

An Critique Of Heritable Property And Patterns Of Inheritance By Special Persons Under The Efik And Qua Customary Law.

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Abstract: *The aim of the research paper is to appraise heritable property and the pattern of inheritance of such property by special persons such as minor, women, wife, illegitimate children, adopted/guardian (step) children and strangers under the patrilineal and matrilineal Customary Law system of Inheritance between the Efik and Qua ethnic groups. This paper further provides a useful insight as to the classification of heritable property into special properties, immovable and movable in a bid to highlight the specific features associated with heritable properties under the Efik and Qua Customary Law. Furthermore, a brief examination of the pattern of distribution of family and communal property is also highlighted in this work. In the concluding section, a critique of specific rights of inheritance among Efik and Qua Communities was attempted with recommendations proffered for reforms of the extant Customary Law of Inheritance.*

Keywords: Inheritance, Heritable property, Customary, Special Persons

Introduction

The want to inherit property and bequest it to children, is inborn in mankind. From biblical times, man has sought to possess property; and he has engaged in wars to guard and secure it for his offspring's.¹ The bible in the book of Proverbs 13:22 reads "A good man leaveth an inheritance to his children's children...."² Cardinal Mercier in his works titled *A Manual of Modern Scholastic Philosophy*³ adds that the father's property "is a joint possession belonging to all the members of the [family].... And therefore the children have a certain right to it during the lifetime of the parents. But this right is suspended while the parents are alive On the death of the parents the right of the children comes, *ipso facto*, into effect; and this is the right of inheritance."

If the right of bequest is an innate right, then the query may be hoisted, as was seen in *Henson v. Moore*⁴ to wit: In what inheritor or set of inheritors does this right subsist? Does it go to the deceased spouse, to his offspring, or to his collateral successors? In answering the question, the Illinois court noted that it is essential to indicate that by no means has it been challenged that collateral beneficiary have the benefit of an innate right of bequest. In the same vein, the wife of a deceased spouse is not possessory of a natural right either but a civil right in the deceased spouse estate, arising from the civil duty of her husband to sustain her. Now, with these sets of inheritors expunged, the complexity anticipated in *Henson v. Moore* decreases to a minimum. The natural right of inheritance would inhere in each child and it would be shared evenly by all.

Inheritance concerns attracts mixed reactions across the entire length of Nigeria as legal rules on succession including inheritance portrays the legal pluralism innate in the country. A case in point is a situation where a person who died intestate in Nigeria and customary law to which the individual was subjected to, presides over the allotment of his properties. The method of customary bequest differs across ethnic groups. The categories of persons who should profit from intestate succession and the allotment of such beneficiary is not devoid of the challenges of discriminations.⁵ The implications of the application of the repugnancy doctrine is evident in the customary rules of succession and administration of estates. Courts maintain that for a customary law rule of succession to be legitimate, it must be unbiased and equal, devoid of gender indifferences and barbaric practises. The dictates of impartiality and equality on the discourse of property inheritance have been given recognition in domestic and international human rights treaties.⁶

¹ Francis W. Matthys, *Nature of the Right to Inherit Property*, 12 Notre Dame L. Rev. 7 (1936)

² King James Version (KJV)

³ Vol. 11, p. 314.

⁴ (1882).

⁵ B.E. Kooffreh, B. Kooffreh, A Review of the Customary Law of Inheritance and Succession amongst the Efik and Qua Communities in Cross River State, Nigeria. International Journal of Research. Vol 5. Issue 15 2018 1471

⁶ Article 3 of the African Charter on Human and Peoples' Rights (1981); Article 7 of the Universal Declaration of Human Rights (1948) ; Article 26 of the ICCPR (1966)

