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AN ANALYSIS OF THE CONCEPT OF PROPERTY IN PERSON UNDER NATIVE LAW AND CUSTOM IN NIGERIA*

1.1 INTRODUCTION

When we talk about property what immediately comes to our minds, more often than not, is the ownership of things by human beings. That is, things that have no will of their own. For example, animals, birds, trees, land, houses, tables, cars, radios, clothes, etc. Rarely, do we think that customary property law has recognized and provided for other forms of property. For example, Customary Law has provided for and recognized the right of a person to his own labour, skill, inventions, discoveries, ingenuity, reputation, and personality. Under the concept of property in person, customary property law has provided that a minor is entitled to the support of his father, and an aged parent or parents have the right to the support of their child. A husband has property in his wife, for example, the right to consortium and spousal support. Conversely, a woman married under customary law, has the right to the support of her husband, and the right to consortium.

Therefore, when we talk about property in person under customary law, we are not talking about the customary rights of a community, village, family and individual member to make use and enjoyment of communal property. Neither are we talking about the rights of an individual to use and enjoy family land. For example, the right to a portion of land, the right to be consulted in the management of family land and the right to the proceeds arising from management of family land. Nor, are we talking of the nature of the interest of individual's right in the family or communal property. For example, whether his right is occupationary, possessory, usfructuary, fee simple, life estate or estate of production.[1] Furthermore, when we talk about property in person under customary law, we are not limiting our discussions or concerns to the zoning system under customary law either. For example, the right of a community leader to zone his domain into different portions or parts for various use and enjoyment, such as lands purposely earmarked for a particular use, like grave-yards, market, fetish/juju land, farm and residential lands. In a wider dimension, customary property law, envisages the right of an individual to make use and enjoyment of other persons' labour, such as the slave holders did in the past. Nowadays, we talk about the right of the employer to the labour of his employee, or the right of a master to the labour of his servant.

As the title of this article clearly indicates, the main focus of our discussion will be the concept of property in persons under customary law of Nigeria. Our discussion will be illustrated by customary institutions of labour, pledge, pawn, slavery, bride price, widow inheritance and the institution of polygamy. In as much as possible, we will endeavour to substantiate our arguments with cases and statutes.

2.2 PROPERTY IN ONE'S PERSON (LABOUR)

Probably the best example to illustrate the concept of property in one's self is the theory of labour.

Labour theory presupposes the transformation or conversion of one's ability, skill, craftsmanship, or ingenuity into real or tangible thing. For example we say, each person has the right to his labour or the product of his labour as it is usually the case when an individual in the family does something whose benefit accrues exclusively to him. For example, if after the communal work on the family farm an individual spends more time on his own farm, the benefit of this farm belongs exclusively to him and not the entire members of the family. Or, if an individual engages himself in a craft after a communal work in a family farm, for example, weaving of mats, moulding of ports, dying of clothes, trading on petty items at his own leisure time, customary law considers these as individual labour. The benefits will go to the individual who did the work and will not go to the entire members of the family. If he invents an object, or he discovers a medicine, customary law recognizes his sole right to use the object he invented or to use the medicine he discovered. Money or benefits which accrues in cash or kinds belongs to the inventor or discoverer exclusively. Customary law even recognizes and enforces the right of the inventor to the monopoly of his invention or discovery. Legends were told of a man who treated people with fractured bornes by the use of concoction of herbs, roots, trees, grasses etc. One day, a patient who was treated and who knew of all the necessary ingredients of the concoction gathered the ingredients and purported to treat a patient with a fractured leg without the consent of the inventor or discoverer. The medicine did not work. The man went to the inventor and apologized for pilfering with the inventor's exclusive or sole right to the medicine. After the apology, the inventor demanded that some royalty be given to him and that certain rites be performed under customary law. These were done. The pilferer went home and retreated the patient with the new medicine given by the authority of the inventor and the patient got recovered.

With the emergence of various industries as a result of science and technology, customary law has duly taken cognizance of the need to protect the right of scientists and technologists who resort to custom as a source to such discoveries or inventions. Professor Nadel[2] narrated an account of how a particular family in Bida town has the sole right to manufacture and distribute beads, necklaces, bracelets and anklets manufactured from glass. It is believed that in the whole of Nigeria, there is no industry which can produce similar products bearing the trade marks which the Bida industry produces. As a matter of Customary law, the family has never given permission to other persons outside the family to manufacture similar products. The family has for ages exclusively retained the (trade and patent marks) to produce and distribute that product throughout Nigeria. Customary law in this regard has protected the family from the unwarranted

pilfering of the profession from persons who are non-members of that family. It has secured and protected the invention and guaranteed the good-will of the business.

