THE NEXT OF KIN REQUIREMENT AS AN INSTITUTIONAL POLICY: IMPLICATIONS FOR INHERITANCE RIGHTS IN NIGERIA*

Abstract

In certain establishments and contracts, there is a requirement for a person to state his next of kin or beneficiary. Outstanding examples are life insurance policies and civil service regulations. The various statutes in Nigeria dealing with Administration of Estates stipulate the class and priority of persons qualified as 'the next of kin' of a deceased person. In the probate enterprise, estates of deceased persons could be administered and ultimately inherited by the next of kin. Conflicts could arise, however, and do arise with respect to which next of kin is entitled to what estate in certain circumstances. Is the law providing for the ratio or quantum of distribution and the priority of persons to inherit an estate affected by the fact that a different set of persons was nominated in a life insurance policy or the record of service as happens in the civil service? How is such a conflict resolved? In other words, are the inheritance rights stipulated in the statute or obtainable under customary law affected by the requirement of next of kin as an institutional policy? We intend to address these issues or concerns in this paper.

Keywords: Next of Kin. Institutional Policy, Inheritance Rights, Nigeria.

1. Introduction

The concept of intergenerational wealth transfer is one of the underlying elements of the phenomenon of inheritance. Many legal systems rely on the family paradigm as the driving force for this phenomenon. [1] The persons covered within this paradigmatic scope are subsumed under the class known as 'next of kin'. In intestate situations, persons falling under this class are entitled, by statute or customary law, to inherit a deceased person's estate. In a testate situation, however, a testator is granted testamentary freedom to bequeath his wealth to any person, subject to some restrictions. In Islamic law, for example, testamentary freedom is limited by the principle of 'bequeathable one-third'.[2] In other words, a Moslem testator cannot bequeath more than one third of his estate to persons who are not members of his family and not subject to Islamic law. Otherwise, a person who is not the next of kin of a deceased could be a beneficiary of a testamentary legacy. In some establishments and contracts, however, there is a requirement to state the affected person's 'next of kin' or 'beneficiaries'. In the civil service, for example, an employee is required to fill a Personal Data Form. This form, which forms part of his Record of Service, requires him to state his next of kin or beneficiary. Since statute law sets a scale of priorities for persons falling under 'the next of kin' class, can a person who is lower in rank than another be entitled to the benefits due to the deceased employee in preference to the one higher in rank because he was named as the next of kin or beneficiary in the deceased's record of service? Put in another context, can one who is named a beneficiary in a Life Insurance Policy inherit to the statutory detriment or exclusion of another person who is entitled to inherit as the next of kin? In other words, is the fact that one is named a beneficiary in a Life Insurance Policy or a Next of kin in the Personal Data Form as required by the civil service regulation affect the inheritance rights of persons identified as the Next of Kin in the statute? What happens to the deceased's estate where a Life Insurance Policy or Personal Data Form in a civil service setting does not state any beneficiary or next of kin? We intend to answer these questions in the course of our discourse. But we must attend to the preliminary issues first.

2. Identifying the Next of Kin

Osborn's Concise Law Dictionary defined the term next-of-kin as follows: 'The nearest blood relatives, strictly, those who are next in degree of kindred to a deceased person. The degrees of kindred are according to Roman law, both upwards to the ancestor and downwards to the issue, each generation counting for a degree. Thus, from father to son is one degree and from brother to brother is two degrees, namely, one upwards to the father and one downwards to the other son. By this means husband and wife did not rank as next-of-kin. However, the old rule whereby a husband or wife did not take as statutory next-of-kin was abolished by the Administration of Estates

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[1] See for example the celebrated essay by Frances H. Foster, '*The Family Paradigm of Inheritance Law*' in *North Carolina Law Review* (2001) 80 N.C.L. Rev. 199. Some scholars have questioned the continued relevance of this paradigm in the face of the near eclipse of the traditional family in contemporary times, especially in western countries.

[2] According to a Hadith, a Muslim cannot dispose of more than one third of his property and should not be partial to one heir at the expense of the others. See I D Abdur Rahman, *SHARI'AH: THE ISLAMIC LAW*, p. 274. As Ben Nwabueze further explained: 'By Mohammedan law a will need not be in writing, but it can only dispose of one-third of the testator's property, and such gift can only properly be made in favour of persons other than the heirs whose right to two-thirds share of the estate is protected by law against any testamentary disposition.' See *Nigerian Land Law* (1982) Enugu, Nwamife Publishers Limited, p. 425.

Act 1925.'[3] The learned author Theobold defined it thus: 'The words 'next of kin', without more, mean the nearest blood relations of the propositus[4] in an ascending and descending line…[5] As Ronald Rubenstein further explained in relation to English Law,

> The next of kin of anyone who has died after 1925 are defined by the provisions of the Administration of Estates Act 1925. They are, in order of precedence: (1) wife or husband of the deceased, (2) children, (3) father and mother, (4) brothers and sisters, (5) half-brothers and sisters, (6) nephews and nieces, (7) grandparents, (8) uncles and aunts, and children or grandchildren of a deceased uncle or aunt. If the death occurs after 1 January 1950 adopted children will rank in the same category as real children, whether the adoption order was before or after that date.[6]

