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Resolving Dilemma of Legal Pluralism in Western States' Laws of Succession

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Abstract

In recent time, researches have shown the need to have one single law in respect of succession matters in Western Nigeria. This is as a result of conflicts attributed to the existing succession laws in the region. Multiplicity of laws of succession have occasioned miscarriage of justice. Often time, lawyers, litigants, even courts do express their dissatisfaction about proliferation of laws in respect of succession matters. The paper has however, examined what can be done to eliminate the conflicts and the problems associated with these proliferations of laws. Findings revealed that Nigeria has not adopted appropriate approach to harmonize different intestate laws. Due to the proliferation of laws of succession in the region, conflicts has been occasioned and as such it has led to the miscarriage of justices and denial of inheritance rights to some set of the people. The paper concluded that lack of one single system of law of succession in the region and Nigeria at large has largely responsible for the conflict which litigants, counsels and even the courts are experiencing today. Unification of intestate succession laws in Nigeria is however, been suggested as the only solution to the problem of pluralism of laws in the area of succession in Nigeria, and it can be achieved by integrating all the existing laws of succession with the support of legislation. Doing these will give all parties in inheritance matters equal opportunity and thereby forbid rancor which this present sharing system has brought.

Key Words: Resolving, Dilemma, Pluralism, Laws and Succession

Introduction

Succession law basically deals with the enabling laws in respect of the distribution of both real and personal property of the deceased person[1]. It manages both testate and intestate situations. Since it is certain that all men and women shall die according to the holy scripture[2]. When a man dies leaving behind documents on how his self-acquired property (real and personal) be distributed among the beneficiaries, then we say the deceased person died testate[3]. But when a person dies and he does not leave any document(s) on how his self-acquired property be distributed among the beneficiaries, we say then, he dies intestate[4]. It means that the property of the deceased person both real and personal are going to be distributed in accordance with Customary law of the deceased[5].

Customary law has been defined to mean the personal law of the deceased man which has come into being through the practice and customs which in due time has passed through the necessary tests[6].

Principally, two systems of Succession exist under the customary law. It may either be patrilineal or matrilineal. In a patrilineal society, succession is through the father's lineage, while in a matrilineal society, succession can be from the mother's lineage. In Nigeria, most succession patterns are through matrilineal method.

However, different laws govern succession matters in Nigeria, namely, General law, Customary law and Islamic law[7]. Succession under the general law is up to certain extent codified, certain and settled. While succession under the customary law is not only varied and diverse, but largely unsettled. Apart from being varied, customary law is not codified in one single document and in most occasions, it discriminates against certain sexes[8]. In all, succession can be looked into in two major ways, firstly, Testate Succession and secondly, Intestate Succession.

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[1] *Idehen v. Idehen* (1991) 6 NWLR at 198.
[2] Hebrews chapter 9 verse 27 " And as it is appointed unto men to die once, after it is judgement" (KJV).
[3] *Lawal Osula v. Lawal Osula* (1995) 9 NWLR (PENT 419) p. 259
[4] Ibid
[5] *Adesubukan v. Yinusa* (1976) 2 FNR 24, 33-261, (1971) NWLR 77, All NLR 123, 125-126.
[6] *Owoyin v. Omotosho* (1961) 2 SCNLR 95; *Olowu v. Olowu* (1985)3 NWLR (pt. 131) 372
[7] Taiwo, Adewale; Nigerian Land Law, (Revised edition, Ikeja Princeton & Associate Company Ltd. 2016) pp 288 - 315
[8] Customary law discriminates against widows, as widows are regarded as parts of the property to be inherited by the male relation of deceased person. Seen in *Suberu v. Sunmonu* (1957) 2 FSC, *Ologunleko v. Ikuemelo* (1993) 2 NWLR (pt 273)16. Also the rules of primogeniture in Benin Kingdom which allows first male child to inherit all property of a deceased person discriminate. See Arase v. Arase (1981) 5 SC 33.

Testate succession under the General law

It is however, important at this juncture to determine in the first place, the law that governs testate succession in various parts of Nigeria.

Firstly, the Wills Act, 1837 and the Wills Amendment Act, 1952 are clearly Statutes of general application in Nigeria being at force in England on January 1, 1900[9]. The Wills (soldiers and sailors) Act, 1918 was another succession law made to regulate probate causes of proceedings' pursuit to the relevant sections of the High Court Laws of a particular locality[10]. This was made with regards to the repealed English Wills Act 1816 (Lord Kingsdown's Act) which initiated deals with the formal validity of Wills which do not comply with English law. Also, the said Wills Act was repealed and later became English Wills Act 1963 majorly applicable in all states in Northern Nigeria (19) states created from old Northern Nigeria replicated what English Wills Act 1963 contained but with little or no variation.

In an attempt to close the gap, the former Western Region of Nigeria in 1958 enacted its own indigenous Wills law which catered for the need of its people[11]. Though it was a replica of the Wills Act 1837, the Wills Amendment Act, 1852 and some parts of the Wills (Soldiers and sailors) Act 1918. The Region's Wills law included provisions like Section 3(1) of laws of Western Nigeria 1959which provides thus:

> "That real or personal estate which cannot be disposed of by the applicable customary law cannot be disposed of by will…"

However, where a Will is made it must comply with some fundamental rules, else it shall be null and void. To avoid making of null and void Will, the following criteria must however be met.

