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The Legal Position Of Bequeathing A Married Woman As A Chattel Under The Nigerian Property And Succession Law: An Appraisal

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ABSTRACT

This study examines the legality of bequeathing a married woman as property capable of testamentary disposition or customary inheritance upon the death of her husband. Although the constitution under sections 34 and 42 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) affirm the dignity and equality of all persons, vestiges of patriarchal customary practices, particularly widow inheritance, continue to generate doctrinal and practical tensions within Nigeria's plural legal system. This study argues that any testamentary clause, provision or customary rule purporting to treat a woman as inheritable property is unconstitutional, null and void, repugnant and contrary to public policy. Adopting a doctrinal research methodology, the study highlighted on conceptual clarifications of the key terms. To make good scholarship impact of the subject, the study interrogates statutory provisions, judicial precedents, and theoretical foundations distinguishing persons from property or chattel. It critically analyses landmark decisions such as *Ukeje v. Ukeje* and *Anekwe v. Nweke*, demonstrating a decisive jurisprudential shift from customary subservience toward constitutional equality. While constitutional supremacy has dismantled the legal fiction of "wife inheritance" as a form of ownership, significant enforcement gaps persist in rural communities (villages). This article concludes that the inheritance of a legally married woman as property is legally impossible under modern Nigerian law, and proposes legislative harmonization, institutional strengthening, and community-based legal education as reform measures necessary to bridge the chasm between law in the books and law in action.

Keywords: Married Women, Property, Succession Law, Widow and Widow Inheritance.

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1.0. INTRODUCTION

The question of whether a legally married woman may be bequeathed as property, or treated as part of her deceased husband's estate, raises some of the most profound constitutional, jurisprudential, and human rights concerns confronting Nigerian succession law today. For centuries, certain customary practices across various Nigerian communities (villages) recognized widow inheritance as a socio-cultural mechanism for preserving lineage continuity and retaining property within a patrilineal system. Under such arrangements, a widow was not merely a grieving spouse, she was seen as a transmissible resource, property passed from the estate of her deceased husband to his male kinsmen as though she were livestock, land, chattel, or property.[1] The contemporary survival of such practices, whether as express customs or veiled testamentary instructions, stands in stark and irreconcilable tension with constitutional guarantees of human dignity and non-discrimination that Nigeria has formally embraced.

Nigeria operates a plural legal system, one of the most structurally complex in the world, which consists of received English common law, statutory law, and indigenous customary law, each operating with distinct normative assumptions about personhood, property, and family.[2] Within this plural framework, succession law remains a particularly contested subject matter. The regime applicable to a given estate, whether the Administration of Estates Law, the Wills Law, customary law rules, or some hybrid thereof, depends on the nature of the marriage contracted, the religious affiliation of the parties, and the State in which the deceased was domiciled. These variables create a complex legal landscape in which discriminatory customary norms can survive by finding refuge in jurisdictional ambiguity.

The core doctrinal problem addressed in this article is the persistent dissonance between formal statutory and constitutional protection of women's rights and the stubborn survival of discriminatory customary inheritance practices. The tension is not merely academic. Where a testator purports, by will, to "hand over" his widow to a brother or kinsman, or where a family council exercises customary authority to "inherit" the widow of a deceased member, real women suffer real violations of their dignity, autonomy, and property rights. This is not a matter of cultural sensitivity or anthropological curiosity; it is a matter of constitutional law and fundamental human rights.[3] This study advances the thesis that any testamentary or customary attempt to treat a legally married woman as inheritable property constitutes a violation of the Right to Dignity of the Human Person[4] and Freedom from Discrimination[5] as provided for under of the Constitution.[6] Provisions of customary law, or terms of any will, that purport to authorize such treatment are void *ex facie* by reason of constitutional supremacy as guaranteed by the Constitution.[7] Far from being a novel or radical proposition, the study is increasingly confirmed by the Supreme Court's own jurisprudence, most notably in *Ukeje v. Ukeje*[8] and *Anekwe v. Nweke*[9], which together represent a definitive constitutional reckoning with discriminatory succession norms.

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[1] A. Oke,. *Inheritance Laws and the Protection of Women's Rights in Nigeria.* (NJGS 2017), 3(1), 134-135.

[2] T. Elias, *The Nature of African Customary Law* (Manchester University Press 1956) 23.

[3] A. Obilade, *The Nigerian Legal System* (Sweet & Maxwell 1979) 10-15.

[4] *CFRN* 1999, s34.

[5] Ibid s42.

[6] Constitution of the Federal Republic of Nigeria 1999 (as amended).

[7] 1999, s1(3).

[8] *Ukeje v. Ukeje* [2014] 11 NWLR (Pt. 1418) 384 (SC).

[9] *Anekwe v. Nweke* [2014] 9 NWLR (Pt. 1412) 393 (SC).

2.0 CONCEPTUAL CLARIFICATION

2.1 Married Woman

A married woman is an adult female legally or customary united in matrimony with a spouse usually of the opposite gender, typically formalized through married ceremonies or legal documentation depending on the jurisdiction or the country.[10] This union often involves certain rights, responsibilities, and societal roles assigned to her. Marriage is defined as a union between a man and a woman that is formally recognized by law.[11] In most legal systems, a married woman has certain legal rights, responsibilities, and societal roles assigned to her, which may vary across cultures, religions and legal systems.[12] Under the Nigerian law, a married woman has the right to inherit her husband's property, make decisions on behalf of her husband, and be entitled to marital property in the event of divorce or separation. She is also recognized as her husband's partner in a contract or other legal agreements.[13]

Under the Nigerian law the rights of a married woman concerning inheritance and property succession are governed by both statutory and customary laws. These rights vary based on the nature of the marriage which could be statutory or customary and the laws governing the distribution of the estate of the deceased. A woman that is married has the legal, statutory right to own properties.[14] The position of a married woman under the Nigerian succession law is multifaceted and multi-dimensional. The legal framework provides for property rights and inheritance, but disparities persist, particularly in the customary law context. The existing legal reforms aim to protect the property rights of women, but challenges remain, particularly in rural and traditional settings where customary practices prevail.

