

A Review of the Customary Law of Inheritance and Succession amongst the Efik and Qua Communities in Cross River State, Nigeria

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ABSTRACT

Customary Law embodies customs as practiced by the people which they regard as binding on them.¹ It is any system of law different from Common Law and a Law enacted by legislation, but which is enforceable and binding within Nigeria as between the parties subject to its way.¹ This article reviews the Customary Law theories of inheritance and succession among the Efik and Qua communities in Cross River State. To this end, it examines the various classifications of the Customary Law of Inheritance and Succession as applicable to both communities. Discussions on the rules of the method of distribution of property in cases of intestate succession in the patrilineal and matrilineal societies of Efik and Qua is analysed. A brief is made of the choice of applicable Customary Law and the position of the eldest child. In conclusion, the work points out the shortcoming of the Customary law practices in both communities and also makes suggestions for reform.

Keywords: Inheritance, Succession, Customary

INTRODUCTION

The Customary Law of Inheritance and Succession is one of those areas of law that have tremendous impact on a larger percentage of Nigerian Populace by virtue of the fact that our developing societies are prevalently polygamous in nature with strong extended family influence. Arising from the developing nature of our

societies, the making of wills and contracting of Statutory Marriages which could have influence the mode of distribution of a deceased person property is not a widespread practice. Thus, the Customary Law of Succession, at often times influences the distribution of property in our societies. Sadly enough, most rules under this aspect of our law falls short of the Repugnancy Doctrine test that rules of customary law which is sought to be enforced must not be repugnant to natural justice equity and good conscience. It may be necessary to state here by way of introduction that the Efik Customary Rule of inheritance is patrilineal but not strictly a primogeniture type. The practice of primogeniture as among the Bini, Boki, Nupe and some other areas of Northern Nigeria is a patriarchal succession arrangement to which property is inherited by the eldest son to the exclusion of all others.¹ On the other hand, the Qua Customary Rule of inheritance is essentially matrilineal in nature. Here, a child belongs to his mother's family and when a man dies; his property is not inherited by his own children but by his maternal relations, for instance, brothers and sisters of the same mother and maternal nieces and nephews.²

¹ Ekpong, T. E. An Introduction to Customary Land Law in Nigeria, Wusen Publishers, Calabar. 2013 p. 205.

² Ibid p.205.

THE CUSTOMARY LAW THEORIES OF INHERITANCE AND SUCCESSION AMONGST THE EFIK AND QUA COMMUNITIES

Where a man dies without any expression of desire as to how his property including his interest in land should be distributed, and was not married according to the English Law, such property devolves on his heir according to the system of Customary Law that governs the case.

The problem of establishing the persons that constitute the heir will depend on the customary law of the deceased intestate that governs the distribution of such property.³

However, a distinction should be made between a deceased native and non natives that dies intestate and was not married under English Law.⁴ In the case of a non native, the applicable Law in English Law or any statutory modifications or replacement thereof. In respect to natives, the applicable law is the deceased customary law unless there is within the class of natives whose intestacies are brought under English Law or Statute by marriage or had made a will thereby ousting the application of customary law.

The application of the customary law of succession is complicated by the fact that there is no single system of customary law

for the whole country, in fact it could be said that the law of succession and inheritance reflects Nigeria's plural legal system.⁵ The principle which has been adopted is that the applicable customary law in a given cases is the one to which the intestate was subject, irrespective of where the property is situated or where death occurred.

In *Tappa vs Kuka*,⁶ where a Muhammadan from Nupe in Northern Nigeria died intestate leaving a house in Lagos, Brooke, J., held that the applicable law was the Muhammadan Law which was the deceased personal law, and not the Customary Law prevailing in Lagos. The general principle of law is that a person carries his Customary Law with him, hence regardless of the Customary Law of the place of his residence or abode, his personal law shall prevail.⁷

The Local Customary Rule of inheritance among the Efiks of Calabar would seem to be substantially the same as those of the Yorubas.⁸ The Efik Local Customary Rule of inheritance is patrilineal but not strictly the primogeniture type.⁹ The eldest surviving male member of the family succeed as head and the succession may be automatic

³ Olawoye, C. O. *Title to land in Nigeria*, Evan Brother (Nig.) Publishers Ltd., 1974 p. 85.