The first important aspect which a Will must meet is ambulatory nature, that is, it must take effect from the death of the testator and not from the date of its making. Consequently, property dealt in a Will but disposed of before the death of the person making it cannot be regulated by the Will[12]. Furthermore, any property acquired by the testator after the making of the Will may be disposed of in accordance with the relevant provisions of the deceased customary law of inheritance[13]. The overall correspondence of this is that the testator remains free until death to revoke, amend or otherwise alter his Will at his pleasure during his lifetime[14].

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[9] B.W. Harvey: The law and practice of Nigerian Wills, Probate and Succession (London Sweet and Maxwell 1968). p. 128, *Adesubukan v. Yinusa* (1971)NWLR 77 (1971) 1A;; NLR 225.
[10] Ibid
[11] Cap 133 Laws of Western Nigeria 1959.
[12]E .I. Nwogugu: Family Law in Nigeria, Ibadan, 3rd edition, HEBN Publishers Plc, 2014, PP 400 - 431.
[13] *Okelola v. Boyle* (1998). ISCJN 63
[14] *Olowu v. Olowu* (1958) NWLR (pt. 13) 372

Another important aspect that a well written Will must comply with is the subject matter, this is, the gift in the Will must be identifiable. An ambiguous or controversial statement about gift or unascertainable gift may not be enforced. Thus, gifts must be of a specific amount of money or property[15]. Of similar relevance is the certainty may not suffice. The obligation must be such that it is acceptable of being made as an offer which capable of being accepted and supported by consideration or a dead or covenant[16].

Every individual has capacity to make a will irrespective of whether the person is Christian or Muslim or subject to Islamic law or Customary law, educated or not. Though, the exceptions to the above quoted general rules is that, children under eighteen (18) years of age lack the testamentary capacity to make a valid Will except where the testator is a seaman, mariner or crew of commercial aircraft being at sea or in the air[17]. As regards the soundness of mind of testator, as pointed out by the court in *Federal Administrator General v. Johnson*[18] and *Balonwu v. Nezianya*[19], that the testator must understand the nature of the act he is performing and its effect. No disorder of mind shall poison his affection, exercise of his natural faculties. No insane delusion shall influence his will in disposing of his property and bring about a disposal of which if the mind had been sound would not have been made.

Also, blind or illiterate persons, like other adults possess the capacity to make a will. However, the execution of such Wills requires special scrutiny in order to avoid incidents of fraud. It is essential that the Will must be in writing, signed by the testator in the presence of one or two witnesses who shall counter-sign the Will at the same time and declaration must be made[20].

Testate Succession under Customary Law

Customary law contains rules on succession and the administration of estates. These rules cover testate succession. Customary and Area Courts are conferred with jurisdiction in this respect to hear and determine therein any matter(s)[21].

Wills under Customary Law

Nuncupative Wills

[15] *Schaefer v. Schvhmann* (1972) 1 All ER 621.
[16] As contained by Section 3 Wills Law Cap W2 Lagos State. Section 3 Will Law Cap 141 Laws of Rivers State, Section 8(1) of Wills Law, Laws of Oyo State.
[17] Section 8(1) Wills Law of Oyo State and relevant sections of other states' Will laws
[18] (1960) LLR 291
[19] (1959) 3 ERLR 40
[20] As contained and specified by the relevant Wills Law of various states in Nigeria, for instance, Section 4(1)(a) of Wills Law Cap 141 laws of Lagos State.
[21] Schedule Part IT Area Court 1.aw. Cap. 10 Laws of Kaduna State 1990; Area Courts Law. Cap 9 Laws of Katsina State 1991: Area Courts Law. Cap. 8 Laws of Yobe State 1994; Section 14 Customary Courts Law Cap 41 laws of Oyo State. 1998: Section 12 Customary Courts Law. Cap. C21 Laws of Cross River State, 2004.

The disposition of property by will is a principle recognized by customary law. In lgbo customary law, it is known as Oli-Ekpe. Most customary law wills are oral and, therefore, are nuncupative wills. This feature has led some scolars[22] to conclude erroneously that there is no distinction between testate and intestate succession under customary law. It is submitted that as in general law, testate succession under customary law gives effect to the intention of the testator as expressed in the nuncupative will.

A customary law will take the form of an oral declaration made voluntarily by the testator during his lifetime. Such declaration may be made while the testator is in good health, or in anticipation of death. Often time, the declaration deals not only with the disposition of property but also gives directions as to the mode of burial and funeral ceremonies to be performed for the testator.

As in general law, a disposition of property by will under customary law become effective only if the testator possesses full mental capacity at the time the will was made. Furthermore, the identity of the subject-matter of the will must be specific so as to be easily identified. In the case of personal property, the particular item devised has to be specified. Where land is given, the testator should appropriately describe the particular plot. It is worthy of note at this juncture that family land cannot be devised. A nuncupative will is not the usual method of general disposition of the testator's entire estate.