2.2 Widow

A widow is defined as a woman whose marriage was legally recognized at the time of her spouse's death, regardless of her marital status post-death.[15] A widow is a woman whose spouse has died and has not remarried.[16] In a legal and social contexts, the status of being a woman often carries implications for inheritance, property rights and social contexts. A woman who has lost her partner in the context of marriage and may be entitled to certain benefits or protections.[17] A widow is a woman entitled to certain rights and privileges upon the death of her husband.[18] These rights typically pertain to inheritance, property ownership, and entitlement to survivor benefits such as pensions or social security.[19] Widowhood for women is not just a personal experience, it is a socially constructed phenomenon influenced by cultural, religious, and gender norms. The transition from being a wife to a widow can be profoundly isolating, as it often signifies a loss of social status, emotional support and economic stability.[20]

Unlike their male counterparts (widowers) who may suffer the loss of companionship, widows often confront a more complex web of societal expectations. In many cultures, widows are expected to grieve publicly, and their mourning can in some communities be put under intense scrutiny. Widows may also face pressure to live a life of austerity or modesty, with some cultures even imposing restrictions on their remarriage.[21] Historically, widowhood was often viewed with a sense of pity, and

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[10] T.A. Ayodele '*The Concept of Marriage in Nigeria Statutory Law'* JNL 34(2), 2017, 56-78.
[11] Marriage Act, Cap. M6, 1914, s3.
[12] S.O. Chukwu, *'Women's Rights in Nigerian family Law'* Nigerian Law Review 15(3), 2019, 122-139.
[13] UN Women, *'Marriage and Family Life'* available at www.unwomen.org, accessed on the 6 March 2026.
[14] *CFRN* 1999 (as amended) s42, 43.
[15] *Jones v. Life Assurance Co*., (1942) 1 All ER 383, 389.
[16] *Lima v. National Pension Fund.*, (1978) 2 SC 275, 278.
[17] S. John. *Understanding Family Law* (New York: Legal Press, 2010) 154.
[18] *Uchendu v. Uchendu* (2007) 12 NWLR Pt. 1048, 1052.
[19] A. Rachel. 'Widowhood and Legal Rights in Contemporary Society. '(JFL2019)' 45, 2: 202-205.
[20] D. Jane. 'The Social Impact of Widowhood in Urban Settings'. International Sociology Review 32, 4 (2017): 540-545.
[21] Global Legal Insitute. *'Womens Legal Status and Inheritance Laws'* (London 2021), 111.

in some societies, widows were marginalized or even oppressed. In ancient Rome, for example. a widow was often required to mourn for a set period and her status was closely monitored by society. In some cultures, widows are subjected to practices such as sati (the practice of self-immolation of forced burning of widows) in India or levirate marriage, where the widow was required to marry her deceased husband's brother.

2.3 Property

Property is a comprehensive legal term that refers to any item, asset or right that can be owned, controlled or possessed. Property can be defined as an anything that can be owned or possessed by an individual or a group of individuals, including rights to land, goods, or other assets.[22] It is not just the right of physical possession but as a bundle of rights that include rights to transfer, lease and enjoy the property. [23] Basically the types of properties are real and personal property. Real property encompasses interests in land and fixtures or structures upon the land. While personal property encompasses tangible or corporeal things like chattels or goods like a car or a table. It also includes certain intangible or incorporeal legal rights, choses in action, such as copyright and other intellectual property rights, shares in a corporation, beneficial rights in trust property, rights in superannuation and some contractual rights. Property can be in the context of land.[24]It encompasses both tangible and intangible assets and includes real property (land and buildings), personal property (movable goods) and intellectual property (non-physical assets such as patents, copyrights and trademarks).[25] Property is an extension of one's personhood and a fundamental right to one's labor. Some Scholars have argued that property is not just a matter of individual rights but has social implications.[26] Property can be further classified as private or public, with private property being owned individuals or legal entities and public property being owned by the government for the use of the public.[27] Property encompasses both tangible and intangible assets that can be owned or controlled. This means that even intangible property (such as rights, royalties or intellectual property) could be subject to ownership and protection under the Nigerian law.[28]

2.4 Succession Law

Succession law refers to the body of legal principles and rules that govern the transfer of a person's property, rights, and obligations following their death. This area of law primarily addresses issues such as inheritance, the distribution of estates, the validity of wills, and the administration of a deceased person's estate.[29] Succession law is rooted in the principle that upon on individual's death, their rights and obligations does not vanish but are transferred to others, usually their heirs or beneficiaries. The main objectives of succession law are to regulate the inheritance process, determine who is entitled to the deceased's estate and provide a legal framework for the administration of estates.[30] The transfer of ownership from the deceased to their heirs can take place through testate succession (via a will) and intestate succession (where there is no will). Testate succession occurs when the deceased leaves a valid will, which expresses their wishes regarding the distribution of their property and assets. A will is a legal document created by a testator (the owner of the will) that specifies how their estate should be distributed upon death. It also addresses other matters such as the appointment of an executor to administer the estate or the appointment of guardians for minor

[22] *Ezeoke v. Odo* (1988) 4 NWLR (Pt.87) 129.
[23] *Ajao v. Olayemi* (1991) 3 SC 219.
[24] Property and Conveyancing Law, 1959, s1.
[25] R. O'Hara, (2020). '*Introduction to Property Law'* Harvard Law Review, 112(5), 240-267.
[26] J.Waldron. (1988)., *The Right to Private Property, 8(3) 60-78.*
[27] A. Nwoke,. *"Legal Perspectives on Property in Nigerian Law"* (ALJ 2017), 33(1), 25-47.
[28] *Chukwuma v. State* (1991) 7 NWLR (Pt. 205) 563.
[29] R. Aderemi, (2015). *Wills and Succession Law in Nigeria*: An Overview. NJL, 20(2), 112-113.
[30] *Okoye v.Okoye* (1983) 4 SC 95.

children.[31] For a will to be valid, it must adhere to the legal requirements set out by the jurisdiction in which it is made. These may include the testator's mental capacity, the presence of witnesses.

