

DAUGHTERS WHO INHERIT: CUSTOMARY LAW, WOMEN'S PROPERTY RIGHTS AND THE UNFINISHED REVOLUTION AFTER UKEJE v UKEJE

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Abstract

More than a decade after the Supreme Court decided Ukeje v Ukeje and Anekwe v Nweke on 11 April 2014, the right of Nigerian women to inherit under customary law remained more secure in the law reports than in family practice. The first decision declared void the Igbo customary rule that excluded daughters from their fathers' estates; the second condemned an Awka custom under which a widow without a son could be dispossessed. Using doctrinal analysis, supported by comparison with South Africa, Kenya and Ghana and by published field research from South-East Nigeria, the study assessed how far the decisions had changed the law. It found that the judgments settled the question of validity but left the question of distribution open. The reach of section 42 of the Constitution over private family arrangements remained uncertain; the Court created an entitlement without fixing its size or addressing ancestral homesteads such as the obi and the igiogbe; widows remained dependent on an occupation-only rule and a precarious repugnancy doctrine; and litigation proved too slow and socially costly to serve as the main means of enforcement. The article argued that only legislation could complete the reform that Ukeje began. It recommended state intestate succession laws with fixed shares for spouses and children, the domestication of the Maputo Protocol, a hotchpot approach to ancestral homesteads, simplified procedures for small estates, and engagement with traditional institutions.

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1. INTRODUCTION

Lazarus Ogbonna Ukeje died intestate in 1981. He was an Igbo man who had lived and acquired property in Lagos, and what he left behind became the subject of a contest between his widow and son on one side and a woman who said she was his daughter on the other. The Supreme Court brought that contest to an end on 11 April 2014, thirty-three years after his death. It held that the Igbo customary rule which shut a female child out of her father's estate was void, because it offended the constitutional prohibition of discrimination on grounds of sex and circumstances of birth.¹ On the same day, in *Anekwe v Nweke*, the Court condemned a custom of Awka under which a widow who had borne no son could be removed from her late husband's land.²

Commentators treated the two decisions as a turning point, and doctrinally they were. The view from the ground is less encouraging. A mixed-method study carried out across the five South-Eastern states, and published eight years after the judgment, found that most of its 490 adult respondents were unaware of *Ukeje*. Drawing also on interviews with twenty-five traditional rulers, the researchers described compliance with the constitutional position on female inheritance as very low and attributed it to a strong attachment to cultural practices that many still regarded as sacrosanct.³

¹ *Ukeje v Ukeje* (2014) 11 NWLR (Pt 1418) 384 (SC); Constitution of the Federal Republic of Nigeria 1999 (CFRN), s 42(1) and (2).

² *Anekwe v Nweke* (2014) All FWLR (Pt 739) 1154 (SC).

³ CO Igbolekwu and others, 'Awareness and Compliance with Court Judgment/Constitutional Provisions Legalizing Female Inheritance Rights Among the Igbo, Nigeria' (2022) 7 *Journal of Human Rights and Social Work* 384.

That gap between the law report and the family compound is the concern of this article. *Ukeje* decided the question of validity and left the question of distribution largely unanswered. A customary rule may be declared void in Abuja and continue to operate, quite untroubled, at a meeting of the *umunna* where nobody keeps minutes and nobody owns a copy of the Nigerian Weekly Law Reports. Completing what the Supreme Court began is work for legislatures more than for further litigation, and the experience of South Africa, Kenya and Ghana shows what that legislation should contain. The method is doctrinal and comparative. The discussion concentrates on the customary law of southern Nigeria; the Islamic law of succession and estates governed by the Marriage Act are considered only where they sharpen the analysis.

2. CUSTOMARY SUCCESSION BEFORE 2014

It is a common mistake to speak of Nigerian customary law as though it were one body of rules. Elias insisted long ago that African customary law was a genuine legal order with its own internal logic, and not a collection of quaint usages waiting to be replaced.⁴ Rules of succession differ between peoples and sometimes between neighboring towns. What the southern systems have largely shared is the premise that land belongs to the lineage before it belongs to any individual, so that succession exists to keep property inside it. Most of the disabilities placed on women follow from that premise.