By section 2 of Administration and Succession (Estate of Deceased Persons) Law of Anambra State (hereinafter referred to as the Succession Law of Anambra State), next of kin includes (a) a widow or widower of a deceased person, and (b) other person who, by law, would be entitled to letters of administration in preference to a creditor or legatee of the deceased. In interpreting this provision of the law, P.C. Obiora, J of the Anambra State High Court in the case of *Nwafia v. Okoye*[7] held thus: 'The presence of the word 'includes' automatically presupposes, that the classes of persons enumerated in either (a) and (b) are not exhaustive'.[8] Of course, section 2 (supra) specifically mentioned widow and widower of the deceased in paragraph (a) but made reference to other persons who, by law, would be entitled to letters of administration in preference to a creditor or legatee of the deceased in paragraph (b) of the said section. Such persons who are entitled to letters of administration in preference to a creditor or legatee are specifically mentioned in section 96(2) of the same law. The said persons, in order of priority, are

(a) The surviving husband or wife of the deceased;
(b) The children of the deceased or the surviving issue of a child who died in the lifetime of the deceased;
(c) Father or mother of the deceased;
(d) Brothers or sisters of the whole blood or the issue of any brother or sister who died in the lifetime of the deceased;
(e) Brothers or sisters of the half blood or the issue of any such brother or sister who died in the lifetime of the deceased;
(f) The grandfather or grandmother of the deceased;
(g) Uncles and aunts of the whole blood or the issue of any uncle or aunt who died in the lifetime of the deceased.

After these persons, the next classes of persons entitled to apply for letters of administration are:

(h) Creditors of the deceased; or
(i) Failing all the aforementioned persons, the Administrator-General.

In other words, persons covered from numbers (a) to (g) are entitled to letters of administration in preference to those listed (h) and (i).[9] By the *ipsissima verba* of section 2 of the Succession Law of Anambra State, they constitute the next of kin of the deceased. This much is equally borne out from Probate Form 25, 'Declaration as to Next of Kin', as a schedule to the High Court of Anambra State (Civil Procedure) Rules 2006. The said Probate Form 25 discloses the same set of persons as the next of kin of the deceased. From these provisions of the law, it is very clear that both the plaintiff (the husband of the deceased woman) and the defendant (the brother of the deceased woman) in the case of *Nwafia v. Okoye (supra)*, all qualify as next of kin of the deceased woman. We shall get back to this case in the course of our analysis.

3. Who is a beneficiary?

A person could confer the benefit of his estate on another through the mechanism of beneficiary designation. According to Black's Law Dictionary,[10] a beneficiary is someone who gains an advantage, profit or interest from

[3] *Osborn's Concise Law Dictionary* (Twelveth Edition) (2013) Scotland, Sweet & Maxwell (South Asian Edition). p. 283.
[4] *Osborn's Concise Law Dictionary* defined the term 'propositus' thus: 'The person by reference to whom a relationship is ascertained, e.g. the children of A, A being the *propositus*.' Op. cit., p. 329.
[5] *Theobold on Wills* (1971) London, Stevens & Sons (Thirteenth Edition), para. 999, p. 354.
[6] *John Citizen and the Law*, 1947, Middlesex, Pengiun Books Ltd., p. 288
[7] (2006) 7 ANSLR
[8] Ibid., p. 135.
[9] For more on the definition of next of kin, see also O Ezeonu, *Probate Practice in Nigeria: A Practical Approach* (2012) Enugu, Snaap Press Nigeria Ltd., paras. 3.02, 3.03, 3.04 and 3.05 where reference is made to the definition offered by Stroud's Judicial Dictionary.
[10] 6th Edition

the act of another. He is a party who will benefit from a transfer of property or other arrangement.[11] According to Karyn Maier, 'A beneficiary is a person or entity designated to receive assets upon another person's death. Specific beneficiaries are named in a last will and testament or in a life insurance policy; they typically include a person's spouse, children or other relatives. Some people designate charities, trusts or other legal entities as beneficiaries instead of family members, either by choice or because none exists. A person may even choose to leave everything to benefit the care of a beloved pet.[12] However, some types of financial accounts and insurance policies may automatically elect a surviving next of kin as the default beneficiary if no other beneficiaries were designated when the account was created.'[13] In insurance policies, a legal entity could be designated as a primary, secondary or tertiary beneficiary. According to Stroud's Judicial Dictionary,

> A beneficiary is 'one who is BENEFICIALLY ENTITLED to, or interested in, property; i.e. entitled to it for his own benefit, and not merely as TRUSTEE, or executor, holding it for others. The word is nearly equivalent to 'CESTUI que TRUST,' which, on account of its cumbersomeness and inexpressiveness, 'beneficiary' has begun to supersede in modern law'[14]

The right of a beneficiary under a will is inchoate until the residuary estate has been distributed and his legacy vested on him by the executors of the will. In other words, the benefits due to a beneficiary under a will become accruable after the administration of estates. This is not the same with a beneficiary under a life insurance policy as shall be demonstrated *anon* (or later).

4. The inheritance rights of the next of kin

When a deceased person dies intestate, his next of kin are deemed to be interested in his estate and shall be entitled to a grant of administration in respect of his estate, in order of priority, as follows: (a) the surviving husband or wife of the deceased; (b) the children of the deceased or the surviving issue of a child who died in the lifetime of the deceased; (c) father or mother of the deceased; (d) brothers or sisters of the whole blood or the issue of any brother or sister who died in the lifetime of the deceased; (e) brothers or sisters of the half blood or the issue of any such brother or sister who died in the lifetime of the deceased; (f) the grandfather or grandmother of the deceased; and (g) uncles and aunts of the whole blood or the issue of any uncle or aunt who died in the lifetime of the deceased. See section 96(2) of the Succession Law of Anambra State. It is pertinent to draw a distinction between the administration of estates and succession to estate. Whilst the former is a necessary process for the winding up of a deceased's estate, the latter situation represents the actual distribution of the benefits of the estate of a deceased person. Thus, while section 96(2) of the Succession Law of Anambra State stipulates who is entitled to undertake the winding up of the estate of a deceased person, section 120 of the same law stipulates the ultimate beneficiaries of that exercise. In this respect, the said beneficiaries would be entitled to the residuary estate[15] of the deceased. The relevant statutes in Nigeria dealing with issues of Administration of Estates and Succession provide for a table of succession or inheritance in a case of intestacy.[16] In this regard, section 120 of the Succession Law of Anambra State provides for the manner in which the residuary estate of an intestate shall be distributed or held on trusts. It stipulates five situations in this respect. We shall only delve into the provision of the law with respect to a surviving spouse given the divergent positions of the law.