⁴ See, statutory definition of "native and non-native" contained in section 3 of the Interpretation Law, of both Lagos and the Northern States repealed by the Interpretation Act of 1964 (No. 1 of 1964)

⁵ Moses A. Bello., "Principles And Practice Of Succession Under Customary Law", National Judicial Institute Conference, 22nd March, (2017) Abuja, Nigeria

⁶ (1945) 18 N. L. R. 5. See also *Re Whyte* (1945) is N. L. R. 70.

⁷ *Osuagwu v Soldier* (1959) NRNL 39

⁸ Elias, T. U. *Nigerian Land Law*, Sweet and Maxwell, London, (1971) p. 197

⁹ *Ibid* p.198.

or subject to election at a family meeting after the death of the deceased head.

Thus Berkeley J., in *Inyang vs. Ita and Ors*¹⁰ observed as follows:

“....it is certain that the headship of a house belong as of right to the senior male member of that house. But he took it at his peril. If he failed to find support within the family only two courses were open to him. Either he went into exile or else he stayed and was put to death. In either case the succession to the vacancy devolved on the next Senior Male, if he choose to take it up...”

Thus we see, even under a system of strict primogeniture, the will of the family functioning as an important factor in placing a man in the headship, and in maintaining him there or ejecting him therefore.¹¹ However, in *Bassey vs Cobham and Ors*,¹² it was held that the family head in Calabar as in other place is a mere trustee and that all the members are beneficiaries of the family property. The family head or the eldest son, therefore, do not inherit the property exclusively under the Efik Customary Law but held it in trust for him and other members of the family.

Under the Qua Communities in Calabar, succession is matrilineal. Under this system, a child belongs to his mother, rather than to his father's family. When a man dies, his property is no inherited by his own children but by his maternal relations. The order of priority in Qua

Communities follows the following order of inheritance.

- (a) The brother of the deceased who is of the same mother, though not necessarily of the same father, in order of seniority.
- (b) His sisters of the same mother in order of seniority.
- (c) The children, male and female, of his eldest sister by the same mother.

The maternal system of inheritance is not peculiar to the Quas alone but common to all the Ejegham people in Cross River State.¹³ The origin of maternal inheritance among the Quas is traced to an event which occurred in which a prominent Qua Chief committed a grievous offence which was an abomination to the 'gods' and was punishable by death. But as a result of the fact that the said Chief was very influential and admired by his own people, it was resolved that a very close relation of the Chief preferably one of his children should volunteer to surrender himself for sacrifice to the gods. The said Chief had many children and wives. None of the children or the wives volunteered to present his or her self for sacrifice. The children's mothers protested seriously against using any of their children for sacrifice and event went to the extent of suing for divorce to enable them go away with their children.

It was one of the brothers to the Chief that finally volunteered to present himself for the sacrifice in place of the Chief. The community then realized that

¹⁰ (1929) 9 N. L. R. 84.

¹¹ Elias, *Op. Cit.* p.198

¹² (1924) 5 N. L. R. 90.

¹³ Ekong, Imona Personal interview, Big Qua, Calabar. 16 June. 1992.

neither the children nor their mothers have personal interest in the life of their father and husband respectively in event of death except for the inheritance of property left behind by the deceased. Hence, it became the custom among the Quas that brothers/sisters of the deceased person should inherit the property instead of the children and wives. The maternal system of inheritance developed from the experiences of this great Chief among the Qua Community.¹⁴

THE CLASSIFICATION OF CUSTOMARY LAW OF SUCCESSION

The classification of the Customary Law of inheritances and succession may be based on whether inheritance to an estate is by a group of people or by an individual.

