GOVERNANCE AND ACCOUNTABILITY ISSUES IN THE DISTRIBUTION OF THE PROPERTIES OF A DECEASED PERSON: THE CASE OF NIGERIA

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Abstract
The paper examined governance and accountability issues relating to the distribution of the properties of a dead person in Nigeria. This study becomes necessary as many families of deceased persons are: always at loggerheads with themselves as a result of the properties left behind by the deceased person; the huge compensations paid to executors of estates; cosmetic accountability and lack of transparency by the executors of the estate of deceased persons. The specific aim of this study was to investigate the reasons why there are continued family squabbles over the distribution of the properties of their deceased bread winner. To pursue this study, agency theory was used to guide the researcher as the executor (agent) acts on behalf of the testator (principal) after his death. The methods used to gather data were by interviewing lawyers, accountants and executors who are involved in the distribution of a dead man's properties. The relations of deceased persons were also interviewed. Data were also gathered from books, newspapers and Journal articles. Results showed that the absence of transparency and accountability in the distribution of legacies by executors fueled the embers of bitterness and squabbles. Another result is the refusal of the executor to give legacy to whom it should be given to. Furthermore, non-equitable distribution of legacies to the beneficiaries and finally, the testators' refusal to give gifts to some of their children. It was recommended that the testator should engage executors that are professionally qualified and having integrity; British ways of making will should stop thus giving ways to our customs and traditions. legacies should be properly and professionally written by a lawyer; the executor should honestly distribute the legacies without bias. Legacy should not be short changed by the executors by not giving a good property to whom it is due.

Key words: Governance, Accountability, Distribution, Properties, Deceased Person, Nigeria

Introduction

After creation, God put man in the Garden of Eden to dress and keep it. However, from the Holy bible we were told that man disobeyed his maker, fell and brought death upon himself and his generations/descendants. And God pronounced "in the sweat of thy face shall thou eat bread, till thou return unto the ground; for out of it was thou taken; for

dust thou art, and unto dust shall thou return" (Authorized King James Version [AKJV], 2021, Genesis 3:19). That was the pronouncement of God upon man. If man must die as his maker said, what should happen to his properties after his death? This is because "Naked came I out of my mother's womb and naked shall I return thither" (Authorized King James Version [AKJV], 2021, Job 1:21). From the foregoing, man needs to arrange his properties and share them among his beloved ones, but still overseeing these properties while he yet lives. From the time immemorial, dying people used to bequeath their properties to their beloved ones. For instance in the Bible, Abraham our father, distributed his properties to his children before his death. "And Abraham gave all that he had unto Isaac. But unto the sons of the concubines, which Abraham had, he gave gifts and sent them away from Isaac his son, while he yet lived, eastward, unto the east country" (Authorized King James Version [AKJV], 2021, Genesis 25: 5-6). Naboth refused to sell his inheritance bequeathed to him to Ahab the King (Authorized King James Version [AKJV], 2021, 1King 21:3). Furthermore, God instructed Prophet Isaiah to tell Hezekiah to "set thine house in order; for thou shalt die, and not live" (Authorized King James Version [AKJV], 2021, 2 Kings 20:1).

In modern times, some people died without making a will. By implication, their properties will be shared according to their culture, traditions or religious beliefs. Some people drew up wills distributing their properties to their beloved ones after their death as father Abraham did. The consequences of death without a will are the same as having a will which is invalid. Some Nigerians' will have been the subject of unpleasant litigations. For instance, the wills of Chief Festus Okotie - Eboh, the first republican minister of finance assassinated in the 1966 coup; Chief Aboderin, the founder of the Punch newspapers who died in February 1984; Otunba Adeniran Ogunsanya, a Senior Advocate of Nigeria who died in 1996; Chief Adebola Odutola a prominent industrialist who died in 1995 and Chief M. K. O. Abiola, the multi-billionaire politician who died in 1998 (Imhanobe, 2002).

