Section 5. Family law

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LAW OF SUCCESSION: TOWARDS A SINGLE SYSTEM OF LAW IN WESTERN NIGERIAN

Abstract. The law of succession basically deals with methods of distributing property left behind by the deceased person. When a man dies, the devolution of his self-acquired property depends upon whether he has a will or not. If he has made a will, the property devolves according to the dictate of his mind through the will. If no Will exists, that is, under the condition of intestacy, his property devolves according to the customary law applicable to the deceased. The situation becomes complex where deceased who during his life time was a religious person and practice Islamic religion. Islamic law of succession is not a law made by legislators hence, its operation is not regulated by any human endeavor. Islamic law of succession is a divine law and it has to be applied as contained in Holy Quran and Sunnah of Prophet Muhammad (SAW). Problem about the applicable choice of law is more pronounced and common under intestacy.

Conflict and choice of law thus, exist in the methods of distribution under various customary laws. Uncertainties associated with applicable choice of law allow some to inherit while others do not. These practices in respect of property inheritance under customary law particularly in the six states of the Western Nigeria manifest in different forms and shapes but eliminating these conflicts between succession laws in Western Nigeria shall be the focus of this research work.

Keywords: Law, Succession, Towards, Single system, Western Nigeria.

Introduction

Owing to the diversity of cultures, ethnic values and religious affiliations, people of Western Nigeria are subject to a variety of laws and customs [1]. Customary law in the six states of Western Nigeria, that is, Oyo, Osun, Lagos, Ogun, Ekiti and Ondo, operate side by side with the received English Common Law, local case law and legislation as well as the Islamic law [1]. The existence of different systems of law in respect of succession have posed a threat to the administration of succession matters, especially intestate succession in the region [2]. What is important in respect of this, is that, these rules are not only different in some cases, they are also contradictory in some areas [2].

Inheritance is a cultural practice that cut across the globe. It is usually the mode of property transfer particularly in many sub-Saharan countries where property distributions are culturally done by the family members [3]. The existing research literature

from various sub-Saharan African societies highlights how as a result of existing social conventions, beneficiaries are often confronted with the problem of determining the applicable law governing the distribution of the estate of a person who died intestate [4]. On the other hand, legal pluralism is a system that allows different rules of laws to govern people's activities and status in a particular locality without spatial separation. It is a reflection of the different forms of law co-existing in various geographical territory within a country [5]. In all, it is the existence of multiple legal systems in a country or within a geographical territory [5].

In Nigeria for instance, three laws of succession namely, general law, Islamic law and Customary law govern succession matters [6], Even in Western Nigeria, the region under review for this research work is inclusive and the aforementioned succession laws cumulated in legal pluralism.

Thus, having allowed pluralism of laws in succession matters, it is certain that conflicts in the administration of these laws are inevitable as seen in the cases of *Salubi v Nwariaku* ((2003) All NLR 548) and *Obusez v Obusez* ((2001) 15 NWLR (pt 736) 377 CA) where there were conflicts between the general law (Section 36 of the Marriage Act) and the customary law as regards which law was the appropriate law to govern the intestate of the deceased husbands.

The Concept of Succession in a Plural System

This aspect considered the multiplicity of laws as it affects applicable choice of law in succession matters in Western Nigeria. This work has been able to take account of literature dealing with nature of customary law of succession, the imported law of English intestate succession, and the Sharia or Islamic law of intestate succession, and the conflict of law created by the application of these laws on the issue of succession among the Yoruba people.

However, the co-existence of different laws is what Allots [7] explains to mean 'unity in diversity as enshrined in our legal system. The central issue which this research work has endeavoured to tackle is all about eliminating the conflicts which multiplicity of laws in the area of succession has caused and thereby seek to create one single system of laws of succession therefrom.

Intestate Succession

Intestate succession simply means passage of not only the real and personal estate of the deceased but also his/her obligations while alive [8] to the beneficiaries. In Ibo culture, laws of succession allows male children to inherit while female ones are not allowed to participate in inheritance processes [8]. In Western Nigeria, both male and female children have equal rights to inherit property (real and personal estate) left behind by the deceased father [8]. Yoruba customary law of inheritance though permit female children to inherit yet still discriminate against them in respect of succession to chieftaincy status. That is the reason why it is very rare to see female king/queen in Western Nigeria. Consequently, some authors concluded that Yoruba customary law of inheritance is patrineal in nature. The line of argument here is that men stay within the family unlike women who, after marriage, leave their father's family and join their husband's family.

In the same vein, widows are not permitted under the customary law of succession of Western Nigeria to inherit the property left behind by their deceased husbands. Yoruba customary law of inheritance applicable in all six states of Western Nigeria. In fact, widows are regarded as strangers and part of property subject to inheritance by the male relatives of the deceased husband (*Suberu V Sunmonu*, (1957) SC NLR 45 *Ologunleko v Ikuomelo*). The reason behind this is that under customary law, devolution of property follows "blood relationship" and anyone who is not related to the deceased husband biologically will not be allowed to participate in the inheritance processes (*Suberu V Sunmonu*, (1957) SC NLR 45 *Ologunleko v Ikuomelo*).

Smith (*Suberu V Sunmonu*, (1957) SC NLR 45 *Ologunleko v Ikuomelo*), while stating what con-

stituted property, went on to clarify property into real and personal property. He similarly explained the concept of family property and cited the cases of *Tapa v Kuka* ((1945) 18 WLR5), *Olowu v Olowu* ((1945) 18 WLR5) and *Zaid v Molisen* ((1957) SC NLR 45) to support of his argument on what constituted laws of succession in the afore-mentioned cases where the courts defined family property to include "unpartitioned real and personal estates of the deceased" which devolved on the children. Intestate succession can however, be further divided into two headings, namely:

1. Intestate Succession (statutory)
2. Intestate Succession (Customary)

Intestate Succession Under Statutory Law

Intestate succession (under statutory law) has to do with intestate succession under the Marriage Act (*Section 36(1) of the Marriage Act* (1958)). It provides thus:

Where a person subject to customary law dies intestate and succeeded by a widow, or husband or children, his estate which would have been disposed of by Will shall devolve in accordance with the law of England.

