 31

¹³ The dependants' rule posits that legislative or judicial actions taken with respect to customary law of intestate succession must consider the overall welfare of everyone maintained by the deceased person shortly before death. See

modes of succession to inheritance are mostly known and fixed and accepted in the community. These succession patterns vary in accordance with the various customs and ethnicity. The established rule of customary law is that immovable property of a Nigerian vests in his descendants as family property. The exception to this rule is seen amongst the Edos and parts of Igboland where the principle of primogeniture applies. Another exception is where the deceased does not have any male child to inherit his property. In such an instance, it is the brothers of the deceased who are entitled under Igbo customary law.¹⁴

a) Customary law of succession among the Igbos

The Igbos are settled in the south eastern part of Nigeria, they can be found in Abia, Anambra, Enugu, Ebonyi, Imo, Rivers and parts of Delta States. The Igbos place property in high esteem as it is believed that the property belonging to an Igbo man showcases the fruit of labour and also gives him the opportunity of having something to hand down to his successors after his demise. In instances where the deceased has left a will, devolution of property could be very complicated especially if the deceased had substantial wealth during his lifetime.¹⁵

The customary law in Igbo land is not uniform, however, there are similarities between customary law practices among the Igbos in the different states in the south east of Nigeria. For instance, in matters relating to his father's property, the eldest son of the deceased succeeds to the property. He is known as the chief manager and administrator of his father's estate. Where the deceased had more than one wife, each of the eldest sons from the wives takes a part in the distribution of the property. In a situation where the eldest son is dead, his own eldest son inherits the property.¹⁶ According to paragraph 156 of the Customary Law Manual,¹⁷ "The daughters of a man who is survived by daughters only and not by sons do not have the right to inherit his estate or any of his other lands or homes. As a result, it is considered that women have no rights to land at all under Igbo traditional law."¹⁸

Two modes of operation of the Igbo customary rules of succession have been propounded by Nwabueze,¹⁹ The eldest surviving son of the deceased inherits from his deceased father as the new head of family under the first mode of succession. In this case, he holds the inherited property in trust for the other children of the deceased. This mode of succession which operates predominantly among the Igbos does not entitle the first son to do as he pleases with the property but to control it for the benefit of other children. The second mode is by succession to the deceased's property as the sole inheritor. Under this mode of primogeniture which operates among the Binis, the eldest surviving son after the death of his father inherits the property of his late father as the sole inheritor,

Anthony C. Diala 'Reform of the customary law of inheritance in Nigeria: Lessons for South Africa' [2014] 14 African Human Rights Journal 633-654.

¹⁴ Gabriel Uchechi Emeasoba 'An evaluation of the Nigerian judicial attitude to the Igbo customary law of succession'[2020] African Customary and Religious Law Review 11.

¹⁵ Ibid.

¹⁶ Obi Syracuse, *Modern Family Law in Southern Nigeria* (The Government Printer 1977) 339.

¹⁷ Ibid

¹⁸ Yinka Olomajobi 'Human Rights on Gender, Sex and the Law in Nigeria' (Princeton Publishing 2013) 163.

¹⁹ Ben Nwabueze *Nigerian Land Law* (Nwamife Publishers 1974) 400.

this particular mode of succession enables the eldest son have rights over the entire real property of his late father including the *igi-ogbe*.²⁰

The first mode of succession was upheld in *Ejimaike v Ejimaike*,²¹ where the court found that concerning the Onitsha customary law, the eldest son has the right to manage and administer the property of his father for his own benefit and for that of his other siblings. The court also held that this right to succession for the first son is an automatic right that can only be invalidated by the father's directive. This implies that the first son is regarded as a trustee-beneficiary for his brothers and for himself. This practice was also corroborated by Egbuna J in the case of *Ugboma v Ibeneme*²² that among the Igbos, land devolves on all the sons of the deceased as family property and the eldest is regarded as the new family head who doubles as a caretaker in relation to the family property. Although it has been argued by some other scholars that in some other communities in Igboland, the fact that the eldest son is seen as a trustee-beneficiary does not prevent him from disposing of the family property against the wishes of his other siblings. This eldest son not only inherits his father's properties but he inherits his debts as well. He is expected to as part of his obligations take care of his mother and the younger children in the family.²³

Other sons of the deceased have a right to the estate of their deceased father but their own rights are subject to the rights of the first son. In some communities, the practice is that the deceased allots pieces of land to his sons to build thereon, and this differs from the deceased's estate. In accordance with traditional Igbo succession law, women have historically been denied the right to inherit. As a result, the deceased's real estate was not passed on to the deceased's daughters or widows.²⁴ In *Nezianya & Anor v Okagbue*,²⁵ the Supreme Court held that although a woman is no stranger to her husband's family, she would need the consent of the family to occupy his property after his death. According to Bello,²⁶ other than whatever benefits she would receive through her children's inheritance rights, no system grants such a widow any advantageous inheritance rights. Some Igbo communities allow female offspring to inherit their father's compound in joint tenancy with their brothers; in these circumstances, however, the eldest brother still retains ownership of the property.²⁷

In some localities a ceremony known as *nrachi* ceremony is performed on daughters, this procedure is performed on a man's female child who doesn't have any male issues. She is forbidden from getting married in order to have sons in her father's name who could inherit the estate, lands, and homes. This is practiced in some parts of Idemili Local Government Area of Anambra State.²⁸

²⁰ Ibid

²¹ [1972] (2) ESLR 11.

²² [1967] FWLR, 257.

²³ Diala (n 12) 640

²⁴ I P Enemuo, *Basic Principles of Family Law in Nigeria* (Spectrum Books 2008) 398-406.

²⁵ [1963] (1) All NLR 358.

