

# Succession Under Customary Law in Nigeria. The Rule of Primogeniture versus the Deposition of a Traditional Ruler (*Onojie*) in Edo State: A critique of the Provisions of the Traditional Rulers and Chiefs Edicts No 16 of 1979

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## **Abstract**

Before the advent of colonial administration in the area, which is presently known as Nigeria, there existed a people occupying vast areas of territories, which were traditionally dominated by highly diverse ethnic groups with highly sophisticated language systems. Apart from the variation in the languages, there also exist shape differences in terms of customs and traditions. However, with the amalgamation of the southern and northern protectorate by Lord Frederick Lugard the former Governor-General of Nigeria in 1914 these territories were brought together for the convenience of British Colonial Administration. The new territory was called Nigeria. In furtherance of their quest for effective colonial administration, the British used to their advantage the traditional institutions that were well established in the country. Although traditional structures differ considerably from one ethnic group to another, but it was a common feature for these various ethnic groups to have their own established traditional institution with a recognised ruler, who may in turn be subordinate to the ruler of a larger community. The procedure regulating succession to the throne of these various traditional institutions are well defined by customs and traditions. These traditional ruler exercises absolute powers, and wade considerable influence in the affairs concerning their area of jurisdiction. However since the attainment of Independence in 1960, and followed by alternating between Military rule and civilian administration saw the decline and in some

cases the eroding of the powers once excised by these traditional rulers. The once reviled absolute rulers suddenly discover that they are now subject to the powers of the state as provided in the various Traditional Rulers and Chief Law of the various states in the federation. These laws prescribed the mode of selection, appointment and discipline of a traditional ruler, which could include deposition or dethronement. In Edo State, succession to the throne as a traditional ruler in most of the communities is governed by the rule of primogeniture. Among the Esan people of Edo State their traditional ruler is known as the “*Onojie*” and succession to the throne is strictly by the principle of primogeniture. Recently, the *Onojie* of Uromi was deposed by the Edo State Government acting in accordance with provision of the Traditional Rulers and Chief Edict No 6 Laws of Bendel State of Nigeria 1979 applicable to Edo State. This article seeks to examine critically the aforesaid deposition of the *Onojie* against the Rule of primogeniture that regulate succession to the throne under Esan customary law.

**Keywords:** Succession under Esan customary law, Traditional rulers and chiefs edict, Deposition of an *Onojie*, The rule of primogeniture

## 1. Introduction

Traditional institutions exist across Nigeria. It is one of the medium through which the activities of government can reach the people at the grass root. Thus modern Nigeria encompasses areas traditionally occupied by highly diverse ethnic group with very different languages and traditions.<sup>1</sup> Historically, the Yoruba have all ways occupied the western part of Nigeria, while the South-Eastern part of the country is occupied by the Ibo and a collection of diverse ethnic groups that cluster around the North-Central zone.<sup>2</sup> A kin observer of the Nigerian political development will observed that since independence, the country, had struggled between civilian rule and military dictatorship. These two systems of administration have impacted on the sphere and influence of the traditional institution in the country negatively. Prior to the amalgamation of southern and northern protectorate by the British colonial government, traditional ruler exercised absolute powers within their area of jurisdiction. However, after independence the status of traditional rulers within the country began to decline with regard to the area of jurisdiction / influence, and general restriction and control in the process of selection and emergence. Thus where some traditional rulers in some communities have emerged through the process of inheritance as prescribed by Native law and Customs i.e., through inheritance or through selection and appointment by traditional council of elders, the government post independence has increasingly become involved in the entire process from the time of selection to eventual succession into the traditional office.<sup>3</sup>

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<sup>1</sup> E. Azinge(ed), *Restatement of Customary Law of Nigeria* (1<sup>st</sup> ed, 2013) The Nigeria Institute of Advance Legal Studies Lagos) at3

<sup>2</sup> Thornton, K *Warfare in Atlantic Africa 1500-1800* (1999) London and New york; Routledge

<sup>3</sup> In May 1994, the Military ruler General Sani Abacha deposed Awwal Ibrahim, Sarkin Zazzu of Suleja Emirate, although he was subsequently reinstated in January 2000. See Tony Orilade (3 April 2000). “Suleja Goes Up in Smoke Again. The News (Lagos) Retrieved 25 March 2010. Cited in E. Azinge (ed), *Restatement of Customary Law of Nigeria* (1<sup>st</sup> ed, 2013) The Nigeria Institute of Advance Legal Studies Lagos) at 4.

Also the Deji of Akure land, Oba Oluwadare Adesina was deposed because he could not maintain his household, and his relationship with his chiefs and his subject. He, not only maltreated his first wife, but also held his community to ransom by flouting traditional rites, grabbing peoples’ land and repeatedly trampling on their civil rights. He was deposed and banished from the throne after Ondo State Government had conducted an investigation that found him guilty. The Ondo State Government led by Dr Olusegun Mimiko deposed Oba Oluwadare Adesina on The 10th June 2010. He was banished and order not to step into Akure for six months. See Daily Champion (Lagos) “ Nigeria:

These actions of government have greatly accelerated the decline in the power of the traditional rulers, which is noticeable across the country. For example, in the North, the Emirs have lost most of their powers to the government.<sup>4</sup> In fact in some other cases, the government has in some circumstances merge, increased or split traditional domains of some traditional rulers.<sup>5</sup> Most recently the Governor of Kano State Abdullahi Umar Ganduje signed into law a bill for the creation of four new emirates for Gaya, Rano, Karaya and Bichi, out of the former Kano Emirate Council under the jurisdiction of the Emir of Kano Muhammadu Sanusi II, consisting of 44 local government areas. Before the creation of these emirates, Gaya, Rano, Karaya and Bichi used to be administered as districts under the old Kano Emirate from Kano. It is interesting to mention that the Kano Emirate was a religious state in the Northern Nigeria. The Emirate was formed in 1805 during the Fulani jihad, when the old Hausa Sultanate of Kano became subject to the Sokoto Caliphate.<sup>6</sup> However, with the creation of these four new emirates, the area of authority and influence of the Emir of Kano has been seriously reduced from the previous 44 local government areas to 10 local government areas.<sup>7</sup> It is important to acknowledge the significant role the traditional institutions had been playing as the centerpiece for mobilisation of people for communal development. Their role in the social and economic development of their areas of jurisdiction cannot be over emphasised. As noted earlier, traditional institutions exist across all the geo-political zones in Nigeria. It is therefore not surprising to observe that some indigene of

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Wife Bashing –Deji of Akure Deposed, Banished.” Available at: < [www.alafrica.com](http://www.alafrica.com)> (last accessed on the 4<sup>th</sup> January 2019).

Furthermore In Edo State, the Ojuromi of Uromi, His Highness Zaiki Anselem .O. Eidonjio II (JP) was also deposed by the Edo State Government led by the immediate past governor of the state Comrade Adams Aliyu Oshiomhole. The deposition order was contained in a letter dated 9<sup>th</sup> of November 2016. The State Government alleged that the deposed Ojuromi committed a lot of offences including fighting one of his subjects Mrs Betty Okoebor after serious altercation on the day of general election in a public field at Uromi, and allegedly travelling abroad without the permission of the governor. Before his deposition, he was suspended for seven day and he was directed to apologise to the state government. See “ Tension in Edo over the deposition of Uromi monarch” in The Pilot available at: < [www.nigerianpilot.com](http://www.nigerianpilot.com)> (last accessed on the 4<sup>th</sup> of January 2019). Finally Oba Akinfeso Adewola was suspended from the throne for allegedly perpetrating various atrocities in the community. Some of the atrocities were fraud, forceful acquisition of land, frivolous litigation over his subjects’ properties, assaulting his chiefs, and failure to perform traditional rites. The suspension of the monarch by the Ondo State government came after mass protest by the people of the community who chased the traditional ruler and his family out of the palace, forcing them to trek barefooted for several kilometers. E. Azinge *Restatement of Customary Law of Nigeria* (1<sup>st</sup>ed, 2013, Nigeria Institute of Advance Legal Studies Lagos) at 12.

<sup>4</sup> See C. Ewoke (1 August 2007). “Nigerians go crazy for title” *BBC News* Retrieved 3 September 2010; William F.S. (Fall 1993) “ Traditional rulers and development administration: Chieftaincy in Niger, Nigeria, and Vanuatu” *STUDIES IN COMPARATIVE INTERNATIONAL DEVELOPMENT (SCID)*, Volume 28, Number 3, 31-50 Retrieved 3 September 2010 cited in E. Azinge (ed), *Restatement of Customary Law of Nigeria* (2011) The Nigeria Institute of Advance Legal Studies page 3.

<sup>5</sup> Prior to 1970, there were two traditional rulers of the Efik people in the area around Calabar. But in December 1970 a decision was taken amongst the stakeholder to merge the two kingdoms into a single kingdom to be ruled by a traditional ruler known as the *Obong*. In 2010, Akwa Ibom state had 116 traditional rulers, which official certificate and various staffs of office with other perks of office that will make them function effectively in their new role. Also in other part of the country, when Yobe State was created there were four emirate in the state but by the year 2000 the state governor restructure the traditional emirate structure from four to thirteen. In Kwara State, the state government appointed there more monarchs in August 2010. The new Emir of Kaiama was designated a first class traditional ruler while Onigonus of Igosun and Alaran of Aran-Orin were designated Third Class monarchs. See “Saraki Approves Appointment of 3 New Monarchs”. *Nigerian Observer*. 19 August 2010. Cited in E. Azinge (ed), *Restatement of Customary Law of Nigeria* (2011) The Nigeria Institute of Advance Legal Studies page 4. See also “AKSG Recognises 116 Traditional Ruler in Three Year Give out Car and Certificate of Recognition” Akwa Ibom State Government. 9 Jul 2010. Retrieved 3 January 2010. Cited in E. Azinge (ed), *Restatement of Customary Law of Nigeria* (2011) The Nigeria Institute of Advance Legal Studies page 4.

<sup>6</sup> For further reading see “Kano Emirate”. Available at: < <http://www.Wikipedia.com>> . (Last accessed on the 9<sup>th</sup> May 2019.)

<sup>7</sup> The State Governor signed the bill creating the four new emirates into law on the 8<sup>th</sup> of May 2019, the same day the bill was transmitted to him by the Kano State House of Assembly. According to the state Governor “ by signing this bill, we are bringing more development closer to the people of Kano State in our efforts to take the state to the next level”. Before the creation of these four new emirates, Kano emirate headed by Emir of Kano Muhammadu Sanusi II used to be ineffective control of the 44 Local Governments Areas in the state. With the creation of these new emirates, the size, jurisdiction and area of influence have been reduced to 10 local government areas. For further reading, see Ganduje approves 4 new emirates in Kano. Available at: < <http://www.dailytrust.com.ng>> (last accessed on the 9<sup>th</sup> May 2019.)

some kingdoms and Emirate in Nigeria places their traditional rulers on a higher pedestal than the democratically elected State Governors. For example in Benin Kingdom<sup>8</sup> the traditional ruler known as the Oba of Benin is highly revered by all his subjects. The current Oba of Benin, His Royal Majesty Omo N' Oba N' Edo Uku Akpolokpolor, Oba Ewuare II<sup>9</sup> pronouncements on issues concerning Native law and Customs are taken as law. Any form of disobedience is visited with heavy traditional sanction oiled by a very well structure traditional chain of command structure with had been in existence over centuries ago. In the northern part of the country, the Sultan of Sokoto is placed in a position of eminence amongst the Emirs in the north. The importance placed on the authority of Sultan can be infer from the statement once credited to the late Surdan of Sokoto Sir Ahmadu Bello who at that time was an aspirant to the Sultan's throne said that if he had a choice to make between being the President of Nigeria or the Sultan, he would gladly accept to be the Sultan than being the president.<sup>10</sup> All across the country, there is evidence of the existence of traditional institution. To this end, there is no local government area in the country that does not have a traditional ruler. Thus where these traditional institutions exist, they play a critical role as custodian of native laws and customs of the people. Because of the significant role these traditional institutions plays in the social – economic lives of their subjects, they still remain relevant despite the fact that they do not have any constitutional roles assigned to them under the present Constitution.<sup>11</sup> The reasons why they continue to exercise wide range of influence in the country cannot be over emphasised. It is on record, that they command and exercise enormous powers and influence over the lives of the people within and outside their respective areas of jurisdictions. Thus, it is not surprising that in some communities, within the country, traditional institutions are the only institution of governance law and order is maintained through this structure.<sup>12</sup> Amongst the Esan people of Edo Central Senatorial District of Edo state, their traditional ruler known as the “*Onojie*” is seen by his people as the supreme head of state. His office being that of a constitutional monarch, was protected with wisely planned laws governing succession, installation and death of the holder. The *Onojie* lives in *Eguare*, the administrative headquarters of the district. Each clan in Esan land has specific quarters whose elders form the Kingmakers. Thus in all cases with the exception of Uromi, the *Eguare* was one of them, and its *Odionwele*<sup>13</sup> and the State *Osukhure*<sup>14</sup> headed the kingmakers.<sup>15</sup> Although today their area of influence has being greatly reduced administratively like their counterpart in the other part of the country, they still command

<sup>8</sup> Benin kingdom is presently consisting of Edo South Senatorial District comprising of seven Local Government Areas. The seat of the Oba of Benin kingdom is at Benin City. Incidentally, Benin City is the state capital of Edo state. Edo State is one of the 36 states in Nigeria with a population of about 3,233,366 people according to 2006 census. The state is made up of four major ethnic groups; namely Edo (Binis) Esan, Owan and Etsako.

<sup>9</sup> He was born on October 20<sup>th</sup> 1953. He was crowned the Oba of Benin on the 20<sup>th</sup> October 2016. He is the 40<sup>th</sup> Oba of Benin Kingdom. A title created for the Head of State (Emperor) of the Benin Empire at some time between 1180 and 1300. He accented the throne after the demise of his father Omo N'Oba n' Edo Uku Akpolokpolo Erediauwu I Oba of Benin Kingdom. See Ewuare II available at: <<https://en.m.wikipedia.org>> (last accessed on the 14<sup>th</sup> January 2019).

<sup>10</sup> E. Azinge *Restatement of Customary Law of Nigeria* (1<sup>st</sup>ed, 2013, Nigeria Institute of Advance Legal Studies Lagos) at 5.

<sup>11</sup> The Constitution of the Federal Republic of Nigeria 1999 (as amended) Cap.C23 Law of the Federation of Nigeria 2004.

<sup>12</sup> E. Azinge *Restatement of Customary Law of Nigeria* (1<sup>st</sup>ed, 2013, Nigeria Institute of Advance Legal Studies Lagos) at 6.

<sup>13</sup> This title is reserved for the oldest man in that particular quarter. In this case, in Eguare.

<sup>14</sup> This title is reserved for the chief priest of the kingdom.

<sup>15</sup> C.G. Okojie. *Esan Native laws and Customs with Ethnographic Studies of the Esan People*, (1<sup>st</sup> ed, Reprinted 1994, Ilupeju Press Ltd) at 66

considerable influence in the socio-economic wellbeing of their people. It is pertinent to say that despite lack of constitutional role for the traditional ruler under the 1999 Constitution, the traditional institution provide a vital link between the government and the rural communities. They are readily accessible to the people at the grass root and the government in turn uses them as conduits pipe for the dissemination of information concerning government policies and programme. As noted earlier about the traditional rulers from Esan in Edo State, the Obas of the South-Western Nigeria are seen and regarded as spiritual head of their respective domain, and also as the representative of gods on earth. Thus they represent the divine symbol of the people's wellbeing and sustenance. This classification explains why the office of the traditional ruler is very attractive to some persons in certain part of the country. It is not uncommon to see very wealthy person jostling to become traditional ruler once such post is vacant. This is a common sight in most states of the federation where succession to the throne is based on the principle of rotation within the illegible ruling houses. However in places like Benin Kingdom, the various kingdoms in Esan land within Edo State and Oyo with particular reference to the Alaafin of Oyo throne in Oyo State where succession to the throne is based on the principle of primogeniture, the struggle for a vacant traditional stool is eliminated. This principle ensured that the first surviving son of the deceased traditional rule ascend the throne after the performance of the final burial rites as provided by the native law and custom of the people. In Edo State, succession to most traditional stool within the state is based purely on the principle of primogeniture. The principle must be complied with before any traditional ruler is installed to occupy any vacant stool among the Esan people in the present day Edo Central Senatorial District comprising of five local government Areas. Thus once a traditional ruler (*Onojie*) is installed, in compliance with the six rules regulating succession to the throne under Esan Native Law and Custom, he can never be deposed. The only condition under which a traditional ruler an (*Onojie*) in Esan land can be removed permanently from the throne is by death. Thus according to C.G. Okojie "once an *Onojie*, always an *Onojie*, so that once a man has been duly installed as an *Onojie* according to native law and custom, nothing but death removes him." <sup>16</sup> However, an unfortunate situation occurred within the last quarter of 2016 that threaten the peace and tranquility that had existed in Esan land for many centuries. The then Executive Governor of Edo State Comrade Adams Aliyu Oshiomhole deposed the traditional ruler of Uromi kingdom the Ojuromi of Uromi His Highness Zaiki Anselem .O. Eidonojie II (JP), relying on the provisions of the Traditional Rulers and Chief Edict No 16 of 1979. The deposition order was contained in a letter dated 9<sup>th</sup> of November 2016. The State Government alleged that the deposed Ojuromi of Uromi kingdom committed a lot of offences including fighting one of his subjects Mrs Betty Okoebor after serious altercation on the day of general election in a public field at Uromi, and allegedly travelling abroad without the permission from the State Government. Before his deposition, the Ojuromi of Uromi was suspended for seven day and he was directed to apologise to the state government but he refused to apologise hence the deposition order. This paper seek to critically examine the principle of primogeniture that regulate the succession to the throne which have been the foundation and a pre-condition that must be fulfilled before a person is nominated to fill a vacant position to the stool of an

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<sup>16</sup> *ibid.*

*Onojie* in Esan land against the backdrop of the provisions of the Traditional Rulers and Chief Edict No 16 of 1979 and postulate whether the provisions of the Edict possess a grave danger to the survival of the age long tradition of the Esan people that regulate succession to the throne as an *Onojie*.

## 2. Nature of Succession under Customary Law

The principle of inheritance and succession constitute a vital part of the Nigeria society both under the more formal system of law (i.e. statutory laws) and more importantly under customary law.<sup>17</sup> According to A.A. Kolajo<sup>18</sup> “ Succession is the devolution of the title to property under the law of descent and distribution. It is the transmission of property vested in a person at his death to some other person or persons. In common parlance succession means inheritance”. However, the word Inheritance and Succession are twin words in the English dictionary but they are in no way ‘Siamese’ twins. The distinction between the two is profoundly significant in customary law.<sup>19</sup> Succession has been defined as the act or right of legally or officially taking over a predecessor’s office, rank, or duties. It also means the acquisition of the rights or property by inheritance under the law of descent and distribution.<sup>20</sup> Therefore, inheritance is an estate or property that a man acquired by descent and can be transmitted to his heir in the same way on his death on intestacy. While on the other hand, succession has a broader meaning. It means the acquisition of rights upon the death of another. Thus, the word encompasses that which in English law are governed by three different rules of law i.e. the law of Wills, the law of intestacy, and the law relating to accession to title and dignities. All these also have parallels in customary law.<sup>21</sup> Consequently, inasmuch as the word succession embraces customary deathbed declarations, inheritance of property and succession to office and dignity/ titles; there is no other regime of law in which its adoption is more appropriate than under customary law. In its simplest meaning, succession is the substitution of a living person for the deceased person in relation to all the rights and duties which the latter had.<sup>22</sup> It therefore means that inheritance and succession are the principles that govern the transmission of property tangible or intangible of a deceased person to some other person(s).<sup>23</sup> Usually, a common principle of inheritance is that “succession” is an inherent and inalienable right and not by appointment.<sup>24</sup> In Nigeria, there are two systems of law that are recognised that regulate the disposition of property upon the death of a person. These systems are known as testate and intestate succession. Testate succession involves the disposition of property under the Wills Act and in accordance with the Will Law of the different states of the federation. In Nigeria, one thing is easily noticeable. That is, that there is no uniformity of laws applicable to Will.<sup>25</sup> For example in the former

<sup>17</sup> E. Azinge *Restatement of Customary Law in Nigeria* (1<sup>st</sup> ed 2013, Nigerian Institute of Advance Legal Studies Lagos) at 104

<sup>18</sup> A.A. Kolajo *Customary law in Nigeria through cases* (Revised ed 2001, Spectrum Books Limited.) at 156

<sup>19</sup> A. Emiola *Emiola’s African Customary Law* (3<sup>rd</sup> ed 2011, Emiola Publisher Limited) at 177.

<sup>20</sup> .A.G Bryan. *Black’s Law Dictionary* (9<sup>th</sup> ed, for the iPhone/iPad/iPod touch version 2.1.2 B13195) at.1569.

<sup>21</sup> Above at note 12 at.177.

<sup>22</sup> M. Okunola *Relationship between Islamic Law and Customary law of Succession in Southern Nigeria* in B Ajibola (ed) *Toward the Restatement of Nigerian Customary Law* (1991 Federal Ministry of Justice Lagos) at 158.

<sup>23</sup> D.H Parry *The Law of Succession: Testate and intestate* (1972 Sweet and Maxwell Ltd London) at 1

<sup>24</sup> R.A.I Ogbobine *Materials and Cases on Benin Land Law* (1978 Bendel Newspapers Corporation, Benin City) at 36.

<sup>25</sup> I. E Sagay *Nigerian Law of Succession; Principles, Cases, Statutes and Commentaries* (1<sup>st</sup> ed, 2006, Malthouse Press Ltd, Lagos) at 124.

Western Region of Nigeria from where the old Bendel State was created from, which later became Edo and Delta State the applicable law on Will was the Wills Law of Western Region.<sup>26</sup> It is a common feature to observe that most state created from the former Western Region adopted the Western Region Wills law with some modification. For example, Lagos State adopted the Western Nigeria Law by virtue of the Applicable Laws Edict of 1972.<sup>27</sup> In the rest of the country, i.e. the Northern and the Eastern States, the situations are quite different. Whilst some state created from the former Western Region have enacted their individual laws on Succession, which in some cases are basically a reproduction of the Western Nigeria Wills law, while in the rest of the country where there are no local legislations regulating wills, it is not surprising that the applicable law in such states is the received English Wills Act of 1837, which qualified as a Statute of General Application in Nigeria<sup>28</sup> and the Wills Amendment Act 1852.