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[11] This definition was cited with approval in the High Court case of *Nwafia v. Okoye* (2006) 7 ANSLR, p. 135.

[12] Frances H. Foster defended the legality of such disposition in an article 'Should Pets Inherit?' in Florida Law Review, Vol.63, Issue 4. The springboard of the article is the following event recounted by the author: 'On August 20, 2007, billionaire hotelier Leona Helmsley died survived by her brother, four grandchildren, twelve-grandchildren, and her beloved companion of eight years, a while Maltese dog named Trouble. One week later came news that shocked the world. Helmsley left $12 million to Trouble.' P. 802

[13] See Karyn Maier, 'What Does Tertiary Beneficiary Mean?'. Accessed on http://info.legalzoom.com/tertiary-beneficiary-mean-20986.html on 5/31/2015 by 9.23pm.

[14] (1971) London, Sweet & Maxwell Limited, p. 276.

[15] 'Residuary estate in cases of total intestacy includes the entire estate of the intestate after payment of funeral, testamentary and administration expenses, debts and other liabilities of the estate.' Per Ayoola, J.S.C. in *Salubi v. Nwariaku* (2003) 7 NWLR (Pt.819), p. 452. Section 107(5) of the Succession Law of Anambra State provides thus: '107(5) The residue of the money and any investments for the time being representing that residue, including (without prejudice to the trust for sale) any part of the estate of the deceased which may be retained unsold and if not required for the administration purposes aforesaid, is in this Law referred to as 'the residuary estate or (sic) the intestate''. According to A.R. Mellows, 'The residue, which will be available either for immediate distribution or where a minority or life interest arises, and which will be invested, is called by the Act 'the residuary estate of the intestate'. The entitlement of the beneficiaries is to the residuary estate, and not to the gross estate.' See *The Law of Succession*, (Third Edition) 1977, London, Butterworths, p. 204.

[16] The rules guiding the distribution of a deceased's estate in terms of intestacy are fairly complicated. See Andrew Iwobi, *Essential Succession* (1996) Great Britain, Cavendish Publishing Limtied, pp. 117-122; A.R. Mellows, *The Law of Succession* (1977) London, Butterworths, (Third edition), pp. 205-214; F.J.Oniekoro, (2007) *Wills, Probate Practice and Administration of Estates in Nigeria* (2007) Enugu, Chenglo Limited, pp. 484-492.

5. The surviving spouse

Apart from enjoying priority over other persons with respect to the right to administer the estate of a deceased spouse, the surviving spouse equally enjoys special benefits in cases of intestacy. R. Rubenstein summarized the position of the law thus:

> Before the estate is divided between the next of kin on an intestacy, the widow or widower, if there is one, is entitled to receive the personal chattels and effects of the deceased, which include furniture, jewellery, and clothing. In addition, the surviving spouse will receive a specific capital sum of money, with interest at 4 per cent from the date of death until payment. The amount of this sum may not be more than (*a*) £5,000 in the case where there is any issue of the marriage which reaches the age of twenty-one years; (*b*) £20,000 in the case where there is no such issue, but a parent, brother, or sister, (great) nephew or (great) niece who reaches the age of twenty-one years survives. The widow or widower has also a life interest in half the remainder of the estate in case (*a*), and an absolute interest in half the remainder in case (*b*). The life interest, when there is one, may generally be capitalized by the widow or widower, who also has a right, which in the majority of cases will be exercisable, to call for the deceased's interest in the matrimonial home to be allocated as *part* of the share mentioned previously.[17] (Emphasis supplied).

Thus, in the case of total intestacy, a spouse may become entitled to benefit from the estate in four respects, the statutory legacy;[18] interest on the statutory legacy; personal chattels; and an absolute or a life interest in half the remainder.[19] In the case of a partial intestacy, it is necessary to value the total beneficial interests received under the will, with the exception of personal chattels which are specifically bequeathed.[20] This picture represents fairly the position of English law with respect to the quantum of inheritance due to a surviving spouse in an intestate situation. In Nigeria, the provisions differ from state to state. In Anambra State, section 120(1) of the Administration and Succession (Estate of Deceased Persons) Law of Anambra State provides for a TABLE OF DISTRIBUTION of the residuary estate of an intestate. Of relevance to this work is section 120(1) (b) which provides thus:

> 120(1) (b): If the intestate leaves a husband or wife as well as children (whether or not he also leaves parents or brothers or children of brothers or sisters) the residuary estate shall be held on trust as to the value of one-third thereof for the surviving spouse whose interest shall be absolute in the case of a husband or for her life or until her remarriage (which ever first occurs) in the case of a wife; the remainder of such estate together with the residue upon Caesar of wife's interest (if any) shall be held on trust for the children in equally shares absolutely or, failing children, on trust for the children of the intestate's children in equal shares absolutely.'

