

COURT OF APPEAL
ENUGU DIVISION
19TH DECEMBER, 1999. CA/E/7/99
CORAM:- N. TOBI, S. A. OLAGUNJU, J. A. FABIYI, JJCA

1. EMEKA MUOJEKWU
 2. IZUCHUKWU MUOJEKWU APPELLANTS
 3. UZOAMAKA MUOJEKWU
- AND
1. OKECHUKWU EJIKEME
 2. DOZIE EJIKEME
 3. ERNEST EJIKEME RESPONDENTS
 4. GODDY EJIKEME
 5. MERCY EJIKEME
-

CONSTITUTIONAL LAW - Birth - Circumstances of - Deprivation by reason of circumstance of birth - Children born out of wedlock - Such circumstances cannot deprive them of their inheritance (H 5)

CUSTOMARY LAW - Repugnancy doctrine - Ili Ekpe custom of Nnewi - Is repugnant to natural justice - Equity and good conscience (H 3)

CUSTOMARY LAW - Repugnancy doctrine - Nrachi custom of Nnewi - Is repugnant and contrary to natural justice equity and good conscience (H 2)

CUSTOMARY LAW - Succession - Nnewi custom - Nrachi ceremony - A female child does not need the performance of Nrachi ceremony on her - To be entitled to inherit her deceased father's estate (H 4)

CUSTOMARY LAW - Succession - Unconstitutional custom - Nrachi custom of Nnewi - Impairs the right of free association - And is unconstitutional (H 1)

EQUITY - Succession - Persons who have been in possession and occupation - Of the estate of a late ancestor for a long time - It will be inequitable to dislodge and throw them out (H 7)

FAMILY LAW - Custody - Of any child born out of wedlock - Follows that of the mother (H 6)

FACTS

In the Nnewi Judicial Division of the High Court of Anambra State, the Plaintiffs/Appellants claimed that as heirs and Successors-in-title of Reuben Muojekwu who died intestate on 1-10-66, they are by virtue of the Nnewi custom called "*Ili-Ekpe*" entitled exclusively to the estate of the said deceased, (2) that the said deceased acknowledged Chinwe, and Uzoamaka - the 3rd Plaintiff as his own children entitled to inherit his property, land and personal goods;

(b) That Sarah Muojekwu the wife of the said deceased with her children - Comfort and Virginia performed the burial ceremony of Reuben and are therefore, entitled to succeed him at his demise. Thus, they laid claim to statutory right of occupancy over Reuben's real estate as well as perpetual injunction restraining the defendants/respondents.

The case of the Plaintiffs is that late Reuben Muojekwu, a native of Ezenwegbu, Otolu Nnewi, married Sarah. Both of them begat Samuel who predeceased his father in 1938 as well as Comfort and Virginia. Reuben died in Kano on 1-10-66. Comfort died childless in 1967. She was unmarried. Virginia gave birth to Chinwe in 1954 and Uzoamaka - the 3rd plaintiff in 1956. Virginia subsequently got married in 1957 to one Mr. Eze. Reuben and Sarah Muojekwu lived with Chinwe and Uzoamaka their grand daughters until their respective deaths in 1966 and 1975. Chinwe unmarried gave birth to Izuchukwu Muojekwu, the 2nd Plaintiff/Appellant. Uzoamaka, the 3rd Plaintiff/appellant also while unmarried gave birth to the 1st Plaintiff/appellant. They contended that Nrachi Customary ceremony was performed by Reuben for Virginia. Also, They maintained that they are not closely related to the defendant who without their permission in 1993 unlawfully trespassed into the compound of late

Reuben Muojekwu, hence they brought this action claiming as hereinbefore stated.

In their defence, the defendants claimed that they were related to the late Reuben Muojekwu as distant cousins. They maintained that Reuben's lineage got extinct due to the fact that he had no male child surviving him. That Nrachi ceremony was performed for Comfort but not for Virginia. "*Nrachi*" custom enables a man to keep one of his daughters unmarried perpetually under his roof to raise male issues to succeed him. The defendants contended that Virginia was not by Nrachi ceremony customarily assimilated into Ejikeme or Muojekwu family which exercise would have legalized her children and consequently empowered them to inherit Reuben Muojekwu's Estate. Defendants also maintained that they are entitled to inherit the estate of Reuben who died without any surviving male issue and without a will. Defendants thereby relied as well on the Ili-Ekpe custom of Nnewi which is to the effect that since Reuben had no surviving male issue, they being sons of Benneth Ejikeme, a distant cousin, must inherit the estate of Reuben to the exclusion of Reuben's daughters.

At the conclusion of trial, the learned trial judge found that because Reuben Muojekwu had no surviving male child and Nrachi ceremony was not performed on his daughter, Virginia, the mother and grand mother of the plaintiffs, the lineage of Reuben Muojekwu had become extinct. He concluded that the plaintiffs are not heirs to Reuben Muojekwu and are not entitled to succeed him or his estate. Consequently, he dismissed their case in its entirety. Dissatisfied, the Plaintiffs appealed to the Court of Appeal, Enugu Division.

ISSUE FOR DETERMINATION

"1. Whether on the pleadings, evidence and the applicable law, the learned Trial Judge was correct in holding that the plaintiffs were not children or heirs to the late Reuben Muojekwu and therefore not entitled to inherit his lands and estate?"

HELD (unanimously allowing the appeal per leading judgment of **FABIYI JCA**)

Nrachi custom of Nnewi - Impairs the right of free association

1. So, with Nrachi ceremony performed on a daughter, she takes the
 B position of a man in her father's house. Technically, she becomes a
 'man'. She must stay unmarried for the rest of her life to produce male
 children for her father. The custom legalizes fornication as the woman,
 outside bounds of marriage is free to procreate in the name of her father
 C without the benefit of a husband recognized by law. It inhibits the God
 given right of marriage. The right of free association is impaired. Such
 is unconstitutional. (p. 2270 F)

Nrachi custom of Nnewi - Is repugnant

D 2. In the main, it is a farce, a sort of window dressing designed to op-
 press and cheat the women-folk. I have no hesitation in declaring that
 Nrachi custom is against the dictates of equity. It is no doubt repugnant
 and contrary to natural justice, equity and good conscience. It is not
 E worthy of application and I declare it as being unenforceable in the judi-
 cial realm and no court of record should countenance or take judicial
 notice of it. In the result, a female child does not need the performance
 of Nrachi ceremony on her to be entitled to inherit her deceased father's
 F estate. (p. 2271 F)

Ili Ekpe custom of Nnewi - Is repugnant

3. As for Ili-ekpe custom of Nnewi the locus classicus on it is the case
 of *Augustine Nwofor Mojekwu v Caroline Mgbafor Okechukwu Mojekwu*
 G (1997) 7 NWLR (Pt.512) 283 at page 304 - 305. In this case, Tobi, JCA
 made a pronouncement that will continue to stand the test of time. Eji-
 wunmi, JCA (as he then was) lent his full support to same while Uba-
 ezonu, JCA cleverly gave it a sort of tacit support. At the end, they had
 H a unanimous decision.

In the above cited case, it was found that under the Nnewi na-
 tive law and custom, if a man dies leaving a male issue, the property
 belongs to the male child. If on the other hand, the deceased had no male

issue, his brother will inherit his property. If the male issue who inherits the father dies leaving no male issue, the father's brother will inherit the property. If on the other hand, the deceased's brother dies leaving sons, the sons will inherit the property of the dead cousin. In particular the 'Diokpala', that is the eldest son of the uncle will inherit the property. If a man dies and subsequently his only son and brother die, if the late brother has sons, the first son of the late brother will inherit all the property. The son of the late brother is called 'Oli-Ekpe'. He inherits the state and wives of the deceased. In the present case, the 1st respondent is the Oli-Ekpe claiming to be entitled to the property of Reuben to the exclusion of the appellants who are Reuben's descendants by blood through his daughter Virginia. C

Tobi, JCA, with great force, pronounced on Oli-Ekpe as follows:

On my part, I have no difficulty in holding that the 'Oli-Ekpe' custom of Nnewi is repugnant to natural justice, equity and good conscience." D
(p. 2271 H / 2273 B)

Female child can inherit without nrachi custom E

4. With Nrachi custom declared otiose, repugnant to natural justice, equity and good conscience as well as being unenforceable, the custom is no longer of moment. It is not relevant and thus Virginia's children - Uzoamaka - 3rd plaintiff/appellant and others can inherit Reuben Muojekwu's estate in the final analysis. (p. 2274 F) F

Children born out of wedlock - May be entitled to inheritance

5. It must be pointed out that the fact that the plaintiffs/appellants were born out of wedlock is immaterial. That cannot be used against them in inheriting the estate of Reuben Muojekwu. This is because section 39(2) of the 1979 Constitution applicable to this case provides that - G

" 39(2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstance of his birth." H

As blood relations, the property of late Reuben should devolve on the appellants. See *Adeseye v. Taiwo (supra)* and *Ogunmefun v. Ogunmefun (supra)* at p.82. (p. 2275 H)

Family law - Custody

6. The custody of any child born out of wedlock follows that of the mother in the absence of any person claiming custody of the child on the basis of being the natural father. Refer to Ben Enwonwu v. Spira (*supra*) at p.233. This must be so since the child must belong to a family and should not be rendered homeless for a situation he did not create. (p. 2276 B)

Equity - Succession

7. The appellants have been found to be descendants by blood, heirs and successors in title to the late Reuben Muojekwu. It was an eye wash to have found to the contrary. The appellants have been in possession and occupation of the estate of late Reuben Muojekwu for a long time. The 3rd plaintiff had been there since her birth in 1956. It will be inequitable to dislodge and throw them out. (p. 2276 F)

NOTABLE POINTS OF INTEREST
FABIYI JCA

1. The absurdity of Nrachi custom

Nrachi custom is discriminatory even in its crude application. A daughter with the custom performed on her has upper-hand over the other without it. She can inherit while the others without same cannot inherit. Nrachi custom entails contradictions galore.