The subject-matter of the will must be disposable, as the testator cannot give that which he does not own. Thus, a person cannot dispose of undivided interest in family or communal land by will, as he has no individual property therein[23]. On the other hand, property individually owned by the testator may be so disposed. The testator should also clearly identify the beneficiary[24].

It has been suggested that for a nuncupative will to be valid, it must be made in the presence of disinterested witness or witnesses[25]. Obviously, the presence of witnesses is necessary for the validity of oral wills. But whether such witnesses should be disinterested is another matter. It has been rightly pointed out that 'the presence of disinterested witnesses is necessary, not for purpose of validity, but for purposes of proof of the declaration[26]. No specific number of witnesses is laid down, but the will is likely

[22] C.K. Meek: the definition of a declaration made voluntarily and orally by a person in sound mind, in expectation of death, in the presence of responsible and disinterested persons. C.K. Meek: *Land Tenure and Land Administration in Nigeria*., London, lIMSO, Colonial Research Studies No. 22, 1957), p182. Also, in T. O. Elias: *Nigerian Land Law and Custom, (* London, 3rd Edition, Routledge and Kegan Paul,. 1962) pp 125 - 130

[23] *Johnson v. Mucaulay* (1961) 11 NLR 743.

[24] On the essential elements of nuncupative wills see S.N.C Obi, *Igbo Law of Property* (London, 3rd edition, Butterworth, 1963), pp 206-208. See Also Okoro Nwakamma: *The Customary Law of Succession in Eastern Nigeria and the Statutory and Judicial rules Governing their Application (*London, Sweet & Maxwell, 1966) pp 73-75

[25] Ibid.

[26] *Ayinke v. Obiduni (1959) 4 FSC 280.*

to be readily established by the evidence of more than one witness, especially if those witnesses are not beneficiaries.

It has also been stated that the effectiveness of a nuncupative will depends on the consent of the testator's family[27]. While this seems to be an essential feature of a customary law will in a country like Ghana (Sawansiw), it is not essential in the testamentary disposition of private property in Nigeria. A testator is always free to dispose of his self-acquired property by a nuncupative will. The requirement of family consent may only be relevant in Nigeria in respect of testamentary disposition of family property. Thus, while an individual cannot dispose of undivided interest in family land by will, he could, with the consent of the family, dispose of the family property in that manner.

Unlike the case of a '*donatio mortis causa*', it is not necessary for the validity of a nuncupative will that the subject matter of the will should be delivered to the beneficiary in the lifetime of the testator. However, *donatio mortis causa* resembles a customary law will in that both take effect and are conditional on the death of the testator or donor. The testator of a customary law will have a free hand in the choice of the beneficiary, who may be a member of his family or a stranger. However, the testator cannot dispose of his property by will so as to deprive his heirs of their entire expectation. He may however reduce the actual amount of the estate going to the heirs. In some localities where the testator fails to make reasonable provision in his will for dependants his family, the will may be varied by his extended family[28].

Written Wills

As western education permeates our traditional society, there are increasing instances of customary law wills being set down in writing. What is the effect of such a document? In order to be valid, it must comply with the provisions of the Wills Act 1837 or the Wills Law 1959 writing is obviously not an intrinsic feature of customary law.

Two schools of thought have emerged in this respect. One school holds the view that unless the will complies with the requirements of the statutory law, it should be treated as null and void[29]. The other school postulates that a customary law Will should be treated as valid irrespective of whether or not it is in a written form so long as it remains genuine[30].

Nigeria courts have repeatedly held that the reduction into writing of an essentially customary law transaction does not alter its nature. Writing in such cases is no more than mere evidence of the transaction[31]. A *fortiori,* the reduction of a customary law

[27] N.A. Ollennu: *The Law of Testate and Intestate Succession in Ghana* (London, Revised edition, Sweet & Maxwell, 1966) p. 273
[28] Ibid
[29] Ibid
[30] Ibid
[31] *Rotibi v. Savage* (1944) 17 NLR 77. *Nwachukwu v. Otuh* (961) 1 All NLR 487

will into writing should not affect the nature of the disposition[32]. Writing *per se* is not conclusive evidence that the statutory form is intended.

If the testator intends to make a will in accordance with the statutory form then the document must comply with the requirements of the Will's Act 1837. Where, on the other hand, the testator intends to make a customary law will but adopts the strict technical form prescribed by the Wills Act 1837, the document may be treated by the courts as a statutory will. If, however the will is written but does not comply with the requirements of the Wills Act, it would be treated as valid under customary law.

In *Apatira v Akanke*,[33] the testator, a native of Nigeria who was born and lived his entire life as a Moslem, died leaving a will in the statutory form which did not comply with the requirements of the Will's Act 1837 as regards signature and attestation. It was argued in favour of granting probate of the will that in spite of the statutory deficiencies, it should be treated as a will in Moslem form which, like the one in question, does not require any writing or attestation. Ames. J refused to grant probate of the will on the ground that the testator intended to make a will in accordance with English law but failed to comply with the statutory requirements. Evidence of such intention was found in the fact that the testator purported to dispose of his estate contrary to the rules of Moslem law. It is submitted that the case was wrongly decided.