²⁶ Moses A. Bello 'Principles and Practice of Succession under Customary Law' (paper read at the Conference workshop of the National Judicial Institute held on 8th May 2015) <nji.gov.ng/workshoppapers> accessed July 22, 2021.

²⁷ Anthony C. Diala 'A critique of the judicial attitude towards matrimonial property rights under customary law in Nigeria's southern states'[2018] African Human Rights law Journal 100-122.

²⁸ Michael Takim Otu & Miebaka Nabiebu 'Succession to and inheritance of property under Nigerian laws: A comparative analysis' [2021] European Journal of Social Sciences 50-63.

b) Succession under Yoruba customary law

Although this article focuses more on an examination of women's rights and the primogeniture rule under Igbo customary laws, albeit, this segment discusses cursorily the Yoruba Customary law of inheritance and succession. All the deceased's children are eligible to inherit under Yoruba customary law. Both male and female can share equally.²⁹ However, control and management of their deceased father's assets is automatically given to the eldest male child, known as Dawodu. This custom received legal support in *Lewis v. Bankole*.³⁰ Previously among the Yorubas of south western Nigeria, the brothers and sisters of full blood used to succeed to the property of the deceased but this practice has gradually changed and now children of the deceased inherit property to the exclusion of the other next-of-kin. Succession to property among the Yorubas is carried out in two ways, one is by the idi-igi method in which property is distributed per stripes.³¹ The other is through the ori-ojori method in which distribution of property is done according to the number of children the deceased had in his lifetime.³²

Wives are excluded from inheritance under Yoruba customary law. Such a widow is frequently viewed as a potential inheritance asset. It is believed that a woman cannot inherit property in her husband's house because she is perceived to be a non-blood progeny of the family. This perception robs the woman of any succession rights in her husband's family.³³ In *Suberu v Sunmonu*,³⁴ Jibowu F.J held that among the Yorubas, a well-established tradition portrays that a wife cannot inherit her husband's property because she is essentially a chattel that can only be inherited by a member of her husband's family.

This was also reaffirmed by the Supreme Court in the case of *Akinnubi v Akinnubi*.³⁵ It is noteworthy that the Nigerian courts in these cases determined that, despite the custom's potential to cause hardship for women, it does not violate natural justice or morality.

Primogeniture and Women's Rights in Nigeria

Under customary law in Nigeria, the system of patriarchy is a dominant feature which puts the interests of men over and above that of women and ushers in inequality between men and women.³⁶ Patriarchy, as a social, ideological and political system asserts through direct pressure, rituals, traditions, gender, law and customs the roles which women shall or shall not play and subsumes the female under the male.³⁷

²⁹ In *Amusan v Olawumi* [2002] 12 NWLR, 780, 30 the court held that both male and female children were entitled to the property of the deceased under Yoruba customary law and also affirmed that a female child could become the family head.

³⁰ [1909] 1 NLR, 82.

³¹ This mode of distribution facilitates sharing property in accordance with the number of wives the deceased had in his lifetime.

³² Kasunmu A.B and Salacuse J.W, *Nigerian Family Law* (Butterworths 1966) 291.

³³ Makama Godiya Allanana 'Patriarchy and Gender Inequality in Nigeria: The way forward' [2013] 9 (17) European Scientific Journal 115-144.

³⁴ [1957] (2) FSC 31, 33.

³⁵ [1997] (2) NWLR 144. Another case in point on this issue is *Obusez v Obusez* [2001] (15) NWLR 736, 377.

³⁶ Olomojobi (n 18) 165

³⁷ Adrienne Rich *Of Women Born: Motherhood as Experience and Institution* (Virago Press 1977) 126

As stated by Allana, ³⁸ by tolerating gender-differentiated terminology in inheritance rights and legal adulthood, the patriarchal culture frequently sets the boundaries for women's inherently unequal position in households and in the society. Additionally, it supports uneven pay for similar or equal work while also condoning domestic and sexual violence. The primogeniture rule is deeply enshrined in the patriarchal system which is commonplace in Nigeria. Primogeniture has been justified on the assumed belief that a female child is brought up to be married off in the near future, and as such when such female child is married into another man's family, it is impossible for her to come back to her father's house to inherit property alongside her male siblings.

This assertion was stated more recently in the case of *Patrick Noah v Gertrude Ekanem*³⁹ where the appellants asserted that because their aunt Gertrude was a woman and had left the family to marry, she was unable to inherit her sister's property. Even though the court ruled that any native laws or customs that discriminate against women, whether or not they are married, are void and unenforceable, the case was ultimately determined in the aunt's favour.

The primogeniture norm is considered to be the result of a patrilineal custom whose major goal is to preserve family structures, prolong clan lineage, and keep riches within the family. It is also claimed that the principles of male primogeniture ensure that the deceased's dependants are cared for and that the family's continuity is protected.⁴⁰ Along this line of thought, Emeasoba stated that the original objective of primogeniture was to protect the best interests of all the dependants of an intestate under the supervision of the eldest surviving son since pre-colonial times. It was not intended to be a tool of discrimination inside the Igbo traditional family structure.⁴¹

The primogeniture rule has likewise been justified on the basis of spiritual connotations about land ownership in Igbo land. Under Igbo customs, land has a ritual link which connects the living with the ancestral spirits. Only menfolk are considered to be proper custodians of the family land, and are in the best position to relate with the ancestors in this regard as it is believed that women would get married to other men and would not be in the best position to administer land. Other reasons have also been adduced to justify the practice of primogeniture in the areas where it exists today. Another view has it that women's property rights are subsumed into those of the menfolk, thus women may only exit marriage with their clothes and cooking utensils but not with land.⁴²

The position of women under the Marriage Act⁴³ is however different as women generally under the Marriage Act enjoy some form of legal protection in the distribution of assets.⁴⁴ By implication, women have equal inheritance rights as their spouses and are entitled to an inheritance from their spouse's estate, under the customary law pattern, the male is seen as having dominance to dispose of family assets to the detriment of the women. It is submitted that among the communities where primogeniture is practised, this customary law belief is a double-edged sword that deprives the female of inheritance rights both as a female child and as a woman. To a great extent, one can then

³⁸ Allana (n 33) 125.

