INHERITANCE RIGHTS TO REAL PROPERTY UNDER IGBO LAND CUSTOMARY LAW: DID THE SUPREME COURT EVER SYMMETRIZE GENDER?

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ABSTRACT

Two 2014 judgments of the Supreme Court of Nigeria have been hailed as heralding a watershed on the issue of women inheritance of real property under Igbo customary law contrary to what had previously existed. However, an examination of these judgments suggests that the Supreme Court did not do so. Indeed, a further examination of pre-2014 judgments of the Supreme Court of Nigeria also suggests that they have never done so. This is due, in the main, to the fact that Supreme Court can only deal with matters before it on a case to case basis and only on the issues presented before it. It is therefore suggested that the most effective way for the Court to deal with such customs is to strike it down on a piece meal basis as each case is, based on variants of Igbo custom, raised before it for adjudication.

INTRODUCTION

Two recently reported Supreme Court cases have caused plaudit from women's rights advocates and scholars[1]. They now claim, ostensibly based on these two decisions, that gender is no longer relevant in the issue of inheritance of real property in Igbo land[2]. The prevalent custom among Igbo communities has been that women are not allowed to inherit real property[3]. However down the years, several Supreme Court decision have shown a whittling down of this position with more concession being granted to women. The overwhelming Supreme Court approach was treat each case on its own merit particularly bearing in mind that even among Igbos there are variations in the position of their various custom on the issue of women's right to inheritance of real property. Indeed the Supreme Court appears to recognize these variations in their previous decisions on this subject. The recent decisions as reported, and celebrated, appears to suggest that the Supreme Court has unified the customs, with its variations, into a common position which is that women can now can inherit real property in Igbo land.

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1 See for instance, **Babatunde Oni, Supreme Court Judgment on Female Inheritance in Igboland Uphold Gender Equality** , (2014) Vol. 32 *Journal of Public and Private Law (JPPL)* 155 at 161

2 Ibid.

3 As we have seen over the years there are variations to this position depending on the peculiar custom of each community which in turn is a matter of proof before the court.

Our quest is to determine what the Supreme Court really did in these recent cases on this issue. This quest leads to us back to when the first of such decisions came before the Nigerian Supreme Court and which was reported in 1963. Since then a number of such cases have come before the Supreme Court. We intend, by this retrospection, to determine the exact position of the Supreme Court decisions on the issue before these recent decisions. There are decisions of other lower court on this issue but our interest will be on the Supreme Court for the reason that the Supreme Court is the highest court in Nigeria and its decisions bind all other courts down the rung[4].

Our discourse is divided into three parts. First, we examine the decisions of the Supreme Court before 2014. Then, we examine these 2014 decisions. This is done to determine the true significance of the 2014 pronouncements of the Supreme Court on this issue: were they groundbreaking, a reiteration of already known position or what? We also pointed the way forward for the Court.

PRE-2014 CASES OF THE SUPREME COURT

The first major "confrontation" the Nigerian Supreme Court had with issues bothering on women's right to inheritance of real property came in 1963 in the case of **Nezianya v. Okagbue**[5]. In this case, which was based mainly on the customary of law of Onitsha people since both parties were indigenes of Onitsha, a widow, upon the death of her husband let out his houses to tenants, sold a portion of the land and used the proceeds to build two huts in the compound. When she wanted to sell more of the land her late husband family objected. The widow then devised the property to her grandson who sued the late husband's family claiming that her grandmother had a long adverse possession of the land. The court of first instance held that the possession by a widow of her husband's land cannot be adverse to the rights of her husband's family to enable her acquire an absolute right to possession of it against the family. On appeal, the Supreme Court, through Ademola J.C.N, while holding that under Onitsha native law and custom the wife of a deceased member of a family could not become the owner of the late husband's real estate by virtue of long possession of the property which she occupied with the knowledge of the family or by adverse possession, clarified the position of Onitsha native law and custom thus,

> The Onitsha native law and custom postulates that a married woman, on the death of her husband without a male issue, with the concurrence of her husband's family, may deal with his (deceased) property. Her dealings, of course, must receive the consent of the family. The consent, it would appear, may be actual or implied from the circumstances of the case, but cannot assume ownership of the property as her own. If the family does not give their consent, she cannot, it would appear, deal with the property. She has, however, a right to occupy the building or part of it but this is subject to good behaviour[6]

4 The Supreme Court also binds itself unless it expressly departs from it

5 (1963) 1 All N.L.R. 352.