Furthermore, although the Wills Law of the former Western Region substantially re-acts the Wills Acts 1873 and 1852, and the Wills (Soldiers and Sailors) Act 1918, there are two significant provisions of the Western Nigeria Law, which are not derived from the English Act. They are as follows:

(1) By section 3(1) of the law, real and personal estate, which cannot be effected by testamentary disposition under customary law, cannot be disposed of by will. This is very relevant in relation to un-partitioned family property.

(2) While the general rule that a Will is revoked by the subsequent marriage of the testator is retained, customary marriages are however excluded from having this effect<sup>29</sup>.

Under this system, the intention of the deceased are given effect to as contained in the will subject however to the fulfilment of the conditions for its validity under the law.<sup>30</sup> On the other hand, intestate succession basically involves the application of three systems of laws. These are the common Law, the Administration of Estate Laws of the various states and the customary law.<sup>31</sup> The patterns of intestate succession under customary law in Nigeria have many variations, as there are ethnic groups in the country.<sup>32</sup> Although marriage creates a contractual relationship between the parties, its validity and consequential rights is dependant on law. In countries where there are multiple systems the implication is that there are different kind of marriages and there are substantial asymmetry between these attendant rights. In other words, the type of marriage that a couple contract determines the rights, such as succession that is attached to such marriage<sup>33</sup>. As noted earlier, the customary law

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See E.I. Nwogugu *Family law in Nigeria* (2011 HEBN Publication Ibadan) at 372; see also M.C. Onokah *Family Law* (2000 Spectrum Books Limited, Ibadan) at 317.

<sup>26</sup> Cap.133 laws of Western Region of Nigeria, 1959.

<sup>27</sup> No 11 of 1972.

<sup>28</sup> *Thomas v. De Souza* [1929] 9.N.L.R. 81.

<sup>29</sup> I. E. Sagay *Nigerian Law of Succession; Principles, Cases, Statutes and Commentaries* (1<sup>st</sup> ed, 2006, Malthouse Press Ltd, Lagos) at 124.

<sup>30</sup> See for example Section 9 of the Wills Act, 1837 and Section 6 Wills Law, 1958.

<sup>31</sup> P.O. Itua "Succession under Benin Customary Law in Nigeria; Igiogbe Matters Arising" 2011 Vol. 3(7) *Journal of Law and Conflict Resolution* Page 117-129. Available online at: < <http://www.academicjournals.org> > (last Accessed 6<sup>th</sup> February 2019).

<sup>32</sup> E.I. Nwogugu *Family law in Nigeria* (2011 HEBN Publication, Ibadan) at 399.

<sup>33</sup> K Akua "Women, Marriage and Intestate Succession in the context of legal pluralism in Africa" being a paper delivered at the 23 Brigitte M. Bodenheimer lecture on family law at the UC Davis School of Law in January 2006. See the case of *Obusez v. Obusez* {2007} 10 NWLR

regulating inheritance and succession like every aspect of customary law in Nigeria differ from one locality to another. In other words, different laws govern the principles of inheritance and succession depending on the community. Therefore, the applicable customary law that should be applied in any particular circumstance should be the customary law of the deceased irrespective of the place where he died. This principle is applicable even when the deceased died while residing outside his home state or community and he left behind landed properties in these places. In this context, the personal customary law of the deceased shall apply to the distribution of his landed property outside his community. Thus, the *lex situs* rule under Nigeria land law is displaced. Thus, once the issue(s) touches on causes and matters arising from inheritance, the appropriate customary law should be the customary law applicable to the deceased while he was alive.<sup>34</sup> Although there appears to be differences in the customs of most of the ethnic groups concerning succession in Nigeria, it is important to also mention that regardless of these differences, certain characteristics are shared amongst these ethnic groups. For instance, it is common for the rules of customary law governing inheritance to be displaced where there is a valid will left behind by the deceased.<sup>35</sup> Also in some ethnic group, certain rules of customary law are very sacrosanct and cannot be disregarded by a testator while making his will. These principles of customary law have enjoyed statutory protection and judicial recognition. For example, the provisions of Section 3(1) of the Will Law of Bendel State,<sup>36</sup> provides as follows:

Subject to any Customary law relating thereto, it shall be unlawful for every person to devise, bequeath or dispose of, by his will executed in a manner hereinafter required, all real and all personal estate which he shall be entitled to either in law or in equity, at the time of his death and which if not so devised, Bequeathed and dispose of would devolve upon the heir at law of him, or if he become entitled by descent of his ancestor, or upon his executor or administrator.

By this provision, a rule of Benin customary law<sup>37</sup> that entitled the eldest surviving son of the deceased to inherit his late father's *Igiogbe*<sup>38</sup> was preserved. The effect is that failure by the testator to take cognizance of this section in his will, has the effect of invalidating any bequest in this will that this provision affects.<sup>39</sup> In an attempt to determine the effect and consequences of this provisions in our legal jurisprudence dealing with testamentary disposition, two conflicting views or opinion as to what was the true intention of the drafter of the law, i.e., the Wills Law in Edo State was have emerged. What were the drafters of the law trying to achieve by inserting this provision in the law. These conflicting views or

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<sup>34</sup>I. E. Sagay *Nigerian Law of Succession; Principles, Cases, Statutes and Commentaries* (1<sup>st</sup> ed, 2006, Malthouse Press Ltd, Lagos) at 257. See also *Tapa v Kula* [1945] 18 N.L.R. 5.

<sup>35</sup> T.O. Elias *Nigerian Land Law and Custom*.

<sup>36</sup> Cap 172 Laws of Bendel State applicable to Edo State.

<sup>37</sup> This customary rule is also applicable under Esan Native Law and custom. In fact under Esan Customary law, this Rule enjoy stricter application

<sup>38</sup> This is the principal house were the deceased live and died, but not necessary where he was buried. For further definitions and meaning, see the case of *Ogiamien v Ogiamien* [1967] NMLR 247 and *Idehen v Idehen* [1991] 6 N.W.L.R (Pt198) 382.

<sup>39</sup> See *Lawal-Osula v. Lawal-Osula* [1993] 2NWLR (Pt.274) 158.



opinion have been categorised into two schools of thought. Each school of thought tries to postulate what its perceived as the true intention of the legislature. One school of thought holds the view that the phrase “subject to customary law relating thereto” in the section is a qualification of the testator’s testamentary capacity, rendering any purported disposition of property by Will which is inconsistent with customary law, null and void. They postulated further that “Customary Law” here includes the rule of intestate succession under customary law<sup>40</sup>. Thus, the provisions of section 3(1) of the Will law of Bendel State now applicable in Edo State has tactically removed the freedom of testamentary powers from a testator in the State. On the other hand, the opposing school holds the view and argued forcefully too that the law did not remove freedom of testamentary powers, and that what the law sought to achieve, was to only restrict freedom of testamentary power of a testator in Edo State, no more no less! They argue further that the views expressed by the other school of thought is ridiculous, because the intention of the Will’s Law was to confer testamentary power in a society in which everybody was subject to one type of customary or another. However, Itse Sagay has argued that it would be wrong to conclude that a testator in Edo State does not possess freedom of testamentary powers to make a will. According to the learned professor “It is therefore clear that Section 3(1) does not in anyway restrict testamentary capacity; it merely defines the type of property which may or may not be disposed of by will, the latter being property which under customary law does not belong exclusively to the testator.”<sup>41</sup> Thus from the foregoing, the right of the deceased to make a testament is limited only to a portion of his estate as the deceased must bequeath the *Igiogbe* to his eldest surviving son.<sup>42</sup> He can not derogate from the law, otherwise that portion of his will would be declared null and void and of no effect. The affected property would be return to the beneficiary owner under customary law.<sup>43</sup>

Over the years, the law seem unsettled with regard the correct position of the law concerning the application of the deceased customary law where the deceased has lived in a different ethnic group for such a long time to be considered as haven adopted their way of life. Situations like this could raise intractable difficulties in certain situation concerning the appropriate customary law to be applied.<sup>44</sup> For instance, how does one determine the customary law of a person that has lived in a foreign land outside his ethnic group for so long and has adopted the life style / custom of his new community? In trying to answer this question, that has eluded some legal writers for some time in the past, some writers and legal analyst were tempted to suggest, following the previously held view that the deceased person carries his customary law with him to his new place of aboard before his demise, in other words, it was impossible for a person to change his customary law of origin. That the appropriate customary law that should govern the affairs of the deceased was the deceased personal customary law acquired from birth. Consequently, they argue that it was legally

<sup>40</sup> I. E. Sagay. *Nigerian Law of Succession; Principles, Cases, Statutes and Commentaries* (1<sup>st</sup> ed, 2006, Malthouse Press Ltd, Lagos) at 142

<sup>41</sup>I.E. Sagay “*Customary Law and Freedom of Testamentary Power*” (1995) Vol. 39(2) *Journal of African law* Cambridge University Press. Available on line at: < <http://www.jstor.org>> (last Accessed 8<sup>th</sup> February 2019).

<sup>42</sup>P.O Itua “*Succession under Benin Customary Law in Nigeria; Igiogbe Matters Arising*” (2011) Vol3 (7) *Journal of Law and Conflict Resolution* Page g 117-129. Available online at: < <http://www.academicjournals.org>> (last accessed 10<sup>th</sup> February 2019).

<sup>43</sup> See *Lawal-Osula v. Lawal-Osula* [1993] 2NWLR (Pt.274) 158. See also *Idehen v Idehen* [1991] 6 N.W.L.R. (Pt198) 382

<sup>44</sup> I. E Sagay. *Nigerian Law of Succession; Principles, Cases, Statutes and Commentaries* (1<sup>st</sup> ed, 2006, Malthouse Press Ltd, Lagos) at 258.

impossible for the deceased to change his customary law at will. In other words, a person dies with his initial customary law he acquires at birth as a member of his ethnic group. This previously, held view that a person carries his original customary law he acquired at birth with him anywhere he goes is no longer the correct position of the law. This position of the law has since been jettisoned since the celebrated case of *Adeniyi Olowu & Ors v. Olabowale Olowu & Ors*.<sup>45</sup> The Supreme Court held in this case that a person originally belonging to one ethnic group could by a process involving time, association, marriage, personal wishes and manner of life become assimilated into and thereby legally acquire the status of another ethnic group. This decision had a huge implication on our law of succession. Its far-reaching consequences on the hitherto position under customary law was monumental. In order to be able to properly appreciate this landmark decision, it is important to take a look at the state of our law before the decision in Olowu's case. Prior to the decision in Olowu's case the judicial authority on the applicability of the *lex loci* or *lex fore* to "non-natives" can be best be illustrated with these two cases. In *Osuagwu v Soldier*<sup>46</sup> a dispute arose between two Ibo men living in Kano. The Court has to consider whether to apply Islamic law, which was the *lex situs* and *lex loci* or Ibo customary law, which was the parties' personal law. Declaring its preference for the latter in the interest of justice, the court stated as follows:

We suggest that where the law of the court is the law prevailing in the area but a different law bind the parties, as where two Ibos appear as parties in the court where Moslem law prevails; the native court will...in the interest of justice...be reluctant to administer the law prevailing in the area, and if it tries the case at all ...in the interest of justice...choose to administer the law which is binding between the parties<sup>47</sup>

Also, in *Ayisatu Tapa & Ors v. Yanrata Kuka*,<sup>48</sup> where a Nupe Muslim from Bida in the present day Niger State died intestate in Lagos leaving property in Lagos the Court held that even though he died in, and leaving property in Lagos, the applicable law for the distribution of his property was his personal law, which was the Muslim law prevailing amongst the Nupe of Bida and not the law that applied in Lagos. Thus from the foregoing, it clear that in certain circumstance the most appropriate law of a deceased may be his personal law that was assumed to follow him everywhere he goes before his demise. This of course used to be the position before the celebrated case of *Adeniyi Olowu & Ors v. Olabowale Olowu & Ors*.<sup>49</sup> However, Sagay has argued that in certain circumstance, its applicability can be unfair, unjust and inconvenient to apply the "carried over" personal law in preference to the customary law of the parties' domicile, or the law of the place of the transaction. He posited that the lacunae in the law appeared to be two-fold: (1) a definition of circumstance in which the personal law or *lex patriae* could be excluded in favour of other system of law like the *lex domicile*, *lex situs*, *lex loci* or *lex fori*; (ii) a definition of the circumstance in which one personal law could

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<sup>45</sup> [1985] 3.NWLR (Pt.13) 372

<sup>46</sup> [1959] N.R.N.L.R. 39

<sup>47</sup> [1959] N.R.N.L.R. 39 at 41.

<sup>48</sup> [1945] 18 NLR 5

<sup>49</sup> [1985] 3.NWLR (Pt.13) 372

be dropped and another one acquire.<sup>50</sup> In other to overcome these gaps, he recommended the views of Bello J. (as he then was) in the case of *Yinusa v Adebusokan*<sup>51</sup> where the learned Judge held as follows:

Subject to any statutory provision to the contrary, it appears... that mere settlement in a place, unless it has been for such a long time that the settler and his descendants have merged with the native of the place of settlement and have adapted their ways of life and custom, would not render the settler or his descendants subject to the native law and custom of the place of settlement

This view, which was stated above so many years ago by Bello J have been confirmed and enlarged by the Supreme Court in the case of *Olowu v Oluwu*.<sup>52</sup>

### 3. Traditions of Origin and History of Esan People

The word Esan (esã) and Ishan are used interchangeably to refer to the same people<sup>53</sup> among the three major ethnic groups in Nigeria, such as the Yoruba, Ibo and Hausa, the Esan people may not enjoy as much international recognition, but certainly, they are a very influential group of people with strong cultural identity in Nigeria in generally and Edo State in particular. An alluring climate with very rich culture speaks volumes of their strategic importance in the socio-economic equilibrium of the country<sup>54</sup>. A total of 34 (thirty-four) kingdoms consisting of large villages / township ruled traditionally by monarchs known as *Enijies*<sup>55</sup> constitute Esan land<sup>56</sup>. Thus the word “Ishan” is an Anglicized from of “Esan” (esã) the result of British colonial officers’ inability to properly pronounce the name of this ethnic group.<sup>57</sup> The Esan (esã) people occupy the five local government areas out of the eighteen local government areas of Edo state in Nigeria. Esan land is located within the present day Edo Central Senatorial District of the state. The chiefdoms, tribes and independent villages that makes up the Esan section of the Edo-speaking people, are located to the Northeast of the Benin kingdom, with the exception of Anwani tribe and the independent village of Ujagbe<sup>58</sup>. Esan land is bounded on the North-West and on North by the *Ivbiosakon* (Owan) and the Etsako people occupying the Northern part of Edo state, while on the West and South-West by the Benin kingdom consisting of a people that speaks the Edo language and on the South and South-East by the Ibo speaking communities of Delta State, and on the East by the River Niger and the Igala people.<sup>59</sup> All the communities that constitute Esan land lives in the area

<sup>50</sup> I.E. Sagay *Nigerian Law of Succession; Principles, Cases, Statutes and Commentaries* (1<sup>st</sup> ed, 2006, Malthouse Press Ltd, Lagos) at 260.

<sup>51</sup> [1968] N.N.L.R. 97,

<sup>52</sup> [1985] 3. N.W.L.R. (Pt.13) 372

<sup>53</sup> This article shall adopt the use of the word Esan (esã) being the historically correct name for the people before the advent of the British colonial administration in Nigeria.

<sup>54</sup> See Christopher E. U. and Inegbedion, N.A.” Ontological Validation of Land Tenure ship in Esan tradition in *Journal of Stud. Tribes*, 5(1) 2007.

<sup>55</sup> The plural form of the word “Onojie”, which means a traditional ruler or King.

<sup>56</sup> See “Esan people on Wikipedia, the free encyclopedia” available at: <[http://en.wikipedia.org/wiki/Esan\\_people](http://en.wikipedia.org/wiki/Esan_people)> (last accessed on the 14 of February 2019).

<sup>57</sup> Ibid.

<sup>58</sup> This community is now located in the present day Esan Central Local Government Area.

<sup>59</sup> See also R.E, Bradbury *The Benin Kingdom and the Edo-Speaking People of South-Western Nigeria*. (1950 International African Institute

of the Ishan Plateau whose general level is over 400ft. (about 121.92meter). The plateau raises from the Orihomo River in the South-west to an East-west ridge along the Northern borders of the present day Esan-west local Government Area and the Esan Central local government Areas respectively wherein the Chiefdom of Irrua, Ekpoma, Egoro, Ukhun, Idua and Ewu, which lie on the Northern slopes of the ridge, which is drained by small streams flowing North then East to the Niger.<sup>60</sup> On the top of the spur projecting to the North is a village (now an urban center), the largest chiefdom, Uromi.<sup>61</sup> It occupies a high ridge in the center of the Plateau from which the land falls gradually away to the Southeast and East. These slopes are drained by the Orle, Orbu, and Uto Rivers, which flow to the River Niger. Okpoji, Igueben, and Ugbegun lie on the undulating surface of the Plateau whose height decreases to the Southwest to the level of the Orihomo River and its tributaries. The Orihomo flows southwest to join the Benin River.<sup>62</sup> All the southern slopes of the Plateau are considerably broken up by deeply entrenched streams. Apart from the above description offered by Bradbury, Okojie also provided his own account about the location of Esan land in his book<sup>63</sup> as follows:

ESAN was a division in the old Benin Province of Bendel State now broken into Edo and Delta State. It is bounded on the North and North-East by old Kukuruku Division which became Afemi before that division was split into Owan, Etsako and Akoko-Edo Local Government Area; on the South by old Asaba Division now broken into Oshimili, Ika, and Aniocha Local Government Area; on the West by Owan, Orhiomwon Ohumwode Local Government Area, and the East, by Aliko and the lordly River Niger. Until 1945 the Ora speaking people of Sabongidda were classed with ESAN people. The population of UJAGBE, AMA with many AWAIN districts and ERHA speak ESAN-but like Anegbete on the North-East of Ugboha and the Northern half of Ifeku (IHEKU) ISLAND are now classed with Etsako Local Government Area.<sup>64</sup>

The word “Esan” is a corruption of the word esã, which is said to have being derived from the word “*esãfua*”, meaning “those who fled”.<sup>65</sup> Oral tradition has it that many of the Esan communities and immigrant element within them claim to have been founded by people who are said to have fled and left Benin Kingdom in order to escape from injustice and oppression. Historical account provides that in the middle of the 15<sup>th</sup> century during the reign of Oba Ewuare of Benin, the Oba had two sons who tragically died on the same day. Mourning the death of his sons, Oba Ewuare declared to the whole kingdom that there shall be no sexual

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University of Oxford) at 61

<sup>60</sup> *ibid* at p 61.

<sup>61</sup> Uromi is no longer a village. Its population has grown compared to 1950 when Bradbury, R.E. wrote his book. Uromi is now the 81<sup>st</sup> largest Nigeria city with an estimated population of about 119,346. Currently, Uromi is the headquarter of Esan North –East Local Government Area comprising of indigenes of Uromi and Uzea.

<sup>62</sup> *Ibid* at 61

<sup>63</sup> C.G. Okojie *Esan Native Laws and Customs with Ethnographic Studies of the Esan People* (1<sup>st</sup> ed, Reprinted 1994, Ilupeju Press Ltd) at 1.

<sup>64</sup> *Id* at 2.

<sup>65</sup> Bradbury, R.E *The Benin Kingdom and the Edo-Speaking People of South-Western Nigeria*. (1950 International African Institute University of Oxford) at 61

intercourse in the kingdom; no washing, sweeping of the houses or compound, drumming or dancing; and making of fire in the land. The Oba insisted that these laws must be strictly adhered to for a period of three years as a mark of respect for his dead sons<sup>66</sup>. However, those who could not endure this suffering ran away from Benin Kingdom to found other new settlement, or fled to other existing communities. This historical account seems to have found validation in the account presented by Okojie in his book titled “Esan Native Laws and Customs with Ethnographic Studies of the Esan People” earlier referred to above<sup>67</sup>. Okojie in his book under reference stated that:

“The name Esan...came from the Benin word ESAN meaning JUMP or FLEE. The name came to be applied to all the district now forming what the British had corrupted to ISHAN, during the reign of OBA EWUARE the Selfish. By then many of the important district in this territory were already in existence as important groups, e.g. URUWA (Irrua), URONMUN (Uromi), EKUNMA (Ekpoma), UBIAZA (Ubiaja) etc., but they were known by their individual names and there was no common name. They know they had a common stock and that was all.”<sup>68</sup>

Contributing to the debate, according to Jacob Egharevba, a renowned Benin historian<sup>69</sup> the Oba conquered 201 towns and villages during war of conquest, it is reported that the Oba had to use diplomacy for many of the other scattered towns and villages in the forest in order to bring them under Benin rule. Thus, Oba Ewuare invited Esan leaders or their representatives to Benin for a truce. He enticed them with the idea of having an attachment to Benin City. He further informed them that they would be honour with the title of the "Onojie", which means king. The future of Esan rested on the Esan leaders who went to Benin and took the title of *Onojie*. It was not an easy decision for the Esan leaders to decide whether to go or not to go. Many feared Oba Ewuare but also they did not want more military attacks against their respective communities hence they decided to attend. To win their confidence, the Oba then promised military support for the Onojie to enforce authority over insubordinate subjects. Only three leaders actually attended the meeting personally, the rest sent representatives.

All three were apparently men who had nothing to fear from the Oba due to various reasons. The first was Ekperejije, the son of Oba Ohen's daughter and a sister to Oba Ewuare. The sister had been given to the leader of Irrua. Ekperejije came without fear because of their cordial relations that existed between Irrua and Benin.

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<sup>66</sup> See the History of Esan people available at: < <http://www.discoveresan.com/history> > (last accessed on the 20<sup>th</sup> February 2019). Also, another account claimed that after Oba Ewuare became the king, he had two sons named Kuoboyuwa and Ezuwarha respectively. They both loved themselves dearly. While the older son Kuoboyuwa was the “Edaiken” [Edayin’Iken] of Urelu, the younger son was made the “Ogie” of Iyowa. As show of their affection, they usually exchange gifts between themselves until one day when the younger brother misjudge the senior brother gesture of sending him gift of farming implement in return of his own gift of yams. This he interpreted to mean that his brother was calling him a “bush man”. This act, introduced hatred between them, which eventually resulted in their poisoning one another, as a result of which they both die the same day. For further reading, see Omokhodion.J.O. (2012) *The Sociology of the Esans*; Titus Obembe Press p. 8-9.

<sup>67</sup> See footnote 59 above.

<sup>68</sup> C.G. Okojie. *Esan Native laws and Customs with Ethnographic Studies of the Esan People*, (1<sup>st</sup> ed, Reprinted 1994, Ilupeju Press Ltd) at 1.