³⁹ Unreported case Suit No HET/3A/2019 (Akwa-Ibom State High Court, judgement delivered in March 2021).

⁴⁰ Emeasoba (n 14) 19.

⁴¹ Ibid

⁴² Ibid.

⁴³ Cap M3 Laws of Federation of Nigeria 2004.

⁴⁴ Adewale Taiwo, *The Nigerian Land Law* (Princeton Publishing 2016) 202.

rightly state that for women and female children in these communities, customs and traditions have acted as instruments to delimit their rights to property.

There are provisions in various international legal instruments to which Nigeria is a signatory that require state parties to ensure that no one within their territory is discriminated against because of their race, colour, sex, religion, language, social origin, property, birth, or other status.⁴⁵ A constant theme found in these international legal treaties is that these rights should be available to everyone, regardless of gender. As a result, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) states that all forms of discrimination against women should be condemned by state parties, and that policies to eliminate discrimination against women should be pursued by incorporating the principle of equality of men and women into national constitutions and establishing legal protection of women's rights on an equal basis with men.⁴⁶

One of the greatest issues confronting women's access to land and property in Nigeria, according to Ezeillo⁴⁷ is the lack of a legal and policy framework empowering women and guaranteeing them express rights to land in pursuance of CEDAW. Article 13 of the Convention on the Rights of the Child requires state parties to take adequate steps to prevent discrimination against women in various areas of economic and social life. Article 13 flows into the provisions of Article 14 of CEDAW which recognises the particular challenges being encountered by women in rural communities. The unequivocal assertions in these international legal instruments are a pointer to the fact that absence of implementation of proactive legislation to discourage in its entirety discriminatory aspects of our law may jeopardize women's rights to acquire property under customary law.

Discrimination is defined in Article 1 of the CEDAW as "any distinction, exclusion, or restriction made on the basis of sex with the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field." Similarly, Article 18 of the Vienna Declaration and Programme of Action documents that the human rights of both women and the girl child are a part of universal human rights which are inalienable. The African Charter on Human and People's Rights also provides for the equality of every person before the law.⁴⁸

Section 42 of the Federal Republic of Nigeria Constitution (as amended) states that a citizen of Nigeria of any community, ethnic group, place of origin, sex, religion, or political opinion shall not be subjected to disabilities, restrictions, or deprivation solely because of the circumstances of his birth. Women's rights to utilize land and possess property are key components of women's fundamental rights, particularly in Nigeria. When women have access to land and property, gender equality is promoted between men and women and democratic societies are strengthened.

Goal 5 of the Sustainable Development Goals (SDGs) advocates for gender equality and the empowerment of women and girls. This goal recognises that gender equality is a much-needed

⁴⁵ Article 2(1) of the International Covenant on Economic, Social and Cultural Rights.

⁴⁶ Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women

⁴⁷ Joy Ngozi Ezeillo 'Rethinking women and customary inheritance in Nigeria' [2021] 47(4) Commonwealth Law Bulletin 706- 718.

⁴⁸ Article 3 of the African Charter on Human and People's Rights.

foundation for a peaceful and economically viable society.⁴⁹ The targets of this goal specifically seek to end all forms of discrimination against all women and girls everywhere. In order for Nigeria to realize this target, women and children must be able to have access to land and property, especially for women in rural areas. In the urban areas, land is readily available to prospective buyers regardless of the gender of the buyer.⁵⁰ Although, some may argue that access to inheritance rights need not be the determining factor for the realization of an economically viable society, this paper argues that this custom operates to deprive women of their rights to enjoy property rights. It has also segregated them from communal decision-making activities. Many scholars have criticized the primogeniture rule in Nigeria on the grounds that it forbids female children from inheriting.⁵¹ Accordingly, Edu⁵² stated that the application of the rule is skewed against female beneficiaries who are either wives or children.

Jelili⁵³ on the other hand had a contrary view as he pointed out that the custom merely permits the male children to hold the property for the benefit of other children (a trusteeship situation) and does not in any way restrict succession rights to property for female children. It has also been said that the primogeniture rule promotes native ideas and ideals especially the office of the eldest son as the father of the family who has oversight functions over the other members of the family.⁵⁴ Some have argued that primogeniture is a solution to the problem of fragmentation of land tenure.⁵⁵ Following this line of reasoning suggests that with the primogeniture rule, ownership of land by different members of the family becomes impossible but only the eldest who would hold the property in trust for the benefit of other members of the family. This however may not be the ultimate action in instances where the eldest son decides on his own accord (without due regard to other members of the family) to dispose of the property.

The position under Yoruba customary law is that no member of the family can alienate family property without the consent of the family head and important members of the family. If any member of the family sells family property without considering these primary members, the sale is null and void.⁵⁶ In particular, sale of family property by the family head as his own is of no effect.⁵⁷

⁴⁹United Nations ‘Sustainable Development Goal 5 Gender Equality’ (United Nations, 2018)<www.un.org/sustainabledevelopment>accessed 29 July 2021.

⁵⁰ Olomjobi (n.18) 165

⁵¹ For instance, Kagnas F. and Murray C. ‘Law and Women’s Rights in South Africa: An overview’[1994] 1 Acta Juridica.

⁵² O.K. Edu ‘A critical Analysis of the Laws of Inheritance in the Southern States of Nigeria’ [2016] 60(1) Journal of African Law 141-155.

⁵³ Omotola Jelili ‘Primogeniture and Illegitimacy in African Customary Law: The Battle for Survival of Culture’ [2003] Speculum Juris 181-185

⁵⁴ Obi (n 8) 340.

