



## A REVIEW OF LITERATURE ON TESTATE AND INTESTATE SUCCESSIONS UNDER THE YORUBA CUSTOMARY LAW

By

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### **Abstract**

*The Yoruba ethnic group is located in Southwest Nigeria. The Yoruba people have been in existence from the time immemorial, Yoruba customary law makes provision for Succession and this norm is guided by intestacy. However, testate succession among the Yoruba is not common and it is restricted to nuncupative (oral) wills. The Yoruba customary law is based on the patrilineal system of inheritance, therefore intestacy followed the male line. Under this arrangement the (Daudu) the eldest son shoulders the responsibility of taking care of the estate after the demise of their father. Moreover, male and female offspring inherit the estate and are joint owners. The offspring have the right to attend family meetings. The objective of this study is to examine the main provisions and principles of the norm testate and interstate succession under the Yoruba customary law. The paper discusses the rights of legitimate and illegitimate children, adopted children, spouses and its effect on inheritance. The study explores the reasons that influence the concept of (Idi-igi) per stripes and (Ori- ojori) modes of property distribution among the Yoruba ethnic group. The study highlights on the impact of gender dynamics cultural norms on the sharing of estate in testate and interstate succession within the Yoruba ethnic group. The study uses doctrinal methodology of research, therefore relies on both primary secondary sources. The paper makes useful recommendations on how best to improve the distribution of estates under Yoruba customary law.*

**Keywords:** Testate, Intestate, Successions, Yoruba, and Customary law.

### **1.0 INTRODUCTION**

In Africa custom is regarded as the way of life of a given people. This is a traditional and recognized norm that is accepted to a particular group of people. Customs varies from community to community. However, customary law is seen as a body of traditions and customs which guide the various relationships between individuals of the community in their native setting.<sup>1</sup>

The term Customary Law is explained as not a law that emerged by any sound man made law in Nigeria, yet it is not only enforceable, but binding on the parties subject to its sway within Nigeria jurisdiction.<sup>2</sup> Customary law, according to jurist is the organic or living

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<sup>1</sup> C.O Okonkwo, Women and the Right to Acquire and Own Land in Nigeria: Examining the Conflict between Statutory and Customary Law. (2022)

<<http://journals.ezenwaohae.org/index.php/unizikjpl/article/download/>> accessed on 5 January, 2026.

<sup>2</sup>Zaidan v. Mohssen (1973 ) 11 F. S. C 1



law of the native people of Nigeria. The law regulates the people's ways of life and transaction. It is a moving law therefore not static. It is said to be a reflection of the culture of the indigenous people of Nigeria.<sup>3</sup>

The Black's law dictionary states that succession is the gathering of rights or estate by Inheritance under the law of descent and sharing.<sup>4</sup> According to a scholar, Succession is seen as the Law and guidelines under which the heirs of a deceased individual share the estate after the death of the deceased. Therefore, such beneficiaries becomes the entitle to a estate or interest in estate of a deceased individual.<sup>5</sup>

## 2.0 IMPACT OF BRITISH RULE ON YORUBA LAND

On succession and inheritance among the Yoruba people, the British colonial rule had a lot of impact with the annexation of Lagos in 1861 and this resulted with seizure of what is called Nigeria today by 1900. The British occupation of Nigeria was in three different stages. First was the occupation of Lagos followed by expansion into the Yoruba areas. After which the British occupied the South east area of Nigeria<sup>6</sup>.

Later, the North was secured for the British by George Goldie of the Royal Niger Company. The final joining together of the Colony and the Protectorate of Lagos, the Protectorate of Southern Nigeria and the Protectorate of Northern Nigeria took place in 1914. Nigeria became an independent nation on October 1, 1960.<sup>7</sup>

The Received English Law is one of the sources of Nigeria law which is made up of Common law, Equity, and Statutes of General Application in Force in England as at January 1<sup>st</sup> 1900. The English Wills Act of 1837 was one of such Statutes of General Application which applied throughout the nation during the British rule.<sup>8</sup>

This Act empowers a testator to dispose of his estate be it real and personal properties using Will as he likes. In effect of any indigenous law and custom which negate or at variance with the provisions of the Wills Act was not enforceable and the provisions of the Wills Act prevailed. This the main decision in classic case of *Adesubokan v. Yunusa*<sup>9</sup>

Prior to the enactment of the Wills Law of old Western region, the Wills Act of 1837 a Statutes of General Application was in use by virtue of the High Court. The Wills Act 1837 is incorporated by some States of this nation into their various State laws.

