

APPRAISAL OF LAW OF SUCCESSION IN NIGERIA: AN OVERVIEW

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ABSTRACT

Succession to defunct is the most important title in law; for thereby the rights of all persons do necessarily pass once, and frequently oftener, in every generation ". Succession affects everyone as all property must pass to someone else on death. This paper examines the laws of succession and its practicability in Nigeria. It also looks at its twin regimes: testate and intestate succession and gives concise explanations on the various rule governing their applicability. Testate succession occurs when a person dies and leaves a will as their estate will be distributed as they bequest in the will while intestate succession occurs when someone dies without a will and their estate is distributed by the laws of intestacy. This paper further examines gift passed by wills, legacies, trusts, probate, Letters of Administration and many other concepts related to testate succession. It also looks into various customary law succession practices in some parts of Nigeria and its defects and proposes certain recommendations to curb the lacuna of those laws. This paper on the law of succession has been provided also to enlighten the populace on the proper ways to distribute property at the demise of a person in order to curb disputes and conflicts that has been the order of the day in our society and to make the society a peaceful and better place for all to live in.

1.0 INTRODUCTION

The law of succession forms a part of private law. It comprises legal rules that determine what happens to an individual's estates after his or her death. The rules of succession identify the persons entitled to succeed the deceased (the beneficiaries) and the extent of the benefits (inheritance or legacies) they are to receive. These rules also determine the rights and duties that persons may have in the estate. It generally involves the transmission of the rights and obligations of a deceased person in respect of his estate to his heirs and successors¹. It equally deals with the rules governing the administration of the estate by the personal representatives of the deceased person including state participation in respect of the real estate situate within its territory and personal estate of the deceased person subject to its jurisdiction.

Also, the law of succession is the branch of law that deals with inheritance i.e. the transmission of ownership of property from the dead to the living or the transfer of property rights from the dead to the living which is founded on the fact that a dead person cannot

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¹http://www.academis.edu/35665674/SUCCESSIONAND_INHERITANCE_LAW_IN_NIGERIA_RESOLVING_THE_DISCRIMINATORY_PROPRIETARY_RIGHTS_OF_WIDOW_AND_CHILDREN_SUCCESSION_AND_INHERITANCE_LAW_IN_NIGERIA_RESOLVING_THE_DISCRIMINATORY_PROPRIETARY_RIGHTS_OF_WIDOW_AND_CHILDREN. accessed 26 October, 2020.

possibly own property because he or she cannot enjoy the rights and benefits accruing from property². Therefore following the death of the owner of some property, rights over such property have got to be passed on to those who survive him or her.

One may therefore say or conclude that succession has everything to do with property and death. The concept of succession is universal to all societies irrespective of their ethnicity and religious background.

The concept of succession arises out of 3 basic considerations;

1. Upon death a person does not take with them property and therefore the property left behind has to pass to those who are living;
2. Human beings need to acquire some property for their own sustenance to satisfy their basic human needs. Succession is seen as one of several ways of acquiring property; and
3. Man instinctively desires to have control over his property even upon death. This is necessary because those who acquire property work very hard to accumulate wealth and they wouldn't want it in the event of their death to be wasted and succession provides a mechanism for retaining control by a dead person over their property particularly through the device of testate succession³.

Furthermore, succession provides the mechanism by which property devolves from the dead owner to those left behind. It also provides the mechanism for determining the rightful claimants to the property who should be entitled to the share of a particular person.

Although the concept of succession is of universal application, inheritance law or rules are not all uniform. They vary or differ in detail from one community to the other.

Succession may be testate or intestate. Where a deceased person made a will, he is said to have died testate. Where a deceased's person did not make a will, he is said to have died intestate. In customary law, this distinction is of marginal importance because under customary law, intestacy, is the rule. The only consideration of testate succession under customary law is a nun-cupative will, also known as death declaration. Inheritance issues are varied across the length and breadth of Nigeria.