While intestate succession occurs when a person dies without leaving a valid will. In such cases, the distribution of the deceased's estate is determined by the laws of intestate succession in the jurisdiction where the person resided at the time of their death. These laws typically establish a hierarchy of heirs, who are entitled to inherit the estate in predetermined proportions. Intestate laws seek to provide a fair and equitable distribution of the estate, reflecting the presumed intentions of the deceased, but they may not always align with the deceased's actual wishes, highlighting the importance of having a valid will.[32]

2.5 Widow Inheritance.

Widow inheritance refers to the rights, benefits and entitlements of a widow regarding the distribution of her late husband's estate.[33] This includes property, assets, as well as social and familial rights that may affect her living arrangements, wellbeing and role within the family.

Widow inheritance is a very complex issue within the inheritance law, as it involves the rights, benefits and entitlements that will be given to a widow upon the death of her husband. These rights may vary widely depending on the jurisdiction, the presence or the absence of a will, the culture of the place that the widow resides, and the legal framework in place. Widow inheritance often intersects with customary, statutory and sometimes Islamic or religious laws, creating a nuanced understanding of what a widow is entitled to after her husband's death.[34]

In many cases, a widow is entitled to a portion of her husband's estate by virtue of her marital relationship. A widow cannot be denied or prevented from benefitting from her husband's properties.[35] However, the distribution and inheritance process may vary, especially where the decease left behind children, other wives, or extended family members. In Nigeria, customary law plays a significant role in the inheritance of property.[36] Customary law governs personal property, land, and in some cases, the customs surrounding widow inheritance may conflict with statutory laws, particularly regarding to women's rights. For example, in some traditional Nigerian societies, a widow may inherit property, but the distribution is often subject to community decisions and the influence of male relatives, including brothers or uncles of the deceased.[37]

3.0 THE CONCEPT OF PROPERTY AND LEGAL PERSONHOOD.

The distinction between a legal person and an object of property is one of the most fundamental organizing principles of private law. Property, in both common law and civil law traditions, refers to a bundle of rights exercisable over things, *res*, external to the legal subject. The legal subject, or *persona*, is the bearer of rights and duties, not an object over which rights may be exercised.[38] This conceptual binary, subject and object, person and thing, has informed legal systems across history and across jurisdictions. To treat a person as property is, in the most technical and precise sense of the term, a legal and logical impossibility under any system that recognizes human beings as possessing legal personality. Modern Nigerian law is unambiguous in conferring full legal personality on

[31] J. Onwuka,. *Testate and Intestate Succession; A Comparative Analysis of Nigerian Law and English Law.* (JCLS 2010), 12(4), 45-47.

[32] T. Abiola *Probate Laws in Nigeria: A Legal Framework for Estate Management.* (Lagos Law Review 2009), 8(3), 101-102.

[33] *Umar v. Umar* (2006) 6 NWLR (Pt.976) 123.

[34] *Odeyemi v. Odeyemi* (2003) 9 NWLR (Pt.826) 223.

[35] *Akpan v. Akpan* (2008) 15 NWLR (Pt.1122) 55.

[36] J.O. Olusegun, (2006). *Customary Inheritance Practices and Their Impact on Widows in Nigeria.* JNLS, 12(2), 29-30.

[37] P. Ademola, (2011). *Widow Inheritance in Traditional African Society and the Law*: NEAJCL, 8(4), 67-69.

[38] W. Hohfeld, *'Fundamental Legal Conceptions as Applied in Judicial Reasoning'* (1913) 23 Yale LJ 16, 21-22; A. Honore, 'Ownership' in A.G. Guest (ed), *Oxford Essays in Jurisprudence* (OUP 1961) 107.

women. The Married Women's Property Act,[39] applicable in several states, expressly recognizes a married woman's capacity to own and deal with property in her own name. The Constitution itself, prohibits any discrimination in the application of any law on grounds of sex.[40]

A woman cannot, therefore, simultaneously be a rights-bearing legal subject with constitutional protections and an inheritable object that forms part of a deceased's estate. The conceptual impossibility of this dual status is not merely philosophical abstraction; it is a doctrinal foundation upon which the entire critique advanced in this study rests. It is worth noting, historically, that early English common law, which Nigeria received through colonialism, did recognize, in certain attenuated forms, the subsumption of a wife's legal identity into that of her husband upon marriage.[41] The doctrine of *coverture* treated a married woman as civilly dead, incapable of holding property, contracting, or litigating independently.[42] However, this doctrine was progressively dismantled in England through the Married Women's Property Acts of 1870 and 1882, and was never transplanted in its fullest form into Nigerian statutory law. Whatever residual influence it may have exerted has been decisively superseded by constitutional guarantees. The ghost of coverture, however, arguably haunts some customary inheritance practices that continue to regard a widow as an extension of her husband's property rather than as an autonomous legal person.

