# PLURALISTIC NATURE OF LAWS AND SUCCESSION MATTERS IN SOUTH-WESTERN NIGERIA

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## ABSTRACT
Succession law is about the methods of distributing property of a deceased person while devolution of deceased's properties depended upon whether deceased had a Will or not. Where the deceased had made a Will, the property devolved according to his dictate. If no Will existed, his property devolved according to the customary law applicable. Therefore, the study examined conflict as a result of pluralism of laws in the area of succession and considered available options towards achieving a single system of law. Findings indicated that different legal systems governed succession in South-west, Nigeria and conflicted with one another. It revealed that pluralistic nature of laws of succession in South-west, Nigeria had created uncertainty in legal administration. Furthermore, this nature of laws of succession created problems for appropriate and applicable choice of law, thereby caused miscarriage of justice. The paper disclosed that rules of succession in South-west, Nigeria in some occasions favoured only male gender and it discriminated against widows of customary law marriage. This paper concluded that unification, integration, harmonization and legal transplant of laws of succession is a viable means to eliminating the conflicts associated with pluralism of laws of succession in the six states of South-west, Nigeria.

**Keywords:** Conflict of laws, Customary law, Laws of succession. Legal pluralism, Legal unification

## 1.0 LAWS OF SUCCESSION IN SOUTH-WESTERN NIGERIA
The law of succession basically deals with the methods of distributing property that is left behind by a deceased person. When a person dies, the devolution of their self-acquired property depends upon whether they have a will or not.[1] If they have made a will, the property devolves according to the dictate of their mind as depicted through the will.[2] If no will exists, that is, under the condition of intestacy, their property devolves according to the customary law that is applicable to the deceased. Problems may arise about the choice of the applicable law and these problems are present under various customary laws. There are uncertainties associated with the choice of applicable law – it allows some to inherit, but

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[1] *Idehen v. Idehen* (1991) 6 NWLR at 198
[2] *Lawal Osula v. Lawal Osula* (1995) NGSC21

disallows others. These property inheritance practices under customary law, particularly in the six South-western states in Nigeria, manifest differently. Eliminating these conflicts between succession laws in south-west Nigeria is the focus of this research work.

Inheritance is a cultural practice that exists across the globe. It is usually the mode of property transfer, particularly in many sub-Saharan countries where property distribution is culturally done by the family members.[3] The existing literature from various sub-Saharan African societies highlights how, as a result of existing social conventions, beneficiaries are often confronted with the problem of determining the applicable law that should govern the distribution of the estate of a person who died intestate.[4]

The difficulty being experienced in the choice of laws in matters of succession is daunting.[5] Historically, 1914 is reported as the beginning of the multiplicity of laws in Nigeria. As a political unit, Nigeria came into existence in 1914 and, until 1954, was administered as a Unitary State from the then capital city of Lagos, under the British Administration.[6] Although the system could be described as quasi-federal, it was not until 1954 that the multi-ethnic unitary government could be said to have become a true federal government – this change resulted in pluralism of laws.[7] Pluralism has been defined to mean a state of being plural, that is, a situation in which different systems of law exists within one locality that has no spatial separation. Legal pluralism can also be described as a system that allows different rules of laws to govern people's activities and status in a particular locality. It is a reflection of the different forms of law which co-exist in various geographical territories within a country.[8] It is the existence of multiple legal systems in a country or within a geographical territory.[9]

In Nigeria for instance, three laws of succession namely, general law, Islamic law and Customary law, govern succession matters.[10] Even in south-west Nigeria, the region that is the focus of this research, there are instances of the aforementioned succession laws which cumulate into legal pluralism. Thus, having allowed pluralism of laws in succession matters, conflicts in the administration of these laws are certainly inevitable as seen in the cases of *Salubi v Nwariaku*[11] and *Obusez v Obusez*[12] where there were conflicts between the general

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[3]J. P. Platteau, and J.M. Beland; 'Impartible Inheritance versus Equal Division: A Comparative Perspective Centred on Europe and Sub-Saharan African Namur, (Belgium Centre de Recherche en Economic du Development (CRED); Faculty of Economics, University of Namur, 2000), 'Available at: www.fundp.ac.be/eco/cahiers/filepdf/c2020.pdf.

[4] L. Rose, 'Children's Property and Inheritance Rights and their Livelihoods: Food and Agricultural Organization of the United Nations'. Available at www.oxfam.org.uk/resources/learning/landarights/downloads/children_property_and_inheritance_rights_and+livelihoods.pdf (2000). Accessed in October 2021

[5] Nigeria Protectorate Order in Council, 1913, Art 4.

[6] Nigeria (Constitution) Orders in Council 1951.

[7] Section 3, Nigeria (Constitution) Order in Council 1954, LN. 16 of 1959.

[8] Taiwo, Adetayo Ademola: Legal Pluralism and the Law of Intestate Succession in Western Nigeria (Babcock University PhD thesis) (2017) P 1-2.

[9] ibid

[10]E. I. Nwogugu, Family Law in Nigerian, (3rd Ed. Enugu, 3rd Ed, HEBN Publishers, 2014) pp 322-328

[11] (2003) All NLR 548

[12] (2001) 15 NWLR (pt 736) @ 377, CA.

law (Section 36 of the Marriage Act) and the customary law as regards which law was the appropriate law to govern the intestate of the deceased husband.

Within the Nigerian context, there is a situation in which members of diverse ethnic, religious, racial or social groups maintain an autonomous participation within the same community.[13] Political pluralism however, connotes a certain connection between social organisation as well as geography, and governmental structure.[14] This system embraces federalism, which itself means a system that provides for the existence of a central government for the whole country, and independent states or regional governments as the components of the central government. As demonstrated by both 1979 and 1999 Constitutions of the Federal Republic of Nigeria, it is a situation in which the component government is free from undue interference or control from the others, especially the Central Government. Under federalism, the government runs its affairs in line with the provisions of the law and leaves matters of common interests to be managed by the Central Government. In this system, there is also room for concurrent management of affairs by both local and national authorities.[15] Accordingly, Nigeria, a country with an estimated population of over 200 million people,[16] as a result of its considerable diversity with respect to religion, language, ethnicity, culture and its varying geographical and economic characteristics, adopted federalism in 1963 where each federating unit held exclusive constitutional authority to create laws governing its own citizens. The period marked the beginning of dual systems of law in Nigeria.[17]

## 2.0 CONCEPT OF INTESTATE SUCCESSION

Intestate succession simply means passage of not only the real and personal estate of the deceased, but, also, the responsibilities the deceased had towards the beneficiaries during their lifetime.[18] The laws of succession in Igbo culture allow sons to inherit; however, daughters are not allowed to participate in inheritance processes.[19] In South-west Nigeria, both sons and daughters have equal rights to inherit the property (real and personal estate) that is left behind by the deceased father.[20]

Yoruba customary law of inheritance, though permits daughters to inherit, discriminates against them with respect to succession to chieftain headship.[21] Due to this reason, some authors concluded that Yoruba customary law of inheritance is patrilineal in nature. The line of argument here is that men stay within the family, unlike women who, after marriage, leave

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[13] See generally H.M. Kallen, Cultural Pluralism and the American India Philadelphia; (Chicago, revised edition; Glazer N. American Judaism; 1957), P 8. Cited by M. C. Onokah, Family Law (Ibadan, 1st Ed, Spectrum Books Ltd, 2012, pp 317-355.

[14] F.W. Coker, 'The Technique of the Pluralistic State' (American Political Science Review, vol. 15, 1921), p. 186. Cited by M.C. Onokah, Family Law (Ibadan, 1st Ed, Spectrum Books Ltd, 2012, pp 317-355.