This study is very important at this time because the responsibility of administering the estate of a deceased person may fall upon any person at any time. For this reason, the knowledge of the law as well as the practice to be employed in performing such functions are of value to the administrators/executors. In the majority of cases, such administration is entrusted into the hands of a Solicitor or an Accountant. The researcher was moved by the woes of the bereaved family to go into this study. After the death of a bread winner many unforeseeable and unimaginable things do happen like: mysterious death of prominent member of the family, children dropouts from schools, cosmetic accountability and transparency in sharing the properties of the deceased, hunger, abject poverty, pains and diseases, diabolical happenings and continued physical and spiritual battles, and huge compensations to the executors of the estate. These and other factors motivated the researcher to conduct this research. The researcher wants to examine the

problem and proffer solution to this lingering problem. The questions this research intends to answer are: why is there continued fighting over the properties of the deceased person after his death? Who is to be blamed; the testator, executor, British law, culture, tradition or religion? This study will be of importance to Accountants and Lawyers who are the professionals exclusively charged to be executors or administrators of a deceased person's estate. The paper will help the Accountant to interpret mathematically various decisions of courts as regards the estate of the deceased person for proper accountability; also to enable both Accountants and Lawyers agree on certain issues as pertaining to the estate; and to give accountants the knowledge, principles and practice of law to perfectly discharge their duties as they relate to executing the estate of the deceased.

Concepts clarification

Governance

Governance, according to IFAC (2001), is a process by which organisations are directed, controlled and are held to account and is underpinned by the principles of openness and accountability. It is an environment in which people interact with themselves and government agencies to achieve their objectives (Obera, 2021).

Accountability

Accountability is taken to be an answer to the issues of governance. It is taking responsibility for one's actions. Accountability guides against abuse and absolute use of power, for absolute power corrupts absolutely. Accountability is an emblem for good governance with little element of book-keeping and financial administration (Obera, 2021). Obera further stated that the development of Limited Liability Company made the need for accountability possible in the business world. Accountability is defined by Sinclair (1995) in Obera (2021) as a "relationship in which people are required to explain and take responsibility for their actions: the giving and demanding of reasons for conduct."

Distribution

Distribution involves sharing something to a group of people. Oxford University Press Dictionary (2006) defines distribution as "the way in which something is shared among a group or spread over an area." Economists describe it as "the shares of income received by different sections of the community" (Oxford Dictionary of Economics, 2009).

Properties

These are things, land and buildings belonging to somebody. In executorship, it is called Estate. Estate is assets left behind by a deceased person. It includes cash, shares, land, buildings, clothing, furniture, supermarket, companies, businesses, rights to claim the payment of a debt and rights to exercise a power of appointment. It is divided into Real and Personal Estates. Real Estate includes immovable property like building and land while personal estate or personalty are movable property like money, stock, furniture etc. and collectively called Chattels. A gift of real estate is called devise and the beneficiary of a gift of real estate is called devisee. A gift of personal estate is called legacy and the beneficiary is called a legatee (the will's act 1837, Imhanobe, 2002).

Deceased Person

This means a dead person. A person who has ceased to live. A person who has left his properties in the world. A deceased person is a person who is no longer existing, living or having his/her being.

Will

This is a statement made by a deceased person (testator) as to how his properties were to be shared after his death. For a will to be valid: It must be written and signed by the person making the will (testator) and two or three witnesses must attest to the will in his presence. This is called Holograph will. Exempted from this rule are Soldiers on active service, Mariners, Seamen or Naval Officers can make oral wills (Nuncupative wills) because of their circumstances (the will's act 1837).

A will comes into effect when the testator dies. "For where a testament is, there must also of necessity be the death of the testator. For a testament is of force after men are dead: otherwise it is of no strength at all while the testator liveth" (Authorized King James Version [AKJV], 2021, Hebrews 9:16-17). This implies that it can be revoked before the death of the testator. A will can be revoked by burning, tearing, destroying or execution by the testator or by a man's or woman's subsequent marriage. But it cannot be revoked if made in contemplation of specific marriage and that contemplated marriage takes place.

Who Cannot Make a Valid Will?

a. **Minors:** a person who is less than 18 years cannot make a valid will but soldiers, airmen or sailors on active service are exempted from this law (wills Act 1837;

Family law reforms Act 1969).

b. **Idiots:** Those who have mental problems from birth cannot make a valid will.

c. **Lunatics:** A mad person cannot make a valid will except when he/she recovers their reasoning (Lucid Intervals).

d. **Bankrupt:** persons cannot make a valid will.