Another interesting question may arise in connection with a written will is if for instance, a native of Nigeria makes a will which is intended to be in the statutory form but fails to comply with the requirements of the Will's Act 1837, can the court consider the validity of such a document under customary law? A negative answer was given to this question in *Apatira v Akanke*.

Islamic Law Wills

In Islamic law, adults who possess disposable valuable property are free to make wills. However, the testator must be sane and free from coercion at the time the will is made There must be two witnesses to the declaration of the will. No mandatory format is prescribed. The will may be oral or written[34].

A Moslem cannot make a bequest to any who is an heir unless other heirs' consent to the bequest[35]. Moreover, the testator is incapable by will of disposing more than third of his estate unless the heirs' consent[36]. Such a bequest may be made to a non-Muslim.

[32] Ibid
[33] (1947) 17 NLR 149
[34] A.S. Ogwuche:. *Compendium of Islamic Law, (Ibadan, University Press,* 2006) pp. 83-87.
[35] F.H. Ruxion: *Maliki Law.*, (London, Luzac publisher, 2001) p. 371. Also, A. A. Fayzee: *Output of Mohammadan Law, , (London, 2nd Edition, Oxford University Press, 1955) p. 306.*
[36] *Adesubukan v. Yinusa* (1971) 1 All NRL 225.

Intestate Succession

Intestate succession simply means to die without leaving behind any document that will direct how the self-acquired property, both real and personal of the deceased be distributed among the beneficiaries[37]. Where this happen, it means rules of intestacy shall apply, that is, property of the deceased are going to be distributed in accordance with the deceased customary law. Even, if the property of the deceased situated outside the place of his birth, the applicable law that will govern the distribution of that property is deceased personal law[38]. But where a person changes his status and acquired the new one, it means his or her personal law is also going to change[39].

In a broader sense, intestate succession can be divided into two, namely:

i. Intestate Succession under Statutory law
ii. Intestate Succession under Customary law

Intestate Succession under Statutory law

As earlier stated, since it is certain that all men and women shall taste death[40]. Preparation required on how one's estate is going to be distributed must be made, Failure to state how one's estates should be distributed may either be as a result of negligence, omission or ultimately death. Where a person dies intestate, the first thing to consider is how the estates of the person is going to be distributed and the nature of marriage deceased contracted. Where deceased contracted monogamous marriage, it means, his estates is going to be distributed in line with the provisions of the English Common law[41]. But where the deceased contracted customary law marriage, it means his estates are going to be distributed in accordance with the customary law of the deceased. For the purpose of applicable law in case of intestacy, Islamic law marriage is considered to be stride or part of customary law, and as such, no different type of law is to govern intestate estate of a person who married under the Islamic law than customary law provisions.

However, since there is no uniform law of succession presently in Nigeria, where a person who contracted statutory marriage dies intestate, the English law which was received into Nigeria on January 1st 1900 shall apply. English Common law was received into Nigeria through reception of English Rules of Common Law, doctrine of Equity and Statutes of General Application in Force on January 1st 1900. English Common Law as contained in Section 36 of the Marriage Ordinance 1958[42], received into Nigeria, stated that "any person who contracted marriage under statute, but dies

[37]Ibid
[38] *Tappa v. Kuka* (1945) 18 NLR5
[39] *Olowu v. Olowu* (1985) 3 NWLR 372
[40] Holy Bible in Hebrew Chapter 9 verse 29 (KJV).
[41] Section 36(1) of the Marriage Ordinance 1958
[42] Section 36(1) of the Marriage Act contained in English law of succession received into Nigeria on January 1st 1900.

intestate, shall have his estates distributed among the children and the wife of the deceased.

It is however, important to note at this juncture that where the deceased state of origin has enacted its own succession law, the succession law of that state shall govern the distribution of intestate estate of deceased. It must be noted also, that where the deceased person was subject to customary law during his life time, his estate will be distributed according to customary law or Islamic law ((if he was a practicing Muslim during his life time).

Intestate succession in Nigeria is governed by different statutes. But it is worthy of note that intestate succession in six states of South Western Nigeria were made after Administration of Estate Law of Western Nigeria 1959. Devolution of estate of a deceased in Nigeria, more particularly in six states of South Western Nigeria is regulated through testate rules or intestate provisions. Both testate and intestate rules discriminate and often result in controversy, but courts in most occasion do resolve in favour of the beneficiaries. In *Salubi v. Nwariaku*[43], where the deceased, Chief T.E.A. Salubi, died intestate in September 1982 and he was survived by his widow whom he married under the Marriage Act, two (2) children by the said widow and two other children born out of wedlock but whose paternity he acknowledged. The said two other children born out of wedlock were also raised by the deceased wife, in his lifetime and in the matrimonial home with the consent of his lawful wife who accepted them as children of the family. Estates left behind included landed property in various parts of Nigeria. The deceased eldest son (first defendant) and the widow were granted letters of administration in 1985 but the widow declined to serve. The first surviving child of the deceased who was the plaintiff sued the defendants for herself as beneficiary claiming an order to set aside the letters of administration granted to the first defendant for mismanagement of the estate.