The sharing of a deceased's property under customary law is in line with the customary doctrines of inheritance and succession of property. These rules are regulated by the canons of lineal descent along paternal or maternal lineage.⁷ Paternal lineages of descent are traced through the father, maternal lineages are traced through the mother. For illustration, the lineage of descent governing inheritance for the Yoruba tribe is paternal as opposed to indigenes from Afikpo, Ariba and Ohafia in Eastern Nigeria that is maternal.⁸ The Local Customary Rule of inheritance among the Efiks of Calabar would seem to be substantially the same as those of the Yorubas. However It may be necessary to state that although the Efik Customary Rule of inheritance is patrilineal, it is not strictly a primogeniture type as the Efik customs permits the appointment of a daughter as a successor, and she can inherit her parents land and chattels and even more occupy the place of family head. 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.⁹ The patriarchal system adopted by the Efik was of oriental origin. The Patriarch was the father and ruler of a family or tribe and was specially applied to fathers of the Jewish people, to the president of the Jewish Sanhedrin, and was later adopted by the early Christian Church.¹⁰ In Efik, "Etinyin" is "Patriarch", and when fully expressed in efik is "Ete Nnyin", or "Or father". This male head of a family was also its ruler, sometimes the position of patriarch in the past gave the patriarch the power of life and death over his family.¹¹ In every respect it was the Patriarch who directed the affairs of his House "Ufok" and administered it with his council of freemen; his voice was the dominant one in the council. The Patriarch who was the oldest blood male descendant of the founding ancestor of the House, was highly revered and no one dared to challenge or contradict the patriarch.¹²

HERITABLE PROPERTY

An understanding of the categories of property which constitutes an estate and the nature of the rights and interest in them is essential for an appreciation of the Customary Law of Succession. Heritable property may be classified into the following types:

- (1) Status and titles
- (2) Immovable property
- (3) Moveable property

STATUS AND TITLES

Rights of succession to title and offices held by the deceased in his life time constitutes one of the heritable property in an estate. A good example of this is the headship of a family which includes either headship of the deceased's household comprising his children and wives, or the headship of the extended family. Another example may be a Chieftaincy title as head over a village. A common feature of the headship of a family and of Chieftaincy among the Efiks and Quas Communities in Calabar is that the status or office which the holders of both titles fill is political in nature and not proprietary. Iwona¹³ posited that the Headship of a family and or Chieftaincy title among the Quas is not inherited directly by the children of the deceased holder of the title. The inheritance of such titles are decided by members of the family. He opined that the eldest male child of the deceased holder of title can inherit such titles if vacant provided he comes of age and has fulfilled the requirements for inheritance of such titles. The inheritance to the headship of a family is important in the discussion of succession in the Efik/Qua Communities where the customary law recognizes the right of a father to disown a child and thereby disinherit such a child, who otherwise could have succeeded to his property and status.

In most patrilineal societies, the eldest son is always the head of the family. A person who has no son but a daughter, may among the Efiks appoint her as his successor. However, the general rule in patrilineal societies, excepting the Efik and Umon (Biase), is that daughters have no right of succession to their father's land and chattels, neither have they to their mother's land. Where the customs permits the appointment of a daughter as a successor, as among the Efiks, she inherits her parents land and chattels and remains the head of the family.¹⁴ A woman cannot appoint her daughter as a successor to her property which is normally inherited by men. The motive behind the appointment of daughters as family heads is to ensure that a man's property is enjoyed by his children,

⁷ T.O.G. Animashaun & A.B. Oyeyeyin: Law of Succession, Wills and Probate in Nigeria: M.J Publisher Ltd (2003) p.3

⁸ U.U.Uche, "The Matrilineal System of Inheritance. The Nigeria Model" in Towards a Restatement of Nigerian Customary Laws (1991) Federal Ministry of Justice page 174.

⁹ B.E. Kooffreh, B. Kooffreh, A Review of the Customary Law of Inheritance and Succession amongst the Efik and Qua Communities in Cross River State, Nigeria. International Journal of Research. Vol 5. Issue 15 2018 P. 1471

¹⁰ Aye, E. U., The Efik People. Glad Tidings Press Ltd, Calabar, 2000. P.85

¹¹ Aye Ibid. P.86

¹² Waddell, Rev. H.M., Twenty-Nine Years in the West Indies and Central Africa. Frank Class, London, 1863, 1970

¹³ Ekong Iwona. Biq Qua Town Hall, Calabar Cross River State

¹⁴ Okoro Nwakamma. 'Customary Law of Succession in Eastern Nigerian' p. 85.

male or female, to the exclusion of relatives, with the hope that the daughter will have a male issue in her father's name to perpetuate the family lineage. Therefore, such daughter are not expected to get married but to have illegitimate male children, provided the children are not claimed by their natural fathers. Where such daughters subsequently get married without having a male child, the property devolves on intestacy as if she had never been appointed. But if she had a son, he succeeds to the Estate.