Under Igbo customary law, as Obi described it in the leading older account, a man's estate devolved through the male line.⁵ His sons inherited, and the eldest son, the *okpara*, took the *obi*, the ancestral homestead, together with the ritual duties of family headship. Where

⁴ TO Elias, *The Nature of African Customary Law* (Manchester University Press 1956).

⁵ SN Chinwuba Obi, *The Ibo Law of Property* (Butterworths 1963).

there was no son, the property commonly went to the deceased's brothers or other male kin. Daughters were expected to marry into other lineages, which is why a share for them was understood as a leakage of lineage land to outsiders. Okoro's survey of succession in the former Eastern Region recorded the same broad pattern, with local variations in detail.⁶

Yoruba law treated daughters better. Children of both sexes inherit their father's estate, which is shared either per head (*ori-ojori*) or per stock according to the number of wives (*idi-igi*). In *Dawodu v Danmole* the Privy Council upheld *idi-igi* and declined to treat it as repugnant, even though under it a child whose mother had borne many children could receive less than a half-sibling whose mother had borne only one.⁷ Widows fared worse. *Suberu v Sunmonu* laid down that a Yoruba wife could not inherit her husband's property, and the Supreme Court restated that rule four decades later in *Akinnubi v Akinnubi*.⁸ Among the Bini, the *igiogbe*, the house in which the deceased lived and died, passes to his eldest surviving son as of right, a rule the Supreme Court enforced against the terms of a will in *Idehen v Idehen*.⁹

The Igbo widow's position was fixed by a line of cases that gave her a right of residence and withheld a right of ownership. In *Nezianya v Okagbue* the Supreme Court held that a widow's possession of her late husband's property, however long it lasted, could not ripen into title.¹⁰ In *Nzekwu v Nzekwu* the Court accepted that an Onitsha widow could

⁶ Nwakamma Okoro, *The Customary Laws of Succession in Eastern Nigeria and the Statutory and Judicial Rules Governing their Application* (Sweet & Maxwell 1966).

⁷ *Dawodu v Danmole* [1962] 1 WLR 1053 (PC).

⁸ *Suberu v Sunmonu* (1957) 2 FSC 33; *Akinnubi v Akinnubi* (1997) 2 NWLR (Pt 486) 144 (SC).

⁹ *Idehen v Idehen* (1991) 6 NWLR (Pt 198) 382 (SC).

¹⁰ *Nezianya v Okagbue* [1963] 1 All NLR 352.

remain in her husband's house and use his property, but held that she could not alienate it without the consent of his family.¹¹ The protection is real but thin, and its continuance depends heavily on her relationship with the family that is supposed to respect it.

Custom was never quite as rigid as the law reports make it appear. Amadiume's study of Nnobi described a gender system in which daughters could occupy male social roles and women could take wives, arrangements that allowed a lineage without sons to continue through a daughter.¹² The *nrachi* institution, known in parts of Igboland, served a similar purpose by keeping a daughter at home to raise heirs for her father's line. Chanock's work on colonial Malawi and Zambia helps to explain how that flexibility was lost: colonial courts took their account of custom from elders, overwhelmingly male, and what those elders stated in court hardened into rules.¹³ When a modern court strikes down an exclusionary rule, it is sometimes undoing a colonial transcription of tradition rather than tradition itself.

3. THE REPUGNANCY DOCTRINE AND ITS LIMITS

For most of the twentieth century the only judicial instrument for correcting customary law was the repugnancy test. It survives in section 18(3) of the Evidence Act 2011, which bars the enforcement of a custom that is contrary to public policy or not in accordance with natural justice, equity and good conscience.¹⁴ In *Eshugbayi Eleko v Officer Administering the Government of Nigeria*, Lord Atkin accepted that a court would reject a barbarous custom, while warning that it could not convert such a custom into a milder one of its own

¹¹ *Nzekwu v Nzekwu* (1989) 2 NWLR (Pt 104) 373 (SC).