In recent times, the Wills Act as amended in 1852 are in use in some States of the Federation that are yet to incorporate the Wills Act into their State laws.

The setback of such situation is that such laws may have been amended in England to make them relevant to contemporary times.<sup>10</sup>

## 2.1 Law Of Succession Among the English People

The concept of succession according to scholars is entrenched deeply in historical, cultural and societal norms. To this end different cultural contexts and legal systems have created

<sup>3</sup>OyewunmiAjagunbade v. Ogunesan. 990 NWLR

<sup>4</sup> Garner, B. A, Black's Law Dictionary (Thomson Reuters, United States of America, 660

<sup>5</sup> Oni, B.A, Discriminatory Property Inheritance Right Under the Yoruba and Igbo Customary Law in Nigeria: The Need for Reforms.

<sup>6</sup>Akande, J, Constitutional Development in T. AA. Aguda.The Challenge of the Nigeria Nation.An Examination of its Legal Development. 1960-1985.

<sup>7</sup>Asein, J.O, Introduction to Nigerian Legal System. ( Ababa Press Ltd, Lagos 2005) 149.

<sup>8</sup>Ajuzie, C.A, Modern Family Law and Practice (Printable Company. 2012)

<sup>9</sup>(1971) 1 All NLR 227

<sup>10</sup>Osondu, C.A Modern Family and Practice (Printable Publishing Company, Company, Lagos, 2012)



their own methods of succession taking into consideration their traditions, customs and values and this varies from one community to the other. The fundamental principles of succession are to ensure equity, legal assurance in the transfer of assets and duties upon a person's death.<sup>11</sup>

Succession is governed by different legal principles and statute which explain how a late individual estate is shared among their beneficiaries and offspring. However, in England and Wales the main legislation that guides succession is the Administration of Estate Act 1925. This legislation provides the legal framework for intestate succession and the sharing of property where provision is not made for a valid will.<sup>12</sup>

In ancient and early contemporary agrarian communities, the law of succession took over additional responsibility to safe guide not only the change of private estate but also political power structure. Two variables determined the gradual transition in the role of succession law among the Europeans.

Firstly, the improvement in family architecture as result of the industrial revolution and the breakup of economic and political due to industrial revolution of the era.<sup>13</sup> The law of succession, in recent times constitutes the most significant survival method of claim of legitimate rights which in past, particularly in the economic arena, mainly exclusive one.<sup>14</sup> The law of succession deals with the transmission of the obligations and rights of the individual that is late in respect of his property to his offspring and successors. In the same vein, it involves the rules guiding the administration of the estate by his representatives of the deceased individual involving active engagement in respect of property within a given territorial jurisdiction. Succession and inheritance are common phrases in most legal system.<sup>15</sup>

The law of Succession functions as mode of sharing an individual's patrimony. All Succession law operational modes make arrangement for modus of acquisition that result in the transfer of the individual's estate to his legal successor. However, Testamentary succession involves the testator to decide a worthy legal successor.<sup>16</sup>

Succession is the transferring of property to individuals after the demise of the owner of the estate. It may be testate or rather intestate. Where the owner of property now late made a will, such an individual is said to have died testate. On the other hand, in the situation where a deceased individual failed to make a will such person is to have died intestate. Intestacy principle is the rule under customary law. Succession is a method that grants the organized transfer of properties riches and duties to the offspring or to recognized beneficiaries.<sup>17</sup> Succession deals with many vital steps such as knowing the assets debts of the deceased person, identifying the legal offspring or beneficiaries, taking stock of the

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<sup>11</sup> Rollison, M.D Principles of the Law of Succession to Intestate Property. (1935) 11 (2) *Notre Dame Law* 14

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

<sup>14</sup> Ishor, D.O, Anzaku, E.D.I, Idyorough, and S.M, Nwanan Sociological Analysis of the Changing Patterns of Inheritance and Succession in Traditional African Society (2013) 3 (18) *Sociological Analysis*.