I must express the point here by which I will continue to stand that human nature, in its most 'exuberant prime and infinite telepathy' cannot support the idea that a woman can take the place of a man and be procreating for her father via a mundane custom. She stays in the father's house and cannot marry for the rest of her life even if she sees an honest man who loves her. I cannot, and do not believe that the society, as it is presently constituted, will for long acquiesce in a conclusion so ludicrous, ridiculous, unrealistic and merciless more especially as we march on into the next millennium.

The polity as presently constituted, cannot, in my view, contain

what Nrachi custom stands for. It is not neat. It is an antithesis to that which is wholesome and forward looking. It cannot, and should not, be allowed to rear its ugly head any longer. It should die a natural death and be buried. It should not be allowed to resurrect. The custom is perfidious and the petrifying odour smells to high heavens. It is an old time B custom. And, 'behold, the old order must change and become new'.

I strongly feel that Nrachi custom is no longer worthy of application with modern day trends. No elite would agree that it be performed on his daughter as at now when making of a will can readily take care of C situations calling for care. Nrachi custom is rendered otiose as it is absurd and fantastic. (p. 2270 H)

TOBIJCA

2. How to draft grounds of appeal

Drafting of grounds of appeal is a very important function of appellate D counsel and he should handle it with care and professional expertise. A ground of appeal must precisely, succinctly and accurately state the complaint the appellant has on the judgment of the court. A long, tedious and E rigmarole language is not good for the drafting of a ground of appeal. Where counsel wants to condemn or attack a statement by the Judge as a basis for a ground of appeal, he should quote the statement precisely and not a mouthful of it, including irrelevant aspects of the statement. F That apart, it is not every error or slip on the part of a Judge that should give rise to a ground of appeal. The error or slip should be such that will determine the fortunes of the appeal in favour of the appellant. Grounds of appeal should not be repetitive. Above all, grounds of appeal must G relate solely to the decision appealed and not flirt outside the decision. A look at some of the thirteen grounds of appeal show inelegance, lacking professional touch. It should not be so, or better, it ought not be so. See generally Ekpan v. Uyo (1986) 3 NWLR (pt. 26) 63. (p. 2279 A)

3. How issues should be framed

H That takes me to the issues. The issues for determination are very important and serious part of a brief and ought to be carefully formulated.

They should not be framed in the abstract but in concrete terms arising from and related to the grounds of appeal filed which represent the questions in controversy in the particular appeal. Issues expatiate, expand or edify grounds of appeal. They act as mirror reflecting the grounds of appeal, See *Busari and Others v. Oseni and others* (1992) 4 NWLR (pt. 237) 557.

The Supreme Court and this court have condemned the proliferation of issues in a number of cases. Appeals are never won on the large number of issues but rather on the quality. Where issues are prolix, verbose and unwieldy, they create problem for the court and that is not in the interest of the administration of justice. (p. 2279 E)

OLAGUNJU JCA

4. The utility of nrachi ceremony

True enough, it cannot be gainsaid that at the time of its conception 'Nrachi ceremony' was designed for the purpose of circumventing the harshness of 'Ili-Ekpe custom' that was so invaluable to the cultural, economic and social aspirations of an environment which called Ili-Ekpe into play that is totally different from the aspirations of the present era. But with the passage of time and cross-fertilization of values with other cultures of the world 'Ili-Eke custom' for the iniquity of which 'Nrachi ceremony' provides a panacea has become anachronistic and sheer customary relics for the modern times that is yearning desperately for some booster to buoy up the low level of chastity that pervades the permissive society which the practice of Nrachi compounds. That the twin practice which has all the trimmings of a primordial evolution should survive the 20th century with only a few days to run is one irony of the legacy on the cultural horizon that will be bequeathed to the new millennium. It is retrograde. (p. 2295 E)

REPRESENTATION

B. S. Nwankwo Esq. for the appellants
O. R. Ulasi Esq. for the respondents

CASES REFERRED TO

- Augustine Mojekwu v. Caroline Mojekwu (1997) 7 NWLR (Pt.512) 283;
(1998) 6 KLR Pt 67 1623 CA
- Adesoye v. Taiwo (1956) SC NLR 265
- Yusuff v. Dada (1990) 4 NWLR (Pt. 146) 657 B
- Ogunmefun v Ogunmefun (1931) 10 NLR 82
- Adeyemi v. Opeyori (1976) 9 - 10 SC 31 at p.56
- Abeki v. Amboro (1961) All NLR 368 at p. 370
- University of Lagos v. Aigoro (1985) I NWLR (pt. 1) 143
- Saffieddine v. C.O.P. (1965) 1 ALL NLR 54 at pg. 58 C
- Ugboma v. Olise (1971) I ALL NLR 8
- Enekebe v. Enekebe (1964) ALL NLR 102 at p.106
- Demuren v. Asuni (1967) I ALL NLR 94 at p. 104
- Solanke v. Ajibola (1968) I ALL NLR 86 at p. 152 D
- Odusote v. Odusote (1971) ALL NLR 219
- Nnubia v. Attorney General, Rivers State (1999) 3 NWLR (pt. 593) 82 at pages. 112 - 113
- E

STATUTES REFERRED TO

- Constitution of Nigeria 1979 ss. 39(2), 42(1)
- Court of Appeal Act, CAP 75, LFN, 1990 s. 16
- High Court Law, 1987 of Anambra State s. 18(1)
- High Court Law, No 27 of 1955 of Eastern Nigeria s. 22(1) F

BOOKS REFERRED TO

- Family Law in Nigeria (1974) Professor E.I. Nwogugu
- The Customary Law Manual Professor S.N.C. Obi Chapters 31 and 32 G

LEAD JUDGMENT BY FABIYI JCA

This is an appeal against the judgment of Nri-Ezedi, J. handed out at Nnewi High Court of Justice in Anambra State of Nigeria on 25-3-97. H

The Appellants, as plaintiffs before the Trial Court, claimed in their statement of claim - (1) That as heirs and successors-in title to Reuben Muojekwu who died intestate on 1-10-66, they are by virtue of

the Nnewi Custom called '*Ili-Ekpe*' entitled exclusively to the estate of the said deceased, (2) That the said deceased acknowledged Chinwe and Uzoamaka - the 3rd plaintiff as his own children entitled to inherit his property, land and personal goods; (3) That Sarah Muojekwu the wife of the said deceased with her children - Comfort and Virginia performed the burial ceremony of Reuben and are therefore, entitled to inherit him at his demise.

It is instructive to garner the relevant facts that are material to the just determination of this appeal. Late Reuben Muojekwu, a native of Ezenwegbu, Otolu Nnewi, married Sarah. Both of them begat Samuel who predeceased his father in 1938 as well as Comfort and Virginia. Reuben died in Kano on 1-10-66. Comfort died childless in 1967. She was unmarried. Virginia gave birth to Chinwe in 1954 and Uzoamaka - the 3rd plaintiff in 1956. Virginia subsequently got married in 1957 to one Mr. Eze. Reuben and Sarah Muojekwu lived with Chinwe and Uzoamaka, their grand daughters until their respective deaths in 1966 and 1975. Chinwe unmarried gave birth to Izuchukwu Muojekwu, the 2nd appellants. Uzoamaka, the 3rd appellant also while unmarried gave birth to the 1st plaintiff.

The appellants contended that Nrachi customary ceremony was performed by Reuben for Virginia. As well, they maintained that they are not closely related to the Respondents, who without their permission in 1993, unlawfully trespassed into the compound of late Reuben Muojekwu which conduct gave rise to the action in the lower court where they laid claim to statutory right of occupancy over Reuben's real estate as well as perpetual injunction restraining the Respondents.

The Respondents, as Defendants at the Trial Court, claimed that they were related to the late Reuben Muojekwu as distant cousins. They maintained that Reuben's lineage got extinct due to the fact that he had no male child surviving him. They contend that Nrachi ceremony was performed for Comfort but not for Virginia. "Nrachi" custom enables a man to keep one of his daughters unmarried perpetually under his roof to raise issues, more especially males for the father to succeed him. By paragraph 9 of the statement of Defence, the respondents averred that Vir-

ginia was not by Nrachi ceremony customarily assimilated into Ejikeme or Muojekwu family which exercise would have legalized her children and consequently empowered them to inherit Reuben Muojekwu's Estate. Respondents maintained that they are entitled to inherit the estate of Reuben who died without any surviving male issue and without a will. Suffice it to say that the respondents thereby relied as well on the 'Ili-Ekpe' custom of Nnewi which is to the effect that since Reuben had no surviving male issues, they being sons of Benneth Ejikeme, a distant cousin, must inherit the estate of Reuben to the exclusion of Reuben's 'daughters'.

The Learned Trial Judge heard evidence from witnesses called by both parties. Learned Counsel on both sides also addressed the Trial Court at will. In his reserved judgment, the Trial Judge concluded same as follows:

"In the result and for the reasons given above, it is my finding that Reuben Muojekwu's lineage became extinct on the death of his daughter Comfort and that the plaintiffs therefore are not heirs to Reuben Muojekwu and are not entitled to succeed him or his estate."

The Learned Trial Judge thereafter dismissed the appellants' case in its entirety and awarded N500 costs against them. The appellants felt dissatisfied and appealed to this court. The notice of appeal was accompanied by five original grounds of appeal. And on 5-7-99, a host of eight additional grounds of appeal were filed with the leave of this court.

On 14-10-99 when the appeal was heard, B.S. Nwankwo Esq., Learned Counsel for the appellants, adopted the appellants' undated brief which was filed on 18-3-99 as well as the reply brief, dated and filed on 17-5-99. As well, Mr. O. R. Ulasi, Learned Counsel for the respondents, adopted their brief, dated and filed on 14-4-99.

On pages 2-3 of the appellants' brief, nine issues were formulated for determination. I feel tempted to reproduce them as follows:

"1. Whether on the pleadings, evidence and the applicable law, the learned Trial Judge was correct in holding that the plaintiffs were not children or heirs to the late Reuben Muojekwu and therefore not entitled to inherit his lands and estate?"