The former which may be called plural or group inheritance, is the succession to an estate by a group of successors in undivided shares.¹⁵ The succeeding group whether a matrilineage or patrilineage, constitutes a corporate body and the estate vests in them as such and remains their group property until it is divided. The later is the succession to an estate by one individual at a time, in such a manner that the successor owes a duty of maintenance to the deceased dependants who do not have defined shares in the inheritance. This type of succession is called sole individual succession.¹⁶ There

are many difficulties in adopting this mode of classification in discussing the Customary Law of Succession among the Efiks and Quas of Cross River State. In fact, the principle of sole succession is not practiced at all among the Efiks and Quas. Rather, the plural system which is common among the Efiks and Quas takes the form of the patrilineal system among the former and the matrilineal system among the later.

The advantage of a plural system of succession is that the rights of each member of the succeeding group are not absolute and therefore not as extensive as those of the deceased owner of the property. No member of a succeeding group while enjoying the property with the others has the power to alienate his interest until the property has been divided.

In respect of sole succession, the successor's rights are from the time they are vested on him, as extensive as those which the deceased owner possessed.

The other method of classification which is based on the three main patterns of distribution of property according to different methods of reckoning relationship in the succeeding group are patrilineal, matrilineal and bilineal. The patrilineal system is the pattern in which a man's Estate is inherited by his children and in lieu of children, by his patrilineage. In the matrilineal system, the matrilineage is entitled to the Estate to the exclusion of a man's children and his patrilineage. In the bilineal pattern, each of the two lineages, matrilineal and patrilineal, succeed to different parts of the estate.

A further sub-classification of the patrilineal system in order to bring out the

¹⁴ Ibid.

¹⁵ Nwakamma Ukoro. *The Customary Law of Succession in Eastern Nigeria*, Sweet and Maxwell 1966 p. 6.

¹⁶ Ibid, p. 6.

distinctive features of the Efik patrilineal system of inheritance is imperative. Thus, two broad classifications of the patrilineal system could be attempted.

(a) Firstly, in respect to succession to a man's property, the successors are his sons, brothers, father, uncle, excluding daughters, wife, sister and mother. This type is male-biased and is found among the Ibo, Ibibio, Annang, Oron, Obanliku, Ngene, Abua Ogoni.¹⁷

(b) Secondly, unlike the first classification which is male-biased, this second type is not. Under this second classification, daughters, together with their brothers, have succession rights to their father's property. This is the Customary Law of the Efik and Umon (Biase).¹⁸

Thus from the above examination of the possible modes of classification, the one considered most satisfactory in the analysis of the Customary Law of inheritance among the Efiks and Qua Communities the classification based on the pattern of distribution of an estates according to the different methods of reckoning relationship in the succeeding group-namely, patrilineal and matrilineal.

THE CHOICE OF APPLICABLE CUSTOMARY LAW

The choice of applicable customary law in the distribution of property among the Efik and Quas is similar to the laid down principle in **Tappa Vs Kuka**.¹⁹ In this case a Muhammadan from Nupe in Northern Nigeria died intestate leaving a

house in Lagos, and it was held that the applicable law for the distribution of the property was the Muhammadan Law which was the deceased's personal law, and not the customary law prevailing in Lagos where the property is located.

Thus, it is the deceased's personal customary law that governs the distribution of property among the Efiks and Quas and not the law of the *lex situs*. However, any Nigerian can change his personal Customary Law of origin in preference for another one which he acquires as a result of acculturation/assimilation.²⁰ Generally speaking therefore, the law applicable for the distribution of a deceased's estate on intestacy is his preferred personal law and not his personal law of origin.²¹

APPLICABLE RULE OF DISTRIBUTION OF ESTATES

The applicable rule of distribution of estates under the Efik Customary Law most often follows the per capita method of distribution where the properties are many. Under the per capita system, the property is shared according to the number of children. But where the property is not many, the per stripes methods of distribution whereby the property is shared according to the number of wives having children. The method of distribution to be adopted is at the discretion of the family head.

