

## **Mojekwu & others v Ejikeme & others (2000) 5 NWLR 402**

### **1) Reference Details**

Jurisdiction: Nigerian Court of Appeal, Enugu Division

Date of Decision: 9 December 1999

Case Status: Concluded by the Court of Appeal

### **2) Facts**

Reuben Mojekwu died intestate in 1996 without any surviving children. The appellants were Reuben's two great grandsons, and his granddaughter. The granddaughter was born to Reuben's daughter Virginia and the great grandsons were born to Virginia's two daughters. The appellants claimed that the *Nnewi* custom of *Nrachi* had been performed for Virginia and accordingly the appellants were entitled to inherit Reuben'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 heir, (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 Reuben's brother's family, claimed that *Nrachi* was performed for Virginia's sister Comfort, who had died childless, and not Virginia. They contended that when Comfort died Reuben's family lineage became extinct, and they, rather than the appellants, should inherit Reuben's property. The legal action began when the respondents, without the appellants' permission, entered the compound once belonging to Reuben. The appellants laid claim to a statutory right of occupancy over Reuben's estate and requested an injunction restraining the respondents from trespassing.

### **3) Law**

#### *National Law*

- Constitution of the Federal Republic of Nigeria

#### *International Law*

- Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (Pursuit of a policy of eliminating discrimination against women);
- Article 5 of the Convention on the Elimination of All Forms of Discrimination Against Women.

#### 4) Legal Arguments/Issues for Determination

The court was required to consider the following questions:

1. Was the trial judge correct to hold that the respondents could not inherit the estate of the late Reuben Muojekwu within the framework of extant *Nnewi* customs which imposed gender-discriminatory rules of succession?
2. Are customary rules of succession which limit the freedom of women to enter into marriage, and deny inheritance to women consistent with the fundamental rights of women, the Constitution and other laws of Nigeria?
3. Is the *Nnewi* custom or ceremony of *Nrachi* whereby a father places his unmarried daughter in his house for the purpose of raising issues and which further forbids a widow from inheriting or succeeding to her husband's estate repugnant to equity, natural justice and good conscience.

#### 5) Decision

##### *The Majority Opinion*

The Court held that the *Nrachi* custom, which is designed to oppress and cheat women and compromises the basic tenets of family life, was inequitable and judicially unenforceable. Accordingly, a female child does not need the performance of *Nrachi* in order to inherit her deceased father's estate.

It held that the custom was 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)). The custom was also inconsistent with public policy as it encourages promiscuity and prostitution. A female child is generally entitled to inherit her deceased father's estate and does not need to perform any customary ceremony such as *Nrachi* to exercise that right.

The Court held that the custom of *Ili-Ekpe* also discriminated against women (*Mojekwu v Mojekwu* (1997) 7 NWLR (Pt. 512) 283, 304-305 (Nig CA)). 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 Ruben'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.

The Court concluded that the appellants had been in possession of Ruben's estate for many years and it would be inequitable to throw them out. The Court of Appeal held that 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 Ruben's estate.

##### *Observations*

*Per Tobi CJA*

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. Virginia is a victim of such prejudices.