It could be seen from decided cases that among the Efik, the democratic will of the living members of a family overrides both the principle of primogeniture and the will of the testator in the nomination of the family head. A testator may nominate one of his sons as the head of a family, but after his death the family can, by a majority decision, remove the nominee and put the person of their choice in office. The appointee is the political head of the family and is responsible for the administration of his father's Estate. A woman may not be appointed a family head in preference to a man.

The Locus Classicus on the appointment of headship of a family among the Efik in *Inyang Vs Ita*.¹⁵ In this case, the plaintiff claimed that as the eldest son of his father, he was entitled to the headship of the family by right of primogeniture. He contended that a democratic election of the head of a family was contrary to customary law. After hearing evidence of Efik Custom on this point, Berkeley J.,¹⁶ noted that although the position of family head is as of right to the eldest male member of the family, he take it as his risk. As such, where he fails to find support from other family member, he has the option of going into exile or face the death penalty. In either case, the succession to the vacancy devolved on the next senior male, if he chose to take it up. Also it was quite possible for an exile head to return. The one condition precedent to such a return, being that he made his peace with the family, not with the successor who had supplanted him but with the body of people who composed the family. His return was sanctioned or refused by democratic suffrage, not by automatic decree. It is clear that, prior to constitutional governance, the notion of election, though in a very elementary form, was already innate in the family system of the Efik people of Calabar.

With the coming of the Government and the rule of Law the barbaric practise of putting an unpopular head to death was abolished. Thus an unpopular head, being no longer in fear of his life, was not mandated to seek refuge in exile. The family was governed by the unpopular head and members had no means of getting rid of him except through an electoral process that ensures that an unpopular head is given less support from the family during the selection process. Instances abound where a senior member of the family was adequately suitable to be the head of the family but fails due to opposition from family members, other member is selected in his stead. Thus Berkeley J maintained that it would be against the interest of good conscience and public policy for this court to uphold the plaintiff's contention of absolute appointment of senior male member of the house without recourse had to an electoral process in contemporary times. It is important to observe that the said judgement is an example of judicial interpretation of Customary Law which was aimed at tempering its rigidity and adapting it to changing conditions.

It would appear that the case of *Inyang Vs Ita*¹⁷ is the only reported case in which the principle of primogeniture in Efik Law has been considered. However, some years after the decision on this case was handed down, Calabar District Court Judges were of the opinion that the elective principle has little support among the Efik and they doubted the correctness of the evidence of their law as adduced before Berkeley J. and on which he based his decision.

As regards the headship of the matrilineal family in respect of the Qua Community in Calabar, the eldest son is usually the head of his mother's children, and in default of a son, the eldest daughter becomes the head. Although a daughter can be a family head, in practice, males are preferred to females. The headship of extended matrilineal family is assumed by the oldest male member of the lineage. Thus, we see the principle of primogeniture operating in the matrilineal pattern of succession to family headship.

MOVABLE PROPERTY AND IMMOVABLE PROPERTY

Property has been defined as the right to own, exploit, and benefit from a determinate thing.¹⁸ A narrower proposition is that property is concerned with the ownership of objects.¹⁹ Generally, the term property can also be defined as any tangible or intangible possession that is owned by someone²⁰

Property may be separated into two broad categorization of moveable and immoveable property. Movable property may also be classified into the following:

1. Movable property held by an individual. An individual movable property may be further classified into money; articles chattels; livestock; rights and interest in moveable property own by others e.g. security for loan.
2. Moveable property owned by a family. The kinds of movable property held by a family are limited. Moveable property own by a family is normally divided up and thus converted into individual property.
3. Moveable property owned by a Community. Money is the commonest moveable property which is owned by a Community.

