

A COMPARATIVE ANALYSIS OF MARRIED WOMEN'S PROPERTY RIGHTS IN NIGERIA AND THE UNITED KINGDOM**

Abstract

This paper critically evaluated the property rights of married women in Nigeria and the United Kingdom, pointing out the legal frameworks, cultural influences and socio-economic implications that shape these property rights. The study provides a comparative analysis that aims to understand and highlight the discrepancies and similarities in both jurisdictions, considering the impact of these rights on the status of married women. The research methodology employed in the study was doctrinal, while data were garnered from both primary and secondary sources. Findings from the comparism of the property rights of married women in these two countries illustrated the importance of legal and societal support in achieving gender equality. It was recommended among other things that future reforms in Nigeria were necessary to align married women's property rights with international standards of equality, and ultimately foster empowerment and independence.

Keywords: Married Women, Property Rights, Rights, Nigeria, United Kingdom.

1. Introduction

Property rights are constructs in economics for determining how a resources or economic good is used or owned.¹ These rights have however developed over ancient and modern history from Abrahamic law to the era of Universal Declaration of Human Rights.² They are cornerstones of personal and economic autonomy, particularly for married women. Property rights are claims to property that are legally and socially recognized and enforceable by extremely legitimized authority.³ They can be seen as attribute of economic good. This attribute has three broad components⁴ namely; the rights to use the good, the right to earn income from the good, and the right to transfer the good to others, alter it, abandon it, or destroy it. In Nigeria, the Constitution grants Nigerians and every citizen including married women the right to acquire and own property anywhere in the country.⁵ However, married women in Nigeria are most times if not all the times denied of their rights to property owing to some unfavourable patriarchal, traditional or cultural practices among others. It is against this background that this study examined the property rights of married women in Nigeria and United Kingdom, highlighting the legal frameworks, and the differences, among others. based on the comparative insights.

2. The Legal Framework for Married Women Property rights in Nigeria and the United Kingdom

2.1 The Legal Framework for Married Women's Property Rights in Nigeria

In Nigeria, married women's property rights are largely governed by customary law (which are largely unwritten), statute law and religious law. Some of these laws are discussed below.

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¹ AA, Alahian, 'Property Rights', *New Palgrave Dictionary of Economics*, Second ed. 2008.

² Universal Declaration of Human Rights, Article 17.

³ B Agrawal, 'Are We Not Presents Too? Land Rights and Women's Claims in India', *SEEDS Pamphlet Series*, 2002.

⁴ D Lueck, 'Property Law', *Economic and the New Palgrave Dictionary of Economics*, 2ndedn, 2008.

⁵ Constitution of the Federal republic of Nigeria, 1999 (as amended), Section.

A. Constitution of the Federal Republic of Nigeria, 1999 (As Amended)

The current Constitution of Nigeria was promulgated into law on 5th May, 1999 and came into force on 29th May, 1999.⁶ The Constitution of the Federal Republic of Nigeria 1999 (as amended) is the highest law of the land from which every other laws derive their powers. The Constitution provides generally for human rights including married women's property rights, and they are integral parts of human rights found in the Chapter Four of the Constitution. Section 43 of the Constitution of Nigeria 1999 provides that: 'Subject to the provisions of this constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.' By this it means that every citizen of Nigeria (male or female) has right to own property anywhere in Nigeria.

The world 'Human Rights' can be traced to the origin of man and nature. Human rights had its philosophical ancestry in the Natural Law School.⁷ As pointed out earlier, the constitution provides for human rights in Nigeria. They are contained in the Constitution of Nigeria as Fundamental Human Rights. Fundamental Human Rights are rights which stand above the ordinary laws of the land, and which are antecedent to the political society.⁸ It is pre-condition to civilized existence. It is guaranteed by positive law and it is easily enforceable. Men and women are equal before the law and those rights which are enjoyed by men must equally be enjoyed by women without any form of discrimination. Chapter Four of the Nigerian Constitution enshrined the Fundamental Rights of every citizen be you male or female. Some of the rights guaranteed include the rights to life, dignity of person, personal liberty, freedom from discrimination, to own property, fair hearing, freedom of movement and religion, freedom of association amongst others. The relevant sections to this work are Sections 33, 34, 37, 38, 40, 42 and 43. These rights also accrue to a woman whether married or not.