⁵⁵ Reginald Onuoha ‘Discriminatory Property Inheritance under Customary Law in Nigeria: NGO’s to the rescue’ [2008] 10(2) The International Journal of Not-for-Profit Law 29.

⁵⁶ Ekpendu v Erika [1959] 4 FSC 79. Okafor Samuel Obuneme and Aduaka Charles Emenogha ‘Sale of land under native law and custom in Nigeria’]2019] 7(3) International Journal of Innovative Legal and Political Studies 89-96.

⁵⁷ Atunrase v Sunmola [1985] 1 NWLR 1, 105; Okafor Samuel Obuneme and Aduaka Charles Emenogha ‘Customary land law and nature of family property in Nigeria’ [2021] 9(4) International Journal of Innovative Legal and Political Studies pp 42-54

Succession and inheritance in Uganda

The succession law in Uganda can be traced back to the Succession Ordinance of 1906, which was based on English law. Uganda was introduced to British models of succession and inheritance by this Ordinance. The Succession Ordinance did not apply to the estate of natives as well as the estates of Mohamedans as it did not fully provide for testate succession and intestate succession and thus, Ugandans fell back to customary and cultural practices to regulate this area of shortcoming in the Succession Ordinance. The Succession Ordinance 1906 thus subtly paved way for the application of customary law and Islamic Law in matters relating to land in Uganda.⁵⁸ In fact, according to some scholars, it paved way for legal pluralism which exists in Uganda presently.⁵⁹

There are thus, three legal systems operating in Uganda in relation to land. These are customary law, Islamic law and statutory law. All these laws are subject to the 1995 Constitution of Uganda which is the supreme law in Uganda.⁶⁰ Under the application of this law, all deaths must be reported to the Registrar and Administrator General. When heirs of the deceased are unaware of their rights under the uniform succession law, they frequently turn to customary and religious authorities whose rules, while not legally enforceable, are considered as such. Many Ugandans do not even write wills since it is thought that doing so is a belief of impending death. Because of this irrational fear of writing a will, combined with the under-enforcement of official law, the distribution of estates is not governed by any official law or instrument in most circumstances. In such instances, clan elders and religious leaders are tasked with distributing an intestate's estate.⁶¹ The Ugandan Constitution of 1995 recognises land ownership in accordance with customary, freehold, mailo and leasehold land tenure systems.⁶² It also provides that every person has a right to property either individually or alongside with others.⁶³ Article 26(2) also states that no one can be deprived of his or her property interest unless the conditions set out in Articles 26(a) and (b) are met. Article 27 enshrines application of customary law in areas relating to land held under customary law tenure, with the provision that any decision that denies women, children, or people with disabilities access to land ownership, occupation, or usage is unlawful.

The Succession Ordinance of 1906 preserved natives' use of religious and customary law in succession affairs, therefore customary and religious practices continued to influence decisions in succession problems. The customary land tenure system is most prevalent in Uganda, and it means that land is owned and disposed of in accordance with patrilineal conventions and traditions, with access to land governed by community customs, laws, and regulations.⁶⁴

Customary law in Uganda, like in Nigeria, is anchored on a patrilineal tradition that encourages property to remain in male descent and be passed down through future generations. In a patrilineal society, a person's identity and social standing are determined by his father's family and clan.

⁵⁸ Uganda Law Reform Commission 'Study report on the review of laws on succession in Uganda' <<http://www.ulrc.go.ug>> accessed May 31, 2023.

⁵⁹ Ibid

⁶⁰ Article 2(1) Ugandan Constitution

⁶¹ Prudence Kemigisha 'Land tenure regimes and women's land rights in Uganda: Legality and the land legal framework' [2021] 8(1) *Advances in Social Sciences Research Journal* 116-133.

⁶² Article 237(3) Ugandan Constitution; S2 Land Use Act Cap 227

⁶³ Article 26(1) Ugandan Constitution

⁶⁴ Prudence Kemigisha (n 55) 127.

Females are generally ignored in property concerns since the conventional belief is that the men of the community will support females. When a girl matures into a woman and marries, she becomes the property of her new husband, and any offspring she bears are also considered to be her husband's property.⁶⁵ Succession and inheritance by male descent is justified and adopted originally within the context of a communal society where it is believed that men would always cater for all the women and children in the community. This also requires the customary heir to attend to the needs of the deceased's family members.⁶⁶

The rule of primogeniture is significant in the Ugandan customary law of succession. Under this law, the closest male heir is the "customary heir" and serves as both administrator and successor to the deceased's inheritance. If no male descendants exist, the deceased's father or his nearest male descendant succeeds him. Women typically do not participate in the intestate succession system since it is widely held that a woman should not own property. Consequently, the immediate and long-term effect of this rule is that most Ugandan women are landless and depend on others to house them.⁶⁷ Inheritance (if at all) by female children is thus very temporal and lasts only so long as the female child remains unmarried. Such unmarried daughters cannot dispose of the property.⁶⁸ The primogeniture rule has been so applied in spite of the provisions of Article 26 (1) and Article 33(1) of the Ugandan Constitution which describes the status and rights of women and enshrines women's rights to equal treatment with men, and prohibits cultures, customs and traditions against the dignity, welfare or interest of women or which undermine their status as women.