6 (1963) 1 All N.L.R. 352 at 356- 357.

A learned author has opined that this statement represents the true position in most other Igbo speaking areas of Nigeria[7]. In 1976, the Supreme Court was faced with a case not only with a different set of facts but a claim that a different custom applied. In **Udensi v. Mogbo**[8] the respondent (as plaintiff) had sued the appellant (as defendant), among others, for an account of the rent he collected at 54 Moore Street, Onitsha and an injunction restraining him from collecting rent from the property. The appellant's contention was that although the Kola tenancy grant was made to the respondent's father, John Udensi, by Mgbelekeke family it was actually his father, Dominic Udensi, who gave the money and financed the acquisition of 54 Moore Street by the said John Udensi since, he contended, John Udensi was a pauper during his life. The appellant alternatively contended that the property by virtue of the *Ili-Ekpe* custom of the people of Ezinifite to which both parties belonged was his property. It is interesting to note that the appellant's father contested the property with the respondent's mother shortly after the death of John Udensi. As a compromise, the appellant's father, Dominic Udensi was handed over the title documents to the property and allowed to collect rent from the property. When Dominic Udensi died, the appellant continued to collect rent from the property until he was challenged. It is also important to note that John Udensi had no male issues. The trial court found in favour of the respondent holding in the process that,

> If a Kola tenant died intestate the beneficiaries of his estate held under Kola tenancy acquired an equitable interest in the property until the Mgbelekeke family acknowledged a successor as the rightful Kola tenant[9]

Based on this the trial court dismissed the appellant's contention that *Ili- Ekpe* custom of the people of Ezinifite applied and held that,

> The property is situate at Onitsha and it seems to me that the lex situs which regulates the tenure will also govern the inheritance and succession of the property. The lex situs is the Mgbekeleke family kola customary tenancy. P.W. 1 said that under this system females can be tenants. I do not think "ILI EKPE" custom applied to this property. It is indeed repugnant to the terms of it tenure[10]

On appeal to the Supreme Court the appellant counsel submitted that "the personal law" of the parties applied to the property in dispute and not the lex situs[11]. While dismissing the appellant contention, and upholding the trial court's decision, as being the result of the nature of Kola tenancy, the Supreme Court[12]held that,

> However in the case in hand the evidence which the learned trial Judge accepted (and rightly in our view) is

7 E.I. Nwogugu, Family Law in Nigeria (3rd Edition)(HEBN Publishers Plc, 2014) 427

8 (1976) 7 S.C, 1

9 (1976) 7 S.C. 1 at 9 cited by Idigbe J.S.C. in his lead judgment.

10 Ibid, 10

11 (1976) 7 S.C. 1 at 14

12 Per Idigbe J.S.C.

> that Kola tenancy under the Mgbelekeke family customary law is inheritable by the children of a deceased (Kola) tenant-no matter the sex- but only upon production by the succeeding child, and acceptance by the Mgbelekeke family of further 'Kola'[13]…We are, therefore, satisfied that in view of the above observations much of the arguments and submissions before us on the "ILI EKPE" custom of the people of Ezinifite and on the question whether the trial court should have applied the personal law of the parties rather than the lex situs of the property is completely unnecessary[14]

It is important to point out that Supreme Court was not the driving force in the declaration of the correct position of Mgbelekeke kola tenancy recognizing the right of women to inherit and succeed the kola tenancy of a deceased relative. The Supreme Court, in this instance, merely agreed with the conclusion of the trial court on the position of the Mgbelekeke custom on this based on the issue before it.