¹⁵ (1929)9 N. L. R. 84.

¹⁶ Ibid p. 85 – 86.

¹⁷ (1929) 9 NLR 84

¹⁸ Black's Law Dictionary 9th Edition

¹⁹ R. J. Smith, Property Law (5th ed, 2006, Pearson Longman) at 3

²⁰ Word Web Dictionary dictionary

Furthermore, immovable property may be classified according to the ownership class as follows:

1. Immovable property rights held by an individual
2. Immovable property rights held by a family
3. Immovable property held by a community

Under Customary Law, it is possible to find that the ownership of the land itself, on which trees and building stand, and the ownership of or the usufructuary rights in some of the trees, crops or buildings are vested in different persons. This is as a result of the practice whereby a landowner may permit a person to build a house on his land without payment of annual land rent. Thus, a landowner may choose to sell or pledge only the economic trees on his land, or he may lease his land while retaining usufructuary rights over the trees on the hand.²¹ This distinction is important in the law of succession since land and the object on it may belong to different persons, the successors to these respective owners will inherit the property, owned by their deceased relatives. Arising from this joint interest highlighted above, it is necessary to sub-classify immovable property into land, trees, crops building.

Individual immovable property can easily be transferred by inheritance to any person entitle to succeed under the patrilineal or matrilineal system. It should however be noted that in respect of property that devolves on matrilineage, like among the Quas Communities, the rule is that it cannot be the subject matter of a nuncupative will. Hence, a person can deprive his matrilineal group of the right of succession to his property only by divesting himself of the ownership of such property in his lifetime. 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 gift passes to the donee during the lifetime of the donor, constitutes an important method in matrilineal societies of depriving the matrilineage of their succession rights.

PATTERN OF INHERITANCE BY SPECIAL PERSONS UNDER THE EFIK AND QUA CUSTOMARY LAW.

(a) INHERITANCE BY MINORS

Under the patrilineal system of inheritance among the Efiks, minors between the ages of 0-12 years cannot succeed directly to their father's property. The property is being held in trust for him or her. But young persons between the ages of 13-17 years may succeed directly to their father's property. Under the matrilineal system of inheritance among the Quas, an infant cannot succeed to the property of parents. The property is being inherited by his matrilineal uncle who by the Qua custom does not hold the property in trust for the infant children of the deceased person. But the matrilineal uncle owes a duty to either educate the young infant or settle him in life by way of establishing him any trade or craft or farming. In the olden days the duties simply involved the provisions of farming instrument, a piece of land, a gun, marrying of a wife for the infant when he comes to age and initiation into Mgbe (Ekpe Cult) and other cultural societies. If female, she is prepared into the fattening room and given out for marriage. Today, the most important thing that a parent could give to a child is education. In present day, the matrilineal uncles who inherit property of a deceased brother among the Quas owes the responsibility of training the children of the deceased brother in school. The fulfilment of this obligation gives the matrilineal uncles a right of inheritance.

It should however be noted that the concept of trust under the Efik Patrilineal System of inheritances is quite distinct from the English Common Law notion of the doctrine. Under the English Notion, the Trustee cannot benefit from the trust property directly except by recovery of expenditure incurred while executing the terms of the trust. The Trustee under the trust concept among the Efik is also the beneficial owner of the property. He can deal with the property in any way he likes and in most cases where the Trustee is poor, he can deny the children of the deceased person a share in the property especially where the deceased person is of the same father and mother with the Trustee. In respect of status/offices/titles held by the deceased parent, and titles held in secret societies or cults or headship to the family such as the Etubom of a house cannot be inherited or held in trust for an infant or minor. Accordingly, titles and headship held by the deceased person is a family property and as such, it could not be inherited by the children of the deceased person. However, under the Quas Custom, if a child of a deceased holder of title comes of age, and has fulfilled the necessary conditions subject to the fact that the title remains vacant, and he is of good behaviour, he can inherit the title. In respect of the quantum of property inherited by male and female minor, the general opinion was that males take more than the females according to their ages. However the quantum of property shared to the various children depends on the family discretion and good behaviour by the children.