¹² Ifi Amadiume, *Male Daughters, Female Husbands: Gender and Sex in an African Society* (Zed Books 1987).

¹³ Martin Chanock, *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia* (CUP 1985).

¹⁴ Evidence Act 2011, s 18(3).

devising.¹⁵ The standard has no fixed content. It invites a judge to measure a people's law against a moral yardstick that was historically English, and Nigerian courts have generally been slow to apply it to rules of family and land.¹⁶

The *Mojekwu* litigation shows that reluctance clearly. The Court of Appeal, in the leading judgment of Niki Tobi JCA, held that the *olikeke* custom of Nnewi, under which a man's estate passed to a male relative in preference to his daughter, was repugnant to natural justice, equity and good conscience and discriminatory against women.¹⁷ When the dispute reached the Supreme Court as *Mojekwu v Iwuchukwu*, Uwaifo JSC disapproved that pronouncement. The validity of the custom had not been put in issue by the parties, and in his view the language of the Court of Appeal was so general and far-reaching that it risked condemning the fundamental customs of whole communities without a hearing.¹⁸

As a matter of procedure the Supreme Court was right. A court ought not to decide an issue the parties never argued. The practical consequence of its caution, however, was a decade in which lower courts had a respectable reason to leave exclusionary customs alone. Scholars have since divided on whether the repugnancy test deserves another chance. Edu has argued that the test, applied with conviction and read with the Constitution and Nigeria's international human rights obligations, can still carry the work of reform, and he points to courts

¹⁵ *Eshugbayi Eleko v Officer Administering the Government of Nigeria* [1931] AC 662 (PC).

¹⁶ For the development of the doctrine, see AO Obilade, *The Nigerian Legal System* (Sweet & Maxwell 1979).

¹⁷ *Mojekwu v Mojekwu* (1997) 7 NWLR (Pt 512) 283 (CA).

¹⁸ *Mojekwu v Iwuchukwu* (2004) 11 NWLR (Pt 883) 196 (SC).

in Ghana, South Africa and Botswana as models.¹⁹ Diala, drawing on South African experience, places more weight on the living customary law that communities actually practice, and proposes that distribution be guided by the best interests of those whom the deceased maintained; he has also criticized the way Nigerian courts have handled women's property claims under custom.²⁰

The repugnancy test was never going to bear this load. Its standard depends on the conscience of the individual judge. Its history makes it easy to present as an alien imposition. It also leaves the custom standing as law that a court merely declines to enforce in a particular case. A constitutional test works differently. It does not ask whether a rule is barbarous; it asks whether the rule discriminates, a question anchored in the text of section 42 and backed by the supremacy clause in section 1(3).²¹ That change of ground is the real doctrinal achievement of *Ukeje*.

4. *UKEJE* AND *ANEKWE*: WHAT THE SUPREME COURT DECIDED

For most of its life *Ukeje* was a paternity dispute. Gladys Ada Ukeje sued the deceased's widow, Lois Chituru Ukeje, and his son, Enyinnaya Lazarus Ukeje, in the High Court of Lagos State, asserting that she was the deceased's daughter and entitled to share in his estate. She succeeded in the High Court and again in the Court of Appeal, and the widow and son appealed. In the Supreme Court, having accepted

¹⁹ OK Edu, 'A Critical Analysis of the Laws of Inheritance in the Southern States of Nigeria' (2016) 60 *Journal of African Law* 141.

²⁰ AC Diala, 'Reform of the Customary Law of Inheritance in Nigeria: Lessons from South Africa' (2014) 14 *African Human Rights Law Journal* 633; AC Diala, 'A Critique of the Judicial Attitude towards Matrimonial Property Rights under Customary Law in Nigeria's Southern States' (2018) 18 *African Human Rights Law Journal* 100.