<sup>15</sup> Zimmerman, R., (2005) *The Private Law of Succession in Europe: Comparative Observations on Law of Succession in England and Wales, France and Germany* (2015) 13 (4) *England Review of Private Law*, 475-495

<sup>16</sup> *Ibid.*

<sup>17</sup> Adekile, G.M, *Succession at Customary Law. Addressing the Crossroads of Constitutional Conflict's*.(2010) 1 (1) *Olabisi Onabanjo University Law Journal*. 21-47.



debt or taxes profile and sharing the leftover assets in line with the relevant applicable laws.<sup>18</sup>

Inheritance is defined as estate or property received from ones descent under the Laws of intestacy or property that an individual receives either by device or bequest.<sup>19</sup>

In Nigeria inheritance is often determined the customary guidelines of the place the deceased individual comes from and not necessarily where he resides or abodes.<sup>20</sup>

Succession under English legal system is faced with many challenges and conflicts. Disputes may come up as a result of many claimants to the property, but more especially disputes may arise over the interpretation or validity of a will. In some cases disputes may occur as result of some beneficiaries feel being marginalized in the sharing of estate.<sup>21</sup> Whenever, such disputes occur, the court will look into the validity of the will in question. Review any arguments or evidence made available before the court. The court will base his judgment on legal principles and the applicable laws.<sup>22</sup>

Under the English law Succession it recommends a framework for the proper sharing of property or assets after the demise of an individual. Intestate succession is a situation whereby an individual dies without making provision for a valid will. Whereas, testamentary succession is guided by sharing of property in accordance to dictates of a valid will. For adequate comprehension of the principles and rules it is fundamental in order to ensure the wishes of the deceased individuals are fulfilled to the letter in sharing their estate particularly as recommended by the law.<sup>23</sup>

The English legal system has a lot of influence on the Yoruba customary law since the advent of the British rule in Nigeria.

### 3.0 YORUBA PEOPLE

The Yoruba people occupies the Southwest of Nigeria and consists of different types of sub-ethno cultural groups such as Oyo, Ibadan, Abeokuta, Owo, Ijebu., Ekiti, Ondo to mention just a few. The lingua franca of the people is the Yoruba language with different dialects.<sup>24</sup> The Yoruba ethnic group has rich religious background they worship *Ifa* and are guided by the norms of various deities. Other religions that the Yoruba people followed are Islam and Christianity. Similarly, the Yoruba's had highly sophisticated mode of governance and the people were well organized long before the contact the British rule.<sup>25</sup> The traditional leadership of the Yoruba people are known as Oba and are the custodian of the people's cultural heritage from the time immemorial long before the advent of the Europeans, the Yoruba had robust trade links, with Yoruba towns such as Abeokuta, Oyo, Ile-Ife were known for their markets and craftsmanship.<sup>26</sup>

The Yoruba people have strong family and community values. The extended family is an integral part of the family system. They encourage kinship ties and obligations performing

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<sup>18</sup> Okunola, M.A, Interaction between Islamic Law and Customary Law of Succession among the Yoruba People. ( Doctoral Dissertation, University of Lagos, 1984)

<sup>19</sup> Garner, B A Black Law Dictionary. Thomson, Reuters United States of America. 90

<sup>20</sup> Akintunde, E Emiola's African Customary Law, Emiola Publisher Limited, Ogbomoso, 0

<sup>21</sup> Ize-Iyamu v. Alonge (2007) NWLR (Pt.1024) 84

<sup>22</sup> Ibid.

<sup>23</sup> Kerridge, R, Parry & Kerry. Law of Succession, 12Ed (London, (Sweet and Maxwell 2009) 1

<sup>24</sup> Johnson, S, The History of the Yorubas (Routledge and K. Paul, London, United Kingdom, 1973) 3-14.

Oyewo, A.T. A Survey of the African Law and Custom, (Jastor Publishers, Ibadan, 1999), 2-3

<sup>25</sup> Obilade, A.O, The Nigeria Legal System (Revised Edition) Sweet and Maxwell, London, 1979.

<sup>26</sup> Marshall, G.A, Women, Trade and the Yoruba Family (Columbia University, 1964), 60-65.



a vital place in social interaction of the people. One of the cardinal principles of the Yoruba culture is respect for elders and communal involvement are key within Yoruba community. Another important element of the Yoruba traditional system is indigenous ceremonies such as rites of passage and the age grade system.<sup>27</sup> Succession is part and parcel of the Yoruba tradition and culture.