The law of succession and inheritance is reflection of the legal pluralism inherent in Nigeria. In general, in cases of inheritance of property of a person who dies intestate in Nigeria, the personal customary law of the deceased that is, customary law to which the deceased was subject, governs the distribution of his estate. The system of customary succession varies from one ethnic group to the other. The class of people who should benefit from intestate succession and the share of such beneficiary are not free of problems.

The aim of this paper is to critically examine the law of succession in Nigeria, analyze the problems of the various customary succession laws generated as a result of discrimination of property, inheritance rights under the various customary laws with particular reference to the

² Rautenbach C, Du plessis E and Venter AM " Law of succession and Inheritance" in Bekker J C, 1 Rautenbach C and Goolam NMI Introduction to Legal Pluralism In South Africa, (2006) 93

³https://uniprojectmaterials.com/law/alegal_discourse_on_the_concept_of_succession_in_family_law/project_to_pics_materials_for_final_year_students#_ftnref1 accessed 25th November,2020

customary laws of the Yoruba and the Igbo in Nigeria and its effects on the rights of women, daughter, illegitimate children and adopted children. The paper also discusses the various discriminatory practices and proffer solutions and possibly reforms.

2.0 CONCEPTUAL CLARIFICATION, LEGAL FRAMEWORK AND LITERATURE REVIEW

Death is an inevitable end of everyone. All societies even the crudest, have a form in which individual's property will be dealt with after they die⁴. The law of succession creates a legal framework for deciding who owns an individual's possession, rights, and obligations in the unfortunate events that the person becomes seriously incapacitated or dies. This paper and research will provide a very basic introduction to these important laws. Also the concept of wills is generally unknown and partially alien to indigenous Nigerian culture. In some instances, however, some terms of testamentary disposition of property are made to safeguard and avoid the various problems that may likely arise after the death of a family head. There exist various rules that govern succession in Nigeria as Nigeria is a multiethnic society with diverse cultures and customs and each culture has its own rules that govern disposition of family property, i.e. the customary law of a particular society determines the customary intestate succession of a deceased person in that community.

In view of the above submission, this work shall try to examine the testate and intestate rules of succession in Nigeria by given a comparative analysis of the laws of succession practicable currently in Nigeria.

2.1 Conceptual Clarification

Meaning of the Laws of Succession

Succession as defined by Osborn's Concise Law Dictionary⁵:

"Is the succeeding or following after as ownership".

From this definition, it can be derived that the law of succession defines the rules of devolution of property in case a person dies without making a will. These rules provide for a category of persons and percentage of property that will devolve on each of such persons. The laws of succession also generally related to legal principles of distribution of assets of a deceased individual. These include the order in which one person in preference of any or one person after another or any one person in particular share with any other person succeeds to the property/estate of the deceased person. However, corporate persons having perpetual existence are not covered in this as they have separate laws relating to Winding up, Reorganisations and Closures. The law of successions helps to create a legal framework for deciding who owns an individual's possession, rights and obligations in the unfortunate events that the person becomes seriously incapacitated or dies.

Further, Article 1888⁶ introduces the definition of succession;

⁴ <https://afribary.com/works/a-comparative-analysis-of-the-intestate-rules-of-succession-and-the-testate-rules-of-succession-in-Nigeria-9413> accessed 3rd December, 2020

⁵ 11th Edition

⁶ Code of civil procedure

"Succession is defined as the entitlement by one or more persons to the legal patrimonial relationships of a deceased person and the consequent restitution of the assets that used to belong to that person⁷"

As stated above, **Article 1888** used complicated legal language in its definition. However, unlike the code, another simpler way to understand succession is that it is a right a person or people have to receive a deceased's person's assets (also called the estate) based on the legal branch of law which governs the manner in which, and, of course, to whom, the rights and duties of a dead person, technically referred to as the deceased, should pass.