2. *Whether from the evidence led in this suit and the pleadings too the defendants were not estopped from asserting that the plaintiffs were not children of the late Reuben Muojekwu?*

B 3. *Whether the Learned Trial Judge was correct at law or in equity to have dismissed in their entirety (sic) the plaintiffs' claims?*

4. *Whether the Learned Trial Judge was correct in holding that the lineage of Reuben Muojekwu became extinct on the death of Comfort?*

C 5. *Whether the custom of Nrachi wherein a father plants a daughter of his in his house without being married to raise issues and that which forbids a widow from inheriting or succeeding to her husband's estate are not repugnant to equity, natural justice and good conscience.*

D 6. *Whether the Learned Trial Judge's conclusions that acknowledgment by Reuben Muojekwu of the 3rd Plaintiff and Chinwe, their continued living in the compound of Reuben Muojekwu, maintaining same till date are neither here nor there correct?*

E 7. *Whether the Learned Trial Judge was correct in holding as he did that the 1st plaintiff was customarily the son of Benneth Ejikeme.*

8. *Whether the plaintiffs or the defendants were closer by blood or descent to the late Reuben Muojekwu for purpose of inheritance and succession*

F 9. *Whether the Learned Trial Judge was correct in casting the burden of proof on the plaintiffs in respect of customs pleaded or asserted by the defendants".*

G On page 7 of the respondents brief, Learned Counsel for the respondents adopted issue No.1 formulated by the appellants as reproduced above. Learned Counsel posited that having regard to the grounds of appeal filed, appellants issue 1 is the only issue which falls to be decided. The assertion, in my considered view, sounds rather simplistic, in the main.

H I need to note at this juncture that the grounds of appeal, thirteen in number, appear too many. The attendant particulars are verbose. As reproduced above, nine issues were formulated by the appellants. To depict lack of bearing, the learned Counsel for the appellants argued all

the nine issues in one fell swoop in a rather disjointed fashion. It must be re-stated that proliferation of grounds of appeal as well as issues for determination must be avoided in all cases. Appeals are not won by the number of grounds of appeal field as well as issues formulated. See *Augustine Muojekwu v. Caroline Muojekwu* (1997) 7 NWLR (Pt.512) 283. B I quite appreciate however that brevity is an art. It is the gift of Providence.

Arguing the appeal, learned counsel for the appellants observed initially that D.W.1 testified at page 36 of the record that the 1st and 3rd C plaintiffs are the children of Muojekwu. The 2nd defendant, according to counsel, said the same thing. He submitted that by the operation of section 33 and 151 of the Evidence Act, 1990, such is a declaration against interest.

Further, Learned Counsel observed that Chinwe and Uzoamaka D - 3rd appellant lived with Reuben Muojekwu until his death in 1966. They stayed with Sarah until her death in 1975. He maintained that Reuben and his wife - Sarah Muojekwu duly accepted Chinwe and Uzoamaka as their E children. He contended that without Nrachi, the appellants are descendants of Reuben Muojekwu by blood. He observed that the circumstance of their births is completely immaterial as such should not be a basis of discrimination against them vide section 39(2) of the 1979 Constitution. He submitted that as blood relations, the property of late Reuben should F devolve on the appellants, he referred to *Adesoye v. Taiwo* (1956) SC NLR 265; *Yusuff v. Dada* (1990) 4 NWLR (Pt. 146) 657, *Ogunmefun v Ogunmefun* (1931) 10 NLR 82.

Learned Counsel submitted that being born out of wed-lock would G not deprive the appellants their inheritance rights as the custody of any child born out of wed-lock follows that of the mother in the absence of any person claiming custody of the child on the basis of being the natural father. He cited the case of *Ben Enwonwu v. Spira* (1965) 2 All NLR 233. H

Learned Counsel submitted further that the learned Trial judge was wrong to have accepted that Benneth Ejikeme, a distant cousin of Reuben, by 'Ili-Ekpe' or 'Oli-Ekpe' custom of Nnewi people inherited

Reuben Muojekwu's estate on the demise of Reuben without a male issue. He maintained that such is against natural justice, equity and good conscience and as such unenforceable. He placed strong reliance on the case of *Augustine Mojekwu v. Caroline Mojekwu supra* at p. 305.

B Learned Counsel further submitted that the issue of Benneth Ejikeme legitimizing the 1st plaintiff as his son, as found by the Trial Judge is most untenable, and as well, a natural and legal impossibility. He referred to *W.N. Ejilemele v. B.A.E. Opara* (1998) 4 NWLR (pt. 567) 587. He maintained that Reuben Muojekwu acknowledge and assimilated Chinwe and Uzoamaka - 3rd appellant as his children. He referred to *Adeyemi v. Opeyori* (1976) 9 - 10 SC 31 at p.56.

C Learned Counsel observed that the plaintiffs/Appellants pleaded in paragraph 10 of their statement of claim that Reuben acknowledged D Chinwe and Uzoamaka (3rd plaintiff) as his own children entitled in inherit his estate. He said there was no proper traverse. It was given an evasive answer. The point must be deemed as established. He referred to *Odogwu v Odogwu* (1990) 4 NWLR (Pt. 143) 224 at p. 226. Learned E Counsel contended that the legitimacy of the appellants follows from the fact of acknowledgment by Reuben and not from the obnoxious Nrachi custom. Finally, he maintained that since Reuben and Sarah accepted the 3rd appellant and Chinwe who both gave birth to the 1st plaintiff and 2nd F plaintiff respectively, it is highly inequitable and unjustified for the Trial Judge to oust them from the estate of Reuben. He referred to section 58 of Trust and Equity Law, Laws of Anambra State which empowers the court to grant injunction in respect of trespass.

G Mr. O. R. Ulasi, Learned Counsel for the Respondents, at first, frowned that the issues formulated by the appellants were more than the grounds of appeal filed. It was found that since additional grounds of appeal were filed to make a total number of thirteen, the point raised was not of moment as nine issues were formulated. I have earlier on in this H judgment expressed my strong view on proliferation of grounds of appeal and issues formulated thereon. And I say no more here.

Learned Counsel pin-pointed it that the real bone of contention is who, under Nnewi Customary Law, as between the appellants and the

respondents should Claim entitlement to inherit the estate of late Reuben Muojekwu? Learned Counsel observed that the appellants relied on Nrachi custom in their evidence but later turned round to say it is of 'doubtful validity'. Trial Judge found that Nrachi was performed by Reuben on Comfort and not on Virginia. The Respondents pleaded in their statement of defence that the ceremony of Nrachi was not performed for Virginia. They admitted that if the ceremony had been performed for her, that would have 'legalized her children and consequently empowered them to inherit Reuben Muojekwu's estate.'

Learned Counsel referred to the pronouncement of Tobi, J.C.A in Augustine N. Muojekwu v Caroline M.O. Muojekwu supra at p. 304. As it pertains to 'Ili-Ekpe' or 'Oli-Ekpe', he pointedly submitted that if the custom can be stigmatized for being repugnant to natural justice, equity and good conscience, then the same standard must also apply to the Nrachi custom (relied upon by the appellants) by which a woman outside bounds of marriage is free to procreate in the name of her father without the benefit of a husband recognized by law.

Learned Counsel contended that apart from the 3rd appellant who was born in 1956, the 1st and 2nd appellants were born after the death of Reuben. And so, they could not have been acknowledged by Reuben. Learned Counsel observed that the Learned Trial Judge found that Benneth Ejikeme performed the burial rites of Reuben.

In the appellant's reply brief, B.S. Nwankwo Esq., of counsel submitted that it was wrong for the learned Trial Judge to hold that Reuben Muojekwu's lineage became extinct with the appellants. Reuben's descendants by blood, being alive. Learned Counsel maintained that the appellants are Reuben's privy in blood. He referred to Nwosu v Udeaja (1990) 6 NWLR (Pt.125) 188. Learned Counsel contended that appellants are descendants of Reuben by blood and as such, are heirs at law and successors-in -title to him. To hold otherwise would deprive them of their identities as indigenes of Okpuno Otolu Nnewi and as Nigeria H citizens. Learned Counsel submitted that the appellants have been in undisturbed possession of Reuben's estate for decades. They live there, keep and maintain same and such is sufficient for declaration and injunc-

tion to protect their accrued rights. Learned Counsel observed that the respondent laid claim to Reuben's estate through the obnoxious Ili-Ekpe custom to the exclusion of the appellants who are descendants by blood.

The two custom of Nnewi seriously relied upon by the parties
B herein are Nrachi and Ili-Ekpe. By paragraph 9 of the Statement of De-
fence, the defendants averred that no Nrachi ceremony was performed
for Virginia - the mother of Chinwe and Uzoamaka. They admitted that if
Nrachi ceremony had been performed for Virginia, such would have le-
C gitimized her children- 3rd appellant and the others to inherit the estate of
late Reuben Muojekwu. The trial judge found that since no Nrachi cer-
emony was performed for Virginia, and her children were not the direct
issues of late Reuben, they were not entitled to inherit Reuben's estate.
Thus, according to the Trial judge, the lineage of Reuben became extinct
D and Benneth Ejikeme, the distant cousin of Reuben should inherit the
estate through Ili-Ekpe custom. It is now pertinent to explore what the
two customs stand for as well as their purpose, intendment and usage.

DW4, Jonathan Okwuosa, the chairman of Ezenwegbu family,
E on Nrachi custom, at page 52 lines 25 - 29 to page 53 lines 1 -4 stated as
follows:

*"I know the custom of Nnewi with respect to 'Nrachi Nwanyi' for
the ceremony a big he goat, 4 gallons of wine and 8 kola nuts are needed.
F These are provided by the father of the woman for whom the ceremony is
performed. The father will invite members of their family and present
these things to them. He will then tell them that he is initiating the
daughter into the family to take the position of a male issue."*

**So, with Nrachi ceremony performed on a daughter, she
G takes the position of a man in her father's house. Technically, she
becomes a 'man'. She must stay unmarried for the rest of her life
to produce male children for her father. The custom legalizes for-
nication as the woman, outside bounds of marriage is free to pro-
H create in the name of her father without the benefit of a husband
recognized by law. It inhibits the God given right of marriage. The
right of free association is impaired. Such is unconstitutional.**

Nrachi custom is discriminatory even in its crude application. A

daughter with the custom performed on her has upper-hand over the other without it. She can inherit while the others without same cannot inherit. Nrachi custom entails contradictions galore.