²¹ CFRN, s 1(3).

the concurrent findings that she was his daughter, a five-member panel still had to deal with the contention that Igbo custom gave her nothing. Rhodes-Vivour JSC, who delivered the lead judgment, disposed of it briefly. No matter the circumstances of her birth, a female child was entitled to an inheritance from her late father's estate, and the Igbo custom that said otherwise was inconsistent with section 42(1) and (2) of the Constitution and therefore void.²²

Two features of the holding deserve attention. The first is the reliance on section 42(2), which forbids subjecting any citizen to a disability or deprivation merely by reason of the circumstances of birth. Gladys Ukeje was born outside marriage, so the decision protected two overlapping classes at once: daughters, and children born out of wedlock. The second is the choice of ground. The Court did not call the custom barbarous or repugnant. It measured the rule against the Constitution and found it inconsistent, which under section 1(3) renders it void to the extent of the inconsistency. The controversy that had stalled reform after *Mojekwu v Iwuchukwu* was bypassed rather than resolved.

Anekwe v Nweke reached a similar destination by a different road. The respondent, Maria Nweke, was a widow without a male child. Her late husband's father and brother sought to remove her from the matrimonial home and land in Awka, relying on a custom that the property of a man who died without a son passed to his male relatives. Ogunbiyi JSC, delivering the lead judgment, condemned the custom in unusually direct terms, describing it as punitive and uncivilized and the disinheritance of a widow on that ground as barbaric. The reasoning was framed largely in the language of repugnancy to natural justice, equity and good conscience.²³

²² *Ukeje* (n 1).

²³ *Anekwe* (n 2).

Read together, the two cases do less than their reputation suggests. *Ukeje* established that a daughter is entitled to inherit. It said nothing about how much she takes, how the estate is to be divided, or how the right is to be secured without going to court. *Anekwe* protected a widow against eviction, but it did not give widows a share in their husbands' estates, and its reasoning rested on the very ground that *Mojekwu v Iwuchukwu* had made precarious. The international dimension adds weight that neither judgment needed but that later courts may find useful. Nigeria ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1985 but has not domesticated it as section 12(1) of the Constitution requires, and the Convention obliges states to modify or abolish discriminatory customs and to secure equal rights for spouses in respect of property.²⁴ The African Charter on Human and Peoples' Rights stands on firmer domestic footing. It has been domesticated, the Supreme Court has held that it forms part of Nigerian law, and article 18(3) obliges the state to eliminate every form of discrimination against women.²⁵ That ground was available in 2014 and remains largely unused.

5. THE UNFINISHED REVOLUTION

5.1 The Reach of Section 42

Section 42(1)(a) is aimed at disabilities imposed 'either expressly by, or in the practical application of, any law in force in Nigeria or any

²⁴ Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW) arts 2(f), 16(1)(h); CFRN, s 12(1).

²⁵ *Abacha v Fawehinmi* (2000) 6 NWLR (Pt 660) 228 (SC); African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, Laws of the Federation of Nigeria 2004; African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter) art 18(3).

executive or administrative action of the government'. A customary rule applied by a court is plainly a law in force, which is why *Ukeje* could strike it down. The difficulty lies elsewhere. Most customary estates never pass through a court or a probate registry. The distribution is settled at a family meeting, often within weeks of the burial, and the property passes to the sons without any document recording why. There is no government action in that meeting and, on a literal reading, no law being applied. *Ukeje* does not settle whether section 42 reaches such private arrangements, so that a daughter could bring a fundamental rights action directly against her brothers. The Fundamental Rights (Enforcement Procedure) Rules 2009 offer a quicker procedure than an ordinary suit, but a court would first have to accept that the right operates horizontally.²⁶ Until that point is decided, the practical effect of *Ukeje* is defensive. It is a shield a daughter can raise once she is in litigation, and the cost of getting there falls on her. The decision is limited in two further directions. Estates of persons who contracted a marriage under the Marriage Act devolve under the statutory regime and not under customary law, a position the Supreme Court confirmed in *Obusez v Obusez*; daughters in those families were entitled long before 2014.²⁷ Islamic law gives a daughter half the share of a son,²⁸ and the Constitution itself provides for the application of Islamic personal law, including succession, where the deceased was a Muslim.²⁹ Whether section 42 can reach a rule the Constitution separately recognizes is a question *Ukeje* did not need to confront and one that lies outside this article. The point nevertheless explains why the decision cannot be read as establishing a single national rule of equal inheritance.