¹⁷ Ibid p. 8.

¹⁸ Ibid p. 9.

¹⁹ Supra

²⁰ See, Adeniyi Oluwo & Ors v. Olabowale Oluwo & Ors (1985)3NWLR (pt. 13) 37

²¹ Bello. *Op. Cit.* p.3

INHERITANCE TO PROPERTY OF A MAN WHO DIES INTESTATE LEAVING CHILDREN

The natural children succeed to the property on intestacy of their father under Efik Custom. The property automatically becomes family property under the control of the eldest son of adult age who on becoming the head of family holds the property in trust for the benefit of all other members of the family. If the first son is a minor, the eldest daughter may act as the regent of the family where the surviving brothers do not interfere. Or where the eldest son is not acceptable to the rest of the family, the head of the family may be chosen by election from among the other descendants or the eldest may never the less, insist on his rights at this peril. The decision in *Ewa Ekeng Inyang vs. Effanga Ekeng Ita and Ors*²² illustrates Efik Custom on the above.

Also *Yesuff vs. Dada*²³ illustrates the Yoruba Custom which is a true reflection of the Efik Customs generally. Under the Quas Custom, the same general principle applies to strictly movable personal property except that the head of the family may of necessity be appointed from among the senior members of the maternal relation of the deceased family in preference to the surviving children.

In respect of property that devolves on the matrilineage as among the Quas, the rules are that it cannot be the subject-matter of a nuncupative will. A person can be deprive to his property only be

divesting himself of the ownership of such property in his life time. Any disposition of property that is to take effect after the testator's death is void. Thus, gift inter vivos, in which ownership in the subject matter of the first passes to the donee during the life time of the donor, constitutes an important method in matrilineal societies of depriving the matrilineage of their succession rights. This is a device often adopted by parents among the Quas to ensure succession by their Natural Children to the property instead of allowing the disposition to be done under matrilineal customary law.

The family property is vested in the members of the family including the extended members of the family depending on approval of elders according to custom as to manner or modality of distribution by custom. Female and male share on terms accepted by the family head whether equally or otherwise.

Widows as a rule have no special right of succession under Efik or Qua Custom. They receive share by representation through their direct children. Where there is no issue they take at the discretion of the family head who is the overall trustee.

Widows have rights of residence if they choose and are subject to good behaviour and also through the shares of their issue/issues. As a rule husbands rarely inherit wife's property particularly where deceased wife has children to succeed her or her natural family objects.

INHERITANCE TO PROPERTY OF A PERSON WHO DIES INTESTATE LEAVING NO ISSUE

²² (1959) 9 N. L. R. p. 84.

²³ (1990) 4 NWLR (part 146) p. 657.

Where a person has no issue, his or her next-of-kin elect one of their members to act as the head of the deceased family. The most senior member of his or her next-of-kin has no superior claim over other members of the lineage. This principle was upheld in the case of *Mfon vs Eyen*,²⁴ in which the Calabar Native Court said that “the said Adiaha Asuquo Edem left no issue of her own. Anybody elected, therefore, by the family is the only person entitle to take charge, of Late Adiaha Asuquo’s Estate.”

A childless testator may nominate his successor. In this case, succession to the headship of his family does not arise since he has no issue. The need is simply that of nominating a successor to his property. He can in the circumstance prefer any of his next-of-kin to the others and the appointment will be given effect. This custom was upheld in *Okon vs Ana*.²⁵ The deceased, Madam Odo Effanga, had no issue. Before her death, she appointed the defendant to succeed to her property. The plaintiff’s claim was based on the grounds that they were the nearest next-of-kin to the deceased. The court upheld the testator’s nuncupative will and emphasized the effect of testamentary succession as follows:

“mention must be made of the Customary way of will made by Late Odo Effanga by inviting responsible chiefs and entrusting her whole house and property into the hands of the defendant and this court cannot as such

reverse the course of her wishes now that she is dead”

SUCCESSION TO A MAN’S ESTATE:

i. UNDER EFIK CUSTOM

The estate of a married man with children is succeeded to in the following order under Efik Custom.