[15] B.O. Nwabueze, Federalism in Nigeria under the Presidential Constitution, (Ibadan, revised edition, Interprint Ltd. 1983), p. 162.

[16] T.O. Elias, Nigeria: The Development of its Law and Constitution (London, revised edition, Sweet & Maxwell, 1981) p. 167

[17] E. I. Nwogugu, Family Law in Nigerian, (Enugu, 3rd Ed, HEBN Publishers, 2014) P. 393

[18] Azinge Epiphany, Restatement of Customary laws of Nigeria, (Abuja: NIALS, April 29, 2013) pp 104 – 106.

[19] ibid

[20] ibid

[21] That is the reason why it is very rare to see female king/queen in South-west Nigeria.

their father's family and join their husband's families. In the same vein, widows are not permitted under the customary law of succession of South-west Nigeria to inherit the property left behind by their deceased husbands.[22] In fact, widows in these areas are regarded as strangers and are considered to be part of the property which is subject to inheritance by the male relative of the deceased husband.[23] The reason behind this act is that under customary law, devolution of property follows 'blood' and anyone who is not related to the deceased husband biologically will not be allowed to participate in the inheritance processes.[24]

In an attempt to provide meaningful and comprehensive definitions of the words 'intestate succession' and how it operates, Nwogugu,[25] Olaoba and Oyewole,[26] Margaret Onokah,[27] Agbede Isaac,[28] Kish Smith,[29] Emiola Toriola,[30] Niki Tobi,[31] and Potiskum[32] researched into the subject matter and came out with their conclusions. The only study which arrived at a different conclusion is that of Potiskum whose conclusion, based on an empirical research, stated that 'there are almost as many varieties of customary law of succession in Nigeria as there are ethnic groupings'. This implies that each of the communities has its own patterns of inheritance. He concluded that patterns of inheritance depend largely on individual or group beliefs, as the case may be.

Kish Smith[33], while defining what constitutes property, went on and divided property into real and personal estate of the deceased. Similarly, he explained the concept of family property and what constitutes the laws of succession, citing the cases of *Tapa v Kuka*[34], *Olowu v Olowu*[35] and *Zaid v Molisen*[36]. In these cases, the courts defined family property to include "unpartitioned real and personal estates of the deceased devolved on the children". Intestate succession can, however, be further divided into two headings, namely:

1. Intestate Succession Under Statutory Law
2. Intestate Succession Under Customary Law

## 3.0 INTESTATE SUCCESSION UNDER STATUTORY LAW

Intestate succession (statutory) has to do with intestate succession under the Marriage Act[37] and it states that:

> Where a person subject to customary law dies intestate and succeeded by a widow, or husband or children, his

[22] Yoruba customary law of inheritance applicable in all six states of South-west Nigeria.
[23] *Suberu v Sunmonu*, (1957) SC NLR 45 *Ologunleko v Ikuomelo*
[24] *Suberu v Sunmonu* (Supra)
[25] ibid
[26] ibid
[27] ibid
[28] ibid
[29] ibid
[30] ibid
[31] ibid
[32] ibid
[33] ibid
[34] (1945) 18 WLR5
[35] (Supra)
[36] (1957) SC NLR 45
[37] *Section 36(1) of the Marriage Act* (1958)

> estate which would have been disposed of by Will shall devolve in accordance with the law of England.

The reality is that the aforementioned Section 6 of the Marriage Act applies only to a person who ordinarily is subject to the customary law, got married under the Marriage Act and died intestate while still domiciled in 'the colony', that is, colony of Lagos, leaving behind movable property there. It also applies when the person dies while domiciled elsewhere, leaving immovable property there; the property shall be distributed according to the provisions of the English law as declared by the Supreme Court in the case of *Salubi v Nwariaku.*[38] In this case, the deceased – Chief Salubi – died intestate in September 1982 and was survived by his widow whom he married under the Marriage Act, two (2) children who were born by the said widow and two other children born out of wedlock but whose paternity he acknowledged. The deceased's wife consented to raising the two children born out of wedlock and she accepted them as children of the family; thus, the children were also raised in the matrimonial home. Estates left behind included real property in various parts of the country. Letters of administration were granted to the deceased's wife and the eldest son (first defendant) in 1985 but the widow declined to serve. The first surviving child of the deceased who was the plaintiff in the suit sued the defendants for herself as beneficiary and claimed an order to set aside the letters of administration granted to the first defendant for mismanagement of the estate.

The plaintiff claimed among other things that the Administration of Estate Law of Bendel State and Section 36 of the Marriage Act governed the distribution of the deceased estate. The defendant in the suit contended and argued that the estate should be governed by Urhobo customary law of succession or the Administration of Estate Law of old Bendel State, not English law of succession. The trial judge held that Section 36(1) of the Marriage Act and not the Administration of Estate law or customary law applied to the estate of the deceased. During the trial, among all other evidence, the Court preferred Section 36(1) of Marriage Act which was considered to be superior to the Administration of Estate Law of old Bendel State. The court further held that the widow was entitled to one-third (1/3) of the deceased's estate and his children, to the remaining two-thirds (2/3) of the estate. At Appeal Court, the decision of the lower court was confirmed and the Court of Appeal said the applicable law for the administration of the deceased's estate was English law as contained in Section 36 (1) of the Marriage Act.

At the Supreme Court, the main issue for determination was which law was applicable for the administration of the estate between Section 36(1) of the Marriage Act and the Administration of Estate Law of Bendel State. It was made known to the court that Section 36(1) was part of the Marriage Ordinance enacted in 1914 and it provided that where a person who is subject to customary law dies intestate and is succeeded by a widow, widower or children, their estate, which would have been disposed of by any will, shall devolve in accordance with the law of England. Also, sub-section 3 of the Marriage Act limited the operation of the Section to the colony of Lagos State. Despite this limitation, the Supreme Court went on and held that the English law had been repealed by the enactment of the

[38]*(2003) All NLR 548*

Administration of Estate Law of Bendel State and that the appropriate and applicable law that should govern the intestate estate of deceased Salubi was Administration of Estate Law of Bendel State and not section 36(1) of the Marriage Act.

Quoting Ayoola J.S.C. who delivered the lead judgement in the suit[39], he said:

> the regional Government through its legislature having enacted a law on the subject matter on which it had full competence, having recourse to the legislation of the previous unitary Government; albeit on the same subject matter or to English Law is misconceived. Where there is conflict between such previous enactment and the later one, the former should be deemed implied repealed and the later one should prevail

Based on the reasoning of the Supreme Court, it was found that Section 49(1) of the old Bendel State Administration of Estate Law applied to the distribution of the intestate estate of Chief Salubi and upheld the appeal. Also, in *Obusez v. Obusez*[40] where, before the final decision of the Supreme Court of Nigeria in *Salubi v. Nwariaku* was decided, the Court of Appeal held that Section 49(5) of the Lagos State Administration of Estate Law governed the intestate estate of the person married under the Marriage Act and not Section 36(1) of the Marriage Act, the Supreme Court held that the decision in *Salubi v. Nwariaku* was arrived at in error. The legal conclusion that can be drawn from these decisions is that at the intestate death of a person who got married under the Marriage Act, the applicable law that would govern the distribution of the deceased's estate is the Administration of Estate law of old Bendel State and not the Federal Legislation or English law.