<sup>69</sup> U.J. Egharevba (1960). *A Short History of Benin*: Ibadan University Press

The second was Alan of Ewohimi, the son of Ikimi who had left Benin prior to the reign of Oba Ewuare and as such was not considered as one of those who fled the city by the Oba. The third was Ijebomen who left Benin for Ekpoma after the Oba had granted him leave. In contrast to those mentioned above, chief Okhirare of Ohordua, had especially offended the Oba and would not risk his neck, so he sent his heir Odua to Benin.

His brother and leader of Emu also sent his son rather than risk his life. Three other Esan leaders dispatched brothers as their representatives to the meeting in Benin. Ede felt he was only less than the Oba by degrees and as such refused to honour the call. He then sent his junior brother to listen to what the Oba had to say. The leader of Ubgoha also asked his junior brother to go on his behalf. The leader of Uromi sent his junior brother to find out what the Oba had to say as well. Ewuare concealed his anger at the impertinent leaders in Esan since he was a skilled diplomat.

During the meeting, the Oba reported to his visitors how they had migrated from Benin, and at the end he enthroned the Benin court traditions on Esan land. This pivotal moment introduces the rule of primogeniture for succession into the traditional stool of the *Onojie* (King) in Esan land. The Oba then bestowed the traditional title of Onojie on those that were present at the meeting making them king over their respective domain. This historic moment happened in 1463. It is reported that instantly, after the Oba made the pronouncement, they were transformed into the traditional rulers of their various communities and subservient only to the Oba. Above all, this noble title was not transferable to father, brother, or master, thus once an Onojie, always an Onojie until death.

Naturally, in places where Oba Ewuare had enthroned a proxy as Onojie except in Ewohimi, Irrua and Ekpoma, strife and hatred followed as the new leaders began to assert authority and control over the elders. Thus, the Oba wielded the numerous villages into large political entities that hitherto became known as chiefdoms, loosely knitted villages, ruled by the Enijies.<sup>70</sup> However, there is a contrary view expressed by Okojie. According to Okojie,

The actual event that came to bring them together was EWUARE'S wooing of 1463. At Benin the leaders or EKAKULO met and were given similar titles to enable them rule their respective communities. Yearly they went personally or through accredited agent to pay homage to their overlord. Their re-union in the place of their origin with the common description of how they broke away resulted in the group name ESAN.

Thus Okojie postulated that Oba Ewuare actually woo the then leader of the various communities rather than conquering them and imposing his self on them contrary to what some historian want us to believe.

Amongst the various tribes in Edo State, the Esan (esã) people are distinguishable with their names, language, culture and social characteristics despite their relative closeness or proximity to Benin Kingdom. The Esan people speak a closely related language. However,

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<sup>70</sup> See "Esan People of Edo State" available at: < <http://w.w.w.owanclub.org> > last accessed on the 2<sup>nd</sup> March 2019).

there are some sharp dialectical variations among the various communities.<sup>71</sup> However, they are a very highly organised people with a very uniform social structure and political framework. With regard to native law and customs, there appears to be uniformity of customs relating to succession and inheritance. However, just as we find with respect to dialectical variation in the their languages, same also applies to some aspect of their customary law. Bradbury<sup>72</sup> further observed that there are a few references in Ishan tradition to aboriginal people who lived in the area before the migrations, which resulted in the founding of the present day communities. The implication of this statement is that most accounts about the origin of the Esan are based on the individual account as it affects a particular village, clan or chiefdom. For example some elements in the population of Egoro, Okpoji, Ewu, Uromi and Ewohimi claim to be descended from ancestors who “dropped from the sky” or who emerged from the ground or from rivers.<sup>73</sup> In Ewu tradition it is generally believed that one of their ancestor fell from the sky and was conquered by the Oba of Benin who gave him a wife and followers and sent him back with the title *Onojie*. However, most tradition are concerned with the origins and growth of the chiefdoms, villages, and village-groups that claim to have been founded directly or indirectly from Benin or by natives of others areas (especially Ife and Ifeku Island) who were absorbed, peacefully or by conquest, into the Benin empire. Traditional history provide that emigrant from Benin fled from injustice or oppression though a few *Enijie*<sup>74</sup> were apparently deliberately placed by the Oba of Benin to look after shrines or to guard his interest in the area.<sup>75</sup> It has been suggested that some of the chiefdoms were undoubtedly offshoots of the other already established communities and that their *Enijie* did not, perhaps, in all cases, secure the Oba’s recognition.<sup>76</sup> Existing literatures concerning the origin of the Esan suggested that it is not possible to say with precise accuracy the date these chiefdom were formed. According to Okojie the actual event that came to bring them together was Ewuare’s wooing of 1463. In Benin the leader or *Ekakulos* (war lords) met and were given similar titles to enable them rule their respective communities. Yearly they went personally or through accredited agent to pay homage to their overlord. They re-unite in the place of their origin with the common description of how they broke away resulted in the group name of ESAN.<sup>77</sup> On the other hand, Bradbury is of the view that it is possible to date satisfactory the founding of the chiefdoms though the traditions of Igueben and Urohi say that they were founded by warriors who followed the Oba of Benin to the war against the Ata of

<sup>71</sup> The village of Idua and Ujagbe and the small chiefdom of Ukhun in the north in the present day Esan-West Local Government and Esan-Central are reported to have historical and culture connections with the Ivbiosakon people. Urohi, in the west has close connections with its neighbours in the Benin Kingdom; its people regarded themselves as Edo rather than Ishan and like Igueben, speak a dialect, which is probably closer to Edo than to the other Ishan dialects. In the southeast Ebu (in present day Delta State) and Inyelen (now a part of Urho chiefdom) have sometimes been reported as Ishan communities. They claim for the most part, Edo and Ishan origins but speak a dialect of Igala with an admixture of Edo vocabulary. Their social organisation exhibits Ibo and Igala characteristics but most of their cults are clearly of Edo origin. In the Urho chiefdom Ishan and Igala communities live side by side, each retaining its own culture and social organization; most of the people speak both Ishan and Igala. Igala is spoken as a second language in Urowa and Ugboha chiefdoms.

<sup>72</sup> The *Benin Kingdom and the Edo-Speaking People of South-Western Nigeria*. (1957 International African Institute London) at 63.

<sup>73</sup> Ibid.

<sup>74</sup> The plural form of *Onojie*.

<sup>75</sup> Amongst such *Enigie* were the *Onogie* of Urohi and the *Okaigū* of Igueben.

<sup>76</sup> See Bradbury, R.E The *Benin Kingdom and the Edo-Speaking People of South-Western Nigeria*. (1957 International African Institute London) at 63.

<sup>77</sup> *Esan Native Laws and Customs with Ethnographic Studies of the Esan People* (1994) Ilupeju Press Ltd. Benin. P1.

Idah, presumably the one which is said to have taken place early in the 16<sup>th</sup> century.<sup>78</sup> He went further to say that the 26 chiefdoms for which information is available can recall the names of from six to 16 *Enijie*, with the exception of Igueben which names 26 *Ekaigu*. Sixteen chiefdoms list a succession of between 12 and 16 *Enigie* but in a number of cases the list are said to be incomplete, some names having been forgotten. In terms of demography, all the chiefdoms appears to have grown by the addition of immigrants of widely diverse Edo-speaking origins, who have accepted the authority of the *Onojie* in whose territory they have settled. This has resulted in all the chiefdom having heterogeneous composition. Also, there is an other school of thought which postulated that most of the people claim descent from people who emigrated from the Benin kingdom for widely very reasons. They included warriors who did not return to Benin after fighting campaigns (e.g. against Idah and Uzia); relatives of the Oba and others who offended him; individual placed by the Oba to guard the shrines; craft, trading and ritual specialist who came to seek their fortunes or were invited by the *Enijie*; slaves or servants sent down to farm for chief in Benin who were responsible to the Oba for administration of Ishan, etc. The *Enijie* often encouraged settlers by giving them title and other honours and privileges.<sup>79</sup>

### 3.1 External and Relations

Furthermore, greater part of Ishan (Esan) apparently remained within the Benin empire down to the British conquest though there were periodical defections and re-conquests in which some of the Ishan (Esan) chiefdoms sided with Benin against other.<sup>80</sup> The Oba Ozolua who was reigning in 1485 is said to have been killed in a war with Uzia, but it is not clear whether this was a war of conquest or the suppression of a revolt. Some *Enijie* provided warriors for the Benin armies, as for instance in the war, which brought Akure (presently the capital of Ondo State) back under the Oba's rule in the early part of the last century. On at least one occasion in the last century chiefdoms took opposing sides in a war of succession to the Benin kingdom.<sup>81</sup> Before the modern times, internally the history of Ishan (Esan) is one of wars and alliance between chiefdoms. Ubiaja is said to have dominated much of eastern Ishan during the 19<sup>th</sup> century. Warfare was carried on in addition, against neighbouring non-Ishan people; Egoro, for example, fought Ozala, an Ivbiosakon tribe.<sup>82</sup>

### 3.2 Contact with the Nupe and Modern Period

The Nupe who, during the latter half of the last century, gained control over most of what is now Kukuruku Division (presently consisting of the people from Owan, Etsako and Akoko-Edo Local Government Area) of Edo State raided the Northern borders of Ishan but did not penetrate deeply into forest.<sup>83</sup> Ujagbe, Ewu, Ukhun and Irrua were most affected and it is reported that raids were made as far as Ugboha. Ewu land is said originally to have

<sup>78</sup> The *Benin Kingdom and the Edo-Speaking People of South-Western Nigeria*. (1957 International African Institute London) at 64.

<sup>79</sup> Bradbury, R.E The *Benin Kingdom and the Edo-Speaking People of South-Western Nigeria*. (1957 International African Institute London) at 64.

<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid

<sup>83</sup> Ibid.



stretched to Igedion River North of the present site of Agbede. Its boundaries were pushed South to the foot of the Ishan Plateau by the Nupe and the Oba of Agbede whom they supported, but in the forest country the Ewu people defended themselves successfully; some, however, fled to Uromi where their descendant remain. Ujagbe, which was formerly under Onojie of Ewu, came under the influence of the Oba of Agbede about 1895 and the people are now virtually all Muslims. Emando village, Ekpoma, is reported to have been founded by a small band of marauders from the North whom the Onojie of Ekpoma employed as mercenaries; they continued to pay tribute of palm oil, goat and cowries to Bida. Evidence and traces of Nupe influence remain in the spread of Islam, particularly to Ewu and Irrua. In fact the present traditional ruler of Irrua kingdom, the Ogirrua of Irrua and the Okajesan of Esan land Alhaji W.O. Momodu II, JP, CON is a Muslim. Also visible is the adoption by men of the northern style of dressing. The early Europeans that visited Esan land came immediately following the Benin Expedition of 1897. However, Esan land was not finally brought under the control of the British until a military force was sent against Uromi and the Uzia and Edenu village-group of Irrua in the spring of 1901.<sup>84</sup> Uromi fell to the British military force after a hard fight.

In the modern period, after the creation of Mid-Western Region from the old Western Region in August 1963, Esan fell within the newly created Mid-Western Region, consisting of the old Benin and Warri Provinces. Under the old Benin Province were Benin Division, Kukuruku Division and Ishan Division. Benin Division consisting of Benin City, Uhiele, Ehor and Ujamen, while Kukuruku division was made up of Sabongida, Afuze, Otua, Igara, Ekpesi, Sebe, Eme, Agbede, Agenegbode, Auchu and Idah. On the other hand Ishan division consisted of the following: - Ewu, Irrua, Ekpoma, Iruekpen, Igor, Igueben, Ekpon, Ewohimi, Ohordua, Emu, Ubiaja, Ugboha and Uromi. With the creation of Bendel State out of the former Mid-Western region came a further split when Bendel state was divided into two states- Edo and Delta states. Under the present dispensation, Esan is bounded on the North and North –East by the old, Kukuruku Division which became Afemai before the division was split into Owan, Etsako and Akoko –Edo Local Government Areas; on the South by the old Asaba Division now broken into Oshimili, Ika and Aniocha Local Government Area; on the West by Owan, Orhionwon, Ohumwode Local Government Areas and East, by River Alike and the River Niger. Until 1945, the Ora speaking people of Sabongidda were classed with the Esan people. The indigene of Ujagbe, Ama, with many district of Awain and Erha speak Esan language. However, like the people of Anegbete on the North-East of Ugboha and the Northern half of Ifeku (Iheku) Island, they have been grouped into Etsako Local Government Area.

### 3.3 Groupings

It is on record that before the advent of the Europeans, Esan territory consist of loosely connected Chiefdoms each group being built round an Onojie most of whom descended from the early war leaders (*Ekakulo*) of the migrating or fleeing bands. Thus it is not uncommon to find evidence of blood relationship amongst some of the *Ekakulo* who later became the

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<sup>84</sup> Ibid.

Onojie of their respective districts. For example, the ruling houses of Irrua, Uromi and Ugbhoha were said to be brothers. Each Onojie was autonomous within his own district, but they all owe allegiance to the Oba of Benin. This is the position notwithstanding the creation of the Okaijesan title by Oba Akenzua I on Ikhihibhojere the then Ojirrua of Irrua early in the eighteenth century. This title only meant that the Onojie of Irrua took precedence when the Esan Enijie were before the Oba, or when they rarely come together in Esan Land. Below are important chiefdoms in early Esan land.

1. Uruwa	(Irrua)
2. Uronmun	(Uromi)
3. Ekunma	(Ekpoma)
4. Ubiaza	(Ubiaja)
5. Owoha	(Ugboha)
6. Orikhimi	(Ewohimi)
7. Eilu	(Ewu)
8. Uzea	
9. Emulun	(Emu)
10. Okhuodua	(Ohordua)
11. Enene	(Ebelle)
12. Amaho	(Amahor)
13. Okalo	
14. Ezen	(now extinct)
15. Udo	
16. Ugbegun.	

From the above list it obvious that Igueben is omitted. The reason for the omission was that Igueben came much later in 1516 after the Idah war and it was ruled by the Okaigun, who was later named the Onojie. It is important to mention that for easy administrative

convenience, Esan was divided into two i.e. Esan 'A' and Esan 'B'. Esan 'A' was fully established, and the districts / chiefdoms were as follows: Irrua, Ekpoma, Uromi, Ewu, Ubiaja, Udo and Ugboha. The various Enijie ruling these chiefdoms pay their annual homage to the Oba of Benin through the Ojirrua. Their channel was through Uhomode, i.e., through Ehor to Benin. Egoro and Opoji, which today have their own respected and accredited Enijie, were prior to this time only closely linked by blood and customs with Ekpoma. Oria though on Ugboha land was closely administered from Uromi and Ubiaja. Okhuesan was similarly linked with Ubiaja.<sup>85</sup> On the other hand, Esan 'B' which included Ewohimi (then Orikhimi), Ohordua, Emu, Ebelle, Okalo, Amahor, Ezen and territory of Okaigun, Ewohimi having being their headquarters, through which they rendered / convey their annual tributes to the Oba. This channel was through Igbanke and Agbor. Ewatto and Ewossa, which were founded much later by princes from Ewohimi were of course subservient to their 'father' the Onojie of Ewohimi and after their installation, they became sectional Enijies of the newly founded chiefdoms.<sup>86</sup> Thus at the zenith of the great Benin Empire, Irrua was the capital of Esan colony, just as Agbede was for the old kukuruku division. Therefore whenever the Esan Enijie meets at the place of the Oba of Benin, the Ojirrua takes precedence. Over the years, the population of the various communities grew which also lead to decentralisation of powers, which was met to curb the acquisitive desire of the Oba of Benin, and those of the very assertive Enijie in Esan land. Amongst them were the Ojirrua of Irrua – Momodu I (1921-1941), Okojie of Ugboha (1906- 1931), Ogbidi of Uromi (1901-1944). The result were modern territorial units, each autonomous and headed by it own Onojie. Thus the list of Esan communities with their autonomous traditional rulers *Onojie*. (King) are as follows: Irrua, Uromi, Ekpoma, Ubiaja, Ugboha, Ewohimi, Ewu, Igueben, Ohordua, Ebelle, Ugbegun, Opoji, Okhuesan, Ekpon, Ewossa, Emu, Amahor, Ogwa, Ugun, Oria, Ewatto, Urohi, Uzea, Udo, Ukhun, Egoro, Ujigba and Ido.

It will be recall that many of these communities grew as a result of the British Administration trying to clip the autocratic tendencies of some of the over bearing Esan Enijies. With the establishment of Ishan Council in 1920, this body wielded both executive and judicial powers subject to the powers of the Central Government. This council consists of six Enijie, representing the six districts into which Esan was divided. They were Ubiaja, Irrua, Uromi, Ekpoma Ewohimi and Ora. At the Council Irrua was represented by the Onojie of Irrua Eromosele (1876-1921) who represented Irrua and Ewu. While the Onojie of Ugboha, Okojie (1906-1931) represented Ugboha, Ubiaja, Emu, Igueben, Iyenlen and Ebu<sup>87</sup>. The Onojie of Ewohimi Ifebhor (1900-1931) represented Ewohimi, Ewatto and Ewossa. The Onojie of Opoji Imadojemun (1909-1946) represented Ekpoma, Opoji and Egoro. While the Onojie of Ohordua Oribhabor (1909- 1937) represented Ohordua and Emu and finally Ovbiato (Ora) was represented by their Onojie Agbebaku who represented Ora territory which was then administered as part of Ishan. The British administrators designated these rulers as District Head. (DH) and they ruled the districts into which Esan Land was divided. It will be recalled that although Uwagbale of Uromi (1944-1960) was added to this list, he was met to act on

<sup>85</sup> See Okojie C.E. *Esan Native Laws and Customs with Ethnographic Studies of the Esan People* (1994) Ilupeju Press Ltd. Benin. P5.

<sup>86</sup> Ibid at 6.

<sup>87</sup> This town, which was originally part of Esan land, has been readjusted into the present day Delta State.

behalf of his father Okojie (1901-1944) the Onojie of Uromi who was deported to Ibadan in 1918 by the British administration. His name was added because Uwagbale did not accept the fact that Uromi was being over see by Okojie of Ugboha at the Ishan Council. To him this was very humiliating. After the re-organisation following the intelligence report of 1931 to 1934, the following became the political units of Esan and upon which the McCall<sup>88</sup> Democratic Constitution of 1950 was based.

1. Uromi (*Urhomu*)<sup>89</sup> – Uzea (*Uzeea*) Native Authority
2. Ugbegun (Ugbegü) Native Authority.
3. South West Federation.
  - a. Amahor (*Amaho*) Clan}
  - b. Ebelle (*Ebene*) Clan}
  - c. Ogwa (*Orwa*) Clan} with its Headquarters at Ebelle.
  - d. Ugun (*Ugü*) Clan}
  - e. Ujiogba (*Ujogba*) Clan}
4. South East Federation.
  - a. Emu (*Emunu*) Clan}
  - b. Ohordua (*Ohodua*) Clan}
  - c. Okhuesan (Oxuesâ) Clan} has its Headquarters at Emu.
  - d. Orowa (Orowa) Clan}
5. North East Federation.
  - a. Ubijaja (Ubiaza) Clan}
  - b. Illushi (*Ozigono*) Clan}
  - c. Udo (Udo) Clan} with its Headquarters at Ubijaja.
  - d. Ugboha (*Owoha*) Clan}

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<sup>88</sup> Mr J.A.G. McCall – Johnny McCall was more of a development Officer than anything else. Schools, Hospital, Water supply etc. were part of his varied interest. He introduced the Democratic Constitution of 1950 where the Clan Councils were popularly elected. From these persons the Ishan Divisional Councils was elected. He left Ishan Division as an S.D.O., and a most popular officer who could be firm in his decisions without hurting. He became Permanent Secretary, Ministry of Lands, Ibadan and retired in the then Midwest Region created in 1963, serving for years as officer on special assignment.

<sup>89</sup> The phonetic spellings in parentheses are taken from the speech of Dr Okojie, a native of Irrua and Ugboha. Also for the corresponding numbers of villages under each chiefdom see <sup>89</sup> Bradbury, R.E The *Benin Kingdom and the Edo-Speaking People of South-Western Nigeria*. (1957 International African Institute London) at 64. For the table containing the names and villages that made up each chiefdom. The column is based on the names of the villages given in Administrative Report and does not include temporary or recent “camps” distinguishable by the prefixes *eko* or *ago*, which may be or may not have the social organization and social status of villages. The numbers of villages do not coincide with those given in the 1952 Census report where the term village is apparently not used in the same sense or consistently. In any case it is probable that the same criteria for distinguishing villages from wards on the one hand and village group on the other have not been used in all our sources. For further reading see Bradbury, R.E The *Benin Kingdom and the Edo-Speaking People of South-Western Nigeria*. (1957 International African Institute London) at 64.

- e. Oria (*Oria*) - Onogholo (*Onogholo*)}
6. Ivie –Uda – Esaba Federation.
  - a. Ekpoma (*Ek'ma*) Clan}
  - b. Egoro (*Egholo*) Clan}
  - c. Opoji (*Ukpozi*) Clan} has its Headquarters at Ekpoma.
  - d. Ukhun (*Uxü*) – Idoa (*Idoa*) Clan}
  - e. Urhohi (*Uroi*) Clan}
7. Ewohimi Federation.
  - a. Ewohimi (*Evoixíví* or *Oríxíví*)}
  - b. Ewatto (*Evoato*)} has its Headquarters at Ewohimi.
  - c. Ewossa (*Evoosa*)}
8. Ekpon (Ekpo) Native Authority
9. Ewu (*Éilu*) Native Authority.<sup>90</sup>
10. Igueben (Iguebé) Native Authority.
11. Irrua (*Urua*) Native Authority.

From the eleven Native Authorities of the fifties emerged single Divisional Council at the center. The then Military Government of Bendel State set up Ishan Divisional Development Council under the chairmanship of late Dr Christopher Gbelokoto Okojie OFR, with thirty-four Development Committees. (One for each town) in 1975. However, there were agitation that Esan should be divided into two local government area because of its size; and for adequate economic and social development. Eventually, two local government councils were established. They were Agbazilo and Okpebho local Government Councils. Agbazilo Local Government Area, which had its headquarter at Ubiaja, was made up of the following clans: Uromi, Ewohimi, Ubiaja, Ugboha, Emu, Ohordua, Ewatto, Ewossa, Illushi, Okhuesan, Ifeku, Uroh, Oria, Onogholo, Orowa, Iyenlen, Uzea and Udo.

On the other hand, Okpebho Local Government Area, which had its headquarters at Ekpoma, was made-up of the following clans: - Ekpoma, Irrua, Igueben, Ewu, Ebelle, Opoji, Egoro, Ogwa, Amahor, Urhohi, Ujiogba, Ekpon, Ugun, Ugbegun, Ukhun, Idoa and Okalo.