B. Matrimonial Causes Act, 2024

The Matrimonial Causes Act⁹ enacted in 1970 mainly deals with issues relating to dissolution of marriage. In 1983, the Matrimonial Causes Rules were made pursuant to the Matrimonial Causes Act, setting out the procedures for instituting actions for the dissolution of marriage and custody and maintenance matters following the dissolution of marriage. Marriage is hardly conceived in Nigeria as a partnership of equals when it comes to property rights both the subsistence of the marital union and in the event of divorce or separation. This often leaves the financially weaker spouse (usually the wife) at a disadvantaged position economically. In Nigeria, the divorce courts have wide discretionary powers under the Matrimonial Causes Act to distribute properties as they deem just and equitable in the event of divorce taking into consideration the statutory guidelines.¹⁰ This is in contrast with what is obtainable in most countries especially the developed ones where there are property defined matrimonial regimes which recognizes the various- rights and contribution of spouses in relation to the marital properties.¹¹ This leaves the court with little or no discretion to interfere in the redistribution of property.

In discussing the provisions of the Matrimonial Causes Act with recourse to the property rights of married women, a section that comes to fore is Section 72. It provides that the court may in proceedings under the Act by order require the parties to the marriage, or either of them, to make for the benefit of all or any of the parties to, and the children of the marriage, such settlement of property to which the

⁶ Decree No. 24 of the Constitution of the Federal Republic of Nigeria (Promulgation) Decree, 1999.

⁷ OVC Ikpeze, 'Human Rights and Fundamental Freedoms: A Must Know', in C Arinze-Umobi & O.V.C Ikpeze (eds), in *Gender Rights Law in Nigeria* (Onitsha: Folmech Printing & Publishing Company, 2008) P. 65.

⁸ Ibid, page 81.

⁹ Now Cap M7 Laws of the Federation 2004.

¹⁰ Matrimonial Causes Act Cap 18 1973, Section 21 (2); *McFarlane v McFarlane* (2006) AC 618 (HL)

¹¹ *Sadiku v Sadiku*, 2007 ZAGPHC 1 (26 January 2007).

parties are or either of them is, entitled (whether in possession or reversion) as the court considers just and equitable in the circumstances of each case. While what is just and equitable may be subjective based on the facts and circumstances of the case and also the mind of the court, it is enjoined to make these orders with recourse to the natural law theory of justice, equity and good conscience.

In the same vein, Section 73 of the Matrimonial Causes Act (MCA) gives court powers to make financial provisions for spouses in proceeding for maintenance, custody and property settlement. In particular, articular, subsection (1) (i) gives the court the power to discharge a settlement order which was previously made pursuant to Section 72 in cases where a spouse in whose favor the order was made remarries or the court has reasons to believe it is just and equitable to do. A combined analysis of the provisions in Sections 72 and 73 of the MCA is to the effect that the settlement of property does not include redistribution of property. What this means is that in the event of divorce or separation, properties are given to the spouses for their use and enjoyment and can be recalled in the event where either of the spouse remarries. This succinctly implies that Sections 72 and 73 are not absolute when dealing with the property rights of women. It doesn't confer absolute title to either of the spouses. Also there is no laid down procedure on how these distributions are made. And in most cases, the just and equitable requirement enjoined for the court is questioned. The case of *Sodipe v Sodipe*¹² is an illustration. In this case, there was no evidence of financial contribution. The court however having valued the marital property to be at ₦10,000,000 (Ten Million Naira) ordered the wife to be paid a paltry ₦200,000 (Two Hundred Thousand Naira) after 43 years of marriage. This is a discriminatory considering other beneficial contributions the wife must have invested in the 43 years of marriage.