The reality is that the aforementioned Section 6 of the Marriage Act applies only to a person who ordinarily is subjected to customary law and if the person married under the Marriage Act and died intestate whilst still domiciled in 'the colony', that is, colony of Lagos leaving behind movable property there; or died domiciled elsewhere leaving immovable property there, the property shall be distributed according to the provisions of the English law as declared by the supreme court in the case of *Salubi v Nwariaku ((2003) All NLR 548)*. Where the deceased, Chief Salubi, died intestate in September 1982 and he was survived by his widow whom he married under the Marriage Act, two children were born by the said widow and two other children were born out of wedlock but whose paternity he acknowledged. The said two other children born out of wedlock were also raised by the deceased wife in the matrimonial home with the consent of his lawful wife who accepted them as children of the family. The estate included real property in various parts of the country. Letter of administration was granted to the deceased wife and the eldest son (first defendant) in 1985 but the widow declined to serve. The first surviving child of the deceased who was the plaintiff in the suit sued the defendants for herself as beneficiary and claimed an order to set aside the letter of administration granted to the first defendant for mismanagement of the estate.

The plaintiff claimed among other thing that the Administration of Estate Law of Bendel State and Section 36 of the Marriage Act governed the distribution of the deceased estate. Defendant in the suit contended and argued that the estate should be governed by Urhobo customary law of succession or the Administration of Estate Law of old Bendel state but not English law of succession. The trial judge held that Section 36(1) of the Marriage Act and not the Administration of Estate law or customary law applied to the estate of the deceased. During the trial, the Court preferred among other evidence Section 36(1) of Marriage Act which was considered to be superior and overrides the Administration of Estate Law of old Bendel state.

The Court further held that the widow was entitled to one-third of the deceased estate while the children take the remaining two-thirds of the deceased estate. On Appeal Court, the decision of the lower court was confirmed and the court of Appeal said the applicable law for the administration of the deceased's estate was English law as contained in Section 36 (1) of the Marriage Act.

At the Supreme Court, the main issue for determination was which law was applicable to the administration of the estate as between section 36(1) of the Marriage Act and the Administration of Estate Law of Bendel state. It was made argued that Section 36(1) was part of the Marriage Ordinance enacted in 1914 and provided that where a person subject to customary law dies intestate succeeded by a widow

or husband or children, his estate which would have been disposed of by Will shall devolve in accordance with the law of England. Also, sub-section 3 of the Act limited the operation of the Section to the colony of Lagos. Despite this limitation, The Supreme held that the English law had been repealed by the enactment of the Administration of Estate Law of Bendel State and that the appropriate applicable law to govern the intestate estate of deceased, Salubi, was the Administration of Estate Law of Bendel State and not Section 36(1) of the Marriage Act. Ayoola J. S.C who delivered the lead judgement in the suit said;

the regional Government through its legislature having enacted a law on the subject matter on which it had full competence, having recourse to the legislation of the previous unitary Government; albeit on the same subject matter or to English Law is misconceived. Where there is conflict between such previous enactment and the later one, the former should be deemed implied repealed and the later one should prevail.

Consequently, Section 49(1) of the old Bendel State Administration of Estates Law was applied and the appeal was upheld.

Similarly, in *Obusez v. Obusez* (*(2001) 15 NWLR (pt 736) 377 CA*) the court of Appeal held that Section 49(5) of the Lagos State Administration of Estate Law governed the intestate estate of the person married under the Marriage Act and not Section 36(1) of the Marriage Act. The conclusion that can be drawn from these decisions is that on death intestate of a person who married under the Marriage Act, the applicable law that would govern the distribution of the deceased estate is the State laws and not the Federal Legislation or English law.

Intestate Succession under Customary Law

Intestate succession under the Customary Law of Western Nigeria on the other hand, is built on decision enunciated by the court in *Lewis v. Bankole* (*(1909) 1 NLR 82; Tijani v. Secretary Southern Nigeria (1921) AC 399; Falomo v. Onakanmi (2005) 11 NWLR (pt 935) 126.*). It was held in this case that on the death of the founder of a family, the eldest surviving son called *'Dawodu'* succeeds to the headship of the family (*Adesanya v. Otuenu&Ors (1993)1NWLR (pt 270) 414, Yissuf v. Dada &Ors (1990)4 NWLR (pt 146) 657*). Also, on the death of the eldest surviving child?, the next eldest surviving child of the founder, whether male or female, succeeds as the head of the family (*Amusan&Ors v. Olawumi (2002) 12 NWLR (pt 78) 31, Ologunleko v. Ikuomelo (1993)2 NWLR (pt 273)16*).

Under the customary law of succession of the people of Western Nigeria, the real and personal property of the deceased devolves on all his children both male and female to the exclusion of other blood relations (*Amodu v. Abayomi (1992) 5 NWLR (pt. 242)503 at p512, Ologunleko v. Ikumelo*). Two modes of distribution of estate exist in these states. The first is *Idi-Igi* (per stirpes) and the second is *Ori-Ojori* (per capita). *Idi-Igi* is referred to as distribution per stirpes. This mode of distribution is generally regarded as the well-established and accepted mode. However, on *Ori-Ojori* (per stirpes) method, the estate of the deceased is distributed according to the number of the children. The case of *Dawodu v. Danmole* ((1962)1All NLR 702) explained and distinguished the two modes. When the Privy Council was called upon to interpret the appropriate mode best suited for the case and in respect of property located in Lagos. There were conflicting claims as to the best suited method between *'Idi-igi'* and *'Ori-Ojori'*, the Lords held that *'Idi-Igi'* is an integral part of the Yoruba native law and custom relating to the distribution of the intestate' estate of the deceased father, and is in full force and is observance has not been abrogated ((1962)1All NLR 702).

It was also observed that this mode is not contrary to the principles of natural justice, equity and good conscience ((1962)1All NLR 702). On the other hand, the Lords found Ori-Ojori to be a relatively modern method of distribution adopted as an expedient to avoid litigation ((1962)1All NLR 702). Similarly adoption of this mode of distribution is at

the discretion of the head of family where dispute had arisen or envisaged.

Apart from the above situations, customary law of inheritance discriminates, against women as wives in many jurisdictions in Western Nigeria where customary law permits some daughters to inherit the properties of their late father, but the share given to them or allowed them to inherit are loss compared with the share given to their male counter parts b (*Akinnubi v. Akinnubi*). Also, customary law of succession generally discriminate against widows of customary marriage.

Wives or widows of the deceased husbands are generally regarded as strangers and are considered as part of the properties left behind by the deceased to be inheritance by the male relations of the deceased husband (*Suberu v. Sunmonu*). The cases of *Suberu v. Sunmonu,* and *Ologunleko v. Ikuomehin* have demonstrated and justified the real reasons why widows are not permitted to have a share in the estate of their husbands.

Again, Customary law does not give equal rights to the adopted children as accorded biological children. The reason behind this is that biological children are considered more precious. It is alien to allow adopted child or children to participate in the sharing of family properties because devolution under Yoruba Customary Law is between 'blood' (biological) relations.