Furthermore on the 27<sup>th</sup> of August 1991, Esan was further split into four Local Government Areas, namely Esan West with its headquarters at Ekpoma, Esan Central with its headquarter at Irrua, Esan North-East with its headquarters at Uromi, Esan South-East with its headquarters at Ubiaja. A fifth local government Area known as Igueben Local Government Area, with its headquarters at Igueben was further created in 1996 by the administration of late General

<sup>90</sup> Ujagbe village was formally under Ewu, during the British Colonial administration. However, under the present democratic dispensation, they are now grouped with the Agbede in the present day Etsako West Local Government Area.

Sani Abacha.

With the firm establishment of the traditional institutions of kingship (Onojie) in Esan land, successions to the throne of a traditional ruler (Onojie) have been based solely on the rule of primogeniture. Whoever that is not qualified under this principle cannot participate in the ceremonies that will eventually lead to the coronation. This practice is traceable to 1463 when the Oba of Benin kingdom, Oba Ewuare enthroned the Benin Court Traditions on Esan land by bestowed the traditional title of Onojie on those that were present at the meeting which he held with warlords and representative of the various Esan clan that were present at that meeting, thus making them king (Onojie) over their respective domain.

#### 4. The Rule of Primogeniture

According to Black Law Dictionary<sup>91</sup> primogeniture means “the state of being the first born child among sibling”. It also mean the common law right of the firstborn son to inherit his ancestors’ estate usually to the exclusion of younger siblings. Thus in ordinary parlance, primogeniture is defined as the system in which the oldest son in a family received all the property when his father dies.<sup>92</sup> These definitions aptly described the nature of primogeniture inheritance under customary law in Nigeria. In most communities where this system of inheritance is practised, the primogenitor does not only inherit the property of his deceased father, but also in most instances also inherit the duties of his father particularly with respect to catering for other children; most especially the women in the family who stand no chance of inheritance. However, the position of female children and widows’ right to inheritance has being greatly enhanced by case law.<sup>93</sup>

Research has shown that within this specific nature of primo genitive inheritance, there are significant variations among different ethnic groups, which is also noticeable within the same ethnic configuration.<sup>94</sup> For example, among the Ibo speaking communities of Southeast, the eldest son becomes the head of the family on the death of his father. The property of his late father is vested in him to hold in trust as a caretaker of the family property on behalf of the rest members of the family. In Edo state, where the rule of primogeniture is fully operational, there is a shape variation in the practise and its application between the Edo speaking communities in Edo South Senatorial District and their Esan counterpart in Esan Central Senatorial District of the same state. Whereas, amongst the Esan the rule is applied in its

<sup>91</sup> 9<sup>th</sup> Edition for iPhone/iPod/iPod touch. (2009-2013).

<sup>92</sup> E. Azinge Restatement of *Customary Law in Nigeria* (1<sup>st</sup> ed, 2013, Nigerian Institute of Advance Legal Studies Lagos) at107.

<sup>93</sup> Hitherto, the position under customary law where the rule of primogeniture determines the nature of succession pattern, female children and widows’ are excluded in most cases. This situation was aptly captured by Margaret C. Onokan in her book titled “*Family law*” (2003 Spectrum law series) at 355 when she stated that...“ on the death intestate of a husband, dispute often arise as to whether his widow can inherit his property. Whether a widow can inherit the intestate of her husband will depend on the customary law of the locality... under Igbo customary marriage law she has no right to inherit her deceased husband’s estate but she can be granted the use of his land if she remains in the family after his death. Such grant being subject to her good behaviour, it cannot vest the estate in her.“ Thus in *In Neziyanya Azika v Okagbue* [1963] 1 All N.L.R 352 the court held that a married woman had no right to succeed to the estate of her late husband under Onitsha customary law. Recently the Supreme Court in *Onyibor Anekwe and Anor v Mrs Maria Nweke* [2014] LPELR -22697 (SC) The court came down heavily against discriminatory inheritance practises against women, i.e., the girl child and married women. The apex court reversed itself and departed from its earlier judgments in a plethora of cases and held that Igbo customary law practise that barred a daughter and a wife from inheriting the property of their deceased father or husband was unacceptable in a civilised society such as Nigeria and that such custom is repugnant to natural justice, equity and good conscience. See also *Mrs Lois Chituru Ukeje & Anor v. Mrs Gladys Ada Ukeje* [2014] LPELR 22724 (SC).

<sup>94</sup> Ibid at108.

purest state as compare to what is obtainable amongst the Edos. Accordingly, in most communities in Esan land, the eldest son of the deceased is vested with absolute right under customary law to inherit all the properties of his deceased father after the performance of the final funeral rites. This rule of Esan customary law was further espouse by Okojie as follows.

Basically the first son inherited the father's property and sheared to any of his junior brothers and sisters at his pleasure. It is true that some brothers particularly the second and the third could challenge his unfairness in taking everything to himself and reported the matter to the *Egbele*.<sup>95</sup> In this, the *Egbele* could only advice; they could not force the first son to part with what has come to him by right.<sup>96</sup>

It's my humble view that this rule of Esan customary law is unfair to the other children of the deceased. Although customary law places a responsibly on the eldest son to take adequate care of his younger sibling, cases abound where this responsibility has been abandon by irresponsible first sons and there seems to be no adequate remedy provided by the customary law to address these problems effectively. For equity sake, there must be some form of distribution with the other children of the deceased. Also, this rule of customary law is discriminatory in nature, particularly towards the female children of the deceased. In other to do equity among the children of the deceased, its here by proposed that the eldest surviving son such inherit the *ijiogbe*, (the principal house where the deceased lived while he was a live) while the rest properties can be shared amongst all the children with the eldest son exercising the option to choose first. Apart from the practise stated above, it is important to also mention some variations noticeable in the application of this rule in some communities within Esan land, concerning the interpretation of the customary rule of primogeniture as it affect inheritance. In some communities, the property of the deceased is shared according to the number of *Ukuede*<sup>97</sup> the deceased person had. Whereas among the Binis', there is a qualification to the nature / type of property the eldest son can inherit absolutely.<sup>98</sup> However among the Esan, the reverse is the case. In Benin once the eldest son inherit the *Igiogbe*, which is the principal house where the deceased lived in his lifetime, while the other children are entitled to share in the remaining properties that constitute the estate of the deceased. This customary law rule has attained judicial notoriety in a numbers of cases.<sup>99</sup> Thus it is a well-established rule of customary law of inheritance and succession among the Binis that the eldest surviving son of the deceased inherits the house where, the deceased lived in his lifetime and not necessarily where he was buried which is called the *Igiogbe*, after the performance of the final burial rites. As noted earlier above, one of the striking features of this system is that it is male dominated. Among the Ibo speaking ethnic group in the South-East of Nigeria, the Binis and the Esan in the South-South, male member of the family

<sup>95</sup> Elderly male members of his extended family

<sup>96</sup> C.G. Okojie. *Esan Native and Custom with Ethnographic Studies of the Esan People*, (1<sup>st</sup> ed, Reprinted 1994 Ilupeju Press Ltd) at 119.

<sup>97</sup> Means gate i.e., representing the number of wives the deceased person married while he was alive. In Benin, the word is Urho.

<sup>98</sup>P.O Itua "Succession under Benin Customary Law in Nigeria; Igiogbe Matters Arising" (2011) Vol. 3(7) *Journal of Law and Conflict Resolution* Page 117-142 Available online at: < <http://www.academicjournals.org>> (last accessed 12<sup>th</sup> March 2019).

<sup>99</sup> See the following cases. *Idehen v. Idehen* [1991] 6 N.W.L.R. (Pt.198) at 382; *Ogiamien v. Ogiamien* [1967] NMLR 247; *Lawal –Osula v. Lawal –Osula* [1993] 2N.W.L.R. (Pt.274) 158 and *Agidigbi v. Agidigbi* [1992] N.W.L.R. (Pt. 221) 98

benefit from inheritance to the disadvantages of their female counterpart. This age long tradition and practise have been observed amongst the Esan people since time immemorial. Okojie reinstated this customary law position when he stated as follows:

Let it be understood at the onset that it was a basic Esan law and custom that when a man dies his property and all he possessed were inherited by his children in the first instance. If he had no children then the right to inherit his property passed to his maternal brothers. If he had no such brother then eldest paternal brother was the next in line of inheritance failing to have children, maternal brother and paternal brother, the right to inheritance passed to *Ominjiogbe* of the *Uelen*. This *Ominjiogbe* might be his uncle or a cousin.<sup>100</sup>

What Okojie described above, as the custom of the Esan people is also common among some communities in Ibo land. In such communities, the practice is that if a man dies leaving a male child, the property belongs to the male child. If on the other hand the deceased has no male child, his brother will inherit the property irrespective of the fact that he might have daughters. If the male issue who survives the father dies without leaving any male child behind, the father's brother will inherit the property. If a man dies and subsequently his only son and brother also dies, in such a situation where the late brother has sons, then the first son of the late brother will inherit all the property. This custom is what is referred as *Oli- Ekpe* among the people of Nnewi.<sup>101</sup> This custom has been seriously criticized for been very discriminatory in nature particularly against the female children.<sup>102</sup>

#### 4.1 Origin of the Rule of Primogeniture in Benin Kingdom

Since the origin and practice / application of the rule of primogeniture to succession matters in Esan land is traceable to Benin Kingdom from 1463, during the reign of Oba Ewuare, it is therefore imperative to discuss the historical evolution of the rule in Benin Kingdom before its introduction in Esan land.

The origin of the rule of primogeniture in Benin Kingdom is of historical importance. The customary law rule of primogeniture is otherwise known as the law of hereditary succession or the law of *Arevbukhu*.<sup>103</sup> It is the succession law, which provide firstly, that the eldest son of the incumbent ruler or titleholder succeeds the deceased, and that failing as in the case of an heirless incumbent, it is seconded to the next of kin.<sup>104</sup> According to Omoregie what is define as the "next of kin" may be traced from the next oldest paternal brother, through the next oldest paternal uncle to the next oldest in the degree of paternal cousin.<sup>105</sup> Thus the meaning ascribed to the word "next of kin" has a totally different meaning with it modern day usage. However, the implication of a next of kin succeeding to title and property is that he

<sup>100</sup> C.G. Okojie. *Esan Native and Custom with Ethnographic Studies of the Esan People*, (1<sup>st</sup> ed, Reprinted 1994 Ilupeju Press Ltd) at 119.

<sup>101</sup> E. Azinge. *Restatement of Customary Law in Nigeria* (1<sup>st</sup> ed, 2013, Nigerian Institute of Advance Legal Studies Lagos) at 109.

<sup>102</sup> See particularly the judgement of Niki Tobi JCA (as then was) in *Mojekwu v Mojekwu* [1997] 7.N.W.L.R. 238. For the current position of the law, see the cases of *Ukeje v. Ukeje* (2014) 234 LRCN1., and *Amekwe v. Nweke* (2014) 234 LRCN 34.

<sup>103</sup> O.S.B. Omoregie "How the Primogeniture law became Royal in Benin" (2003) Vol. 1(4) in ISPU Newsletter at 7.

<sup>104</sup> Ibid

<sup>105</sup> Ibid



immediately begins a new line of succession for his family, except if there is a failure by heirlessness. Legal historians have asserted that the effectiveness of this rule of customary law has largely contributed to the stability of the Benin Monarchy over the past ten centuries since its founding in about 900AD. Therefore since the introduction of the primogeniture law the succession system in the Benin Monarchy has been effectively standardised, and it has been a considerable asset to the political and cultural development of Benin Kingdom. It has guaranteed an age-long traditional discipline both in royal practice and in its subordinate political units.<sup>106</sup>

It is on record that the practise of succession by *Arevbukhu* is one of the *Asegbere* types of succession that the Benin traditional system has experimented with over the years. In fact according to Omorie, this system of *Arevbukhu* is the most recent of the types at the monarchical level and one that has been found to possess the greatest quality, especially as it is one that is practice at the highest level.

#### 4.2 The Development of the Primogeniture Law or *Arevbukhu* in Benin Kingdom

Historically, the development of the primogeniture law or *Arevbukhu* as a basis of monarchical succession in Benin started with the effort of *Ogiso Igodo*, the first king and the founder of Benin Kingdom.<sup>107</sup> He was the Oba that initiated the move to elevate the succession principle of the *Urho*<sup>108</sup> system to the monarchical level over and above the practice of *Okaegbee* system in the choice of the *Odionwere*. *Ogiso Igodo* was able to lay claim to the throne because he claimed that his authority was from Sky-God (*Iso*) and on the basis of which he took the royal title. Thus, *Ogiso* then became the title, which was used by all the thirty-one kings of Benin that ruled before the coming of the Oba era in the 13<sup>th</sup> century. Omorie further stated that *Ogiso Igodo's* effort at elevating the *Urho* principle to the monarchical succession practice lasted only during the period of *Igodomigodo* (900-1000 AD) before it collapsed. According to him, three factors have been attributed to the collapse of the primogeniture system at the end of the 10<sup>th</sup> century AD.

Firstly, the system failed because it did not make provisions to take care of a situation where there is an heirless incumbent on the throne. In other words there was no safeguard for how the succession question was to be resolved if a king does not have an heir to succeed him. This was the situation that *Ogiso Orire* found himself. There was no provision for the right of the next of kin, as it was later defined to stabilise the succession system. Secondly, similar *Arevbukhu* provisions did not safeguard the position of the kingmakers. Finally, the mutual responsibility between the king and the kingmakers to preserve the other's primogeniture practice was not defined. Therefore, without these three factors, it was impossible to guarantee the continued operation of the primogeniture law especially as *Igodo's* elevation of the *Arevbukhu* principle to monarchical succession practise, and this did not augur well with the envious *Edionwere* in the village and the senior nobles in the royal council.

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<sup>106</sup> Ibid

<sup>107</sup> Ibid at 8.

<sup>108</sup> Meaning gate, representing the numbers of wives married by the deceased.

However, for a period of two generations (1000-1050AD) the primogeniture law was rejected, and the *Odionwere* rotational process of succession was applied to the monarchical system.<sup>109</sup> During this period, the *Odionwere* who was the oldest senior noble in the royal council, ruled as the *Ogiso*. One common problem with this era was that majority of the *Odionwere* were senile because of their age. This was why their era was generally referred to in the history of Benin Kingdom as the era of “DO Nothing *Ogiso*”. Their period was characterised with no major significant achievement in the Kingdom.

By 1050 AD, there was a revival of the primogeniture law in Benin Kingdom. A Royal Decree came into effect that effectively took steps to correct the three factors that has hitherto contributed to the failure of the system at the earlier stage of its introduction. This significant milestone was achieved during the reign of *Ogiso Oriagba* (1050-1070 AD).<sup>110</sup> From the period of the royal decree till date, *Ogiso Oriagba*'s primogeniture decree has never been suspended in the Royal Benin Succession System. Scholars in Ubiniology agrees that this decree proved a veritable instrument for the succession of the incumbent king's first son, or failing which his next of kin succeed to the throne; and also provide a platform to address issues affecting the mutual concern of the king and those of the kingmaker in other for them to remain indefatigable in applying the law to sustain the position of the other.<sup>111</sup> In spite of the Royal Decree, there are some exceptions recorded in history. It is on record that there were two kings that communicated a temporary change to their kingmaker in the choice of a successor among their children. These two kings were, Eweka 1 and the sons of Ohen.

Thus, the evolution of the primogeniture law as an instrument of royal succession in Benin brought considerable solidarity, peace and progress to the monarchical government of Edo land. From the foregoing, there are three major actors in the history of the development and preservation of the law of primogeniture –*Arevbukhu* in Benin Kingdom. The first was *Ogiso Igodo* who elevated the principle of the *Urho* system as an instrument of monarchical succession. The second was *Ogiso Oriagba* who consolidated the instrument through an all-time decree, and supplied all the provision for sustaining it. Finally the untiring efforts of the *Edionnisen* (as the kingmakers were called during the *Ogiso* era) who became *Uzama* in the *Oba* era. This is why the kingmakers have been accorded the honour and designation as first - class nobles in Benin kingdom from that time till the present day. Without the primogeniture law the Benin monarchy would have lost its orderliness and uniqueness it had enjoyed till the present day.

With the embrace of the primogeniture law within the Benin royal family, its application was extended to regulate the succession matter concerning every citizen of Benin. The implication was that with regard to the property of ordinary citizen; the eldest surviving male child is automatically transmogrified into his late father position after the final burial ceremony had been successfully concluded. It is note worthy to mention that with the exodus of persons from Benin Kingdom in the middle of the 15<sup>th</sup> century during the reign of *Oba Ewuare* of Benin, who had two sons who tragically died on the same day, mourning the death of his sons

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<sup>109</sup> Id. at 9.

<sup>110</sup> Ibid

<sup>111</sup> Ibid.

Oba Ewuare declared to the whole kingdom that there shall be no sexual intercourse in the kingdom; no washing, sweeping of the houses or compound, drumming or dancing; and making of fire in the land. The Oba insisted that these laws must be strictly adhered to for a period of three years as a mark of respect for his dead sons<sup>112</sup>. However, those who could not endure this suffering ran away from Benin Kingdom to found other new settlements outside Benin kingdom or integrated with communities that were already in existence like Irrua, Uromi and Ekpoma. Historically, this narrative suits one of the accounts for the origin of the Esan people in the present day Edo Central Senatorial District of Edo State. It is therefore not surprising that the rule of primogeniture that regulates succession and inheritance in Benin Kingdom is also applied by the Esan people on the same subject matter, however with little modifications.

#### 4.3 Types of Succession System in Benin Kingdom

In Benin Kingdom, two major types of succession system are in place. These systems are generally described according to their forms and characteristics, particularly as they provide for the orderly sequence in the succession system, which is known as the *Asegbere*.<sup>113</sup> The second system is called the *Ahannore*. Under the *Asegbere* system of succession, there are three-sub classifications. These are *Azodionre*, *Azofure* and the *Arevbukhu*. These succession systems are unique to certain category of persons. Thus the *Azodionre* is use to select the head of the *Okagbee*<sup>114</sup>. While *Azofure* regulate the *Odionwere*<sup>115</sup> selection and finally, the *Arevbukhu* regulate the *Urho*<sup>116</sup> of the ordinary citizen. The *Ahannore* system basically controls the *Avbure* and the *Azere/Azema* succession pattern.

##### 4.3.1 The Azodionre System

As it has been noted earlier, the *Azodionre* type of succession system in Benin Kingdom is that which is applicable to the *Okaegbee*. This system prescribes the age criterion as the basis of ordered succession to the title and property. The *Okaegbee* is the oldest male member of the (*Oka*) of a kingship (*Egbee*) and he over see the affairs of the nuclear families (*Urho*) clusters within it. It is on record that this age criterion principle of the *Okaegbee* system has from the earliest time been applied to village community. The village community is made up of a cluster of kingship families. It is important to state that at this level, the *Odionwere* or the oldest male member of the village community holds political authority. The application of the *Odionwere* rotational system has not been a successful venture beyond the government of the

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<sup>112</sup> See the History of Esan people available at: <<http://www.discoveresan.com/history>> (last accessed on the 20th March 2019). Also, another account claimed that after Oba Ewuare became the king, he had two sons named Kuoboyuwa and Ezuwarha respectively. They both loved themselves dearly. While the older son Kuoboyuwa was the “Edaiken” [Edayin’Iken] of Uselu, the younger son was made the “Ogie” of Iyowa. As show of their affection, they usually exchange gifts between themselves until one day when the younger brother misjudge the senior brother gesture of sending him gift of farming implement in return of his own gift of yams. This he interpreted to mean that his brother was calling him a “bushman”. This act, introduced hatred between them, which eventually resulted in their poisoning one another, as a result of which they both die the same day. For further reading, see J.O. Omokhodion *The Sociology of the Esans* (2012 Titus Obembe Press) at 8-9.

<sup>113</sup> Id.at 7.

<sup>114</sup> He is the head of the extended family consisting of several units that shear the same ancestry.

<sup>115</sup> This is the oldest person in a village.

<sup>116</sup> Refers to door I.e the number of women the deceased married.

individual village community. It has thus continued to operate at the village level of the monarchical administration<sup>117</sup>

#### 4.3.2 The Azoture System

The Azoture system of succession is one in which the *Odionwere* principle is applied to pee group called the (*Otu*) for the purpose of electing a leader. This system is distinguished from Azodionre in the sense that while Azodionre is effective at the level of kinship families in applying the *Okaegbee* principle to choose a village leader known as the *Odionwere* who is the oldest man in the village for the purposes of village administration, while the *Azoture* system is effective at the level of village leaders or *Odionweres* by applying the *Odionwere* principle to choose a monarchical leader (*Ogie*<sup>118</sup>) who would exercise an over-riding authority over a wide range of village communities. It is similar to *Azodionre* in the sense that it is based on age criterion though this criterion is operated within the context of peer group. Also it is generally believed that this system is also based on group criterion. It is on record that at the early stage of the history of Benin monarchy, the *Azoture* with its *Odionwere* principle was applied at the monarchical level during the period of the “Do-Nothing Ogiso” (1000-1050 AD), the period immediately following the *Igodomigodo* (900-1000 AD), during which 19 kings ascended the throne in quick succession.

#### 4.3.3 Arevbukhu System

This system of succession belongs to the *Asegbere* classification its application applies directly to the nuclear family called the *Urho*. This system prescribed the birth criterion as the condition for the succession to the title and property of the deceased. The *Urho* system specifically ensures that it is the eldest son of man that should succeed to his position and property when he dies. The peculiarity of this system is that, unlike *Azodionre* and *Azoture*, which allow the rotation of the succession chances in ordered pattern, the *Arevbukhu* concentrate it on the same family line. It is only when that line fails by heirlessness that the next of kin is invited into the succession system, not only to ascend the throne, but also to continue the *Arevbukhu* practice in his crown family.<sup>119</sup> It is a commonly held view amongst Ubiniologist<sup>120</sup> that this system is the most successful among the various methods that has been experimented with in relation to the monarchical succession system in Benin Kingdom. The advantage of this system is that it eliminates all strife and competition for the throne because it is known that the eldest son of the incumbent ruler is alive, or there is an identified next of kin in the line of succession to the throne. The same reasons can be adduced with respect to its application to individual families. Once the eldest son of a deceased person is identified, every body within the family unit knows that he is expected to step into his father's shoes as the head of the family after his death and by extension, there are certain things that he will be required to possess or acquired to be able to function properly in that

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<sup>117</sup> Ibid.

<sup>118</sup> A Duke. The word is not used in the sense as it applies to the British. A duke under Benin Native Law and Customs is a male ruler of a collection of villages who report to the Oba of Benin.