### 3.1 Yoruba Customary Law

The people have perfect system for the transmission of property and duties upon the demise of a person. The principles of succession and Yoruba customary law are interwoven with lineage, family ties and inheritance rights. To safeguard this long aged indigenous system, the traditional rulers assist in upholding the norms. In contemporary era, Common law legal system co-exists with the indigenous customs and succession in Yoruba community continues to show-case the cultural norms and indigenous way of life of the Yoruba people.<sup>28</sup>

Customary succession is the traditional type different from that of the Common law or Statute but rather based on indigenous, practices and customs of the traditional people which are respected therefore binding and enforceable between individuals which are within the jurisdiction.<sup>29</sup> Under the Yoruba customary law, succession is vital part of communal and family life. Therefore succession is guided by rules and regulated with a lot of attachment to the Yoruba belief system and indigenous cultural practices<sup>30</sup> Yoruba customary law makes provisions for orderly transfer of estate and duties attached to it upon the demise of a person and it recommends tangible regulations for sharing properties particularly when a reliable will is not available.<sup>31</sup>

Customary law of succession among the Yoruba people is based in accordance with indigenous practices and customs of the local society which are not only binding but at same time enforceable particularly between individuals that are subject to it. Customary succession among the Yoruba people of the Southwest of Nigeria is sole intestate with the guiding principles based on the tradition, customs and beliefs.

Custom varies from society to society, same with inheritance it varies from one ethnic group to the other. Before the enactment of the 1999 Constitution of the Federal Republic of Nigeria as Amended which is a replica of the 1979 Constitution, the right of inheritance was based on the status of the child. Hence a child born outside the wedlock of an existing statutory marriage were not entitled to their share in the sharing of their daddy's estate.<sup>32</sup> This was decided in *Cole v. Akinyele*, the decision was that it was against public policy to permit the father to make legal that child by any other mode than the laid rules by the Legitimacy Ordinance.<sup>33</sup>

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<sup>27</sup>Shitta-Bey, O.A, The Family as Basis of Social Order: Insight from the Yoruba Traditional Culture (2014) 12 (1)

<sup>28</sup> Ibid.

<sup>29</sup> BBIH, I.O, Customary Succession Law in Modern Ibo Land: Judicial and Legislative Dimension in Focus (UNIBEN Seminar Paper) 2008/2009. Onokah, M.C, Family Law (Ibadan-Nigeria, (Spectrum Books Ltd. 2003) 55.

<sup>30</sup> Lloyd, C, Some Notes on the Yoruba Rules of Succession and Family Property (1959) 3 (1) Journal of African Law 7-32.

<sup>31</sup> Bello, M.A, Principles and Practice of Succession under Customary Law. National Judicial Institute, 2017 10-12

<sup>32</sup> Section 42 (2) of the 1999 Constitution of the Federal Republic of Nigeria and Section 39 (2) of the 1979 of the Constitution of Federal Republic

<sup>33</sup>(1960) 5 F. S.C. 84



The Yoruba customary law is faced with challenges which the African customary laws also encounter, yet pragmatic approaches have often been engaged to ensure the disputes are settled with any grunges. Most of cultures in Nigeria make use of patrilineal method of succession usually tracked through the father's lineage.<sup>34</sup> In some regions in Africa different method is adopted like primogeniture, and it varies from one community to the other. This method of inheritance where by the eldest son in a given group of relatives solely inherit the property of the deceased person.<sup>35</sup>

The indigenous law and customs among the Yoruba people, particularly in relation to succession and inheritance are ancient practices and respected by the Yoruba ethnic group. Yoruba customary law of succession and inheritance seems to be accepted by most constituent Yoruba nation States. Under Yoruba Indigenous Law and Custom, if a person dies intestate, his offspring whether male or female inherit the property as one entity. The children of the deceased person are regarded as joint owners of the estate and the most senior son referred to as *Daudu* succeeds the duty for management of the property. This position is well respected in Lagos and most part of the Yoruba region. As in the classic case *Lewis v. Bankole*.<sup>36</sup>