3.1 Testamentary Freedom and Its Constitutional Limits

The principle of testamentary freedom holds that a testator may dispose of all property beneficially owned at the date of death, subject to any applicable rules on forced heirship, family provision, and public policy. In Nigeria, this freedom is most fully expressed in relation to statutory marriages governed by the Wills Law.[43] However, testamentary freedom is emphatically not absolute, and its limits are as important as its scope. A will cannot create rights that the testator did not possess in life. A man who holds no legal title to his wife, because she is a person and not a thing, cannot purport to dispose of her by testamentary instrument. The will is void *ab initio* in relation to such a clause, not merely voidable or subject to disclaimer.[44] The invalidity arises not from any procedural defect but from the fundamental legal impossibility of the object of the gift. Courts will not give effect to testamentary provisions that are illegal, impossible, contrary to public policy, or that purport to dispose of something that the testator had no power to give.[45] The constitutional dimension reinforces this conclusion. Even if, by some tortured legal reasoning, one were to suggest that certain communities recognize a husband's customary "authority" over his wife that might be transmissible, the Constitution renders void any law, including customary law, that is inconsistent with the Constitution.[46] No amount of customary sanction can elevate a practice into constitutional validity. The supremacy of the Constitution is not a principle to be balanced against cultural tradition; it is an absolute legal norm from which no derogation is permitted.[47]

3.2 The Repugnancy Doctrine: A Critical Appraisal

Long before the Constitution of 1999 decisively resolved the tension between customary norms and individual rights, Nigerian courts possessed a doctrinal tool for refusing to apply customary practices

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[39] Married Women's Property Act 1882 (UK), as applicable in several Nigerian States by virtue of the Interpretation Acts and received English law principles.

[40] *CFRN* (as amended) 1999, s 42(1).

[41] W. Blackstone, *Commentaries on the Laws of England*, Book 1 (Clarendon Press 1765) 430: "By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage."

[42] (n41).

[43] Wills Law of Lagos State, Cap W2, Laws of Lagos State 2015; comparable Wills Laws exist in other States.

[44] C. Sherrin and R. Barlow, *Williams on Wills* (10th edn, Lexis Nexis 2014) para 35.1; I.E. Sagay, *Nigerian Family Law: Principles, Cases, Statutes and Commentaries* (2nd edn, Malthouse Press 2004) 246.

[45] Ibid.

[46] *CFRN* (as amended) 1999, s1(3).

[47] *A.G Abia State v. A.G Federation* [2002] 6 NWLR (Pt. 763) 264.

that offended fundamental principles of justice: the repugnancy doctrine. Under the Evidence Act,[48] and its statutory predecessors, customary law is only applicable where it is "not repugnant to natural justice, equity and good conscience" and is "not incompatible either directly or by necessary implication with any law for the time being in force." The repugnancy doctrine was not, of course, without its own ideological baggage. Applied in the colonial period, it sometimes served as a vehicle for imposing Eurocentric values on indigenous practices that were merely different, not unjust. Critics have rightly observed that the doctrine's application was inconsistent and sometimes racially inflected. [49] Yet, whatever its colonial origins, the doctrine has been domesticated and constitutionalized in post-independence Nigerian jurisprudence. Applied to widow inheritance, the result is clear: a practice that treats a human being as heritable chattel, that strips a woman of her autonomy, forces her into a new conjugal arrangement without consent, and denies her independent access to property, is manifestly repugnant to natural justice, equity, and good conscience. No court that applies this standard faithfully could reach any other conclusion.

3.3 Legal Pluralism as Both Problem and Solution

Legal pluralism, the coexistence of multiple normative orders within a single polity, is both the structural cause of the problem under examination and, potentially, part of its solution. It is the problem because legal pluralism creates regulatory gaps and jurisdictional ambiguities that discriminatory customary practices exploit. A widow in rural Anambra State may never encounter the formal legal system; her fate is determined by family councils applying customary norms that no court has ever reviewed. In this sense, legal pluralism preserves space for the perpetuation of human rights violations.[50] Yet legal pluralism also contains resources for reform. Customary law is not static; it evolves in response to social, economic, and normative pressures. Courts have repeatedly acknowledged that customary practices do and must change with changing times.[51] Legal pluralism, reconceived not as a hierarchy in which customary law occupies the lowest rung but as a dynamic field of normative interaction, can accommodate the gradual constitutionalization of customary succession norms. The challenge is to accelerate and embed this process through legislative, judicial, and community-based interventions.

4.0 THE LEGISLATIVE ARCHITECTURE OF SUCCESSION AND MARRIAGE IN NIGERIA

4.1 The Constitutional Foundation

The [52]Constitution is the grundnorm of the Nigerian legal order. Section 1 declares it supreme, and Section 1, provides that any law inconsistent with its provisions shall be void to the extent of its inconsistency.[53] In matters of succession and inheritance, the relevant constitutional provisions are Sections 34, 42, and 43.The former provides that every individual is entitled to respect for the dignity of his person, and accordingly no person shall be subjected to any form of inhuman or degrading treatment.[54] The treatment of a widow as heritable property, whether by testamentary clause or family council decision, is not merely disrespectful; it is, on any reasonable construction, degrading. It reduces a human being to the status of livestock, robs her of her autonomous will, and subjects her to the authority of persons to whom she owes no legally recognized obligation of obedience.

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[48] Evidence Act 2011 (as amended), s 14(3). The earlier statutory formulation was in s 14(3) of the Evidence Act, Cap E14, LFN 2004.

[49] M. Chanock, *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia* (Cambridge University Press 1985) 4-10.

[50] B. Morse and G. Woodman (eds), *Indigenous Law and the State* (Foris Publications 1988) 12.

[51] *Agbai v. Okogbue* [1991] 7 NWLR (Pt. 204) 391, 416.

[52] *CFRN* 1999 (as amended).

[53] *CFRN* 1999 (as amended), s1(1), (3).

[54] s34(1)(a).

Similarly, it provisions prohibits discrimination against any citizen of Nigeria on account of sex, among other grounds, in the application of any law.[55] It is difficult to conceive of a more explicit case of sex-based discrimination than a succession rule that applies exclusively to widows, never to widowers, and that treats women, and only women, as transmissible assets within a deceased's estate. Such a rule discriminates on the basis of sex both facially and in its operational effect, and accordingly falls squarely within the prohibition in the section referred to above. The grundnorm further emphasized on the right of every citizen to acquire and own immovable property anywhere in Nigeria.[56] Where widow inheritance operates to dispossess a woman of the matrimonial home, farming lands, or other assets she occupied and used during marriage, it operates as an expropriation by private customary law, one that is constitutionally impermissible.