Other concepts that were used in this study and often confused are:

i. **Executor:** This is the person that administers the estate of a deceased person. He disposes the deceased person's body, collects his assets, pays his debts and distributes the residue according to the directions given in the will. A female executor is called executrix.

ii. **Administrator:** A person who died without a will or if a person died having a will but no executor, then a person who is interested in administering the estate can apply for a grant of probate to administer the estate. A female administrator is called administratix.

iii. **Testator:** This is a person who makes a valid will. A female testator is called testatrix.

iv. **Testate:** A person who died leaving a valid will showing how his properties he left behind shall be shared.

v. **Intestate:** A person who died leaving no valid will. In this case his properties shall be shared based on the laws of his ethnicity, religion or tradition. Such a person is said to die intestate.

vi. **Partial Intestacy:** A person is said to die partially intestate if the following conditions apply: a.) When part of the properties is disposed of by a will and others are not disposed of by the will. b.) When a beneficiary of the residue died before the testator. c.) When there is a residue and nobody has been appointed the beneficiary.

vii. **Personal representatives:** These are the executors or administrators who carry out the wishes of the testator as expressed in his will after his death. The executors or administrators have the following duties to perform: pay debts and legacies, realise the estate, pay tax on the properties he has realised, bury the dead and meet the necessary burial expenses, prove the will, to deal with the residue of the estate

of the dead person in accordance with direction given by the will and if there is no will, according to the laws of intestacy.

viii. **Residue:** This is what is remaining out of the deceased person's estate after the payments of burial expenses, tax, debts and costs of administration.

ix. **Trust:** Trust means transferring properties to one or two persons (Trustees) to be used for the benefits of another person or persons (Cetuique Trust).

x. **Hotchpot:** This is bringing into account any gift made to the children by their parents during the parents' lifetime before the reckoning of the children's share in the residuary estate.

xi. **Codicil:** It is a statement made by a testator to add to, alter, explain or confirm a will. It is subject to the same rules as the will it is supplementing (Vickery, 1980).

Theoretical Framework

Agency Theory

Agency is a relationship that subsists between two persons - the principal and agent (Jensen and Meckling, 1976). The agent undertakes to perform certain duties for the principal in order that the agent be paid. The agent would like to pursue his self-interest rather than to comply with the requirements of the agreement between them. Non-compliance with the agreement by the agent represents an agency risk for an investor. The principal lacks the information that the agent has about the organisation and cannot effectively monitor the agent.

> *"You can not expect those who manage other people's money to be as careful and caring as it would belong to them. Waste and negligence are present, always, more or less, in the management of every business."* (Borlea and Achim, 2013).

People (Agents) who manage other people's wealth are prodigal with the wealth entrusted into their hands. In this case, the personal representatives (Executors and Administrators) may not distribute the estate of the testator entrusted into their hands in accordance with the will of the testator satisfactorily thus creating bitterness, squabbles and deaths among the family of the testator after his/her death.

Governance and accountability issues surrounding customary inheritance system in Nigeria's three major tribes

A man who died without making a valid will is said to die intestate. The intestate succession in Nigeria is governed by customary law which vary from tradition to tradition. Thus, intestate succession in Igbo land is different from Hausa land or Yoruba land. In each case, people come to accept this as a general accepted traditional principle which is adhered to strictly without external intervention including British legislation. The following are the customary inheritance systems as applicable to three major Nigerian languages.

Igbo Tribe

Igbo people live in the south-eastern part of Nigeria. In Igbo land, the first son is highly accorded respect. He is the bread winner after the demise of his father. He is called OKPALA and chief administrator of his father's property. The opinion of a first child is sought before a decision is finally taken. According to the king of Abriba ancient kingdom, Enachioken Abriba, Eze Kalu Kalu Ogbu (iv), Igbo accords high recognition to the first son because, according to him:

> "*The first son is the first proof of his father's strength and symbol of hope for the family's continuity, hence, the special place he occupies in the family. This strong position stems from the tradition and common mentality among the Igbo that male children are sine-qua-non for the family lineage to be maintained. The first son is the first male blood of the man; his alter ego and he is considered the heir apparent of the family. Besides, because male children unlike their female siblings carry on the family's name, it becomes necessary that the first son who is also the evidence of the progenitor's manhood, is highly revered. Ndigbo have the culture that female children will eventually be married off; so any family without a male child is seen to have gone into extinction."* (Okoli, Ujumadu, Nkwopara, Alaribe, Okonkwo, Ozor, Adonu, Alozie, Odu & Oko, 2021).