I must express the point here by which I will continue to stand that human nature, in its most 'exuberant prime and infinite telepathy' cannot support the idea that a woman can take the place of a man and be procreating for her father via a mundane custom. She stays in the father's house and cannot marry for the rest of her life even if she sees an honest man who loves her. I cannot, and do not believe that the society, as it is presently constituted, will for long acquiesce in a conclusion so ludicrous, ridiculous, unrealistic and merciless more especially as we march on into the next millennium.

The polity as presently constituted, cannot, in my view, contain what Nrachi custom stands for. It is not neat. It is an antithesis to that which is wholesome and forward looking. It cannot, and should not, be allowed to rear its ugly head any longer. It should die a natural death and be buried. It should not be allowed to resurrect. The custom is perfidious and the petrifying odour smells to high heavens. It is an old time custom. And, 'behold, the old order must change and become new'.

I strongly feel that Nrachi custom is no longer worthy of application with modern day trends. No elite would agree that it be performed on his daughter as at now when making of a will can readily take care of situations calling for care. Nrachi custom is rendered otiose as it is absurd and fantastic. **In the main, it is a farce, a sort of window dressing designed to oppress and cheat the women-folk. I have no hesitation in declaring that Nrachi custom is against the dictates of equity. It is no doubt repugnant and contrary to natural justice, equity and good conscience. It is not worthy of application and I declare it as being unenforceable in the judicial realm and no court of record should countenance or take judicial notice of it. In the result, a female child does not need the performance of Nrachi ceremony on her to be entitled to inherit her deceased father's estate.**

As for Ili-ekpe custom of Nnewi the locus classicus on it is the case of Augustine Nwofor Mojekwu v Caroline Mgbafor Okechukwu

Mojekwu (1997) 7 NWLR (Pt.512) 283 at page 304 - 305. In this case, Tobi, JCA made a pronouncement that will continue to stand the test of time. Ejibunmi, JCA (as he then was) lent his full support to same while Ubaezonu, JCA cleverly gave it a sort of tacit support. At the end, they had a unanimous decision.

In the above cited case, it was found that under the Nnewi native law and custom, if a man dies leaving a male issue, the property belongs to the male child. If on the other hand, the deceased had no male issue, his brother will inherit his property. If the male issue who inherits the father dies leaving no male issue, the father's brother will inherit the property. If on the other hand, the deceased's brother dies leaving sons, the sons will inherit the property of the dead cousin. In particular the 'Diokpala', that is the eldest son of the uncle will inherit the property. If a man dies and subsequently his only son and brother die, if the late brother has sons, the first son of the late brother will inherit all the property. The son of the late brother is called 'Oli-Ekpe'. He inherits the state and wives of the deceased. In the present case, the 1st respondent is the Oli-Ekpe claiming to be entitled to the property of Reuben to the exclusion of the appellants who are Reuben's descendants by blood through his daughter Virginia.

Tobi, JCA, with great force, pronounced on Oli-Ekpe as follows:

"Is such a custom consistent with equity and fair play in an egalitarian society such as ours where the civilized sociology does not discriminate against women? Day after day, month after month and year after year, we hear of and read about customs which discriminate against the womenfolk in this country. They are regarded as inferior to the menfolk. Why should it be so? All human beings - male and female are born into a free world and are expected to participate freely without any discrimination on grounds of sex; and that is constitutional. Any form of societal inhibition on grounds of sex, apart from being unconstitutional, is antithesis to a society built on the tenets of democracy which we have freely chosen as a people. We need not travel all the way to Begin to know that some of our customs including the Nnewi 'Oli - Ekpe' customs relied

upon by the appellant are not consistent with our civilized world in which we all live today, including the appellant. In my humble view, it is the monopoly of God to determine the sex of a baby and not the parents. Although the scientific world disagrees with this divine truth, I believe that God, the Creator of human beings, is also the final authority of who should be male (or) female. Accordingly, for a custom or customary law to discriminate against a particular sex is to say the least an affront on the Almighty God Himself. Let nobody do such a thing. **On my part, I have no difficulty in holding that the 'Oli-Ekpe' custom of Nnewi is repugnant to natural justice, equity and good conscience.**"

The Supreme Court, as well as this court have laid down instances when a court of appeal will interfere with a lower court's exercise of discretion relating to finding of facts. Where the lower court took irrelevant matters into consideration or omitted to take relevant matters into consideration, this court will interfere. See *Abeki v. Amboro* (1961) All NLR 368 at p. 370. Where exercise of discretion is perverse, such will be reversed. Refer to *University of Lagos v. Aigoro* (1985) 1 NWLR (pt. 1) 143 at page 148 - 149. Discretion must be exercised not only judicially, but judiciously as well. See *Saffieddine v. C.O.P.* (1965) 1 ALL NLR 54 at p.g. 58. *Ugboma v. Olise* (1971) 1 ALL NLR 8. When it is in the interest of justice, this court will interfere. Refer to *Enekebe v. Enekebe* (1964) ALL NLR 102 at p.106. *Demuren v. Asuni* (1967) 1 ALL NLR 94 at p. 104; *Solanke v. Ajibola* (1968) 1 ALL NLR 86 at p. 152. Discretion must be exercised according to justice and in consonance with common sense. Refer to *Oduote v. Oduote* (1971) ALL NLR 219. Where it is in the interest of justice or such leads to miscarriage of justice this court will interfere. Refer to *Nnubia v. Attorney General, Rivers State* (1999) 3 NWLR (pt. 593) 82 at pages. 112 - 113. I should add that where findings run against the flow of the current or they are palpably contrary to the dictates of equity, natural justice and good conscience, this court will definitely interfere. And where discretion appears to have been thrown to the wind, such will call for an intervention by this court.

That leads me to the operation of section 16 of the Court of Appeal Act, CAP 75, Laws of the Federation of Nigeria, 1990. It pro-

vides, *inter alia*, that the court may grant an injunction which the Trial Court is authorized to make or grant. And the court may re-hear the case in whole or in part as if proceedings had been instituted in this court.

With the above as an armour, I should now pronounce on the propriety or otherwise of the findings of facts made by the Trial Judge. It is clear that he employed the two customs to wit: Nrachi and Oli-Ekpe to determine the case. As shown above, the two customs are repugnant to the principle of natural justice, equity and good conscience. The Trial Court employed the services of the two unenforceable customs to determine the case in the main. The appellants based their case on Nrachi and Oli-Ekpe customs.

They also based their case on acknowledgment or acceptance by Reuben Muojekwu. They had no point as regard the two unenforceable customs. The respondents' defence was based on Oli-Ekpe custom. And since Oli-Ekpe custom has been found to be unenforceable, the defence which was built on a sinking sand fell like a pack of cards without support.

I should here again re-iterate it that the defendants/respondents admitted in paragraph 9 of their Statement of Defence that if Nrachi ceremony had been performed for Virginia that would have 'legalized her children and consequently empowered them to inherit Reuben Muojekwu's estate'. **With Nrachi custom declared otiose, repugnant to natural justice, equity and good conscience as well as being unenforceable, the custom is no longer of moment. It is not relevant and thus Virginia's children - Uzoamaka - 3rd plaintiff/appellant and others can inherit Reuben Muojekwu's estate in the final analysis.**

It is of interest to state here that the Trial Judge found that Benneth Ejikeme legitimized the 1st appellant as his son before the family at large. The 1st appellant was legitimized into Benneth Ejikeme's family, not into Reuben Muojekwu's family. Such appears egocentric of Benneth who wanted to see the total extinction of Reuben's lineage. The finding of the Trial Court was unreasonable and perverse. It is untenable. It is a legal and natural impossibility. It is definitely in the interest of justice to interfere with the finding. Emeka Muojekwu is of the lineage of Reuben,

being a great grand son. Refer to Ejilemele v Opara (supra) 587.

The main pivot of the appellants' case is that they are children of Reuben Muojekwu who acknowledged and accepted them as such during his life time. The 2nd defendant/respondent testified as DWI at page 36, line 16-17 of the transcript record of appeal. He made an admission B against their interest thus:

"The 1st and 3rd plaintiffs are the children of Muojekwu. The 2nd plaintiff is a paternal grand son to Muojekwu"

DW2, Eric Obimailo, at page 45, lines 26-28 testified as follows:

"When Reuben Muojekwu died, he had three daughters surviving him. Their names are Virginia, Uzoamaka (3rd appellant) and Chinwe". C

The same DW2 further stated that Uzoamaka and Reuben Muojekwu were living together until Reuben Muojekwu died. D.W.4, on his own part, stated on oath at page 54 lines 19-20 of the record that: D

"Uzoamaka was born in Reuben Muojekwu's family. I know her as Uzoamaka Muojekwu".

In paragraph 10 of the statement of claim, the plaintiffs/appellants claim that Reuben acknowledged Chinwe and Uzoamaka (3rd plaintiff) as his own children entitled to inherit his property, lands and personal goods. The defendants/respondents merely denied same in their paragraph 25 of the Statement of Defence. There was no proper traverse to the salient point raised. It is clear that a denial must not be evasive. F The Defendants had to answer the point of substance. See Odogwu v Odogwu (supra) at p. 226.

One is therefore at a loss on the rationale for the learned Trial Judge's conclusion at page 77 line 31 to page 78 lines 1-5 which reads as follows: G

"In the result and for the reasons given above, it is my finding that Reuben Muojekwu's lineage became extinct on the death of his daughter Comfort and that the plaintiffs therefore are not heirs to Reuben Muojekwu and are not entitled to succeed him or inherit his estate". H

It must be pointed out that the fact that the plaintiffs/appellants were born out of wedlock is immaterial. That cannot be used against them in inheriting the estate of Reuben Muojekwu.

This is because section 39(2) of the 1979 Constitution applicable to this case provides that -

" 39(2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstance of his birth."

B As blood relations, the property of late Reuben should devolve on the appellants. See *Adeseye v. Taiwo (supra)* and *Ogunmefun v. Ogunmefun (supra)* at p.82. That is not the end of matter. The custody of any child born out of wedlock follows that of the mother
C in the absence of any person claiming custody of the child on the basis of being the natural father. Refer to *Ben Enwonwu v. Spira (supra)* at p.233. This must be so since the child must belong to a family and should not be rendered homeless for a situation he did not create.