More than a decade later another case[15] came to the Supreme Court based on a house in Onitsha. One of the issues canvassed at the Supreme Court was whether the trial court ought not to have taken judicial notice of Onitsha customary law as pronounced in the case of **Nezianya v. Okagbue[16]** in the instance case? The summary of the facts of this case[17] is as follows. The plaintiff (respondent at the Supreme Court) sued the 1st defendant (1st appellant at the Supreme Court) and two other defendants, for recovery of a piece or parcel of land at Cole Street, Onitsha. The plaintiff's claim is that virtue of the judgment of Onitsha Native Court which ordered the partition of the land belonging to her late husband's father, her late husband, Daniel Oguejiofor Ejiogu Nzekwu, became the owner of the property at Cole Street, Onitsha. Consequently she and her two daughters moved into the property on the death of her husband in 1943 and were indeed in occupation of the property until 1972 when she discovered that the 1st defendant had sold the property to the 2nd defendant who in turn sold to the 3rd defendant. The defendants' position is that it was the 1st defendant's father who owned the property but allowed the plaintiff and her daughter to occupy the property but changed his mind when he discovered that the plaintiff was attempting to alienate the property without his consent as the head of the family. The trial court, relying on the judgment of Onitsha Native court which was tendered before him and the principles of Onitsha customary law laid down in the **Nezianya's case**, gave judgment to the plaintiff. The judgment of the court was affirmed at the Court of Appeal. On further appeal to the Supreme Court, counsel to the appellants (the defendants at the trial court) contended, among others, that the custom of Onitsha having not been pleaded and evidence led, the **Nezianya's case** was inapplicable[18]. The Supreme Court overwhelmingly[19] rejected this argument. Nnamani J.S.C, while

13 (1976) 7 S.C. 1 at 16-17

14 (1976) 7 S.C. 1 at 18.

15 With different set of facts.

16 Supra

17 Nzekwu & 2 Ors. v. Nzekwu & 2 Ors. (1989) 2 N.W.L.R. (Pt. 104) 373.

18 (1989) 2 N.W.L.R (Pt. 104) 394

19 The Supreme Court where split on the other issues raised in this appeal leading to the appeal being dismissed by a majority decision.

agreeing with the contention of counsel for the respondents that the trial court was right to take judicial notice of the decision in **Nezianya's** case stated,

> I agree with that submission[20]. It seems that the custom, if it has been well established in a decision of the Superior Courts, need not be pleaded and proved. It would be necessary, however, to plead facts and lead evidence to bring the suit in question within the ambit of judicially noticed custom. In this case, it was pleaded and evidence was led to the effect that the plaintiff was a widow of Daniel Ejiogu Nzekwu and that there were 2 issues-girls-of their marriage. *Nezianya*'s case was therefore applicable.

On his own part, Nnaemeka-Agu J.S.C[21], opined, on this issue that,

> It does appear to me that a different situation from those older cases arises in a case like Nezianya's case where a particular custom has been pronounced upon by a High Court at the first instance, after considering the pleadings and evidence, and the pronouncement has been confirmed by the Supreme Court. Such pronouncement can be judicially noticed by all the courts in the land[22].

It is clear from this decision[23] that the Supreme Court merely reiterated the possessory rights of a widow under Onitsha custom in respect of her husband's real property as the Court had earlier done in **Nezianya's** case.

In 2004, the Supreme Court was confronted with another suit bothering on the inheritance rights of women in Igbo land. This time it was the case of **Mojekwu v. Iwuchukwu**[24]. This case had been earlier been greeted with excitement by women's rights advocates and scholars following the Court of Appeal decision on it[25]. At the Court of Appeal the case was famously known as **Mojekwu v. Mojekwu**[26]. On further appeal to the Supreme Court metamorphosed into **Mojekwu v. Iwuchukwu** following the death of the respondent at the Court of Appeal, Caroline Mgbafor O. Mojekwu, and her subsequent substitution by her step daughter, Mrs. Theresa Iwuchukwu. The facts of the case may be summarized as follows. The appellant (as plaintiff) at the High Court filed this suit against the Caroline Mojekwu claiming, among others, a declaration that he, being the recognized Kola tenant of Mgbelekeke family of Onitsha is entitled to statutory right of occupancy of property at 16 Venn Road South, Onitsha and a declaration that the respondent is only entitled to be accommodated at the property in accordance with Mgbelekeke family of Onitsha Kola tenancy land tenure system and the Kola Tenancy Law or in the alternative that the respondent is only entitled to be accommodated at the property subject to good behaviour and maintained from the property by the appellant during his life time in

20 Submission of respondent's counsel.

21 Nnaemeka- Agu J.S.C was one the dissenting justices, along with Craig J.S.c, who upheld the appeal.

22 ((1989) 2 N.W.L.R (Pt. 104) at 427.

23 As its relates to the inheritance rights of women.

24 (2004) 11 N.W.L.R (Pt. 883) 196.