²⁶ CFRN, s 46(1); Fundamental Rights (Enforcement Procedure) Rules 2009.

²⁷ Marriage Act, Cap M6, Laws of the Federation of Nigeria 2004, s 36; *Obusez v Obusez* (2007) 10 NWLR (Pt 1043) 430 (SC).

²⁸ The Qur'an 4:11.

²⁹ CFRN, ss 262(2)(c), 277(2)(c).

5.2 An Entitlement without a Formula

Rhodes-Vivour JSC held that a daughter was entitled to ‘an inheritance’. Because customary law had never prescribed one for her, the judgment created an entitlement whose size no source of law yet fixes. Does she take equally with her brothers? Does the eldest son still take the *obi* first, with the remainder divided? In a Bini family where the eldest child is a daughter, can she claim the *igiogbe*, or does *Idehen* survive on the footing that it turns on seniority as much as on sex? In many rural estates the homestead is the only asset of real value, and anyone who has sat through a family meeting in an *obi* will know it is the one property on which the brothers will not bargain.

The most workable answer separates ritual succession from beneficial ownership. The eldest son may continue to hold the *obi* or the *igiogbe* as custodian of the family seat, a role custom has always described in terms of duty as much as ownership, while its value is brought into account when the rest of the estate is divided. Equity already has a name for the technique; it is hotchpot. A court applying *Ukeje* could adopt it without waiting for the legislature, and it meets the strongest objection to equal inheritance, which is that it threatens the continuity of the lineage, without sending daughters away empty-handed. It is closer to the internal logic of custom than a flat division that pretends the homestead is just another building.

5.3 Widows at the Margin

Ukeje left the widow where it found her. Her position is still governed by *Nezianya* and *Nzekwu*: she may occupy but she may not own.³⁰ *Anekwe* protects her from the harshest form of dispossession, yet under the customary law of most southern communities a widow still takes no share of her husband's estate in her own right. Diala's review of the

³⁰ *Nezianya* (n 10); *Nzekwu* (n 11).

case law shows how often courts have restated the occupation-only rule without asking whether it reflects present practice.³¹ Ewelukwa's study of widowhood in African societies documents how ritual humiliation and material dispossession commonly follow a husband's death.³²

Some states moved before the Supreme Court did. Enugu legislated against infringements of widows' fundamental rights in 2001, Imo and Edo followed in 2003 and 2004, and Anambra enacted a law against malpractices towards widows and widowers in 2005.³³ At the federal level, the Violence Against Persons (Prohibition) Act 2015 makes it an offence to subject a widow to harmful traditional practices.³⁴ These laws target mourning rites and eviction more than shares in the estate, and the 2015 Act applies by its own terms only to the Federal Capital Territory, so that each state has had to enact its own version. Rivers State went further in 2022 with a law that prohibits the curtailment of women's right to share in family property, the clearest legislative response to *Ukeje* so far.³⁵ The one instrument that speaks directly to the widow's inheritance is the Maputo Protocol. Article 21(1) gives a widow the right to an equitable share in her husband's property and to continue living in the matrimonial home; article 21(2) gives women and men the same right to inherit their parents' property in equitable

³¹ Diala, 'A Critique of the Judicial Attitude' (n 20).

³² Uche U Ewelukwa, 'Post-Colonialism, Gender, And Customary Injustice: Widows in African Societies' (2002) 24 *Human Rights Quarterly* 424.