C. Married Women's Property Act, 1882

The Nigerian Married Women Property Act (MWPA) came into existence on the 18th of August, 1882. It borrowed some leaves from the United States Married Women Property Act. Unlike the Matrimonial Causes Act, the Married Women Property Act establishes the doctrine of separate property for spouses. The doctrine of separate property is a doctrine that recognizes the separate rights of spouses to acquire, own and deal in property during the subsistence of their marriage as if they were not married. In this case, property is owned with regards to the strict principles of the law of property, except of course where a spouse can show his or her financial contribution to the acquisition of the property by the other spouse. In this case, he or she will be entitled to some proprietary interest.

According to Section 2(1) of the Married Women Property Act:

A married woman shall in accordance with the provisions of this Act, be capable of acquiring, holding and disposing by will or otherwise, any real or personal property as her separate property, in the same manner as if she were a *femme sole*, without the intervention of any trustee.

By the above, it means that married woman under the law have the right to acquire, hold and dispose of their property like their male counterpart. The Act further provides under Section 3 that;

Every woman who marries after the commencement of this Act shall be entitled to have and to hold as her separate property and to dispose of in manner aforesaid all real and personal property which shall belong to her at the time of marriages, or shall be acquired by or devolve upon her after marriage, including any wages, earnings, money, and property gained or acquired by her in any employment, trade or occupation, in which she is engaged, or which she carries on separately from her husband, or by the exercise of any literary, artistic or scientific skills'.

¹² (1990) 5 WRN 98.

Under Section 13 of the Act, it provides that:

A married woman is able, without her husband, to dispose of, or join in disposing of, real or personal property held by her solely or jointly with any other person as a trustee or personal representative in like manner as if she were a *femme sole*.

D. Land Use Act, 1978

The Land Use Act¹³ in Nigeria plays a significant role in shaping property rights, including those of married women. These are some key provisions and implications:

1. The Act simplifies land ownership and management, allowing citizens, including married women, to acquire and hold land.
2. It empowers individuals to obtain certificates of occupancy, which serve as proof of land ownership.

i. Implications of the Land Use Act provisions for Married Women in Nigeria

1. Equal Rights: Married women have the right to acquire, hold, and dispose of property, just like single women or men.
2. Property Ownership: The Married Women's Property Act¹⁴ and the Constitution of Nigeria¹⁵ guarantees a married woman's right to own and acquire properties separately from her spouse.

ii. The Challenges of the Land Use Act in Respect of Married Women in Nigeria

Despite the provisions of the Land Use Act, customary law and patriarchal attitudes often limit women's ability to exercise their property rights in Nigeria. Some of the challenges and limitations of the Land Use Act in respect of Married Women in Nigeria are discussed below:

1. Customary Law: In many Nigerian communities, customary law governs property ownership and inheritance, often to the detriment of women's rights.
2. Financial Contribution: Courts often consider financial contributions when determining property rights, which can disadvantage women who contribute non-financially to a marriage or property.
3. Cultural Attitudes: Deeply ingrained cultural attitudes and discriminatory practices can hinder women's ability to assert their property rights.

E. Convention for Elimination of all Forms of Discrimination against Women, 1981

The International Convention, which recognizes women's right generally is the Convention on Elimination of All Forms of Discrimination against Women (CEDAW). It is otherwise referred to as Women's Convention. The Convention is the definitive international convention requiring respect for and observance of the right of the women to be equal to that of the male counterpart in their status and entitlement.¹⁶ The Convention was adopted on 18th December, 1979, but actually came into force on 3rd September, 1981.¹⁷ Currently about 185 countries including Nigeria¹⁸ signed and ratified the Convention.