Though, the eldest takes over the father's land. He enjoys the personal use of the property, so also are other members of the family. Such other members of family are entitled to live in house. Only widow who takes another husband forfeit such rights. The eldest son holds the estate in trust for the family. The under this arrangement had no right to sell house or the land.<sup>37</sup>

Under the Yoruba customary law there two methods of sharing of a father's property, the *Ori-Ojori* and the *Idi-Igi* concepts. Under the first classification, which is often adopted in monogamous family setting, where the deceased person is survived by only one wife or polygamous setting where the deceased individual left a lot of property that can be shared among all his wives and children.<sup>38</sup>

The second type of sharing the property of a deceased person among the Yoruba ethnic group is called *Idi-Igi* (per stripes). Under this arrangement the deceased is survived by more than one spouse, thus each spouse stands for a branch of the estate. The most famous case on the matter is *Daudu v. Danmole*, where the Supreme Court held that with the deceased survived by four wives and nine children and many grandchildren the estate left behind be shared per capita (*Idi-Igi*) that the property be divided into four equal parts showcasing the number of wives and not by the number of surviving children.<sup>39</sup>

#### 4.0 REVIEW OF LITERATURE

The literature review highlights on testate and intestate successions under the Yoruba customary law with a view comprehend scholarly positions in contemporary era. Besides, this segment examines the impact of *Idi-Igi* and *Ori-Ojori* methods of sharing of estate under the Yoruba customary law. The review discusses the impact of gender dynamics and cultural norms on distributing of testate and intestate successions. Besides, he

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<sup>34</sup>Yakubu, C. M. O, Property, '*inheritance and Distribution under Customary Law.*' In towards a Restatement of Nigeria Customary Law.( Oshinbajo, Y. and Kalu, A.W ed.).Federal Ministry of Justice Review Series

<sup>35</sup> Osborn's Concise Law Dictionary (9<sup>th</sup>ed ) (Sweet and Maxwell, London, 2001.

<sup>36</sup> ( 1908 ) 1 NLR 81

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> ( 1958 ) 3 F. S. C. 46



discusses how disputes and conflicts arising from sharing of estate among the Yoruba ethnic group of Southwest region of Nigeria

#### 4.1 Testate and Intestate Successions Under the Yoruba Customary Law

Although, many studies have been conducted on Testate and Intestate successions under the Yoruba Customary Law on the Yoruba region of Southwest Nigeria within and outside the region of West Africa, yet literature survey has revealed that very few scholars have written on the review of literature of the subject particularly from the study of salient provisions and principles of testate and intestate successions under Yoruba customary law. Despite this reality, there are no studies done on the position of the Yoruba customary law rights of spouses, legitimate and illegitimate children particularly as it relates to the context of inheritance. It is against this background this study in examining testate and intestate successions under the Yoruba customary law.

Rebecca<sup>40</sup> is of the view that any individual of sound mind may make a will disposing his or her estate as long as the appropriate laid down rules in the Wills Act 1837 have been. This study provides appropriate framework in understanding the present work yet it left a gap. This work examines testate and intestate succession under the Yoruba customary law in Nigeria. The study gives comprehensive package on the theme at hand particularly as it relates to contemporary era

Obilade<sup>41</sup> explained customary law in his work, that this is made up of traditions and accepted customs of the people and varies from one place to the other. Essentially, the scholars argued customary law is written law. Though the work is an asset to the present for it gives detailed knowledge in understanding the discourse under review. But the study created gap which this paper makes attempt to bridge

Nwogugu<sup>42</sup> discusses family law in Nigeria with reference to disposition of will a doctrine recognized by customary law The author makes reference to the Igbo ethnic group and examines testate succession under Igbo customary law. The scholar argues that the customary law takes the shape of an oral declaration usually done while the testator is healthy or in anticipation of his demise. He highlights on major concepts such as *Idi-Igi* and *Ori-Ojori*. The scholar reviews the classic case the *Privy Council v. Dawodu v. Danmole*. The scholar concludes his argument on the fact that the Yoruba customary law in sharing of estate is in line with natural justice equity and good conscience. This is a comprehensive work, yet there are areas of lacuna which the study failed to address. The present study examines these areas of vacuum.