3.0 NATURE AND SCOPE OF THE LAW OF SUCCESSION

Generally, the law of succession involves the transmission of the rights and obligations of a deceased person in respect of his estate to his heirs and successors⁸. It deals primarily with the distribution of a deceased person's estate to his heirs and successors. It also includes the rules governing the administration of a deceased person's estate by personal representative of the deceased person including state participation in respect of real estate situate within its territory and personal estate of the deceased person subject to its jurisdiction.

Intestacy occurs where a person dies without making a legally valid will in respect of his estate. While it may be easy to have or articulate a unified law of wills, such efforts may be elusive in connection to succession on intestacy⁹. This is particularly true in Nigeria. It has been said that the principles of succession and inheritance of property is the subject of individual, as opposed to property held under family ownership or other form of group ownership¹⁰. It is nearly impossible for such rule of intestacy not to interact with or intersect with or intersect these group ownership structures under customary law. This paper outlines the rules which have been recognized by the courts over time or which have been documented by scholarly works over time under customary law and in the Administration of Estates Law. It is impossible to articulate the rules in all customary law areas in the country; therefore, the representative approach is adopted in this work. Since the rules are fairly uniform amongst areas in major ethnic groupings in the country, applicable rules in these major groupings are outlined. We have selected the rules amongst the Yoruba (South-West), Bini, (South -South) Ibo (South-East) and Non-Islamic and Islamic regions (North).

Conversely, testacy on the other hand is the situation where a person has laid down in writing how his or her estate is to be distributed after he/she has passed on. The document in which the person instructs how his or her estate is to devolve after his/her death is referred to as a will. If the person wants to amend, add or alter his/her will, a document called codicil is then done to effect the necessary amendments, alterations or additions. Both testacy and intestacy are major kinds of succession and forms of distribution of a deceased estate. Also, the concept of succession involves the transmission of the rights and obligations of a deceased

⁷ The Civil Code of Timor Leste Article 1888

⁸ TOG Animashun & AB Oyeneyin Law of Succession, Wills and probate in Nigeria (Lagos: MIJ Professional 2002)

⁹ 2 S Roberts " The Malawi Law of Succession: Another Attempt at Reform"(1968) (12) Journal of African Law (1968) 81, 83

¹⁰ J. Fenine Fekumo Principles of Nigerian Customary Land Law (Port Harcourt: F&F 2002)330

person in respect of his estate to his heirs and successors. It deals primarily with the distribution of a deceased person's estate to his heirs and successors¹¹.

In the word of Osondu¹², he described succession as;

" a means by which the living enters into possession of the property of the dead"

In other words, it is a means by which the living inherits the property of the dead¹³. To him, there is no difference between succession and inheritance.

Kerridge and Brierly¹⁴ considers the nature of the laws of succession to be concerned with the transfer or devolution of property on death¹⁵. Importantly they note that not all transfers on death are covered by the law of succession, that is, the law of intestate succession and the law of wills is not the only way property of a deceased can devolve on another. This is because there are a number of ways in which property which belongs to, or which may appear to belong to, an individual during his lifetime may pass on his death other than by his will or in accordance with intestacy rules¹⁶. A ready example is the rights of survivorship (*jus accrescendi*) applicable to a beneficial joint tenancy. Miller holds the views also that the law of succession is traditionally regarded as being concerned with the transmission of property vested in a person at his death to some other person or persons¹⁷. He notes that the person or persons beneficially entitled will be those specified by the law of intestate succession except and in so far as the deceased has made a valid will. He argues that a more "realistic" view of succession must take account of gratuitous *intervivos* transfers as well as of testamentary disposition¹⁸. However, one must regard with caution his views that the law of succession presupposes the existence of private property; that is, property owned or possessed by individuals. He claimed that " the question of succession does not arise in a society in which articles or the right to possession therefore is regarded as vested in a group such as a clan or tribe or tribe or family of which individual is a member and which, unlike him, does not die. Membership of the group changes over time, but no provision for the transmission of property on the death of an individual member of the group is necessary¹⁹. Ikpeze supports this view by citing the case of *Oke V. Oke*,²⁰ where the supreme Court held that; " Where a testator builds a house on unpartitioned family land, he could not dispose of it by will" testator would not have a right to remain in the building pending when the family land was partitioned. Ikpeze while positing that inheritance and succession are essentially the same, notes the "minor difference" between them. She states that " while inheritance connotes the possession of a dead person's property or interest by a living person or persons,