3.3 SLAVES

Among all forms of private property in this world, there was none that most stultified the conscience of man like slaves. This was because, it was widely believed that relationship between human beings is more pristine than relationship between any other thing in the world. Relationship between human beings requires human consideration, respect and dignity. The fact that one person can own, use and enjoy another, just like he can own a chattel is contrary to natural justice equity and good conscience. In the past, in Rome and Greece, slaves were regarded as necessary part of the household.[4] This was because slaves were regarded as property or tools. Like any other chattel, slaves were necessary household goods, without which the master's life was incomplete.[5] One of the purported justifications for slavery was that it was a necessary, natural and conventional phenomenon inherent in the institution of the family.[6]

However, apart from the doctrine of necessity and the natural right of the Greeks and Romans to own slaves in their homes, it was believed that the prime objective upon which slavery thrived in the Western Europe, especially in England, France, Portugal, Spain, Belgian and to some large extent in the United States, Central America, et.c was economic. Slaves were used to run all forms of domestic chorus. For example, female slaves were used to provide domestic services such as washing of clothes and dishes, sweeping, cleaning and mopping of floors. They were cooks, baby sitters and errand maids. The male slaves served outside the household. For example, they took care of gardens and courtyards. They worked in the farms tilling land, planting, harvesting and threshing grains. During the period of capitalism many raw materials were needed to keep the factories busy. To meet this demand, slaves were used to make raw materials available. In the United States, for example, slaves were the principal producers of cotton, sugar, wheat, and corn. Some of them were also machinists, who had to stand by machines in the factories for many hours a day. Slavery, therefore, provided the quickest and cheapest labour market for the capitalists. That was property in person.

In Africa, from where most of the slaves were exported to Europe, the history of slavery was as old as the history of the continent itself. Like ancient Greece, Rome and other countries of the Western Europe, there were numerous grounds upon which slavery was justified. First, slavery was a custom which was deeply rooted in customary law Thus, slavery was a creature of law and that the Nigerian Slaveholders merely took advantage of the custom.[7]

Secondly, in many parts of Africa, there was a close connection between slavery and religion. In the Ghanian case of Kodieh Vs. Affram,[8] it was alleged by defendant that

the deceased, a slave was "ahinkwa" - one who was 'dashed' or was to be sacrificed to a stool.

Thirdly, like many parts of the world where slavery had once reigned, economic interest was the first consideration for indulging in slavery. Slavery was a system of labour similar to the present system of hiring labour. It was an institution where a slaveholder used the labour of his slave for his economic gains. As one would have expected, in predominantly agricultural community, slaves were used to till land from sunrise to sun-set during planting seasons. They were used to transport heavy goods from one place to another especially to markets since there were no vehicles to transport goods as we have nowadays. An owner of a slave could sell him, exchange him for any goods or pawn him. Many of those slaves who were pawned were not redeemed. At homes, slaves were engaged in personal attendance of their masters. For example, in the homes of men of authority i.e. chiefs, obas, emirs, village heads, member of village council, and aristocrats slaves were used as errand boys. They fetched water, hewed firewood, cleaned compounds and their surroundings. Female slaves ran errands accordingly for the wives of their masters. They husked and ground cereals, cooked food, took care of their masters' children and stable. Some masters even used some female slaves as concubines. In some families, in order to multiply the number of slaves, slaves were married to slaves for purpose of reproducing. In the case of Sanusi Alaka Vs Jinadu Alaka,[9] a testimony was given to the effect that if a slave had an underslave, the latter was the property of the master. In other words, the trite customary law was that the property of a slave was the property of the master.[10] Slavery was an institution for maximization of property through the labour of the slave. It was an institution which manifested real concept of the property in person.

During the period of slavery, the most common mode of acquisition was war. Captives of wars who could not be ransomed by their families or by their communities were usually taken as slaves. They were regarded as spoils or booties of war. Some slaves were acquired by kidnapping. In the olden days, an individual could be seized by another powerful individual or group of people. In some places, slaves were acquired through convert of criminal offenders. Prisoners who were not condemned to death had to serve people in authority as slaves. Some slaves even stayed in the homes of their masters for further protection long after they had finished the terms of their sentences.