The plaintiff claimed that the administration of estate law of Bendel State and Section 36 of the Marriage Act governed the distribution of the deceased estate. Defendant contended and argued that the estate supposed to have governed by Urhobo customary law or the administration of estate law but not English law. 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 father. During trail, among all other evidence court preferred Section 36(1) of Marriage Act which was considered to be superior and overrides the State Law which is the Administration of Estate Law.

Furthermore, court in its calculating and analysis going by Section 36(1) of the Marriage Act, held that the widow was entitled to one-third (1/3) of the deceased estate and his children to the remaining two-thirds (2/3) of the deceased estate. At the Appeal Court, decision of the lower court was confirmed and the court of Appeal said the applicable

[43] (2003) SC.

law for the administration of the deceased's estate was English law as contained in Section 36 (1) of the Marriage Act.

While at the Supreme Court, the main issue for determination was the applicable law choice for the administration of the estate. Whether section 36(1) of the Marriage Act or the administration of Estate Law. It was made known to the court that Section 36(1) was part of the Marriage Ordinance enacted in 1914 and received as part of statute of General Application and it provided that where a person subject to customary law dies intestate succeeded by a widow or husband or children, his estate which would have been disposed of by any Will shall devolve in accordance with Law of England. Also, sub-section 3 limited the operation of the Section to the colony of Lagos. In spite of this limitation, it was held in *Cole v. Cole*[44] *Administrator General v. Egbuna*[45] that English law applies in cases of intestacy outside Lagos. The following facts were also noted by the court in its analysis.

i. The Marriage Act was included in the Laws of Nigeria 1948,
ii. Subsequently included in the Law of the Federation and Lagos Law of 1958,
iii. Marriage Act was omitted from 1990 Laws of Federation of Nigeria (LFN),
iv. Laws of Federation of Nigeria (LFN) 1990 contained only the Federal Statutes.
v. While Marriage under the Marriage Act fell within the exclusive Federal legislative list, succession was not included in the exclusive or concurrent legislative list,
vi. Implication of this is that it became a residual matter in the exclusive legislative competence of State laws.

The Supreme Court, through Ayoola J.S.C 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.

From the foregoing, based on the reasoning of the Supreme Court analysis, it was found that Section 49(1) of the Bendel State Administration of Estates Law applied to the distribution of the intestate estate of Chief Salubi and upheld the appeal.

In *Obusez v. Obusez*[46] where before the final decision of the Supreme Court of Nigeria in *Salubi v. Nwariaku* was decided, the court of Appeal in *Obusez v. Obusez* 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

[44] *(1898) 1 NLR 15*
[45] *(1945) 18 NLR 15*
[46] *(2001) 15 NWLR (pt 736) 377 CA*

arrived at *per incurian*, that is, arrived in error. The legal conclusion to be drawn from these decisions is that on death intestate of a person who married under the Marriage Act, the applicable law that would govern the distribution of the deceased estate is State and not Federal Legislation or English Law. Most states in Nigeria have enacted laws to govern the distribution of an intestates' estate of the deceased man.

Intestate Succession under Customary Law

Intestate succession under Customary Law in Western Nigeria on the other hand was built on a well principle of law clearly enunciated by the court in *Lewis v. Bankole*[47]. They are that on the death of the founder of a family, the eldest surviving son called *"Dawodu"* succeeds to the headship of the family[48].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[49].

The real and personal property of the deceased founder of the father devolves on all his children both male and female to the exclusion of other blood relations including brothers, aunts, sisters and cousins[50]as family property. Succession to the estate of the deceased man is on equal shares. In Western Nigeria which comprises of six states namely, Oyo, Ogun, Osun, Ondo, Ekiti and Lagos States, two modes of distribution of real and personal property of the deceased man-exist. The first is *Idi-Igi* (per stirpes) and *Ori-Ojori* (per capita). *Idi-Igi* is often referred to as distribution per stirpes, where the estate is distributed according to the number of wives deceased had. This mode of distributions generally regarded as the well-established and accepted mode. However, on *Ori-Ojori* (per capita) method, the estate of the deceased father is distributed according to the number of children. The case of *Dawodu v. Danmole*[51]explained and distinguished the two where the Privy Council was called upon to interpret the appropriate mode best suited for the case and in respect of property located in Lagos. In the aforementioned case conflicting claims were made in favour and against *'Idi-igi'* and *'Ori-Ojori'* the Board held that *'Idi-Igi'* is an integral part of the Yoruba native law and custom relating to the distribution of the intestate' estate of the deceased father, and is in full force and its observance and has not been abrogated[52].