<sup>119</sup> Ibid.

<sup>120</sup> Expert in the study of Bini traditional history and its Native Law and Customs.

capacity as the new head of the family. These things, or property are not part of the estate of the deceased to be shared amongst the other children of the deceased.

#### 4.3.4 Avbure System

*Avbure* system belongs to the *Ahannore* classification. This system makes provision for an aspirant to a title and property to apply to a higher authority such as the Oba for consideration into the position. At the heart of this system, the applicant reserves the right to make his own selection among the non hereditary titles that are vacant and he must be satisfied that whatever he is applying for is what appeals to him the most. This system demand that the applicant must be fully prepared to satisfy all the conditions required for the attainment of the desired position under native law and custom. For example in Benin Kingdom, there are certain chieftaincies titles that are not hereditary and that are opened to well-meaning members of the society. The *Avbure* system of succession plays a significant role in the selection of the recipient to take any of these titles when the former holder dies.

#### 4.3.5 Azere or Azema System

This is the second system under the *Ahannore* classification. Under this system, a ruler invites a subject to take over a chieftaincy title. The decision to pick a particular person for the position is at the discretion of the ruler after taking into consideration all positive facts and quality of the recipient, which are favourable to the ruler. This system is distinguishable from *Avbure* system in the sense that while the application comes from the recipient in *Avbure* system, under the *Azere or Azema* system, the direct opposite is the case. Thus both classifications belong to the *Ahannore* system of succession because they are executed by random choice rather than by orderly and predetermined choice, which is normally associated with *Asegebere* system.<sup>121</sup>

### 5. Law of Succession under Esan Customary Law

The rule of customary law that regulate succession in Esan land is slightly difference in form and application from what is obtainable in Benin Kingdom. Although, the rule of primogeniture was introduced to Esan land as a result of the introduction of the Benin Court Tradition into Esan land in 1463 during the reign of Oba Ewuare. Some Esan historian had opined that these variations are not unconnected with the traditions of the aborigine that had already settled before the conferment of the Benin traditional court practices in Esan land. These two ethnic groups, the Edos and Esan people, are among the key ethnic groups that constitute the present day Edo State in Nigeria. Historically, the initial settlers / founder of Esan land were said to have migrated from Benin Kingdom as earlier stated in this research. This explains the similarity in the customs and traditions between these two groups. Esan land consists of 28 communities with their autonomous traditional rulers known as the *Onojie*<sup>122</sup>. It is important mention that even among these 28 autonomous communities with their various *Onojie*, it is not difficult to find areas of notable variations in the application of

<sup>121</sup> Ibid

<sup>122</sup> These are the names of the 28 autonomous communities that constituted Esan Land. Irrua, Uromi, Ekpoma, Ubiaja, Ugboha, Ewohimi, Ewu, Igueben, Ohordua, Ebelle, Ugbegun, Opoji, Okhuesan, Ekpon, Ewossa, Emu, Amahor, Ogwa, Ugun, Oria, Ewatto, Urohi, Uzea, Udo, Ukhun, Egoro, Ujiogba and Ido.

certain aspect of the customary law rules regulating succession and inheritance. In spite of these differences, there are seven basic laws governing the selection, succession and installation of an *Onojie*<sup>123</sup> (Traditional ruler or King) in Esan land. The rule of primogeniture is strictly adhered to in almost all of these kingdoms except for Idoa, Ukhun and the cosmopolitan clan of Illushi where the succession to the throne is based on the principles of rotation among the various ruling houses. Apart from the rule of primogeniture, there are other rules that must be observed in conjunction with this rule of primogeniture. These rules are as follows: (a) the title of *Onojie* (traditional ruler) is hereditary, which passes from father to son. (b) The first surviving legitimate son succeeds his father. (c) There can be no lawful succession until after the burial ceremonies of the late *Onojie* have been completed, in accordance with native law and custom. (d) He who performs these burial ceremonies inherits the family property, which is not shared and succeeds to the title and throne absolutely. According to Okojie, these burial ceremonies have the greatest significance under Esan customary law of inheritance, and hence this fourth law is of overriding importance. (e) Once an *Onojie*, always an *Onojie*. Once someone has been duly installed as an *Onojie* in accordance with native law and custom, nothing but death removes him from the throne. (f) The title, been that of a Constitutional Monarch, which is held in trust for the community cannot be willed or voluntarily relinquished in favour of any son, brother, uncle or a trusted friend. (g) The official burial place of an *Onojie* is at a special spot or location in *Eguare*.<sup>124</sup>

These aforementioned rules ensure that a uniform system of succession is maintained throughout Esan land. Thus the importance of these rules cannot be over emphasised in the overall stability of traditional institution in Esan land for centuries. By way of adumbration, the first rule ensures that a son succeeds to the property of his later father, and a single line of succession is maintained. Just like what is obtainable under the *Arevbukhu* system in Benin Kingdom The advantage of this system is that it eliminates all strife and competition for the throne because it is known that the eldest son of the incumbent ruler is alive, or there is an identified next of kin in the line of succession to the throne The only exception is when the *Onojie* dies without an heir. In such a situation, the right to succession passes to the late *Onojie*'s surviving most senior brother. If no brother, the right passes to his eldest uncle.<sup>125</sup>

The second rule satisfied the customary law dealing with the rule of primogeniture that provides that every first son inherits his late father's worldly possession. This rule is of uniform application across Esan land. With particular reference to the *Onojie*'s stool, if an *Onojie* has several sons and the eldest of them dies, leaving male children of his behind to succeed him with regard to his own personal estate, such male children, the first amongst them cannot lay any claim to the throne after the death of the current *Onojie* regardless of the fact that his late father was the late *Onojie*'s first son. The reason being that by the operation of customary law, since the first son predeceased his father, the right to succession automatically falls on the late king second son who now become the eldest surviving son of the late *Onojie* or king. The children of the deceased former first son under customary law

<sup>123</sup> C.G. Okojie. *Esan Native and Custom with Ethnographic Studies of the Esan People*, (1<sup>st</sup> ed, Reprinted 1994 Ilupeju Press Ltd) at 67.

<sup>124</sup> Ibid

<sup>125</sup> Ibid

have no legal claim whatsoever to the title as long as their uncle is alive. It is important to emphasize that for a male child to benefit under the operation of the rule of primogeniture, such a son must be a legitimate child. Children from a lover / lovers, (known as *Omon Osho* in *Esan* language) or from an *Arebhoa*<sup>126</sup> do not have any claim whatsoever to the title under customary law.<sup>127</sup> The application of this rule restricting succession to the throne by foreclosing children from “*Omon Osho*” who happens to be the late Onojie’s first surviving son might appear discriminatory in nature, when juxtaposed with the provisions of section 42 (2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).<sup>128</sup> The reason being that such a child, even though his father might have accepted his paternity, he is still being discriminated against because of the circumstance of his birth and he is considered as not being a fit and proper person to succeed to the throne because his mother was never married properly according to native law and custom. But the situation could be differently interpreted if the late Onojie does not have any child at all to succeed him. Rather than allowing the title to shift to the late Onojie’s eldest uncle, the kingmaker would prefer an *Omon Osho* to the late king’s younger brother. However, the same cannot be said for a child given birth to by an *Arebhoa* for obvious reasons. Encouraging such a child, will amount to disruption in the line of succession. In order to illustrate the application of this rule, two examples readily come to mind. According to Esan historian some time around 1905 Ozigue of Okhuesan died, and within nine days of his death, his son Isi, the heir apparent to the throne also died. The traditional right of succession to the throne automatically shifted to his second son Ataimen that performed the burial ceremonies of their late father Ozigue and he was installed as the Onojie. However, on the 20<sup>th</sup> of September 1920 Isi also died leaving a son called Ehidiamen who was a minor. The kingmaker appointed Oobo the minor most senior uncle as a regent to act until Ehidiamen is old enough to be installed as the king. This example helps to illustrate and to point out the fact that even though Eigbokan who was Isi’s eldest surviving son was alive, he was not appointed by the kingmaker because they were following the strict application of the rule of primogeniture. The regent administered the kingdom till 1933 when Ehidiamen was installed as the Onojie.

Also, the case of Usiahon 1 of Okolo kingdom is very apt and instructive on the strict application of this rule under consideration. Usiahon succeeded his father Ehirenmen who had reigned from 1892-1956. He performed the burial ceremonies and of his late father in 1957, and he was installed as the king or Onojie in 1957. Unfortunately, he died in 1973 leaving a son Jonathan Izebokhae to succeed him. Unfortunately, his son was a very sick man. He succeeded his father, but hoping to fully validate his position by completing all the processes of the final burial ceremonies. Sadly, on the 27<sup>th</sup> of January 1974 he died without completing the final burial rites of his late father. The Odionwele and Ibhijie of Okalo (the Kingmakers) called on the next surviving son of Usiahon 1, Prince Andrew Ilenbaremen to

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<sup>126</sup> An *Arebhoa* was usually a man’s first daughter (his *Ehale*). She is encouraged not to be married to any man. When she attained puberty, she lives in her father’s house where she is permitted to have sexual relationship with any man of her choice. All the children from this association are deemed to be the children of her father. The only reward for the husband is uninhibited companionship at the girl’s father compound. Also, the man is not expected to pay any bride price on the girl. This practice is encouraged where a man does not have male children that will inherit his estate when he is dead. This procedure provides an alternative means of having male children.

<sup>127</sup> Ibid at 69.

<sup>128</sup> See Cap C23 Laws of the Federation of Nigeria, 2004.

perform the burial ceremonies of their father Usiahon, which he did and he was installed as the Onojie (traditional ruler) of Okalo on the 9<sup>th</sup> of February 1974. It was immaterial whether later Jonathan Izebhokhae had sons who could have succeeded him or not.<sup>129</sup>

The third rule ensures that the proper customary burial ceremonies are observed and performed. There is an idiomatic expression in Esan language that goes thus: “*Ei se bhe Eguale abha mien ojie*” meaning the throne is never vacant. Immediately after the death of an incumbent *Onojie*, the kingmakers will immediately install the heir and he must as a matter of urgency commence the burial ceremonies at once. The implication of failure to perform the burial ceremonies or not completing it after stating one is the lost of the throne by the lineage of the heir. In such a situation, the next senior brother will be called upon to ascend the throne notwithstanding that the deceased heir has children who could have being installed as the next *Onojie* to succeed him. This also epitomise the common saying amongst the Esan people that no man is legally an *Onojie* until he has performed the burial ceremonies of his late father. A good illustrate of this rule occurred at Ebelle kingdom. This case concerns the quest of Emovuon of Ebelle (1907-1910) to succeed to the throne of his late father. The custom at Ebelle is to the effect that once the *Onojie* is dead, his is interred immediately. Then the Royal Family of Ebelle install his heir at once, and he too is expected to commence the burial ceremonies immediately with the commencement of the *Ihavie* ceremony which is considered as the most important aspect of the burial ceremonies. Thus custom dictates that the *Ihavie* ceremony should never be postponed for any reason whatsoever. But Emovuon commenced the *Ihavie* ceremony and stopped midway without completing the ceremony with the “*Edion*”.<sup>130</sup> Unfortunately, Emovuon died without completing even the first part of the burial ceremonies. The kingmakers called on prince Igbinijie to perform the final burial ceremonies and he was installed the *Onojie*. He reigned from 1910 – 1971. It very important in order to fully appreciate the significant of this customary law the reason for the immediate installation of the heir after the death of the *Onojie*. The main reason is to prevent what is term in Esan language as “*O re Okpu or Uwedia fi Ukhuo don.*”<sup>131</sup> in spite of the installation of the heir as the *Onojie* designate in other to prevent the throne from being empty. In reality, the heir does not exercise any form of authority, until the burial ceremonies are completed. Thus during the interval between installation and the completion of the burial ceremonies, the kingdom is being administered by the “*Oniha*” who is the traditional Prime Minister.<sup>132</sup>

The fourth rule appears to be the most important having its uniform application to the crown and the ordinary persons. This rule stipulate thus: “*Onon luogbe ole nab he ogbe*” meaning (he who performs the burial ceremonies owns the house and all there-in) this customary law is based on the necessity to bury the dead *Onojie* and bring him in harmony with, and associate with the spirits of the departed *Enijie*<sup>133</sup>. It is believed among the Esan people that the spirit of the newly departed *Onojie* merely hangs about in the next world with no abode or

<sup>129</sup> C.G. Okojie. *Esan Native and Custom with Ethnographic Studies of the Esan People*, (1<sup>st</sup> ed, Reprinted 1994 Ilupeju Press Ltd) at 67-68.

<sup>130</sup> Translated to mean the elders feasting.

<sup>131</sup> Translated to mean missing the throne.

<sup>132</sup> G. Okojie. *Esan Native and Custom with Ethnographic Studies of the Esan People*, (1<sup>st</sup> ed, Reprinted 1994 Ilupeju Press Ltd) at 69.

<sup>133</sup> The plural form of *Onojie*.



respect until he has been buried according to native law and custom.<sup>134</sup> Since succession right to the throne is conferred on the person who performs these burial rites, this in turn places a grave responsibility on shoulders of the kingmakers by not allowing or accepting any person other than the first surviving legitimate son of the departed *Onojie* to perform the burial ceremonies. Furthermore this rule of customary law is also applicable to ordinary citizen within the community. It is the deceased first surviving son that performs the final burial rites of his late father before he is entitled to inherit his estate. However, where the son is a minor, it is permissible for an older uncle to perform these burial ceremonies for him (the nephew) the uncle then inherit the property which he holds in trust until the boy attain majority. However where the heir to the throne as in the case of an *Onojie*, is a minor, the rules are completely different from the position enumerated above concerning the ordinary citizens. Where an heir is a minor the kingmakers will appoint an *Akheoa* (Regent) to administer the affairs of the chieftdom until the minor comes of age and performs the burial rites afterwards he is then installed as the *Onojie*. Under Esan native law and customs the Regent must be the minor oldest uncle. He is not allowed under any circumstance to perform the burial ceremonies; and in any case, he cannot perform them on his dead brother because customarily he is forbidden from doing so. This is one of the safe guards introduced by the founding fathers of Esan land to ensure that the rule of primogeniture as it affects the throne is preserved.

Furthermore, it important to discuss what happens if the first surviving son who is legally and customarily entitled to ascend the throne is either incapacitated by mental illness or he is an imbecile. What about situation where it become imposable to trace the where about of the first son or the heir apparent to the throne? What happens in these circumstances? This scenario was very common in the olden days. But today with the advancement in technology this kind of situation can rarely happen. However, whenever such a situation does arise, the system has an inbuilt mechanism for resolving these kinds of conflicts. The position under Esan native law and custom is that if any heir is known to be suffering from or affected by any of the condition(s) listed above, which will ultimately makes it impossible for him to participate and fully understand the essence and the nature of the burial ceremonies; and since the burial ceremonies can not be shelved, then the kingmakers will have no option than to call on the second son of the deceased *Onojie* to perform the burial ceremonies. Once the second son performs the ceremonies successfully he will be installed as the *Onojie* (king) in accordance with the fourth rule that provides that he that performs the final burial ceremonies is entitled to inherit the deceased *Onojie*'s property and the throne. However, *Okojie* has warned that before this alternative procedure is adopted particularly in relation to not being able to identify the where about of an heir, due diligence must be the watch word in other not to repeat the mistake of the past, which occurred at Ewu kingdom.

The fifth law strongly support and entrench the existence of the *Onojiship*. The rule ensures that once a person has been installed as the *Onojie* after the performance of the second burial ceremonies, he cannot be removed as an *Onojie*. Only death can remove an *Onojie* from the throne under Esan native law and custom. In the event that the *Onojie* become sick and

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<sup>134</sup> C.G. Okojie. *Esan Native and Custom with Ethnographic Studies of the Esan People*, (1<sup>st</sup> ed, Reprinted 1994 Ilupeju Press Ltd) at 70

unable to perform the functions of his office, an *Akheoa* (Regent) will be appointed to perform his duties on his behalf. In most cases, the *Onojie* first son is usually appointed or the *Onojie*'s immediate brother. However, Okojie<sup>135</sup> argued that the notion or opinion, which, states that an *Akheoa* can become a substantive *Onojie*, is something new among the Esan people, which cannot be supported by any traditional or historical records. Its origin cannot be ascertained and it is an aberration to Esan Native Law and Custom. It does not represent the correct position of Esan customary law on succession to the throne. The correct position of the law is that an *Akheoa* can never be a substantive *Onojie*<sup>136</sup>.

The sixth rule ensures that the succession to the throne follows the age-long tradition as provided by Esan Native Law and Customs. Thus an *Onojie* cannot by a testamentary instrument executed by him bequeath the throne to any other person apart from his first son, who is the customary heir to the throne. Where any of such testamentary bequeath is made, that disposition will be declared void *ab initio*. The reason being that, the title (the throne) is not his personal property. It belongs to all the communities constituting the kingdom and he (the king) does not possess the powers to single-headedly alter the age-long customary law in favour of any one else apart from the first son who is customarily recognised as the heir to the throne. Although there could arise a situation where an heir could refuse ascending to the throne for reasons best known to him. However, whenever such a situation does arise, it will be easily resolved because the system had already envisaged the occurrence of such a situation and a solution already provided by the customary law. The implication of such an act of rejecting the throne is an automatic forfeiture of the customary right to the throne and the attendant right to inherit any property of his late father the *Onojie*. Under Esan customary law, the option of who then becomes the *Onojie* is left for the kingmakers to decide. Also another situation could arise where the heir to the throne performs the burial ceremonies of his late father in accordance with the custom which will then allow him to inherit his late father's properties and yet, refuses to ascend to the throne for reasons best known to him. Whenever such a situation arises, the customary law provides that succession to the throne will be shifted to a named person, to be chosen by the kingmakers of that particular kingdom. The person so chosen by the kingmakers will only occupy the throne legitimately during his lifetime to serve the period the legitimate heir refuses to occupy the throne. However, when he dies, succession to the throne does not continue with his children or his lineage because of the operation of the rule of primogeniture and the need to preserve a single lineage of succession to the throne. Any legitimate claim he might have is automatically extinguished by his death. Succession to the throne automatically reverts to the lineage of the heir that performed the final burial rites of his deceased father (the *Onojie*) but refuses to ascend to the throne. Thus by performing the burial ceremonies, the heir has established an irrevocable claim to the throne not only for himself, but also for his own offspring. Therefore, after the death of the person that renounces the throne and the person so chosen to replace him by the kingmakers,

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<sup>135</sup> Ibid.

<sup>136</sup> Id at 72.

his own children and not the children of the person chosen to replace him have the legitimate right to succeed to the throne.<sup>137</sup>

Finally the seventh rule or law deal with the final resting place of an *Onojie*. The rule provides that no matter the place and location where an *Onojie* dies, he must be brought to Eguare (the place) and interred at the official place. This spot is reserved for the interment of the *Onojie*. Under Esan customary law no other person or persons no matter how popular or highly placed he might be, he cannot be buried on these sacred grounds exclusively reserved for the burial of the departed *Enijies*.

As mentioned earlier, there are two kingdoms and a cosmopolitan clan called Illushi where succession to the throne is not based on the application of the rule of primogeniture rather it is based on the principle of rotation between the various ruling houses. These kingdoms are Idoa, Ukhun, and the cosmopolitan clan of Illushi. At Ukhun, succession is gerontocracy in nature, and the title goes to the oldest man in the three quarter kindred that formed the ruling houses of Oba. In other to fully appreciate how these kingdoms select their respective Onojie, it is imperative for the purpose of this discuss to examine the historical evolution of these kingdom though in Esan land, but operate a system which seem to be alien to other Esan communities.

### 5.1 Idoa

The kingdom of Idoa present a unique history and characteristic which it shears with the kingdom of Ukhun that is totally different from the rest of Esan Kingdoms, with particular reference to the laws regulating succession to the throne of the traditional ruler known as the Onojie. This uniqueness regulating inheritance to the throne of the Onojie came about according to Okojie as a result of circumstance.<sup>138</sup> From the time of the early settler, Idoa had always been an Esan community. It exhibits all Esan customs and traditions except the aspect affecting succession to the throne. This exception, learned authors in Esan history have agreed with Okojie was force upon the community by exceptional circumstances.<sup>139</sup> Thus according to Bradbury, “ Individual titles of the Benin type are found throughout Ishan with the exception of Idua, Uzea, Ujabge and Illushi. Ukhun has a title association, probably of the Ivbiosankon type but in recent years individual title have been adopted as a result of contact with other Ishan groups.”<sup>140</sup> Therefore the traditional title of the Onojie of Idoa is of a recent development in history of Esan land. Being an adoption many years after the return of the original Idoa people. Idoa is a single independent village with five original quarters. They are as follows: Omoakon or Uhonlumun or Ubi, Afuku, Afokolo, Atologua and Ofie. It is on record that Omoakon was the first remembered settlement and hence regarded as the first in Idoa. There is no record of precedence with regard to the other quarters that make up Idoa. However, because of its peculiar geographical location, Idoa was one of the areas that

<sup>137</sup> Id. at 75.

<sup>138</sup> Id. at 581.

<sup>139</sup> Bradbury, R.E *The Benin Kingdom and the Edo-Speaking People of South-Western Nigeria*. (1957 International African Institute London) at 66, and G. Okojie. *Esan Native and Custom with Ethnographic Studies of the Esan People*, (1<sup>st</sup> ed, Reprinted 1994 Ilupeju Press Ltd) at 581.