¹¹ TOG Animashaun AB Oyenyin, Law of Succession, Wills and probate in Nigeria (Lagos: MIJ Professional 2002) 3

¹² AC Osondu Modern Nigeria Family Law and Practice

¹³ AC Osondu, Modern Nigeria Family Law and Practice

¹⁴ JR Kerridge, AHR Brierley University of London

¹⁵ Roger Kerridge and AHR Brierley Parry and Clark The Law of Succession (12 thedn London: Sweet & Maxwell,2009)1

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ JG Miller, The Machinery of succession (Oxon: Professional Books 1977)1

¹⁹ Ibid 1-2

²⁰ (1974) 3SC1

succession is more elaborate and includes²¹ the act or right of legally or officially taking a predecessor's office, rank and duties. It involves the absorption of rights and liabilities of the deceased in respect of the estate of the deceased. From our discussion on the nature and Scope of succession from different points of view of various legal writers, authors and learned judges, we can so submit that succession is a broad aspect of private law that cannot be undermined.

4.0 TYPES OF SUCCESSION IN LAW

The Law of succession as earlier defined refers to the law that applies to the law that applies to succeeding a deceased estate. As a legal terminology, succession means taking the rights of another as his or her successor. There are basically three types of succession in law namely:

1. **Testamentary succession:** This type of succession is created when a testament specifying the heir to one's property is executed in a manner prescribed by law.
2. **Legal Succession:** it's the succession established in favor of the nearest living blood relations of the deceased.
3. **Irregular Succession:** it refers to the succession established by law in the absence of legal or testament -constituted heirs. Where there are heirs to inherit a deceased property the lines of a regular succession rank are in the following order:
 - a. Descendants
 - b. Ascendants
 - c. Collaterals

Apart from the above mentioned types of succession there are other types of succession as when a person dies, his or her property must pass to a living person. Succession or this passing of property is regulated by the following twin regimes and they are:

1. Testate succession (where the deceased had left a will)
2. Intestate succession (where the deceased has not left any will)

In the case of a testate succession, the estate of the deceased, after satisfying all existing obligations, is distributed in the manner set out in the will. In the case of an intestate succession, the estate is distributed according to the laws of intestacy. Distribution of an intestate estate is done in the following order:

- a. Payments of debts
- b. Right to dwelling house
- c. Furniture and furnishing
- d. Right to cash
- e. Legal rights
- f. Free estate

5.0 TESTATE AND INTESTATE SUCCESSION

Testate succession occurs when one dies leaving a will and it is relatively easier. The personal representative or executor needs to obtain a Grant of probate to prove that the will is

²¹ Ibid, 3. Emphasis added

genuine²². The probate allows the executor or personal representative to distribute the estate of the deceased according to the testament.

On the other hand, in the case of intestate succession, the personal representative must apply for **Letters of Administration** in order to be able to deal with the estate. Improper drafting and dishonesty of a lawyer often comes in the way of fulfilling the wishes of the testator. It also affects the legitimate rights of the beneficiaries. If a solicitor fails to adhere to the laws of wills or testate succession, it may put the very validity of the will at stake.

Generally, a solicitor is under a legal duty to ensure that:

- a. The will accurately captures the instructions of the client.
- b. The testator is legally capable of making the will.
- c. The testator intends to make the will.
- d. The will meets the requirements of the wills law in force.
- e. The will is prepared without any undue delay.