Furthermore, it was observed that this mode is not contrary to the principles of natural justice, equity and good conscience[53]. On the other hand, the Board found *Ori-Ojori* to be a relatively modern method of distribution adopted as an expedient to avoid

[47]*(1909) 1 NLR 82; Tijani v. Secretary Southern Nigeria (1921) AC 399; Falomo v. Onakanmi (2005) 11 NWLR (pt 935) 126.*
[48]*Adesanya v. Otuenu & Ors (1993)1NWLR (pt 270) 414, Yissuf v. Dada &Ors (1990)4 NWLR (pt 146) 657.*
[49]*Amusan & Ors v. Olawumi (2002) 12 NWLR (pt 78) 31, Ologunleko v. Ikuomelo (1993)2 NWLR (pt 273)16.*
[50]*Amodu v. Abayomi (1992) 5 NWLR (pt. 242)503 at p512, Ologunleko v. Ikumelo(Ibid)*
[51] (1962)1All NLR 702
[52] Ibid
[53] Ibid

litigation[54].Similarly adoption of this mode of distribution is at the discretion of the head of family where dispute arises or envisaged.

Apart from the above controversial conflicting situations, Customary Law of Inheritance discriminate against women as wives and daughters in some jurisdictions in South-Western Nigeria where customary law permits some daughters to inherit the properties of their late father, quantum given to them or allowed them to inherit are so low compared with the quantum given to their male counter parts[55]. Also, customary law generally disinherits wives or widows in all states of South-Western Nigeria.

Wives or widows of the deceased man are generally considered as part of the properties left behind by the deceased man subject to inheritance by the male relative of the deceased husband[56]. Widows in Ikale and Ilara-Mokin in Ondo State respectively, Ado-Ekiti and Oye-Ekiti both in Ekiti State; Ile-Ife, Ede, Osogbo and Iwo in Osun State respectively; Anago, Ibadan, Ogbomoso, Iwo-Ate and Ibarapa in Oyo State, Ijebu and Remo-Parapo in Ogun State, Badagry and Isale-Eko in Lagos State[57] are not been permitted to inherit the properties left behind by their husbands.

From the foregoing, in order to prevent our customary law from going into extinction, because if no reform is made to it, substantial parts of it, if not all would be declared by the courts as being repugnant to natural justice, equity and good conscience. Presently, pluralized nature of laws of succession in the region, apart from the fact that they discriminate against widows, women and daughters, they contradict and conflict with one another.

However, to allow this trend of conflict and controversy to continue, it will automatically degenerate the level of miscarriage of justice in our courts because it has gotten to the level that when succession mattes come up for hearing in many courts, courts do often face with the problem of applicable choice of law and at the end of it all, it is the beneficiaries that suffered. The courts, in the case of *Salubi v. Nwariaku*[58], faced with the problem of applicable choice of law to be applied at the trail court (State High Court) when the matter first came up for hearing. The court was not sure whether to base its evidence on "Section 36(1) of the Marriage Act" or "Administration of Estate Law" or "Urhobo Customary Law", being the personal of the deceased". At the end, the trial court finally rested on Section 36(1) of the Marriage Act, the judgement was confirmed by the Court of Appeal. But at the Supreme Court after much deliberation and examination of different laws and evidence put before it, held that administration of

[54] Ibid
[55] *Akinnubi v. Akinnubi* (1997) 2 NWLR (pt 486) 144
[56] *Suberu v. Sunmonu* (1957) 2 FSC 83
[57] Akin Ibidapo-Obe: A Synthesis of African Law (Mushin, Concept Publishers Limited, 2005). Also, Akintunde Emiola; the Principles of African Customary Law (Ogbomoso, 3rd Edition, Emiola Publishers, 1997) pp. 121-140
[58]Ibid

estate law of the state should guide the distribution of estates of the deceased and not Section 36(1) of the Marriage Act.

The regional legislation enacted law on the subject on which it had full competence recourse to the legislation of the previous unitary government. Albeit on the same subject, or to English law is misconceived. Supreme Court went on and said, where there is conflict between such previous enactments and the later one, the former should be deemed impliedly repealed and the later one should prevail.

The Supreme Court impliedly held that Section 47(1) of the Administration of Estate Laws of Old Bendel State applied to the Intestate estate of late Chief Salubi. The court resolved similar situation in *Obusez v. Obusez*[59] the same way it resolved *Salubi v. Nwariaku.*

In many countries of the world, where indigenous laws in respect of certain issues are conflicting with another law, be it legislated laws or foreign laws, they have however allowed reformation through integration of all laws to take place. Once it is ascertained that the defects in the existing laws cannot be cured, the only solution is how can it be repeated or replaced with another one which will take care of different peculiarities.

Though, various options have been suggested at different fora but due to the peculiar situation which we find ourselves in Nigeria, most especially in six states of South Western Nigeria, the focused cure of this paper, integration of laws of laws of succession is hereby proposed. Integration is an outright abolition of all various systems of laws or the replacement of an existing law by a new single law of succession that would be acceptable to all and sundry.

In a society like ours, where we have many ethnic societies, it may not just be easy to have integration of laws on a platter of gold. Partial success has been recorded on criminal law. In Northern parts of Nigeria where penal code operates[60], criminal parts of Sharia laws have been codified and integrated into the penal code[61]. Offences like drinking of intoxicating drinks, stealing, adultery and others, formerly punishable by maiming, toning, amputation or all kinds of mutilation were subsumed and integrated into Penal code.

