Paradigm Academic Press
Law and Economy
ISSN 2788-7049
AUG. 2023 VOL.2, NO.8

Another Work in *Chidoluo v. Attansey* from the Pricing of the 1999 Constitution of the Federal Republic of Nigeria (as Amended)

PhD. Godwin Emeka Ngwu[1] & LLB. Collins Ugochukwu Akpusi[2]

[1] Lecturer and Head of Department of Private Law, Enugu State University of Science and Technology

[2] Solicitor and Advocate of Supreme Court of Nigeria

Correspondence: PhD. Godwin Emeka Ngwu, Lecturer and Head of Department of Private Law, Enugu State University of Science and Technology.

doi:10.56397/LE.2023.08.04

Abstract

For many decades, the rights of the girl child in Igboland were practically non-existent with regards to inheritance. It was the popular believe that a female child will grow up to leave her father's house and 'belong' to another man and so should not partake in the sharing of the family property — a direct violation of section 42 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). This gave rise to the age long disinheritance of the girl child in the estate of her deceased father. Her brothers were always quick to point out this 'disability' plaguing their sisters and in some extreme cases even embellished it with insults and ridicules. This case comment carefully x-rayed the input that the case of *Chidoluo v. Attansey* has made to better the lot of the female child and help her find her place in a society that has ostracized her for too long. It was distilled that despite previous judgments of courts including the apex court in Nigeria, the problem had persisted hence the instant case sought to re-emphasize that the female child is neither incapacitated nor diminished in any way by virtue of her sexual orientation and equally entitled to inherit under the Igbo native law and custom. This case comment sought to encourage the acceptance of the female child as a legitimate part of the family, allowing her to take part in the God given inheritance in the family that she belongs. No matter the circumstances of the birth of a girl child under the Igbo native Law and Custom, such a child enjoys the right to inherit from her deceased father's estate.

Keywords: female, inheritance, Customary Law, Igboland

1. Introduction

The instant case emanated from the squabble between the descendants of late Chinwuba and Esther Attansey who died intestate. The 1st respondent is the daughter of Christiana Attansey the daughter of the deceased and the 2nd respondent is son born to Godwin Attansey, the son of the deceased. The respondents are therefore grandchildren of the deceased and claim that as lineal descendants of both Chinwuba and Esther Attansey, they were legally entitled to apply for letters of administration to administer the property in dispute. On their part, the appellants' case was that the 1st respondent was not entitled to share in the grandfather's property because she is a female and her mother was married to Aniagboso family; that the 2nd respondent was not a legitimate son of late Godwin Attansey, as there was no proof of the marriage between his mother, PW1 and late Godwin Attansey; and that the letters of administration and other documents in the joint names of the respondents were obtained by fraud, forgery and misrepresentation and therefore liable to be set aside.

The trial court in its judgment held that the letters of administration granted on 14th March 2007 in the joint names of the respondents were obtained by fraud and set same aside. It ordered new letters of administration to be issued by the Probate Registry to the 2nd respondent and the 2nd appellant in their joint names to jointly

administer the property in dispute and granted to the respondents a share each in the proceeds of the rent collected from the property. Aggrieved by the judgment, the 2nd and 3rd appellants appealed to the Court of Appeal. The plaintiffs are also not satisfied with a portion of the judgment. They accordingly sought and obtained leave of the court and filed a cross appeal.[1]

2. Facts of the Case

The respondents commenced an action against the appellants by a writ of summons issued at the High Court of Kano State claiming a declaration that by virtue of the letters of administration granted to them on 14th March 2007 by the Probate Registrar of the court, they were solely and exclusively entitled to administer and manage the property situated at No. 13 Ibadan Road, Sabon Gari Kano State which belonged to late Chinwuba and Esther Attansey; an order of perpetual injunction restraining the 1st appellant, his officers, servants, agents, privies or otherwise from trespassing on, interfering or intermeddling with their management and administration of the property; an order compelling the 1st appellant to file a comprehensive account of his stewardship of the property; and an order directing the 1st appellant to pay respondents percentages of the rents collected.

The 2nd and 3rd appellants filed a joint statement of defence. They counter-claimed for a declaration that the purported letters of administration and other documents in the joint names of the respondents were all premised on acts of criminality, conspiracy, forgery, fraud, and impersonation and as such could not confer legal rights and interests on the respondents; an order setting aside the purported letters of administration and other documents in the joint names of the respondents based on their fraudulent acts; and a perpetual injunction restraining the respondents from trespassing on the property in dispute or disturbing or interfering with its management.