The Convention addresses married women's property rights indirectly through several provisions:

¹³ Land Use Act, 1978.

¹⁴ Married Women's Property Act, 1882.

¹⁵ Constitution of the Federal Republic of Nigeria, 1999 (as amended), Section 43.

¹⁶ RJ Cook, 'The Women Convention: Opportunities for the Common Wealth', (1990) 16 *Common Law Bulletin* in V. 610.

¹⁷ J Ezeilo, *Women and Children's Right in Nigeria*, (Lagos: Women's Aid Collection WACOL, 2001) p. 3.

¹⁸ Nigeria signed in April 23, 1984 and ratified in June 13, 1985.

1. Article 2: Requires states to eliminate discrimination against women and enshrine gender equality in domestic legislation, which can include property rights.
2. Article 3: Guarantees basic human rights and fundamental freedoms to women on an equal basis with men, encompassing economic and social rights.
3. Article 16: Prohibits discrimination in marriage and family relations, ensuring women have equal rights and responsibilities during marriage and its dissolution.

The CEDAW's implications for married women's property rights include:

1. Equal Rights in Marriage: Women have the same rights as men in marriage, including property ownership and management.
2. Non-Discrimination: States must eliminate laws and practices discriminating against women in property ownership, inheritance, and other economic matters.
3. Protection and Remedies: States are obligated to establish tribunals and public institutions to protect women against discrimination and provide effective remedies.

The CEDAW's General Recommendations further clarify these obligations, emphasizing the need for states to take concrete measures to eliminate discrimination and ensure women's equal enjoyment of rights.

F. African Charter on Human and People's Right, 1981

The African Charter on Human and People's Right is the Regional Charter dealing with the issue of protection of women's right in Africa generally and in Nigeria in particular. The Charter is a combination of a number of attempts by African leaders to safeguard human rights in Africa. The Charter dates back to 1961 when a conference of eminent jurists was convened in Lagos under the auspices of the international commission of jurists, to discuss problems of the implementation of human rights in Africa. The Charter provides for equal right before the law and those rights which are enjoyed by men including property rights must equally be enjoyed by women (married or unmarried) without any form of discrimination. Why the Charter does not explicitly address property right, several provisions relate to married women's rights:

1. Article 2: Prohibits discrimination based on sex, ensuring equal enjoyment of rights.
2. Article 3: Guarantees equality before the law and equal protection under the law.
3. Article 18: Emphasizes the protection of family and women's rights, particularly in relation to their role in society.

In relation to married women's property rights, the ACHR's provisions imply:

1. Non-Discrimination: States should ensure women are not discriminated against in property ownership or control.
2. Equal Protection: Women should have equal rights to own, manage and dispose of property without undue interference.

The African Commission on Human and People's Rights has interpreted these provisions to promote women's rights, including property rights, and has encouraged states to eliminate discriminatory laws and practices.

2.2 Legal framework for Married Women's Property Rights in the United Kingdom

In the United Kingdom, the legal framework for married women's property rights has evolved greatly and significantly, especially with the enactment of some of the laws such as the ones discussed below:

A. The UK Married Women's Property Act, 1882

The Married Women's Property Act, 1882 is an Act of the parliament of the United Kingdom which significantly altered English Law regarding the property rights of married women and which besides other matters allowed married women to own and control property in their own right. The Act applies in England (and Wales) and Ireland, but does not extend to Scotland.¹⁹ The Married Women's Property Act was a model for similar legislations in other former British territories.

The Act altered the Common Law doctrine of coverture to include the wife's right to own, buy and sell her separate property. Wives' legal identities were also restored, as the courts were forced to recognize a husband and a wife as two separate legal entities in the same manner as if the wife was a *feme sole*. Some of the married women's rights provided for under the Act are:

- i. Right to Own Property:** The Married Women's Property Act, 1882 granted married women the right to own, buy and sell their separate property, altering the common law doctrine of coverture as pointed out above.
- ii. Legal Identity Restoration:** Married women's legal identities were restored, recognizing a husband and wife as two separate legal entities.
- iii. Right to Sue and be sued:** Married women gained the right to sue and be sued, with damages being their own responsibility.
- iv. Liability for Debts:** Married women became liable for their own debts and their businesses were subject to bankruptcy laws.