This is a long standing tradition in Igbo land and it continues to stand for now. It should be noted that the first child takes both assets and liabilities of the dad. As he takes over the assets he is also responsible for taking care of his siblings. The Chairman, Abia State Council of Traditional Rulers, Eze Ndubuisi Nwabeke argued that "It is a tradition in

Igbo land that in the absence of the father of the family, the first son takes over the administration of the family. He is expected to take care of the mother and assist his siblings" (Okoli et al., 2021). You dare not interfere with the power of the first son in the family in Igbo land.

However, in the case of UKEJE V UKEJE (2014) LPELR-22724(SC), the supreme court opined that, it is wrong for customs to disinherit a child from sharing in his father's properties after his demise. The customary law that discriminates against women having share in their deceased father's properties is void as it conflicts with Section 42(1) and (2) of the Nigerian constitution (Oshodi, 2023).

Hausa Tribe

Hausa people live in the Northern part of Nigeria. The laws governing intestate succession among the Hausas are quite diverse because they are not exactly a homogeneous group says Ubimago (2018). In Hausa land, the determination of inheritance or succession is based on the customary rules of where the deceased person lived during his lifetime. If an Hausa Muslim man died intestate, his properties will be distributed based on Islamic law-Shari'ah. If other wise, that is, if he is not a Muslim, his properties will be shared in accordance with the customary law principles of his indigene-ship. According to Ubimago (2018):

> *"Generally, among the Hausas, the eldest son inherits his deceased father's cattle, the main asset in those days, out of which he makes presents of some to his younger brothers according to their needs. Wives, sisters and mothers are generally excluded from inheriting a deceased man's property. In Kaduna state, women are allowed to inherit where there are no male heirs. In other societies and tribes in Hausa land, the absence of male heirs means that the land would revert to the community where the deceased belonged when he was alive. The inheritance rights of widows and divorcees are precarious and dependent on the benevolence of the family head."*

In Hausa land, according to Ubimago (2018), only male children inherit their late fathers' and mothers' property, and the brothers of the deceased. Females do not have inheritance right. But under Islamic law, there is no discrimination against females, (Quran 4 :7):

> "*Men shall have a share in what their parents and near relatives leave and women shall have a share in what their parents and near relations*

> *leave; whether it be little or much, it is legally theirs" wives inherit 1/4 ,if no child and 1/8 if there are children"*

Yoruba Tribe

Yorubas live in the South West of Nigeria. There are two methods of inheritance in Yoruba land. Family property and personal property. Motun (2019) describes a Family property as the one that the head of the family holds for the general interest of the members of the family. Family property devolves on the descendants of the deceased parents to be used for the benefit of the whole family. No one can claim ownership right to the family property as ownership elapses when the present occupier dies.

Personal properties are properties a person acquires during his life time. These properties will be distributed among the children upon the death of their bread winner.These self acquired properties will be shared in two ways as follows, according to Motun (2019):

a. The deceased's property will be distributed among the wives equally. The share of each wife will then be distributed among their children equally. This is known in Yoruba tradition as IDI-IGI (per stripe).

b. The second mode of distribution under self-acquired properties, is that the properties will be shared among the children directly and equally without their mothers. In this case, the deceased had one wife at the time of death. This is called ORI OJORI (per capita).

Note that each child will have equal share to avoid squabbles among the children. Daughters have equal rights to partake in the distribution of their father's properties in Yoruba land.

Generally, Taiwo and Imosen (2019) posit that for a customary law to be valid, the following conditions must be adhered to:

> *It must not be repugnant to natural justice, equity and good conscience; It Must not be incompatible with any law for the time being in force;*

It must not be contrary to public policy.