- (i) His sons and daughters,
- (ii) His full brothers and sisters; subject to their parent’s life interest,
- (iii) His father and or mother,
- (iv) In default of both parents, his half brothers and sisters,
- (v) His father’s successors.

ii. UNDER QUAS CUSTOM

In respect of the Quas, the succession is by the nearest class of matrikin to the exclusion of extended members of the family. But often, the successor may, and usually do, allow their extended matrikin a share of the inheritance, for example, farming and residential right in land.

In respect of a man’s estate under the Qua’s Custom, the order of succession is:

- (i) His mother, his full brothers and sisters;
- (ii) The issue of his full sisters;
- (iii) His mother’s full brothers and sisters;
- (iv) The issue of her mother full sisters.

²⁴ Unreported, Calabar Native Court Suit No. 69/60 (1961) Civil J. B. A/60-393.

²⁵ Unreported, Calabar Native Court Suit (SUPRA).

If any of his full brothers married a woman from a patrilineal society, their wives and children will be entitled to succeed along with (ii) above. If any of his mother's full brothers married a woman from a patrilineal society, their wives and children will succeed along with (iv) above. The reason for this is that such children belong to their father's matrikin whereas if their mother had come from a matrilineal society, they could not belong to his matrikin. Again if the deceased man married a woman from a patrilineal society, his children by that marriage together with their mother will succeed along with (i) above because they are also his closest matrikin by adoption through marriage.

SUCCESSION TO A MARRIED WOMAN'S ESTATE:

i. HER ANTE-NUPTIAL PROPERTY

Under the Efik Customary Law, A married woman's ante-nuptial property which she did not take with her to her husband's home belongs to her father's family. Any such property which she continued to enjoy after marriage and until her death is succeeded to by her children and in default of issue, by her father's family.

ii. HER PROPERTY ACQUIRED DURING COVERTURE

Under the Efik Customary Law these are succeeded to by her children and in default of issue by her husband. If succeeded by her children, the daughters are entitled to the feminine property. The

daughters are nevertheless entitled to a share of the remainder of the property together with their full brothers. In default of issue and husband, her husband's successors will succeed to the estate. In default of issue, a woman's grand children are her nearest descendants and successor to the exclusion of other claimants.

Under the Quas Matrilineal System of inheritance, the order of succession to a woman's estate is as follows:

- (i) Her children
- (ii) Her grand children by her daughters (if any of her sons married a woman from a patrilineal society, the wife and her children will join this class).
- (iii) Her mother, full brothers and sisters.
- (iv) Her full sisters' children (if any of her full brothers married from a patrilineal society, the wife and her children will join this class).
- (v) Her mother's matrilineal successors i.e., her mother's full brothers and sisters.
- (vi) The issue of her mother's full sister.

The most senior male member of the Class of Successors, if any, or the eldest woman in default of a male, manages the property and is entitled to the largest share.

SUCCESSION TO FAMILY AND COMMUNITY PROPERTY

Under the Efik Customary Law, Succession to family and community

property are by both the male and female children of the family. As noted earlier, a striking feature of Efik Customary Law of Inheritance is that women have right in family and community property, whether land or chattels. Also, the children of a woman and her descendants are entitled to the property even if their mother has been given away in marriage to another family. Furthermore, an Efik person has an interest in family property owned by both his mother's and father's families.

THE RULE OF DISTRIBUTION OF PROPERTY

Under the Efik Customary Law, there are no separate rules governing the distribution of land and chattels; there is not fixed ratio for distribution other than that the eldest child receives the largest share and the youngest the smallest share. Land is not normally divided. The successors decided on which property they will share and at what time it will be shared.

