
Family Law In African Jurisprudence

Introduction

When we speak of sources of law, it is essential to mention custom. This is due to its peculiarity, as unlike other sources of law. Which are in a form imposed on the populace, the custom is a totality of what the people generally as having the effect of law. African customs are unwritten traditions and practices of the people in a classic African Society.

The beliefs and practices of various African societies vary according to what is acceptable to them. However, a common understanding drawn from the African Jurisprudence is that law is a fundamental part of their culture and thus seen as a tool for maintaining social equilibrium and gives prominence to the distributive justice.

Family law encompasses various subdivisions which are touched one way or the other by African Custom. For example, African Custom prescribes different rules on marriage, succession and dealings with Children, all which fall under the field of family law. This work will give a detailed view of the influence of African Jurisprudence on Family law.

Contract to Marry and Marriage

The traditional African marriage was setting pictures a man paying a bride price to the family of the woman in exchange for hey physical and social values and benefits. In some instances, the children also pass as his property. Marriages in Africa are usually elaborate and public with a lot of celebration and jubilation as opposed to the solemn ceremony of the western culture. In Africa, marriages often involved contact between the husband and the family of the wife. Rather than a consensual relationship between the man and woman. African jurisprudence recognizes marriages done outside the provisions of the statutory Marriage Act as valid to the exact degree of the latter. Marriages consummated in a shrine are as compelling as those in a church. Also, there existed no such thing as a breach of promise to marry under the Africa family law, and so the man had the power to turn his back on the promise at any time. In certain instances, he could return the wife and collect the bride price back.

In South Africa, marriages were predominantly polygamous and as a result, were regarded as contrary to natural law and were not recognized by many states. Nevertheless, at the beginning of 1927, the custom of lobolo was formally protected by the Black Administration Act which prevented the courts from finding this custom as contrary to natural law and recognized the consequences and effects as legal and binding in South Africa.

The African System of Family

Family plays a significant role in African culture. It shapes such day by day experiences as to how and where people live, how they associate with the individuals around them, and even, now and again, whom they get married. In rural territories, the family remains the essential unit of agricultural creation typically.

For this study, Nigeria and Namibia will be used as a case study. In Nigeria, families are patriarchal with extended family members having more say than expected in contrast with family arrangements in the westernized world. Although kids are critical to Nigeria, families as guardians believe that their kids will offer help for them in their old age. The males are viewed as a progression of both family name and heredity, and the men are assumed to be predominant with ladies being dependent upon them.

However, in Namibia, Corporate kin groups are framed by ties followed through women (matrilineal), men (patrilineal), or both (bilateral), contingent upon ethnicity. These kin groups offer help arrange for their individuals and control joint property, particularly domesticated animals. There has been a general move from matrilinealism to patrilinealism, for instance, wives and children in matrilineal communities would now be able to declare rights to the property of deceased husbands and fathers, which has been traditionally acquired by the man's matrilineal family members (his siblings and sisters' children). Even though Nigeria families are patrilineal, scarcely would one be able to watch noteworthy contrast between Nigeria families and some Africa nations whose families are matrilineal.

Rights and Obligations in Respect of Children

Although most scholars believe that traditional African societies did not have laws, it is clear that there were systems put in place which protected and safeguarded the rights of children within traditional societies. An example of this can be seen in the early Yoruba societies which were mainly patrilineal, and more emphasis is placed on relationships which exist between bloodlines as opposed to marital relationships meaning that the family bond between a father and his children is usually given more attention than his relationship with his wife. Although this may be detrimental to the wife, it is to the advantage of the children. In a traditional Yoruba society, the father has the responsibility of ensuring that all the needs of the child are met which is similar to the provision of The Child's Rights Act which provides that all the needs of the child which are necessary for his general well-being should be met. The children, in turn, have the responsibility of farming, trading and partaking in a vocation.

In the traditional Igbo society, provisions are made for the welfare of the male children upon the passing of the parents and the male child is expected to follow in the footsteps of their fathers as the breadwinner. Still, the girl child, on the other hand, may face several obstacles and although her general welfare is provided for she is not genuinely regarded as her father's child because it is expected that she will remarry and take another family's surname.

Although in traditional African law most societies ensured that parents fended for their offspring and provided their general needs and I turn the children are expected to play their role within the household by performing menial tasks and chores. Still, there is a clear difference in the treatment given to both male and female children.

Children's family Rights and obligations involve assistance and respect that children are expected to provide immediate and extended family members and reflect beliefs related to family life that may differ across cultural groups. Within families, mothers and fathers had more concordant expectations regarding children's family obligations than did parents and children. Parenting behaviours that were warmer, less neglectful, and more controlling, as well as, more authoritarian parenting attitudes were related to higher expectations regarding children's family

obligations between families within cultures as well as between cultures. Children's responsibilities to the family involve a collection of values and behaviours related to children's assistance and support to and respect for their parents, siblings, and extended family. According to Wiesner(2001), ethnographic research has shown that children in most societies are expected to contribute to the family by working (e.g., taking care of younger siblings, cooking, farming), and that fulfilment of obligations is essential to family well-being (and often survival). Perceptions of family obligations derive from ideas regarding families that are held in many different countries, e.g. traditional African concepts of family obligations, Individuals' opinions of these obligations are important because they shape the ways family members interact and because they affect psychological construal's of the family. Opinions of family obligations are a potentially meaningful way to characterize cultural values, going beyond social address models that compare groups based on ethnicity or national origin to understand what factors might underlie such group differences. Given that the theoretical importance of family obligations has been advanced in diverse countries and cultural contexts, the present study examines mothers', fathers', and children's perceptions of parents' expectations regarding children's family obligations in an

Nullity Of Marriage

Nullity of marriage is a declaration by the court that a supposed marriage is null and void and that no valid marriage exists between partners. A petition for nullity differs from other matrimonial causes which relate to valid and subsisting marriages. In a petition for nullity, the petitioner seeks to establish that owing to some defect; the marriage is invalid. To petition for nullity has to be established that a marriage took place between the parties.