The 1st respondent is a grandchild and a lineal descendant of both late Chinwuba and Esther Attansey, parents of late Godwin Attansey and Christiana Attansey and on whom the property in dispute devolved. Christiana Attansey was the 1st respondent's mother and sibling to Godwin Attansey.

According to the respondents, as lineal descendants of both Chinwuba and Esther Attansey, they were legally entitled to apply for letters of administration to administer the property in dispute.

On their part, the appellants' case was that the 1st respondent was not entitled to share in the grandfather's property because she is a female and her mother was married to Aniagboso family; that the 2nd respondent was not a legitimate son of late Godwin Attansey, as there was no proof of the marriage between his mother, PW1 and late Godwin Attansey; and that the letters of administration and other documents in the joint names of the respondents were obtained by fraud, forgery and misrepresentation and therefore liable to be set aside.

At the trial, the 2nd respondent tendered exhibits "C", "D" and "E" and were admitted in evidence without objection in proof of his paternity as a child of the late Godwin Attansey. The 2nd respondent's birth certificate was exhibit "C".

At the conclusion of trial, the trial court in its judgment held that the letters of administration granted on 14th March 2007 in the joint names of the respondents were obtained by fraud and set same aside. It ordered new letters of administration to be issued by the Probate Registry to the 2nd respondent and the 2nd appellant in their joint names to jointly administer the property in dispute and granted to the respondents a share each in the proceeds of the rent collected from the property. Aggrieved by the judgment, the 2nd and 3rd appellants appealed to the Court of Appeal and the plaintiffs also filed a cross appeal.[2]

3. Case Review

Inheritance of property from one generation to the next in a family tree is something that derives from nature and a God-given right which inures to the benefit of members of a family simply by virtue of being members of that family and not more. It would therefore seem that disinheritance of a member of a family for the reason of the circumstances of birth or gender would work injustice. Justice is supposed to be practical and realistic. "Justice must not only be done, but must also be seen to be done". This dictum was laid down by Lord Hewart, the then Lord Chief Justice of England in the case of *Rex v. Sussex Justices*.[3] In other words, if a particular custom or practice is acceptable to some persons within the vicinity of a custom but not to others and there is manifest outcry as to the injustice of the custom or practice, then it is expected that the decision of the court regarding acceptability of the custom must necessarily be seen by at least the majority to be just. The process for determining the abolition or rejection of perceived unwholesome or inhuman Customary Law on the ground that it is obnoxious is what is now very popularly known as the Repugnancy Test.[4] It follows that the acceptability of a Customary Law is further subject to an 'Objective Good' or a higher law which supersedes the custom in question. This higher law gives validity to the rightness or otherwise of the custom.

3.1 The Repugnancy Test Doctrine

The Repugnancy Test Doctrine was introduced into Nigeria by the end of the 19th century via the received English laws to test our Customary Law for acceptability. It is a universal concept of what is 'good, just and fair',

which is consistent with. S. 1 (3) of the 1999 Nigerian constitution.[5] It is also the law that if any other law is inconsistent with the provisions of the 1999 Constitution of the Federal Republic of Nigeria (as amended), the provisions of the constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void.[6] In essence, all Customary Law practices which intend to enjoy the coverage of legality in Nigeria must be reconciled with the said S. 1 (3) of the 1999 Nigerian constitution and failure to be so reconciled, the Customary Law practice will violate the provisions of S.1 (3) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and so rendered null and void and have no force of law. Many scholars have canvassed opinions for and against the instant subject of discussion. That is, whether the British Repugnancy Test used as a standard to ensure that justice is performed in customary practices in Nigerian Customary Law, is a positive aspect of the British colonialism or a denigration of Nigerian Customary Law (that is, subjecting the autochthonous practices to foreign standards).[7] By virtue of section 14 of the *Evidence Act*[8] Customary Law must be established in either two ways, namely: (a) by the court taking judicial notice of its existence; or (b) by leading evidence in the particular case.[9]

4. The Place of the Female Child in Inheritance Under the Igbo Native Law and Custom

It has been well settled that the Igbo native law and custom that disentitles a female child from her inheritance is in conflict with section 42 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). Such custom has been described as barbaric and unacceptable, *Ukeje v. Ukeje*.[10]

Section 42 (1)[11] provides;

> A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:-
>
> (a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or
>
> (b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.
>
> (2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.
>
> (3) Nothing in subsection (1) of this section shall invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office under the State or as a member of the armed forces of the Federation or member of the Nigeria Police Forces or to an office in the service of a body, corporate established directly by any law in force in Nigeria.