This section became the object of interpretation in the case of *Okonkwo v. Okonkwo*.[21] In this case, a childless widow, who married under the Marriage Act, was deprived of her statutory rights to inherit his deceased husband's estate by the relatives of the deceased husband. She led uncontroverted evidence that she contributed to the acquisition of the said estate of the deceased. The said relatives took control of the estate and rather contended, during trial, that under Awka native law and custom, the estate should devolve on the 2nd set of defendants who are the legitimized children of the deceased from another woman whom the deceased married under native law and custom. The learned trial Judge held that section 120(1) (b) of the Administration and Succession (Estate of Deceased Persons) Law of Anambra State applied to this case. The appellant, the surviving spouse, appealed against this decision contending primarily that there is a vacuum in section 120(1) (b) of the Anambra Law (supra) and that by section 42(2) of the 1999 Constitution the provision of the said section of the aforesaid Anambra Law is discriminatory against a widow for not bearing children. In unanimously upholding the appeal, the Court of Appeal, per Agube, J.C.A. held thus:

> Section 120(1) (b) of the Administration and Succession (Estate of Deceased Persons') Law of Anambra State, 1991 no doubt, to the extent that it discriminates or dichotomizes between male and female intestate spouses is inconsistent with section 42(1)(a) of the 1999 Laws and to the extent of such inconsistency ought to be void. This is because by providing that only one third

[17] R. Rubenstein, *op. cit*., pp. 287-288.

[18] 'The sum of money payable to a surviving spouse is known as 'the fixed net sum' or, colloquially, as the 'statutory legacy'. It is updated from time to time by order of the Lord Chancellor….' See *Ranking, Spicer & Pegler's Executorship Law, Trusts and Accounts* (1996) London, Butterworths, para 2.6

[19] 'Thus, after setting aside from the residuary estate the personal chattels, the statutory legacy, and interest on it, the residuary estate is divided into two parts. One moiety is held upon trust for the issue absolutely, and the other half is held upon trust for the spouse for life, with remainder to the issue.' See A.R. Mellows, *Op.Cit*., p. 207.

[20] AR Mellows, Op. *Cit.,* p. 225

[21] (2014) 17 NWLR (Pt. 1435).

> of the estate of the intestate shall go to 'the surviving spouse whose interest shall be absolute in the case of a husband or for her life or until her remarriage (which ever first occurs) in the case of a wife,' the widow is put under great disadvantage particularly in the case of this appellant who had toiled all thesse years with her husband and invested her life savings in building the estate now in dispute only for her to be entitled only to a life interest of one third of the estate and the bulk of the residue of two thirds of the estate shall devolve on the children of an adulterer who will now enjoy same absolutely.[22]

After considering the circumstances of this case and other laws applicable to it especially the provision of the Intestate Act, 1890,[23] His Lordship further held as follows:

> In this case, since it has been acknowledged that the appellant was the only legitimate wife and widow of the deceased intestate, she ought to take half of the estate absolutely and the remaining half shall be divided amongst the legitimized 2nd set of respondents by virtue of the provisions of section 42(1) and (2) of the Constitution of the Federal Republic of Nigeria and I so hold.[24]

6. Is a person named 'a beneficiary' in a Life Insurance Policy or 'next of kin' in a deceased's record of service entitled to be granted letters of administration in respect of the estate of a deceased person?

The first scenario occurred in the case of *Obusez v. Obusez*.[25] In this case, the respondents instituted an action at the High Court of Lagos State, Ikeja, against the appellants claiming a declaration that the 1st respondent and her five children were the only persons entitled the estate of late Cornelius Paul Obusez (hereinafter referred to as the deceased) and an order that the grant of letters of administration in solemn form for the administration of the estate be issued to the respondents. The deceased was assassinated and died intestate. Before his demise, he was married to the 1st respondent under the Marriage Act. The relationship between the deceased and the 1st respondent was estranged until his death. The 2nd respondent had been a friend of the deceased in his life time and is not a member of the deceased's family. In fact, the 1st respondent was charged with other persons for the murder of the deceased but was discharged. The appellants were brothers of full blood to the deceased. The 1st appellant was the deceased's twin brother. They were sued as defendants at the trial court. They filed a defence and counter-claim in which they claimed a declaration that that they were the only persons entitled to administer the estate of the late Cornelius Paul Obusez and an order that the grant of letters of administration be issued to the appellants. The deceased was buried in the personal residence of the 1st appellant. The deceased also in his lifetime took out a Life Insurance Policy with American International Insurance Company Ltd., where he named his first and second children and the 1st appellant as beneficiaries. The learned trial judge found for the respondents, granted their claims and dismissed the appellants' counter-claim. He deemed it proper and lawful that the 2nd respondent be appointed as co-administrator with the 1st respondent as all the children were minors.[26] Aggrieved by the decision, the appellants appealed to the Court of Appeal which dismissed the appeal and affirmed the judgment of the trial court. They appealed further to the Supreme Court. In dismissing the appeal, Tobi, J.S.C., in his concurring judgment, held as follows:

> I realize that two of the appellants claims of succession to the estate were based on the fact that the deceased was buried in the personal residence of the 1st appellant and the life policy of the deceased where he made his first and second children and the 1st appellant as beneficiaries….I know of no law, which says that succession to property is determined by the place of burial of the deceased intestate or by a life policy made *inter vivos*. The fact that the deceased did not make the 1st respondent a beneficiary of his life policy does not mean that she cannot benefit under section 36(1) of the Act.[27] Conversely, the fact that 1st appellant is a beneficiary of the life policy does not ipso facto make him a beneficiary of the estate of his twin brother.[28] (Emphasis supplied).

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[22] *Okonkwo v. Okonkwo* (supra) , p. 54, D-F.