In view of the above, a kind of law of succession that will not conflict and at the same time discriminate against women either as daughters or wives or widows is advocated. Also, this type of law of succession that this paper is advocating is the one that will foster unity among the beneficiaries in the sense that, the position which one beneficiary takes in hierarchy of number of children in the family and sexes will not be advantageous or detrimental to one's right to inheritance.

[59] Ibid

[60] Criminal Code, applicable in Southern parts of Nigeria.

[61] Cap 89, Penal code with Sharia Penal Code contained in Laws of Federation of Nigeria 2004.

Furthermore, in addition to the above stated points, where proper integration of laws is done, religion affiliation would not be an influencing factor. Be it a Muslim or Christian or Pagan will not have anything to do with how estates of a person is distributed as it was demonstrated by the court in the case of *Adesubukan v. Yinusa*[62], where religion at the trail courts was seen as determinant factor that determined the validity of a deceased Wills.

As it was done in civilized and advanced countries, effective integration passed through legislative processes. This paper is however, calling South Western Legislative Houses to take it as a matter of urgency to sponsor a bill that will integrate laws of succession in the regions. Doing this will allow the region to have 'just' only one uniform law of succession in place, the same way "Amotekun Security Outfit law 2020" was passed in all the six states of the South Western region which gave birth to Amotekun Security personal in all six states of the region.

Reformation through integration will involve consideration and examination of relevant provisions of law provided by the English Common law of succession and in line with Sharia or Islamic laws. The advocated uniform law of succession will accommodate different types of religions and at the same time have regard for those that practiced them. Also, nature of marriage contracted will not be a yardstick or criteria for those who choose any type of marriage to inherit or not to inherit.

As advocated in this paper, percentage for inheritance under the uniform shall be as; sixty percentage (60%) for the children of the deceased, thirty percent (30%) for deceased's wife or wives while the remaining ten percent (10%) shall be for deceased's relatives whether patrilineal or matrilineal or combination of the two.

If it is embraced, uniform law of succession will not only certain, but it will be definitely codified and as well as settled like any other law in the land.

In conclusion, as earlier reiterated, the best approach to eliminate conflicts in our laws of succession in South Western Nigeria and in Nigeria at large is to embrace integrated method of unification in place of pluralistic systems. Though, the approach has been criticized by the practitioners of custom and Islamic laws. Their criticisms are based on different perspectives. For the Muslims, they claimed that how would they abandon the way of Almighty Allah for human way? And for the chronic customary law believers, they see the uniform choice of law through integration as another attempt to colonize them again through another means.

Before resulting to integration method, their thoughts have been envisaged and adequate provisions have been made to take care of their claims.

In replacing different laws of succession with a new single law, rights of devoted Muslims who will not like to embrace any other law other than Islamic or sharia law has been taken care of by inserting Islamic way of devolution of property into the new

[62] Ibid

law of succession as prescribed by the Almighty Allah in Quran chapter 4 verse 7 which say;

> From what is left by parents and those nearest related, there is a share for men and a share for women, whether the property be small or large a determinate share.

Also, in the prescribed manner as stated in Holy Qur'an chapter 4 verse 32 which are explained by table below:

	Sharers	Share	Conditions under which the share is inherited	Whether excluded of converted into a residuary
1.	Husband	¼ ½	When there is a child or son's child (H.L.S) When there is no child or son's child H.L.S	Excluded by none
2.	Wife (one or more)	1/8 ¼	When there is a child or son's child (H.L.S) When no child or son's child	Excluded by none
3.	Daughter	1/3 2/3 R	if one) when there if two) is no son	Excluded by none Converted into a residuary if there is a son
4.	Son's daughter	1/3 2/3 R	If one) when no son or son's son If two) when no daughters or more) or higher son's daughter.	Excluded by son, or son's son of higher grade, also Excluded by two or more daughters or by two or more son's daughters with two or more a son's daughter or higher grade Converted into a residuary or son's son of equal or even lower grade
5.	Father	1/6	Where there is a son or sons son (H.L.S)	Excluded by none

		$\frac{1}{6}$plus R R	When there are one of more daughters, son's is daughters and there is no son or son's son. When no child or son's child (H.L.S)	In this case the father a sharer and also a residuary Converted into residuary in the absence of any child
6.	Mother	$\frac{1}{6}$	When there is a child or sons child (H.L.S) or two or more brothers or sisters whether full blood or half and whether they inherit or are excluded or there is a brother and sister and the father	Excluded by none
		$\frac{1}{3}$ $\frac{1}{3}$ of R	Where there is no child or son's child and not more than one brother and sister When there is a wife or husband and the father	Converted into a residuary by the father
7.	True grandfather	$\frac{1}{6}$ $\frac{1}{3}$ of R R	When there is a child or son's (H.L.S) and no father or nearer true grand-father When with daughters or only son's daughters When no child or son's child	Excluded by the father or near true grand-father
8.	True grand-mother	$\frac{1}{6}$	When no mother and no nearer true grand-mother	Paternal true grand-mother excluded by father or by true grandfather. Any true grandmother is excluded by mother or by nearer true grandmother, whether paternal or maternal. Not a residuary.