³³ Prohibition of Infringement of a Widow's and Widower's Fundamental Rights Law No 3 of 2001 (Enugu State); Widows (Protection) Law 2003 (Imo State); Inhuman Treatment of Widows (Prohibition) Law 2004 (Edo State); Malpractices Against Widows and Widowers (Prohibition) Law 2005 (Anambra State).

³⁴ Violence Against Persons (Prohibition) Act 2015, ss 15, 47.

³⁵ Rivers State Prohibition of the Curtailment of Women's Right to Share in Family Property Law No 2 of 2022; 'Rivers Gives Women Right to Inherit Family Property' *This Day* (Lagos, 25 September 2022) <<https://www.thisdaylive.com/2022/09/25/rivers-gives-women-right-to-inherit-family-property/>> accessed 1 October 2026.

shares.³⁶ Nigeria ratified the Protocol on 16 December 2004 but has not domesticated it. In its 2017 concluding observations, the CEDAW Committee noted that inheritance rights in Nigeria were still largely based on succession by men and recommended a review of the customary and Islamic regimes of inheritance to bring women's rights into line with the Convention.³⁷

5.4 The Distance between a Judgment and a Village

Low awareness is only part of the problem.³⁸ Knowing that the Supreme Court has spoken does not make it easier for a woman to sue her brothers, and the social price of doing so is high. A daughter who litigates may win her share and lose the goodwill of relatives she will need at every wedding, burial and naming ceremony for the rest of her life. No court can undo that.

Sally Falk Moore's account of the semi-autonomous social field describes this situation closely. A social group such as a lineage can generate its own rules and has its own means of securing obedience, while remaining open to the law of the state only at particular points of contact.³⁹ The *umunna* is such a field. The Supreme Court's rule enters it only when a dispute is carried outside, and the lineage has every incentive to settle matters before that happens. John Griffiths made the

³⁶ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 11 July 2003, entered into force 25 November 2005) CAB/LEG/66.6 (Maputo Protocol) art 21.

³⁷ CEDAW Committee, 'Concluding Observations on the Combined Seventh and Eighth Periodic Reports of Nigeria' (24 July 2017) UN Doc CEDAW/C/NGA/CO/7-8, paras 45(c), 46(d); see also CEDAW Committee, 'General Recommendation No 21: Equality in Marriage and Family Relations' (1994) UN Doc A/49/38.

³⁸ Igbolekwu and others (n 3).

³⁹ Sally Falk Moore, 'Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study' (1973) 7 *Law & Society Review* 719.

general point that legal pluralism is a fact of social life and not something that exists by the permission of the state.⁴⁰

Galanter's analysis of litigation explains who tends to win when the dispute does leave the lineage. The extended family is a repeat player whose elders have seen land cases before and can afford to wait. The daughter is a one-shotter, typically suing once in her life, with limited funds and strong reasons to settle.⁴¹ *Ukeje* is itself a cautionary tale. Gladys Ukeje won, but her father had been dead for thirty-three years when she did. A lawyer advising a daughter today should tell her plainly that the constitutional point is now easy and almost everything else is not.

Rosenberg's study of American civil rights litigation concluded that courts produce significant social reform only where other conditions support them, among them political backing and incentives for compliance.⁴² The Nigerian experience fits that account uncomfortably well. The federal legislative climate has been cool. On 15 March 2016 the Senate rejected the Gender and Equal Opportunities Bill sponsored by Senator Biodun Olujimi, with opponents arguing, among other things, that the Constitution already protected everyone's rights.⁴³ Allott observed that law which is not communicated to its subjects, or not accepted by them, has limited power to alter behavior, however

⁴⁰ John Griffiths, 'What is Legal Pluralism?' (1986) 24 *Journal of Legal Pluralism and Unofficial Law* 1.

⁴¹ Marc Galanter, 'Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change' (1974) 9 *Law & Society Review* 95.

⁴² Gerald N Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (2nd edn, University of Chicago Press 2008).