Rights of Spouses

As a general rule, spouses do not succeed to each other's estate under customary law of succession of the Yoruba people of Western Nigeria (*Nezianya v. Okagbue (1963) 1 All NLR 358*. In *Johnsonn v. Macauley (1961) 2 All NLR 743, it was held that under Yoruba law, the estate of an intestate mother devolves on her children as joint heirs.*). In the case of *Oloko v Giwa* ((1939) 15 NLR 31; *Dosunmu v. Dosunmu (1954) 14 WACA 527*) the court firmly declared that the land allocated to each of the deceased wives by the intestate still belonged to the family because the allocation conferred no title on the women.

Distribution under Yoruba Customary Rules of Inheritance

The Yoruba customary rules of inheritance stipulates that upon the death intestate of the founder of the family, a family property is thereby created and the eldest son, the Dawodu, becomes the head of the family and he takes over the management of the estate of the deceased for himself and on behalf of other members of the family, as illustrated by the case of *Lewis v Bankole* (See *Lewis v. Bankole* (Supra). See also the case of S.J. Adeseye (supra) S.F. Taiwo). Upon assumption of the position of Dawodu (that is, head of the family), he decides which of the two Yoruba customary systems of distribution will apply to the distribution of the intestate's estate. These rules of distribution are the *'Ori-Ojori'* and *'Idi-Igi'* systems, as decided in the case of *Olowu v Olowu* (See the case of *Olowu v. Olowu (2002) 46 WRN 102*) *Ori-Ojori* is a system of distribution whereby the estate of the intestate is shared equally among all the children of the intestate, both male and female children. On the other hand, *Idi-Igi* system is that which allows the distribution of the intestate's estate equally according to the number of wives for the benefit of the children of each wife. In *Danmole v Dawodu* ((1956) 1 FSC 84):

One Suberu Dawodu, who at one time had four wives, died intestate leaving surviving three wives. Letter of Administration to administer his estate was granted to four members of the family, one representing each wife and, consequently, representing also the branch consisting of the children by each wife. The deceased's personal estate and rents accruing from his real property were divided into four parts one part was given to the children or each wife. All parties originally agreed to this method of distribution and it was observed for ten years. The respondents contended in this action that the deceased's property should be divided into nine parts, one part to go to each child of the deceased or, in the case of a deceased child (whether dying before or after Suberu) to be divided between the issue of that de-

ceased child. This method is known as *'Ori-Ojori.'* The learned trial judge held that the division of the estate into four parts was by mistake, and ordered that future rents be divided into nine parts and each child or children of a deceased child should have a ninth part. On the appeal, the Court laid down the following principles of law relating to Yoruba Customary rule of inheritance:

i. That *Idi-Igi* method of distribution is an integral part of the Yoruba Native Law and Custom and should be adopted in the case.
ii. *Idi-Igi* is still in force, and is the universal method of distribution except where there is a dispute among the descendants of the intestate as to the proportions into which the estate should be divided.
iii. That where there is such a dispute, the head of the family is empowered to, and should decide, whether *Ori-Ojori* ought, in the particular case, to be adopted instead of *Idi-Igi.*
iv. That *Ori-Ojori* is a relatively modern method of distribution adopted as an expedience to avoid litigation,
v. That *Idi-Igi* method of distribution is not repugnant to natural justice, equity and good conscience. Under Yoruba Customary Rule of Inheritance, both male and female children share equally in the distribution of the intestate's estate. This point is illustrated by the case of *Sule v Ajisegiri* ((1937) 13 NLR 146). In that case the Plaintiffs claimed partition and sale in respect of six properties alleged to form the undistributed portion of their grandfather's estate. The Plaintiffs were children of the same mother whom they claimed were entitled to an equal share of the properties with the defendants. The Defendants case was that being a male he was entitled to a larger share than the Plaintiff's mother. The court held that the partition must be equally between those entitled to it regardless of sex. The position of the wives left by the intestate is that they have a right of residence in their husband's house. However, this is subject to their being of good behavior. One defect of the Yoruba customary rule of inheritance is that the wives are not entitled to share in the distribution of the intestate's real and personal property. It has earlier been pointed out that under the provisions of the Administration of Estates Law, the position of the widow is improved since she can share in the distribution of the late husband's estate. It was however also pointed out that this law applies only to estates of persons married under the Marriage Act, not under customary law. The provisions of the Administration of Estates Law with regard to the right of succession of widows to their husbands' estate is another advantage of statutory marriage over customary law marriages.

Upon the death of the eldest surviving son, the Dawodu, the next eldest surviving son of the founder of the family, succeeds to the family headship. It has been held that a woman connot succeed as the head of the family. In *Adeniji v Adeniji:*

One Abudu Karimu Adeniji, a Yoruba man, died intestate and was survived by wives and children. The eldest surviving child was a daughter. There arose a dispute among the family members as to whether the distribution of the deceased's estate under Yoruba customary law should be according to the *Ori-Ojori* method rather than the *Idi-Igi* method. The issues before the trial court for determination were:

i. Who was the head of the family of the deceased?
ii. What was the proper method of distribution of the estate of the deceased in accordance with native law and custom in view of the dispute among the members of the family over the sharing of the estate?

The trial court held that since the eldest surviving child was a daughter, she could not assume the position of the head of the family, and declared the next

eldest surviving child, a son, as the head of the family, although the dispute as to the headship of the family was between the eldest surviving daughter and the overall head of the family. On appeal, however, it was held that the issue of headship of the family of the deceased was not at large since the contest was solely between two of the parties to the proceedings as to which of the two of them was the head of the family, nor was the court required to make a general declaration as to who of all the members of the family is the family head, and it was competent for the trial judge to make a case of his own or to formulate his own case from the evidence, and then proceed to give a decision based thereon, quite contrary to the case of the parties before him by declaring that one of the other parties to the proceedings was the head of the family. Secondly, that the trial judge having found that there was an existing family dispute as to whether the distribution of the deceased's estate under Yoruba Customary Law should be according to the *Ori-Ojori* method rather than the usual *Idi-Igi* method, it is an error on his part to order a distribution according to the *Ori-Ojori* method when there was no evidence that the head of the family as such had decided in favour of that method, thereby depriving the head of the family of his right to resolve such a dispute.

Fusion of Courts and the Law in Nigeria

It must be stated that our knowledge of the distribution of working among the various system of court would be incomplete if we were not to know some significant exceptions to the general propositions stated in the proceeding pages. It is no easy task to treat problems of choice of court in Nigeria on basis of "Systems" of Court where the legislature has been mostly concerned with conferring jurisdiction on individual courts within the tripartite system. The jurisdiction of the individual customary courts is generally specified in the warrant of each of these courts.

