

Case Name	Muojekwo & Ors v Ejikeme & ors
Topic	Customary law affecting rights of female family members inequitable
Category	WOMEN - inheritance;
Tribunal	Court of Appeal (Enugu)
Country	Nigeria (Africa)
Case Date	09 Dec 1999
Judge(s)	Tobi JC, Olagunju and Fabiyi, JJCA

R died intestate in 1996 without any surviving children. The appellants were R's two great grandsons, and his granddaughter, the third appellant. The granddaughter was born to R's daughter V and the great grandsons were born to V's two daughters. The appellants claimed that the Nnewe custom of Nrachi had been performed for V and accordingly the appellants were entitled to inherit R's property. The Nrachi custom enabled a man to keep one of his daughters perpetually unmarried under his roof in order to raise children, especially males, to succeed him. Any such daughter took the position of a man in the father's house and was entitled to inherit her father's property, and any children born to the woman would automatically be part of the father's household and accordingly entitled to inherit. A different custom, Ili-Ekpe, provided that where a man has no surviving male issue, including the daughter in respect of whom Nrachi was performed, and her children, the man's brother or his male issue are entitled to inherit. The respondents, five male members of R's brother's family, claimed that Nrachi was performed for V's sister C, who had died childless, and not V. They contended that when C died R's family lineage became extinct, and they, rather than the appellants, should inherit R's property. The legal action began when the respondents, without the appellants' permission, entered the compound once belonging to R. The appellants laid claim to a statutory right of occupancy over R's estate and requested an injunction restraining the respondents from trespassing.

In allowing the appeal, it was held that:

Fabiyi JCA (Tobi JCA concurring):

1. The Nrachi custom, which is designed to oppress and cheat **women**, compromises the basic tenets of family life, is inequitable and judicially unenforceable. Accordingly, a female child does not need the performance of Nrachi in order to inherit her deceased father's estate.
2. The custom is also repugnant to natural justice because the children born to a daughter in respect of whom the ceremony is performed are denied the paternity of their natural father (*Edet v Essien* (1932) 11 NLR 47 (Nig DC) considered). It is also inconsistent with public policy as it encourages promiscuity and prostitution.
3. The custom of Ili-Ekpe also discriminates **against women** (*Mojekwu v Mojekwu* (1997) 7 NWLR (Pt. 512) 283, 304-305 (Nig CA) considered).
4. The fact that the appellants were born out of wedlock was immaterial since s 39(2) of the 1979 Constitution prohibits **discrimination** on the grounds of circumstance of birth. In this case the acceptance into R's family of the third appellant and her sister was sufficient acknowledgement of the two daughters by their grandparents to entitle them to full rights of succession to the estate of their grandfather.
5. The appellants had been in possession of R's estate for many years and it would be inequitable to throw them out.
6. The trial judge therefore applied two customs which are repugnant to the principles of natural justice, equity and good sense. With the Nrachi custom rendered unenforceable, the appellants, as blood relations, should have inherited R's estate (*Adeseye v Taiwo* (1956) SC NLR 265 (Nig SC), *Ogunmefun v Ogunmefun* (1931) 10 NLR 82 considered).

Observations:

Per Tobi CJA:

1. Article 5 of the **Convention on the Elimination of All Forms of Discrimination Against Women** (CEDAW) calls on States Parties to modify social and cultural patterns of conduct in order to eliminate prejudices, customs and practices based on the inferiority or superiority of either sex. V is a victim of such prejudices.
2. In determining whether a customary law is repugnant to natural justice or incompatible with any written law, the standard is not the principles of English law; on the contrary the courts must look inwards to Nigerian jurisprudence.
3. Lineage refers to a line of descent and one can only talk of its extinction when the line is extinguished.

When there are children or grandchildren still alive it is wrong to hold that the lineage is extinct.

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For the Respondents: O R Ulas

Citations [2000] 5 NWLR 402