One of the features of property is that it bestows the owner with liberty. Conversely, lack of property has the effect of fettering one's liberty. In the olden days in Nigeria, debtors who could not settle their debts were usually enslaved. For example, a child could be seized from his or her parents and enslaved because of debt his father owed to a creditor. Or, the debtor himself could be taken from the family to work for the creditor in lieu of the money which was borrowed. If the money which was borrowed was

not returned, the debtor's status could be changed. He could either be recognized as a slave or as a pawn, depending upon the agreement reached. Other methods by which slaves, were acquired in the past were by purchase and barter.

The institution of slavery in the continents of both Africa and Europe was declared offensive to the moral conscience of man. It was repugnant to the ideals of natural law. Its evil features such as exploitation, lack of liberty, lack of freedom and independence, unjust treatment, political and social degradation were all contrary to natural law and thus violated the dignity of man and the peaceful co-existence of the world community. Consequently, the Barlin Act of 1885 enjoined all countries which were signatories, to it to use all means at their disposal to put an end to slave trade and to punish those engaged in slavery.[13] Slavery, was abolished in Nigeria by the Slavery Abolition Ordinance, 1916. This Ordinance was incorporated into the Criminal and Penal Codes of Southern and Northern Nigeria respectively.[14] Similarly, the Constitution of Nigeria, 1999 has abolished slavery and slave trade.[15]

4.4 PAWN

Many at times, the word "pawn" is usually used interchangeably with the word pledge. Though the two words have similar meanings but they differ in term of the objects on which they relate. The word "pawn" is used in connection with movable property such as cars, caps, axes, cutlasses, pots etc including human beings. The word 'pledge' is usually used to refer to real property like a house or land. Therefore, in strict sense, it is wrong to say one has pledged his gown as a security for 100 Naira. Similarly, it is also wrong to say, one has pawned his land or house for One Million Naira. The correct expression is to say one has pledged his house or land for one million Naira. Or, one has pawned his gown for ten Naira.

In the olden days, if a family or an individual wanted money or wanted something to exchange for service or goods, if the family had human beings, it could pawn a member or members of its family as a security for money, goods or service rendered. Under this agreement, the pawn would work for the pawnee for such number of days or years as may be agreed upon. Under this kind of contract the pawnee was only interested in the labour of the pawned person which was an indirect kind of slavery.

There is a great difference between a slave and a pawn. As it was said, a slave was a person who had no will of his own. He was a chattel of his master. A pawn was a person who was given as a security for money borrowed or for a valuable service. It was purely a contractual relation between a debtor and a creditor. There was no relationship of slave and master. Unless, the person who was pawned was a slave, a pawn was not regarded as a chattel or property of the pawnee. He had no social stigma which a slave had. A pawnee had no power of life and death over him. A pawn could not be maltreated,

sold, or given to a third party without the consent of his or her family. He could not become the property of an heir upon the death of a pawnee, although, he could become one, if further agreement had been reached between the heirs and the family of the pawn. If a pawned person was a woman, she could not be married by a pawnee without a bride price. If her bride price was greater than the money which was lent to her family, the pawnee had to pay the difference.

One distinctive feature between the institutions of pawn and slavery was the right of redemption which was available to a pawn. The customary law was once a pawn always a pawn. That is, like a contract of pledge of land, a pawned person was perpetually redeemable. A slave had no right of redemption. His redemption was at the discretion of the master. It was not automatic. This difference was an important one. It gave a pawned person some limited degree of freedom, which was not available to a slave. Although, a slave could buy himself from his master, his master had the right to ignore his offer however high. Moreover, under customary law, an agreement not to redeem a pawn was considered to be illegal and abomination.

However, there was one striking similarity between contracts of pawn and slavery. A slave was a property of his master. He was an investment or capital which could yield interest. In fact, he was a productive property — property that had potentiality of maximizing or producing other property. Whatever he produced belong to his master. Likewise, whatever a pawn produced, was the property of the pawnee... as interest for the money lent. It did not go to reduce the liability of the money that was borrowed.

