

LEGITIMATION IN NIGERIAN IBO CUSTOMARY LAW

Under Ibo customary law, a child born out of wedlock is illegitimate. Thus, a child born to a woman who is unmarried or legally divorced is an odii odanye ("a fallen tree," "a wild plant," the idea being that whereas legitimate children are sown by the man, illegitimate children are self-sown).^{1/}

Such a child has no legal association with the natural father and cannot succeed him. Under some customary law systems of Nigeria, such as the Yoruba, KwaLe, and Igbirra tribes, legitimation by acknowledgment is accepted and recognized. All the sources and literature available^{2/} on Ibo customary law indicate that legitimation by acknowledgment is not part of Ibo customary law, and therefore not accepted or recognized.

There is only one case^{3/} (not reported) in which the court allowed legitimation by acknowledgment, in relation to the Ibos, contrary to Ibo customary law. The case was decided in Lagos, not a part of the Ibo region, and therefore contradicts the rules of Ibo customary law.

^{1/} S. M. Obi, The Ibo Law of Property 190-192 (1963).

^{2/} R. O. Ekundare, Marriage and Divorce under Yoruba Customary Law 62 (1969); E. I. Nwogugu, Family Law in Nigeria 225-231 (1974); J. W. Salacuse, Selective Survey of Family Law in Northern Nigeria 57 (1965).

^{3/} Re Edu Dien Suit No. H3/64 (unreported) in the Lagos High Court, Nwogugu, supra note 2.

According to the sources cited in this report, the father under Ibo customary law, is obliged to feed, clothe, and educate his children. Neither the legal literature nor the laws specify whether these provisions entitle the father to consider otherwise illegitimate children as legitimate.

The federal law of Nigeria ^{4/} recognizes legitimation by subsequent marriage of the parents if the father is domiciled in Nigeria at the time of the marriage. This recognition is confined only to marriages performed under the Marriages Act and not marriages contracted under customary law. Available sources do not contain a statutory law in Nigeria which specifically effects legitimacy in customary relationships or marriages.

Therefore, Federal and state court systems of Nigeria will accept and recognize legitimation by acknowledgment from those customary law jurisdictions which permit acknowledgment as a way of legitimation, ^{5/} but not from those jurisdictions, such as Ibo land, where legitimation is considered contrary to native law and custom.

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^{4/} The Legitimacy Act In Laws of the Federation of Nigeria and Lagos, rev. ed. Sec. 3 Cap. 103, 2181 (1958).

^{5/} Nwogugu, supra note 2, at 231.