D The plaintiffs/appellants maintained that they are in exclusive possession of Reuben's estate. The 3rd appellant said her late sister Chinwe and herself renovated the house and out up a fence with iron gate. DW4 at page 53 lines 25 - 29 confirmed same as follows:

E *" I know Reuben Muojekwu's compound. The compound has an iron gate with a dwarf compound wall - Sarah was buried in that compound. I do not know the bungalow in the compound has 4 rooms. Uzoamaka lives in that compound now. "*

F It is not in contention that Uzoamaka - 3rd plaintiff has been living in the house of Reuben since her birth in 1956. I feel exclusive possession was clearly established by the appellants. It is clearly erroneous to have found otherwise.

The appellants have been found to be descendants by blood,
G heirs and successors in title to the late Reuben Muojekwu. It was an eye wash to have found to the contrary. The appellants have been in possession and occupation of the estate of late Reuben Muojekwu for a long time. The 3rd plaintiff had been there since
H her birth in 1956. It will be inequitable to dislodge and throw them out.

In the result, It is hereby declared that the plaintiffs/appellants are the heirs by blood who should inherit the estate of late Reuben

Muojekwu situate at NO. 38 Ezenwegbu Street, Okpuno Otolu Nnewi as well as another parcel of land situate at Okpuno Otolu Nnewi. It is declared that they are entitled to a right of occupancy over both parcels of land as contained in paragraph 28(b) and (c) of the statement of claim. The defendants/respondents are restrained from further trespassing into the above land and/or estate of the late Reuben Muojekwu. B

In conclusion, the Judgment as well as the attendant costs entered by the trial judge on 25-3-97 is hereby set aside as the appeal is allowed. Appellants are entitled to costs which I assess at N3,000 against the respondents. C

TOBI JCA

I have read the judgement of my learned brother, Fabiyi. JCA and I agree D with him. Let me add some words of mine. I should trace the genealogy from Reuben Muojekwu. I shall mostly simply refer to him by his first name, Reuben. He married Sarah, not Abraham's wife of biblical fame, though. She died in 1975. E

Reuben begat Samuel. Paragraph 6 of the Statement of Claim specifically deposed that Samuel was "*a male child*." The name Samuel should be enough to indicate his male sex but counsel added the already known description of gender by adding the words "*a male child*." F Considering the background of the nature of the case and particularly the custom involved. I can hardly blame counsel. His unusual and probably tautologous description serves his purpose and therefore the purpose of his clients, the appellants. I should close this non-controversial aspect of the matter by saying that even without the words "*a male child*" this G court has the support of the law to take judicial notice of the male content of the gender of Samuel. Unfortunately for Reuben, Samuel predeceased him. Samuel died sometime in 1938. The actual date of Samuel's death is not available in the records. That evidence is not even necessary, H although it is probable that if Samuel had outlived his father, Reuben, the litigation which is the subject of this appeal may not have been necessary. This is all assumption or presumption. I could be wrong. The procre-

ation life of Reuben, if I may use the expression unguardedly, did not die with the death of Samuel. Reuben begat two other children: Comfort and Virginia.

Reuben died on 1st October, 1966, Nigeria's sixth independence anniversary. Comfort died childless in 1967. Virginia according to the appellants, begat Chinwe in 1954 and Uzoamaka in 1956. Uzoamaka is the 3rd plaintiff and the 3rd appellant on record. Uzoamaka, unmarried begat Emeka, 1st plaintiff and 1st appellant on record. Chinwe begat Izuchukwu, the 2nd plaintiff and 2nd appellant on record.

I think I have covered the pedigree of the three appellants, Emeka, Izuchukwu and Uzoamaka. Let me end the picture by tracing the relationship of the appellants to Reuben, though seemingly clear from the above pedigree. I should do so even if it will sound prolix. While the 1st and 2nd appellants are Reuben's great grand sons, the 3rd appellant is Reuben's grand-daughter. I should perhaps add that Chinwe, Reuben's grand-daughter, died in 1989. Chinwe's mother, Virginia is alive. I think I should restrict myself by saying that Virginia was alive at the time the matter was heard at the lower court. She gave evidence as DW2. It is possible that she is still alive. I do not know, but that is not important.

The appellants as plaintiffs in the court below sought three declarative reliefs and one injunctive relief. The learned trial Judge did not grant any of the reliefs. He dismissed the case and awarded N500.00 costs against the plaintiffs.

Dissatisfied, they appealed to this court. Appellants filed five original grounds of appeal. By motion filed on 18th March, 1999 and argued on 5th July, 1999 this court granted the filing of eight additional grounds, making a total of thirteen grounds.

Learned counsel for the respondents raised objection based only on the five original grounds. In the light of the eight additional grounds of appeal, his objection in respect of Issue No 4, 5, 6, 7, 8 and 9 may not be necessary. But this is not to say that the appeal really requires the formulation of thirteen grounds and nine issues. Really, what has thirteen grounds of appeal and nine issues to do in this appeal. They are far too many.

Drafting of grounds of appeal is a very important function of appellate counsel and he should handle it with care and professional expertise. A ground of appeal must precisely, succinctly and accurately state the complaint the appellant has on the judgment of the court. A long, tedious and rigmarole language is not good for the drafting of a ground of appeal. Where counsel wants to condemn or attack a statement by the Judge as a basis for a ground of appeal, he should quote the statement precisely and not a mouthful of it, including irrelevant aspects of the statement. That apart, it is not every error or slip on the part of a Judge that should give rise to a ground of appeal. The error or slip should be such that will determine the fortunes of the appeal in favour of the appellant. Ground of appeal should not be repetitive. Above all, grounds of appeal must relate solely to the decision appealed and not flirt outside the decision. A look at some of the thirteen grounds of appeal show inelegance, lacking professional touch. It should not be so, or better, it ought not be so. See generally Ekpan v. Uyo (1986) 3 NWLR (pt. 26) 63; Alade v. Ademuloke (1988) 1 NWLR (pt. 69) 207; Nwadike v. Ibekwe (1987) 4 NWLR (pt. 67) 718; Idika v. Erisi (1988) 2 NWLR (pt. 78) 563; Egbe v. Alhaji (1990) 1 NWLR (pt. 128) 546.

That takes me to the issues. The issues for determination are very important and serious part of a brief and ought to be carefully formulated. They should not be framed in the abstract but in concrete terms arising from and related to the grounds of appeal filed which represent the questions in controversy in the particular appeal. See Okpala and Another v. Ibeme and others (1989) 2 NWLR (pt. 102) 208. Ehot v. The State (1993) 4 NWLR (pt. 290) 644. Issues expatiate, expand or edify grounds of appeal. They act as mirror reflecting the grounds of appeal, See Busari and Others v. Oseni and others (1992) 4 NWLR (pt. 237) 557.

The Supreme Court and this court have condemned the proliferation of issues in a number of cases. Appeals are never won on the large number of issues but rather on the quality. Where issues are prolix, verbose and unwieldy, they create problem for the court and that is not in the interest of the administration of justice. See generally Ugo v. Obikwe

and Another (1989) 1 NWLR (pt. 99) 566; Aniekwe and Others v. Okereke (1996) 6 NWLR (pt. 452) 60; Chevron Nigeria limited v. Onwugbelu and Others (1996) 3 NWLR (pt. 437) 404.

Nine issues certainly have no place in this appeal. They are quite a number too many. This is very clear from the way learned counsel argued the appeal. Normally, the brief is argued according to the issue or issues formulated. Learned counsel did not do so. He merely argued the brief without really indicating the issue or issues. Although the brief was poorly presented, that is not enough to throw it away. It is sad that after more than fourteen years of introduction of brief writing in this court, some counsel are yet to find their feet. I do hope they will learn and fairly too for that matter. See Akpan v. The State (1992) 6 NWLR (pt. 248) 439; Maximum Insurance Co. Ltd. v. Owoniyi (1994) 3 NWLR (pt. 331) 178.

With the above seemingly 'midwifery' role, I take the merits of the appeal. The appellants as plaintiffs pleaded the Nrachi ceremony in paragraph 8 of their Statement of Claim as follows:

"The said Reuben Muojekwu in accordance with the custom, usages and practices of Nnewi people conducted a legitimizing ceremony called Nrachi for Virginia one of his daughters to enable her raise issues, sons, or heirs for him. This custom would enable Virginia raise issues without being married. The children or issues thus raised would become by operation of customary law the children, issues, heirs of her father, Reuben Muojekwu."

In answer to the above averment, the respondents as defendants deposed in paragraph 9 of their Statement of Defence as follows:

"The defendants aver that Mrs. Virginia Ezenwakozo was not by Nrachi ceremony customarily assimilated into the Ejikeme or Muojekwu family which exercise would have legalized her children and consequently empowered them to inherit Reuben Muojekwu's Estate."

By the above state of the pleadings, the parties agree on the effect of performing the Nrachi ceremony for a girl. The point of disagreement is whether the ceremony was performed for Virginia or not. While the appellants claimed that it was performed for Virginia, the re-

spondents said it was not performed for her.

Witnesses gave evidence as to the nature and content of the Nrachi ceremony. DW1, said in evidence in-chief:

"I know the purpose of Nrachi ceremony in Nnewi. The ceremony is done to enable a daughter bear children in her father's compound in order that the children if males will represent the father of the mother. Such children if males will inherit the mother's father's property". B

DW2 also said in evidence in-chief:

"Nrachi ceremony is performed by a man who has no male child. He then chooses any of his daughters to stay in his family and produce children. He invites his extended family and presents one goat, eight kola nuts, and four gallons of palm wine to them and declares his intention to them. If the extended family accepts, then the goat is slaughtered and shared by the members. The daughter chosen can from then on start having issues for the father." C D

Witnesses told different stories as to whether the ceremony of Nrachi was performed for Virginia, the daughter of Reuben. While Virginia, E herself as PW2, and the 3rd appellant (PW1) gave evidence that Nrachi ceremony was performed for Virginia, DW1 and DW2 gave the contrary evidence, and it is that the Nrachi ceremony was not performed for Virginia. There was a contradiction between the evidence of PW1 and F PW2 as it affected the performance of Nrachi ceremony for Comfort, the daughter of Reuben who predeceased him.