Applicable Laws Governing the Making of Wills in Nigeria

In Nigeria, the following laws govern Wills made in English form:

i. Wills Act 1837 as amended by the Wills Amendment Act 1852. The Act is applicable only in those states that have not enacted their own Wills law.

ii. The Will Law: All the states of old Western Region of Nigeria and Lagos have enacted their own Wills law and the Act is no longer applicable to them.

iii. Case Law: These include the numerous rules of common law and equity applied by Nigerian courts.

iv. High Court (civil procedure) Rules.

Methodology

This study made used of primary and secondary data. Interviews were used to extract information from lawyers, accountants, executors of estates, elders from the three major tribes in the Federal Capital Territory (FCT), Abuja and relations of deceased persons living in the FCT while newspapers, books as well as journal articles were used to beef up the literature. The results of the interviews are as displayed below.

Governance and Accountability Issues arising from Written Wills

The law provides for how the estate of a deceased intestate person's estate should be distributed. The mode of distribution may not please the deceased if he were to be alive. For this reason, and according to Imhanobe, (2002), it will be advantageous to the deceased person to make a valid will before leaving the world. The will made by a deceased person will supersede the administration of estate's law. Again, the person that will be appointed to act on his behalf may not be desirable by him if he did not make his will to appoint his executor. Through his will, he may appoint a guardian for his dependants and also give gifts to his relatives and non-relatives. He can also disinherit any person he chooses to disinherit.

If all things be equal, the execution of the estate of a deceased person having a will is cheaper than a person without a will. This is because the administrator is liable to pay for administration bond. The testator is quite sure of his business continuity than without a will if he has a business. However, there are lots of problems coming out of the family of people who made wills than those who followed the customary ways of distributing their properties. As mentioned earlier, so many families, especially some prominent

figures from the south western part of Nigeria, have continued squabbles after their demise over the wills made by them before their deaths. For instance, the wills of Chief Festus Okotie - Eboh, the first republican minister of finance assassinated in the 1966 coup; Chief Aboderin, the founder of the Punch newspapers who died in February 1984; Otunba Adeniran Ogunsanya, a Senior Advocate of Nigeria who died in 1996; Chief Adebola Odutola a prominent industrialist who died in 1995 and Chief M. K. O. Abiola, the multi-billionaire politician who died in 1998 (Imhanobe, 2002) are subject to litigations.

Those interviewed were: Lawyers, Accountants, and the bereaved families in the Nigerian Federal Capital Territory (FCT), Abuja where the three major tribes (Igbo, Hausa and Yoruba) in Nigeria dwell. The chief issues arising from the interviews were: the cost of administration, the menace of disinheriting a child, juicy gift to a child in a will and gift by the deceased person to his relations in his will are some of the major reasons for the squabbles. These issues are as discussed below:

Cost of administering the estate

After the death of the testator, the executor named in the will by the testator will start his duties by arranging for the burial of the deceased. From the day the executor starts his work till the day he completes his work, if care is not taken, the whole estate may have been taken over by the executor. This is because as an agent he is a self interest individual wanting to carry every thing that the principal committed to his care for himself. According to one of the relations of the deceased person interviewed:

> *"The executor will change everything to himself. Apart from his legitimate wages, he will corner everything to himself. Everything in the will be forged. He will cut down some gifts from other persons to add to other beneficiaries' own. He will increase his remuneration that sometimes the gifts of some persons will be reduced to make the whole gift to be abated. He will consider himself to be the owner of the estate thus making the dependants of the deceased to live in abject poverty and beggars. It is not a good experience. It will be good if our customary ways of sharing the properties of the deceased person are allowed to exist for us. This is because every body knows the consequences of not following what our ancestors have laid down for us."*

The cost of administering the estate may swallow up the whole estate. This is because agents will be prodigal in anything that is not theirs. Human beings are self-centred beings looking for whom to cheat.