It is also settled that children born out of wedlock can also not be deprived from sharing from the estate of their deceased father. Any law that seeks to do this is in violent conflict with section 42(2) of the Constitution of the Federal Republic of Nigeria *supra-mentioned*.[12]

5. The Place of the Law in the Subject Matter vis-à-vis the Repugnancy Test

With respect to the instant case, the facts of the case came face-to-face with foregoing positions of the law when the rights of persons were impugned by virtue of their gender and the circumstances of birth, more so when there are many decided authorities even up to the Supreme Court of Nigeria to the contrary. The effective implementation of the law is also sacrosanct and fundamental to the triumph of the rule of law which indeed is essential for any civilization to thrive.

What measures are taken to ensure that public authorities effectively implement the law?

i. Are obstacles to the implementation of the law analyzed before and after its adoption?

ii. Are there effective remedies against non-implementation of legislation?

iii. Does the law provide for clear and specific sanctions for non-obedience of the law?

iv. Is there a solid and coherent system of law enforcement by public authorities to enforce these sanctions?

v. Are these sanctions consistently applied?

Although full enforcement of the law is rarely possible, a fundamental requirement of the Rule of Law is that the law must be respected. This means in particular that State bodies must effectively implement laws. The very essence of the Rule of Law would be called in question if law appeared only in the books but were not duly applied and enforced. The duty to implement the law is threefold, since it implies obedience to the law by individuals, the duty reasonably to enforce the law by the State and the duty of public officials to act within the

limits of their conferred powers.[13]

According to Aboki, (J.C.A)[14]

> In the instant case, I have no difficulty in holding that the native law and custom of Umuanaga Awka which discriminates against female children of the same parent and favours the male child who inherits all the estate of their father to the exclusion of his female siblings to be repugnant to natural justice, equity and good conscience.
>
> "We need not travel all the way to Beijing to know that some of our customs including the Nnewi *Oli-Ekpe* customs relied on by the appellants are not consistent with our civilized world in which we all live totally including the appellants …Accordingly, a custom or Customary Law to discriminate against a particular sex is to say the least an affront on the almighty God himself. Let nobody do such a thing on my part. I have no difficulty in holding that the Oli-Ekpe custom of Nnewi is repugnant to natural justice, equity and good conscience." In the instant case, I have no difficulty in holding that the native law and custom of *Umuanaga* Awka which discriminates against female children of the same parent and favours the male child who inherits all the estate of their father to the exclusion of his female siblings to be repugnant to natural justice, equity and good conscience.[15]
>
> It baffles one to still find in a civilized society which cherishes equality between the sexes, a practice that disentitles a woman [wife in this matter] to inherit from her late husband's estate, simply because she had no male child from the husband. This practice, I dare say, is a direct challenge to God the Creator who bestows male children only; female children only [as in this matter], or an amalgam of both males and females, to whom He likes. He also has the sole power to make one a barren. There is nothing virtually one can do if one finds oneself in any of the situations. To perpetuate such a practice as is claimed in this matter will appear anachronistic, discriminatory and unprogressive. It offends the rule of natural justice, equity and good conscience. That practice must fade out and allow equity, equality, justice and fair play to reign in the society.[16]

There is only so much a judge at any level of our courts can do when the law is faced with a tradition that is unfair, inequitable and unjust, there will be an unavoidable need for the scale of justice to tilt in favour of fairness and justice every single time. What is right is not subjective and open to interpretation; the truth is always objective and firm with little or no room for doubt, especially when appreciated removed from interest and emotions. While it is imperative to promote our cultural heritage, we must always do so conscientiously without sacrificing excellence on the altars of mediocrity or we risk creating a retrospective society that is built on prejudice and bigotry. There is need to fine-tune and smoothen the rough edges where the provisions of the law faceoff with traditional practices and that is where Equity usually fits to ensure fairness to all.