25 Particularly the dictum of Niki- Tobi JCA

26 (1997) 7 N.W.L.R (Pt. 283) 283

accordance with Nnewi Native Law and Custom. The appellant's case is that he inherited the property from his father, Charles Nwofor Mojekwu, under Nnewi custom. His father was the brother of Okechukwu Mojekwu, the husband of the respondent. Okechukwu Mojekwu, who died in 1944, was married to the Caroline Mgbafor and one Janet. Janet had two daughters while Caroline Mgbafor had a son, who predeceased her. On her part, Caroline Mgbafor contended that the appellant was neither the head of Mojekwu family nor did he inherit the property under Nnewi custom or any other custom. She cited previous judicial victories in respect of claims to the property to buttress her position. At the end of the trial, the High Court dismissed the appellant's claim as a result of which he appealed to the Court of Appeal. Two important issues that arose at the proceedings as it relates to this discourse are whether the law applicable to this case is the personal law of the deceased or the *lex situs* and whether the learned trial judge failed to evaluate the evidence before him that the appellant is the surviving male issue in the Mojekwu family who is entitled to inherit the property in dispute in accordance with Nnewi Native Law and Custom? In response to these Tobi JCA stated,

> The general state of the law is that lands or other immovables are governed by the *lex situs*[27]…There are instances where the lex situs and the personal law are the same…The present appeal is not one of such instances as the deceased was a native of Nnewi while the property in dispute is at Onitsha[28]…I have come to the conclusion that the applicable law is the *lex situs*. The *lex situs* is the Kola Tenancy Law[29]

Having addressed the issue posed Tobi JCA went on to add this now famous statement,

> We need not travel all the way to Beijing to know that some of our customs, including the Nnewi "Oli-ekpe" custom relied upon by the appellant are not consistent with our civilized world in which we all live today, including the appellant…Accordingly a custom or customary law that discriminates against a particular sex is to say the least an affront on the Almighty God Himself. Let nobody do such a thing. I have no difficulty in **holding**[30] that the "Oli –ekpe" custom of Nnewi is repugnant to natural justice, equity and good conscience[31]

This part Tobi JCA's judgment[32] became an issue at the Supreme Court in **Mojekwu v. Iwuchkwu**[33]. The Supreme Court were called upon here to decide, among others, whether the Court of Appeal was right in declaring the "oli-ekpe" custom of Nnewi

27 Ibid, 299

28 Ibid, 300

29 Ibid, 303

30 Emphasis supplied

31 (1997) 7 N.W.L.R (Pt. 283) 305

32 To which Ubaezuonu JCA and Ejiwumi JCA concurred

33 Supra

repugnant to natural justice, equity and good conscience? In response to this question, Uwaifo JSC emphatically retorted,

> I do not think it was right for the court below to declare the said "oli-ekpe" custom repugnant to natural justice, equity and good conscience in the circumstances of this case[34]…First, the issue that 'oli-ekpe' in question was repugnant was not joined by the parties. Second, the court below having felt strongly about its repugnancy as can be seen from the emotive and highly homilized pronouncement, was obliged to draw the attention of parties to it, raise it *suo motu* and invite them to address the court on the point. Third, the court below itself had reached a conclusion that the applicable law custom was that of the kola tenancy of the *lex situs* …The pronouncement which was not necessary in deciding the suit can thus be assessed upon the scenario in which it was made. Fourth, the learned Justice of the Court of Appeal was no doubt concerned with about the perceived discrimination directed against women by the said Nnewi 'oli-ekpe' custom and that is quite understandable. But the language used made the pronouncement so general and far-reaching that it seems to cavil at, and is capable of causing strong feelings against, all customs which fail to recognize a role for women.. I find myself unable to allow the pronouncement to stand in the circumstances, and accordingly I disapprove of it as unwarranted…it had nothing to do with the merits of the case[35]

These cases encapsulated the Supreme Court position on the issue of inheritance until 2014. As can see from these decisions, the Supreme Court approach has always been to address the issues raised before it. If any principle of law is laid down it should be in the in course of addressing the issue and not after its resolution.