PW1, the 3rd appellant said under cross examination :

"I know Comfort. The ceremony of Nrachi was performed on my mother, and not for Comfort Muojekwu". G

PW2, the mother of PW1 gave a different story when she said in examination in-chief:

"I am the mother of Chinwe Muojekwu and Uzoamaka Muojekwu. I gave birth to Chinwe in 1954, Uzoamaka was born in H 1956. When I gave birth to Chinwe and Uzoamaka I was in my father's house. My father performed the ceremony of Nrachi for me and my older sister called Comfort".

And so mother and daughter parted ways on the issue whether the *Nrachi* ceremony was performed for Comfort. Although the issue is of no relevance to the appeal, the contradiction portrayed in some material way the authenticity or veracity of the evidence of both witnesses.

B The learned trial Judge did not believe the evidence of PW1 and PW2 that the *Nrachi* ceremony was performed on PW2 - Virginia. He said:

"PW2, Virginia herself testified that *Nrachi* was performed for her ...Surprisingly however, she failed to name those present when it was performed for herself. She failed to name them in spite of the fact that her own *Nrachi* is the plaintiffs' strongest witness in this case, since the first plaintiff, a male, is her grandson, being the son of her daughter, Uzoamaka. No person who witnessed that ceremony testified for the plaintiff ... It is my finding anyway that *Nrachi* was not performed for her."

I entirely agree with the findings of the learned trial judge that on the evidence before him, the *Nrachi* ceremony was not performed for Virginia.

E A more fundamental issue however is whether the *Nrachi* ceremony which is a custom of the Nnewi community is consistent with the principles of natural justice, equity and good conscience or repugnant to the principles. Learned counsel for the appellants raised it in Issue 5. Learned counsel for the respondents raised it at page 17 of the respondent's brief. The learned trial Judge also dealt with the issue at great length. Let me deal with it too.

Section 18(1) of the High Court Law, 1987 of Anambra State provides as follows:

G "*The Court shall observe and enforce the observance of customary law and shall not deprive any person of the benefit thereto except when such customary law is repugnant to natural justice or incompatible either directly or by its implication with any written law from time to time in force in the state.*"

This is the old repugnancy doctrine, with some amendments, which was provided for in section 22(1) of the High court law, No 27 of 1955 of Eastern Nigeria. The operative expressions in the section are

"repugnant", "natural justice" and "incompatible", thus the subsection provides for three clear and distinct arms. The word "repugnant" ordinarily means offensive, distasteful, inconsistent or contrary. In the context, this word means inconsistent with or contrary to. The expression "natural justice" generally means justice according to or pertaining to nature and therefore inborn. It is not the work of man and therefore cannot normally be interfered with by man. Although the expression is fluid, vague, generic and nebulous, mostly incapable of a precise legal meaning and a 'fortiori' legal definition, the above law creates a situation where the High Courts of Anambra State are statutorily enjoined not to observe or enforce customary law which is inconsistent with natural justice.

The third arm flows in with the word "incompatible", a word which means not compatible, not consistent and contradictory. Contextually, the Courts are compelled under the subsection not to observe or enforce any customary law which is not consistent with any written law in force. While it is easy to determine when customary law is incompatible directly with any written law in force, it is not that easy to determine when such law is by implication incompatible with a written law. It is however a matter of hard law based on the construction of the provisions of the enabling laws. It is not a matter of fact.

Although I have undertaken a short exercise in diction and syntax of each set of expression, as a matter of interpretation the courts take the words together when determining the applicability or otherwise of the doctrine to a particular customary law. This is because in reality and in practice there is no such watertight compartment.

In *Lewis v Bankole* (1908) 1 NLR 81, Speed, Ag. C.J., describing the terms "natural justice and good conscience" as high sounding phrases, said that it would not be difficult to hold that many of the ancient customs of the barbaric times are repugnant thereto, though it would not be easy to offer a strict and accurate definition of the terms. The point should however be made that in the determination of whether a customary law is repugnant to natural justice or incompatible with any written law, the standard is not the principles of English law. In order

words, it is not fair to conclude that the Nrachi ceremony is repugnant to natural justice because it is inconsistent or contrary to English law, in the sense of the English common law or English statute. On the contrary, the courts must have an inward look, inward in the sense of Nigerian B jurisprudence. Such an indigenous approach, if I may use that expression vaguely, will certainly reduce the usual pet expression of the English Judge, "barbaric", in the description of our traditional jurisprudence, an expression, Speed, Ag. C.J. freely used in *Bankole*.

C Let me now apply the provision of section 18(1) to the *Nrachi* ceremony of Nnewi. It is clear from the evidence of the witnesses that by the ceremony, a girl cannot marry. She stays in the father's house and performs only one natural function of a woman, and it is the function of procreation. Even here, the whole essence of the procreation, in the D content or context of the Nrachi ceremony is to produce a male child; not a female child. This means that the main and only purpose of the ceremony would be defeated if God, the Almighty Creator, who has the final say of who should be a male or female, decides that the victim of the E *Nrachi* ceremony should give birth to female children. In *Augustine Muojekwu v Caroline Muojekwu* (1997) 7 NWLR (Pt. 512) 283, I said at p. 305:

F *"In my humble view, it is the monopoly of God to determine the sex of a baby and not the parents. Although the scientific word disagree with this divine truth, I believe that God, the Creator of human being, is also the final authority of who should be male or female".*

And so I ask, is a custom which is designed to prefer one sex to the other, really within the provision of the first leg of section 18(1) and G therefore be observed or enforced by the High Courts of Anambra State, and in the particular situation by the Nnewi High Court? Is the preference for one sex consistent with natural justice when both are created by the Almighty God? Does such a custom not come within the provision of the H second leg of section 18(1)? And if so, could the learned trial Judge have relied on it?

The Nrachi ceremony can still be looked at from another aspect and it is the aspect of incompatibility with written laws in Anambra State.

Customary laws marriage is an institution recognized and practiced in Nigeria, including Nnewi. Professor E.I. Nwogugu, in his book entitled, *Family Law in Nigeria (1974) recognized customary law marriage*, when he said at page 41:

"There are essential and formal requirements for the celebration of valid customary law marriage. Although, the details of such requirements vary from one locality to another, the broad principles are sometimes similar."

Professor S.N.C. Obi in a handbook entitled, *The Customary Law Manual*, a manual of customary laws obtaining in the former Anambra and Imo State of Nigeria, documented Marriage under Customary law *in extenso*. See Chapters 31 and 32. The handbook was sponsored by Government. In the preface, Professor Obi wrote:

"This work was produced by the law Revision, Research and Reporting Division of the Ministry of Justice, Enugu. It was prepared under a directive given by Government that the customary law currently obtaining in all the communities in what are now Anambra and Imo State should be ascertained, recorded and published in the form of a handbook."

The above apart, there are decisions of courts galore on customary law marriage in Nigeria, including Nnewi.

What the above comes to is that the *nrachi* ceremony, which does not allow a girl to marry but stay in the house of the father to give birth to male children, is incompatible with written laws from time to time in force in Anambra State. Looking at the custom even from that angle, the High Court of Anambra State cannot observe and enforce the observance of it, that is the *nrachi* ceremony.

Again, the *nrachi* ceremony can be condemned from another angle; a most fundamental angle. All the witnesses consistently made the point that the male children of the daughter will belong to the father. In other words, the grand children will belong to the father of the mother of the children. This means that the children are denied of the paternity of their natural father. Is this consistent with natural justice?

Why should a custom deny the biological father of his children?

In *Edet v. Essien* (1932) 11 NLR 47, the appellant was married to his wife under native law and custom. His wife left him and went to live with the respondent. Two children were born of the union between the respondent and the wife. The respondent did not pay to the appellant the money which the appellant had paid in dowry on the wife. The appellant therefore claimed that the children were his. The court held that it was contrary to natural justice, equity and good conscience to allow the appellant to claim the children of another man merely because the other man had deprived the appellant of his wife without paying dowry for her.

A custom which denies the natural or biological father of his child is certainly repugnant to natural justice. In his submission, learned counsel for the respondents, Mr. Ulasi said at page 17 of his brief:

"I venture to submit with humility that if Oil-Ekpe custom can be stigmatized for being repugnant to natural justice, equity and good conscience, then the same standard must also apply to the nrachi custom (relied upon by the appellants) by which a woman outside bounds of marriage is free to procreate in the name of her father without the benefit of a husband recognized by law."

I agree entirely with learned counsel. He is correct. I therefore declare that for all the reasons I have given above, the *nrachi* ceremony of Nnewi is inconsistent with public policy, repugnant to natural justice, equity and good conscience.

That is not all. The *nrachi* ceremony encourages promiscuity and prostitution, the latter condemned in Article 6 of the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW). A woman who has no husband generally has more freedom to involve in sexual practices than one who is married. In such a situation indiscriminate sexual practices would result in promiscuity and prostitution. While I should not be understood as saying that a married woman is entirely free from such sexual practice, it is much more pronounced in cases of unmarried woman. The study of sociological patterns confirm this view.

In my view promiscuity and prostitution are anti social conducts which are against public policy within the meaning of the proviso to section 14 of the Evidence Act, Cap 112, Laws of the Federation of

Nigeria. The proviso reads:

provided that in case of any custom relied upon in any judicial proceeding it shall not be enforced as law if it is contrary to public policy and is not in accordance with natural justice, equity and good conscience."

Accordingly, I hold that the learned trial Judge was in grave error when he invoked the nrachi ceremony against Virginia when he said:

"Even if 'Nrachi' has been proved to have been performed for PW2, she was not patient enough to fulfill the purpose of 'Nrachi' because she left her father's house and got married after giving birth to only two daughters ... It is my finding any way that 'Nrachi' was not performed for her."

DWI, the 2nd defendant in the court below and 2nd respondent here said in his evidence in-chief:

"I know the 1st plaintiff. I know the 2nd and 3rd plaintiffs. All of them are not the children of Muojekwu. The 1st and 3rd plaintiffs are the children of Muojekwu. The 2nd plaintiff is a paternal grandson of Muojekwu. He is a native of Awo-Idemili in Imo State."