6. Recommendations

One of the fundamental essence of the law is the protection of the citizens especially the weak and the vulnerable and ensure the guarantee of an all-encompassing freedom and equal rights and privileges that benefits all without fear or favour. Also, the circumstances of birth should not deprive one of a right guaranteed under the law. There is a compulsory duty to interpret and implement the law devoid of sentiments. Where the provision of the law is distinct, explicit and unambiguous, the ordinary course of action will be to apply the provision and give effect to the law. This is usually done judicially and judiciously with the intention of bringing about manifest justice. Even judicial activism will be boxed in a corner and the discretion of the judge restricted. Any attempt to deviate from the ordinary application of the law will be tantamount to perversion of justice and such decision will most likely and correctly be up-turned on appeal. It is therefore expected that where the content of a decision of a court is in consonance with the provisions of the law when applied to the facts of the case, *"the truth"* emerges and births a laudable judgment that is manifestly just, equitable and fair.

It is safe to say that the plethora of judicial authorities that have formed an iron-clad judicial precedent vis-à-vis the facts of this case is a clear indication that the decision of the Court of Appeal to uphold the decision of the trial court and dismiss the appeal is the right and just outcome.

7. Conclusion

It goes without saying, that the decision of the Court of Appeal in dismissing the appeal and upholding the decision of the Trial Court was a superb and successful attempt at upholding the provisions of the law and giving effect to justice, equity and fairness. It will amount to absurdity or even rascality for the judgment of any court to deviate from the justice of a case vis-à-vis application of the law to the facts of the case. In a nutshell, the act of the Court of Appeal to dismiss the appeal and the cross appeal and restore the proverbial but very real hope of the common man in this case is topnotch, further guaranteeing the right of the female child to inherit from the estate of her deceased father.

References

B C Uweru, (2008). Repugnancy Doctrine and Customary Law in Nigeria: A Positive Aspect of British Colonialism. *African Research Review,* *2*(2), 286-295. https://www.ajol.info/index.php/afrrev/article/view/41055#:~:text=The%20doctrine%20of%20repugnancy%20owes,our%20customary%20law%20for%20acceptability. Accessed 14th July, 2023.

Igwe Onyeka, (2014). Repugnancy Test and Customary Criminal Law in Nigeria: A Time for Re-Assessing Content and Relevance. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2528497#:~:text=The%20process%20for%20determining%20the,known%20as%20the%20Repugnancy%20Test. Accessed 14th July, 2023.

Oladotun Gbolagunte, (2016). Repugnancy Test: Positive Aspect of British Colonialism or Colonial Denigration of Nigerian Customary Laws? https://www.linkedin.com/pulse/repugnancy-test-positive-aspect-british-colonialism-laws-gbolagunte Accessed 20th July, 2023.

---

[1] Chidoluo v. Attansey (2022) 6 NWLR (Pt 1719).

[2] ibid.

[3] [1924] 1 KB 256.

[4] Igwe Onyeka, (2014). Repugnancy Test and Customary Criminal Law in Nigeria: A Time for Re-Assessing Content and Relevance. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2528497#:~:text=The%20process%20for%20determining%20the,known%20as%20the%20Repugnancy%20Test. Accessed 14th July, 2023.

[5] B C Uweru, (2008). Repugnancy Doctrine and Customary Law in Nigeria: A Positive Aspect of British Colonialism. *African Research Review,* *2*(2), 286-295. https://www.ajol.info/index.php/afrrev/article/view/41055#:~:text=The%20doctrine%20of%20repugnancy%20owes,our%20customary%20law%20for%20acceptability. Accessed 14th July, 2023.

[6] S. 1(3) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

[7] Oladotun Gbolagunte, (2016). Repugnancy Test: Positive Aspect of British Colonialism or Colonial Denigration of Nigerian Customary Laws? https://www.linkedin.com/pulse/repugnancy-test-positive-aspect-british-colonialism-laws-gbolagunte. Accessed 20th July, 2023.

[8] Section 14 of the Evidence Act 2011.

[9] Egbuta v. Onuna (2007) 10 NWLR (Pt. 1042) p. 298.

[10] Per Rodes-Vivour, JSC (2014) 14 NWLR (Pt. 1418) p. 384 at 408, paras. C – E.

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

[12] See. Ukeje v. Ukeje (supra) at p. 410 para. D - E, per Ogunbiyi, JSC.

[13] European Commission for Democracy Through Law (Venice Commission) Rule of Law Checklist Adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016).

[14] Motoh v. Motoh [2011]16 NWLR (Pt 1274) p. 533, Per Aboki, J.C.A.

[15] ibid at p. 533.

[16] Anekwe v. Nweke [2014] 9 NWLR (Pt 1124) p. 423, Per I. T. Muhammad, J.S.C.