In the same vein, widows may be denied property belonging to their late husband's because such property is deemed to belong to the husband's relatives. The customary practices prevalent in Uganda leave women as well as female children with little or no property rights. The continued deprivation faced by women and female children in matters relating to succession and inheritance under customary law practices in Uganda became pronounced by the effect of the Succession Act 1965. This Act was amended in 1972 by the Succession Amendment Decree, in particular this amendment rescinded equal inheritance rights for spouses and legitimized devolution of residential property to the oldest male descendant.⁶⁹

Liberal Feminist Theory, Radical Feminist Theory and Primogeniture Rule

Feminist theories are useful in evaluating the insightful thoughts about how feminists explain and understand gender subjugation in the society. The theories aim at understanding the causes of, and remedies to gender inequities. This article leans extensively on the liberal feminist theory and the radical feminist theory. The radical feminist theory emphasizes that the underlying root cause of female oppression is the belief that the society is based on the patriarchal value system. Radical feminists thus attribute sex difference as the basis of female gender exploitation by men.⁷⁰ In other

⁶⁵ Alli Tripp 'Women's Movements, Customary law and Land Rights in Africa: The case of Uganda' African Studies Quarterly <<http://www/Africa.ufl.edu>> accessed 12 June 2022

⁶⁶ Ibid

⁶⁷ Valerie Bennett, Ginger Faulk, Anna Koving and Tatjana Eres 'Inheritance Law in Uganda: The plight of widows and children [2006] 7 The Georgetown Journal of Gender and the Law 451- 520.

⁶⁸ Rachel C. Loftspring 'Inheritance rights in Uganda: How equal inheritance rights would reduce poverty and decrease the spread of HIV/AIDS in Uganda' [2007] 29(1) University of Pennsylvania Law Journal.

⁶⁹ Ibid

⁷⁰ Olomojobi (n 18) 10

words, the patriarchal value system empowers men in order to suppress womenfolk. This theory argues in strong terms that women's subjugation and discrimination is a pervasive act of extreme and intense oppression and this comes in the form of patriarchal domination.

The liberal feminist theory on the other hand posits that women and men are rights bearing individuals that ought to be treated equally. The liberal feminist theory has its tenets in fundamental human rights, and as such actively seeks to promote equal rights for all women by eliminating gender inequities through the removal of social and legal constraints to women's equality. Liberal feminism as a theory gained popularity when people began questioning the age-long traditions and hereditary customs widely held in societies.⁷¹ As opposed to classic liberalism that promoted non-involvement of government in areas such as right to property and right to vote as fundamental expressions of individual liberty, the liberal feminism theory argues that the patriarchal structure intrudes on women's political freedom and choices. While this theory seeks no exceptional rights for women, rather it stresses that women should have the same access to rights that men have.⁷²

In applying this theory to this article, elimination of every form of inequitable access to rights for women should be addressed by the state through its machinery. Thus, culture inhibiting access to property for female children should be eradicated to advance equal rights of inheritance between male and female children. Advocates of the liberal theory affirm that individual rationality which is depicted by the ability to reason for the womenfolk is one of the foremost solutions to the male dominance.⁷³ They argue that the ability to reason is advanced by educating the female gender. In line with this, this article also affirms that one of the reasons why female children are unable to resist the male dominance in the form of this primogeniture rule is that they are in most cases indigent and unable to fight for equal rights with their male counterparts in the community. One of the ways by which indigent women can be empowered to have a voice of their own in the society is by educating women and girls.

Judicial interpretation of Primogeniture rule under Igbo customary law in Nigeria

Although the primogeniture rule has been accepted as part of the customs in the areas where it is being practised in Nigeria through a plethora of cases previously outlined, the judiciary has played a major role in an attempt to redefine and give a more positive outlook to the application of the rule. This segment of the article discusses judicial activism on the application of primogeniture rule under Igbo customary laws. In *Muojekwu v Muojekwu*,⁷⁴ the oli-ekpe custom⁷⁵ came up for consideration. In this case, the property which was the subject matter in dispute was owned by the deceased. The property was held under Nnewi custom of Onitsha. The plaintiff in contention

⁷¹ Lucy Bailey 'Feminism, Liberal in 'The Wiley Blackwell Encyclopedia of Gender and Sexuality Studies' Nancy A. Riples (ed) (2016, Wiley and Sons 2016) <www.researchgate/publication> accessed 22 July 2021.

⁷² Bimer Eyayu Enyew and Alemeneh Getaneh Mihreta 'Liberal Feminism: Assessing its compatibility and applicability in Ethiopia context' [2018] 10(6) International Journal of Sociology and Anthropology 59-64. See also Judith Lober, 'The variety of feminism and their contribution to gender equality' <diglib.bis.uni-oldenburg.de/pub> accessed 22 July 2021.

⁷³ Gal Gerson 'Liberal Feminism: Individuality and Oppositions in Wollstonecraft and Mill' [2002] 50(4) Journal of Political Studies 794- 810.

⁷⁴ [1997] (7) NWLR Pt 283, 1.

⁷⁵ The Oli-ekpe custom prohibits the inheritance rights of females and allows the eldest male son to inherit property

claimed that being the eldest surviving in the deceased's family, he had the sole right to the deceased property and not the deceased's defendant daughters. The Court of Appeal struck down the, Oli-ekpe, custom as being repugnant.

The decision in this case marked a turning point in judicial attitude towards the primogeniture rule and women's rights in Nigeria. It appears as though the reasoning and the judgement arrived at in the court opened a new path and thinking towards certain barbaric and discriminatory customs in Nigeria and the need to guard against them. Thus, in *Mojekwu & Ors v Ejikeme*,⁷⁶ the Court of Appeal also reviewed the Oli-ekpe custom in Igboland which forbids female gender from inheriting land, and held that the custom was repugnant and contrary to natural justice, equity and good conscience. Similarly, in *Ukeje v Ukeje*,⁷⁷ the daughter of the deceased had sued the deceased's wife and son in a suit instituted at the Lagos High Court on the grounds that she was one of the deceased's children and thus entitled to take part in the administration of her deceased's father's estate. The trial court gave judgement in her favour and held that she was thus entitled. The case went on appeal to the Court of Appeal where the decision of the trial court was upheld. At the Supreme Court, the decision of the court of Appeal was also upheld and the court ruled that irrespective of the circumstances of birth of a female child, such female child was entitled to an inheritance from her father's estate. The court held that the Igbo customary which disqualified a female child from inheritance was a violation of section 42 of the Nigerian Constitution. Specifically, Rhodes-Vivour JSC stated

No matter the circumstances of the birth of a female child, such a child is entitled to an inheritance from her late father's estate. Consequently, the Igbo customary law which disentitles a female child from partaking in the sharing of her deceased father's estate is in breach of section 42(1) and (2) of the Constitution, a fundamental right provision guaranteed to every Nigerian. The said discriminatory customary law is void as it conflicts with section 42(1) and (2) of the Constitution.