Contrarily however, intestate succession under the customary law of South-west Nigeria is built on the decision enunciated by the court in *Lewis v. Bankole.*[41] Here, it was held that on the death of the founder of a family, the eldest surviving son, called *'Dawodu',* succeeds to the headship of the family.[42]Also, on the death of the eldest surviving son, the next eldest surviving child of the founder, whether male or female, succeeds as the head of the family.[43]
Under the customary law of succession of the people of South-west Nigeria, the real and personal property of the deceased founder of the family devolves on all his children both male and female to the exclusion of other blood relations, including brothers, aunts, sisters and cousins.[44] For the purpose of clarification, South-west Nigeria comprises six states namely Oyo, Ogun, Osun, Ondo, Ekiti and Lagos States, and there exists two modes of distribution of real and personal estate. The first is 'Idi-igi' (per stripes) and the second is 'Ori-ojori' (per capita). 'Idi-igi' is generally regarded as the well established and accepted mode. However, on 'Ori-ojori' (per capita) method, the estate of the deceased is distributed

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[39] Supra
[40]*(2001) 15 NWLR (pt 736) 377 CA*
[41]*(1909) 1 NLR 82; Tijani v. Secretary Southern Nigeria (1921) AC 399; Falomo v. Onakanmi (2005) 11NWLR (pt 935) 126.*
[42]*Adesanya v. Otuenu&Ors (1993)1NWLR (pt 270) 414, Yusuf v. Dada &Ors (1990)4 NWLR (pt 146) 657.*
[43]*Amusan & Ors v. Olawumi (2002) 12 NWLR (pt 78) 31, Ologunleko v. Ikuomelo (1993)2 NWLR (pt 273)16.*
[44]*Amodu v. Abayomi (1992) 5 NWLR (pt. 242)503 at p512, Ologunleko vs. Ikumelo(supra)*

according to the number of the children. The case of *Dawodu v. Danmole*[45] explained and distinguished the two modes. When the Privy Council was called upon to interpret the appropriate mode best suited for the case and in respect of property located in Lagos. There were conflicting claims as to the best suited method between 'Idi-igi' and 'Ori-ojori'. On the one hand, the board held that 'Idi-igi' is an integral part of the Yoruba native law and custom because it relates to the distribution of the intestate' estate of a deceased father. Thus, 'Idi-igi' is in full force and its observance has not been abrogated.[46]

It was also observed that this mode is not contrary to the principles of natural justice, equity and good conscience.[47] On the other hand, the Board found 'Ori-ojori' to be a relatively modern method of distribution adopted as an expedient in order to avoid litigation.[48] Similarly, adoption of this mode of distribution is at the discretion of the head of the family where dispute had arisen or had been envisaged.

Apart from the situations above, customary law of inheritance discriminates against wives in some jurisdictions in South-west Nigeria. Where customary law permits some daughters to inherit the properties of their late father, the quantum they are permitted to inherit is so low compared with the quantum given to their male counterparts.[49] Also, customary law of succession generally discriminates against widows of customary marriage.

Wives or widows of the deceased husbands are generally regarded as strangers and are considered as part of the properties left behind by the deceased subject, to be inherited by the male relatives of the deceased husband.[50] The cases of *Suberu v. Sunmonu, Ologunleko v. Ikuomehin* have demonstrated and justified the real reasons widows are not permitted to inherit the properties left behind by their husbands. The main reason for the discrimination against widows is that devolution in Yoruba customary law of succession follows 'blood' and anyone who is not related by blood to the deceased is considered to be a stranger.

Another aspect is in the area of adoption. Customary law does not give equal rights to adopted and biological children. The reason behind this is that biological and adopted children of the family are not placed on the same level by the customary law. It is alien to allow adopted children to participate in the sharing of family properties because devolution under Yoruba Customary Law is between blood relations. However, people always find it difficult to decide on the appropriate applicable law to adopt when confronted with the above situation.

Potiskum identified three patterns of devolving property in different societies, and they are patrilineal, matrilineal and bilineal methods in different societies. According to him, in a patrilineal society, there are seven identified methods of devolving property and all of them

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[45] (1962)1All NLR 702
[46]ibid. p.709
[47]ibid. p. 710
[48]ibid. p. 709
[49]*Akinnubi v. Akinnubi (supra)*
[50]*Suberu v. Sunmonu (supra)*

are based on whether the deceased has a male child or not[51]. Where there is a male child in the family borne by the deceased, it means the eldest son has a duty to play in the management and control of the property left behind by the deceased. The eldest male child in Yoruba-speaking communities is called 'Dawodu' and holds the property on behalf of all the other children of the deceased.[52] Despite the fact that Potiskum's work was based on empirical investigation, his conclusion that customary law of intestate succession varies from one community to other was similar to others' work of research.

While in a matrilineal society, succession is through the mothers' lineage, though, there are pockets of matrilineal system in Nigeria succession patterns and it is common among Ijesha people of Osun State, and Yewa/Awori people of Ogun State in South-West Nigeria. Bilineal system of succession is the one where blood links and rights of inheritance through both male and female ancestors are of equal importance.[53]

Kasunmu and Salacuse,[54] Obi,[55] Okoro Nwakama[56] and Nwabueze[57] like other authors, focused on the general rules of intestate succession and patterns of inheritance in the whole of Nigeria. Okoro Nwakama and Nwabueze, like Smith, Nwogugu, Ezeilo and Onokah researched into the rules of inheritance in Bini and some parts of Enugu and Imo States. The outcome of his empirical research was that in Bini kingdom, there is rule of primogeniture which gives credence to male inheritance.

Under the rules of primogeniture, the eldest son of the deceased inherits all self-acquired property of the deceased including chieftain titles. The right to inherit all, irrespective of the eldest son's position in the number of children born by the deceased, is unchallengeable and it is called Igi-obe in Bini area of Edo state while it is called Diokpa in Igbo-speaking communities[58].

See for example, the cases of *Ugbo v Asemota,*[59] *Arase v Arase,*[60] *Agidigbi v Agidigbi,*[61] and *Lawal Osula v Lawal Osula,*[62] and *Idehen v Idehen*[63] where the Courts held that it is the principles of law in Bini Kingdom that where father dies intestate, based on 'Igi-obe' rules of succession, the eldest son inherits all the deceased father's estate and holds same in trust for other children.

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[51] T. A. Oyewo, Issues in African Judicial Process (Ibadan, Jator Publishing Co. Ltd, 1997), pp. 76-79
[52]ibid
[53] P. Brown, Bilineal systems of succession (London, Butterworth & Co, 1957) p. 89
[54]Kasunmu and Salacuse, 'Nigerian Family Law' (Butterworth London, 1966), pp. 89-92.
[55] S. N. C.Obi; The Manual on Customary Law obtained from Anambra and Imo states, (Enugu, Government Printer, 1977), pp 120-122.
[56] Okoro Nwakama, Customary Laws of Succession in eastern Nigeria and the Statutory & Judicial Rules governing their application (London, Sweet & Maxwell; 1966), pp. 96-98
[57] B. U. Nwabueze; Nigerian Land Law (Enugu, Nwamife Publishers, 1972), pp. 100 – 102.
[5858] E. A. Taiwo; The Customary Law Rule of Primogeniture and its Discriminatory effects on women's inheritance rights in Nigeria: A Call for Reformation (2008) 22 (2) Speculum Juris, 104 – 122
[59] Unreported, Suit No B/49/70 of 30th March, 1974, High Court, Benin.
[60] (1981) SSC, 33
[61] (1996) 6 NWLR (pt 454) 300
[62] (1995) NGSC21
[63] (1991) 6 NWLR 198, 382

The findings of the authors, however, cannot be totally relied upon because it failed to reveal the prevailing positions on succession in the areas where there are variations in the method(s) used within Bini and parts of Imo and Anambra States. The aforementioned authors also wrote on Yoruba custom on rules of intestate succession and came out with the position that, though the eldest son, called 'Dawodu', is recognised as the first among equals, both male and female children inherit equally in South-west Nigeria. They restated that Yoruba customary rules of succession recognise two modes of distribution of the property of the deceased father who dies intestate. 'Idi-igi' (per capita) and 'Ori-ojori' (per stripes) are recognisable rules of succession. Kasunmu and Salacuse[64] explained further that under 'Idi-igi' (per capita), the estate of the deceased is distributed according to the number of mothers (wives of the deceased) of the children of the intestate. According to them, it is generally regarded as the well-established and accepted mode of distribution and this is confirmed by the court in the case of *Dawodu v Dammole*[65], where the Privy Council was called upon to determine the appropriate mode of distribution of rent from the family property located in Lagos.