2014 DECISIONS OF THE SUPREME COURT

Incidentally the two Supreme Court decisions that are the subject of discourse in this part of the work were decided on the same day[36] although they were decided by different panels of the Supreme Court. In **Ukeje & Anor v. Ukeje**[37] the respondent (as plaintiff at the trial court) sued the appellants (defendants at the trial court) at the High Court, Lagos praying, among others, for a declaration that she, as a daughter of Lazarus Ogbonnaya Ukeje, is entitled the estate or at least one of the person's entitled to share in the estate of Lazarus Ogbonnaya Ukeje (deceased). The fact leading to the suit is that the wife of Lazarus Ogbonnaya Ukeje, who is also the 1st respondent, had obtained a Letters of Administration with the 2nd respondent, a son of L.O. Ukeje,

34 Ibid, 216.
35 Ibid, 317
36 11 April 2014.
37 (2014) 11 NWLR (Pt. 1418) 384

without the knowledge of the plaintiff. It appears on record that the respondent's status as a daughter of L.O. Ukeje was in issue at the trial which prompted the trial court to find that the defendant is a daughter of late L.O. Ukeje[38] and then granted other reliefs including the relief that she is entitled to share in the estate of L.O. Ukeje (deceased). Apparently dissatisfied with the judgment, the appellants appealed to the Court of Appeal who also agreed with the decision of the trial court. The appellants then appealed to the Supreme Court. One key issue at the Supreme Court was whether the respondent proved that she was a biological daughter of L.O. Ukeje (deceased)? Rhodes- Vivour JSC while agreeing with the findings of the trial court on this issue maintained,

> The finding of fact that the respondent is a daughter of L.O. Ukeje (deceased) was arrived at by the learned trial judge after the plaintiff/ respondent supported her claim with flawless documentary evidence, especially her birth certificate. There is no way such a finding can be said to be perverse, or to have violated some principle of law. Concurrent findings of fact that the respondent is a daughter of L.O. Ukeje (deceased) are correct. This appeal is on the paternity of the respondent. Whether the respondent is a daughter of L.O. Ukeje (deceased)[39]

However the learned justice did not stop there. He went on to add,

> L.O. Ukeje (deceased) is subject to Igbo Customary Law. Agreeing with the High Court, the Court of Appeal correctly found that the Igbo native law and custom which disentitles a female from inheriting her late father's estate is void as it conflicts with sections 39 (1) (a) and (2) of the 1979 Constitution (as amended). This finding was affirmed by the Court of Appeal. **There is no appeal on it[40]**. The finding remains inviolable…[41] No matter the circumstances of the birth of a female child such a child is entitled to an inheritance from her late father's estate. Consequently the Igbo customary law which disentitles a female child from partaking in the sharing of her deceased father's estate is in breach of section 42 (1) and (2) of the Constitution…The said discriminatory customary law is void as it conflicts with section 42 (1) and (2) of the Constitution[42]

Okoro JSC also followed Rhodes-Vivour JSC in expressing similar sentiments[43].

> I also agree that by virtue of section 42 (1) of the 1999 Constitution of the Federal Republic of Nigeria (then section 39 (1) of the 1979 Constitution), any customary

38 Ibid, 397 disclosing the trial court's judgment as summarized by Rhodes –Vivour JSC.

39 Ibid , 407

40 Emphasis supplied.

41 (2014) 11 NWLR (Pt. 1418) 384 at 407

42 (2014) 11 NWLR (Pt. 1418) 384 at 408.

43 (2014) 11 NWLR (Pt. 1418) 384 at 412.

> law which says or tends to suggest that a female child cannot inherit the property of her father, is not only unconstitutional but also null and void