Speaking of the restriction of women from inheriting property, the Supreme Court in *Anekwe v Nweke*,⁷⁸ stated that a custom of this sort in a twenty-first-century societal setting will only serve to portray the absence of human civilization. It is barbaric, uncivilized, and serves mainly to safeguard the selfish continuance of male domination, with the goal of restricting the rights of women in the given community.

The current state of Primogeniture rule in Nigeria

The aftermath of the decision of the Supreme Court in *Ukeje v Ukeje* sparked off a series of reactions especially from the Ndigbo who are custodians of the Igbo culture and tradition. While some applauded the courts' decision, others described the decision as an attempt to provoke chaos and skirmishes among various Igbo communities. In another light, Ezenagu⁷⁹ commended the decision of the Supreme Court, saying that granting females' access to their fathers' property is

⁷⁶[2000] (5) NWLR Pt 657,402.

⁷⁷[2001] (27) WRN 142.

⁷⁸ [2014] (9) NWLR Pt 1412, 393

⁷⁹ Itodo Osi 'Supreme Court decision on female inheritance divides Igbo' *Vanguard Newspaper*(Lagos, August 26, 2020)<accessed July 22, 2021>

natural, adding that it would give them a sense of belonging in the society. As stated by Ojilere⁸⁰, the pronouncements of the superior court of record in Nigeria may have disregarded the primogeniture rule, however, salient gaps may however defeat or impede the essence of the noteworthy decisions. Ojilere continued that skepticism and reluctance to let go of old customs and traditions may be a major hindrance to the actualisation of women's rights to inheritance and succession. Ojilere further affirmed that contrary to popular belief and modernization, majority of individuals particularly in Igboland still pattern their lives according to the prevalent customary law. Kuforiji⁸¹ likewise asserted that the execution of a verdict removing the primogeniture system is likely to be challenging because the inheritance custom is deeply ingrained in Nigerian culture and is likely to be resisted by the men folk in traditional communities.

Diala⁸² however saw the effects of the pronouncement of the Nigerian Supreme Court in another dimension. To Diala, although the primogeniture rule has been long abolished for its incompatibility with the provisions of the 1999 Constitution, this decision has failed in its entirety to address the social context of inheritance. Diala opined that the social settings in which inheritance rules operate ought to adapt to changes in the society to protect not only women, but also younger male children. Diala thus recognised that the application of the primogeniture rule and the decisions made by the Nigerian Supreme court protects the womenfolk to the detriment of younger male children.

As stated by Onuoha et al,⁸³ rural people's adherence to patriarchy, primogeniture, and the practice of customary intestacy/succession pose severe challenges to existing constitutional protections of equality and non-discriminatory property rights, as well as the advancement inherent in those guarantees. Other challenges could be the culture of silence which promotes continued silence in the face of apparent violation of personal rights. This culture of silence is mostly attributed to the women folk in Nigeria. Onuoha further stated that although in Nigeria and in some parts of Africa, women are denied property rights as a result of local land tenure systems which derive their legitimacy from indigenous customs, most women in this category are unwilling, financially disadvantaged, or too timid to litigate these customary violations unless they receive some form of assistance to enable them to pursue their rights.⁸⁴

This article however argues that although the intendment of the Nigerian Supreme court is to uphold women's rights to inheritance to promote equality amongst gender, the situation is different from what is obtainable in these communities. The patriarchal nature and the culture of male dominance is a threat to women equality in these societies. It is also submitted that rules of this nature impede the capacity of women to support their children's education and economic development. For women who are still being denied of their rights to inheritance, a way out of this quagmire is to resort to litigation for the enforcement and realization of their right. The landmark

⁸⁰Aloy Ojilere 'Expanding women's rights to inherit immovable property in Igboland beyond the limits of *Ukeje v Ukeje* [2020] 2(3) JoCLEP 30-38.

⁸¹O.M. Kuforiji 'Recent development on inheritance law in Nigeria' <<http://escr-net.org>> accessed 8 August, 2021.

⁸²Anthony C. Diala 'A critique of the judicial attitude towards matrimonial property rights under customary law in Nigeria's southern states'[2018] African Human Rights law Journal 100-122.

⁸³Reginald Onuoha, Aloy Ojilere and Titus Igwe 'New directive for securing African women's right to property under Customary law: the case of Nigeria' [2019] 35(1) Asian Women 95-119.

⁸⁴Ibid

decisions of the court outlined previously will support sympathy of the Nigerian courts towards the plight of women. In addition to this, the principle of *stare decisis* makes the courts bound to follow the decisions made by them. Litigation however plausible can only be achieved when there is monetary power to prosecute claims.