METHOD OF DISTRIBUTION

The method of distribution under the Efik Patrilineal System is that the property is shared per capita, in the strict order of the seniority of the children irrespective of their sex and despite the fact that they belong to different mothers.

Under the matrilineal system of the Quas, the entire estate of a deceased person is succeeded to by the deceased's matrilineage. As a result of the opposition often put up by the children of the deceased person under the matrilineal system of the Quas, the matrilineage is now willing to allow them the concession

of their father's dwelling house, compound, some money, and chattels. It must be emphasized that the matrilineage is not obliged to make any concession whatsoever to the deceased's sons.²⁶

THE POSITION OF THE ELDEST CHILD

Under the Efik Customary Law, the eldest child of a man is his Chief successor irrespective of sex and is entitled to the largest share of the estate. A distinctive characteristic of Efik Law of Succession is that women succeed to a man's immovable and movable property. However, wives do not succeed to their husband estate. Also a woman retains her rights of succession even if she is married.

CONCLUSION AND SUGGESTIONS – RECOMMENDATION FOR REFORMS

In response to changing socio-economic conditions, the need for reforms of the prevalent customary law of inheritance among the Efik and Qua becomes very imperative. If the purpose of law is to regulate the behavioural pattern of people in society, and society itself is not static, then the customary laws of inheritance and succession should change in line with the changing social norms and values. Considered in the light of changing societal norms and values, it will not be derogatory to say that some of the customary rules of inheritance of Efik and Qua Communities do not any longer reflect current public opinion and

²⁶ Ekong, Imona Personal interview, Big Qua, Calabar. 16 June. 1992.

behaviour. Furthermore, customary law rules of inheritance do not in many other respects provide a complete answer to contemporary problems which its evolution did not anticipate.

Although one does not doubt the fact that customary rules will remain for a long time as the law which will regulate the inheritance and succession rights among Efik and Qua, experience has shown that the process by which customary law changes by usage is slow.

If customary law is not to be exposed to abuse, ridicule, and circumvention by fiction, a more positive process for its reform is a necessity. Any reform, must however be preceded by an ascertainment of the existing customary law and of current public opinion in societies.

Having established a case for the need for reforms, it is therefore necessary to highlight those areas of customary rules of inheritances and succession among Efik and Qua that should be reformed.

(1) The matrilineal system of inheritance under the Qua customary law where children of a deceased person cannot inherit property owned by their father, but rather the inheritance is by the matrilineage family requires urgent reforms.

A situation where the matrilineage successor is not under an obligation to take care of the children of the deceased brother is no longer the acceptable norm of modern society. Little wonder by persons under the matrilineal system of customary law of inheritance divest of their property to their children during their life time. It is therefore suggested that the matrilineal

system of inheritance should be abolished and replaced by a system whereby the children of the deceased person inherit a sizeable portion of the property. Alternatively, persons under the matrilineal system of customary law of inheritance should distribute their property in their life time as a means of circumventing the matrilineal system of inheritances.

(2) Also the notion of trust under the Efik customary law of inheritance where by the deceased brother(s) inherit the property on trust as a beneficial owner should be reviewed in line with English notion of trust. It is suggest that a trusteeship Act should be enacted to abolish this practice whereby the trust property is held by the trustee as a beneficial owner.

In conclusion, any reform in both patrilineal and matrilineal rules of succession are bound to have far-reaching positive and negative impact on the peoples attitude. It is submitted with the greatest respect that the task of reforming our customary law which is both desirable and urgent, is unsuitable to be left to the courts alone.

The progress of customary reform by the court is usually slow and the scope of what a court can achieve is limited because a court will not act unless a case comes before it, and when it acts, it is further limited to act on the facts adduced before it. The customary law review committee under the legislative arm is best suited to handle this work.

The legislature ought to take the opportunity to reconcile customary law of

succession with the rules put forward in Cole' case²⁷ and in section 36 of the marriage Act. By this means the dualism of law of succession in Nigeria will be eliminated.

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²⁷ Cole vs. Cole 1898 1 NLR 15