[23] It is doubtful whether the provisions of this Act could be called in aid in resolving this case since the Intestate Act, 1890 is one the laws that has been abolished by section 167 of the Administration and Succession Law of Anambra State.

[24] Ibid., p. 57, B.

[25] (2007) 10 NWLR (Pt. 1043).

[26] It is the law that probate or administration shall be granted to not less than two individuals if there is a minority or if a life interest arises under the will or intestacy. See section 94(1) of the Succession Law of Anambra State. Section 107 (4) of the same law provides thus: ' 107(4) During the minority of a beneficiary of (sic) the subsistence of a life interest, and pending the distribution of the whole or part of the estate of the deceased, the personal representatives may invest the residue of the money or so much of it as may not have been distributed, in any investments authorized by statute for the investment of trust money, with power, at their discretion to change the investments for others of a like nature.'

[27] Reference is made here to the Marriage Act.

[28] *Obusez v. Obusez supra*, p. 451, G-H

In his concurring judgment, Mohammed, J.S.C., spoke in similar terms when he held thus:

> Although the 1st defendant/appellant is a beneficiary under the Life Policy Insurance of his deceased brother forming part of the estate of the deceased, that alone does not give him the right or priority in grant of Letters of Administration under section 36 of the Marriage Act and section 49(5) of the Administration of Estate Law, over the spouse and children of the deceased who while married under Marriage Act, died intestate.[29]

The second scenario occurred in the case of *Emodi v. Emodi*.[30] In this case, the respondents had claimed priority to the grant of letters of administration in respect of the estate of one late Nnanyelugo Godfrey Umunna Emodi, a civil servant who died intestate. 2nd to 4th respondents claim to be children of the deceased. The appellants, who are brother and sister, of the deceased claimed that the deceased died childless. The deceased was divorced from the wife at the time of death. That being so, the appellants claimed to be next in priority to be granted letters of administration. In proof of the fact that the deceased died childless, the appellants relied on the High Court Judgment which dissolved the statutory marriage between the deceased and his estranged wife. One of the grounds stated by the estranged wife was that the deceased was impotent. This assertion was not contradicted by the respondents. The respondents hinged their claim of paternity to some customary events and the fact that the deceased changed his next of kin as contained in his record of service from his father to the 2nd respondent. The learned trial judge found for the respondents. Being dissatisfied with the judgment of the High Court, the appellants appealed to the Court of Appeal. In upholding the appeal, the Court of Appeal, per Akeju, J.C.A. held thus:

> Notwithstanding the position of the pleadings the appellants testified and tendered exhibit B in support of their assertion while the 1st respondent did not give any evidence in opposition, and in the circumstances, it must be taken that the appellants sufficiently and effectively established on pleadings and evidence that the marriage between the 1st respondent and the deceased was childless….Now exhibit B is the proceedings and judgment of a competent court which has not been proved to be the subject of an appeal. It is of course settled that a finding of court against which there is no appeal remains binding and conclusive. See *Okotie-Eboh v. Manager* (2005) ALL FWLR (Pt. 241) 277; (2004) 14 NWLR (Pt. 905) 242; *Iyoho v. Effiong* (2007) All FWLR (Pt. 374) 204; (2007) 11 NWLR (Pt. 1044) 31; *F.I.B. Plc v. Pegasus Trading Office* (2004) 4 NWLR (Pt. 863) 369. By virtue of section 62 of the Evidence Act, 2011, the issues decided in exhibit B and the facts upon which the judgment had been based remain conclusively proved as against the parties and their privies…..What is material here is the finding of the court in exhibit B that the marriage between the 1st respondent and the deceased was not blessed with any child and indeed that the deceased was impotent. It becomes an exercise in futility for the learned trial Judge in the instant case to embark on the scrutiny or interpretation of exhibit B or a reevaluation thereof as that court coordinate jurisdiction. See *Gispel Inter Co. Nig. Ltd v. Henry Eya & Anor* (2010) LPELR 4198 per OWOADE JCA with reliance on *Race Auto Supply Co. Ltd. v. Akib* (2006) 13 NWLR (Pt. 997) 333, (2006) ALL FWLR (Pt. 327) 486.[31]

In this case, the paternity of the 2nd to 4th respondents was not proved and the fact that the 2nd respondent was named as next of kin in the deceased's record of service cannot displace the statutory priority of the deceased's brother and sister. According to the statutory ranking stipulated in section 96(2) of the Administration and Succession (Estate of Deceased Persons) Law of Anambra State, the first four classes of persons qualified to apply for letters of administration in case of intestacy are (a) The surviving husband or wife of the deceased; (b) The children of the deceased or the surviving issue of a child who died in the lifetime of the deceased; (c) Father or mother of the deceased; and (d) Brothers or sisters of the whole blood or the issue of any brother or sister who died in the lifetime of the deceased. In this case, there is no surviving wife by virtue of the dissolution of marriage between the deceased and his estranged wife. There is, equally, no children of the marriage as, by the evidence of the estranged wife, the deceased was impotent. This finding was made in Exhibit B, an unchallenged judgment of the High Court of Anambra State. It is obvious that none of the deceased's parents was still alive; otherwise the appellants who belong to CLASS D would not have been qualified to be granted letters of administration of the estate of the deceased.

[29] *Ibid.*, pp. 455-456, H-A.
[30] (2015) 2 NWLR (Pt. 1443).
[31] *Emodi v. Emodi supra* p. 345 B-G

7. Is a person not named as the next of kin in the Records of Service of a deceased civil service employee entitled to her pension, gratuity and death benefits?