One of the characteristics of customary law is that it must be enforceable. In Lewis V. Bankole,[16] the Privy Council had held that a customary law should not be those of the bygone days. In other words, it must be in force at one particular time. Customary law like any other system of law being an organic law, is bound to be obsolete as time goes by. Thus, laws which are current and relevant today may not be relevant in the future due to changed circumstances. With the fastly growing rate of civilization and intensification of morality coupled with the increasing need to bestow human beings with dignity they deserve, the institution of pawn had fallen into disuse just like slavery. The practice of pawning human beings just like slavery had received statutory "coup de grace". Section 34(c) of the 1999 Constitution did not only abolish slavery but also put a stop to any forced labour.[17] Nevertheless, the institution of pawn was an important institution of customary property law which was devised to protect land from being lost as a result of possible failure of the right of redemption.[18] We will explain this in detailed below.

5.5 THE CUSTOM OF WIDOW INHERITANCE

Custom varies from one place to another. This variation becomes more striking to someone who is totally foreign to an area. In addition, one may developed hatred of a custom no matter how good or lofty the ideals contained in a custom if he is an extrovert to the custom. This explains the reason for condemnation and derogatory remarks about some Nigerian Customs.[19] Thus, one of the customary institutions often criticize by Western oriantalists, feminist advocates, and critics is the custom of widow inheritance Critics often based their criticisms on the fact that it equated women with chattels.

According to customary law of many communities in Nigeria if a family member dies, his property either movable or immovable and his wives can be inherited.[20] In the case of Claidius James Haastrup V. Felix Adebayo Coker,[21] evidence was given that the deceased, Fredrick Haastrup, inherited fifty wives of his late father. It was because of this custom that Archdeacons Basden, an anthropologist, who wrote a book on the Ibo custom of succession says, "personal property including wives, descends to the eldest son as heir. A wife ordinarily has no rights, either over herself or her possessions. She is part and parcel of her husband's property."[22]

Even among Nigerians there have been debates about the relationship between husband and wife under native law and custom. Former Justice Coker, claimed that under Yoruba customary law, a woman is part of her husband's property.[23] In the case of Aileru V. Anibi (supra) the deceased died interstate leaving four wives. Each one of them was inherited by one of the four male relatives of the deceased. Justice Jibowu, a Nigerian who was disenchanted by the custom, remarked that customary law treats women "like chattel to be inherited" on their husband's death. Similarly, Justice Begho, also a Nigerian said that according to Itsekiri customary law, when a man dies, his wife must mourn for four months. After this period, the wives will be "shared" among the heirs."[24]

It was argued that some of the attributes of human beings are freedom, liberty, self-will and actualization of personhood. According to critics, the customary institution of widow inheritance, deprives women of these characteristics. It is the view of the critics that inheriting a woman is a debasement of her personality to the level of material objects. It is a denial of her autonomy, self-will, self-actualization and personality and therefore, contrary to natural justice, equity and good conscience.[25] But a careful examination of this custom will show that its prime purpose is to protect the interest of widows.

Under customary law of many communities in Nigeria, wives don't inherit their husbands. The custom of widow inheritance is a kind of property right which a wife acquires after the death of her husband in the absence of her right to inherit him. In a traditional customary marriage, one of the precepts of marriage is that it provides security for the wife. The idea is that, though, she has no right to inherit her husband, but his

death should neither frustrate her expectations nor render her vulnerable to insecurity misery, and agony. For this reason, customary law requires that a widow should be inherited by any deserving, suitable member of her ex-husband's family. The aim is that the new husband should take over the responsibilities of providing for her and her children, particularly, if they are young. On the part of the new husband, in many cases what he inherited are liabilities and duties and not a chattel. The new husband steps into the shoes of the deceased and provide consortium which the deceased husband would have provided if he were alive. For example, he will be required to provide her with accommodation, food and maintenance, even if the widow is old and cannot perform any matrimonial duties. Because there are no institutions such as nursing home or other publicly managed old-age caring centers, customary law requires that she be retained and not be thrown out of her ex-husband's home.

The custom of widow inheritance is not only to care for a widow but for her children, too. If a man dies, leaving behind his children, the heir automatically takes over the responsibilities of the children, especially if they are minors. In this way the institution of widow inheritance safeguards the occurrence of a disfunctional family, which may be fatal to the proper up-bringing of the children.