In the Western State, for example, customary courts Grades A and B presided over by lawyers have nearly as little in common with the customary courts Grade C as the Magistrates Courts have in common with such Grade C Courts. Yet the Grades A, B and C belong to one system whilst the Magistrates Courts belong to another. The fact, however, is that the ultimate aim is to fuse the various systems of courts. This is the declared policy of the Government of Western Nigeria. The practical consequence of pursuing such policy has made the problem of choice of court increasingly complicated but correspondingly insignificant. But this fact is by no means, a sufficient why attempts should not be made to point out the defects of the present arrangement.

It is submitted that the rules of choice of court, is the context of pluralism of system of courts, with different rules of procedure, must have as their primary purpose the efforts to prevent overlap of jurisdiction so that, a suit properly cognizable by one system, should not be actionable in another purposely to take advantage of a more favorable rule of procedure. To that end, the rules determining the jurisdiction of each system of court should be clear and obligatory as opposed to the present arrangement whereby the application of some rules are left to the absolute discretion of the judges in certain cases and to the whims of administrative officers in some others.

By far, the major defect of the present statutory rules is that some of these rules are so vague as to permit of different interpretations. Such a situation is neither conducive to certainty or predictability nor likely to promote the course of justice. The fact that there has been, on the part of legislature, a preoccupation with delimiting the jurisdiction of the native courts rather with improving upon the law they apply. This policy has resulted in the development, until lately, of a multiplicity of un-coordinated rules of judicial jurisdiction. (Particularly in the Northern States). This preoccupation with customary court's jurisdiction has produced, under the recent Area Court Edits of the Northern States, the absurd situation whereby a Syrian sue any Nigerian in the Area Court while a Syrian can only be sued in this Court

when he so desires. If attempt will be made to and modernize the law applicable in these courts, there can be no acceptable objection against making anybody, of whatever race or creed, amenable to their jurisdiction deserving in cases.

Another conspicuous defect of the present arrangement is its absorbed consequences. It has been previously mentioned that the judges of customary court of Grade A and B (at least in the Western State) possess basically the same legal qualification and experience as most of the magistrates have. We have stated too that the legal representation is allowed in these grades of customary courts and that they administer non-customary criminal law. Yet as the law now stands, the jurisdiction of these customary courts is not only limited to certain laws but also to specific classes of persons. The distinctions thus drawn between magistrates and those judges is, to all intents and purposes, artificial and inconvenient. Perhaps we do not have to repeat here that some of the current rules are patently unconstitutional in certain respects.

Furthermore, while we do not wish to indulge in value judgments as to whether it is right or wrong to have a separate system of customary courts, (For arguments in favour of preserving the present system of native courts [9].) we wish however, to state that it is mistake to work on the assumption that rules of procedures suitable to natives of Nigeria as well as to resident foreigners cannot be devised for the customary courts so as to make everybody subject to their jurisdiction. The problem of getting personnel capable of administering such rules is one which only the Government can solve.

It is important to note at this juncture that, we wish to state the present arrangement neither prevents "forum shopping" nor ensures uniformity of decision. It is no exaggeration to say that the present rules are in practice, often misunderstood or ignored. (Five out of seven judges of the customary courts (with legal education) questioned on whether they would dissolve a customary marriage contracted in another Region stated that they would decline jurisdiction. Clearly there is no support for this view in the law of the western state which judges apply.) It is therefor, proposed that (pending the time a total integration of the courts can be effected, the following measures should be taken.

Firstly, the customary court would not on any account, have concurrent jurisdiction with the general courts for as long as the two systems operate different rules of procedure. The power of transfer should only be used to check or prevent undesirable tendency in trial before the customary courts and as a basis for the division of jurisdiction between the customary courts and the general courts.

Secondly, all customary courts presided over by trained lawyers should be absorbed to the body of general courts.

Thirdly, the division of jurisdiction between whatever remains as customary courts and the general courts should be based on the principle of convenience. So that matter that can be more conveniently determined by the kind of adjudication available in such courts must be litigated, in the first instance, in them. There shall be a right of appeal to the general courts.

Finally, it must be stated that the necessity for creating courts to "prop up" the authority of native rulers which arose under Lugard's administration is non- existent today. The mobility of modern society and the scale interpretation of communities have rendered somewhat anachronistic the existence of separate courts for certain persons. The Korah Commission [10] has rightly pointed out that as modern secular states develop, there comes a time when special courts for particular clauses of inhabitants must give way to general courts for all manner of men. We think the time has come in Nigeria, when the Customary Courts should have authority over all persons (of whatever race or creed) to any cause or matter properly cognizable by these courts.

Problems arising from the Legal Pluralism

Pluralism occurs in a situation where different legal systems apply to just only one issue. The prob-

lems associated with this system of pluralism of laws are the conflicts it created, with its attendant multiple courts. As will be expected. There are separate courts administering these separate laws. That is, customary courts are the court established to apply customary laws while the general courts are those courts established to apply and administer those statutory law classified as general laws [10] Interaction between the general law and customary law does not permit the assumed 'straight jacket' between the customary law and the general law. Presently, the rule under the customary law of succession in Western Nigeria or even in any other part of Nigeria is that anybody who is married under customary law whether to a wife or to many wives is governed by customary law in the area of intestate succession. (Lewis v Bankole (1909) INLR 82: see also the cases of Tijani V Secretary, Southern Nigeria (1921) AC 399, *Falomo v Onakanmi* (2005) II NWLR (Pt. 935) 126.) Whereas, someone married under the statute and died intestate will have his or her estate governed by the statutory law. (Salubi v Nwariaku (2003) AII NLR 548.) The question that needs urgent answer is what becomes of a man who has not married under either the customary law or Islamic law who died intestate. The concern is how do we know the appropriate and applicable law that should govern his intestate estate?

As should be expected, when the matter like this is litigated in the general court, the general law becomes the applicable law. (Adesubokan v Yinusa (1971) NWLR 77; (1971) 1 AIINLR 225). When such case is litigated in the customary court, the rule of customary law will apply as decided by the court in the case of *Lewis v Bankole* ((1962) 1 AII NLR 702).

Dawodu v Dammole where the customary rules of succession were applied. This practice is however unsatisfactory, what happen, presently, is that those who are wealthy enough to institute action at the general court will do so while the defendant who could not afford the services of a legal practitioner will lose out.