⁴³ 'Nigeria's Senate Rejects Gender Equality Bill' *Africanews* (16 March 2016) <<https://www.africanews.com/2016/03/16/nigeria-s-senate-rejects-gender-equality-bill/>> accessed 1 October 2026.

authoritatively it is stated.⁴⁴ Most of the people who actually distribute estates will never read the judgment that governs them.

6. COMPARATIVE LESSONS: SOUTH AFRICA, KENYA AND GHANA

The South African Constitutional Court faced the same problem in *Bhe v Magistrate, Khayelitsha* and answered it more completely. The applicants were two young girls born outside marriage whose claim to their late father's home in Khayelitsha was defeated by the customary rule of male primogeniture. The Court struck down that rule, together with section 23 of the Black Administration Act 38 of 1927 and its regulations, as unfair discrimination on grounds of sex and birth.⁴⁵ Langa DCJ did not leave a vacuum. The Court ordered that, until Parliament acted, estates formerly governed by customary law would devolve under the Intestate Succession Act 81 of 1987, with adjustments to accommodate polygynous households. Ngcobo J, dissenting in part, would instead have developed the customary rule by allowing the eldest child, of either sex, to succeed as heir with the customary duties attached. Parliament later placed the majority's interim regime on a statutory footing.⁴⁶ In *Shilubana v Nwamitwa*, which concerned the Valoyi traditional authority's decision to install a woman as chief, the Court went on to recognize that customary law is a living system which traditional authorities may themselves develop in conformity with the Constitution.⁴⁷ Ngcobo J's approach deserves more attention in Nigeria; it is the closest judicial counterpart to the

⁴⁴ Antony Allott, *The Limits of Law* (Butterworths 1980).

⁴⁵ *Bhe v Magistrate, Khayelitsha* 2005 (1) SA 580 (CC).

⁴⁶ Reform of Customary Law of Succession and Regulation of Related Matters Act 11 of 2009.

⁴⁷ *Shilubana v Nwamitwa* 2009 (2) SA 66 (CC); see generally Jeanmarie Fenrich, Paolo Galizzi and Tracy E Higgins (eds), *The Future of African Customary Law* (CUP 2011).

hotchpot solution suggested above, because it changes who benefits without abolishing the office of heir.

Kenya chose statute early. The Law of Succession Act, in force since 1981, governs intestate estates without distinguishing between sons and daughters. In *Rono v Rono* the Court of Appeal refused to apply a custom that favored sons in the distribution of their father's land, relying on the Act, the anti-discrimination clause of the then Constitution and Kenya's obligations under CEDAW.⁴⁸ The 2010 Constitution then made the position explicit by requiring the elimination of gender discrimination in law, customs and practices relating to land and property.⁴⁹

Ghana took the most direct route. Under matrilineal custom a man's self-acquired property passed largely to his matrikin, often his sister's sons, while his widow and children could be left with very little. The Intestate Succession Law 1985 displaced that position for intestate estates. It gives the surviving spouse and children the household chattels and one house, and divides the residue in fixed fractions: three-sixteenths to the spouse, nine-sixteenths to the children, one-eighth to a surviving parent and one-eighth to be distributed according to customary law.⁵⁰ That last eighth is a deliberate concession to the lineage. The law bought the acquiescence of custom with a defined share instead of pretending that the extended family had no stake at all. None of these jurisdictions relied on a judgment alone. South Africa paired a judgment with an interim regime and then with a statute; Kenya and Ghana began with legislation and let the courts police it.

⁴⁸ *Rono v Rono* (2005) AHRLR 107 (KcCA 2005).

⁴⁹ Constitution of Kenya 2010, arts 27(3), 60(1)(f).

⁵⁰ Intestate Succession Law 1985 (PNDCL 111), ss 3, 4, 5. A Bill to replace PNDCL 111, the Intestate Succession Bill 2022, was before the Parliament of Ghana and was reported on by its Committee on Constitutional, Legal and Parliamentary Affairs in June 2023.