In the case of *Nwafia v. Okoye*,[32] the Anambra State High Court, *coram* P. C. Obiora, J., was faced with the issue of determining the proper person to inherit the pension and gratuity of a deceased woman. The contest was between the brother of the deceased woman who was specifically mentioned as the next of kin of the deceased woman in the Personal Data Form forming part of her Record of Service and her husband who had been issued with letters of administration in respect of her estate. The facts of the case are fairly straightforward. The deceased was employed by the State Primary Education Board, Awka (hereinafter referred to as the Board) before her demise. The Chairman of the Board was sued as the 2nd defendant, whilst, the Board was sued as the 3rd defendant in the case. None of these two defendants filed any pleading. According to the learned trial judge: 'The indifference of 2nd and 3rd defendants, is quite understandable, as the real issue in controversy is basically between the plaintiff and the 1st defendant.'[33] During trial, the 1st defendant relied on the evidence of DW3 Mrs. Chinelo Egini, who is the legal adviser of the 3rd defendant, who testified on subpoena and tendered the Personal Data Form of Late Mrs. Nwafia. The Personal Data Form, was admitted in evidence as Exhibit F. This witness under cross-examination, testified that the person entitled to receive the pension and gratuity of Mrs. Mary Nwafia, is the person named as next of kin, in Exhibit F.[34] According to the learned trial judge,

> The central issue in dispute, simply put, is who between the plaintiff that was the husband of Late Mrs. Mary Matagu Nwafia and who obtained letters of administration, in respect of her estate and the 1st defendant who was named in Exhibit F as next of kin, is entitled to the pension, gratuity and any other death benefits of Late Mrs. Matagu Nwafia.[35]

The primary contentions of the 1st defendant could be summarized as follows: (a) he has first priority of interest by virtue of section 96(2) and (4) of the Succession Law of Anambra State; and (b) the entry of 1st defendant's name as next of kin, was done before the marriage between him and the deceased and that even a Will which is superior to an ordinary entry of next of kin in a Record of Service, is revoked by a subsequent marriage.[36] In reply, counsel to the 1st defendant submitted that they are not challenging the grant of administration to the plaintiff but only lay claim to the death benefits to which the 1st defendant is specifically entitled to by virtue of Exhibit F. The plaintiff had earlier tendered the letters of administration granted to him as Exhibit C. With respect to the effect of a grant of letters of administration, the learned trial judge asseverated thus:

> Let me also state, that letters of administration by its nature, does not empower the grantee to the estate or interests of the deceased at large. Letters of administration is normally granted over specific properties or assets, usually mentioned on the document and it is on the basis of the declared assets, that an estate fee, is charged by the Probate Registrar.[37]

It is in this light that the learned trial judge evaluated Exhibit C tendered by the plaintiff. He found that the said exhibit was made only as an authority for the plaintiff to manage the specific assets of Mary Matagu Nwafia, mentioned in the document, namely, money in the bank as represented by two account numbers. It is not a magic wand that will entitle the plaintiff to claim the death benefits of his deceased wife. In dismissing the case of the plaintiff, the learned trial judge held thus:

> …, the rational for filling a next of kin, in official Records of Service or for example, in insurance policy, is to clearly identify a beneficiary. I know of no law, that prescribes that a married person, must fill in his/her spouse as next of kin.
>
> DW3 clearly and categorically told the court in evidence, that the person legally entitled to the death benefits of Mrs. Mary Nwafia, is the person written on the form, Exhibit F as next of kin. This piece of evidence was not challenged, controverted or contradicted at the trial. It is the law, that where a court has before it only the unchallenged evidence of a party to consider, the court is duty bound to accept the unchallenged evidence….See: MIRCHANDANI vs. PINHEIRO (2001) 3 NWLR (PT. 701) 557 OFORLETE vs. STATE (2000) 12 NWLR (PT. 681) 415…Consequently, I have studied Exhibit F, the Personal Data Form of Late Mrs. Mary Matagu Nwafia and the name that appears as next of kin, is that of the 1st defendant and not that of the plaintiff….The only logical conclusion from my finding, is that the plaintiff is not the

[32] (2006) 7 ANSLR.
[33] *Nwafia v. Okoye* (*supra*), p. 131.
[34] Ibid., p. 133.
[35] Ibid., p. 133.
[36] According to the learned trial Judge: 'The plaintiff claims that 1st defendant, is the named next of kin. His position is that, having subsequently married the deceased and obtained letters of administration, these two events have superceded the entry in the deceased Record of Service. With respect, I do not think the position of the plaintiff is correct.' Ibid., p. 136.
[37] Ibid., p. 135

> next of kin and therefore, not entitled to the gratuity and other death benefits, of Late Mrs. Mary Matagu Nwafia (Nee Okoye) and I so hold.[38] (Emphasis supplied).