Indeed, the real problem is the rule of choice of law applicable in the general court and in the customary court where these different laws contradicts each other.

Fusion by Unification

The issue here is whether the entire system of customary courts should be abolished to be replaced by subordinate courts to the High Court that will be empowered to apply the general law, the customary law and the Islamic law as they become applicable ((1962) 1 AII NLR 702). After all the high court handle customary law issues on appeal until lately when customary Court of Appeal were being established which appears to have turned out a white elephant that is now being abolished in some states. Only the Ondo State customary court of Appeal is functioning in the whole region, and there is indication that it will be abolished. (Ondo State Ministry of Justice, structure of Courts vis a vis Administration of Customary Court in the State 2017).

On the other hand, is it not feasible only to fuses the courts but also to fuse the law? This leads us to the consideration of the draw-backs in maintaining separate system of courts to administer these different system of laws. (Ondo State Ministry of Justice, structure of Courts vis a vis Administration of Customary Court in the State 2017).

Unification of Legal System

Unification is an approach in which different laws are subsumed into only one acceptable law. The question is how can this bring an end to discrimination which is the basis of our discussion in this research work? Before now, litigants or beneficiaries, most especially in an intestate situation have an options either to bring his or her claims(s) under the General law or customary and Islamic laws where it involves Muslim personality, closer look at these various types of inheritance laws it revealed that adequate provisions were not given to widows, most especially widows whose husband died intestate and contracted customary marriage (The customary law of inheritance of south-western Nigeria regards wid-

ows of customary law marriage as property to be inherited by male relative of the deceased husband see the cases of *Suburu v Sunmanu* (1957) 12, F.S.C. 33, *Akinnubi v Akinnubi* (1977) 2 N.W.L.R, 144, *Ologunleko v Ikuomelo* (1993) NWLR (PT 273). Also, unless otherwise stated in Administration of Estate laws of states in administration of estate laws of states in south-western Region in recent times, where Western Region in recent times, where a man deed intestate leaving behind a man deed intestate leaving behind his wife or wives, customary law of the his wife or wives, customary law of the deceased which contained no provision as regard widows inheritance will be resorted to address the plight of such widows. See also section 36(1) of marriage act and Islamic law also contained 1/8 of the deceased properties to be given to the wider or widow of the deceased husband while relatives and distant cousins who does not know how such properties were acquired would be allowed to participate in the sharing of the deceased husband's properties. (As contained in Qur'an 33:6; Dasuki, M, Hastiy): — at Dasuki, Vol. 4, p. 267–268, Qur'an 2:18, 4:11, 12 and 174, 2: 240 … The instructions provided in this Holy Book is a divine instructions since its exercise is regulated by the Holy Qu'ran and the Sunnah of prophet (S.A.W): It is prescribed when death approaches any of you, if he leaves any goods that he makes a bequest to parents, and next of kin according to reasonable usage; this is due from the God-fearing)). The existing inheritance laws in South Western Nigeria are inefficient and inadequate towards inheritance rights of widows whose husbands died intestate (The customary law of inheritance of south-western Nigeria regards widows of customary law marriage as property to be inherited by male relative of the deceased husband see the cases of *Suburu v Sunmanu* (1957) 12, F.S.C. 33, *Akinnubi v Akinnubi* (1977) 2 N.W.L.R, 144, *Ologunleko v Ikuomelo* (1993) NWLR (PT 273). Also, unless otherwise stated in Administration of Estate laws of states in administration of estate laws of states in south-western Region in recent times, where Western Region in recent times, where a man deed intestate leaving behind a man deed intestate leaving behind his wife or wives, customary law of the his wife or wives, customary law of the deceased which contained no provision as regard widows inheritance will be resorted to address the plight of such widows. See also section 36(1) of marriage act and Islamic law also contained 1/8 of the deceased properties to be given to the wider or widow of the deceased husband while relatives and distant cousins who does not know how such properties were acquired would be allowed to participate in the sharing of the deceased husband's properties. (As contained in Qur'an 33:6; Dasuki, M, Hastiy): — at Dasuki, Vol. 4, p. 267–268, Qur'an 2:18, 4:11, 12 and 174, 2: 240 … The instructions provided in this Holy Book is a divine instructions since its exercise is regulated by the Holy Qu'ran and the Sunnah of prophet (S.A.W): It is prescribed when death approaches any of you, if he leaves any goods that he makes a bequest to parents, and next of kin according to reasonable usage; this is due from the God-fearing)).

From the forgoing, it is important to note therefore, that unification being the only desired reform shall be discussed in detail under the following headings:

a). Whether fusion of laws is itself desirable
b). To what extent has fusion been or should be achieved
c). What is the methodology or mechanism of fusion.

In the field of administration of law, it should be recalled that the Korsah Commission has rightly pointed out that as modern secular societies develop there comes a time when special courts for particular classes of inhabitants must give way to general courts for all manner of men. (See Native Courts Commission of Inquiry (Gold Coast) 1951, p.3.). It is suggested therefore that the time has come in Nigeria when customary courts should be replaced

by a court that will have jurisdiction over all persons (of whatever race or creed) who are parties to any cause or matter properly cognizable by courts.

If by fusion of law we mean the creation of a new single system to replace the existing dual or tripartite ones such a unification is desirable in the field of substantial law for the following reason in line with the option of Professor Agbede.

a). **Legal simplification**: An integrated system of law will not only simplify the teaching of law but also its administration. The courts will be spared the perplexing task (of which the law reports show more than ample evidence) of having to decide in any given case whether the general or customary or Islamic law applies and to ascertain the particular customary to be applied.

b). **Administrative convenience:** if fusion is embraced, an established court under the law will have jurisdiction to administer both common law and customary law. Polarization of courts alongside diversity of laws have no tangible advantages than to create unnecessary duplication of courts like what we are experiencing presently in Nigeria (O. Agbede, *Legal Pluralism* (Ibadan, Shanneson Ltd, 1991) pp. 272, 273.). Unified system will automatically resolve any controversy relating to application and interpretation of law at a given time. For instance, in northern Nigeria, there is what is called British type of courts with unlimited jurisdiction, Area court with limited jurisdiction and Sharia court with a specialized jurisdiction with a line of appeal to a Sharia court of Appeal before finally coming to Court of Appeal (The Sharia Court of Appeal could only be described as being at the apex of the Area courts only in relation to Muslim personal law. Particularly in Norther Nigeria, see for example section 20 (3) of Old Area Court Edict (Kwara State) No 2 of 1967). While in the southern part of Nigeria, British type of court have unlimited jurisdiction in respect of all matters, Magistrate court also have limited jurisdiction and Customary court were established to administer customary law. (What is applicable south-western in Nigeria as indicated by I.O. Agbede, 273).