The other suit that was decided on the same day with the **Ukeje** is by the Supreme Court is **Anekwe & Anor. v. Nweke**[44] . The respondent sued the appellants at Mbailinofu Customary Court in Anambra State. The suit was later transferred the High Court at Awka, Anambra State. The thrust of the respondent's suit is that she is entitled to statutory right of occupancy in respect of a land situate at Amikwo Village, Awka known as 19 Ogbuagu Lane. The basis for the respondent's claim is that she is the wife of one Nweke Okonkwo Eli. Nweke was one of the sons of Nwogbo Okonkwo Eli. The other son of Nwogbo Okonkwo Eli is Anekwe, the 1st appellant's father. Nweke and Anekwe were step-brothers as the said Nwogbo Okonkwo Eli married two wives. Nwogbo Okonkwo Eli however did not have a house at Awka and indeed died outside Awka. Upon his death, his two widows came down to Awka with their children and were subsequently resettled on the land in dispute by Nwogbo's step-brother, Obiora Okonkwo Eli. The respondent contends that the said Obiora Okonkwo Eli erected two separate bungalows on the land in dispute and shares it between the two sons of Nwogbo, Anekwe and Nweke. The respondent further contended that Nweke, her husband, was buried in the portion given to him by the said Obiora Okonkwo Eli and that she continued to live peacefully in the property until Anekwe asked her vacate on the ground that she had no male issue. According to her, a woman, under the customs of Awka people, inherits the property of her late husband whether she had a male child or not. In proof of this she relied, before the trial court, on the final arbitration made by the Ozo Awka society on the matter which she claimed was not disputed by the appellants. The appellants' position is that land was never partitioned and shared by Obiora Okonkwo Eli. Rather Obiora only built a mud house but that it was the appellants' father, Anekwe, who eventually erected two buildings in the land out of which he gave the respondent two rooms to occupy as tenant at will. The appellants further contended that the land in issue was the homestead of Okonkwo Eli and that by Awka Native Law and Custom, the land was inherited by their grandfather, Nwogbo Okonkwo Eli and then by the appellants' father, Anekwe, as the only surviving son of Nwogbo Okonkwo Eli and subsequently the 1st appellant as the eldest son of the late Anekwe.

The trial court gave judgment for the respondent. This was affirmed by the Court of Appeal. One of the issues at the Supreme Court was whether the Court of Appeal was right in upholding the decision of the trial court which decided the suit on the issue of inheritance of the respondent when the issue was never canvassed before the trial court? In furtherance of this issue appellants' counsel contended that issue before the trial court bother on partition of the land in question and not on whether the respondent has the right to inherit or not.

In response to this Ogunbiyi JSC, who delivered the leading judgment[45], agreed with the trial court and the Court of Appeal and noted,

> I seek to state further that as rightly submitted on behalf of the respondent, the totality of the evidence adduced

[44] (2014) 9 NWLR (Pt. 1412) 393

[45] It was a unanimous judgment

> by D.W.1 was a confirmation that the complaint at the trial court was not only limited to whether the compound, (No. 19 Aguegbe Street) the subject matter of this case, was partitioned between the father of the appellants and the husband of the respondent or whether it remained one compound, but rather and more importantly it also raises the question, "whether the respondent who has no male child can inherit the property of her late husband?" As a matter of fact the pre-occupation of the respondent's claim had to do with the question of her disinheritance which, once decided in her favour, would relegate the issue of partition of no significance…[46]

Surprisingly having stated this Ogunbiyi JSC still went on,

> I hasten to add at this point that the custom and practices of Awka people upon which the appellants have relied for their counter claim is hereby out rightly condemned in very strong terms. In other words, a custom of this nature in the 21st century societal setting will only tend to depict the absence of the realities of human civilization. It is punitive, uncivilized and only intended to protect the selfish perpetration of male dominance which is aimed at suppressing the right of the womenfolk in the given society…The impropriety of such a custom which militates against women particularly, widows, who are denied their inheritance, deserves to be condemned as being repugnant to natural justice, equity and good conscience…[47]

These scathing comments by Ogunbiyi JSC on Awka custom seemed to have signaled others justices in the panel to follow suit in their condemnation of this supposed[48] custom of Awka people. For I.T. Muhammad JSC,

> It baffles me to still to find in a civilized society which cherishes equality between the sexes, a practice that disentitles a woman [wife in this matter] to inherit from her late husband's estate, simply because she had no male child from the husband…To perpetuate such practice as is claimed in this matter will appear anachronistic, discriminatory and unprogressive. It offends the rule of natural justice, equity and good conscience…[49]

On his part, Ngwuta JSC was more emphatic and caustic in his attack of the custom,

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46 Ibid, 415.

47 Ibid, 421

48 There was evidence at the trial court by a member of Ozo Awka society (the highest body in settlement of dispute in Awka), which the trial judge accepted, that under the custom of Awka people the respondent was entitled to live in the husband's compound.

