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Critical Analysis of the Law Regulating Succession and Inheritance Rights of Widows and their Children from the Estate of their Deceased Intestate in Nigeria

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ABSTRACT: More often than not, when a man dies intestate (without making a formal will), sharing or distribution of his properties usually poses a big problem. In Nigeria, it is almost usual for the widow and female children of the deceased intestate to part with nothing from the estate of their late husband and father respectively. This trend will persist if unchecked by the marriage laws. This paper x-rays the law regulating succession and inheritance rights in relation to the properties of a person who died without making a will in Nigeria. The study adopts a doctrinal legal research methodology, which makes use of primary sources, such as: statutes, case laws, and secondary source such as: text books, journals periodicals, magazines, newspapers and internet sources. The study analysed and examined the rule of intestate succession and the rights of widow and children of a deceased intestate to benefit from the estate of their deceased husband or father as the case may be.

KEYWORDS: Law Regulating Succession, Critical Analysis, Inheritance Rights, Widows, Children.

INTRODUCTION

Depending on various custom and tradition in Nigeria, Africa, and some parts of the world, the widow of a man who died intestate is usually denied her due share from the distribution of her deceased husband's estate or properties. However, statutory marriage has tried to ameliorate the inequity by stipulating specifically what is due the widow of deceased husband, when he dies without making a will. Thus, by virtue of valid contracted statutory marriage, what governs the distribution of the intestate estate/properties of a husband who died intestate is not his native law and custom or customary law, but the applicable relevant provisions of the Marriage Act and Administration of Estates Law, 1988. The most important question, whose answer determines the entitlement of a widow to share from the distribution of the estate is, 'whether there was a valid statutory marriage between the deceased man who died intestate and the widow?

It is trite law that the matrimonial home where the deceased intestate lived with his widow before his demise belongs to the widow being the surviving spouse and she is entitled to remain therein for her lifetime. Therefore, any act or acts, distribution, alienation, mortgage, interference or dealing with the intestate estate/properties of the deceased husband of a surviving widow, without her consent is illegal, null and void, being contrary to and or in contravention of and or without regard to the provisions of the Administration of Estate Law, and the Marriage Act. Thus, upon the necessary application, the Courts ought to make an order of perpetual injunction restraining any steps or moves as in times past to evict the widow of the deceased intestate, or in alienating, mortgaging and or interfering with her rights contrary to and or in contravention of and or without regard to the provisions of the Administration of Estates Law. In the same vein, the Court must set aside any acts or purported acts inimical to the interest of the widow, including distribution, sharing, partition, allotment, alienation, sale, disposition, transfer, conveyance, lease, assignment, conversion, appropriation, or any form of interference or dealing with the intestate estate by the

relatives or relations of the deceased intestate contrary to and or in contravention of and or without regard to the provisions of the Administration of Estates Law.

The Position of a Woman after Marriage

A time comes in a man's life, when he feels a vacuum to be filled by marriage. He sees the need to settle down and become responsible for the purpose of complementarity, happiness, companionship, and procreation. He utilizes part of his available income to start his life and build same with his wife after marriage. Fortune smiles on many men after marriage and they become so richly blessed and established with the effort and support of their wife. This is in tandem with the provision of the Holy Writ that 'he who finds a wife, finds a good thing and obtains the favour of the Lord. For example, some rise from being a cobbler, to a cab driver and thereafter get employed in a reputable transport company, from where he grows, attend courses until rising to the position of a manager. This experience could help him secure greener pasture in better-paying companies.

In Nigeria, before a man marries a woman, he must secure the consent of her parents and the marriage is usually celebrated customarily, after the payment of dowry before the woman is allowed to go with the man for them to live as husband and wife. This customary marriage however may allow for polygamy, unlike statutory marriage, which is monogamous, being a union of one man and one woman. Statutory marriage, as well as registration of same is usually done in a registered place for celebrating such marriage, which can be at the public Marriage Registry usually located in Local Government Area Headquarters, or Churches. Immediately after marriage, the man is expected to leave his father and mother and cleave to his wife and both of them shall become one flesh. This implies that the new couple can cohabit and procreate children. In practice however, it is usually the woman that leaves her father and mother and cleaves to her husband in her husband's house (distinct from the in-laws' house) and she is entitled to change her maiden name to that of her husband's and not the other way round.