With regard to her personality, the stand of customary law is that she has the right to reject any member of her ex-husband's family who intends to take her as his wife. In Aileru V. Anibi (Supra) the deceased was survived by four wives. Each of the wives was inherited by four different relatives of the deceased. Three of those women left the men who inherited them and got married outside the deceased husband's family. Similarly, in the Re-Estate of Agboruja[26] the uterine brother of the deceased inherited the widow and lived with her for one and half years. The wife left him and married another man. This showed that the customary law of widow inheritance is not as oppressive as its critics have thought. It gives a widow the right of choice, independence, liberty and freedom to accept or reject the choice of a new husband by the family. Her right of refusal is a realization of her autonomy, independence, personality, individuality and dignity. She is not treated as a chattel. However, should a widow decide to marry outside the family of her late husband, she must return the bride-price which was paid on her head. In the Re-Estate of Agboruja, (supra) upon exercising the right of refusal to marry an heir who was chosen by the family, the widow refunded twelve pounds sterling which was paid on her by the deceased husband.

Earlier on, we have said that custom varies from one place to another. Widow inheritance as an institution of customary property law is one of those customs that the colonial judges and administrators could hardly reconcile with their own notion of property. Many cases of widow inheritance that went to English Courts did not succeed. In Cole V. Cole,[27] the plaintiff was the brother of the deceased who was survived by a wife and a

son. The plaintiff claimed that he was the customary heir of the deceased and therefore, entitled to inherit the widow and her son. Evidently, it was disclosed that the widow was married according to the English Marriage Ordinance in force in the colony at that time. The question before the court was whether a woman who was married in accordance with the English Marriage Ordinance could be inherited in accordance with the native law and custom. The answer was categorically negative. The court tersely remarked as follows:

> Were such a contention to hold good, then an educated native, Lagos gentlemen... may be a doctor, or a barrister, or a clergyman or a bishop (for there are all such)... marrying an educated native permanently in Lagos would have his estate subject to native law in case he died interstate, his widow being required by a strict undiluted, native law to act as a wife to her brother-in-law in order to obtain support.[28]

Under Customary Law of most communities in Nigeria, a husband does not inherit his wife. Despite this customary law position, there is no any institution which provides support for a widower. But in some special cases, if a man's wife dies, especially at a tender age, another girl could be given to him for marriage. But this is not done out of fear that the widower might like to claim his bride-price or other kind of support from the family of the deceased. This is usually done on humanitarian grounds and it depends upon several circumstances. For example, the number of years of her marriage before her death, the number of her children and their ages, and the availability of someone who will take care of them. In short, the interest of the children is the primary goal of substituting another wife, if there is any. The character of the widower, his relationship with the deceased wife and members of her family may be relevant factors for consideration for a substitute.

There is no doubt that the institution of widow inheritance properly belongs to the realm of customary property. This is because an heir who inherits a widow inherits liabilities, rights, obligations, privileges and immunities. It is an equivalence of the Western idea of spousal support... an important property right for the wife. It serves as a security, especially in the past when the concept of marriage was to provide security for the wife. It is meant to fill the gap created by customary law which does not strictly provide for women to inherit their husbands.

However, it must be admitted that the terrain to which the custom of widow inheritance pertains is diminishing. But this is not because of the pressure from its critics or from the type of opinion expressed above by Justice Brandford Griffith in the case of Cole Vs. Cole. But because of changing conception of marriage... a conglomeration of interests for both families of the bride and bridegroom rather than security for the wife alone.

Originally the institution of bride-price purely took the form of reciprocity of good gesture on the part of the family of the bridegroom-to-be for the kindness of the family of the bride to give their daughter to the family of the bridegroom for marriage.

It is customary in many communities in Nigeria to reciprocate a good act with another. For example, in an agrarian community, if your neighbour gives you or your wife a measure of corn after his harvest, you may also consider to give him or his wife two measures of beans, millet or corn after your harvest. If your neighbour invites you for a drink today, you may also like to invite him for a drink tomorrow or any other day. If he went to hunt and offered you a part of the animal he caught, although it is not obligatory for you to give him yours, it is considered to be morally good if you do something to signify your appreciation of what he did to you. Even today, many Nigerians reciprocate gifts to them by given something to the person who brought the gift. Reciprocity for a good act done to one is an act of good moral. This is how the practice of bride-price evolved in many communities in Nigeria. Bride-price is a token of appreciation on the part of the husband to the parents of the girl for their effort in bringing up the girl who would become his consort.[29] Therefore, at the initial stage, it was given purely on moral and on an altruistic grounds. It was an act of good gesture done to show an appreciation to another good gesture. Like any custom, as time passes, the custom of bride-price transformed remarkably from one of permissive act to one of obligatory or mandatory gift with special sanctity of stamping a marriage with the stamp of legality. In other words, in many communities, a marriage is invalid without bride-price.