A special format is prescribed for a petition for a decree of nullity of a marriage. Such a petition shall indicate whether the decree is sought on the ground that the marriage is void or voidable at the suit of the petitioner and shall state the nature of the defect in the marriage. Under section 29 of the Matrimonial Causes Act, where both a petition for a decree of nullity of a marriage and a petition for a decree of dissolution of that marriage are before a court, the court shall not make a decree of dissolution of the marriage unless it has dismissed the petition for a decree of nullity of the marriage. The rule ensures that before the court embarks on the dissolution, the marriage in question must be established to be free from any defect which will make it void or voidable.

A petition for nullity shall be in respect of a void or voidable marriage. A void marriage is one that has never been in existence; such a marriage is void ab initio and the parties to it have never acquired the status of husband and wife. In contrast, a voidable marriage is one that is good while subsisting but may be annulled at the instance of one or both parties. We must, however, note that a voidable marriage does not need a court decree to bring it to an end because the marriage never existed. Where a decree of nullity is granted in respect of a void marriage, it is merely declaratory of existing facts. There are certain circumstances where customary law marriage may be void or voidable, and they include parental consent of a female person, persons related by blood, child marriage, and so on. Also, Islamic law regards some marriages to be a nullity in cases such as secret marriages, marriage for a period, marriage to a Christian as seen in the case of *Noma v. Bugako*, where the respondent, a Muslim, gave the appellant who was formerly a Christian, his daughter in marriage on the condition that the appellant changed his religion to Islam. It was held under Islamic law that parents are prohibited from giving their Muslim daughters in marriage to Non- Muslims.

Succession

Succession can be defined as 'the transfer of legal or official powers from an individual who formerly held them to another who undertakes current responsibilities to execute those powers'. In simpler terms, it is the transfer of legal title subsisting within a person to another upon which such person shall have the right to exercise power concerning the estate devolved. The law relating to this area governs the way such power is transferred. It deals with the rules governing the administration of the estate by the personal representatives of the deceased person including state participation in respect of real estate situated within its territory and the personal estate of the deceased person subject to its jurisdiction.

Intestate Succession

Intestate succession occurs when a person dies without a valid will executing either a part of the whole of their estate. Thus there is an inability to quickly transfer their property. As a result, the law has put systems in place to justly divide property; this is achieved by using the law that governed the testator during his lifetime. Intestate succession under customary law in Africa will be briefly examined to enable further understanding of African jurisprudential family law.

In Nigeria customary law intestate succession is executed with legal principles. They are; the deceased customary law will be applied to divide his entire estate, one carries his customary law with him wherever he goes and the exception to this rule that acquisition of another customary law demands that the estate will be shared following the adopted law.

In South Africa the law is different, customary Law intestate succession is governed by The Intestate Succession Act which applies to estates where customary law was not applicable, this creates a uniform, relevant law for the courts to apply. The courts struck down the right of male primogeniture in the case *The v The Magistrate, Khayelitsha* thereby granting equality of the genders and regulating the many customary practices.

Testate succession

When a person dies 'testate', he is said to have been killed with a will which stipulates how his property is to be devolved. In such a situation, the law which would apply in Nigeria is the Wills Act of 1837, which has been amended as the Wills Law of various states. In African jurisprudence, the devolution of property is usually done intestate which shall be discussed in more detail below. This is because the property is usually shared according to the customs of the people. This however changed with the influence of colonial rule and the introduction of wills.

Conclusion

In conclusion, it is evident that some theories as stipulated by certain authors and writers as regards African and its jurisprudence is highly fallacious and lacks merit in all ramifications. The elucidation on the African system in family law, the principles, how the children are raised. Also, the morals and ideologies that guided the administration of the family, the devolution of properties and administration of the estate of a deceased are all evidence that there indeed existed a history of Africans to be told. The earlier stated is as opposed to the words of Trevor-

Roper, a professor of History of Oxford University who said that there was no content on the history of the Africans to be taught.

The English system, as well as its theorists, believe that the English idea of law is superior to any other and believes that where any other legal system is not in conformity with that which they know; such legal system did not qualify as law. This work has been able to distil that there existed a legal system in terms of family affairs. This ranged from the agreements to marry, to how marriages were organized between the various families. Also, the rights and obligations concerning the children from various marriages, and how it was a communal effort to raise the children.

This work has been able to elucidate on the African system concerning testate and intestate succession as it relates to family law from the African jurisprudential perspective. It has also been resolved that there indeed existed a better and much more appreciated concept of family in the traditional African society as compared to the current English system. The above is evidenced in the sanctity of marriage, as marriages were much more respected in the traditional African cultures, the children were better brought up this was the duty of the entire community and not just the parents. The traditional African jurisprudence on the family did not recognize 'divorce' in any form but upheld the sanctity of marriages and the importance of raising well-trained and cultured children..

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