4.2 The Marriage Act and Its Succession Implications

The Marriage Act,[57] which governs statutory marriage in Nigeria, is the primary legislative instrument recognizing civil or "monogamous" marriage. A marriage under the Act is a voluntary union for life of one man and one woman to the exclusion of all others. The Act thus premises the marriage relationship entirely on the mutual consent and legal equality of the parties. It confers on neither spouse any proprietary claim over the other's person. Under the received principle of English law applicable to statutory marriages, a wife retains full legal personality during and after the marriage. She is not subsumed into her husband's legal identity. Upon his death, she is entitled to her share of his estate; she is not herself a component of that estate. Any attempted testamentary disposition of her person is, therefore, not only conceptually absurd but legally impossible under the framework the Marriage Act establishes.

4.3. Wills Law and Administration of Estates.

The Wills Law of the various states, modelled largely on the English Wills Act 1837, governs the formal validity of testamentary instruments for persons married under the Marriage Act.[58] The essential requirements for a valid will are: capacity, intention (*animus testandi*), formality, and the existence of property over which the testator has power to dispose. The last requirement is determinative for present purposes. A testator can only bequeath what he owns. He does not own his wife. He has no *ius disponendi*, no power of disposal, over her person. A clause purporting to "give" or "hand over" his wife to any person is not merely morally objectionable; it is formally invalid for want of subject matter over which the testator had testamentary power.

The Administration of Estates Law further regulates the distribution of a deceased's assets among beneficiaries. A widow is a beneficiary of her husband's estate; she is not a component of it. The distinction is elementary but apparently requires continued assertion in the face of customary practices that have not fully internalized the implications of the statutory framework.[59]

4.4 The Violence Against Persons Prohibition Act 2015

The Act,[60] represents a significant legislative intervention in the protection of women from harmful traditional practices. The Act is a federal law enacted to eliminate all forms of violence and harmful practices against individuals, particularly women and girls. One of the issues addressed by the Act relates to harmful widowhood practices and economic abuse, which often include denial of inheritance rights to women. While its primary focus is on violence, the Act's prohibition of "harmful traditional practices", defined broadly to include cultural practices imposed on the basis of

[55] s42(1).

[56] s43.

[57] Marriage Act, Cap M6, LFN 2004.

[58] Wills Law of Lagos State (n10); Wills Law of Ogun State 1996; comparable legislation exists in all States.

[59] Administration of Estates Law of Lagos State, Cap A2, Laws of Lagos State 2015; comparable legislation applies in other States.

[60] Violence Against Persons (Prohibition) Act 2015, s46.

sex that cause physical, emotional, or psychological harm, is directly relevant to the practice of widow inheritance. The VAPP Act is presently in force in the Federal Capital Territory as a federal statute, though many states have enacted comparable legislation. Its principles, however, are instructive in understanding the legislative trajectory: the Nigerian legislative framework is increasingly inhospitable to practices that instrumentalize women as objects of family control.

Many customary practices in Nigeria historically denied widows and female children the right to inherit property and also prevents act such as disinheritance, property grabbing, and forcing a widow out of her matrimonial home. The act provides that a person that subjects a widow to a harmful traditional practices commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine nit exceeding ₦500,000 or to both.[61] It is important to note that economic abuse refers to a situation where a person is intentionally deprived of financial resources, property, or inheritance rights. Denial of inheritance therefore qualifies as economic violence under the Act.[62]

5.0 THE JURISPRUDENTIAL TRAJECTORY: FROM CUSTOMARY SUBSERVIENCE TO CONSTITUTIONAL EQUALITY

5.1 The Early Jurisprudence: Accommodation and Ambivalence

The earliest Nigerian cases dealing with customary succession norms reflect a judicial posture of cautious accommodation. Colonial and early post-independence courts were reluctant to exercise the repugnancy doctrine aggressively, partly from a desire to respect indigenous cultural values and partly from the absence of a strong constitutional framework against which to test customary rules. The result was a body of case law that tolerated significant discrimination against women in succession matters, while occasionally striking down the most egregious abuses.

A. *Nezianya v. Okagbue [1963] 1 All NLR 352*

An early and instructive case is *Nezianya v. Okagbue*,[63] decided by the Supreme Court in 1963. The case concerned the scope of a widow's rights in her deceased husband's estate under Onitsha customary law. The Court held that a widow holds the matrimonial property in a form of qualified occupancy, a right of residence and user, rather than a full proprietary interest. Crucially, however, the Court distinguished her status from that of a chattel; she was not to be regarded as part of the estate itself. [64] This distinction, while important, was insufficiently developed to provide comprehensive protection. The case illustrates a judicial attempt to mediate between customary norms and evolving conceptions of women's status, without fully committing to the constitutional logic that would later emerge.

5.2 The Constitutional Turn: Ukeje and Anekwe

A. *Ukeje v. Ukeje [2014] 11 NWLR (Pt. 1418) 384.*

The Supreme Court's decision in *Ukeje v. Ukeje*[65] is the most consequential Nigerian judicial authority on the intersection of customary succession law and constitutional equality. The case is an offshoot of a dispute over the estate of Lazarus Ogbonnaya Ukeje, who died intestate. His wife and children, including two daughters, sought to share in the estate under customary law. The customary law of the Igbo, as applied in Lagos State, excluded female children from inheriting their father's estate.

The Supreme Court, in a decision of profound jurisprudential significance, unanimously held that the Igbo customary law rule disinheriting female children was void and of no effect, being inconsistent with Section 42(1) of the 1999 Constitution. His Lordship, Rhodes-Vivour JSC, delivering the lead

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[61] VAPPA 2015, s15.

[62] A.A. Yusuf, '*Women's Property Rights and the Nigerian Legal System'* (2016) 5JCLA 72.