Proofs of Valid Marriage

Proofs of valid customary marriage can be in the forms, such as: parental consent, payment of dowry, marriage introduction otherwise termed 'knocking on the door', carrying of drinks/celebration of the marriage, taking of photographs, and exchange of gift by parents and family members to the newly married. With respect to statutory marriage, it is consent of the couple (unlike parental consent in customary marriage), marriage celebration and at least two witnesses, where one is for the man and the other for the woman.

As reiterated by the decision of the Nigerian judex in both the Court of Appeal and Supreme Court in the cases of Mrs. Esther A. Osho & Ors. v Gabriel A. Phillips & Ors. and Mrs. Ifeanyi Obiozor v Baby Nnamua respectively, the law is well settled that a statutory marriage could be proved by the production of a copy of the certificate of marriage filed in the office of the registrar. Thus, where a widow tenders in evidence before the Court, either of the original copy of her marriage certificate, or the certified true copy of same, it is established, notwithstanding any objection to the contrary. The law is trite beyond peradventure in the case of Pastor Mathew Alabi Bankole v Mrs. Victoria Anike Bankole, where the Court of Appeal held as follows:

The marriage certificate sought to be tendered by the appellant is an original copy. The original document is surely and certainly, the best evidence. The original marriage certificate is primary evidence and not secondary evidence. Sections 93 and 94 of the Evidence Act make it imperative that proof of documents could be either by primary or secondary evidence. The original marriage certificate being a public document is admissible in evidence as primary evidence, this court had cause to pronounce on the issue of admissibility of original copy of public document in Dagaash vs, Bulama (2004) 14 NWLR (Pt.892) 744 at 206 wherein Obadina J.C.A had this to say: "There is no section of the Evidence Act that provides that no primary evidence of a public document is admissible. Section 112 of the Act allows certified true copy to be produced in proof of the contents of public documents, I do not think the provision of section 112 of the Act renders the primary

evidence of public document inadmissible in evidence'.
The Supreme Court has held that the original of a public document, including a marriage certificate is admissible. In Udo v State held thus:
Exhibit 5 is the statement made to the police on 30 July, 2004, by the appellant in its original form, that is, primary evidence thereof within the meaning of section 86(1) of the Evidence Act. Sections 104 and 105 of the Evidence Act are not applicable in the present circumstances, since what was produced and tendered from the bar, is the original statement and not a copy thereof'.
The cases of Oredola Okeya & Trading Co. v BCCI and Abdulahi v FRN are also instructive on this point.

Strictly, it is the Registrar of Marriage that conducts marriages and observes the signing of marriage certificates. Assuming that the original of a marriage certificate cannot be found, the certified copy of same can validly be tendered. This is because a public document duly certified is presumed to be genuine. Thus, as held in the case of Okechukwu Uzoma v Dr. Victor Asodike it follows therefore that certification is a confirmation of the genuineness of the public document by the public officer. Furthermore, even without laying foundation, it is the law that a duly certified public document would be admissible in evidence and that the issue of proper custody and related matters will not arise. It can even be tendered from the bar by or through Counsel who is not even a party in the case, as well as by a witness who is not a party to the public document.

It is pertinent to interrogate further that assuming a widow could not produce or tender either the original or certified true copy of her valid marriage; that alone would not detract from the fact that she had a valid marriage under the Act, once it is established that the marriage was celebrated in a licensed place of worship. This position was upheld in the case of Ike v Ike & Anor as follows:
The non-production of a marriage certificate does not in my view; detract from the fact that the union was solemnized at Holy Cross Catholic Church on the 28th day of December, 1985. A marriage in a Catholic Church as agreed by both parties is a recognized monogamous marriage under the ordinances. See OBIEKWE v. OBIEKWE (2010) LPELR 864. Legally, a marriage in a licensed place of worship such as the Catholic Church in the instant case is legally recognized under the ordinances. In the instant case, both parties accepted the fact that their union was solemnized at Holy Cross Catholic Church, Benin. For the Petitioner to claim that there had been no marriage because the marriage certificate was not produced simply goes to no issue.

Similarly, in the case of Menakaya v Menakaya the Court had held that it is not the law that once a marriage certificate is not tendered in a matrimonial matter a court of law cannot order a decree nisi. Such a law will certainly be against public policy. The fact that the couple cohabited after the ceremony of marriage, till the death of one of the spouses is sufficient evidence of the validity of the marriage. Thus, in Christopher Anyaegbunam v Catherine Anyaegbunam the Supreme Court, per Fatayi Williams, JSC held as follows:
Again, it will be inappropriate to suggest that the only way to prove a birth, death or marriage is by the production of the relevant certificate or a certified true copy thereof. Thus, where there is evidence of a ceremony of marriage having been gone through, followed by the cohabitation of the parties, everything necessary for the validity of the marriage will be presumed.