<sup>140</sup> Bradbury, R.E *The Benin Kingdom and the Edo-Speaking People of South-Western Nigeria*. (1957 International African Institute London) at 76.

suffered constant incessant slave raid during the Nupe war of about 1850AD. In the final analysis, Idoa was sacked and its inhabitants fled to different places like Agbede, Ibore, Idoani, etc., during this period, the people of Ibore has relocated and finally settled at its present site some years earlier. Most of the inhabitants of Idoa fled to Agbede because of the activities of the slave raiders from Nupe, where Akhigbe was the ruler at that time and his mother Agbonrofo was from Idoa. However, with the restoration of peace, the remnants of Idoa regrouped under the influence and direction of Agbonrofo to form the present village structure comprising of the aforesaid four quarters. The unique pattern of succession to the throne of Idoa, which is based on principle of rotation between these four quarters, is a product of consultation amongst the returnees. According to Okojie, on getting to Esan they found that each group had a respected leader and sensing no group would accept the other leader, they came to a compromise of allowing the leaders to rule one after the other this, being the origin of the rotational method of inheritance and succession to the throne as the Onojie of Idoa.<sup>141</sup> It is on record that Ikpebua of Afuku was the first beneficiary of this succession pattern to the throne. After his death, Ugbadamun of Ofie succeeded him in 1940.<sup>142</sup>

### 5.2 Ukhun

The founder of Ukhun came from Benin via what is now known as Ekpoma, married a wife from Uzeba (Ivbiosakon). Social organization suggests affinities with Ivbiosakon.<sup>143</sup> Ukhun is one of the single independent village districts on the northern escarpment of the Esan Plateau. As a result of their peculiar geography location, their customs have been infringed upon by the customs of their non-Esan neighbours.<sup>144</sup> These neighbouring villages are Erha, Ama, Awain, and Ujagbe. Erha had been excised from Esan to join Ivbiosakon, now Owan; Ujagbe, Ama and Awain since 1895 came under the present day Etsako who were once all under the old Kukuruku division. As stated earlier, the geographical location of Ukhun played a factor in facilitating the influence of these non-Esan communities. During the Nupe invasions called Nupe or Bida War of 1847-1850, most of these Northern Esan villages bore the brunt of the attacks and were sacked by these invaders. As a result of the frequent attack from the marauders, most of these communities fled and took refuge in the Kukuruku Division (consisting of the present day Owan and Etsako local governments Areas). However, most of them started returning after the Nupe domination came to an end after the Royal Niger Company was established, round about 1885. The result is that the survivors and their offspring came back to their settlement and gained full control of their affairs. However, most of the communities within what was then Kukuruku Division had been converted into Islam, and they were made to pay tribute in slaves, money etc. Having lost their original families, what kept the returnees together had been the Esan language and tribal marks<sup>145</sup>. But they were

<sup>141</sup> C.G. Okojie. *Esan Native and Custom with Ethnographic Studies of the Esan People*, (1<sup>st</sup> ed, Reprinted 1994 Ilupeju Press Ltd) at 582

<sup>142</sup> Ibid.

<sup>143</sup> Bradbury, R.E *The Benin Kingdom and the Edo-Speaking People of South-Western Nigeria*. (1957 International African Institute London) at 66.

<sup>144</sup> C.G. Okojie. *Esan Native and Custom with Ethnographic Studies of the Esan People*, (1<sup>st</sup> ed, Reprinted 1994 Ilupeju Press Ltd) at 584

<sup>145</sup> C.G. Okojie *Esan Native Laws and Customs with Ethnographic Studies of the Esan People* (1<sup>st</sup> ed, Reprinted 1994 Ilupeju Press Ltd) at 584

able to organise themselves through seniority among the village elders, i.e. the principle of gerontocracy was entrenched as opposed to the rule of primogeniture that was in operation in other Esan kingdoms. As the community grew, many quarters developed and whoever was the oldest became the community leader and on his death, the next in seniority takes over who in most cases were from another quarter. This arrangement was not in conformity with the custom and tradition obtainable in other Esan community. This was why Bradbury wrote “the characteristic independent political unit of Esan society is the chieftdom ruled over by a hereditary Chief - Onojie or Onoje. The only exception being Ujagbe and Idoa which are single independent village and Awain a group of four village, all without hereditary Chief.”<sup>146</sup> Ukhun consist of the following quarters: Uwen-Okolo which is the first among Ukhun components, Uwen-Ogbeta, Uwen-Ijiekhine, Ogbuje, Afaken, Ebhoigben, Ebheyen, Oderie, Uwen-Itun and Okede. The first three quarters form the Ruling House of Oba. Succession is gerontocracy; the title goes to the oldest man in the three quarter kindred. Whenever an Onojie dies, his children have up to three months to perform the burial rites of their father before a successor is installed. According to historical records, the installation of the new Onojie is performed by Ogbuje quarter. The account states that his custom arose from the inability of the Ogbuje quarter that was once part of the Oba Ruling House that normally produced a ruler. However, some time in the history of the kingdom, an incumbent from this quarter had no male child, and his daughter married into the Uwen-Okolo quarter. When her father eventually died, she correctly performed the burial ceremonies of her father in her husband’s place where she took all paraphernalia of Onojieship<sup>147</sup>. This action robbed Ogbuje quarter of the right to inheritance to the throne. As a result, in other to compensate Ogbuje quarter, they agreed amongst themselves that the installation of new Onojie could only be performed by them. In spite of the principle of gerontocracy governing the succession to the throne, Ukhun has had its Enijie since the British arrival in Esan land. Ukhun had always been regarded as part of Ekpoma. However, in 1909, the Onojie of Ukhun elected to go with Ewu and his people started attending Irrua Native Court.<sup>148</sup>

### 5.3 Illushi

Apart from Idoa and Ukhun already discussed above, Illushi also known as Ozigono or Ojigolo has a very interesting, but rather sad history amongst the Esan clans. The word Ojigolo was first used in a document titled “Agreement of Sale signed by the King and People of Oporoporo (Illushi)<sup>149</sup>. Illushi today stands on the eastern border of Esan land. It is within the present day Esan South-East local government Area with its headquarters at Ubiaja (Ubiaza). It is about 16 kilometers (10 miles) from Oria, about 25 kilometers (16 miles) from Ugboha and about 33 kilometers (21 miles) from Ubiaja. There is so much uncertainty regarding the historical evolution / the origin of Illushi. The only part that is certain is its location. This uncertainty concerning the history of Illushi is intertwined with the origin of the people of Illushi themselves. Traditional historical records states that before 1896, the area was an uninhabited land claimed by Ugboha with the mouth of river Idon forming the

<sup>146</sup> The *Benin Kingdom and the Edo-Speaking People of South-Western Nigeria*. (1957 International African Institute London) at 67.

<sup>147</sup> This practice is totally alien to Esan native law and custom.

<sup>148</sup> Ibid at 586.

<sup>149</sup> Ibid at 395.

boundary between Ugboha and Urho. However, in 1885, the National African Company Limited was granted a Royal Charter as the Royal Niger Company with the authority to administer the territories, which it held under treaty and concession. According to Okojie, this Charter was not revoked until 1899.<sup>150</sup> Between 1896 and 1899 the Royal Niger Company became the de facto government of the territories under it in what is today known as Nigeria. This treaty was revoked in 1899. Because of the nature of the business the company was engaged in at that time, it became necessary for a port to be established for the purpose of re-fuelling, rest and evacuation of the produced. One such place that was chosen was Ozigono. The British were confronted with the problem of lack of access road into the hinterland for further procurement of produces confirmed in the hinterland. The only accessible road was a footpath to Ugboha, Oria and Urho villages. Thus, in order to legalize their position on the territory, the British through the Royal Niger Company signed an agreement for the purchase of a portion of land from the people of Illushi on the 29<sup>th</sup> February 1896. Many Esan historian and commentators had questioned the origin of the name “Illushi”. They argued that when the British came, they found that the place was already called Ozigolo, but which they called Jigolo because of phonological difficulties. However, the name Illushi is totally strange and alien. Suffice it to say that the nearest quarter of Urho to the Royal Niger Company station was Urhosi. Okojie question the genuine motive of the British acting through the officers of the Royal Niger Company to execute an agreement with the people of “Illushi” when the said agreement was written in English. According to him, in 1896, no single Esan man could speak English language. In such circumstances, who could have interpreted the document to the indigenous people of Illushi?<sup>151</sup> The above-mentioned agreement was registered as No.57 in volume 1 of the Niger Lands Agreement, kept in the Lands Registry, in Lagos. It is interesting to note that the agreement was signed between the “King” Jackara, Chief Omootooni, Egalalo, and Itsodi. Mr John Taggart signed for the Royal Niger Company. Okojie opined that Jackara must have been Atokhara, while Omootooni is Omochulu. These men were said to be native of Idah and according to Commander Pykenott, the Divisional Officer (D.O.) Ishan and G.B. Williams, representing the U.A.C. and John Holts, which became the Lessors of the Royal Niger Company land at Jigolo “Jackara” and Omootooni were native of Idah who appears to have trading activities at Ogu and Jigolo. Interestingly, all the litigations concerning the ownership of land in Illushi, originating from the court of first instance, all through to the Supreme Court, witness on both side have constantly maintained that there was no Onojie at Illushi.<sup>152</sup> There is a consensus of opinion among the people of Ugboha, Urho and Ubiaja who have a strong connection with the people of Illushi or Jigolo that Ozigolo (Illushi) is Esan land. Historically, Ugboha had always claimed Illushi as part of its land, and they have a common boundary with the people of Urho / Uroshi. This proposition is supported by historical facts. It is on record that Chief Okojie became the Onojie of Ugboha in 1906. This was ten years after the Royal Niger Company

<sup>150</sup> C.G. Okojie. *Esan Native and Custom with Ethnographic Studies of the Esan People*, (1<sup>st</sup> ed, Reprinted 1994 Ilupeju Press Ltd) at 394.

<sup>151</sup> See the Memorandum with Reference No. 3/ ILLUSHI/E/75, presented to the Commission of Enquiry on the Village Head of Illushi by Dr.Xto. G. Okojie OFR.

<sup>152</sup> See *Achima and others* (I.D. 394) *Chief Mordi & Ors of Uloshi (Urho) v. Chief Okoiwere & Ors of Oria* (I.D.94/3.1), and *Okoh Ugbohu & Ors Vs. Okoiwere & Ors* in suit No. SC 717/66 heard on Friday 23<sup>rd</sup> May 1969, before their Lordship Sir Adetokunbo Ademola CJN, Sir Ian Lewis and Charles Olusoji Madarikan. See also G. Okojie. *Esan Native and Custom with Ethnographic Studies of the Esan People*, (1<sup>st</sup> ed, Reprinted 1994 Ilupeju Press Ltd) at 399 for a list containing the names of the parties that litigated over the land at Illushi.

built their factory and station at Illushi. Chief Okojie of Ugboha had always received tributes from Illushi. Also, he had always appointed market masters who assisted him in the collects of levies from traders at Illushi in exercise of his control and authority. These market masters were given powers to adjudicate cases at Illushi as the representatives of Chief Okojie the Onojie of Ugboha. Over a period of time, these market masters became to be addressed as chiefs<sup>153</sup>. Furthermore, historically facts also shows that chief Okojie's suzerainty extended across Illushi to Urho, Iyenlen and Ebu, which was, then under Asaba Division, in the present day Delta State. Chief Okojie effective control of Illushi came to an end after his death in 1931. The chieftaincy dispute that engulfed Ugboha after the death of Okojie contributed to the lost of control of Illushi by the Onojie of Ugboha. In the very recent past, the creation of Local Government Council had a direct impact and destabilizing effect on the authority of the market masters once appointed, dating back to the era of chief Okojie the Onojie of Ugboha. The local government tax collectors were now performing their duties, and roles. Today because of the commercial nature of Illushi from the period of the establishment of the Royal Niger Company, which attracted many non-Esan speaking people to Illushi. The community now consists of people of different tribes and origin with amalgamation of different languages, which cannot be properly described as Esan language simpliciter. Thus it is not uncommon to hear people speaking, Igala, Esan, Ibo, Yoruba and Hausa languages at Illushi. However, the most commonly spoken language at Illushi is Igala language, instead of Esan language considering the fact that Illushi is located on Esan land. This explains why Illushi because of its cosmopolitan nature does not share any of the social organization and political structure found in all Esan communities.<sup>154</sup> However in 1974 the Chieftaincy Committee of Central Ishan District appointed a Committee to select a chief for Illushi. Also, in June 1975, the then Government of old Mid-Western State set up a Commission of Enquiry to look into

<sup>153</sup> Examples of the market masters were Orukpe Ikekhuwa from Inemen-Ugboha man, Arome from Urho, Eguma from Igalla, Alfa Tedi from Nupe, Tom Amalu.

<sup>154</sup> In Esan communities, the entire social structure is based on Kinship. The smallest social unit which is the family, which is called *Uelen* in Esan language consist of a man, his wife or wives as the case may be, his children, his junior brothers, his sisters not yet married if any and any other person such as his mother. Thus when his brother come of Age by getting married and starting their respective families, they will build there own houses round their senior brother's house which is the late father's house which their elder brother inherited under native law and custom as the eldest son of their late father. As a result of his position under Esan customary law, he is called as the *Ominijogbe* or *Akheoa*, depending on the part of Esan land one is considering. "*Ominijogbe*" or "*Akheoa*", simply means the head of the family or unit and he is the one person under Esan custom entitled to speak for the family and he also take absolute control and charge of the Ancestral shrine. Further more it is important to state that several family units form what is known as "*Idunmun*" in Esan language. Many of these *Idunmun* collectively form what is also known as "*Egbele*". It is significant to state that all members of an *Egbele* descend from a common father or ancestor. The *Odionwele* is the oldest man in any Esan village. It is noteworthy to mention that if a stranger comes to settle in any Esan village and eventually becomes the oldest person in that village, he can never become the *Odionwele* of that village. The reasons are not farfetched. Under Esan Native Law and Custom, such a person is not qualified to, and can never handle the village "*Okpo*" which is the village Ancestral staff or permitted to conduct traditional worship at the village Shrine. The customary implication of this position is that even though such a person must have gone through the process of acculturation / assimilation as recognized by the Supreme Court of Nigeria in the celebrated case of *Adeniyi Oluwu and Ors v. Olabowale Oluwu and Ors* [1985] 3 NWLR (Pt.13) 372. Where the court held that a person can charge his customary law of origin due to the process of acculturation / assimilation due to prolong settlement in a different culture. It is doubtful whether this decision can impact the Esan Native law and Custom in favour of a stranger to become an *Odionwele*. On the political structure, every Esan village consists of the following age groups and sets. The *Odionwele* being the oldest man in the village has under his control a tripartite division of male members of the village. These are the *Edion* (the Elders). This group consists of men who are 45 years and above. The second group is the *Igene*. They are made up of men between the ages of 25 years and 45years. In some Esan communities they are also referred to as "*Igbama*" or "*Oboigbaoto*" or "*Okuokhimio*" or "*Okhirare*" or "*Okhirenata*". According to Dr Okojie C.E. in his book titled "*Esan Native Laws and Customs with Ethnographic Studies of the Esan People*" at page 45, all the above mentioned name for the *Igene* group appropriately referred to the groups of men that engaged in war on behalf of the village. It is also not uncommon to find them being referred to as "*Ujiagbedion*." The last group is known as the "*Egbonughele*". The groups consist of young men from the ages of 12years to 25 years. They are must concern with duties relating the environmental sanitation and other assigned duties by the *Edion*. The last group in the political structure are the "*Ekhaemon*" these are title men given chieftaincy titles by the traditional rulers ("*Enijie*"). They occupy the senior grade in the village, but have no direct voice at the *Edion*'s deliberation.

the custom of succession to the village head of Illushi with Mr S.O. Ayonote as the Sole Commissioner. Presenting his memorandum before the Commission of Enquiry<sup>155</sup> Okojie held the view that Illushi does not have any custom. That the community was “an amalgam of Ishan, Kankandas, Nupes, Igallas, Ibos, it is as at best a miniature tower of Babel”<sup>156</sup> according to him, the characteristic political unit in Ishan is the chiefdom ruled over by an Onojie, and in the olden days, owing allegiance only to the Oba of Benin. He was the unifying factor for the villages in each of which social organization and political framework consisted of the Edion, the Igene and Egbonughele - the village workers. The village head or the Odionwele was the oldest man of the village. The concept of a “village head” does not exist in Ishan, and the social and political organization referred to above do not exist in Illushi.<sup>157</sup> He said further that the most important question ought to be the definition and identification of the people of Illushi before discussing the issue of appointment of a village head. A concept that is totally alien to Esan land. Despite the submission of Dr. Okojie before the Commission of Enquiry, the then Bendel State Government went ahead to approve a Declaration made under Section 8 of the Traditional Rulers and Chiefs Edict 1979<sup>158</sup> stating the Customary Law Regulating Succession to the title of Clan Head of Illushi.<sup>159</sup> The Declaration, which was signed by the then secretary to the Military Government D.P. Lawani, OON, KSG provides as follows:

- (1) There are three major ethnic groups in Illushi, namely: - Ishans, Igallas and Azanamas. The word Azanama used here is understood to include Hausas, Yorubas, Bidas and Nupes and all other non- Ishans and non- Igallas in Illushi.
- (2) Succession to the clan Headship rotates around the three ethnic groups in order of stated above.
- (3) On the demise of a Clan Head, his corpse is interred immediately after if he is a Muslim, otherwise within seven days upon demise. Burial rites are then performed, provided that its non-performance / non-completion will not debar the succeeding Clan Head from assuming office.
- (4) Thereafter, ten representative of the appropriate group, including the Odionwele, shall meet to select a candidate for the Clan Headship. Subsequently, during a meeting called by the Odionwele of the appropriate ethnic group, the candidate is presented to the leaders of the community comprising the Odionwele and six representatives from each of the three groups.
- (5) On the appointed day the new Clan Head is installed.

From the provisions of Section 8 of the Traditional Rulers and Chiefs Edict<sup>160</sup> the procedures prescribed above by the Declaration signed by D.P. Lawani, OON, KSG, secretary to the then

<sup>155</sup> Above at note 146

<sup>156</sup> C.G. Okojie. *Esan Native and Custom with Ethnographic Studies of the Esan People*, (1<sup>st</sup> ed, Reprinted 1994 Ilupeju Press Ltd) at 408.

<sup>157</sup> Ibid at p. 409.

<sup>158</sup> Sec. 8 (1) provides as follows “ Nothing in this Edict shall prevent the Executive Council from appointing any person or persons to investigate the method of selection of a person to be the holder of any traditional ruler title and to make the a declaration in writing stating the customary law which regulates the selection of such a person to be the holder of the title”.

<sup>159</sup> This publication was dated the 28<sup>th</sup> day of September 1979.

<sup>160</sup> Edict No 16 of 1979. Law of Bendel State of Nigeria, applicable in Edo State.



Military Government of the defunct Bendel State of Nigeria dated the 28<sup>th</sup> of September 1979 detailing steps regulating succession to the title of Clan Head of Illushi is totally at variance with the seven rules that regulate succession to the throne as an *Onojie* the traditional ruler under Esan Native law and Customs discussed above.<sup>161</sup>

## 6. Traditional Rulers and Chiefs Edict No 6 of 1979

Before the promulgation of the Traditional Rulers and Chiefs Edict No 16 Law of Bendel State 1979<sup>162</sup> by the then Military Administrator of Bendel State, Brigadier Abubakar Waziri<sup>163</sup> the law in force was the Chiefs Law, of Bendel State, 1976<sup>164</sup> which by its Section 2 repeals the hitherto Appointment and Recognition of Chiefs Law of 1954.<sup>165</sup> Interestingly, the provisions of the Traditional Rulers and Chiefs Edict No 16 Law of Bendel State and the provisions of the Chiefs law of Bendel State, 1976 are in *pari materia* in many material respects, but with some radical modifications, that introduced new concepts. For the purpose of this discuss its important to examine the provision of Section 28 of the Traditional Rulers and Chiefs Edict No 16 Law of Bendel State 1979, dealing with withdrawal of approval of appointment, suspension and deposition of traditional rulers, regent and chiefs by the Executive Council.<sup>166</sup> The section provides as follows Sec. 28(1)

The Executive Council may withdraw the approval of the appointment of, or suspend or depose, any traditional ruler, regent, traditional chief or an honorary chief whether appointed before or after the commencement of this Edict, if it is satisfied that such withdrawal, suspension or deposition is required according to customary Law or is necessary in the interest of peace or order or good government.

On the other hand, the provisions of Section 34 (1) of the repeal Chiefs Law, 1957 Cap 37 Laws of Bendel State of Nigeria 1976 provides as follows Sec. 34(1)

“The Executive Council may suspend or depose any chief whether appointed before the or after the commencement of this Law, if it is satisfied that such suspension or deposition is required according to customary law or is necessary in the interest of peace, or order or good government.”

From the provisions of these two statutes examine above, it is clear that the provisions of Sec.28 (1) of the Traditional Rulers and Chiefs Edict No 16 Law of Bendel State 1979 is more detailed than Sec. 34 (1) of the repeal Chief Law of Bendel State. For example, Sec. 28(1) introduced the word “withdraw of the appointment of ” which is a complete element

<sup>161</sup> For further reading, see P.O. Itua “Succession Under Esan Customary Law in Nigeria: Grounds for Disinheriting an Heir from Inheriting His Deceased Father’s Estate under Esan Customary Law” 2018 Vol.7 (8) *International Journal of Innovative Research and Development*. Available online at: < <http://w.w.w.ijird.com>> (last Accessed 28<sup>th</sup> March 2019).

<sup>162</sup> Now made applicable to Edo State,

<sup>163</sup> Brigadier Abubakar Waziri was the Military Administrator of the defunct Bendel State of Nigeria from 24<sup>th</sup> July 1978 to 30<sup>th</sup> September 1979 during the transitional period of Military to Civilian government under then General Olusegun Obasanjo’s Military Administration in Nigeria.

<sup>164</sup> Cap.37 Laws of Bendel State of Nigeria 1976.

<sup>165</sup> Western Region Law No 1 of 1955.

<sup>166</sup> Section 2 of the Traditional Rulers and Chiefs Edict No 16 of 1979 Law of Bendel State define “Executive Council” to mean the Executive Council of the State.

that seek to nullified the process of appointment of a traditional ruler, regent, traditional chief or an honorary chief whether appointed before or after the commencement of the Edict. The consequential effect is that an person who's appointment is deemed to be valid under the repealed Chiefs Law stands the risk of his appointment being withdrawn in accordance with the provisions of Sec. 28 (1) of the Traditional Rulers and Chiefs Edict No 16 Law of Bendel State 1979<sup>167</sup> if the Executive Council is satisfied that such withdrawal, suspension or deposition is required according to customary Law or is necessary in the interest of peace or order or good government will proceed to effect the withdrawal or suspension or deposition as the case maybe. Also, another concept introduced by the Edict, is the definition of a traditional ruler, which is provided for under Sec. 2 of the Edict.<sup>168</sup> This aforementioned definition is missing from the provision of the repealed Chiefs Law. Thus the provisions of the Traditional Rulers and Chiefs Edict are more detailed in nature, covering a wide variety of issues. The Edict is made up of eight parts consisting of 52 sections and four schedules. For the purpose of this discuss, certain provisions that are directly related to this research shall now be examine.

Firstly, before a person can be nominated or installed as a traditional ruler under the provisions of the Edict, he must satisfy the requirements as provided under section 13 of the Edict. For the avoidance of doubt section 13 provides as follows: Sec.13 (1)

“A person shall, unless he is disqualified under sub-section (2) of this section, be qualified to be a candidate to fill a vacancy in a traditional ruler title if :-

(a) he is proposed by a ruling house or the person having the right to nominate the candidate according to customary law;

(b) (i) he is a person whom the ruling house or the person having the right to nominate candidates are entitled to propose according to customary law as a candidate; or

(ii) he is unanimously proposed as candidate by the members of the ruling house or the persons entitled to nominate candidate.