[63] *Nezianya v. Okagbue* [1963] 1 All NLR 352 (SC).

[64] Ibid.

[65] *Ukeje v. Ukeje* (n4) 384.

judgment, stated that "any customary law rule that seeks to discriminate against persons on the basis of sex is inconsistent with the Constitution." The Court made it abundantly clear that constitutional supremacy is not negotiable, and that no customary practice, however longstanding or culturally embedded, survives a direct constitutional challenge where it discriminates on the ground of sex. The implications of *Ukeje's case* for the present analysis are immediate and decisive. If female children cannot be disinherited from their father's estate on the basis of their sex, *a fortiori* a wife cannot be constituted as an element of that estate on the basis of hers. *Ukeje*[66] establishes the constitutional framework within which widow inheritance as property must be evaluated: it is discriminatory, it is sex-based, and it is unconstitutional.

B. *Anekwe v. Nweke [2014] 9 NWLR (Pt. 1412) 393*

Similarly, like *Ukeje*, the Supreme Court's judgment in *Anekwe v. Nweke*[67] addressed a customary law rule that denied a widow and her female children the right to inherit the matrimonial home. The Court, per Ogunbiyi JSC, struck down the practice in emphatic terms, describing it as "uncivilised and repugnant to natural justice, equity and good conscience."[68] The judgment is notable not only for its conclusion but for its doctrinal method: the Court deployed both the constitutional equality guarantee and the repugnancy doctrine simultaneously, demonstrating that these analytical tools are complementary rather than alternatives.

Together, *Ukeje* and *Anekwe* constitute a jurisprudential revolution in Nigerian succession law. They represent the Supreme Court's decisive repudiation of the notion that customary law may treat women, whether as wives, daughters, or widows, as legal objects rather than legal subjects. These decisions do not merely resolve particular disputes; they establish a constitutional template within which all succession norms, customary or otherwise, must now be evaluated.

C. Additional Judicial Precedents

1. Mojekwu v. Mojekwu [1997] 7 NWLR (Pt. 512) 283

In *Mojekwu v. Mojekwu*,[69] the Court of Appeal invalidated the "Oli-ekpe" custom of Nnewi, which vested the estate of a deceased man in his nearest male agnate even where female children survived. The Court held this practice repugnant and discriminatory. Although the decision predates the more sweeping constitutional analysis in *Ukeje*, it demonstrates that the trajectory toward constitutional equality in succession law has been consistent and progressively more assertive.

2. Muojekwu v. Ejikeme [2000] 5 NWLR (Pt. 657) 402

In this case,[70] the Court of Appeal again confronted a discriminatory Igbo customary practice, the "Nrachi" custom, which permitted a father to detain a daughter in perpetual spinsterhood in order to acquire male grandchildren through her to continue his lineage. The Court struck down this custom as repugnant to natural justice and contrary to the constitutional right to dignity of the human person. The *Nrachi* custom is, in important respects, analogous to widow inheritance: both treat a woman's reproductive and conjugal autonomy as a family asset to be controlled, directed, and disposed of by patrilineal kinsmen. Both are, on the reasoning of these authorities, constitutionally invalid.

D. A Synthesis: The Emerging Constitutional Canon

Reading these cases together, a coherent constitutional canon emerges. Nigerian courts, and in particular the Supreme Court, have consistently held that: (i) customary law rules that discriminate against women in succession matters on grounds of sex violate Section 42 of the Constitution; (ii) customary practices that treat women's persons or autonomy as objects of family control are repugnant to natural justice, equity and good conscience; and (iii) no degree of cultural tradition or community consensus can insulate a discriminatory customary practice from constitutional review.

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[66] Ibid.

[67] *Anekwe v. Nweke* (n5) 393, per Ogunbiyi JSC.

[68] Ibid.

[69] *Mojekwu v. Mojekwu* [1997] 7 NWLR (Pt. 512) 283 (CA).

[70] *Muojekwu v. Ejikeme* [2000] 5 NWLR (Pt. 657) 402 (CA).

The legal position on widow inheritance as property is, therefore, not genuinely uncertain at the level of doctrine. The uncertainty lies at the level of implementation and enforcement.

6.0 CRITICAL ANALYSIS: THE PERSISTENCE OF UNCONSTITUTIONAL PRACTICES

1. Socio-Cultural Inertia and the Limits of Legal Formalism

The gap between formal legal doctrine and lived social reality is a recurring theme in socio-legal scholarship, but nowhere is it more acute than in the relationship between Nigerian constitutional law and rural customary practice. The Supreme Court may declare widow inheritance unconstitutional from the bench in Abuja, but the widow in a remote Enugu or Benue village may never learn of that declaration. Her circumstances are determined not by the law reports but by the family council meeting in the compound on the evening after her husband's burial.

Socio-cultural inertia is a powerful force. Patriarchal traditions do not yield simply because a superior court has disapproved them. They are embedded in cosmological belief systems, kinship obligations, and economic structures that formal law addresses only tangentially. Where widow inheritance serves the economic function of ensuring that land and conjugal labor remain within the patrilineal group, its persistence reflects rational responses to the absence of formal social security mechanisms, not merely irrational hostility to women's rights.[71] Legal reform that does not address these underlying structural incentives will remain incomplete.

2. Institutional Failures and Access to Justice.

Even where affected women are aware of their legal rights, access to justice presents formidable obstacles. The formal court system, with its procedural requirements, legal costs, geographical remoteness, and procedural delays, is practically inaccessible for the majority of Nigerian women in rural settings. The customary courts, which might be more accessible, sometimes perpetuate rather than correct the very practices that constitutional law condemns. Customary court judges, many of whom are themselves steeped in the traditions they are asked to adjudicate, may lack the constitutional literacy to apply the reasoning of *Ukeje* and *Anekwe* to cases before them.[72]

The National Human Rights Commission,[73] which is mandated to promote and protect human rights in Nigeria, has not consistently engaged with discriminatory succession practices as a human rights issue requiring proactive institutional response. The Commission's reactive, complaint-driven mandate is poorly suited to addressing practices that most victims are unable or afraid to report. A more proactive, monitoring-oriented mandate is required.