Adubil<sup>43</sup> highlighted Will in his work as a testamentary document in which an individual makes and executed in accordance to the Wills Law and recommends other guidelines as may be necessary. He makes reference to Sections 4 and 9 of the Wills Act of Lagos State. The author uses Section 6 of the former Western Region of Nigeria. This foreign inputs assist in understanding the Yoruba customary law, the author omitted discussion on the subject matter which this study addresses

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<sup>40</sup> Rebecca Probert, Cretney and Robert's family law(3th ed, Sweet and Maxwell, London, 2012). <https://www.amazon.com/cretney-and-proberts-family-law//dp/0414023285>> accessed 18 Nov

<sup>41</sup> Obilade, The Nigeria Legal System(Revised Edition) Sweet and Maxwell, London, 1979.

<sup>42</sup> E.I Nwogugu Family Law in Nigeria (3rd edn. Heblin Publish Plc 2014.)

<sup>43</sup> C.O. Adubi, *Legal Drafting, Conveyance Law, Wills and Practice 201.2* Revised edition; The Lighthouse Publishing Company Limited Lagos, Nigeria.



Olajubu<sup>44</sup> in his book written in Yoruba language titled *IweAsa Yoruba* explained comprehensively inheritance under the Yoruba norms. He outlined the negative consequences of sharing inheritance properly. The author appreciates the fact that norm exists side by side with the Muslim laws of inheritance. The write-up overlooked provisions and principles of the norms of testate and interstate successions under Yoruba customary law.

#### **4.2 Factors that Influence the Choice between *Idi-Igi* and *Ori-Ojori* Methods of Estate Sharing under Yoruba Customary Law**

Several scholars write on Yoruba customary law concerning the Yoruba cultural norms. Though these authors appreciate the richness of Yoruba historical antecedent, yet most scholars are mute on the factors that impact the choice between *Idi-Igi* and *Ori-Ojori* methods of estate sharing under Yoruba customary law.

Taiwo and Akintola<sup>45</sup> in their scholarly work discussed the custody of will and were of the view that when the testator is alive, he could keep the original version of his Will in the Probate Registry of the High Court of the State where he stays, for safe custody. By so doing, the Wills will be under his seal and the seal of the High Court. This documentation process is useful method in improving the Yoruba customary law, though the study created a gap which this work makes attempt to discuss

Akintunde<sup>46</sup> evaluated sharing of a gift created *inter-vivos* could be taken into consideration on the final sharing of what left over of the person's assets. This method of distribution is solely limited to matrilineal communities or may be mainly designed to benefit the female offspring of patrilineal societies. Such gift is often created to people who are not direct offspring of the deceased person and not necessarily benefit from the asset of the deceased individual. The concept of gift is relevant to the discourse hence an asset to the study. However, this study undertakes to resolve the gap created for deeper understanding of present research.

Bello<sup>47</sup> explained that beneficiary under customary law is total different from enlisted under a Will. He posited that under Wills an individual not related to the testator can be given shares from the deceased asset whereas, offspring of the testator are exclusive beneficiaries to the property of a deceased individual under the Yoruba Customary law. However, some ethnic groups differentiate between genders, like the Binis and the Igbo ethnic groups. The Yoruba ethnic group of Southwest Nigeria do not discriminate on the basis of sex. This is distinctive feature of the Yoruba people of inheritance norm. The comparative work creates insight into customary law in Nigeria and assists to enrich the literature of this study, it left blank spaces which this study endeavour to fill.

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<sup>44</sup>Olajubu O, Daramola, *'IweAsalbile Yoruba'*, ( Longman Nig. Plc., I Lagos1982) 83

<sup>45</sup>AdewaleTaiwo and OluwatoyinAkintolaIntroduction to Eauiny and Trust in Nigeria. (Princeton and Associates Publishing Co. Ltd Lagos,20 16).

<sup>46</sup>Akintunde.E, Emiola's African Customary Law. (Emiola Publisher Limited, Ogbomosho, 201)

<sup>47</sup><http://nji.gov.ng/images/workshoppapers/07/refresher.Judgesandkadis/s4.pdf>



Margret<sup>48</sup> the author used Statutory Provisions of the Nigeria Constitution for her illustrations especially inheritance Provisions in the Marriage Act. Its effect is exclude from the ambit of Succession law under customary law, the Succession rights in certain situations to individual who marry under the Act and also those of any offspring of that kind of marriage not minding whether or not such offspring marry in accordance to the Act. The appropriate Statutes are used in the explanation of succession of marriage consummated under the Act and the position of the customary. This shed light on possible areas of conflict between the Act and customary law. This scholarly study is useful to the study. But this paper addresses the areas of vacuum created.