As earlier indicated, both the plaintiff and the 1st defendant fall under the class of 'statutory next of kin' of the deceased. It is more correct then to state that 'the plaintiff is not the named next of kin' for the purpose of inheriting the gratuity, pensions and death benefits of the deceased. The named next of kin, in this case, is the 1st defendant, the deceased's brother. The learned trial Judge asseverated that the rationale for filling a next of kin, in official Records of Service or for example, in insurance policy, is to clearly identify a beneficiary. From the reasoning of the learned trial Judge, It is this named next of kin, the 1st defendant, that is, the identified beneficiary of the gratuity, pensions and death benefits of the deceased. A similar issue arose in the English case of *Baird v. Baird* [39]. As the facts of the case are fairly straightforward, I shall replicate them as indicated in the Law Reports: 'The deceased was employed by a Trinidad oil company which provided a contributory pension scheme for its employees. Under art XIII of the scheme an employee was entitled to nominate a beneficiary to whom certain benefits, including the benefits payable if the employee died while still in the company's employment, were to be payable. Nominations and revocations or alterations thereto were subject to the consent of the management committee of the scheme being given. If no nomination was made the benefits were payable to the employee's widow or widower or to his or her estate. The deceased nominated his brother as the beneficiary under art XIII by signing the relevant form supplied by the company. Five years later he married but did not vary or revoke his nomination of his brother as his beneficiary. Two years later he died while still in the company's employment and both the brother and the widow claimed the 'death-in-employment' benefit payable under the scheme. On an interpleader summons issued by the company the judge held that the brother was entitled to the benefit. The widow appealed to the Court of Appeal of Trinidad and Tobago, which dismissed her appeal. The widow appealed to the Privy Council, contending that since the nomination of a beneficiary to receive the 'death-in-employment' benefit was an ambulatory disposition of the employee's property which took effect on the death of the employee it was a testamentary disposition which was only valid if it was executed with the formalities required for a will.'[40] After distinguishing the cases relied upon by the Appellant, the Privy Council, per Lord Oliver of Aymerton, held thus:

> It is not, …, the case that every revocable instrument which creates interests taking effect on the death of the person executing the instrument is necessarily a will. The most obvious example of such a revocable but non-testamentary instrument is the exercise of a revocable power of appointment under a settlement inter vivos. Essentially, a pension scheme of the type with which this appeal is concerned is no different from any other inter vivos declaration of trust or settlement containing provisions for the destination of the trust fund after the death of the principal beneficiary. By becoming party to the scheme each employee constitutes himself both a beneficiary and (quoad his contributions to the trust fund from which the benefits are payable) a settler. He retains no proprietary interests in his contributions but receives instead such rights, including the right to appoint interests in the fund to take effect on the occurrence of specified contingencies, as the trusts of the fund confer on him.[41]

In dismissing the appeal, His Lordship held thus:

> The question must depend on each case on the provisions of the individual scheme. No doubt, where the effect of the particular scheme is, as it was in *Re MacInnes*, to confer on a member a full power of disposition during his lifetime over the amount standing to his credit under the scheme, a disposition of the interest on his death would normally constitute a testamentary disposition requiring attestation in accordance with the statutory requirements for the execution of a will. But in what is now the normal case of non-assignable interests such as that in the present case and, a fortiori, where the power of nomination and revocation requires the prior approval of the trustees or of a management committee, their Lordships see no reason to doubt the correctness of Megarry J's decision in the *Danish Bacon Co* Case. The relevant authorities were carefully considered by the Court of Appeal in the instant casse and that court unanimously expressed the conclusion that, in a case at lease in which the funds covered by the nomination were never within the deceased's control, Megarry J's decision was applicable and should be followed. Their Lordships agree. The appeal will accordingly be dismissed.[42]

[38] Ibid., pp. 136-137.
[39] [1990] 2 All E R 300
[40] See Baird v. Baird (supra), p. 300
[41] See Baird v. Baird (supra), pp. 304-305
[42] See Baird v. Baird (supra), p. 308

8. Probate and Non-Probate Properties

The general impression is that once a person dies, beneficiaries must go through the probate process before any interest can pass. This is not entirely correct. In England, for example, there is a distinction between probate property and non-probate property. Probate property is a reference to that set of proprietary items that can only be inherited after undergoing the probate process. On the other hand, non-probate property refers to those properties that can pass from generation to generation without going through probate. It could be achieved through different devises. Life Insurance Policy, for example, falls under the category on non-probate property in England. According to John H. Langbein, 'the beneficiary designation in a life insurance policy serves precisely the function of the designation of a devisee in a will. The label aside, life insurance is functionally indistinguishable from a will, for it satisfies the twin elements of the definition of a will.'[43] Explaining the position under English Laws, the learned authors, Schmitthoff and Sarre, stated as follows:

> Whenever one person effects an insurance on the life of another there must be inserted in the policy the name of the person interested therein, or for whose use, benefit or on whose account the policy is made, otherwise the policy will be void (Life Assurance Act 1774 s.2). By the Married Women's Property Act 1882, s.11, a husband or wife may insure his or her own life, and if the policy is expressed to be for the benefit of the other, or for the children, a valid trust of the policy money will be created, and the policy money will not form part of the insured's estate or be liable for his debts.[44] (Emphasis supplied).

According to Catherine Rendell,

> On the death of the life assured, the insurance company will pay the sum assured to the deceased's personal representatives. This will then form part of the deceased's estate and will be discounted by the personal representatives in accordance with the terms of the deceased's will or the rules of intestacy. However, by making use of s.11, Married Woman's Property Act 1882, or by *expressly* assigning or writing a policy in trust for a person, the assured can ensure that the proceeds of the insurance policy are paid *directly to the intended beneficiary*.'[45]

The point to note is that there some other methods of disposing of property on death apart from the will. Andrew Iwobi enumerates them as (a) Inter vivos dispositions, (b) survivorship under joint tenancies, (c) benefits payable under life insurance policy, (d) nominations and, (e) *Donatio mortis causa* (DMC).[46] V.K. Rovati identified eight such methods as (a) property held by the deceased as joint tenant, (b) life interest ceases, (c) unbarred entails, (d) statutory tenancy, (e) corporation sole (f) donation mortis causa (g) insurance policies and (h) nominations.[47] With respect to benefits payable under life insurance policy, the learned author observed as follows:

> Another method through which a person may provide for others on his death outside the terms of his will is by taking out an insurance policy on his life. Under such an arrangement, the insurer agrees, in return for premiums paid by the policyholder, that on his death certain benefits will be payable to his spouse, children or any other person(s) specified by him…Where the policy provides that the benefits are payable to the spouse or children of the policyholder, s 11 MWPA 1882 specifically directs that these benefits are to be held on trust for these beneficiaries such that they will not become part of the policyholder's estate on his death but are payable directly to the beneficiaries. See *Re S (Deceased)* (1995). In the case of beneficiaries other than spouses/children, the same result may be achieved where the policyholder expressly assigns his legal and equitable interest under the policy to the insurer on trust for such beneficiaries.'[48] (Emphasis supplied)

Is this the position of the law in Nigeria? Does a benefit from a life insurance policy fall under probate or non-probate property? Indeed, is there is a distinction between probate and non-probate property in Nigeria? According to J.A. Mosanya, benefits from a Life Insurance Policy especially where the deceased was competent to dispose of the benefits is one of the items of information to be included in the inventory form.[49] However, this position would be correct where no specific beneficiary is nominated in the insurance policy. As the learned authors, Animashaun and Oyeneyin, explained,

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[43] JH Langbein, '*The Nonprobate Revolution and the Future of the Law of Succession*' in Harvard Law Review (1983 – 1984), Vol. 97:1108, p. 1110.
[44] Charlesworth's *Mercantile Law* (Fourteenth Edition) 1984, London, Stevens & Sons, p. 503
[45] C. Rendell, Wills, *Probate & Administration* (1994) London, Cavendish Publishing Limited., para. 3.4.2, p. 37.
[46] A. Iwobi, pp. 9-13.
[47] See V.K. Rovati, *Succession: The Law of Wills and Estates* (3rd Ed.) 2001, London, Old Baily Press, pp. 268-271
[48] A. Iwobi, pp. 10-11.
[49] Op. Cit., pp. 241-242.

> A person may also take a life insurance policy out for the benefit of other people. The policy taken may pass to the beneficiaries outside the estate. This way the deceased provides for his family tax-free since the policy is not regarded as part of the estate of the deceased that would be taxed….But if the proceeds of the life insurance policy are not directed to any beneficiary, the proceeds will fall into the estate of the deceased. It would be regarded as part of the estate and treated as such to be distributed under either the deceased's will if one was made or intestacy if a will not made….Where a will is left but a life insurance policy leaves a named beneficiary, the named beneficiary under the life insurance and not the beneficiary of the residuary estate will be entitled to the proceeds.'[50]

The incidents of inheritance that follow the properties identified in the non-probate sphere apply in Nigeria. For example, the incidents of inheritance that attend a joint tenancy apply in Nigeria. See the case of *Chinweze v. Masi*.[51] The incidents of inheritance that attend nominations as obtains in records of service and contributory pension schemes as indicated in the case of *Baird v. Baird* (supra), also applies in Nigeria. See the case of *Nwafia v. State* (supra). In effect, the distinction between probate and non-probate properties applies in Nigeria.

9. Matters arising

In Nigeria, the requirement to state the next of kin pervades many sectors of the society. While filing your biodata in a hospital or a bank or in the civil service, and even some transport companies request same from commuters. What is the purpose of these requirements? Do they affect the inheritance rights of next of kin as stipulated in the Administration and Estate laws of the different states in Nigeria? In an earlier article, I observed thus:

> In Nigeria, however, the term 'next of kin' like in some climes has bee used with some ambivalence and arbitrariness. In the civil service, there is usually the requirement that you state your next of kin as part of your record of service. Banks equally require same information from prospective customers. Schools demand same information from students. By that, they usually mean the person who stands *in loco parentis* to the student and with whom the school could interact in respect of the student's welfare and misconduct. Transport companies required the contact of next of kin from commuters; by this they mean the person they could contact in cases of accident and other issues, etc. In these circumstances, the information is required for different purposes, not necessarily for purposes of inheritance. Inheritance is not part of the definition of next of kin….[52] (Emphasis supplied)

In other words, it is not in all circumstances that the requirement of stating a next of kin implies the person to inherit. It all depends on circumstances and statutory provisions. In England, for example, the Mental and Health Act ascribes no rights to the next of kin and in fact contains distinctive provisions with respect to a patient's 'relative', 'nearest relative' and 'next of kin'.[53] In some other instances, inheritance could be implied like cases of statutory nominations as obtains in pension schemes, and beneficiary designations as in insurance policies. In the later circumstance, the properties given to specific beneficiaries do not form part of the estate of the deceased, and therefore accrues to the designated beneficiary irrespective of customary incidents of ownership and the statutory provisions as to who inherits what under the default rules of intestacy.

10. Conclusion

We have essentially established that the inheritance rights stipulated under the statutes and as obtainable under customary law could be affected by statutory regulations and other circumstances. This was demonstrated by cases involving nominations in pension schemes and beneficiary designations in life insurance policies. But we equally demonstrated that it is not in all circumstances where the next of kin is required that inheritance is implied. In the later cases, the inheritance rights as indicated in the Administration and Succession laws of the different states, especially in the cases of intestacy, are not affected by such requirements.

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[50] Animashaun and Oyeneyin, *Law of Succession, Wills and Probate in Nigeria* (2002) Lagos, MIJ Professional Publishers Limited, pp. 116-117

[51] (1989) 1 S.C. (Pt. 11)

[52] See AO Ezeonu, '*Who is your next of kin? A Rejoinder'* in Law Journal of Nigeria (2018) 3 L.J.N., p. 511

[53] See Andrew Parsons, 'Mental Health law briefing 186 – Next of kin and nearest relative: what's the difference?' accessed at https://www. Rlb-law.com/briefings/mental-health-law/next-of-kin.on 10/11/2018 by 9.18am