(b) INHERITANCE BY WOMEN

Under the Efik and Qua Customary Law, wives of deceased husband do not have succession right to the estate of their husband. However, if the widow was of good behaviour and do not get married to another man, she could be allowed to remain in the family house especially where she has children to the deceased husband. This widow is not however entitled to monthly maintenance allowance from the family but she is normally taken care of by the children. A woman's succession right in her father's estate under the Efik Customary Law differs significantly from that of the Quas Customary Law. Under the Efik Customary Law, a

²¹ Elias, *Nigerian Land Law and Customs* (1953) p.202 – 203.

female child or women is entitled to inherit property including land and real estate from her father's estate. In most cases the first daughter called 'Adiaha' by household name takes a lion share if the males are junior to her. Under the Qua Customary Law, a female child or woman is only entitled to inherit movable property such as pure personalities. They cannot inherit land and other immovable property. The land and other real estates are inherited by the matrilineal uncle on their behalf. In fact instances exist where a Chief in Qua Community had inherited land from his deceased maternal brother and only the male children of the deceased can have right to the share of their father's landed property through him.

In respect of succession to a brother's immovable property by a woman (sister) of the deceased, this is not possible where they are of different mothers among the Efiks. But among the Quas and where they are of the same mother, succession to immovable property is acceptable. However, a woman (female child) has succession right in their mother's property under the Efik and Quas Customary Law. In summary, inheritance among the Efik in Calabar is not male biased and as such a daughter, married or unmarried, has succession right to land and chattels in their father's estate.

(C) INHERITANCE BY ILLEGITIMATE CHILDREN

It is sometimes contended that under the Efik Custom the refund of marriage payment (dowry) to a husband renders the children of such marriages illegitimate, thereby dis-inheriting the children from the property of their father. However, the refund of marriage dowry is not customary to the Efik and Qua Cultures. Thus illegitimacy resulting from refund of marriage fee is not tenable among the Efiks and Quas. Therefore, every child becomes legitimate once the father has named such a child. Once this is done, the child is entitled to inherit property according to the Customary Law of the Efik and Quas. It should be noted that the act of disowning a child by either parents among the Efiks, thereby dis-inheriting such a child from their parents estates does not imply illegitimacy of such a child. Under the Efik Custom, a father can disown ("uyet Aran") a legitimate child for a grievous offence from inheriting his property. But, this act of disowning could only be valid if there has been a public announcement to this effect in the presence of people.

However, in *Cobham Vs Cobham*,²² the Calabar Native Courts' finding was that the acceptance of the refund of marriage payment by a husband in respect of his divorced wife bastardised the issue of that marriage in Efik Customary Law. Confirming this finding, the Calabar Native Court of Appeal said²³ "this exhibit greatly affected the legitimacy of defendant according to native law and custom and he (defendant) cannot be called the son of Henry Cobham in its true meaning. In accordance with the native law and custom with which this court is very conversant, the defendant has no claim to the estate of late Henry Cobham and has no right to interfere with the administration of the said estate".

(D) INHERITANCE BY ADOPTED/GUARDIANSHIP/STEP CHILDREN

Adoption of children is rare in Efik Customary Law, rather guardianship of children or step children is better known to the Customary Law of the Efik than adoption. There are more instances of the acceptance of the children of relatives and friends for guardianship than the acceptance of the children of people who are not related by blood to the guardian. As such, these accepted children can inherit property under the Efik Custom especially when they had performed certain obligations, for example care during sickness and performance of funeral rights. Among the Quas, adopted children are also recognized. However, there is a limitation to the rights of Guardian Children since they cannot inherit titles/status of the deceased guardian parents.