Cultural relativism and Primogeniture in Nigeria

Culture plays an important part in an individual's life since it connects a people's values and traditions to their heritage and ancestry. Cultural relativism expresses cultural diversity in diverse civilizations across the world.⁸⁵ Cultural relativism is an ideology that outlines how the culture of a certain group is described and understood within that community's environment. Cultural relativism opposes a 'one-size-fits-all' approach to the universality of human rights in favour of a subjective approach to culture. According to cultural relativism, beliefs, practices, and ethical conduct exist in relation to the society from which they emerge and, as such, are not universal.⁸⁶ This means that a person's views and actions must be understood in connection to his or her own culture. Thus, a person would not criticize another person's culture based on his own criteria of defining what is right or bad, but rather understand whatever cultural practices a people had in accordance with their own cultural context.⁸⁷ Cultural relativism may help to understand the context within which primogeniture has evolved and why this custom is still being practised in these communities despite the courts pronouncements on the discriminatory aspects of this rule. Where cultural relativism is upheld in relation to primogeniture, then the thoughts and reactions of prominent Igbo people in response to judicial pronouncements on the application of same become relatable. For instance, Tony Okafor, a public affairs commentator said 'You do not give a judgment that not only negates the tenets of age-long tradition and foists disharmony in families where women scorn and wantonly abandon marriage and return home to cause trouble with their male siblings'⁸⁸

The exact point where cultural relativism become relevant in support of the practice of primogeniture is that primogeniture is well known, understood and accepted custom among the Igbos. Common beliefs that are subjective to the Igbo people in promoting primogeniture include the fact that ancestral property belongs exclusively to the male children of a man and not to the female children and primogeniture enables landed property to remain in the custody of the family (held on trust by the eldest male for the benefit of the other children. These beliefs are held in common by the Igbo people.

Judicial Attitude to Primogeniture in Uganda

⁸⁵ J. Donnelly 'Cultural relativism and universal human rights'(1984)(6) Human Rights Quarterly p. 401<<http://www.heonline.com>> accessed 12 March 2023.

⁸⁶ Jonathan O. Chimakonam and Ada Agada 'The sexual orientation question in Nigeria: Cultural relativism versus Universal Human Rights concerns' (2020) Journal of Sexuality and Culture <<http://www.doi.org/10.1007/s/1219-020.09>> accessed 12 March 2023.

⁸⁷ Khan Academy 'Cultural relativism' <khanacademy.org/test> accessed 6 February, 2023

⁸⁸ Tony Okafor 'Female inheritance: Supreme court, Igbo culture in head-on collision' Punch *Newspapers* (Lagos, September 8, 2020) <<http://www.punchng.com>> accessed March 12, 2023.

Unlike in Nigeria where primogeniture exists despite the provisions of the law declaring such traditional customs as discriminatory and archaic, in Uganda, the application of primogeniture rule was initially backed up by the provisions of statute. This is as reflected in the provisions of the Succession Act of 1972 in the following ways. First, the legal heir, who is the nearest male lineal descendant and typically the eldest son, is given possession of the family residence. Second, the deceased's daughters were only given a limited right to reside in the residence until they married or attained the age of twenty-one, at which point the legal successor might legally evict them. As a result, the law restricts a daughter's claim to maintenance from the estate on the condition of her being unmarried, but a son's entitlement to maintenance is not so conditioned.⁸⁹

This inequality in inheritance under customary law was thus vividly supported by statutory law. As stated by Bennet et al⁹⁰ the inequality in Uganda's Succession Act expresses both customary and religious concepts based on the premise that the male heir has complete authority and ownership of the family property. This is not to say that there has been no litigation whatsoever pertaining to traditional practices of inheritance in Uganda. In *Ddamulira v Najikoba*⁹¹, a case on appeal from the Ugandan High Court, the respondent had instituted a suit in the High Court on a claim for trespass and a declaration that the appellant was not entitled to the disputed land. One of the issues that came up for consideration at the court was that the appellant was not entitled to the land as a result of patriarchal claim in the clan which was said to defy the deceased's distribution to his female children. The court upheld the provisions of Article 26(1) of the Ugandan Constitution which protects the right to own property and affirmed that both male and female children should exercise this right equally. The court held further that it was unjust and unfair for the appellants and clan leaders to deprive the respondent of her property.

Similarly, in *Sophia Beihi & 3ors v Nangobi Jane & 2ors*⁹², the case dealt with family property which was given to the respondents by their late father before his demise. The other sons of the deceased (the appellants thereafter threatened and intimidated the respondents on the basis that they were daughters and because of custom, were not entitled to share in their father's land. It was argued for the respondents that under the customary law of the Basoga, as it is the case in other areas of Uganda, female offspring have a right to acquire a share of their parents' land, and thus the conduct of the appellants in this case was discriminatory of the respondents because they are women and contrary to the provisions of Article 33 of the Constitution of Uganda which grants women rights of full and equal dignity of the person. The Court held that the respondents were the rightful owners of the property having acquired same as a gift inter vivos.

The origin of legal pluralism in Ugandan laws is traceable to the Succession Ordinance of 1906 which preserved the application of both customary law and religious laws by natives in succession matters. Thus, Ugandans who preferred customary way of handling succession continued to apply customary practices alongside statutory law. The Succession Ordinance of 1906 was replaced with the Succession Amendment Decree of 1972 which was replicated in the Succession Act Cap 162

⁸⁹ Elizabeth Cooper 'Inheritance practices and the intergenerational transmission of poverty in Africa' <<https://www.papers.ssrn.com>> accessed 21 June 2022

⁹⁰ Valerie Bennett, Ginger Faulk, Anna Koving and Tatjana Eres 'Inheritance Law in Uganda: The plight of widows and children [2006] 7 The Georgetown Journal of Gender and the Law 451- 520

⁹¹ [2021] UGHCCD 236

⁹² [2010] UGHC 15

of 1972. The Succession Act was mainly discriminatory on the basis of sex and its continued application put women at a disadvantaged position when compared with men.⁹³ In the case of *Ugandan Women Lawyer's Association & 5 ors v Attorney General*,⁹⁴ the petitioner sued to have several provisions of the Divorce Act declared void on the grounds that they discriminated against the female gender on the basis of sex, and were thus inconsistent with Articles 21(1) and Article 31 of the Ugandan Constitution. The court held that the provisions of the Divorce Act were inconsistent with the Constitution.