#### **4.3 IMPACTS OF GENDER DYNAMICS AND CULTURAL NORMS ON THE SHARING OF ESTATE**

In the recent times many scholars have written on the Yoruba customary law and have examined the theme from different perspectives so as to improve Yoruba in relation to the expectations of the contemporary era. However, little is done to evaluate the Yoruba customary law from the impact of gender dynamics and cultural norms on the sharing of estate in testate and intestate successions among the Yoruba ethnic group of Southwest region of Nigeria.

Oni<sup>49</sup> focused on gender discriminatory nature of estate rights particularly under the Igbo and Yoruba customary law in Nigeria and argued that there is the need for changes. Furthermore, the writer explained integration of outdated cultural practices was responsible for the trend. He suggested that it was time to align customary norms with constitutional rights and principles of equality. This is contemporary approach to the study of customary law in Nigeria. The study however, left some gaps which this study examines.

Lloyd<sup>50</sup> explored a social anthropological method to estate as a social institution to examine the Yoruba customary regulations of family estate and succession. The author discussed estate gift, and differences between testate and intestacy. Furthermore, the scholar outlined the structural nature traditional political and Yoruba patrilineal system. Though the themes of discourse are similar to our study yet it omitted some gaps which this study addresses in due course.

Animashaun and Oyeyin<sup>51</sup> posited the legal doctrines and frameworks that guided succession and inheritance in Nigeria. He highlighted on Wills according to the Statutory law and Probate section of the High Court of Justice. This a reference material for this study, though it overlooked some areas which this attempt to look into properly.

Sagay<sup>52</sup> gave a vivid and comprehensive details of the case law, principles and relevant discussions as it related to the Nigeria law of Succession . The author compared and contrasted intestate and testate succession for deeper understanding of the explanation of the subject matter. This framework provided a comprehensive profile of Succession law in Nigeria. This notwithstanding, the study left some vacuums which this study takes care of.

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<sup>48</sup> Margret, C., Family Law. Spectrum Books Limited 00, Ibadan. <http://www.amazon.com/family-law-margret-onoka/dp/97809489>, accessed 05 March

<sup>49</sup> Oni, B. A Discriminatory Property Inheritance Rights Under the Yoruba and Igbo Customary Law in Nigeria: The Need for Reforms JOSR Journal of Humanities and Social Studies,

<sup>50</sup> Lloyd, P. C, Some Notes on the Yoruba Rules of Succession and on Family Property Journal of African Law

<sup>51</sup> Animashaun, T. O. G, and Oyeyin A. B .Law of Succession, Wils and Probate in Nigeria (M IJ Professional Publishers, Lagos, Nigeria,

<sup>52</sup> Sagay, I. Nigeria Law of Succession, Malthouse Press Ltd, Lagos.



#### 4.4 DISPUTES AND CONFLICTS ARISING FROM SHARING ESTATE

In the recent era many authors have written on the distribution of estate in testate and intestate successions under the Yoruba customary law. Though these scholars explain the method of sharing estate using the *per stripes Idi-Igi* and *Ori-Ojoriper capita* types of distribution under Yoruba customary law, yet little is done to explain how disputes and conflicts arising from the sharing of estate in testate and intestate successions cases under Yoruba customary law are resolved.

Ogunbowale<sup>53</sup> explained the Inheritance norms among the Yoruba people of the Southwest Nigeria. He focused on the duties of the relatives of the deceased in relation to the status of the widows left behind. This study provided insight into harmful cultural practices against the widows under the Yoruba customary law. But the study was not a comprehensive package of our discourse for it created some gaps which this study makes attempt to address.

Ladele<sup>54</sup> focused on the procedural steps of inheritance norms among the Yoruba ethnic group in Southwest Nigeria. He outlined the steps to be observed before sharing the property among the offspring of the deceased and most importantly the debts left behind must fundamentally, be taken care of before the distribution of the estate equally among the beneficiaries of the estate. The work showed case the technical aspects of inheritance practices among the Yoruba people in Nigeria. The study explained the beauty of the Yoruba inheritance practices which is relevant to the study. However, this study tries to bridge the gaps of the previous study on the Yoruba customary law.