(E) INHERITANCE BY STRANGERS/FORMER SLAVES

From the beginning the Efik grew in family units generally known as House or *Ufok*, and each unit had its own family council presided over by the *Etinyin* or Patriarch with its lesser chiefs. Formally the House would include all categories of servants, including the slaves when slavery was in existence, and it was a territorial entity. Being strangers or guest of the families, naturally they enjoyed a degree of personal immunity as any native, and for the protection they receive they were obliged to render some prescribed services in return.²⁴ Thus, these strangers and former slaves may after a long stay with the family become part and parcel of that family and therefore could inherit property. Commenting in the case of *Eyamba Vs Holmes*²⁵ on the advantages to a family or community of absorbing strangers and the protection to which strangers are entitled, Berkeley Acting J. has observed. "It must have happened many times in the past that a stranger has associated himself and identified himself with a family, has taken part in their communal activities and labour, until having proved himself a desirable member, having passed through his apprenticeship, so to speak, he becomes recognized as an associated member of the family and is given a piece of land to live on or to farm, or both. All this is perfectly natural, for such a recruit adds to the strength of the family with which he has associated himself and to the strength of the Community to which the family belongs. Every such accession makes the family stronger against outside aggression

²² *Cobham Vs Cobham* (1944) Calabar Native Court Suit No. 492/44.

²³ (1944) Calabar Native Court of Appeal Suit No. 54/592/44.

²⁴ Aye, E. U., *The Efik People*. Glad Tidings Press Ltd, Calabar, 2000. P.88

²⁵ (1924) 5 N. L. R. 85 at p. 86.

and it is only natural that it should be welcomed. And if after having acquired his land, the associated member acts in a way which is contrary to the family interest or otherwise proves himself undesirable, I have no doubt that the same family authority could dispossess him of the land which it had allotted to him." Under the Efik Customary Law, former slaves' right to inherit property depends on whether his master has issue or not. Among the Efik, a slave can inherit his master's property if the master had no eligible issue. Where the master had an eligible issue, a slave inherit along with the issue only if his master gave directives to that effect. The Efik proverbial expression "*Ebefa otomo obon otomo ebefa*" meaning as the servant looks up to his master, the master also looks up to the servant. In this Efik proverb lies a formula for successful living, as even in the days of Slavery, a wise *Etinyin* or Patriarch knew that his wellbeing depended on the degree of his humaneness to his slaves or servants. Thus, in as much as they serve him and their desire is under his control; he has to reciprocate with goodness to win their love and loyalty.²⁶

In the Efik case of *Okon Vs Ana*,²⁷ the deceased, Madam Odo Effanga Ekeng, had no issue and appointed the defendant, a family slave member of the deceased family group, to bury her and to administer and inherit her estate. The defendant bore the cost of her treatment before death, and of her burial. The Plaintiff was the son of the deceased late brother and it was the deceased who had administer the estate of her late brother, the Plaintiffs' father. But for her oral will, the Plaintiff was the rightful person to inherit her property. The Calabar Native Court unanimously upheld the deceased's appointment of a family slave member to administer and inherit her estate.

RECOMMENDATION FOR REFORMS

The non-inheritance of property generally by wives (widow) under the Efik patrilineal system and the Quas matrilineal system is a serious aspect of our customary law that calls for urgent reforms. The judgement of Brooks, Acting C. J. in the case of *In the matter of Estate of Edward Anfu Whyte*²⁸ raises some speculation on what the attitude of the Nigerian courts will be if similar case was brought before it in respect of the denial of rights of inheritance to wives and children in the matrilineal and patrilineal societies in the Cross River State. The fact of the case and the judgement were as follows:

"The deceased was a Fanti of the Gold Coast who dies in Nigeria, his domicile being the Gold Coast. He left a widow to whom he had been married in accordance with Fanti customary law and an infant daughter of the marriage, both of whom were in Nigeria, and a sister who was living in the Gold Coast and was the successor to the Estate under Fanti Customary Law to the Exclusion of the widow. The Estate was being administered by the Administrator-General and he had proposed a distribution of the residue, which was not wholly in accordance with Fanti customary law in that it provided (Inter alia) for a sixth share of the Estate for the widow and another sixth share for the infant daughter, and for the appointment of the widow as the legal guardian of the daughter; the remaining two thirds share of the Estate was to go to the sister in the Gold Coast. This Scheme was opposed by the sister, who claimed the whole Estate. She proposed that the daughter should be taken to the Gold Coast to live with her in which case she would assume responsibility for her education; but if the widow should not agree to return the daughter to the deceased's family in the Gold Coast, the sister proposed that the widow should keep the daughter with her and educate her from the resources of her (the widow's) own family. "It was held that, as the condition upon which the sister, the successor to the estate under Fanti customary law, undertook to fulfill the family obligations was that the daughter should be separated from her mother and compelled to return to the deceased's family, a hardship would be caused by the application in toto of the custom under consideration and that the distribution proposed by the Administrator-General was an equitable one and an order should be made in the terms thereof (with a minor consequential amendment)".

From the above judgment it is clear that the Learned judge felt on principle that the rules of distribution of estate in the matrilineal societies is inequitable, at least in so far as the man's children are excluded from inheriting a reasonable share of his estate. In recent times, the Supreme Court has held that Nigerian customs which disinherit a daughter from her father's estate or wife from her husband's property are repugnant to natural justice, equity and good conscience and should therefore not be allowed to stand. The decision followed the case of *Anekwe v Nweke*²⁹ where the court, declared as repulsive the custom of the Awka people in Anambra State which allows married women to be disinherited upon the death of their husband because they could not produce a male child for the late husband.

²⁶ Ekpe, E.Ita.,Efik Proverbs:Their Beauty, Interpretation and Application Book 2.Alpha Grafix Press Ltd,2016. P.1

²⁷ Calabar Native Court Suit No. 43/61, Estate JB. A/58-283.

²⁸ (1946) 18 N. L. R. 70.

²⁹ (2014) 9 NWLR (Pt 1412) 393

Although this decision was reached on a rule of customary law amongst the Ibo (that daughters are not entitled to inherit from the estate of their late father), the pronouncement applies to all rules of customary law in Nigeria that discriminate against daughters in inheritance. This is so because the pronouncement was made on the reasoning that such discriminatory practice...is in breach of section 42(1) and (2) of the Constitution of the Federal Republic of Nigeria, 1999, a fundamental rights provision guaranteed to every Nigerian³⁰. Furthermore, such practices is against biblical tenets as seen in the books of 1st Timothy 5:3 which reads thus "Take care of any widow who has no one else to care for her".

Another aspect of the customary law of inheritance among Efik which calls for reform is the act of disowning a child by parents, thereby dis-inheriting such a child from their parent's estates. The denial of such a right is repugnant to equity and natural justice. Per Salami in *Anka v Lokoja (2001) 16 WRN 11* held that "all heirs or princes are members of a family. Thus, section 14(1) of Child Rights Act provides that "Every child has a right to parental care and protection and accordingly, no child shall be separated from his parents against his wish". The practise of disowning a legitimate child is a glaring attempt to sever the child from his/her biological parents. This is a practice that is neither known to nor recognised by our law, and any custom which supports such practice clearly goes against the express provisions of the law as well as being repugnant to public policy. Parents are entrusted with the care and upbringing of their children by the law and it is punishable for a parent to fail to provide the basic and essential needs of the child. This makes the responsibility to care for a child an imposition of the law, an obligation which cannot not be shirked by a mere pronouncement of the disownment.³¹

Where parents decide to go against the clear provisions of the Child Rights Act and Laws and disowns their biological child, this child can proceed against the parents both in criminal and civil proceedings. Thus, such a child may make a formal complaint against the parent either to a Development Officer, Police Officer or any Person nominated by the Minister or Commissioner, who may bring the child to court, and if there is reasonable ground to believe that the child has been deprived of parental care, the court may order the parent to enter into recognisance to exercise proper care and guidance over the child.³²

³⁰ Section 42 paragraph (1) & (2) 1999 Constitution As Amended

³¹ *Section 14(1) of Child's Right Act.*

³² *Section 54 of Child's Right Act.*