9.	Full sister	$\frac{1}{2}$ $\frac{2}{3}$	If one) when no child If two) or son's child or} (H.L.S) or more } father or } brother	Excluded by son or son (H.L.S) father or brother. Also excluded as sharer by one or more daughters or son's daughter.
		R		Converted into residuary by full brother, that is when with one or more full brothers subject to not being excluded or when with one or more daughters or son's daughters and no excluder; the full sisters, one or more, become residuary with daughters, i.e. they take the residue after deducing the shares of daughters.
10.	Consanguine sister	$\frac{1}{2}$ $\frac{2}{3}$ $\frac{1}{6}$ R	If one) When no child If two) or son's child or (H.L.S) or more) father or brother or full sisters When with one full sister only the sister take $\frac{2}{3}$ and consanguine sister take $\left(\frac{2}{3} - \frac{1}{2} = \frac{1}{6}\right)$	Excluded by sons or sons father or by full brother or by full sister when she is a residuary Converted into residuary by a consanguine brother. When there are one or more daughters, or son's daughters and no excluder
11.	(Uterine brother or sister	$\frac{1}{6}$ $\frac{1}{3}$	If one} when no child If two} or son's child or} (H.L.S) or More} father or H H S)	Excluded by son or son's son father, or true grandfather, or daughter or son's daughter. Not a residuary

Agnatic Heirs

S/No	Heirs	Kind of Residuary	Under what Circumstances
1.	Son	Original Residuary	Whether he is alone or with other heirs
2.	Daughter	Not original residuary	When she is inheriting with son
3.	Son's son	Original residuary	When there is no son
4.	Son's daughter	Not original residuary	When she is inheriting with son's son of equal grade or even with son's son of lower grade
5.	Father	Original residuary	When there is no issue
6.	Mother	Not original residuary	When she is inheriting with father in the absence of any issue or sisters
7.	Germaine brother	Original residuary	When there is no son, son's son (H.L.S) father
8.	Consanguine brother	Original residuary	When there is no son, son's son (HLS), father and germaine brother
9.	Germaine sister	Not original residuary	When there is only daughter or son's daughter and in the absence of germaine brother. She is also converted into a residuary in the presence of germaine brother.
10.	Consanguine brother	Not original residuary	When there is only daughter or son's daughter and in the absence of consanguine brother and consanguine brother and germaine sister.

Distribution of Estate

S/No	Sharers	Sharers	Sharers
1.	Father	When there is a child or son's child	When there is no child or son's child
2.	True grandfather	Ditto (in default of father)	Ditto (in default of father
3.	Mother	In all cases expect vide next column	When the father co-exists with mother and spouse only and there is no child, or son's child or two or more brothers or sisters
4.	Daughter	When there is no son	When there is a son

5.	Son's daughter	When there are no two or more daughters and there is no son's son's son of the same degree and no excluder	When there is a son's son of the same degree, when there is a son's son of lower degree and she has been excluded
6.	Full sister	Where there is no full brother, or daughter, or son's daughter and no excluder	When there is a full brothers. When there is a daughter or son's daughter and no excluder.
7.	Consanguine sister	When there is no consanguine brother or daughter, or son's daughter and no excluder.	When there is a consanguine brother. When there is any daughter or son's daughter and no excluder

For the native law and custom practitioners, their interests and rights are also noted in the proposed new single law of succession. Tribes and religions which are presently essential criterium are not going to be the yardstick factors for who will and who will not participate in inheritance processes.

From the foregoing, where unification system of integration is embraced, it will make administration of laws and courts less cumbersome, that is, references to the law quoted or relied upon by the litigants will not be either or to English system of Law, Islamic law or customary law, as it is presently available, but to the unified law of succession.

Also, unlike what we have under some customary laws where some rules of inheritance are not contained in a written form, proposed new single law of succession otherwise called unified law of succession will take care of the effects that system of marriage which one contracted would have brought to the mode of distribution, most especially, where one dies intestate or fails to prepare a valid Will.

Alternatively, integration by way of restatement can also mean 'reception of a foreign legal system' which had been tested in other countries. The system or idea is good once it is certain that it is going to take care of the interest of the people who voluntarily accepted the idea. For instance, Turkey imported Swiss law in 1926 when it was found beneficial to the people of Turkey. Though, it must be noted that any system of law or code which is unrelated to the culture and the needs of the people of a particular community stands a very slim chance, if any at all, of providing a viable benefit. Where it is confirmed that the two countries have some values in common, the reception in this circumstance, given necessary goodwill, may prove beneficial to a large extent. In the same manner, Ethiopia took a similar step forward by adopting the law of France and England the same time which Nigeria may also follow the same route. Also, Nigeria in her quest to have new law on succession, can approach South Africa who has merged its customary law, Islamic law with that of general law and thereby presently have "unified law on succession, marriage and divorce"