6.0 CONCLUSION

This article discussed in detail the concept of succession in Nigeria, its practicability and its enforcement. This law of succession as we have aforementioned explains the means by which the law distributes a deceased person's property. A proper succession law as established above must determine which individuals or groups are appropriate heirs and summon them to succession. Succession as earlier stated can either be Testate or intestate and when a deceased leaves will behind, the law guarantee that a certain portion of the inheritance will go to close family members according to the principles of compulsory succession and when he doesn't leave a will it is governed by the deceased customary law. Although a lot of details about customary laws were not covered as most of their laws are unwritten, one can conclude that the law of succession is the right way an individual has to use and enjoy the property of another, provided its substance is neither impaired nor altered.

7.0 RECOMMENDATIONS

From the examination of the laws of succession and despite the certainty in the law as established by this article, the article makes the following recommendations with a view to improve the proper running of succession laws as it will be of great help in reducing the fights and conflicts over properties that gives rise to the wearisome and uncertain process of litigation in the first place. The recommendations are as follows:

1. The Culture of writing wills should be promoted and embraced by people especially in Nigeria where customary law is strong. Where people make their wills appropriately, the application of discriminatory customary practice would be averted. The writing of a will takes away the tenure of intestate succession; hence the application or role of customary law will have no impact.
2. The Mass media should be utilized to create awareness about the problems of discriminatory succession practices in this day and age. Radio and TV channels, newspaper are vital tools in this aspect.

²² <https://www.lawteacher.net/free-law-essays/equity-law/testate-succession-and-intestate-succession-law-essays.php> > accessed 5th January, 2021.

3. Seeing law as an instrument of positive change, it should be aimed at correcting societal ills. Legislators should be proactive and enact reformative laws to alleviate discriminatory practices in succession, especially among the Igbo ethnic group.
4. Also, international human right instrument which promote the rights of females to be free from discrimination such as the CEDAW which Nigeria is signatory to, should be domesticated by the legislature. This is because by virtue of being a party to the adoption and ratification of these instrument, Nigeria should be committed to the full implementation of the spirit of the instruments.
5. The courts should also apply the provisions of domesticated international human rights charter to matters of female inheritance. For instance, the African Charter which promotes women's rights against any form of discrimination should be applied by the judiciary as a cure to any lacunae in or limitation to women's rights under Nigeria law.
6. Further, the three tiers of government should engage in bringing reformative change in the society by taking steps to alleviate discriminatory inheritance practice in Nigeria.
7. Awareness should be created also in the society. Training and empowering programs for both men and women should be initiated to sensitize them on the right of both sexes to inherit both real and personal property.
8. The government should also establish gender based monitoring agencies to prevent discriminatory practices against females in succession, especially in the Eastern part of Nigerian.
9. Traditional rulers should also make efforts to reform the deplorable inheritance practice in Igbo land. They should also enlighten their subjects on the wrongfulness and evils of such practices.
10. The traditional Rulers also should assist in the modification of cultural practices to reflect the modern trends in society. Thus, succession practices will be adaptable and acceptable to the 21st century world. A total abolition of certain cultures which are beyond reform may also be undertaken
11. Having discussed the impact of Section 42 (2) of the 1999 Constitution as amended on succession in Nigeria it is recommended that there should be a programme for re-socialization and redirection in Nigeria, it is recommended that there should be a programme for re-socialization and redirection of the public policy that is the government should be able to formulate a policy that will be all embracing that will protect human rights but at the same time meet the aspirations of the citizens.
12. An enlightenment campaign can also be fostered to educate the people on the negative impact of discrimination among women especially in Igbo land and the possibility of circumventing the limitation of customary law in succession.
13. Where a Testator makes a will conforms to the provisions of the Wills Law or the Wills Act, the effect of customary law succession should always be eliminated in that regard and a Testator should be able to make specific gift to any child in his Will and not be subject to the limitation imposed by customary law.
14. Finally, various Ministries of Women affairs and Social Development in the states of the federation should be encouraged to open zonal offices in the all the Locals Government Areas in the country, where they can have direct access to the grassroots and provide legal aid, enlightenment campaign and support to women and female children from discrimination especially those who are unable to afford the exorbitant legal fees for litigation.