Fadipe<sup>55</sup> reviewed the indigenous religion of the Yoruba people and its impact on inheritance norms. He identified those that are eligible and those excluded from inheritance and how it is shared among the Yoruba people. Similarly, the author looked into the status of the widows and conflicting contradiction the eldest brother of the deceased inherit the wife of the deceased under the customary law of the Yoruba ethnic group in the Southwest area of Nigeria. This arrangement disqualifies the widow from the inheritance of her husband. This norm negate the fundamental human rights of the widow contrary to contemporary expectations. Despite, this shortcoming, the study is of significant to our discourse, yet left some uncovered areas which this study reviews.

Kasumu and Salacuse<sup>56</sup> the scholars in their work, captioned the Nigerian Family Law argued that in the olden days children of common parents often inherit the estate of a deceased individual under the Yoruba customary law. The study exposed some of the ancient cultural practices of the Yoruba people. The work discussed the historical background of the Yoruba customary law. The paper enriched the literature of this study, hence an asset to the study. Furthermore, the work overlooked some aspects of Yoruba customary which the present study endeavors to examine.

#### 5RECOMMENDATIONS

Customary law is transmitted through oral tradition from generation to generation, such knowledge are mostly documented in the memory the elders who mostly are no more in contemporary era. However, these indigenous experts are biased in their narration, out of selfish motives; thereby their narrations are mostly unreliable.

To remedy, this setback codification is vital for a reliable legal system such as customary law. Codification of customary law no doubt will inject certainty into the legal system. In

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<sup>53</sup>Ogunbowale, P.O. *Asalbile* Yoruba . Ibadan University Press Ltd, Ibadan.

<sup>54</sup>Ladele, T. A. A. *AkojopoIwadiIjinle* Yoruba. Macmillan Nigeria Ltd.

<sup>55</sup>Fadipe, N. A. *Sociology of the Yoruba*. Ibadan University Press, Ibadan

<sup>56</sup>Kasamu, A. B and Salacuse, J. W. *Nigeria Family Law*. Butterworth & Co Publishers, London



the areas of inheritance and succession our customary law is unreliable. Better still, to achieve this laudable goal customary law needs to be reduced into written form. This endeavor would reduce call of witnesses to proof a claim under customary law.

There is the need for better sensitization of Customary Practices particularly on inheritance obligations and rights under Yoruba customary law.

Similarly, reforms are required as regard discrimination against widows especially with reference to some inheritance rights under Yoruba customary law. This is becomes tenable in line with international best practices. Proper documentation processes to assist to improve estate administration and safeguard disputes, and proper record keeping for inheritance could be uplifted. Nigeria is a pluralistic society there is need for better clarity of interplay of customary law with Statutory Law especially in inheritance laws on issues that relate to cross-border properties. This will reduce unilateral use of foreign norm.

There is the need for capacity building for recognized family elders, particularly the *OloriEbis*, on modern methods of arbitration, mediation within the society. Furthermore, such family elders need contemporary skill on record keeping enhancing fair resolution on inheritance and related issues in accordance to customary norms and precedent. This in-built mechanism would strengthen customary institution in the Yoruba society.

The contemporary society is dynamic and moving from time to time, customary law need to relate with dynamics of modern trend by evolving gradually via organic society consensus rather than conservative approach to safe guide social acceptance and cultural longevity. The Yoruba society need to establish pilot projects to test run suggested amendment of some societal norms protecting philosophical goal of the people in line best practices in contemporary times.

## **6CONCLUSIONS**

This discourse provides comprehensive and useful insights into the Nigeria pluralistic society. The study exposes the rich and complex customary inheritance norms of the Yoruba ethnic group by showcasing the substantive and procedural aspects of Yoruba customary law. The paper highlights on diverse legal systems could achieve common objectives, like allocation of fairness using different approaches befitting distinct historical background and traditional social philosophies. This comparative discourse assist in the comprehension of different yet balance frameworks for sailing life's transition cross-over borders despite legal diversity. The adaptive yet community- friendly nature of Yoruba succession traditions continues to offer instructive framework for creating detailed, context-oriented inheritance norms.