c). **Legal certainty**: — The fused system of law will automatically bring certainty into the judicial administrative system in the region. The decisions of our judges, left much to be desired in matters concerning internal conflict of laws where it is almost impossible to predict in advance, which particular laws a court will or must apply to a given situations. (*Adeniji v Adeniji* (1972) 1ALL NLR (Pt 1) 298 where the lower court accepted the application of Idi-Igi as appropriate formula for distribution of property under the customary law of the deceased person, but on appeal to the Supreme Court, the court found ori-ojori as most appropriate formula. Since there have been a conflicting decision on the issue of succession).

d). **Social convenience**: if embraced, a unified system of law will definitely take proper account of contemporary issues (like widows inheritance separately and social conditions suitable to the needs of the time (Currently, private ownership and outright alienation of land through sales and gifts in a will, formerly unknown to customary law and custom is now receiving the benefit of the general law) than outdated, controversial and inchoate rules of customary law, the exotic laws and principles of the received English laws or the worse still, the somewhat rigid and immutable rules of Islamic law,

e). **Matter of policy**: — It is important to ask ourselves this question, whether it is right or proper that a citizen of a sovereign Independent states in this present world should

perpetually be governed by foreign laws that is different from their own culture both in content and inform and that the particular foreign legal system should claim.

Overriding effect on their own indigenous laws. (South Africa Government enacted customary law Act to be part of her constitution in 1996 in the same way, customary laws in Nigeria should be enacted to be part of our national constitution as stipulated in our sister (South Africa) 1996 constitution as constituted in its section 30, 31 and 185. Section 211 (3) of south Africa, further stipulated that the court must apply customary law when that law is applicable, subject to constitution and legislation). It is also important to add in all sincerity that the adoption of a uniform system of law may have the underlisted merits in this part of this country.

i. There will be no need to create various courts systems for different forms of cases, like applicable customary law in succession matters, marriage, adoption, inheritance right, land and other related matters within the system.
ii. Removal of stigma of inferiority attached to various customary laws, even Islamic law will definitely restore hope of many litigants.
iii. The confusion that is always confronting those people who have contracted two or more different forms of marriage will no longer exist. (Decision of court in *Omolade Adelae v Sunday Adelae* (2015) where the deceased who married three wives underwent marriage restitution and settled with the second wife after he had become a Jehovah witness Christian, died in 1988 without a will, his estate was distributed according to his personal law; (customary law of the deceased husband)).
iv. The current problem facing the court at all levels in determining appropriate choice of law to a particular case in the area of succession and inheritance would be removed.
v. Interest of the litigants: the parties to a particular customary law matters will know ahead of time which specific remedy is available to him or her (See *Panseca v Passman* (1958) WNLR 41, also, *Savage v Macfoy* (1909) Rem. 504) as against the current system whereby the courts prefer to apply "English law" in most cases as if our own indigenous law has been abolished.

It is not the case that our generation can eliminate the ills of our society in a full swoop but that is not an excuse for not embarking on a sustained effort to make our social situations better than we met it. It is high time we moved away from different courts and different law for different people and attain unity in our diversity by establishing single system of court to be administering an integrated or harmonized system of law. We are to make real progress, we need the speed of the Greek messenger coupled with the wisdom of the old shepherd, who gave the right answer only after weighing all the elements of the problem [11]. While the need for caution against revolutionary legislation in this regard is welcome, the apparent inaction of the Nigerian legislature is patently inexcusable.

To achieve the desired uniform system of law that will not discriminate and at the same time bring easy administration of judicial process, our judicial system must be unified. This can come into manifestation through reformation of our judicial system process at both regional and federal levels. Integration by fusion approach can be achieved through an outright abolition of all the systems of law but one or the replacement of the existing conflictual systems by a new single (acceptable) system. This type of approach to unification of law has been experimented with success in the field of criminal law and punishment by outright abolition of the rules of customary law and Islamic law. The aspect of Islamic law infused are however contained in the Northern penal code such as the prohibition of consumption of intoxicating liquor and criminal punishment for adultery,

(Cap 89 Penal Code with Sharia Penal Code) unless fine-tuned, customary law rule is not suitable to modem situations in this area of the law (Formerly punishment by maiming, stoning and mutilation of all kinds were rampant under customary and Islamic laws respectively).

Also, the customary and Islamic laws are vigorous, fully developed and will dominant among the people particularly in Yorubaland. From the Northern part of Nigeria, Muslims patronize the indigenous Sharia court, much more than any other courts. It will be unrealistic, if we are to replace the existing rules of customary /Islamic laws with the rules of the received English law. For instance, the rules of English law of succession inclusively based on monogamous marriage can hardly found acceptance with Nigerians particularly, the Yorubas, majority of who do not appreciate any other law than customary aw, in this regard regardless of some of its weaknesses. As to the contemplation of replacing the general law in-to-to with the existing rules of customary law, one may begin with the view expressed by the London Conference on the 'Future of Law in Africa" that; "Question of family relation, marriage, adoption, divorce, wills and succession are so essentially personal that they must in large part continue to be governed by the customary law of the community to which the person belongs" (See Marriage Act, Law of Federation of Nigeria 2004). The issue of replacing customary law by foreign law in this area is bound to produce absurdity and injustice (See Future of Law in Africa (1960) Supra p 45–60, unlike Ethiopia that adopted two foreign laws, English and Swish (South Africa also followed suit)).

However, the most criticized aspect of customary law of succession is the way and manner the law treats the women folk particularly the inferior status and inadequate protection of the widows and daughters of the deceased which has rendered the customary law of succession inconvenient to most educated females in Yorubaland. On the other hand, Islamic law cannot be applied universally because the law is addressed only to Muslims and the Muslim community. It is regarded as a law of religion and an integral part of Islam. Islam is the totality of human life. Therefore, it cannot be a viable alternative or a universal option to other non-Muslims.

Fusion by 'Cut and Paste' Approach

This approach of fusion of laws will be achieved by taking whichever aspect of the existing laws is considered desirable and embody the same in the unified scheme. Since the integrated scheme will be built up from the existing laws of the Yorubaland, this approach has the merit of being geared towards the reality of social conditions of the society. It is society-driven and as such it will be necessary to briefly review the state of the existing laws on which the integrated programme will be based. It must be noted that the courts are not helping the situation in Nigeria because the judges have not involved any reliable formula for determining whether or not a particular English statute is of general application. As a result, it is undoubtedly unsatisfactory that it will require the accident of litigation to know whether a given English statute is part of the law in Nigeria.