3. The Misuse of Testamentary Language

A peculiarly modern manifestation of the problem is the use of testamentary instruments, that is, wills, to encode customary succession arrangements, including the "transfer" of a widow to specified kinsmen. Such instruments exploit the formal legitimacy that a written will provides while pursuing objectives that are constitutionally impermissible. A will executed with the requisite formalities and attested by independent witnesses is presumptively valid on its face; its substantive invalidity may not be immediately apparent to those who encounter it.

Probate courts and legal practitioners bear a specific responsibility in this regard. Any clause in a will purporting to dispose of a living person as property should be identified as void and severed from the valid provisions of the instrument. The duty of a lawyer advising on the drafting of a will includes the

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[71] D. Bryceson, '*Ganyu Labour in Malawi and Its Implications for Livelihood Security Interventions' (2002) 34 Agricultural Systems* 1.

[72] A. Whitehead and D. Tsikata, *'Policy Discourses on Women's Land Rights in Sub-Saharan Africa'* (2003) 3 Journal of Agrarian Change 67.

[73] National Human Rights Commission Act, Cap N46, LFN 2004 (as amended) by the NHRC (Amendment) Act 2010).

duty not to give effect to instructions that are unlawful, and the duty of a probate court includes the power to decline to give effect to provisions that violate constitutional norms.[74]

4. The "Consent" Fallacy

Defenders of widow inheritance sometimes argue that where a widow consents to the arrangement, that is, accepts the new conjugal relationship with her late husband's kinsman, no legal wrong arises. This argument misconceives the nature of both consent and constitutional rights. First, the structural conditions under which a widow in a traditional community"consents" to inheritance are rarely consistent with the free, informed, and voluntary consent that law requires to legitimate an arrangement affecting personal autonomy. Social pressure, economic dependence, fear of disinheritance, and cultural conditioning are pervasive factors that vitiate genuine consent.

Second, and more fundamentally, constitutional rights cannot be contractually waived where the waiver operates against public policy. The right to dignity and the right to freedom from discrimination are not merely private entitlements that individuals may relinquish at will; they are public rights, guaranteed by a constitutional order that operates in the interests of the entire society.[75] A purported "consent" to widow inheritance no more validates the practice than a purported consent to slavery would validate a contract of enslavement.[76]

7.0 THE INTERNATIONAL AND REGIONAL HUMAN RIGHTS DIMENSION

A. The African Charter on Human and Peoples' Rights

Nigeria ratified the African Charter on Human and Peoples' Rights in 1983, and the Charter was domesticated into Nigerian law by the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.[77] The Charter, having been incorporated into domestic law by statute, carries the force of federal legislation and must be given effect by Nigerian courts alongside domestic statutes.[78]

Article 2 of the Charter prohibits discrimination on grounds of sex. Article 3 guarantees equality before the law. Article 5 prohibits all forms of exploitation and degradation of persons, and specifically prohibits degrading punishment. Article 18(3) provides that the State shall ensure the elimination of every discrimination against women. Taken together, these provisions reinforce and amplify the constitutional guarantees in Sections 34 and 42 of the 1999 Constitution, and provide an additional layer of legal authority for the proposition that widow inheritance as property is unlawful.

B. The Protocol to the African Charter on Women's Rights (Maputo Protocol)

The Maputo Protocol,[79] which Nigeria signed but has not yet fully domesticated, provides the most detailed and progressive articulation of women's rights under the African human rights system. Article 6 protects the rights of women in marriage, requiring free and full consent. Article 20 expressly provides that a widow shall have the right to continue living in the matrimonial home and to choose whether to remain with her husband's family or not, a direct repudiation of the practice of compulsory widow inheritance.

While the Protocol's domestic legal status in Nigeria remains imperfect for want of full domestication, its provisions constitute interpretive guidance for Nigerian courts applying

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[74] Rules of Professional Conduct for Legal Practitioners 2007, (*prohibition on facilitating client fraud or illegality*) r15(3)(d).

[75] *CFRN* 1999 (as amended), s45 (only derogations expressly permitted by the Constitution are permissible, and dignity under s34 is a (non-derogable right).

[76] *Ransome-Kuti v. A-G Federation* [1985] 2 NWLR (Pt. 6) 211.

[77] African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, LFN 2004.

[78] *Abacha v. Fawehinmi* [2000] 6 NWLR (Pt. 660) 228 (SC), per Ogundare JSC (holding that the African Charter, having been domesticated, is part of Nigerian law and must be given effect).

[79] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), adopted 11 July 2003, OAU Doc CAB/LEG/66.6, arts 6, 20.

constitutional provisions relating to women's rights. Courts have increasingly drawn on international instruments as aids to constitutional interpretation, even absent formal domestication.[80]

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

Nigeria ratified CEDAW in 1985.[81] CEDAW Articles 15 and 16 require States Parties to ensure equality between men and women before the law, in marriage, and in family relations, including matters of ownership and disposal of property. Article 16(1)(h) specifically requires States to ensure equal rights of spouses in respect of ownership, acquisition, management, administration, enjoyment, and disposition of property.

Nigeria has not domesticated CEDAW into domestic legislation in the manner contemplated by Section 12 of the Constitution, which requires an Act of the National Assembly to give domestic legal effect to international treaties. Accordingly, CEDAW does not itself create directly enforceable rights in Nigerian courts.[82] However, as with the Maputo Protocol, CEDAW remains an important interpretive resource.[83] The CEDAW Committee's General Recommendation No. 21 on equality in marriage and family relations expressly identifies "bride inheritance" practices as incompatible with CEDAW obligations, providing authoritative international guidance on the normative status of such practices.[84]

D. The UN Declaration on the Elimination of Violence Against Women

The UN Declaration on the Elimination of Violence Against Women,[85] adopted by the General Assembly in 1993, defines violence against women to include harmful traditional or customary practices prejudicial to the health of women. The Declaration specifically identifies practices that subjugate women on the basis of sex as forms of gender-based violence. While non-binding as a matter of international law, the Declaration reflects a global normative consensus that practices such as widow inheritance constitute not merely discrimination but violence.