Moreover, the Act²⁰ further provides and allows the courts to decide on property disputes between husband and wife in a summary way and it is still in force today. The Married Women's Property Act also extends rights to engaged couples regarding property claims, treating them similarly to married couples in certain cases.

B. First Protocol of the European Convention on Human Rights

The First Protocol of the European Convention on Human Rights, incorporated into the UK Law via the Human Rights Act, 1998, protects the right to peaceful enjoyment of possessions for everyone including married women. It provides that the state should not interfere with the peaceful enjoyment of property without lawful justification and in the public interest. If the government takes private property for public use, it must provide fair compensation.

C. Family Law Act²¹

The Family Law Act of 1996 is another law that provides for married women property rights in the United Kingdom. The Act provides protection for spouses' rights to occupy the matrimonial home in the United Kingdom. It ensures that property acquired during marriage is subject to equitable distribution, regardless of the legal titleholder. It empowers women to claim their rights in divorce proceedings, although societal attitudes can still pose a barrier.

D. Land Registration Act, 2002

¹⁹ Married Women's Property Act, 1882, Section 26.

²⁰ Married Women's Property Act, 1882, Section 17.

²¹ Family Law Act, 1996.

The Land Registration Act of 2002 is another legal framework for Married Women's Property rights in the United Kingdom. The Act establishes rights in the UK for registering land ownership in England and Wales for everybody, including married women. While it is clear that the United Kingdom does not have a single, codified constitution like other countries of the world, the right to property is protected and guaranteed through various laws and legal frameworks as discussed above.

3. Comparative Analysis of Married Women's Property Rights in Nigeria and United Kingdom

There are significant differences in the property rights of married women in Nigeria and the United Kingdom as can be seen in the short analysis below.

- i. **Legal Protection and their Effectiveness:** It is crystal clear that both countries (Nigeria and the United Kingdom) have laws providing for and protecting married women's property rights. However, in Nigeria, the tripod legal system which comprises statutory, customary and as well as Islamic laws creates a complex landscape for women's property rights. The effectiveness of the legal protections also differs in both jurisdictions. In Nigeria, cultural practices and/or Islamic and other societal norms often override legal protections, resulting in limited access to property for women. This situation is worsened by lack of awareness and enforcement of the existing laws in Nigeria.²²
- ii. **Cultural Practice:** The United Kingdom is more uniform in applying statutory principles. The same cannot be said of Nigeria. Nigeria is faced with serious challenges of traditional and/or cultural practice (including patriarchy) limiting women's property rights.
- iii. **Judicial Approach:** The United Kingdom's legal framework as well as the judiciary is more supportive more than that of Nigeria. The United Kingdom's courts focus more on fairness and equal division of matrimonial assets. The Nigerian courts, on the other hand navigate statutory and customary laws determining property rights of married women.

4. Conclusion and Recommendations

This comparative analysis of the married women's property rights in Nigeria and the United Kingdom underscores the importance of understanding the interplay between law and culture in shaping married women's property rights. While the United Kingdom provides a more equitable legal framework, Nigeria's dual legal system on the other hand presents significant challenges for women's property ownership. Taking care or addressing these challenges required not only legislative reforms but also, a paradigm cultural shifts to empower women and ensure that their rights are recognized, protected and upheld in the country. Future research, therefore, should focus on the impact of these legal frameworks on women's economic empowerment and the role of advocacy in promoting gender equality in property rights.

²² A Afolabi, 'Gender and Property Rights in Nigeria: A Critical Analysis', (2019)63(21) *Journal of African Law*, 123-145.