It appears to me from the above that the sentence "all of them are not children of Muojekwu" should read "Not all of them are children of Muojekwu". I say so because that is the only way to make the next two sentences which follow meaningful. By the above evidence, DW1 said that while 1st and 3rd plaintiffs are the children of Muojekwu, the 2nd plaintiff is not.

The learned trial Judge, in pronouncing on the status of the plaintiffs said:

"The third issue is whether the plaintiffs are in law the children and successors - in - title to Reuben Muojekwu. It is common knowledge that the plaintiffs are not the natural children of Reuben Muojekwu. I have held above that by the custom of Ezenwegbu, the plaintiffs are not the children of Reuben Muojekwu. I have also held that the plaintiffs are not by any other customary ceremony regarded as the children of Reuben Muojekwu. The plaintiffs are therefore not entitled to succeed to his estate not being his heirs".

Why should the learned trial Judge come to the conclusion that all the

plaintiffs are not the children of Reuben Muojekwu in the light of the evidence of DW1, who categorically said in evidence that 1st and 3rd plaintiffs are the children of Reuben Muojekwu? It is the law that findings of a trial judge not based on the evidence before him cannot be basis for arriving at a decision. Such findings are perverse and a court of appeal can interfere in the interest of justice. See *Lengbe v Imale* (1959) WNLR 325; *Okpiri v Jonah* (1961) All NLR 102; (1961) 1 SCNLR 174; *Akinyemi v. Akinyemi* (1963) 1 All NLR 340, (1963) 2 SCNLR 303; *Akinwumi v. Idewu* (1969) 1 All NLR 319; *Maja v Stocco* (1968) 1 All NLR 141; *Onowan v. Iserhien* (1976) - 10 SC 95.

The learned trial Judge relied on Ezenwegbu family custom and came to the conclusion that "the plaintiffs are not the children of Reuben Muojekwu." I have read the Record a couple of times and I cannot see where evidence was led in proof of Ezenwegbu family custom to the effect that the appellants are not the children of Reuben Muojekwu.

By section 14(1) of the Evidence Act, a custom may be adopted as part of the law governing a particular set of circumstances if it can be noticed judicially or can be proved to exist by evidence. See *Buraimo v Bamgboye* (1940) 15 NLR 139; *Adagun v Fagbola* (1932) 11 NLR 110; *Giwa v Erinmilokun* (1961) 1 All NLR 294. (1961) 1 SCNLR 377; *Oloko v Giwa* (1939) 15 NLR 31; *Ifeajuna v Ifeajuna* (1997) 7 NWLR (Pt 513) 405.

The evidence of DW1 to the effect that 1st and 3rd plaintiffs are the children of Muojekwu is certainly evidence against interest and is admissible. If that evidence is admitted, what should the learned trial Judge expect this court to make out of the following finding he reached at page 77 and 78 of the Record:

"In the result and for the reasons given above, it is my finding that Reuben Muojekwu lineage became extinct on the death of his daughter Comfort and that the plaintiffs therefor are not heirs to Reuben Muojekwu and are not entitled to succeed him or inherit his estate."

A lineage refers to a direct line of descent and one can only talk of extinction of a lineage when the line of descent extinguished or wiped out in the sense that it is no longer in existence or it is dead. Where there

are children or even grand- children and great grand-children, directly traced or traceable to the ancestor, it will be wrong to hold that the lineage is extinct, unless the generational gap is so wide that history and tradition cannot relate sociological contiguity. There is no such evidence before the court. On the contrary, the evidence before the court is that while the 1st and 2nd appellants are the great grand-children of Reuben Muojekwu, the 3rd appellant is the grand-daughter. And what is more, can the learned trial Judge be heard to come to a conclusion that Reuben Muojekwu's lineage became extinct when Virginia, the daughter is alive merely because Comfort died immediately after the death of Reuben? I think the conclusion is a replay of the finding of the learned trial Judge that the *nrachi* ceremony was performed for Comfort and not for Virginia. I have dealt with that aspect and I will not reopen it.

The evidence of DW3 is also relevant on the aspect of the finding or conclusion of the learned trial Judge on the extinction of Reuben's lineage. Under cross-examination, witness said:

Benneth Ejikeme brought Emeka Muojekwu into Ezeikejiaku and the larger Ezenwegbu family so that he became a member of the two families. It is true that by that assimilation Emeka became a full fledged son of Benneth Ejikeme. It is correct for Emeka to be called Emeka Muojekwu."

If it is correct for Emeka, the 1st appellant to be called Emeka Muojekwu, is it correct to hold that Reuben Muojekwu's lineage became extinct on the death of Comfort? I think not. There is some contradiction.

Let me briefly look at the respondents- the Ejikemes. The pedigree of that family is averred to in paragraphs 11,12,13,14 and 15 of the Statement of Defence. By the averments, the family tree of the parties in the suit began with Ezeikejiaku who begat three sons to wit: Nwokedike, Ejikeme and Muojekwu. Nwokedike begat only a daughter, Ifennanu. Ejikeme begat Madubuko who in turn begat Benneth and Earnest. Benneth is the father of the 1st and 2nd defendants/ respondents while the 3rd defendant/ respondent is the brother of Benneth . The 4th defendant/ respondent is the son of Benneth's uncle while the 5th defendant/respondent is the brother of Benneth The 4th defendant/respondents the son of

Benneth's uncle while the 5th defendant/respondent is the mother of 1st and 2nd defendants.

The respondents' averments in paragraphs 16, 17, and 18 are relevant: "16. *The defendants aver that on the death of Reuben without*
 B *surviving male issue and no Nrachi customary ceremony was performed for any of his daughters, it fell on the eldest son of Ejikeme's descendants to step into and inherit the estate, of late Reuben Muojekwu.*

17. *The defendants further aver that from 1st October 1966 when Reuben*
 C *was killed during the pogrom, the eldest son of Ejikeme called Benneth lawfully inherited the estate of Reuben Muojekwu whose lineage has by Nnewi native law and custom grown extinct.*

18. *This Benneth Ejikeme performed his burial obsequies and therefore*
 D *started exercising maximum acts of possession and ownership over the said estate without let or hindrance."*

In amplification of the averments in the Statement of Defence, DW1, the 2nd respondent, said in evidence:

"Because Reuben Muojekwu died without a male issue my fa-
 E *ther Benneth Ejikeme inherited Reuben Muojekwu's property."*

DW4 also said under cross-examination :

"When Reuben Muojekwu died Benneth Ejikeme inherited ev-
 F *erything belonging to Reuben Muojekwu including Reuben Muojekwu's wife, Sarah. He also inherited Comfort."*

It is clear from paragraph 16 of the Statement of Defence that the eldest son of Ejikeme's descendants, Benneth, inherited the estate of Reuben simply because he died without a surviving male child. Putting it in another way, if Reuben died before Samuel, the situation averred to in
 G paragraph 16 could have been different. Although Virginia was and probably is still alive, she could not inherit her late father's estate, because Nnewi custom does not recognize the status of inheritress or inheritrix.

This aspect of the case is similar to what happened in *Augustine*
 H *Muojekwu v. Caroline Muojekwu (supra)*. The property in dispute was owned by one Okechukwu, who married two wives: Janet and Caroline, the defendant/appellant. He died without a male child. The plaintiff/respondent, a nephew sought a declaration *inter alia* that he being the

recognized kola tenant of the Mgbelekeke family of Onitsha, was entitled to the statutory right of occupancy of the property.

He had judgment in the court below. On appeal, this court was urged to examine the Nnewi custom of Oli-ekpe which permitted the son of the brother of the deceased person to inherit his property to the exclusion of his female child. The court held that the Oli-ekpe custom of Nnewi as presented in the case was repugnant to natural justice, equity and good conscience.

Unlike *Muojekwu*, this appeal does not deal directly or specifically with the Oli-ekpe custom *qua* Nnewi tradition. Apart from the strange mention of Oli-ekpe in both the claim and the Statement of claim, no witness directly or specifically mentioned the custom, although the totality of the case of the respondents seem to devolve on it. I shall therefore refrain from making a specific pronouncement on the custom here in name. But I can say that the Nnewi custom relied upon by the respondents which permitted them to inherit the estate of Reuben merely because he had no male child surviving him is repugnant to natural justice, equity and good conscience. And what is more, such a custom has clearly discriminated against Virginia, the daughter of Reuben and therefore unconstitutional of the Federal Republic of Nigeria, 1999. Section 42(1) of the Constitution is in the following terms:

"A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person (a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions are not made subject..."

Virginia, the mother of the 3rd appellant, and grandmother of the 1st and 2nd appellant, a victim of the Nnewi *nrachi* ceremony, cannot be discriminated against on grounds of her female sex. By the application of the custom, Virginia was subjected to disabilities or restriction which the provision of section 42(1) of the Constitution forbids.

The above apart, Virginia has protection under Article 2 of the

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). By the Article, State parties condemn discrimination against women in all its form and agree to pursue a policy of eliminating discrimination against women.

B By Article 5, State parties are called upon to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority of the superiority of either of the sexes or on stereotyped roles for men and women. In my
C humble view, Virginia is a victim of the prejudices anticipated in Article 5. In view of the fact that Nigeria is a party to the convention, courts of law should give or provide teeth to its provisions. That is one major way of ameliorating the unfortunate situation Virginia found herself, a situation
D where she was forced to rely on an uncouth custom not only against the laws of Nigeria but also against nature.

The status of widow in Nnewi custom was raised by some of the witnesses in evidence. In answer to cross examination, DW2 admitted:
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"In Ezenwegbu Okpuno Otolu Nnewi, where a man dies, his wife will inherit his property."