8.0 CONCLUSION

The question posed by this article, whether a legally married woman may be bequeathed as property or treated as part of her deceased husband's estate, admits of only one legally coherent answer under modern Nigerian law: she cannot, and any attempt to do so is without legal foundation. The argument for this conclusion rests not on any contested or evolving norm, but on the most fundamental principles of Nigerian constitutional law, statutory interpretation, and private law theory. A person is not property. A rights-bearing legal subject cannot be the object of a testamentary gift. Constitutional guarantees of dignity and equality cannot be overridden by custom, however longstanding.

The Supreme Court's decisions in *Ukeje* and *Anekwe* have provided the definitive judicial articulation of this position, building on a decades-long trajectory from the cautious mediation of *Nezianya* through the assertive constitutional turn of *Mojekwu* to the unequivocal supremacy reasoning that now governs the field. The inheritance of a legally married woman as property is, in doctrinal terms, a dismantled legal fiction, a relic of an era in which women's legal personality was subordinated to patrilineal customary authority.

What remains is the gap between doctrine and practice, the chasm between the jurisprudential clarity of the law reports and the social reality of family councils applying customary norms without reference to, or knowledge of, constitutional precedent. Bridging this gap is the central challenge of

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[80] *Mojekwu v. Iwuchukwu* [2004] 11 NWLR (Pt. 883) 196 & *Abacha v. Fawehinmi* (n 35) 270 per Achike JSC.

[81] Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW), arts 15, 16.

[82] CFRN 1999 (as amended), s 12(1).

[83] *Abacha v. Fawehinmi* (n 35) per Ogundare JSC.

[84] I.E. Sagay, *Nigerian Family Law* (n 11) 15.

[85] UN General Assembly, *Declaration on the Elimination of Violence Against Women,* A/RES/48/104, 20 December 1993.

succession law reform in Nigeria. It demands legislative action to harmonize the plural legal framework; institutional reform of customary courts and the National Human Rights Commission; sustained investment in community-based legal education; and judicial training to ensure consistent application of constitutional norms.

The stakes are not merely academic. Behind every discussion of repugnancy doctrine and testamentary theory is a real woman, a widow, newly bereaved, whose grief is compounded by family council members who assert that she, like the land and the livestock, must be redistributed. Nigerian law tells her she is a person, a human being, not a property or chattel. The task now is to ensure that truth reaches every woman in Nigeria and to stop the marginalization of women in Nigeria.

9.0 RECOMMENDATIONS

A. Legislative Harmonization: A Uniform Succession Act.

The most structurally important reform is the enactment of a uniform national succession law that would apply consistently across all States and in respect of all marriages, whether statutory, customary, or Islamic. The current patchwork of Wills Laws, Administration of Estates Laws, customary law rules, and religious personal law creates precisely the kind of regulatory lacunae that discriminatory practices exploit. A comprehensive Succession Act, modelled on best comparative practice and firmly grounded in the constitutional equality framework, would eliminate the possibility of forum-shopping between customary and statutory regimes.

Such legislation should expressly provide: (i) that no provision of a will and no rule of customary law may treat any living person as property or as the object of a testamentary gift; (ii) that any such provision is void and of no effect; (iii) that a widow retains full legal capacity and all constitutional rights upon her husband's death; and (iv) that the widow's right to remain in the matrimonial home is protected, at minimum for the period of administration of the estate.

B. Strengthening the Customary Court System.

Customary courts are the frontline institutions through which most Nigerians in rural communities access succession-related dispute resolution. Their reform is essential to the effective implementation of constitutional principles at the grassroots level. Reform measures should include: mandatory constitutional literacy training for customary court judges; the incorporation of gender equality principles into the training curricula for customary court personnel; the establishment of clear appellate channels from customary courts to magistrate and High Courts with the authority to apply constitutional norms; and the introduction of lay assessors with specific expertise in gender and human rights issues.

C. Proactive Mandates for the National Human Rights Commission.

The National Human Rights Commission Act[86] should be amended to include an express and proactive mandate to identify, monitor, and respond to discriminatory customary succession practices as human rights violations. The Commission should be empowered to conduct investigations, receive complaints, issue recommendations, and, in appropriate cases, initiate proceedings in the Federal High Court to challenge customs that violate constitutional rights. A dedicated gender unit within the Commission, adequately resourced and staffed, would be an important institutional mechanism for addressing this issue systematically rather than reactively.

D. Community-Based Legal Education and Awareness

The most constitutionally sophisticated judgments of the Supreme Court are ineffective if they are unknown to those most affected by the practices they condemn. A sustained, multi-institutional programme of community-based legal education is an essential complement to doctrinal and legislative reform. Such a programme should involve: collaboration between the Nigerian Bar Association, civil society organizations, and traditional rulers' councils; the training of community paralegals, especially women, as legal first responders; the use of community radio, local languages,

[86] National Human Rights Commission Act (n31), s5.

and other accessible media platforms; and the specific engagement of religious and traditional leaders, whose normative authority in communities often exceeds that of formal legal institutions.

E. Judicial Training and Attitude Reform

Judges, including those in the superior courts, are not immune to the cultural assumptions that permeate their social environment. Judicial training programmes that address gender bias in succession and family law, covering both doctrinal knowledge and attitudinal dimensions, are necessary to ensure consistent application of constitutional principles. The National Judicial Institute should incorporate gender justice as a core theme in its judicial education curriculum, with specific modules addressing the constitutional framework governing customary succession practices.

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