Primogeniture and Women's Rights in Uganda

The divergence which hitherto existed between statutory and customary law in Uganda prior to the enactment of the Succession Amendment Act 2022 will be discussed briefly. In some instances, where statutory law mandates something, the application of customary law illegally undermines its application. This happens despite the fact that when both statutory and customary laws apply, statutory law must take precedence. Thus, notwithstanding the existence of statutory rules and the Ugandan Constitution which is the supreme law in the land, traditional practices such as primogeniture and denial of women's rights to land and property continued unabated through the use of customary law.⁹⁵ Inequality in inheritance was supported by both statutory law and the informal use of customary and Islamic laws in Uganda, despite the fact that the people of Uganda embraced the ideal of gender equality over a decade ago when the country ratified one of the most progressive and democratic constitutions in Africa today.

Due to the nature of the Succession Laws in Uganda which discriminated against women's property rights in itself, there were a number of calls for legislative interventions and repeal of the laws rather than judicial interpretation of the provisions of the law. For instance, a number of studies were commissioned to identify the gaps and weaknesses in the Succession Act of 1962 with a view to amend the law.⁹⁶ These commissioned studies showed in practice that the culture and tradition was more relied upon to govern succession matters in Uganda, and the laws on succession were largely unused to the extent that even if a Will was written by the deceased, customary practices still superseded the written Will.⁹⁷

In the early 1990s, women in Uganda requested that the Constitutional Drafting Commission require Parliament to "repeal all discriminatory legislation and adopt laws that do not discriminate against women. They identified the continued application of inheritance laws in Uganda as laws under which the majority of women have continued to suffer deprivation."⁹⁸ The enactment of the 1995 Constitution of Uganda thus represented the first step in reform towards protection of women's rights generally. The Land Act of 1998(as amended) while recognising customary land

⁹³ Uganda Law Reform Commission 'Study Report on the review of the Laws of Succession in Uganda' (2013) <<http://www.ulrc.go.ug>> accessed 18 June 2022

⁹⁴ [2004] UGCC 1

⁹⁵ Rachel C. Loftspring 'Inheritance rights in Uganda: How equal inheritance rights would reduce poverty and decrease the spread of HIV/AIDS in Uganda' [2007] 29(1) University of Pennsylvania Law Journal.

⁹⁶ For instance, the Kalema Commission of Inquiry Study of 1965, the Study of Women and Inheritance in Bushenyi District of July 1994 and the Uganda Law Reform Commission Study on the Law of Succession to name a few.

⁹⁷ Uganda Law Reform Commission 'Study report of the review of the Laws of Succession in Uganda' <<http://ulrc.gov.ug>> accessed 18 June 2022

⁹⁸ Leslie Hannay 'Women's Land Rights in Uganda' (2014) <<http://www.landsea.org>> accessed 22 June 2022

tenure system was another step towards emancipation of women's rights. S27 of the Land Act forbids the application of customary law where such customary law denies women the rights to own and/or occupy land. The 2013 National Land Policy of Uganda acknowledges the failure of the erstwhile Ugandan formal laws to overcome discriminatory practices and thus called for overhaul of the statutory regime to tackle the issue of discrimination.⁹⁹

On the 10th of April 2022, the President of Uganda assented to the Succession (Amendment) Act 2022. This new regulation tried to address the gaps in the law of succession in Uganda by making amendments to the Succession Act of 1972 thereby according equal rights to both men and women in Uganda.¹⁰⁰ The main motive behind the amendment to the erstwhile Succession Act was to bring in new provisions to align the Ugandan law on succession with recent court judgements that had challenged the constitutionality of the Succession Act 1972. Notable features of the 2022 Act include:

- a. Disposal of residential property can now only be carried out with the consent of lineal descendants and the living spouse. This provision has been said to likely end the habit of rendering widows homeless after the death of their spouse.
- b. Another feature of the 2022 Act relates to the rights of divorced women to stake a claim in the estate. The 2022 Act now provides that a woman, whether divorced or not has a valid claim to the estate especially on the property acquired during the subsistence of the marriage.¹⁰¹

Conclusion

It should be noted that culture as a way of life of a people should evolve over time to reflect modernization and urbanization. This article has comparatively examined the interplay between aspects of culture and women's rights to inheritance in Nigeria and Uganda, and has seen that there is a remarkable distinction between what has been judicially noted and what obtains in reality. The feminist theories expatiated in this research have also sought to understand why culture as a way of life in this regard has not evolved over time to reflect changes in our value system. It would also appear that customs and traditions that subjugate women and female children are the basis of discrimination against the female gender in Nigeria and Uganda. The effective implementation of the 2030 Agenda for Sustainable Development is not attainable without access to justice. Specifically, Goal 10 which seeks to reduce inequalities within and among countries can only be achieved when no one (including women) is excluded from living a better life. Access to property for women is a pointer to economic and financial independence for women. This research is thus inclined to suggest that for women whose rights have been violated, the court of law is the last hope for them. However, in order to prosecute a case to a reasonable conclusion in the Nigerian courts, monetary power is needed to support litigation. A suggested solution to this is to make legal aid available to indigent women who cannot prosecute their claims. Repeated orientation and reorientation is required to consciously uphold the rights of women against the patriarchal system

⁹⁹ *ibid*

¹⁰⁰ Tumukunde & Associates 'Flash at the new succession law in Uganda' <<http://www.tumukundeadv.com>> accessed 31 May, 2023.

¹⁰¹ Parliament of the Republic of Uganda 'What new amendments to the Succession Act mean' <<http://www.parliament.go.ug/news/5646>> accessed 1 June 2023



of belief. Stiffer sanctions can be given for violations of the Constitution which discourages discrimination in any form.