At the trial, there were conflicting claims and arguments that only one mode of distribution exists and it is 'Idi-igi' mode. While analysing their arguments, Privy Council stated that the first recognised mode of distribution is the one under review but where its usage can bring injustice among the beneficiaries, then, 'Ori-ojori', which is the second mode, may be employed. Therefore, it is not repugnant to the principle of natural justice, equity and good conscience.[66]

## 4.0 THE CONCEPT OF CUSTOMARY LAW

Different writers used different terms to describe 'customary law'. In the cases of *Obusez v Obusez,*[67] *Re-Alayo,*[68]*Ekem v Nerba*[69] and *Olowu v Olowu,*[70] the courts defined customary law to mean the personal law of the deceased. Some authors also defined it to mean the laws, practices and customs of indigenous and local communities which are intrinsic and central to the way of life of these communities.[71] Eyamu-Ojo further considered it to mean traditional common rule or practice that has become an intrinsic part of the accepted and expected conduct in a given community, profession or trade and which is now treated as legal requirements.[72]

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[64]ibid
[65] (1962) 1, All NLR 702
[66]*Dawodu v Dammole* (supra)
[67] (2001) FWLR pt 73, p. 25
[68] (1946) 18 NLR, p 5, See also the case of *Zadien v Hessen* (1973), All NCR, p. 740
[69] (1985) 12 WACA, p. 258
[70] (1985) 3 NWLR (pt 43) at 372
[71] C. O.Okonkwo, Introduction to Nigerian Law, (London; Sweet & Maxwell, 1974) p. 41
[72]Iyamu-Ojo Elizabeth Aiwekhoe; Customary laws and Gender, Human Rights, Any probability of conflict? Ife journal of International and Comparative Law, Vol. 1, No 2, July – December, 2014, p. 299.

Obilade Adewale[73] and Nikki Tobi[74] opine that customary law as a way of life consists of established patterns of behaviour that can be objectively verified within a particular social setting. They further added that it includes the expressions of law developed in particular communities and are slowly collected and written down by local jurists. Furthermore, such customs develop the force of law when they become the undisputed rules by which certain entitlements, that is, rights or obligations become regulated between members of community. In the case of *Oyewumi v Ogunesan,*[75] the Supreme Court defined customary law as the organic or living law of the indigenous people of Nigeria – it regulates their lives and transactions. By being organic is meant that customary law is not static, that is, it changes from time to time. Also, in the case of *Owonyin v Omotosho,*[76] it was defined to mean "the mirror of accepted usage." Evidence Act[77] provides that a custom may be accepted as part of the rules governing a particular set of circumstances if it can be judicially accepted by the court or can be proved to exist by evidence.

## 5.0 AFRICAN CUSTOMARY LAW

African customary law is a system of laws that has its origin in Africa's beliefs, perceptions, and notions. Culture, tradition and people's beliefs dictate their mode of lives and[78] how they want to be governed. Beliefs of the people vary from one ethnic society to the other and from one locality to the other[79]. Associating themselves with these thoughts, Emiola Toriola,[80] Elias,[81] Park[82] and Agbede Isaac[83] were unanimous in their views that laws in African societies maintain the same purpose of providing justice to the people, especially when offences and other heinous crimes are committed.

In his own argument, Driberg was of the view that African law existed only to maintain peace rather than as punitive methods of today's system of law.[84] He added that the aim or goal of African law is to bring justice without bitterness to the people of the community.[85] Even where crimes are committed, it is a kind of justice system that restores peace and thereafter encourages concerned people to live together after the settlement of their fights or misunderstanding.

Another characteristic of African law is the principle of collective responsibility, where consensus decisions are allowed. This assists the people of the community in preventing any

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[73] A. O. Obilade, 'The place of customary law in our legal system' being a paper presented at Cultural Extravaganza of the Society, (Lagos, University of Lagos, November 7, 1996), p. 1
[74]ibid
[75] (1990) 3 NWLR (pt 7) 182
[76] (1961) 2 SCNLR 57
[77] As contained in Section 16(1) of Evidence Act (As amended) 2011, see also Sections 17, 18, and 19 of the same act.
[78]ibid
[79]ibid
[80]ibid
[81] T. Q. C Elias; The Nigerian Legal System, (London: Routledge & Kigan Paul Ltd, 1963) pp. 178-179
[82] A. E. Park; Source of Nigerian Law, (London, Sweet & Maxwell 1953), p. 121
[83]ibid
[84] J. A. Deriber; 'The Concept of law in the Journal of Corporate Legislation and International Law' (3, series volume 16, 1955) pp 233-237
[85]ibid

likely crime and eventual settlement. In his conclusion, Driberg opined that African conception is effective in its operation among the people of the same culture and that those who hold different beliefs may not be protected by the law of that area.[86] However, different authors' views vary with regards to the existence of African law. Although the erroneous view of the Europeans as of the colonial era was that due to the non-existence of physical prison structures in some African countries, then there was no law in Africa. Debunking the claim, Elias[87] defined law as "a body of rules which are recognized as mandatory and obeyed by the members of a given society". Allot,[88] in his contribution, said that "there is indigenous jurisprudence which people of Africa believe in".

## 6.0 MEANS OF RESOLVING CRISES BORNE OUT OF LEGAL PLURALISM

### 6.1 Unification through Restatement

Presently, there are no authoritative sources of customary law, that is, a statute that contains the rules of customary law, whether in any particular community or state in Nigeria.[89]The current practice is to accept any customary law after it has become notorious[90] that is, it can be applied in any situation, but it introduces uncertainty when the number of such situations isn't specified.[91]. Furthermore, the convenient approach at present is to accept any rule that has been upheld by the Supreme Court provided the same rule has not been rejected in subsequent cases by the same Supreme Court. Where there are no contradictory decisions of the Supreme Court on the rules of customary, such law can become authoritative. Again, in this case, each state customary court has their manual that gives them as to what the customary law in a particular state is, but such statement can be contended if it is not in conformity with the decision of the Supreme Court.[92]

The weakness of the approach is what becomes of the decision of customary law taken by the Court of Appeal or even by the High Court. Decisions by the High Court are also authoritative even if they have not been taken to the Supreme Court. It is on this basis that a restatement compiled by the authoritative scholars that have done or carried out intensive research becomes necessary on the particular customary law.[93] In addition to a restatement, we could have a model law that will become authoritative on that aspect of law or on a particular issue. Such as the rule made after a particular state which other states consider authoritative, and can therefore, adopt them in their own states. This approach can be carried further to the level of legal transplant whereby a restatement made in, for instance, the Republic of Benin, Togo, Ghana, or even South-Africa may be adopted in any state in South-west Nigeria where they consider them authoritative on the same tribe or community common to this state. Such as Yoruba, in the Republic of Benin, Ibos in Cameroon and Hausa from Niger or Mali or even in South –Africa.[94]