But DW3, in examination-in-chief gave contrary evidence:

F *In Nnewi custom a widow cannot inherit the husband's estate. Only a son, if the widow has one, will inherit the estate."*

In view of the fact that no issue of widow or widowhood was raised in the case, I shall not go into the above contradictory evidence. It is however a matter of grave or serious concern whether it is not time that
G courts of law consider the predicament and deprivations of widows in the hands of in-laws in the guise of customary law with a view to upholding the evidence of DW2 which is similar to inheritance under Islamic law. Certainly, 21st century Nigeria which is a question of less
H than a month from now, should not tolerate the evidence of DW3. It is discriminatory and therefore against the provisions of the Nigerian Constitution and CEDAW.

It is for the above reasons and the fuller reasons given by my

learned brother in his judgment that I allow the appeal. I also award N3,000.00 costs in favour of the appellants.

OLAGUNJU JCA

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Fabiyi, JCA., and I agree with his conclusion that this appeal should be allowed.

He has meticulously and painstakingly combed through the knotty issues raised in the appeal. But the central issue which is the fulcrum of the appeal is particularly refreshing and one on which a stand must be taken because of its refractory nature in a strategic area of the law that is not the regular haunt of the litigants.

The appellants as the plaintiffs at the court below asked for declarations that (a) in accordance with 'Ili-Ekpe' custom of Nnewi people they are the heirs of late Reuben Muojekwu who died intestate in 1966 and successors-in-title to his estate and (b) they are, ipso facto, entitled to a grant of statutory right of occupancy over the property of the deceased at No. 38, Ezenwaegbu Street and one other piece of land both situate at Okpuno Otolu, Nnewi. They also asked for a perpetual injunction restraining the defendants from further trespass into or interference with the said land.

By 'Ili-Ekpe' custom on which the appellants founded their claims a female cannot inherit the property of his father unless during the life time of the father a ceremony known as 'Nrachi' had been performed for her whereby she is initiated to take the position of a male issue in the family whose male offspring are eligible to inherit the property of their maternal grand-father, in this context, the property of the late Reuben Muojekwu.

The background facts about the family relationship of the parties have been ably summarized in paragraphs 3 to 5 of the leading judgment to spare a repetition except to note for the purpose of emphasis that the 3rd appellant is the grand-daughter of late Reuben Muojekwu and the 1st and 2nd appellants his great-grand sons all of whom are the offspring of Virginia, the late Reuben Muojekwu's daughter, while the respondents

are distant cousins of the deceased, the founder of the estate in dispute. Two other material facts worthy of emphasis are (a) that the 3rd appellant and her late sister, Chinwe, lived with their grand-father and mother, Reuben Muojekwu and his wife, until the death of the latter who out-
 B lived the former and (b) Benneth Ejikeme who claimed to be the heir of Reuben Muojekwu was said to have performed a ceremony to legitimize the 1st appellant.

On those facts, the learned trial judge found that because Reuben
 C Muojekwu had no surviving male child and *Nrachi* ceremony was not performed on his daughter, Virginia, the mother and grand-mother of the appellants, the lineage of Reuben Muojekwu had become extinct since under customary law of Nnewi a wife and her female offspring cannot inherit the property of their ancestor. On that ground the appellants'
 D claims were dismissed.

At the centre of the disqualification of the appellants from inheriting the estate of their maternal ancestor is the non-performance of *Nrachi* ceremony by his only surviving daughter, Virginia the appellants' mother
 E and grand-mother. This is the plank of the respondents' argument that they as distant relations are eligible to inherit the property of Reuben Muojekwu who was survived by male and female grand-children but by only a female child for whom *Nrachi* was not performed to exorcise the
 F disability attached to the right of inheritance by her offspring.

What the custom of Ili-Ekpe and its offshoots of 'Diokpala' and 'Oli-Ekpe' stand for has been concisely described in the leading judgment to excuse a repetition except to say that they barred for ever the progeny of the founder of an estate who had no surviving male child from inheriting the property of their ancestor. Instead, the right of inheritance passed to the uncle and brother of the deceased or failing that to the 'Diokpala' or
 G 'Oli-Ekpe', the deceased's uncle or brother's son. What is intriguing is the wholesale disqualification of the direct progeny of the founder of an
 H estate from the right of inheritance which is passed over to the distant relations of the founder by sheer accident of the founder being survived by a female child who was not in the life time of the founder availed of the ceremony of *Nrachi* that confines her to a promiscuous existence

of staying unmarried in her father's house for the singular purpose of producing male children for the parents' family. The practice is preposterous as compromising the basic tents of family life that institutionalized marriage as the foundation of that fulfillment.

'Ili-Ekpe' custom with its moderating antidote of 'Nrachi' ceremony flaunted by the respondents as the winning gambit has been roundly condemned in no uncertain terms in the leading judgment in much the same strain as was done earlier by this court in its celebrated pronouncements on the custom in *Augustine Muojekwu v. Caroline Muojekwu*, (1997) 7 NWLR. (pt.512) 283, 304- 305. I endorse without reservations those strictures which moral suasion is becoming disturbingly lax. The contribution of the womenfolk as a procreative medium in the annals of human race imposes a duty on the mankind to accord to that special breed of Homo sapiens a dignity and respect for which advanced culture provides a model worth emulating. This cannot be reconciled with trivializing the virtue of adolescence which the practice of Nrachi ceremony foisted on the youth at the formative stage of life when they can hardly appreciate the burden of the custom in all its ramifications.

True enough, it cannot be gainsaid that at the time of its conception 'Nrachi ceremony' was designed for the purpose of circumventing the harshness of 'Ili-Ekpe custom' that was so invaluable to the cultural, economic and social aspirations of an environment which called Ili-Ekpe into play that is totally different from the aspirations of the present era. But with the passage of time and cross-fertilization of values with other cultures of the world, 'Ili-Ekpe custom for the iniquity of which 'Nrachi ceremony' provides a panacea has become anachronistic and sheer customary relics for the modern times that is yearning desperately for some booster to buy up the low level of chastity that pervades the permissive society which the practice of Nrachi compounds. That the twin practice which has all the trimmings of a primordial evolution should survive the 20th century with only a few days to the run is one irony of the legacy on the cultural horizon that will be bequeathed to the new millennium. It is retrograde.

However, since the abrogation of such obnoxious practice rests

absolutely with the legislature of the state that still clings to such absurdity and the burden of containing the incidence of its manifestation in judicial matters lies upon the apex court the best that can be done at this level of judicial hierarchy is to shun the practice as repugnant to natural justice, equity and good conscience and, therefore, unenforceable hoping that sooner than later the authorities that are in a position to do so will hasten the interment of a custom that has outlived its usefulness and has become counter-productive.

Having rebuffed the application of the obnoxious Ili-Ekpe custom with its *Nrachi* ceremony as an accessory I agree that the circumstance of the appellants' birth should not be a bar to their legal right guided by the mandate of sub-section 39(2) of the Constitution of the Federal Republic of Nigeria, 1979, that bans such a disability. A person cannot be cast away from the society because he was born out of wedlock. A safety-net that assures assimilation is the ascription of the personal law of such person to that of the mother on the principle in *Ben Enwonwu v. Spira*, (1965) 2 All NLR. 233. Thus the acceptance into Reuben Muojekwu's family-fold of the 3rd appellant and Chinwe, her late sister, the mother of the 1st and 2nd appellants, respectively, is sufficient acknowledgment of the two daughters by their grand-parents that assimilated them as fully-fledged members of that family during the life time of their grandparents with full right of succeeding to the estate of the grandfather which devolved upon them when the last of the parents died in 1975 and a right which they are, ipso facto, entitled to transmit to their off-spring, i.e. the 1st and 2nd appellants.

It is the appellants' contention that the 3rd appellant and her aunt, late Comfort, the elder sister to her mother, were in possession of the land in dispute over which they exercised control and a portion of which they sold to one David Nwosu in early part of 1967 without demur by the respondents. Those acts they proffered as evidence of continuous possession for about 17 years before 1993 when the respondents began to interfere with the land in reaction to which the appellants commenced the action on appeal. Thus the assertion of ownership to the land by the respondents was to fish in troubled waters.

The learned trial judge rejected the appellants' claim that since the death of Reuben Muojekwu they had been in an undisturbed possession of the land in dispute exercising control over the land including selling part of it because the appellant did not produce the document of the sale or called the purchaser as a witness. The issue is not calling evidence of sale or probing the customary tenure of the widow of Reuben Muojekwu and the 3rd appellant and dismissing the argument off the cuff as the learned trial judge did. Rather, the respondents who claimed that they are entitled to the land which was vested in Benneth Ejikeme stood by from 1966 when Reuben Muojekwu died until 1993 after Benneth Ejikeme had also died before asserting claim to the land. Equity, it is said, aids the vigilant.

Similarly, on the procedure for legitimizing members of the appellants' family, other than by Nrachi, which is by the Ezenwegbu larger family the learned trial judge who believed evidence of the 3DW that such a ceremony was initiated by Benneth Ejikeme but not the son of Reuben Muojekwu.

With respect to the learned trial judge, that logic is wobbly. If 1st appellant is the great-grandson of Reuben Muojekwu about which there is no doubt it seems to me to be preposterous that appellant's assimilation to the family stream could be anything other than as a descendant of Reuben Muojekwu. Any contrary construction will be fictitious such that the logic of the pernicious Nrachi doctrine would revolt against such an interpretation.

In sum, the examination of the dispute by the learned trial judge was dominated by the twin doctrine of 'Ili-Ekpe' and 'Nrachi' through the lenses of which everything was examined. Thus in the critical areas of the deliberations objective was lost in examining the issues of assimilation into the family of those born out of wedlock, possession of the land in dispute including exercise of the right of ownership over it and the respondents, lapse into a long reverie in oblivious of their legal right. The cumulative effect of those lapses has left an unsavoury impression of the trial.

For the for going reasons and for the fuller reasons so elabo-

ately canvassed in the leading judgments I will also allow this appeal, set aside the judgment of the court below and substitute therefore the order for declarations that (a) the appellants are heirs to the late Reuben Muojekwu and the successors-in-title to his estate and (b) that they are
B entitled to right of occupancy over the property of the deceased at No. 38, Ezenwaegbu Street, and one other piece of land both situate at Okpuno, Otolu, Nnewi. In addition the five respondents are hereby restrained jointly and severally from further trespass into or interference with the
C land hereinbefore mentioned. I abide by the order for costs made in the leading judgment.

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