Nigeria has the judgment and very little else. Because succession appears on neither the Exclusive nor the Concurrent Legislative List, legislation on customary succession falls within the residual competence of the state Houses of Assembly, with the National Assembly legislating for the Federal Capital Territory.⁵¹ Reform must therefore be won state by state, and only Rivers State has so far legislated directly on the point.

7. SUMMARY OF FINDINGS

The study found that *Ukeje* moved the law of female inheritance from the uncertain ground of repugnancy to the firmer ground of constitutional equality. It found, equally, that the decision created an entitlement without a formula. It fixed neither the size of a daughter's share nor the treatment of ancestral homesteads such as the *obi* and the *igiogbe*, and it left undecided whether section 42 binds families that distribute estates privately. Widows gained protection against eviction through *Anekwe* but no positive right to inherit, and their position continues to rest on the occupation-only rule in *Nezianya* and *Nzekwu*. Field evidence from the South-East showed low awareness of the decision and very low compliance with it. Litigation, which remains the main route to enforcement, is slow, expensive and socially costly for the daughters and widows who need it. The comparative material showed that South Africa, Kenya and Ghana achieved more durable change by pairing judicial decisions with legislation that fixed shares and procedures.

8. CONCLUSION

The Supreme Court did what a court can do. It declared the law. What it could not do was write a scheme of distribution, create a cheap forum for small estates, or persuade an *umunna* that its daughters are

⁵¹ CFRN, ss 4, 299 and Second Schedule, Parts I and II.

members of the family for purposes other than weddings and funerals. Twelve years after *Ukeje*, the revolution it began is real but half made. The constitutional right exists but the machinery to deliver it does not.

9. RECOMMENDATIONS

Each state House of Assembly in the South, and the National Assembly for the Federal Capital Territory, should enact an intestate succession law for estates governed by customary law. The Rivers State Law of 2022 offers a starting point, and a model bill prepared by the Nigerian Law Reform Commission would reduce needless variation between states. The law should fix the shares of spouses and children without distinction of sex, protect the surviving spouse's right to remain in the matrimonial home, and, following the Ghanaian example, reserve a modest and defined share to the lineage. It should deal expressly with the *obi*, the *igiogbe* and similar homesteads by allowing a designated family member to hold them as custodian while their value is brought into account in the distribution.

The National Assembly should also domesticate the Maputo Protocol under section 12 of the Constitution. Domestication would give widows the positive right to an equitable share that neither *Anekwe* nor the widowhood laws provide, and it would give courts a clear statutory basis for extending to widows the reasoning they have so far applied to daughters.

Until legislatures act, courts should build on *Ukeje* instead of merely repeating it. Absent a lawful basis for difference, daughters should be treated as entitled to shares equal to those of sons, and courts should apply hotchpot where an ancestral homestead passes to one child. The constitutional reasoning in *Ukeje* should be extended to widows, with article 18(3) of the African Charter, which already has domestic force, as a supporting ground. When a suitable case arises, the Supreme

Court should also settle whether section 42 applies to private distributions of customary estates.

Access to justice needs direct attention. State judiciaries should create a simplified procedure for small customary estates, with fixed timelines and modest fees, in the customary courts or the probate registries. The Legal Aid Council should treat inheritance claims by widows and daughters as priority matters.

Traditional institutions must be engaged, not bypassed. An-Na'im has argued that human rights take firmest root when they are defended through a community's own cultural discourse.⁵² State councils of traditional rulers should be invited to issue restatements of succession custom consistent with *Ukeje*, in the manner *Shilubana* recognised in South Africa.⁵³ Public education should follow the advice of the South-Eastern field study and use the languages, songs, proverbs and drama through which custom is actually transmitted.⁵⁴ A daughter who knows her right, and a family head who accepts it, will do more for the law than another decade of appeals.

⁵² Abdullahi Ahmed An-Na'im (ed), *Cultural Transformation and Human Rights in Africa* (Zed Books 2002).

⁵³ *Shilubana* (n 47).

⁵⁴ Igbolekwu and others (n 3).