It would appear that the law holds a presumption in favour of the evidence of a ceremony of marriage. Thus, where there is evidence of a ceremony of marriage, the validity of the marriage is presumed. This position of the law was succinctly expressed by BERNARD, J in the case of Russel v Attorney General as follows:
It is clear from the authorities which have been cited to me that where there is evidence of a ceremony of marriage having been performed, followed by cohabitation of the parties, the validity of the marriage may be presumed, in the absence of decisive evidence to the contrary. It would be both tragic and chaotic if such a ceremony would on slender evidence, be declared null and void.

It would indeed be tragic and treacherous for the Court to hold otherwise that a man can set

up a public ceremony of marriage, pretend to the whole world that a valid marriage was celebrated under the Act while hoping to walk away from the legal consequences of his public show. This type of situation had been settled in the case of Akparanta v Akparanta where it was held as follows:
'I find it difficult to believe that the respondent would take the trouble to procure rings or that the petitioner procured them without his knowledge and having procured them that they were used merely for the purpose of blessing an existing customary marriage. I cannot understand his assertion that the petitioner arranged a pseudo-wedding ceremony by wearing a wedding dress, when it was unnecessary to do so and arranged for photographers without his knowledge. Nor do I believe that the signing posture of the petitioner was stage-managed…… I refuse to be persuaded that all these are designed for the blessing of an existing potentially polygamous customary marriage.

Proofs of Paternity of Children

As held in Tony Chibueze Okolonwamu & Anor v Mrs. Theresa Nkem Okolonwamu & Ors, it is the law that marriage of the parents of a child or children must first be proved, before paternity can be presumed. Once it is established that there was a valid marriage between a widow and her deceased husband, and that the said marriage subsisted until the demise of her said husband, it follows that the children of the widow born during the subsistence of her marriage to the deceased are the legitimate children of the marriage. This view is amply expressed by the Court per OGUNWUMIJU, JCA, as follows:
How can paternity be proved? Paternity of a child can be determined by three major ways which are akin to the ways of proving legitimacy of a child. They are:
(1) Paternity by existing Marriage: A child born during the pendency of a valid marriage between couples is automatically presumed to be legitimate.
(2) Paternity by Subsequent Marriage to the mother: This occurs when a child is born at a time when the mother was not married to the father and after whose birth the mother and father entered into a valid marriage.
(3) Paternity by acknowledgement by the father accepting paternity of the child: This includes paying for the hospital bills and upkeep of the child, introducing the child to his family as his child etc.
The Supreme Court in Adeyemi & Ors v. Bamidele & Ors (1968) NSCC pg. 26 at 31 had this to say on legitimacy of a child:
"In Nigeria, a child is legitimate if born in wedlock according to the Marriage ordinance. There are also legitimate children born in marriage under Native Law and Custom. Children not born in wedlock (Marriage Ordinance) or who are not the issues of a marriage can also be regarded as legitimate children for certain purposes, if paternity has been acknowledged by the putative father. See Bamgbose v. Daniel 14 W.A.C.A 111 at page 115 and Alake v. Prat 15 WACA 20.

The foregoing position of the Court is borne out of the presumption of legitimacy of children born during the subsistence of a marriage. This is in tandem with the provision of the Evidence Act, which states that 'Without prejudice to section 84 of the Matrimonial Causes Act, where a person was born during the continuance of a valid marriage between his mother and any man, or within 280 days after dissolution of the marriage, the mother remaining unmarried, the court shall presume that the person in question is the legitimate child of that man'. These provisions of the Evidence Act and decided authorities hereinabove referred to support the presumption that a child conceived or born in lawful wedlock, as well as the child of the man to whom his mother was married at the time, is legitimate. This is a corollary to the presumption that there is access between the parties and that sexual intercourse has taken place between them, except where there is judicial separation. This is a very strong presumption, which cannot be displaced by mere balance of probabilities but by strong preponderance of evidence. The evidence for the purpose of repelling this presumption, according to Lord Lyndhurst in Morris v Davies must be strong, distinct, satisfactory and conclusive.