The menace of disinheriting a child

As noted earlier, the testator if he wishes, can disinherit any of his children in his will. This is dangerous. This means that the child will fend for himself. The father has the responsibility to take care of his children until they can take care of themselves. This is the rule given by God (Obera, 2021). What can a child do if the father does not take care of him? Another interviewee, a lawyer, argued:

> *"what do you think the child will do if he was not given a gift by his father in his will? He will not fold his hands and die of hunger or not going to school? He will become a rogue or armed robber disturbing the peace of others. He will make sure his other siblings that were given gifts do not enjoy their gifts. He will pose as a danger to his family and environment. You interviewer, what will you do if peradventure you were not given a gift in your father's will? If it is to be I, I will not allow any of my siblings to enjoy their gifts until they will be forced to give me my own share."*

The menace of a deceased person disinheriting any of his children in his will is too great that it should not be imagined. It is like a camel passing through the eye of a needle. One red cap Igbo chief interviewed in Abuja lamented that if the sharing of the deceased properties are left in the hands of customs and traditions, these problems will not arise. This is because customs and traditions are just like a unwritten law, everybody knows how the estate of the deceased person should be distributed after the demise of their bread winner and the consequences of not following the ancestral rules and regulations.

Juicy gift to a child in a will

Some children of a deceased person in the FCT were asked, "supposing a juicy gift was given to one of your siblings in your father's will, what will be your reactions?" One of the interviewees asked, "what do you mean by a juicy gift?" I mean for instance, if your dad had a big company or a flourishing supermarket and gave it as a gift in his will to one of your brothers and gave you two motor vehicles in his will, what will you do?

> *"I will not agree to that. Is my brother greater than I in my father's house? How many days will the two motor vehicles last for me? Talk about the cost of maintaining those two vehicles, where are they coming from? It will not be possible. We will fight it out. This is because my brother is not greater than I in that house."*

To this end it means that the estate should be shared at the rate that is acceptable to every child. For instance, the estate of the deceased person in Yoruba land is distributed equally using ORI OJORI and IDI-IGI. This will be acceptable to all parties. The British ways of making wills have created more problems, pains and squabbles than good to Nigerians.

Gift by the deceased person to his relations in his will

Sometimes, some relations will insist that their gifts be given to them from the deceased estate. It may be that the gift was given to them by their brother in his will and the executor may not be permitted to give them the gift. This may lead to continued quarrel between the two families. It may be that the deceased brother in his will has declared that his junior brother be trained up to university level but the executor supported by the children of the deceased may refuse to comply with this instruction. This can lead to an unending problem between the two families.

Some relations of the deceased person were asked to declare their stand in the case where their deceased brother gave them a gift in his will but they were not given by the executor and the deceased children. The question is, what will you do if your brother in his will asked the executor to set certain amount of money aside to train your five children at the university level but the executor supported by your brother's children refused to carryout this instruction even though the estate is buoyant enough to carry out this instruction? Some of the relations interviewed said they will not do them anything but hand them over to God to judge. Some said they will regret for their actions. Some said they will curse them. Others said "there will continued and unending problems and the chief among the children and the executor will die prematurely."

Conclusion and Recommendations

This paper looked at Governance and Accountability issues in the distribution of a deceased person's estate: the case of Nigeria. It examined the governance and accountability issues in customary system of administering intestate successions in Igbo, Hausa and Yoruba tribes.

In Igbo tribe, the first child takes both assets and liabilities of his father after the father's demise. As he takes over the assets he also takes the liabilities of taking care of his siblings. He is called OKPALA and chief administrator of his father's property; In Hausa land, the determination of inheritance or succession is based on the customary rules of where the deceased person lived during his lifetime. If an Hausa Muslim man died intestate, his properties will be distributed based on Islamic law-Shari'ah. In Yoruba land, the deceased's property will be distributed among the wives equally called

IDI-IGI and if he had one wife, his properties will be shared among the children directly and equally. This is called ORI OJORI.

This paper concludes that the British system of making wills has brought pains, bitterness and family unending squabbles than Nigerian customary ways of distributing the estate of a departed soul.

This study recommends the following:

1. That the British system of making wills should be stopped and customary system strictly followed. It creates more problems than solving them. This is also to avoid the cost of administering the estate by a stranger (executor or administrator) who has no love of the deceased person and his children at heart.

2. The risk of not giving a child an inheritance in his father's will is too high. In customary system, no child will be disinherited. There will be perfect peace in the family and their environment.

3. The practice whereby a juicy gift will be given to a child at the expense of other children will not be there and the children will be treated equally or as the first child takes the responsibility of doing what the father did before his demise.

4. The calamities of pre-matured death whereby the relatives rain curses on the children will be averted.

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