49 (2014) 9 NWLR (Pt. 1412) 393 at 423

> The respondent is not responsible for having only female children. The craze for male children for which a woman could be denied her rights to her deceased husband or father's property is not justified by practical realities of today's world…The custom of Awka people of Anambra State pleaded and relied on by the appellants is barbaric and takes Awka community to the era of cave man. It is repugnant to natural justice, equity and good conscience and ought to be abolished….[50]

IMPORT OF THESE 2014 DECISIONS ON THE RIGHT OF WOMEN IN IGBOLAND TO INHERIT REAL PROPERTY UNDER IGBO CUSTONMARY LAW

In this segment of our discourse, our concern will be on distill the real impact of these latest 2014 decisions, **Ukeje's case** and **Anekwe's case** on the right of women to inherit real property under Igbo custom. Before doing this it is important to use the template laid by the Supreme Court itself in this exercise. In **Mojekwu v. Iwuchukwu**[51] Uwaifo JSC while setting aside the pronouncement of Tobi JCA[52] to effect that *oli ekpe* custom of Nnewi was repugnant natural justice, equity and good conscience gave reason, which should guide the courts, for his position. According to him,

> First, the issue that "oli ekpe" in question was question was repugnant was not joined by the parties. Second, the court below having felt strongly about its repugnancy as can be seen from the emotive and highly homolized pronouncement was obliged to draw attention of the parties to it, raise it *suo motu* and invite parties them to address the court on the point. Third, the court below itself had reached a conclusion that the applicable custom was that of kola tenancy of the *lex situs*…. Fourth, the learned Justice of Appeal was no doubt concerned about the perceived discrimination directed against women by the said Nnewi "oli-ekpe" custom and that is quite understandable. But the language used made the pronouncement so general and far-reaching that it seems to cavil at and is capable of causing strong feelings against all customs which fail to recognize a role for women.

With this template, we will now re-examine **Ukeje's case**. In this **Ukeje's case**, the issues the Supreme Court chose to address were three. The germane issue to this discussion and which attracted the comments that are highlighted in this discourse was the first issue. In the first place, the issue of disinheriting the respondent through any customary law was never in issue before the Supreme Court. The issue before the Supreme Court was whether the respondent proved that she was the biological daughter of L.O. Ukeje (deceased)? Since this was not is issue before the Court there was no a need for the parties to address the Supreme Court on issue of inheritance under "Igbo Customary law". Secondly, there was no indication that the Supreme Court ever invited the parties to address it on the issue of "Igbo Customary law" on

50 Ibid, 425

51 Supra 217

52 In Mojekwu v. Mojekwu (supra) 306

inheritance and the effect of section 42 of the 1999 Constitution on it. Thirdly, the Supreme Court had proved that the respondent was a biological daughter of L.O.Ukeje (deceased)[53] therefore the issue of "Igbo Customary law" position on female inheritance, coming on the heels of this decision, was therefore irrelevant to the determination of the appeal. Indeed it is doubtful if Igbo Customary Law of inheritance was ever applicable to this instance. Apart from what we already stated, it is also important to note at this stage that term "Igbo Customary law" is vague. This is because there is no single customary law that is applicable to all Igbo land. What exists are several customs[54] which have some features in common. It is for this reason that every custom has to be proved by evidence in some way[55]. Therefore the Supreme Court sweeping position on "Igbo Customary law" flies in the face of legal reality that there is nothing in like "Igbo Customary law". Furthermore, the views of the Supreme Court justices in **Ukeje's case** on female inheritance under "Igbo Customary Law" can at best be regarded as *obiter dictum*[56] . Explaining the concept of *obiter dictum*[57] further the Supreme Court itself through Ogundare JSC and Uwaifo JSC had these to say in respect of Pats-Acholonu JCA's observation at Court of Appeal in the case of **Abacha v. Fawehinmi**[58]. Pats- Acholonu JCA had observed on the decision of the respondent at the Supreme Court, Chief Gani Fawehinmi, to make the then military Head of State, General Sani Abacha, a part of the proceedings in court, that,

> When I look at the case I observe that one of the respondents is the Head of State- General Sani Abacha himself. I wonder whether the appellant is unaware of the provisions of section 267 of the Constitution of the Federal Republic of Nigeria. The section provides immunity against civil and criminal actions or proceedings against the person of the President or Head of State…I hold therefore that the name of the Head of State should not have been reflected in the suit in the first place. It offends the provisions of the Constitution[59].