The situation therefore is unfortunate that we are saddled with outdated English statutory which are largely irrelevant to the social reality of the present age and indeed the arrangement militates against legal certainty. Most of the English statutes of "general application" have radically amended or repealed outrightly in response to changing reality of their country of origin.

However, in order to eliminate uncertainty in the law, the states of former "Western Region" have done admirably well in picking such English statutes as they deem suitable and re-enacting them as local statutes with suitable modification. Nevertheless, the adoption is far from being adequate as it covered only a few areas of the law.

Fusion by Harmonisation

The diverse laws operating in Yorubaland, particularly, need to be looked into and the shafts removed from the grains, so that the relevant ones can be har-

monized together. The essence of the adoption of harmonization can therefore be realized. As Agbede has suggested "admittedly, the primary purpose of unification of laws is to avoid the current conflict and congestion arising from the interaction of diverse local laws. This objective can be achieved to some extent, by a process of harmonization (See decisions of the courts in *Cole v Cole, Adegbola's* case, See also I.O. Agbede, Legal Pluralism, pp. 145.) by removing the rough edges of the diverse local laws in order to reduce them to a harmonious whole. A harmonization scheme of customary and general laws will no doubt permit some features of existing customary laws to apply in parallel form.

However, it was regrettable that customary law still remains, to this day, unwritten, uncertain and basically inadequate to cope with the social and economic conditions of a rapidly changing society. It is also disappointing that, Islamic (Sharia law), though, written with its rules spelt out in detail thoroughness and meticulous precision, is by and large, inflexible and therefore not responsive to changes in social conditions and circumstances. On the contrary, the received English law is to some extent alien and remote to the culture and expectations of the majority of the people of Yorubaland and Nigeria at large. On the other side of the coin, we have our own system of Customary or Islamic law which is unsuitable to the needs and aspiration of a modern society (See decisions of the courts in *Cole v Cole, Adegbola's* case, See also I.O. Agbede, Legal Pluralism, pp. 145.).

The Theory of Equity of Apportionment

This theory is proposed on the basis that an integrated scheme will be predicated on itself. An integrated scheme is a process of having a unified system of law to govern all persons, natives and non-natives and of whatever religious persuasion. The purpose is to design a single legislation which will fulfils the reasonable expectation as far as practicable of all persons concerned unlike the existing Administration of Estate law in force in each of the Yoruba six states which exclude succession governed by customary law. The law should have taken account of all persons of whatever cultural background, level of advancement and whatever degree of diversity between different levels of educational attainment by the people of these states. It should be possible for a single legislation or a code to govern the devolution of intestate estate of every person domiciled in these states. The existing controversy is the narrow confine known to English concept of "family" and somewhat larger notion of "family" known to our customary law. All that is necessary is to widen the scope larger than the existing beneficiary of intestate estate under the general (English) law to take account of the cultural value of the people of these states.

It is on this account, that the researcher is proposing the theory of "equity of apportionment". By this theory, those who ought to have a share in particular intestate estate shall not be disappointed. The way this theory will work is to reserve definite percentage such as 60% to the children of the deceased person, 25% to the widow or widows of the deceased husband 15% to the extended family members. By this, where particular individuals have been brought and trained by their uncles and aunties, it is natural that the children of such uncles and aunties should benefit from the investment their parents have made on their sisters and brothers. If alive otherwise it goes to brothers and sisters of the deceased alive or their children. That is, extended family should be confined to father, mother, brothers and sisters or the successors of brothers and sisters if not alive.

So, the ongoing practice of denying the wife and children of share from their husbands and fathers' real estate will pale into oblivion. That is the essence of "theory of equity of apportionment". If this theory is adhered to in legislation governing intestate succession, the present hardship being suffered by children and wives of the deceased persons in the hands of the members of the extended family particularly when the deceased is married monogamously, will ceased to plague us. The better approach is to achieve integration of law that will take account of the pres-

ent realities geared towards achieving harmony within the extended family. (The extended family should approximate the concept of 'dependents" elections as contained in Fatal Accident Law of the continent states with some medications; for instance, under the right of the beneficiary; fatal Accident Act allows for claims to be made by the defendants of the deceased in their own right. This will include losses arising after the date of death. The beneficiary of the estate are often dependents. When a person is killed a claim can be brought on behalf of his or on behalf of their dependants. The person suing as of right are called the "claimant" who are the beneficiaries according the act particularly Section 2 states that: Every such action shall be for the benefit of the dependants of the person (die deceased) whose has been so caused; the "dependant means:

The wife or husband of the deceased,

Any person who is a parent or grandparent of the deceased

Any person who is a child or grandchild of the deceased and

Any person who is, or is the issue of, a brother, sister, uncle or aunt of the deceased.

In addition, section 4 provides:

Any relationship by affinity shall be treated as a relationship by consanguinity, any relationship of the half blood as a relationship of the whole blood and the step child of any person as his child, and illegitimate person shall be treated as the legitimate child of his mother and reputed father, see, Gordon Exhale "the law relating to fatal Accidents", An Introduction https://fataaccidentlaw.wordpress.com/2013/07/22/the-law-relating-to-fatal-accidents-an-introduction. Accessed 30th November, 2016. See, fatal Accidents Act (1976) 1976 CAP 30.

Definition of wife should include childless wife which customary law excludes.

A child or children should include illegitimate children as prescribed by the 1999 constitution of FRN sections 42(2). Also as contained in the Northern state Fatal Accident law, laws of Federation.)

Ways and Means of Fusion of Laws by Legislation

It is important to note that approaches to fusion of law by legislation are as varied as underlying policies behind every integration scheme. These approaches are discussed as follows:

Integration by Unification

Integration by unification approach can be achieved through an outright abolition of all the systems of law but one or the replacement of the existing conflictual systems by a new single (acceptable) system. This type of approach integration of law has been experimented with success in the field of criminal law and punishment by outright abolition of the rules of customary law and Islamic law. The aspect of Islamic law infused are however contained in the Northern penal code which include the prohibition of consumption of intoxicating liquor and criminal punishment for adultery, (Cap 89 Penal Code with Sharia Penal Code) unless fine-tuned, customary law rule is not suitable to modem situations in the area of criminal law and punishment. (Formerly punishment by maiming, stoning and mutilation of all kinds were rampant under customary a Islamic laws respectively).