(c) where succession is based on age, he is the oldest person qualified in accordance with the customary law to succeed to the title;

(d) where a hereditary system of succession operate he is the person entitled under the customary law to succeed to the title:

(2) No person shall be qualified to be a candidate for a traditional ruler title who:-

(a) suffers from serious physical infirmity; or

(b) has, under any law in force in Nigeria, been found or declared to be a lunatic or adjudged to be of unsound mind; or

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<sup>167</sup> Hereinafter referred to as the “ The Edict”

<sup>168</sup> “ Traditional ruler” means the traditional head of an ethnic unit or clan who is for the time being the holder of the highest traditional authority within the ethnic unit or clan and whose title is recognised as the traditional ruler title by the Government of the State.

(c) has-

(i) been sentenced to death or imprisonment for a term exceeding two years; or

(ii) been convicted of an offence involving dishonesty and sentenced to imprisonment therefor, and has not been granted free pardon”.

Secondly, the procedure to be followed where a traditional title, which is hereditary by the rule of primogeniture is vacant and the heir-apparent to the title is a minor or the heir-apparent does not ascend to the throne immediately after the title has become vacant is provided for under Section 16 of the Edict. Sec. 16 (1) provides that:

Where a traditional title which is hereditary by primogeniture is vacant and the heir-apparent to the title is a minor or does not ascend the throne immediately after the title become vacant, the Executive Council may approve the appointment of a person or persons as regent to perform such traditional functions and exercise such traditional powers and privileges attaching to the traditional title as are required to be performed or exercised by the regent under customary law if the Executive Council is satisfied that the appointment of such person or persons as regent is in accordance with customary law.

(2) Any appointment made and approved under sub-section (1) of this section shall cease to be effective on the date on which the heir-apparent to the traditional ruler title attains the age of eighteen years;

Provided that where the heir-apparent does not ascend the throne immediately on attaining the age of eighteen years, he may re-appoint such a person or appoint any other person or persons to act as regent for such period or periods and subject to such terms and condition as he may determine until he assumes the office of the traditional ruler title

(3) The provisions of sub-section (1) of this section shall apply in relation to any re-appointment or appointment made pursuant to section (2) of this section.

Thirdly a vacancy can also occur to the traditional ruler’s title were the vacancy is occasion as a result of the provisions of section 28 (3) of the Edict. Sec. 28 (3) provides as follows:

Where the approval of the appointment of a traditional ruler or a traditional chief is withdrawn or where a traditional ruler, or a traditional chief is deposed under sub-section (1) of this section, the traditional ruler title or chieftaincy title, as the case maybe, shall be deemed to be vacant from the date of the withdrawal or deposition, as the case maybe, and shall be filled in accordance with the provision of this Edict.

Furthermore, the Edict also makes provisions for offences. In fact Section 20 of the Edict deal with general offences while Section 26 of the Edict deals with offences with respect to traditional and honorary chieftaincies. These two provisions are not relevant to the subject matter of this discuss. However, Section 28(7) of Edict which make it an offence for someone who has been deposed as a traditional ruler to hold himself out as such and also purport to discharge the function of his former office as a traditional ruler. In fact this section

criminalises such conduct, and upon conviction the offender is liable to a term of six months imprisonment without the option of a fine. Thus Sec. 28(7) provides as follows:

Any person, who having been deposed from a traditional ruler title or chieftaincy title in accordance with provisions of sub-section (1) of this section-

(a) holds himself out as being the holder of that title; or

(b) purports to exercise or discharge any of the powers or duties attaching to the holder of that title, shall be guilty of an offence and liable on conviction to imprisonment for six months without the option of a fine

Also Section 28 (9) of the Edict sought to preserve the rights of a heir-apparent to the throne under customary law where succession to the throne is based purely on the rule of primogeniture, which have become vacant as a result of the deposition of the former occupant by the Executive Council in accordance with the provisions of the Edict, particularly Section 28(1). For the purpose of clarity, Sec. 28(9) provides as follows:

“Nothing in the preceding sub-section of this section shall be construed so as to extinguish or otherwise prejudice the right of a heir-apparent to succeed to a vacant title where, under customary law, succession to the title is hereditary by primogeniture”.

Finally, Section 32(a) of the Edict oust the jurisdiction of the court in entertaining any civil case or matter that seek to question the deposition of a traditional title holder i.e., the traditional ruler (*Onojie*) amongst other things. Section 32(a) of the Edict provides as that:-

Sec.32 “Notwithstanding anything in any written law whereby or where-under jurisdiction is conferred upon any court, whether such jurisdiction is original, appellate or by way of transfer, no court shall have jurisdiction to entertain any civil case or matter-

(a) institute for the determination of any question relating to the selection, appointment, installation, deposition, withdrawal of approval of appointment, abdication or suspension of a traditional ruler, regent or a chief as the case may be; or.”

These are the relevant sections of the Edict that directly affect the deposition of a traditional ruler, as in the case of Esan land called the *Onojie*.

## **7. The Deposition of the Traditional Ruler (*Onojie*) of Uromi in Edo State**

The deposition of a traditional ruler is not a new phenomenon that is peculiar to modern day Nigeria.<sup>169</sup> In fact the remover of a traditional ruler from office can take place either by the government acting on its own accord or prompted by the people of the community who are unhappy with the behaviour of the traditional ruler.<sup>170</sup> It must be stressed that it is very rare for a traditional ruler to be stripped of his staff of office. However, where such an act is about

<sup>169</sup> There are instances during the Colonial Administration in Nigeria where some traditional rulers were deposed in the former Western Region. For example, Akarigbo Oyebajo (1891-1915) was deposed as the traditional ruler of Akarigbo of Ijebu-Remo And he was replaced by Chief Awolesi the then Alase.. For further reading, see Tunde Oduwobi “*Deposed Ruler under Colonial Regime in Nigeria*”, *Cahiers d'études africaines* [Online], 171 /2003, available at: < [Http://journals.openedition.org/etudesafriaines/215](http://journals.openedition.org/etudesafriaines/215).> (last accessed 20th March 2019).

<sup>170</sup> E. Azinge. *Restatement of Customary Law in Nigeria* (1<sup>st</sup> ed, 2013, Nigerian Institute of Advance Legal Studies Lagos) at page 69.

to be effected, the extant law regulating such relationships requires that due process must be followed. In the recent past, under the military rule in Nigeria, there are several cases where notable traditional rulers were deposed. For example in May 1994, the Military ruler General Sani Abacha deposed Awwal Ibrahim, Sarkin Zazzau of the Suleja Emirate. Although he was later reinstated in January 2000.<sup>171</sup> Also, Ibrahim Dasuki who was the 18<sup>th</sup> Sultan of the Sokoto was also deposed in 1996 during the Military Administration of General Sani Abacha. Before becoming the Sultan, Dasuki held the traditional title of Baraden of Sokoto. He was the first Sultan from the Buhari line of the house of Dan Fodio<sup>172</sup>.

Generally, the duration of office of traditional rulers in Nigeria are for life<sup>173</sup>. However, the tenure of office of traditional ruler can be terminated by the deposition of the traditional ruler. Where this occurs, it is usually done by government of the day relying on the misconduct committed by the traditional ruler in question. Thus a paramount ruler is one man having authority over the entire community or kingdom. Usually a person becomes a king, Oba or paramount ruler in Nigeria through two recognized procedures. He could either inherit the throne as of right, having regard to rule of primogeniture or through election consisting of ruling houses. In Benin kingdom and all the kingdoms of Esan land, with the exception of Ido, Ukhun and Illushi the tenure of the Oba of Benin and that of the *Onojie* or *Enijies*<sup>174</sup> of the respective Esan Kingdoms are for life. On the death of the Oba, or the *Onojie* as the case may be, his eldest surviving son ascends to the throne after the performance of the final burial rites, and the installations rites conducted in accordance with native law and custom, and by rule of primogeniture. In Otoro Clan in Abak Local Government Area of Akwa Ibom State the clan headship, paramount ruler ship, village headship, as well as the family headship is for life. The implication of this is that the head cannot be succeeded until he dies or he is deposed. However in some communities, were the village head is found to be guilty of an unpardonable offence; he can be removed from office.<sup>175</sup> On the other hand, among the communities in South-West, South-South, North-Central and the South-East, there is clear indication based of the field research work conducted by researcher from Nigeria Institute of Advance Legal Studies that traditional rulers could be deposed by government acting on it own or prompted by the people.<sup>176</sup> Most of the reasons advanced for the deposition of a paramount ruler includes disobedience to constituted authority, disregarding / disparaging and desecrating of customs and tradition etc. A good example is the deposition of the Deji of Akure land, Oba Oluwadare Adesina in Ondo State. He was deposed because he could not maintain his household, his relationship with his chiefs and his subject. He, did not only maltreated his first wife, but also held his community to ransom by flouting traditional rites, grabbing peoples' land including his subjects and repeatedly trampling on their civil rights. He was deposed and banished from the throne after the Ondo State Government had

<sup>171</sup> Ibid at 4. See also Tony Orilade article titled “*Suleja Goes Up in Somke Again*” published on the 3<sup>rd</sup> of April 2000 referred to in E. Azinge. *Restatement of Customary Law in Nigeria* (1<sup>st</sup> ed, 2013, Nigerian Institute of Advance Legal Studies Lagos) at page 4

<sup>172</sup> See Ibrahim Dasuki –Wikipedia available at: < <https://en.m.wikipedia.org> > ( last accessed on the 20<sup>th</sup> of March 2019).

<sup>173</sup> E. Azinge *Restatement of Customary Law of Nigeria* (1<sup>st</sup>ed, 2013, Nigeria Institute of Advance Legal Studies Lagos) at10.

<sup>174</sup> The Plural form of the word Onojie.

<sup>175</sup> This is the position at Iwuru Central Akampka Local Government Area of Cross River State.

<sup>176</sup> E. Azinge *Restatement of Customary Law of Nigeria* (1<sup>st</sup>ed, 2013, Nigeria Institute of Advance Legal Studies Lagos) at 11.

conducted an investigation that found him guilty.<sup>177</sup> Also in Igburowo town, Odigbo Local Government Area of Ondo State, the Akamuja of Igburowo, Oba Akinfesola Adewola was suspended from the throne for allegedly perpetrating various atrocities in the community. Some of the atrocities were fraud, forceful acquisition of land, frivolous litigations over his subjects' properties, assaulting his chiefs, and failure to perform traditional rites. The suspension of the monarch by the Ondo State government came after mass protest by the people of the community who chased the traditional ruler and his family out of the palace, forcing them to trek barefooted for several kilometers.<sup>178</sup>

With regard to the subject matter of this discuss, in Edo State, the Onojie of Uromi known as the Ojuromi of Uromi, His Highness Zaiki Anselem .O. Eidonjio II (JP) was deposed by the Edo State Government led by its immediate past governor of the state Comrade Adams Aliyu Oshiomhole. The deposition order was contained in a letter dated 9<sup>th</sup> of November 2016.<sup>179</sup> The State Government alleged that the deposed Ojuromi committed a lot of offences including fighting one of his subjects Mrs Betty Okoebor after serious altercation on the day of general election in a public field at Uromi, the administrative headquarters of Esan North East Local Government Area of the state. The state Government further alleged that the Onojie travelled abroad without the permission of the state government. Before his deposition, he was suspended for seven day and he was directed to apologise to the state government. The government further alleges that the Onojie refused to apologise hence his deposition. However according to an article published in the Vanguard newspaper titled "Uromi: Gathering storm over the deposition of the Onojie,"<sup>180</sup> the publication gave reasons advanced by the state government for the suspension before the final deposition of the traditional ruler as contained in the letter dated the 26<sup>th</sup> of October were as follows:

Your unprovoked attack, inflicting grievous bodily harm on one Mrs Betty Okoebor on September 28, 2016 in full public glare to the embarrassment of those present and causing disgrace to your otherwise esteemed office your refusal, even after two weeks to respond to a query issued by the appropriate authority within the stipulated 72 hours, demonstrating total disregard and disrespect for constituted authority. Travelling outside the country without appropriate permission in further demonstration of your disregard for the extant regulation and law.

Furthermore, the article traced the genesis of the crisis between the traditional ruler and the then Executive Governor of Edo State Comrade Adams Aliyu Oshiomhole. According to the aforesaid article, trouble started when the Onojie of Uromi His Royal Highness refuted, through a statement, claim and attributed to him in the media that he had expressed distrust in the Edo State governorship aspirant of the People Democratic Party, Pastor Osagie Ize-Iyamu,

<sup>177</sup> The Ondo State Government led by Dr Olusegun Mimiko deposed Oba Oluwadare Adesina on The 10th June 2010. He was banished and order not to step into Akure for six months. See Daily Champion (Lagos) "Nigeria: Wife Bashing –Deji of Akure Deposed, Banished. Available at: < www.alafrica.com> (last accessed on the 20<sup>th</sup> March 2019).

<sup>178</sup> E. Azinge *Restatement of Customary Law of Nigeria* (1<sup>st</sup>ed, 2013, Nigeria Institute of Advance Legal Studies Lagos) at 12.

<sup>179</sup> See "Tension in Edo over the deposition of Uromi monarch" in The Pilot available at: < www.nigerianpilot.com> (last accessed on the 20<sup>th</sup> March 2019).

<sup>180</sup> Article by Prince Okafor available at: < www.vanguardngr.com > (last accessed on the 20<sup>th</sup> March 2019)

due to the party's track record of Under development in Esan Land. Part of the statement that refuted the claim is as follows:

Let it be noted that the Onojie of Uromi had never said during the visit of the Governor Adams Oshiomole and his entourage to the Palace that he does not trust Pastor Osagie Ize-Iyamu to be the Governor of Edo State, but rather Ize-Iyamu was welcome to his Palace 30 times a day if he wanted because they are personal friends.

Also the article gave a vivid account of what actual transpired at the public field on the day of the election as witness by one Mr Festus Okoebor an eyewitness who was quoted as saying

We voted in the Units 8 and 9 of Ward 4, Esan North East Local Government Area of Edo State on that fateful day. While we were there casting our votes, we observed an APC member being arrested by the security agents; there was a lot of tension. It was at this point that the Highness came in and said he received a call from somebody who said there were issues going in that polling unit. Customarily, when the Onojie steps into a crisis, the people 'sheathe their sword' as a mark of respect. At the polling unit, both my brother and sister were the APC agents collating their data. The Onojie went straight to my brother and placed his hand on his shoulders. All of a sudden my sister started videotaping the conversation between His Highness and my brother Matthew Okoebor. The Onojie was infuriated by the act and knocked the phone away from him. My sister responded by insulting the Onojie. We begged His Highness to forgive her and he left the area. There was no time the Onojie slapped my sister as alleged by the former Governor Oshiomhole. After the incident, she went to plead with the Onojie for forgiveness and the royal father promptly forgave her and prayed for her right in the palace. But later on, we heard that the governor suspended and later deposed the Onojie because of that incident. To us, is a sacrilege and disrespect to the traditional leadership, because the Onojie is not appointed, being a hereditary position and cannot be dethroned unless by death.

From the report contained in the aforementioned article, one might be tempted to question the true motive behind the action of the immediate past governor of Edo State Comrade Adams Aliyu Oshiomhole in deposing the Onojie of Uromi. The reasons might appear to be more politically motivated than the desire for peace, order and good government. But whatever the reasons might be, this research is focused and directed toward examining the legal implication of the deposition of the Onojie of Uromi vis-à-vis the provisions of the Edict and the customary rule of primogeniture that regulate succession to the throne as a traditional ruler in Esan land.

Having established the reasons provided by the Edo State Government forming the basis for the deposition of the Onojie of Uromi, the traditional ruler of Uromi Kingdom, it is imperative at this junction to examine the reasons given by the state government against the provisions of the extant law, which is the Traditional Rulers and Chief Edict No 16 Laws of

Bendel State applicable to Edo State. It is very clear that the State Government acted in accordance with section 28 (1) of the Edict to depose the Onojie of Uromi. While section 20 and section 26 (3) deal with offences, none of the offences listed in these two sections deal directly with any offence if committed by a traditional ruler will either lead to his suspension, withdrawal of approval of appointment or his deposition. Also section 28 (7) of the Edict deal specifically with offence committed by a person who had been deposed as a traditional ruler. Thus the Edict fails to define what could constitute an offence, on the basis of which a traditional ruler could be deposed, suspended or have his approval of appointment withdrawn by the Executive Council. The implication of this grave error is that it leaves the determination of what constitute such offence or offences to the whims and caprices of the Executive Council that would form the bases upon which a traditional ruler can be deposed. For the purpose of clarity, section 28(1) provides thus:

The Executive Council may withdraw the approval of the appointment of, or suspend or depose, any traditional ruler, regent, traditional chief or an honorary chief whether appointed before or after the commencement of this Edict, if it is satisfied that such withdrawal, suspension or deposition ***is required according to customary Law or is necessary in the interest of peace or order or good government.***<sup>181</sup>

From the concluding part of section 28(1) particularly the words in Italic, the Edict places a duty and responsibility on the Executive Council to make a determination whether to suspend, depose or withdraw the approval for the appointment of any traditional ruler, regent, traditional chief or an honorary chief whether appointed before or after the commencement of the Edict. However, in carrying out this function, the Executive Council must decide whether its action is required in accordance with customary law, or is necessary in the interest of peace or order or good government. These are the factors upon which a consideration must be made. Taken these factors into consideration, the question for determination at this stage is, was the deposition of the Onojie of Uromi carried out in accordance with the spirit and letters of the Edict? It's a trite principle of law that where words used in a statute are clear and unambiguous, the court must adopt the literal rule of interpretation<sup>182</sup>. Thus the provision of section 28 (1) are very clear and unambiguous.

Although the conduct of the Onojie of Uromi His Highness Zaiki Anselem .O. Eidonjje II (JP) seen fighting with one of his subjects Mrs Betty Okoebor after serious altercation on the day of general election in a public field at Uromi as alleged by the state government is highly condemnable as a behaviour not expected of a traditional ruler, who is expected to be the custodian of traditional values, and a role model in his kingdom and beyond; the punishment or sanction meted out on him by the state government, i.e., his deposition was too severe in humble opinion of the writer for the offence he was alleged to have committed. It is on record that the state government in justifying the deposition alleged that the traditional ruler

<sup>181</sup> Bold and Italic are mine for the purpose of emphasis.

<sup>182</sup> See *Mr Ugochukwu Duru v. Federal Republic of Nigeria* (2013) LPELR-19930 (SC). Where the Supreme Court held that "...it is not within the province of the court to seek the meaning of the statute outside the clear words the legislators employed. A court does not rewrite the law." See also *N.D.I.C. v. Okem Enterprise Ltd.* (2004) 10 NWLR (part 880) 107.



committed several other offences, including travelling abroad without permission from the state government. It's submitted that there is no single provision of the Edict that requires a traditional ruler to "take permission" from the state government before travelling abroad. However, as a matter of convention, traditional rulers are normally expected to inform their respective local government chairmen in their domain before travelling abroad. The chairmen on their own part will further inform the state government. It must be emphasised that the essence of the notice is to acquaint the chairmen of their movement. Therefore from the foregoing, can the deposition be said to be in accordance with customary law? The obvious answer is No. As stated earlier, succession to the throne as a traditional ruler (Onojie) in Esan land is strictly by the rule of primogeniture expect for the kingdoms of Idoia, Ukhun and Illushi. Under this customary law rule of inheritance, once a person has being installed as the traditional ruler in Esan land after the performance of the traditional / installation rites, only death can remove him from the throne. Under this rule, an Onojie (the traditional ruler) cannot be deposed for any reason what so ever, although other form of sanctions can be applied on an erring traditional ruler. The reason being that once an Onojie is deposed, the throne will remain vacant until the death of the deposed Onojie. The eldest son of the Onojie who is the heir-apparent to the throne under customary law cannot put himself forward for installation as the new Onojie, and no member of the kingmakers of the affected kingdom will perform the installation ceremony. Thus Okojie<sup>183</sup> re-stated the custom as follows: " to any one who knows our custom, the line of action in these matter is simple: no new Onojie could be installed until after the burial ceremonies of the last one." Therefore, because of the existence of this customary rule of primogeniture, which regulate succession to the throne in Esan land, the government of Edo State was handicap in announcing a replacement to the deposed Onojie of Uromi after one year of his deposition<sup>184</sup> in spite of the clear and unambiguous provisions of section 28(3) of the Edict which provides as follows:

Where the approval of the appointment of a traditional ruler or of a traditional chief is withdrawn or where a traditional ruler or a traditional chief is deposed under sub-section (1) of this section, the traditional ruler title or chieftaincy title, as the case may be, shall be deemed to be vacant from the date of the withdrawal or deposition, as the case may be, and shall be filled in accordance with the provisions of this Edict.

It is noteworthy to mention here that even during the period of dethronement where all the executive and judicial powers were withdrawn from the Onojie as a form of punishment by the Executive Council he was still regarded as their *ZAKI*<sup>185</sup> by his people / subjects.<sup>186</sup> In a twist of events, on the 9<sup>th</sup> of May 2018, the current Executive Governor of Edo State Mr Godwin Obaseki reinstated the deposed Onojie of Uromi, his Royal Highness Anselm O. Aidenojie II JP, who was deposed by the administration of Governor Adams Oshiomhole in

<sup>183</sup> C.G. Okojie. *Esan Native and Custom with Ethnographic Studies of the Esan People*, (1<sup>st</sup> ed, Reprinted 1994 Ilupeju Press Ltd) at 72.

<sup>184</sup> According to an article published in The Nation newspaper titled "*Uromi: A community waiting for its deposed traditional ruler*" published 13<sup>th</sup> April 2018. The news paper opined that "Apparently to avoid a possible backlash and revolt from the people of Uromi the state government did not announce a new ruler because ascendancy to the throne of Uromi is by primogeniture". Available online at: <<https://www.thenationonline.net>> (last accessed on the 20<sup>th</sup> March 2019).

<sup>185</sup> The traditional name and salutation for an Onojie, the traditional ruler in Esan Land.

<sup>186</sup> C.G. Okojie. *Esan Native and Custom with Ethnographic Studies of the Esan People*, (1<sup>st</sup> ed, Reprinted 1994 Ilupeju Press Ltd) at 74.