This part of the Court of Appeal judgment apparently formed a ground of appeal for the appellants to the Supreme Court. In his reaction, Ogundare JSC stated,

> The observation above did not arise out of any issue canvassed before the court below nor were arguments advanced on it. It is therefore not a decision that could be appealed against; it is only a remark…[60]

On his part Uwaifo JSC was more direct in classifying that part of Pats- Acholonu JCA's judgment as an *Obiter dictum*. According to him[61], "The observation , no

53 Which seems to basis of the respondent's suit at the trial court.

54 Distributed among the various communities in Igbo land.

55 Whether by being judicially noticed as an adjudication by a superior court of record or proved as a fact. See Sections 16, 17 and 18 (1) of the Evidence Act 2011

56 *Obiter dictum* has been described as embodying the opinion of the judge which does not embody the resolutions of the court. See Edozien JSC's view in A.I.C. Ltd. v. NNPC (2005) 11 NWLR (Pt. 937) 563 at 589.

57 As perceived by the Supreme Court of Nigeria.

58 (2002) 6 NWLR (Pt. 660) 228

59 Ibid, 297, 351

60 Ibid, 297.

61 Ibid, 351

doubt, is an *obiter dictum* by the learned justice of the Court of Appeal. It was not part of the argument before the Court"[62].

On this footing, we contend that the opinion of the Supreme Court justices in **Ukeje's case** that "Igbo Customary law" that disinherits female from inheriting real property therefore is an *obiter dictum* because it did not resolve any of the issues before the Supreme Court and indeed was not part of the argument before the Supreme Court.

The observations of the Supreme Court as to female inheritance in the case of **Anaekwe v. Nweke[63]** suffers a similar fate as the **Ukeje's case.** In **Anaekwe's case** there were two issues before the Supreme Court. However, the issue that formed the platform for the Supreme Court to attack Awka customary law on inheritance was apparently the issue of whether the Court of Appeal was right in upholding the decision of the trial court which decided the suit on issue of disinheritance of the respondents when the issue was never canvassed before the trial court? Once more, an application of Uwaifo JSC's "template" in **Mojekwu v. Iwuchukwu[64]** to this case point to the observations of the Supreme Court justices[65] on Awka custom being at best an *obiter dictum*. First, the parties did not join issues on the nature of any Awka custom[66] at the Supreme Court. Secondly, the Supreme Court did not invite the parties to address it on any custom of Awka people. The Court of Appeal had already agreed with the trial court that Awka custom did not disinherit women without a male issue.

In all, we contend that, the two Supreme Court decisions on the issue of female inheritance of real property did change anything significant in the legal landscape of inheritance to real property under Igbo custom.

CONCLUSION

Our tour into pre-2014 and 2014 decisions of the Supreme Court on the issue of whether the Supreme Court had ever pronounced that women in Igbo land can now inherit real property under Igbo custom as men do reveal that the Supreme Court never said so in reality[67]. Indeed was the Supreme Court had succeeded in doing down the years has been to deal with the issue of female inheritance in Igbo land on a case to case basis. The custom that featured prominently in most of their decisions is the Mgbelekeke Kola tenancy custom in Onitsha which apparently allows females to succeed to the tenancy on the death of the original tenant. One thing that however stands out is that each case is to be determined on its merit. This is aptly demonstrated in the **Anaekwe's case** which is case based on the custom of Awka people and as the decision of the trial court and Court of Appeal affirmed, Awka custom permit widow to succeed their late husband's real property contrary to the practice in some parts of Igbo land.

Thus a major constraint to the Supreme Court striking down the prevalent custom of women in Igbo land not being allowed to inherit real property is the variations that exist in Igbo custom on this issue[68]. Consequently for the Supreme Court to tackle this problem it must adopt a piece meal approach to striking down the custom in each

62 Court of Appeal

63 Supra

64 Supra

65 Ogunbiyi JSC, I.T. Muhammad JSC and Ngwuta JSC

66 Whether it disinherits females or not

67 Our examination reveal that although the Supreme Court may have evinced such an intention it was constrained by the existing legal framework from doing so.

68 As we saw from the Mgbelekeke Kola tenancy system and apparently the Awka custom.

community as each case is presented to it and also based on the issue before it. The Supreme Court should realize that it is constrained[69], no matter how "obnoxious, barbaric, uncivilized, anachronistic, unprogressive and discriminatory[70]" it feels the custom to be, in its ability to wipe it out by a single decision.

69 As we pointed out in this work, the Supreme Court is bound by the issues presented before it. Pronouncement that do not aid in the determination of these issues can at best be regarded as *obiter dictum*.

70 These were terms used by the Supreme Court justices to qualify the practice of exclusive male inheritance of real property under Igbo custom.