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[86]ibid
[87]ibid
[88] A. N. Allot, Essay in African Law; (London: Butterworth, 1960), pp 345 - 351
[89]*Lewis v Bankole* (1908) INCR P.81,83
[90] Section 1 (4) (c) of the Evidence Act 2011, also section 14 (1) of the same Evidence Act 2011.
[91]*Ehigie v Ehigie* (1965) II WACA, 118.
[92]I.O. Agbede; Legal pluralism (Ibadan, 1st ed., Shaneson C.I Ltd, 1991) pp. 272-275
[93]ibid
[94]ibid

It should be added however, that customary laws of Hausa and Fulanis have been supplanted by the Muslim law in Nigeria (through restatement, Model law or Legal transplant).[95] It is admitted generally that customary law is unwritten, that is, no statute includes it, and it is not clearly defined in any law. It is also flexible, that is, capable of change from time to time; notorious, that is, authoritatively adopted; and current that is, what is currently practiced[96]. The requirements may make the decision of the Supreme Court outdated in some cases, however, the best approach to this is to adopt the subsequent decision of the Supreme Court to depart from old decision, otherwise, we will never be able to find any authoritative rule of customary law outside Restatement, Model law or Legal transplant.[97] It must be accepted that the decision of the Supreme Court can override any of these sources in relevant cases. They can override them when these other sources (Restatement, Model law and Legal transplant) can be useful where there is no rule of the Supreme Court on a particular rule of customary law.

### 6.2 Unification through Fusion of Court

It must be stated that our knowledge of the distribution of the working among the various systems of court would be incomplete if we were not to know some significant exceptions to the general proposition stated in the proceeding pages.

It is no easy task to treat problems of choice of court in Nigeria on the basis of 'Systems' of Court where the legislature has been mostly concerned with conferring jurisdiction on individual courts within the tripartite system.[98]

### 6.3 Administration of Courts System in South-west Nigeria

In the South-west States, for example, customary courts Grades A and B presided over by lawyers have nearly as little in common with the customary courts Grade C as the Magistrates Courts have in common with such Grade C Courts. Yet the Grades A, B and C belong to one system whilst the Magistrate Courts belong to another. The fact, however, is that the ultimate aim is to fuse the various systems of court.[99] The practical consequence of pursuing such policy has made the problem of choice of court increasingly complicated but correspondingly insignificant. But this fact is by no means a sufficient reason why attempts should not be made to point out the defects of the present arrangement.

It is submitted that the rules of choice of court in the context of pluralism of system of courts with different rules of procedure must have as their primary purpose the efforts to prevent overlap of jurisdiction so that, a suit properly cognisable by one system, should not be actionable in another purposely to take advantage of a more favourable rules of procedure. To that end, the rules determining the jurisdiction of each system of court should be clear and obligatory as opposed to the present arrangement whereby the application of some rules are

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[95]ibid

[96] As the statement defined by the court in the case of *Ojesina v Aiyebelehin* (2001) II NWLR (Pt. 723)44.

[97]ibid

[98]The jurisdiction of the individual Customary Courts is generally specified in the warrant of each of these Courts.

[99] This is the declared policy of the Government of South-west Nigeria then.

left to the absolute discretion of the judges in certain cases and to the whims of administrative officers in some others.

By far, the major defect of the present statutory rules is that some of these rules are so vague as to permit of different interpretations. Such a situation is neither conducive to certainty or predictability nor likely to promote the course of justice. The fact that there has been, on the part of legislature, a pre-occupation with delimiting the jurisdiction of the native courts rather than with improving upon the law they apply, this policy has resulted in the development, until lately, of a multiplicity of un-coordinated rules of judicial jurisdiction.[100] This preoccupation with customary court's jurisdiction has produced, under the recent Area Court Edits of the Northern States, the absurd situation whereby a Syrian can sue a Nigerian in the Area Court while a Syrian can only be sued in this Court when he so desires. If attempt will be made to modernise the law applicable in these courts, there can be no acceptable objection against making anybody, of whatever race or creed, amenable to their jurisdiction in deserving cases.

Another conspicuous defect of the present arrangement is its absurd consequences. It has been previously mentioned that the judges of customary court Grade A and B (at least in the South-west States) possess basically the same legal qualification and experience as most of the magistrates have. We have stated too that the legal representation is allowed in these grades of customary courts and that they administer non-customary criminal law. Yet as the law now stands, the jurisdiction of these customary courts is not only limited to certain laws but also to specific classes of persons. The distinctions thus drawn between magistrates and those judges are, to all intents and purposes, artificial and inconvenient.

Perhaps we do not have to repeat here that some of the current rules are patently unconstitutional in certain respects. Furthermore, while we do not wish to indulge in value judgments as to whether it is right or wrong to have a separate system of customary courts,[101] we wish however, to state that it is mistake to work on the assumption that rules of procedures suitable to natives of Nigeria as well as to resident foreigners cannot be devised for the customary courts so as to make everybody subject to their jurisdiction. The problem of getting personnel capable of administering such rules is one which only the government can solve.

At this juncture, we wish to state that the present arrangement neither prevents 'forum shopping' nor ensures uniformity of decision. It is no exaggeration to say that the present rules are in practice, often misunderstood or ignored.[102] It is therefore, proposed that (pending the time a total integration of the courts can be effected) the following measures should be taken.

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[100] Particularly in the Northern States.

[101] See B. O. Nwabueze; Machinery of Justice in Nigeria (London, Butterworths, 1963) p 309, p 23. For arguments in favour of preserving the present system of native courts.

[102] Five out of seven judges of the Customary Courts (with legal education) questioned on whether they would dissolve a customary marriage contracted in another region stated that they would decline jurisdiction. Clearly there is no support for this view in the law of the South-west state which judges apply.

Firstly, the customary court would not on any account, have concurrent jurisdiction with the general courts for as long as the two systems operate different rules of procedure. The power of transfer should only be used to check or prevent undesirable tendency in trial before the customary courts and as a basis for the division of jurisdiction between the customary courts and the general courts.

Secondly, all customary courts presided over by trained lawyers should be absorbed to the body of general courts. Thirdly, the division of jurisdiction between whatever remains as customary courts and the general courts should be based on the principle of convenience. So, that matter that can be more conveniently determined by the kind of adjudication available in such courts must be litigated, in the first instance, in them. There shall be a right of appeal to the general courts.

Finally, it must be stated that the necessity for creating courts to 'prop up' the authority of native rulers which arose under Lugard's Administration is non- existent today. The mobility of modern society and the scale inter-penetration of communities have rendered somewhat anachronistic the existence of separate courts for certain persons. The Korah Commission[103] has rightly pointed out that as modern secular states develop, there comes a time when special courts for particular classes of inhabitants must give way to general courts for all manner of men. We think the time has come in Nigeria, when the Customary Courts should have authority over all persons (of whatever race or creed) to any cause or matter properly cognisable by these courts.

## 7.0 UNIFICATION THROUGH JUDICIAL DECISIONS

The court can by itself unify rules of customary law and it has indeed achieved such unification in the area of testate succession.[104] Currently, whatever document purported to be a Will is subjected to the rule that governs written Will under the statute of each state.[105] In effect, oral request or statement contained in a notebook or diary or sheet of papers purporting to be a Will under the customary law is just a mere directive which cannot be taken as a will. On testate succession Harvey;[106] stated that compliance with the Act is what makes the rules of making will unique and unified.
He went on to say:

> It is still, however, questionable whether a judge would be willing to make the necessary verbal alteration, though, transliteration would be less difficult in the case of the Wills Act, 1963 than its repealed predecessor.[107]

However, unification by the judiciary suffers from the weakness that until the particular rule is brought before the court, it cannot make any authoritative pronouncement therefore to depend on the judiciary to unify customary law rule with the statutory rules on particular rule of customary law in the area of testate succession may take decade if not centuries.