Entitlement of a Widow and her Children to Benefit from their Benefactor's Estate

It is the law that a property of a person who died intestate can be administered under

English law or customary law depending on the circumstances of the estate. However, the apex Court has held that where two consenting adults contract a marriage under the Act, they have opted out of the system of Customary Law of succession in case of intestacy. In other words, where any person who is subject to customary law contracts a marriage in accordance with the provisions of the Marriage Act and such person dies intestate, leaving a widow or husband or any issue of such marriage, any property of which the said intestate could have disposed by will shall be distributed in accordance with the provisions of the Administration of Estates Law, notwithstanding any customary law to the contrary. This position was reiterated in Salubi v Nwariaku. Furthermore, by Sections 1(2); 47 and paragraph 2 to the Second Schedule to the Administration of Estates Law of Rivers State, it is enacted as follows:

The provisions of this Laws relating to the administration of the estate of a person who died intestate or the undisposed part of the estate of a testator shall apply only to persons who contract a valid monogamous marriage and are survived by a spouse or issue of that marriage:

The residuary estate of an intestate shall be distributed in the manner or be held on the trusts set out in the Second Schedule.

A husband and wife shall for all purposes of distribution or division under the provisions of the Second Schedule be treated as two persons.

Second Schedule:

If the intestate leaves a spouse and -

issue; but

no parent, or brother or sister of the whole blood or issue of a brother or sister of the whole blood,

The surviving spouse shall take the personal effects absolutely and, in addition, the residuary estate of the intestate (other than the personal effects) shall stand charged with the payment of a net sum of money equivalent to the value one-third of the residuary estate, free of death duties and costs, to the surviving spouse with interest thereon from the date of the death at the rate of five per cent per annum until paid or appropriated, and, subject to providing for that sum and the interest thereon, the remainder of the residuary estate (other than the personal effects) shall be held as to the other two-thirds, on the statutory trusts for the issue of the intestate.

In light of the foregoing provisions of the Administration of Estates Law of Rivers State, the law is well founded that, on the death intestate of a married man, his widow would take one third of his estate if there were issues of the marriage alive. Where there are no issues of the marriage, she would take a half. The remainder of the estate would be divided among the issues per stirpes or, in default of issue, amongst the deceased's next-of-kin as defined in the statute. In Salubi v Nwariaku, the apex Court AYOOLA, JSC while delivering the lead judgment held thus:

The court below should have made an order in terms that the estate of the deceased stood to be distributed to all the beneficiaries of the estate in accordance with that Law.

While rightly acknowledging the right of the widow to one-third of the total value of the estate, that court erroneously purported to state the properties which should be comprised in that one-third share without a valuation of those properties which were stated to be 69 Brickfield Street, Ebute Metta, Lagos and 39A and 39B, Airport Road, Benin City and described as matrimonial home and residence of the widow.

Clearly, a marriage contracted after the celebration of other forms of marriages between the same couple is superior to the earlier forms of marriage. Thus, where a statutory marriage or marriage under the Act is contracted after the celebration of customary marriage, the said statutory marriage would supersede the customary marriage. Consequently, the estate of the deceased intestate would be governed by the Administration of Estates Law. This position is further restated in Olowu v Olowu. It therefore follows that the widow of an intestate husband is entitled to share or inherit veritably from the estate where she proves by credible evidence that she was validly married to her husband in his life time and that they laboured together to acquire good fortune in the cause of their marriage. This is not withstanding whether the marriage was or was not blessed with

children.

In the case of the children of the marriage, it is the current position of the law in Nigeria that there are no illegitimate children, and even children born out of wedlock have equal rights to be entitled to share in the estate of their father provided there is direct or inferred acknowledgment of paternity during the lifetime of their father. This is well founded by the fundamental right provision of the Constitution which enshrines right to freedom from discrimination, and as upheld in the celebrated cases of: Messrs A. Younan & Sons v Lawal & Ors; Bamgboshe v Daniel and Alake v Pratt.

SUMMARY, CONCLUSION AND RECOMMENDATIONS

By virtue of marriage of a woman to her husband, with whom she had cohabited and had children, in accordance with the provisions of the Marriage Act, there is an irrefutable presumption that where any of the couple dies intestate, any property of the deceased shall be distributed in accordance with the provisions of the Administration of Estates Law, notwithstanding any customary law to the contrary. The children are in the same vein entitled to all the rights and privileges in that regard. Consequently, any purported sharing and/or distribution of the estate of a deceased husband who died intestate or any part thereof by members of his extended family and to the exclusion of his widow is invalid, null and void, and of no effect.

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