However, in the area of succession, the customary and Islamic laws are vigorous, fully developed and will remove dominant among the people particularly in Yorubaland. From the Northern part of Nigeria, Muslims patronize the indigenous Sharia court, much more than any other courts. It will be unrealistic, if we are to replace the existing rules of customary /Islamic laws with the rules of the received English law. For instance, the rules of English law of succession inclusively based on monogamous marriage can hardly found acceptance "with Nigerians especially the Yorubas, majority of whom do not appreciate any other law than customary aw, in this regard regardless of some of its weaknesses. As to the contemplation of replacing the general law in-to-to with the existing rules of customary law, one may begin with the view expressed by the London Confer-

ence on the 'Future of Law in Africa" that; "Question of family relation, marriage, adoption, divorce, wills and succession are so essentially personal that they must in large part continue to be governed by the customary law of the community to which the person belongs" (See Marriage Act, Law of Federation of Nigeria 2004). The issue of replacing customary law by foreign law in this area is bound to produce absurdity and injustice (See Marriage Act, Law of Federation of Nigeria 2004).

However, the most criticized aspect of customary law of succession is the way and manner the law treats the women folk particularly the inferior status and inadequate protection of the widows and daughters of the deceased which has rendered the customary law of succession inconvenient to most educated females in Yorubaland. On the other hand, Islamic law cannot be applied universally because the law is addressed only to Muslims and the Muslim community. It is regarded as a law of religion and an integral part of Islam. Islam is the totality of human life. Therefore, it cannot be a viable alternative or a universal option to other non-Muslims.

Conclusion

The following recommendations are proposed:

Reforms of Customary Law in Yoruba land as a First Step

The customary laws of succession in Nigeria are long overdue for reform (Despite the fact that South African practice a mixed legal system, comprises of indigenous laws and law inherited from Dutch and British. The 1996 Constitution gives customary law equal standings with the received laws). Most of these customary laws are discriminatory against women barring wives from inheriting any share in their husband's estate. The denial negates the tenets of 1999 Constitution as amended and contrary to International Convention on Eliminating of Discriminations against Women (CEDAW) to which Nigeria is a signatory. This law needs to be overhauled to allow women as wives to inherit their deceased husbands' estates like other wives who married monogamously (See Section 42 (1) & (2), 1999 Constitution of Federal Republic of Nigeria as amended).

Alongside reform, families and members of the entire citizenry should be sensitized and enlightened on the notion that women are not chattel (Widow inheritance by the male relations of their late husband. See Nzekwu v Nzekwu (1989) 2 NWLR (Pt. 104) 373; Akinnubi vAkinnubi (1997) 2 NWLR (pt 486) 144; Obuzez v Obuzez (2001) 15 NWLR 377) and therefore not like property that can be distributed after passing away of their husbands. This traditional concept should be eliminated from the mindset of all and sundry. This sensitization campaign should not be undertaken by the government alone but should be collectively handled by the traditional rulers, religious leaders, community leaders, and family heads. They are stakeholders in the field of culture and its sustenance in their various communities. These set of people can be regarded as necessary parties because they promote and enforce customary laws that are deeply enshrined in the culture of the people. The involvement of the stakeholders as mentioned here is inevitable for the effectiveness of the proposed reforms.

Simply, these laws are archaic and cannot stand the test of modern times in the global world. Conferences, seminar and workshop should be organized by NGOs, government parastatals and Religious and social groups (This is corollary recommendation to the above point. Although most states particularly in the southern part of Nigeria have been playing active role in customary law related reforms. The development in these states is very recent, apart from Wills Law, Law of Estate Administration enacted by the defunct old Western Region Government and re- enacted by the states devolved from the defunct region. In this respect, some states that set up Law Reform Commission are Lagos, Abia, Bayelsa, Akwa Ibom and Edo.Ekiti signed into law, a Law Reform Commission Bill in 2014. The state need to come out with legislation that will eliminate primogeniture and a law that will put men and women on equal level

under customary law of inheritance. http://www.punchnh.com/news/ekiti-signs-criminal-law-acuses-ff-g-neglect retired 30/6/2015 Jigawa State Justice Law Reforms Commission, Akwa Ibom State Law Reform Commission presented its first annual report in 2010, Abia State is collecting data for a Customary law Manual).

Enlightenment Campaign through Mass Media:

Mass enlightenments programs on the untold hardship and deprivation that wives and in some cases, daughter suffer under customary laws should be embarked upon in a sustained manner. Such campaign should be mounted by Ministries of Information, Communication, Women Affairs, Youth and Culture, and also on electronic social media to enlightened people on the dangers of inequality of succession rights caused to widows and the female heirs.

Radio, Television (TV), town criers, discussions, notices on billboards, newspapers, leaflets, magazine in both English, local languages and local dialect should be employed so as to reach the educated, semi-educated, illiterate, semi-illiterate in our society. These programs are very necessary to effect changes in the attitude of men particularly in the field of succession. It will also reduce men chauvinism to the barest minimum, generally.

The Role of the States House of Assembly

The State Houses of assemblies have a very crucial role to play in the reforms of customary law of succession. These are the only authorities to deliberately abolish or modify existing rules of customary law. Such legislation should abolish all forms of discrimination against widows and female children as contained in the customary law rules. The legislators should therefore prescribe the exact percentage to be given to a widow from her demised husband estate as suggested in this paper. Daughters and sons should be placed on equal footing by such legislation. The states in Yoruba land need to emulate the states (The states are Imo, Bayelsa, Enugu, Cross Rivers and Kaduna states; that is gender and Equal Opportunity Law no 7 of Imo State 2007; the Prohibition of Infringement of a Widow's and Widower's Fundamental Human Right Law of Enugu state 2011; Cross River Female Person's Inheritance of Property Law 2007) that have taken this step earlier.

Need for Intervention of the Legal Aid Council

The legal aid council should provide services for the citizenry in line with the enabling Act (Cap L9 law of the federal government of Nigeria 2004, on legal aid council) that established it and render free legal services for the time being for poor, widows and their children to secure their rights of inheritance. The National Assembly and the State Assembly should endeavor to emulate other African countries (Uganda, South — Africa and Zimbabwe) that have achieved this fit (Cap 4, section 33–46 of 1999 Constitution of Federal Republic of Nigeria. See particular section 32 constitution of Republic of Uganda 1995; Also, Section 8 Constitution of Republic of South Africa, 1996) in their various constitutions (See particular section 32 constitution of Republic of Uganda 1995; Also Section 38 Constitution of Republic of South Africa, 1996 prohibits laws, culture, centenary, and tradition which are against the dignity or interest of women and also ensure outright repeal/abolition of all under customary laws that allows denial and promote discrimination against women as widows or widower (whose applicable) in respect of right of inheritance succession).

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