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[103] Native Courts Commission of inquiry (Gold coast) 1951 p.3.
[104] The Will Act 1837 and the Will Amendment Act 1852
[105]ibid
[106] Nigerian Wills, Probate and Succession. (London, Sweet & Maxwell, 1968) p 29.
[107]ibid

The statute including the Constitution of the Federal Republic of Nigeria 1999 (as amended) is the most effective and efficient tool of unification because, statute can abolish any rule of customary law or repeal any earlier statute in order to achieve unification. But to achieve that it calls for vision, devotion and determination to come up with a scheme that will be acceptable to the generality of the people. Since no legislative house in any state of the federation has shown any interest in undertaking such an adventure that can bring unification, effort must be directed towards such plan so that it can be a legacy that would be handed over to incoming generations.[108]

However, the British imperialist succeeded to some extent to achieve unification in the area of criminal law in Nigeria,[109] they could only do that by proclaiming a different statute for the southern states of Nigeria called Criminal Code as distinct from the Penal Code. Because the Penal Code has to incorporate some rules of customary laws such as, drunkenness, adultery, and offences, insults in their penal code is comparatively absent in the Criminal Code. What has happened now is that there is presently a unification of law in the case of criminal law both in the Northern and Southern states of Nigeria apart from the Sharia states.
Unification of testate succession in southern states: This could be achieved as demonstrated in the area of criminal law but the somewhat strange approach in the Northern states was to adopt Sharia law to be applicable to everybody in some area of criminal punishment (ten states). This appears a retrogressive step taken us back to the pre-independence era, so unification of law in Northern Nigeria between the Muslims and Christians and traditional communities may be a work for a long period. But our focus is on South-west States of Nigeria and within this context, the court can use the rule of conflicts of law or interstates conflicts rule of choice of law to solve the problem of those who are living in South-west States but are not of Yoruba ethnic groups.

### 7.1 Unification through Integration of Laws

Prior to this present period, there were some struggles by some scholars like I. O. Agbede, A. N. Allott and B. O. Nwabueze, who believed that applicable customary laws in most of African States were outdated and not favourably disposed to the rights of a certain gender[110]. Due to this reason, conferences were held both within and outside Africa to integrate different customary laws and possibly to replace the outdated ones, particularly those customary laws that were discriminatory, even though the non-discriminatory laws still addressed the needs of the local population[111].

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[108] ibid

[109] ibid

[110] For instance, Yoruba Customary Laws of Inheritance of South-west Nigeria denies widows of Customary Law marriage their inheritance rights, in fact, it regards widows as part of the property to be inherited by the male relation of the deceased husband. The position was noted by the Courts in *Suberu v Sunmonu* (1957) SC. Also, Benin primogeniture rules of inheritance, Igi-Ogbe, favoured male gender and it gives credence to first male son of the deceased father and disinherited female children. It is applicable in Benin Kingdom and similar rule called Diokpa also applicable in South-East Nigeria.

[111] As stated by A. N Allott; Towards the Unification of Laws in Africa conferences on unification of Laws in Africa were held in London, June 1963, the Dar-es-Salam Conference was held in September 1963, the Venice

Integration of laws has been described to mean an outright abolition of all the systems of laws but one remaining or the replacement of all the conflicting systems of laws with a brand-new single system that is acceptable to target certain groups in the community[112]. It will be recalled that Nigeria presently practice a dual system of criminal law: Criminal Code applicable in Southern Nigeria and Penal Code applicable in Northern Nigeria. Unification of laws experienced in this area of law clearly abolished customary ways of detecting and investigating criminals in the affected areas or societies for instance, trial by ordeal whereby the suspects used to be subjected to inhuman treatments or torture have been abolished in Southern Nigeria[113].

Also, in Northern Nigeria, the use of caning where intoxicating liquor was taken by someone was incorporated into the relevant sections of the Penal Code[114]. Certain behaviours which were criminal in nature under the Sharia Legal System were merged and subsumed into Penal Code. For instance, an adultery which ordinarily attracts caning upon conviction was incorporated into Penal Code. Also, consumption of intoxicating drinks and materials punishable upon conviction with strokes of cane was incorporated into Penal Code.

Having recorded huge success of unification in criminal law, it is important to follow the same suit in the areas of marriage, adoption, divorce and succession so that conflicts which multiplicity of laws in the area of succession are generating can be reduced to barest minimum. The move to unify laws on marriage, adoption, divorce, and succession started long ago as stated by Allott[115] and Agbede[116] and many other scholars who contributed in one way or the other in London and at the University of Ife Conferences[117].

**7.2 Substitution of Local Laws with Foreign Legal Systems**

Where applicable laws are defective or generate controversy as currently experienced in South-west Nigeria, where it is extremely difficult to freely choose or apply or know appropriate and applicable law by either a litigant or lawyer or the court itself, voluntary reception of a foreign law is the way out. What is needed is to take lessons from countries which have successfully accepted such system of law and carefully incorporate same into their system. For instance, Turkey successfully adopted Swiss law in 1925 into her legal system and a good example to many African countries[118]. What this analogy portrays is that the six states of South-west Nigeria emulate the Turkish example by simulating and adopting a good African example. Also, Nigeria as a country may adopt Ghanaian or South African 1996 modernised customary laws where no citizen was discriminated against on the ground of the circumstance of their births.

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Conference was also held in October, 1963 and that of University of Ife was held in Ibadan in August 1964 on the future of laws in Africa, sub-titled 'the integration of Customary and Modern Laws in Africa'.

[112]ibid

[113] Criminal Code Act, CAP C 41 Laws of Federation of Nigeria 2004

[114] Penal Code Act, CAP C89, Laws of Federation of Nigeria 2004

[115] A. N. Allott; Future of African Customary Laws, paper presented at Conference held in London, June, 1963

[116]I. O. Agbede; Legal Pluralism (Ibadan, 1st ed, Shaneson Ltd, 1991) pp 272-289; specifically, chapter thirteen titled; 'Towards Unification of Municipal Laws, the Nigeria Experience'.

[117] ibid

[118] See Turkey's adoption of Swiss Code in 1925 to replace her local law, as cited by Taiwo, Adetayo Ademola, PhD Thesis submitted to Babcock University, 2007, pp 68-70

### 7.3 Adoption through Cut and Paste Unification System

As the name implies, the system of 'cut and paste' means without mincing words, the system whereby a country or a state directly copies the existing laws or systems of another state or country with similar cultures or peculiarities, incorporating such into one's legal system will solve or bring into barest minimum the conflicts or controversy or legal difficulty attributed to dual system of law that Nigeria as a state practices. Though, it may be a bit uneasy because of different ethnicities that Nigeria has in every geo-political zone.

### 7.4 Fusion by Harmonisation

As Agbede has suggested, admittedly, the primary purpose of unification of laws at any point in time is to avoid the conflict and controversy which may arise from the application of different local laws. This objective can be achieved to some extent, through a process of harmonisation[119] by removing conflicting local laws be it customary, Islamic or English laws in order to reduce them to a harmonious one. A harmonisation scheme of customary and English laws will in no doubt allow the litigants, lawyers and the courts to have a non-controversial law to rely upon during adjudicatory processes.

It is however, discovered during the course of this research that customary law still remains unwritten, uncertain and basically inadequate to cope with the social and economic conditions of rapidly growing societies in the six states of South-west Nigeria, even in many other jurisdictions outside South-west states of Nigeria.