In the past, payment of bride-price was mostly in the form of labour or offering of valuable material things. Because there was no money, it used to be paid for by giving things such as goats, cows, hens, cocks, farm produce of any kind, beer, wine and kola nut. Others included caskets, clothes, beads, anklets, earrings and necklaces. In an agrarian society bride price may consist of labour services in the farm of the bride's father. It may take the form of building a house for the parent of the bride. Above all, though its payment was important but its quantum was considered unimportant and therefore, not usually emphasized.

The arrival of colonial administration in Nigeria had heralded a new system of market economy. Upon the establishment of colonial government, the British Government introduced its money. This had significantly affected the mode of payment of bride-price. It transformed the mode of payment from labour services or goods to raw cash in the forms of British currency or coins. Payment of bride-price in cash became the most prevalent practice. This had made the demand of British money to be high. Parents were no longer interested in accepting payment of bride-price in kinds or in traditional forms as they were used to. Some parents who wanted to be rich with the newly introduced

British kind of money took advantage of the new situation and levied exorbitant bride-prices with condition that it had to be paid with the new English Currency. At the same time, the Colonial government introduced a new system of payment of poll tax in British Currency. This system brought untold hardships to Nigerians. The only way the tax could be paid was by payment with the British money. In order to escape the ruthlessness with which the tax collectors used to handle tax defaulters, many parents levied exorbitant bride-prices on the head of their daughters to enable them raise money to pay taxes. It is for this reason, bride-price is considered and analyzed as property in person.

Also, during the Second World War, soldiers who returned home brought new English money to pay for bride prices and other services. Although the returning of soldiers had increased the amount of English money in circulation, but it also helped to skyrocket the quantum of bride price. In 1956, bride price in Eastern Region of Nigeria was high to the extent that the government had to enact law to curb it.

Like the owners of slaves who had to resort to selling them whenever they needed money, or the practice of pawning oneself, son or daughter for money or valuable services, sometime when parents are faced with financial problems they usually resort to giving of their daughter to suitors who are able to give them money. For example, a father who wants to marry a wife can give his daughter to someone who can give him money to pay the bride price of his new wife. Or, if any member of his family is sick and there is dire need of money for medical expenses, bride price can be placed on the head of a girl in order to raise money. Bride price therefore, becomes an important security, for those who have daughters, which could be resorted to in time of desperate need.

The importance of bride price as an institution of private property, became more evident when slavery and slave trade were abolished. The abolition of slavery had made slavery or the use of slave in whatever form or way illegal. Moreover, with the prohibition of the custom of pawning of human beings, Nigerians again lost one of their important traditional property rights. Consequently, the only traditional property right or security left was the institution of bride price. To make it worse, bride price is no more a token of money or labour services but rather a huge amount of money. Sometime, it is paid in a form of a car, radio, television, video cassette recorder, air fare to Mecca, sponsoring of one child of the bride's family to university level, etc.

The absolute departure from the original philosophy and concept of bride price had prompted critics, particularly from the West, to have equated it with the contract of sale of goods or purchase of a commodity. For example, in the Nigerian Sunday Times of May 13, 1956, Patricia Freeman criticized the custom of bride price as follows:

> The word 'bride price' means the immediate and accepted value of some commodity measured and expressed in terms of money. When you charged fifty pounds for the hand of an

> illiterate daughter, ninety pounds for another who has passed standard six and a hundred and fifty pounds for one with grammar school education, you are not merely demanding the customary payment of dowry; you are asking the suitors within your gates for an amount of money directly proportional to what you think is the value of each of the three girls. They call that amount simply "price" and since the commodity in that case is the would be-bride price... When a man pays bride price he tends to look on his wife as a property. She is in the same category as his chairs, pots, goats, his clothes, or his domestic establishment.[30]