2016 to the throne.<sup>187</sup>

The second factor for consideration in our quest is to examine whether the Executive Council followed the clear and unambiguous provision of section 28(1) of the Edict to remove the Onojie of Uromi. The second condition provides that the deposition, withdrawal of approval of appointment and suspension must be done in the “interest of peace or order or good government”. This requirement presupposes that the paramount interest or consideration by the Executive Council must be that the deposition must be done in the interest of peace or order or good government. However, judging from the events that follow immediately the deposition order on the Onojie of Uromi was announced shows that the direct opposite of the interest of peace, order and good government was what the deposition of the traditional ruler achieved. Instead of peace within Uromi kingdom, the indigenes of Uromi took to the street to denounce the deposition order against their traditional ruler.<sup>188</sup> According to Onegbedan (SAN)<sup>189</sup> and Dan Okoh (SAN), “ the humiliation of the Onojie of Uromi is a vicarious humiliation of the entire Enijie in Esan land and by extension the humiliation of the traditional institution in Edo state.”<sup>190</sup> the duo of the Senior Advocate of Nigeria made this quoted remark in a press statement that was released to the general public after the deposition order was announced by the state government. From the weight attached to the press statement released by the learned Senior Advocate of Nigeria (SAN) and the street protest that followed the deposition, it is palpable that instead of the deposition of the Onojie of Uromi to have restored peace to the kingdom following the alleged misconduct committed by the deposed Onojie, the consequential effect of the deposition was to pitch the indigenes of Uromi against the state government who they viewed as humiliating their revered monarch. The social-economic and cultural consequences of the deposition of the Onojie of Uromi cannot be over emphasised. In fact the mood of the indigenes of Uromi was aptly captured by Chief Francis Ozah the secretary of Uromi Traditional Council when he said

We are just like a wife with no husband. Onojie of Uromi would have performed New Yam festival but because of the dethronement, he cannot do it “...”members of the community are not happy that their Onojie is dethroned. We are not happy. There are other festivities in Uromi that are no longer celebrated in an elaborate manner. All the festivals are supposed to be overseen by the Onojie. We are not happy that our king is dethroned.<sup>191</sup>

From the analysis above, it’s humbly and respectfully submitted that the deposition of the Onojie of Uromi by the Executive Council was not done in according with the spirit and letter

<sup>187</sup> For further reading see “Obaseki reinstates deposed Onojie of Uromi” available on line at: <<https://www.vanguardngr.com/2018/05/obaseki-reinstates-deposed-onojie-uromi-aidonojie/>> (last accessed on the 24<sup>th</sup> of March 2019).

<sup>188</sup> See “Tension in Edo over the deposition of Uromi monarch “ in The Pilot available at: <<https://www.nigerianpilot.com/>> (last accessed on the 24<sup>th</sup> March 2019). See also the article by Prince Okafor titled “Uromi: Gathering storm over the deposition of the Onojie” published 19<sup>th</sup> December 2016 available at: <[www.vanguardngr.com/](http://www.vanguardngr.com/)> (last accessed on the 24<sup>th</sup> March 2019)

<sup>189</sup> SAN is the acronym for Senior Advocate of Nigeria. Senior Advocate of Nigeria (SAN) is a title that may be conferred on legal practitioner in Nigeria of not less than ten years’ standing and who have distinguished themselves in the legal profession. For further reading see Senior Advocate of Nigeria available at: <<https://en.m.wikipedia.org/>> (last accessed on the 24<sup>th</sup> March 2019)

<sup>190</sup> See the article by Benneth Oghifo titled “ Onegbedan: Deposition of the Onojie of Uromi, Humiliation of Esan Traditional Institution” published 12<sup>th</sup> November 2016 available online at: <<https://www.thisdaylive.com/>> (last accessed on the 24<sup>th</sup> March 2019).

<sup>191</sup> See an article published in The Nation newspaper titled “Uromi: A community waiting for its deposed traditional ruler” published 13<sup>th</sup> April 2018. Available online at: <<https://www.thenationonline.net/>> (last accessed on the 24<sup>th</sup> March 2019)

of section 28(1) of the Edict. The only conclusion a reasonable man can reach in the circumstance is to hold that the deposition was done *mala fide*. Perhaps if the Executive Council had stopped at just suspending the Onojie of Uromi, probably there wouldn't have been much uproar. In fact instances abound in the history of Esan land, where prominent Esan traditional rulers (*Enijie*) were either suspended or deported by the colonial British Administration. In 1918 the late Onojie of Uromi Okojie (Ogbidi) who reigned from 1901 to 1944 was deported to Ibadan by the colonial administration. During the period of his deportation, his son Princess Uwagbale (1944-1960) became "*Akheoa*"<sup>192</sup> and on his father's returned in 1933, he stepped down from the throne for him. His father Onojie Ogbidi then regained his throne and reigned peacefully until his death in 1944. Also, Asikagbon the then Onojie of Ugbegun kingdom in the present day Esan Central Local Government reigned from 1916 to 1947. During his reign, he was imprisoned twice, serving a term of two and half years during one of the imprisonment. He came back and regained his throne after serving the various terms of imprisonments. He reigned till he died in 1947. In 1946 Isidaehomen II who reigned as the Onojie of Irrua kingdom from 1941 to 1971 was suspended from the throne for about a year. In spite of his suspension from the throne, his subjects who were always revolting against him as a result of his style of administration always considered him as their Onojie during and after his suspension from the throne. Also, at Ugboha kingdom, during the reign of Stephen Ukato the then Onojie who reigned from 1932 to 1954. He was imprisoned for eighteen months for committing criminal offences. On his returned from serving the term of his imprisonment, he returned to the throne as the Onojie of Ugboha. Apart from the colonial administration taken steps against an Onojie, the people also could on their own protest against their own traditional ruler. In such situation, the protest could have arisen by the people being totally dissatisfied with the behaviour / conduct or the manner in which the Onojie administer the kingdom. This scenario was mostly very common at Irrua during the colonial era. However, such action normally does not lead to the deposition of the Onojie affected from the throne even under the colonial administration. Such situations are resolved amicably and the Onojie still remained on his throne.

Furthermore, apart from the situation discussed above, a difference form of challenge is presented when an Onojie becomes very old and almost senile. In the history of Esan land two traditional rulers readily come to mind in this regard. According to Okojie<sup>193</sup> Imadojemun of Opoji who reigned from 1909 to 1946 and Omelimen the Onojie of Ewatto kingdom who died in 1953 were very old and senile but could hardly function as the respective Onojie of their kingdoms. In these two kingdoms, the traditional rulers were not removed or regarded as been very old and unable to function in that capacity by their subjects. Rather, for these two Enijie, their heir-apparent function and deputies for them until they

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<sup>192</sup> An "*Akheoa*" in Esan language simply means the "keeper of the home" in relation to succession to the throne in Esan land, it refer to a person that is appointed to hold the position and act as the Onojie (the traditional ruler) on behalf of the current occupant who is incapable to function in that capacity as a result of either imprisonment or deportation from the throne temporarily. At best, an *Akheoa* is a caretaker, a regent. Thus, under Esan customary law an *Akheoa* cannot bury his brother, nor can he perform the necessary traditional rites on a living person. Therefore, no other person can be installed as the Onojie regardless whether the real Onojie is imprisoned, deported, deposed or dead. Thus, traditionally, an *Akheoa* is nothing more than a caretaker. Therefore Esan native law and custom provides that an *Akheoa* is either appointed from amongst the temporarily incapacitated Onojie's brothers or his heir-apparent is appointed as it was in the case of Okojie (Ogbidi) 1901-1944 the Onojie of Uromi.

<sup>193</sup> C.G. Okojie. *Esan Native and Custom with Ethnographic Studies of the Esan People*, (1<sup>st</sup> ed, Reprinted 1994 Ilupeju Press Ltd) at 74.

eventually died and their sons succeeded them. These examples were highlighted to further illustrate the point that under Esan customary law of inheritance and succession to the throne as a traditional ruler, once a person has been successfully installed as an Onojie after the performance of the second burial ceremonies and the installation rites, only death can remove such a person from the throne. Any attempt to depose an Onojie from the throne and replace him with another person while the deposed Onojie is still alive will amount to an exercise in futility.

## **8. Recommendations**

This study has critically analysed the provisions of the Traditional Rulers and Chiefs Edict above, it is very apparent that the Edict needs to be amended because of its inherent defects. The Edict came into force in 1979 almost forty years ago under a military administration. Reading through the provisions of the Edict, it is very easy to identify the hallmark of military dictatorship within its jurisprudence. In order to make the Edict relevant under the present democratic system, the following recommendations are hereby proposed.

### *8.1 Offences*

Offences are provided for comprehensively under section 20(1) to section 20(7) of the Edict. Also, Section 26 of the Edict further provides for offences with respect to traditional and honorary chieftaincies. However, with respect to traditional ruler title, section 28(7) makes it an offence punishable with a term of imprisonment for six months upon conviction without the option of fine for any one having been deposed from a traditional ruler title or a chieftaincy title to hold himself out as being the holder of that title or purports to exercise or discharge any of the power or duties attaching to the holder of that title. It is very surprising that the Edict that makes these elaborate provisions for various categories of offences if committed by anyone that could lead to the conviction of the offender, fails to provide either by way of definition or otherwise for what would constitute an offence or offences if when committed by a holder of traditional ruler title, will empower the Executive Council either to withdraw the approval of the appointment of the traditional ruler, suspend or to depose the traditional ruler. The Edict left this critical element to the whim and caprices of the Executive Council. This is a very dangerous legislative approach to governance. In fact this is the hallmark of military dictatorship, which this legislation epitomises. The consequences of this approach, is that it empowers the Executive Council to solely determine what it thinks fit that should constitute an offence for the purposes of either withdrawing the approval of the appointment of the traditional ruler, suspending and finally deposing the holder of a traditional ruler title once the Council is satisfied with its decision. This approach is a recipe for arbitrariness, which is anathema to democratic rule. Therefore, it is hereby recommended that the Edo State House of Assembly should as a matter of public importance urgently amend this Edict by introducing the definition of offence(s), if when committed, shall empower the Executive Council to either withdraw the approval of the appointment of the traditional ruler title, suspend such a traditional ruler and finally as the case may be, the deposition of the traditional ruler. It is further recommended that the withdrawal of the approval of the appointment of a traditional ruler title, the suspension and the final deposition of a

traditional ruler shall only be effective if such withdrawal, suspension or deposition is supported a resolution of 2/3 members of the Edo State House of Assembly after a due and diligent investigation must have been conducted by the House of Assembly, and the traditional ruler is adjudged guilty. This will ensure that there is transparency in the process, and reduces the degree of arbitrary powers presently being wielded by the Executive Council under the present Edict.

Furthermore, it is a notorious fact that the Rule of Primogeniture regulates the succession to the throne of a traditional ruler in Esan land. Base on the operation of this rule, it's hereby recommended that since under Native Law and Customs, such traditional rulers cannot be deposed, because deposing any of them will simple amount to an exercise in futility, the only option is to limit the scope of punishment for these categories of traditional rulers in Edo State to suspension. The reasons for these recommendations are not farfetched. They have been exhaustively discussed in the body of this research. Suffice it to say that since it is impossible to depose a traditional ruler in Esan land because it is customarily impossible to replaced a traditional ruler who is not dead, the natural consequence is that since deposition of any of these traditional ruler is impossible, then withdrawal of approval of a traditional ruler title will equally suffer the same faith because by extension it simply amount to refusal or failure to acknowledge the legitimate customary heir to the throne. Once the Executive Council withdraws the approval of appointment of legitimate heir-apparent to the throne, the Executive Council cannot announce another person as replacement for the legitimate prince.

### *8.2 Sections 28(9) of the Edict*

The provisions of section 28(9) of the Edict totally contradict the very foundation of the Rule of Primogeniture. For the avoidance of doubt, the section provides as follows:

“Nothing in the preceding sub-section shall be construed so as to extinguish or otherwise prejudice the right of a heir-apparent to succeed to the vacant title where, under customary law, succession to that title is hereditary by primogeniture.”

It is important to state here that section 28(9) is a follow up to Section 28(1) of the Edict. Section 28(1) is the sub section that empowers the Executive Council to either withdraw the approval of the appointment of, or suspension of and finally the deposition of any traditional ruler, regent, traditional chief or an honorary chief, whether appointed before or after the commencement of the Edict. Since this research is mainly to analyse critically the customary rule of primogeniture against the deposition of the traditional ruler in Esan land, where succession to the throne is regulated by the aforesaid rule, this paper shall limit the analysis to the deposition of a traditional ruler. A literal interpretation of the provision of section 28(9) of the Edict show that the intention of drafter of this legislation is to guarantee the right of a heir-apparent to succeed to the throne where such throne has become vacant as a result of either the Executive Council withdrawing the approval of the appointment of, or suspension of or deposition of the hitherto traditional ruler. However, with the application of the rule of primogeniture regulating succession to the throne as a traditional ruler in Esan land, the above provisions of section 28(9) seem unachievable, except perhaps in the kingdoms of Ukhu, Idoa and Illushi where a different system of succession is applicable. The reasons

being that where a heir-apparent is appointed by the Executive Council, after declaring a particular stool vacant, either by deposition or otherwise as provided under section 28(1) of the Edict, so long as the deposed monarch is still alive, he remain for all intent and purposed their “ZAKI”<sup>194</sup> notwithstanding the withdrawal of authority the Executive Council. Thus, it is hereby recommended that either this sub section i.e., section 28(9) is deleted, or its application is restricted from having effect in areas where the rule of primogeniture holds sway, particularly in Esan land.

### 8.3 Ouster Clauses

The provisions of Section 32 of the Edict seek to oust the jurisdiction of the court to interrogate any action done or purported to have being done in accordance with the provision of the Edict. Section 32(a)(b) provides as follows:

“Notwithstanding any thing in any written law whereby or where-under jurisdiction is conferred upon any court, whether such jurisdiction is original, appellate or by way of transfer, no court shall have jurisdiction to entertain any civil case or matter:-

(a) instituted for the determination of any question relating to the selection, appointment, installation, deposition, withdrawal of approval of appointment, abdication or suspension of a traditional ruler, regent or a chief as the case may be or

(c) calling in question anything done in the execution of any of the provisions of this Edict or the repealed law or in respect of any neglect or default in the execution of any such provision by the Executive Council, the appropriate authority, a traditional council or its secretary, a prescribed authority, a local government council, a ruling house or a kingmaker”.

It is very clear that the provisions of section 32 generally oust the jurisdiction of any court to adjudicate on any civil matter emanating from any of the provisions of the Edict. Once again, Section 32 demonstrates the attitude of the then Military administration to rule dictatorially without due regard to the rule of law by inserting ouster clauses in almost all the Decrees and Edicts they promulgated. However, under the present democratic rule and with the coming into effect of the Constitution of the Federal Republic of Nigeria 1999 hereinafter called “ the 1999 Constitution (as amended)<sup>195</sup> the courts have adopted a difference approach to the interpretation of ouster clauses inserted in statutes differently from what the position was under the Military. In *Inakoju v. Adeleke*<sup>196</sup> Niki Tobi JSC, stated as follows: “Ouster clauses are generally regarded as antitheses to democracy as the judicial system regard them as unusual and unfriendly. When ouster clauses are provided in statute the court invoke section 6 as barometer to police the constitutionality or constitutionalism” The 1999 Constitution (as amended), which is the Grundnorm<sup>197</sup>, proclaim its supremacy above every

<sup>194</sup> Above at note 183.

<sup>195</sup> Cap C 7 laws of the Federation of Nigeria 2014.

<sup>196</sup> (2007) NWLR (Pt. 1025) 423.

<sup>197</sup> For further reading on the meaning of Grundnorm see Hans Kelsen “Pure theory of law.” Translated by Knight. Berkeley, CA:

other law in Nigeria, by virtue the provisions of Section 1(1) of the Constitution, which provides as follows. “This Constitution is supreme and its provision shall have binding force on all persons and authorities throughout the Federal Republic of Nigeria.” In addition, its further provides in Section 1(3) that “If any other law is inconsistent with the provision of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistencies be void.” Also the Constitution under Section 4(8) provide that:

Save as otherwise provided by this Constitution, the exercise of legislative powers by the National Assembly or by a House of Assembly shall be subjected to the jurisdiction of the court of law and of judicial tribunals established by law, and accordingly, the National Assembly or a House of Assembly shall not enact any law, that oust or purport to oust the jurisdiction of a court of law or of a judicial tribunal established by law

The over all effect of the above provision, is to prohibit the legislative arm of government both at the state and the federal level from enacting any law that sought to oust the jurisdiction of the court. Thus, under the present democratic practice, it’s not possible for any law to be enacted the will effectively oust the court’s jurisdiction.

Furthermore, in a bit to put an end to this practice that prevalent under the military rule where the rule of law was relegated to the background, the 1999 Constitution (as mended) extend the jurisdiction of the court of law to all matter between persons, authorities and the government. Thus, Section 6(1) and Section (6) (6) (b) of the Constitution provide that;

Section 6(1)

The judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation

Section 6(6) provide

The judicial powers vested in accordance with the foregoing provisions of this section-

Section 6(6)(b) further provide that:

Shall extend to all matters between persons, or between government or authority and to any persons in Nigeria, and to all actions and proceeding relating thereto, for the determination of any question ass to the civil rights and obligations of that person.

Arising from the above provision of the 1999 Constitution (as amended) is the liberty that all Nigerian now enjoy that any action of government that appear to conflict with the provision of the Constitution can be challenge before any court of competent jurisdiction.

In the light of the above, the provision of Section 32 of the Edict that oust the jurisdiction of court in adjudication on matters done, or purported to be done under the Edict is clearly in contravention of the clear provision of section 1(3) of the 1999 Constitution. Thus, its hereby submitted that because of the inconsistencies between the provision of section 32 of the Edict

against the Constitutional provisions section 1(3) section 32 of the Edict is hereby with due respect declared void and of not effect because it sought to oust the jurisdiction of court as provided for under the Constitution. In *Independent National Electoral Commission v. Alhaji Abdulkadir Balarabe Musa*.<sup>198</sup> The Supreme Court commenting on the supremacy of the Constitution observed as follows:

“The acknowledge supremacy of the Constitution and by which the validity of the impugned provisions will be tested. First, all powers, legislative, executive and judicial must ultimately be traced to the Constitution. Secondly, the legislative powers of the legislature cannot be exercised inconsistently with the Constitution. Where it is so exercised it is invalid to the extent of such inconsistency”

Consequently, its hereby proposed that that Section 32 of the Edict should be deleted from the Edict in other to bring the provisions of the Edict in line with the current Constitutional realities in the country.<sup>199</sup>

#### 8.4 Reinstatement Provisions

Despite the elaborate provisions of the Edict dealing with offences and their punishment, it is sad to observe that there is no single provision of the Edict that is dedicated to the reinstatement of a traditional ruler, regent, traditional chief or an honorary chief whose appointment had been, withdrew, suspended or deposed. The only reasonable explanation for this state of affairs is that the drafter of the Edict did not anticipate a situation where once a person has either being suspended, deposed or his approval of authority withdrawn can be reinstated under any circumstances. However when the Ojuromi of Uromi his Royal Highness Anselm O. Aidenojie JP, was reinstated by the current Executive Governor of Edo State, His Excellence Mr Godwin Obaseki, the reasons he gave for the reinstatement of the traditional ruler are as follows:

“Consequent upon his tendering of apology to the Edo State Government and a plea for leniency from well meaning citizen of the state, the Executive Council of the state, approved the reversal of his deposition and was reinstated as His Royal Highness Anslem Aidenojie II, the Ojuromi of Uromi...the people who pleaded for his reinstatement reported that the Ojuromi of Uromi had been sober and remorseful and we are happy that he has undertaken to eschew acts unbecoming of his royal status”<sup>200</sup>

From the reason adduced by the Governor, it’s clear that there is no reference to the relevant provisions of the Edict that empowered the Executive Council to so act in that regard. The reason is simple, because no such provisions exist. However, the governor actions can be reasonably justified under the doctrine of necessity.<sup>201</sup> Without taken the aforesaid steps, by

<sup>198</sup> [2003] Vol.3 M.J.S.C. 1

<sup>199</sup> For further reading on the attitude of Court to ouster clauses see the following cases. *Chief Enyi Abaribe vs. The Speaker, Abia State House of Assembly & Ors* [2002] 14 NWLR (Pt. 738) 466. *Jimoh vs. Olawoye* [2003] 10 NWLR (Pt. 828) 307. *Balarabe Musa vs. Hamza* [1982] NSCS 219., *Dapialong vs. Dariye* [2007] 8 NWLR (Pt. 1036) 289 and *Ekpeyong vs. Umana* (2010) LPELR-8653 (CA).

<sup>200</sup> See “why Obaseki reinstated Ojuromi of Uromi” available on line at: < <https://www.vanguardngr.com>> (last accessed on the 24<sup>th</sup> of May 2019).

<sup>201</sup> For further reading, see the “Doctrine of necessary” available at:< <https://www.wikipedia.com>> accessed on the 24<sup>th</sup> May 2019.



the Executive Council, the indigenes of Uromi would have been deprived of their traditional ruler. The social-economic effects of the deposition of the Ojuromi of Uromi are unquantifiable. The action of the governor is commendable. Now that the traditional ruler has been reinstated, traditional activities that were hitherto suspended can now resume and the indigenes of Uromi can now feel a sense of belonging in the state. In other to prevent a similar situation in the future, it is hereby recommend that the Edict should be amended by the Edo State House of Assembly by making adequate provisions for the recall of a suspended traditional ruler and the reinstatement of a deposed traditional ruler in the state.

## 9. Conclusion

This research has demonstrated the important of the age long Rule of Primogeniture that regulate succession to the throne of a traditional ruler (Onojie) in Esan land. This rule of customary law has been in existence for centuries and its application has being held sacrosanct by Esan people, since the origin of the various kingdoms in Esan land. Interestingly, the British colonial administration recognised this principle during the colonial era, and they preserved its application. Any action that will undermine it observance was avoided. However, it is rather unfortunate that after the attainment of independence, when it was expected that successive administration would do all that is necessary to preserve the observance of our native law and customs, experience had shown that the reverse is the case. How does one justify the promulgation of an Edict that set out *ad initio* to undermine and destroyed this rule of customary law that regulate succession to the throne in Esan land that had enjoyed judicial notoriety in our legal system. However, it's comforting to see that the indigenes of Uromi Kingdom and other Esan kingdoms stood in solidarity in defense of their common ancestral and customary heritage when the deposition order was handed down on the Ojuromi of Uromi kingdom. In spite of the deposition order by the state government, the indigenes of Uromi kingdom, still regarded their deposed Ojuromi as their "ZAKI" even though he was practically strip of all his administrative powers. It is hope that the Edo State House of Assembly will do the needful by taking all the recommendations of this research into consideration when they eventually amend the Edict in other to effectively preserves this distinctive feature of our customary law from arbitrary abuse and at the same time, bring its provisions in conformity with our current democratic practice.

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