## 8.0 THE THEORY OF INCLUSIVENESS

The theory of inclusiveness as proposed on the basis that an integrated scheme of unification will be predicated on it. This is an approach whereby a unified system of law is allowed to govern all persons, natives and non-natives and of whatever religious faiths. The essence of this is to allow a single system of law that will fulfill the reasonable expectation of all concerned citizens unlike the existing Administration of Estate laws of different states in force in each of the Yoruba states of South-west Nigeria which exclude succession to be governed by customary law. The system is expected to take account of all persons of whatever cultural background and ethnicity, status or whatever degree of diversity at the different levels of educational attainment by the people of the affected states. It is possible for a single law or a code to govern the distribution of intestate estate in these states. Furthermore, it is important to widen the scope of the law larger than the existing beneficiary of intestate estate under the general (English) law to take account of the cultural value of the people of affected six states of South-west Nigeria.

It is on this note that the researcher is proposing the theory of inclusiveness. By this theory, those who ought to have a share in a particular intestate estate shall not be disappointed. The way this theory will work is to reserve definite percentage such as 60% to the children of the deceased person and 20% to the widows of the deceased husband while 20% will be meant for members of extended family. It is on this note that where particular persons have been

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[119] See decisions of the courts in *Cole v Cole,* (supra), also in *Adegbola's* case, See also I. O. Agbede (ibid)p145 for their different perspectives on the subject matters.

brought and trained by their uncles and aunties, it is natural that the children of such uncles and aunties should benefit from the investment of their parents. Where there are such persons, they are expected to benefit from the portion reserved for the extended family which normally goes to the father, mother, brothers and sisters or any other relations of the deceased. Extended family must be made to include relations from the father, mother, uncles and sisters from both sides. Flowing from the above, chapter six summarizes the entire work, findings, conclusion and also make recommendations.

In arriving at this conclusion, the study set its aim towards an achievement of "a single system on laws of succession in South-west Nigeria". It discussed an overview of laws of succession in South-west Nigeria[120] and different rules of succession were analysed. The study further discussed the different approaches to achieve unification of law – the preferred approach to have a single system of law on succession.

Finally, schemes of unification were also examined as it was used by the countries which have adopted the schemes as an alternative to their customary and general laws. The study found out that if different systems of law continue to operate in succession matters, the problem regarding the applicable choice of law, conflicts between different systems of laws, uncertainties in legal administration and controversies will still persist in the justice sector of the affected South-west states in Nigeria.

As provided by the Wills Act of 1837, a person has the privilege and unlimited freedom to dispose of their estate as they wish. They could choose to deprive any of their children any share in the property; however, if they fail to make provisions in the will, there is nothing that can be done if the will complies with the formalities prescribed by the 1837 Wills Act for making a valid will. The English Will Act of 1837 has since been abrogated in England and new laws have since been enacted to retain the testamentary freedom of a testator such that, on application, wife, children and other dependants of a testator who have been deprived of the right to inherit the estate in a will could be given a reasonable financial provision from the net estate by a court of competent jurisdiction.[121] The provisions of the new laws can be said to have somehow conferred on any child – who has been deprived of the right to inherit the estates of their father's will – a limited right of inheritance of such estate.

It is regrettable that despite the fact that the 1837 Will Act is no longer operative in England, the Act is still applicable in many states of Nigeria, except a few which have enacted their own Will Laws.[122] To follow the step of other states that have enacted their local laws of succession, Rivers State in South-South Nigeria in September 2022 signed Rivers State

[120] ibid

[121] Inheritance (Family Provision) act 1938 as amended by the intestate Estates Act 1952 and Inheritance (Provision for Family and Dependants Act 1975)

[122] Wills Law of Lagos State 2003, CAPW2 Laws of Lagos State of Nigeria; Wills Edict of Oyo State 1990, CAP 63 Laws of Oyo State of Nigeria. Kaduna State Wills Edict; CAP 163 Laws of Kaduna State of Nigeria 1991. Kwara State Wills Edict 1994, CAP 168 Laws of Kwara State of Nigeria, Anambra State Administration and Succession (Estate of Deceased Persons) law 1987, CAP4 Laws of Anambra State of Nigeria.

Succession Law 2022 into law.[123] It is gratifying however, that the states that have enacted Wills laws have followed the modern trend in England and some other developed countries to retain the testamentary freedom of a testator under their Wills laws. Hence, there is need for other states in Nigeria that have not enacted statutes on Wills to take a cue from these states.

Generally, customary law of succession of Yoruba people of South-west Nigeria denies widows their inheritance rights. Though customary laws differ from place to place, some principles of customary law seem to repeat themselves in the different cultures. In almost all customary laws, the principle that men are superior to women and as such women are subject to men continues to be in operation all over Nigeria. The motive behind the denial of widows' rights of inheritance is that under the customary law of Yoruba people of South-west Nigeria, inheritance follows blood and anyone who is not related to the deceased husbands biologically, will not be allowed to participate in the inheritance processes. The courts noted this in the cases of *Suberu v Sunmonu*[124], *Ologunleko v Ikuomelo*[125], *Akinnubi v Akinnubi*[126], *Oloko v Giwa*[127], *Bolaji v Akapo*[128]and *Osilaja v Osilaja*[129] where it was generally stated by the courts that "the rule that widows cannot inherit her deceased husbands' property has become so notorious by frequent proof in Courts, that, it has become judicially noticed". On the other hand, intestate succession basically involves the application of three systems of Laws. These are

(a) The Common Law
(b) The Administration of Estate Laws of the various state
(c) Customary Law[130]

The crucial question is how the applicable laws in cases of intestate succession (non-customary) can be determined. According to Sagay,[131] the factor which determines the system to apply in every case is the type of marriage contracted by the intestate person. In the case of Muslims, the religion practised by the deceased is also relevant. Where marriage was contracted under Islamic law, Islamic law would be the appropriate law that would govern the intestate estate of the deceased. Commenting further, he states the position of law as follows:

> Thus, if a person contracts a Christian (monogamous) marriage outside Nigeria, the rule of private international law applies to the distribution of his estate, if he contracts a statutory marriage in Nigeria then, if he dies domiciled in Lagos or any of the states comprising the old Western

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[123] Guardian Newspaper 16th September, 2022. The Punch, This day and the Nation Newspapers 16th, 17th September, 2022.
[124] (1957) 2 FSC 31
[125] (1993) NWLR (pt. 273) 16
[126] (1997) 2 NWLR (pt. 486) 144 SC
[127] (1939) 15 NLR 31
[128] (1968) NMLR 203
[129] (1972) 10 SC 126
[130] Customary law in the context include Muslim law, see also *Zaidan v Zaidan* (1974) 4 UILR 283.
[131] I. E.Sagay; Nigerian Law of Succession Principles cases statutes and commentaries, (1st ed., Malthouse Press Limited, 2006) p 73

> region, then the Administration of Estate law[132] govern the interstate estates of the deceased. If he contracts marriage but dies domiciled in any of the state comprising the former Northern or Eastern regions, which are yet to enact their own law on non-customary succession then the received English law will also, govern the distribution of his estates.[133]

Finally, the cases of *Salubi v Nwariaku*[134] and *Obusez v Obusez*[135] played an important role in discussing dualism of law in South-west Nigeria. In the above-mentioned cases, deceased contracted marriages under the English law, though they were subject to different cultures and customary laws and died intestate. Controversies arose after their death about which of the laws, namely Deceased's Customary Law, Administration of Estate Law or Section 36(1) of Marriage Ordinance of 1958, was the appropriate law to govern the distribution of their intestate estates. As it can be practically viewed from the above, dualism of laws in the area of succession has largely caused confusion, conflicts and controversy as to which law is the appropriate law to govern the estate of the person who, though subject to a certain customary law, contracted marriage under a different law and died intestate. To resolve this problem is to have one single system of the law of succession in the region so that the problems associated with dualism of laws can be completely eliminated. This is what this thesis has been able to achieve, as stated and demonstrated in chapters four, five and six of this research work.