In the same vein, professor C. K. Meek depicted the property-like characteristic of the Custom of bride price and vehemently scorned it as follows:

> Marriage by purchase assumes that the woman is a transferable piece of property. The man buys by gift, or service to her parents complete rights over the woman and her subsequent progeny. This is shown by the restrictions which are placed on his rights if he fails to make his payment or if they are deficient. Thus, among the Munshin (Tiv) if a man marries a virgin without making any payments, he thereby forfeits his claim on the children.[31]

From these criticisms, it is discernible that the critics were really equating married women under customary law with the property of their husbands because the latter had paid bride-prices on them. Surely, Nigerian men do not look at their wives as chattels. In the former times, when bride price was very hard to pay, a woman occupied comparable position with her husband in her husband's family. A husband, instead of treating his wife like his own cap and pair of shoes or boots, had to treat her delicately, gently, courteously and fondly. He had to adore her and revere her highly. In her husband's family, everybody stood in a special relation with her, which decided her importance in the family. She commanded immeasurable influence and power in the family. On many occasions, husbands had to try hard to please their wives for fear that if they ran away or divorced them they would not have other wives because it was not easy to pay bride price twice or more in one's life time. That is why payment of bride price of one or more women was considered to be acts of manliness, achievement or success in life. Bride price was and still is a strong coercive wand which regulates a man's behaviour with his wife in that if a man looses his wife it is usually not easy to get another bride price. Bride

price, therefore, enhances women's status and bestows them with respect and dignity in the eyes of their husband. It does not make men look at their wives with contempt to the extent of debasing them to the level of chattel. Accepted, the quantum of bride price has increased and the form in which it used to be paid has changed to include modern things like cars, videos, televisions, etc. but the original ideology, philosophy, and concept which underlies the payment of bride price has not changed. That is, bride price is a token of appreciation given by the family of the bridegroom to the bride for the hand of their daughter in marriage to their son. It is for this reason that Justice Anthony Aniogolu of the Supreme Court of Nigeria defended the custom of bride price in its most essential characteristics as follows:

> The Customs of bride price was never, in its original conception, meant to be a purchase of the girl by the husband. The sacredness of our customary marriage would not permit such a desecration. It was a token of appreciation on the part of the husband to the parent of the girl for their efforts in bringing up the girl who would become his consort. The amount of the bride price was originally only nominal as it was customary accepted that the husband would continue rendering services to the parents so long as they live.[32]

The institution of bride price quite apart from being an institution of private property plays several important roles in customary law marriage. It solemnizes a contract of marriage between bride and bridegroom. It differentiates a marriage from all forms of marriage-like institutions, e.g., legitimacy of marriage is anchored by payment of bride price. It confers the rights of consortium over each spouse. That is to say, upon its payment and due performance of marriage ceremonies the husband assumes the obligation to care for the wife. Similarly, the wife has the duties of rendering matrimonial services to him. Payment of bride price legalizes not only cohabitation but the children of such marriage. It confers absolute right on father over the children of the marriage.[33]

If there is any institution of customary property that has endured the test of time and commanded the recognition of the popular will of the people despite severe criticisms from the west, it is the custom of bride price. Secondly, if there is any custom in Nigeria that is of general or universal application, it is also the custom of bride price. It is because of the universality of its practice and popularity that the call for its abolition by people who do not know its importance has always fallen into deaf ears. Instead, the rate of bride price is on the increased, though we are of the opinion that it should be curbed. To this effect in 1956 the former Eastern Region of Nigeria enacted the Limitation of Dowry Law which fixed the amount of bride price payable on a girl in that region to 30 pounds sterling. In the former Western and Mid-western regions the amount of bride

price fixed by statute was 10 pounds sterling.[34] Other communities have attempted to limit the quantum of bride price at local level. For example in Biu, bride price must not exceed 15 pounds sterling. In Borgu it must not exceed 15 pounds plus other materials such as clothes, kola nuts, etc.

In short, bride price is not only a custom but its payment has become a law. Moreover, it has become part of the institution of private property the abolition of which will no doubt amount to an expropriation of the property right of families.