## 9.0 CONCLUSION

It should be sufficiently obvious at this stage that the right of succession is one of the fundamental rights of civilisation and a characteristic of a strong system of democratic rights. It is also a panacea for political freedom and equality. In this sense, to have conflicting laws of succession would imply that there is a crisis in the area of law of succession in South-west Nigeria. The pluralistic nature of laws of succession in South-west Nigeria is complex and has created uncertainty in legal administration; it has also resulted in uncertainties regarding the law rules to choose from among the general, customary and Islamic laws as well as rules of different schools like Islamic law school of thought, and occasionally between foreign customary law and local customary law.

As earlier stated, the solution to the pluralistic nature of laws of succession in South-west Nigeria is to have one single system of law of succession, that is, the different laws on succession should be unified. Whatever form(s) adopted to achieve unification of laws of succession in South-west Nigeria is not as important as what the unified system will bring into succession matters in the region. Apart from its unique features, unification of the laws of succession will bring certainty into legal administration in the affected states. It will also make documentation and referencing of laws of succession to be easy.

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[132] Cap. 1 1959 Laws of Western Nigeria
[133] See Administrator – *General v Egbuna* and others (1918).18 NLR 1
[134] Supra
[135] Supra

Besides, the idea of maintaining a separate system of customary law will become an unnecessary luxury. Whether we integrate, harmonise, unify, or choose specific parts of restatement or legal transplant, the centre will not conflict or deny citizens their succession rights. To this end, a single system of law on succession is desired and hereby advocated in South-west Nigeria, so that the problem as to appropriated and applicable choice of law on succession will be resolved.

## 10.0 FINDINGS

The study found that different legal systems govern succession in South-west Nigeria and often, these laws conflict with one another at the level of enforcement. The case of *Salubi v Nwariaku* for instance, demonstrated the conflicts. In this case, the deceased died intestate, leaving behind his wife and four children, two of whom were born by the wife and the other were born outside the holy wedlock. At the trial court, problem arose as to the appropriate and applicable laws that were supposed to govern the intestate estate of deceased. The Plaintiffs claimed that the English law was applicable as provided by Section 36 (1) of the Marriage Ordinance and Administration of Estate Laws of old Bendel State and not Urhobo Customary Law of Succession as contended by the defendants.

Trial Court while delivering judgement relied on Section 36 (1) of the Marriage Ordinance, being a Federal Law that had overriding power over every other law cited by the parties. The judgement was affirmed by the Appeal Court but at the Supreme Court, it was ruled that the appropriate law was Administration of Estate laws of old Bendel State and not Section 36(1) of the Marriage Ordinance. The same reasoning was applied in the case of *Obusez v Obusez*[136].

The study also discovered that the pluralistic nature of the laws of succession in South-west Nigeria created uncertainty in the legal administration, most especially at the level of enforcement. The cases of *Salubi v Nwariaku*[137], *Obusez v Obusez*[138], and *Adesubukan v Yinusa*[139] are instances of this.

The study further found out that customary laws of succession in the above-mentioned areas were unwritten and varied from one place to another; therefore, these laws were not codified in one single document. 'Ori-Ojori' and 'Idi-Igi' rules of succession, as presently applicable, are no longer capable of providing equal rights as they used to do, and as stated in the case of *Dawodu v Danmole*[140]. The values have failed to provide inheritance rights for widows of customary law marriage.

Also, findings indicated that different legal systems governed succession matters in South-West Nigeria, the present applicable laws of succession namely customary, Islamic and English laws of succession often conflict at the level of enforcement, thereby creating uncertainty in legal administration and in the choice of appropriate law(s) that both litigants and judges should rely upon.

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[136] Supra
[137] Supra
[138] Supra
[139] Supra
[140] Supra

It was also made known by this research that the customary laws of succession in the above-mentioned areas were unwritten, varied from one locality to another, and not codified into one single document.

The study disclosed that rule of succession in the above reviewed areas in some occasions favoured only male gender and it discriminated against widows married under customary law as illustrated by the court in the cases of *Suberu v Sunmonu*[141]and *Ologunleko v Ikuomelo*[142].

Finally, most of the customary courts in the aforementioned South-west states in Nigeria are not being presided over by trained lawyers. This affects the quality of judgement delivered by these non-lawyers. The affected courts include Grade A Customary Courts which are being presided over by Justice of Peace who are either retired principals or headmasters.

## 11.0 RECOMMENDATIONS

From the above discussions and on the strength of the findings, the following recommendations have been proffered:

Reformation of customary laws of succession in the affected South-western states in Nigeria and Nigeria as a whole is long overdue. For there to be rapid development in the affected areas, customary laws of succession must be urgently reformed. Many of these customary laws are outdated and discriminatory against women as wives. This is because inheritance in these areas follows 'blood relationships' and anyone who is not related to the deceased husband will not be allowed to participate in the inheritance processes. Some affected people are widows of customary law marriage who are regarded as strangers and denied inheritance rights; more so, under the customer law, these widows are regarded as part of the property to be inherited by the male relative of the deceased husband. The courts fostered this in the cases of *Suberu v Sunmonu*[143], *Ologunleko v Ikuomelo*[144], *Akinnubi v Akinnubi*[145] to mention but a few.

There is a trend of discriminatory acts against women, most especially widows, in the above-mentioned South-west states in Nigeria and aggressive steps must be taken to reduce it to the barest minimum so that women in the affected states can be released from oppressive laws. To alleviate the situation, non-governmental organisations ought to dissuade women at various levels from marrying under any discriminatory customary law and to encourage those women who have married under such regimes to upgrade their marriages to statutory ones.

### 11.1 Education of Female Children

Parents are advised to educate their female children so that upon marriage, they will be able to choose the type of marriage that will not deny their inheritance rights. Also, education of female children should be made compulsory by the government of the affected states and the

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[141] Supra
[142] Supra
[143] Supra
[144] Supra
[145] Supra

Federal Government of Nigeria so that the benefits attached to it will be enjoyed across board. This can be achieved through the appropriate legislation which makes the education of a girl child compulsory.

**11.2 Increase in Enlightenment Campaigns through the Mass Media**

There should be an increase in enlightenment campaigns through media and information concerning the right(s) of women and other citizens should be made available in different local languages so that the concerned citizens, whether educated or not, would be able to understand the content of the law regarding their rights.

Also, to be able to achieve the desired results, the cost of acquiring these media gadgets must be very minimal for the citizens and the poorest sets of individuals must be helped by political office holders at various levels. This way, information regarding the rights of citizens can get to where it is needed.

**11.3 Replacing outdated Marriage Laws/Acts with new laws is necessary**

Matrimonial Causes Acts and Marriage Acts are not sufficient laws to cater for marital challenges. They are old and there is a dire need to replace them in order to meet or provide solutions to the challenges emanating from different marriages. New ones that will be able to address marital issues under customary, Islamic and general law are highly expedient.

**11.4 Expediency of harmonization of different Succession Laws**

Harmonization of different succession laws started as far back as 1963 in Nigeria when different conferences were called to deliberate on the need to harmonize different laws on succession in Nigeria; however, this was to no avail. It is necessary to reform the different succession laws into a single system in South-west Nigeria. States' Houses of Assemblies must have courage to initiate a bill that will achieve a single system of succession laws in the region in the near future, the same way their states have been able to have a unified security outfit (Amotekun Security Laws). They should come together to have a single system of succession laws in South-west states of Nigeria.