7.7 CONCLUSION

Upon reading the title of this article at a first glance, the reader might have been astonished about the concept of property in person. Upon reading through the article he might have also expressed his disgust about how human beings are or were equated with chattels. But surely, in the whole world, the most important property a country can have or possess is its people. Similarly, the most important and precious property a family can possess is its members. A family with several able bodied men and women is regarded as the wealthiest family in Nigeria. Thus, in a traditional African concept of property, the wealth of a family or of a person is determined by the number of persons it has or he has. Material property, or wealth like cars, money, buildings, shares, debentures, annuities, e.t.c. are not considered as valuable as human beings. Consequently, there was less effort in seeking and amassing material property. It is against this background that the concept of property in person should be understood and appreciated. The discussion is not intended to ridicule or debase the importance or the sanctity of human being. For example, though the institution of slavery was abolished, but it shows the importance of human beings as a central piece of slavery. Similarly, with regard to widow inheritance the idea is not to equate housewife with other personal property of a deceased husband. The discussing of the custom of widow inheritance is to demonstrate how the institution played an important role in feeling the gap which customary law had left opened... i.e. lack of inheritance provision for married women after the death of their husbands.

Finally, with respect to bride price one would concur with the statement of Justice Aniogolu's observation that "the custom of bride price was never in its original concept meant to be a purchase of the girl by husband because of the sacredness of customary marriage. The concept was used as an illustration to show that the custom over the years has transformed and has acquired the characteristics of private property. Both in the olden and modern times, bride price no matter how much it is still considered as a token of appreciation of the suitor's family to the family of the bride. It is never equaled to the value of the bride. Nevertheless, it clearly demonstrates the jurisprudence of property in person under native law and custom.

END NOTES AND REFERENCES

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Estate of Production is the term used by Professor Gluckman in defining the interest of an individual member in a family property. He said that land is a place of production and the interest of family member in family land is the estate of production and that the head of family has the estate of administration. For detailed discussion see Gluckman, Barotse Jurisprudence (1961) page 249.

Nadel, S. F. Black Bzantium (1949) at page 278.

Even today, people transport their farm produce to markets on head.

Aristotle, The Politics. Translated by Trevor J. Sounder (1981) at page 64.

Ibid at page 64.

According to Aristotle, a Greek family consisted of the free-born members and slaves, Ibid at page 62.

Nadel, S. F. A Black Bzantium (1965) at page 106-107; Lord Lugard, The Dual Mandate in British Tropical Africa, Chapters 17-19 (1965 ed).

(1935) I WACA 12.

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Re: Offiong Okon Atta (1930) 10 NLR 65, Martin V. Florance (19...) 2 NLR 46.

(Unreported). But see Nwabueze, B. O. Nigerian Land Law (1974) at pages 25 and 143.

Inasa V. Oshodi (1943) A. C. 99.

Lugard, The Dual Mandate in the British Tropical Africa (1965) at page 358.

See sections 369 (3) and 279 of the Criminal and Penal Codes respectively.

See section 34(c) Constitution of Nigeria, 1999.

(1908) 1 NLR 81.

See section 34(c), Constitution of Nigeria, 1999.

In the past a family would prefer to pawn its member than to pledge a piece of land. This was because in a case of a pawn, the worst the pawnee could do if the pawn was not redeemed was to enslave the pawn. This was preferred than failure to redeem and land was considered to be more precious in this regard than a human being. Land is a productive property as well.

See generally, Aboki Y. "Are some Customary Law Really Repugnant? A.B.U, Law Journal (1992-4). Vol. 10-12, page 1.

20. Aileru V. Anibi 20 NLR 46, Coker, G.B.A Family Property Among the Yorubas (1966) at page 89.
21. (1928) NLR 68.
22. Basden, Among the Ibos of Nigeria (1921) at page 32.
23. Coker. Ibid at page 89.
24. Begho, M. A. Law and Culture in the Nigerian and Roman World (1971) pages 61-62.
25. In the Re-Estate of Agboruja (1949) 19 NLR 38 26
26. Supra
27. (1898) 1 NLR 15
28. (1898) INLR 15 at page 22.
29. Anyabe, A. P. Customary Law: The War Without Arms (1985) at page 75.
30. Begho, Ibid at page 37.
31. Meek, C. K. The Northern Tribes (1971) at page 201
32. Anyabe, P. A. Ibid at page 75.
33. Adet Vs Essien (1932) 11 NLR 47.
34. See Marriage, Divorce and Custody of Children Adoptive Bye Laws, Northern Nigeria, 958.