INTER-VIVOS DISPOSITION OF PROPERTY IN NIGERIA: PANACEA FOR ENDING FAMILY FEUD ON THE DEMISE OF THE FAMILY PROGENITOR

BY

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Abstract

This paper appraises the disposition of property in Nigeria on the death of a family progenitor. The paper finds that contrary to the general notionthat testate succession lays to rest family squabbles and conflicts on the death of their progenitor, this marks the beginning of unending crises in most families in Nigeria. Issues ranging from lack of disposing mind, undue influence, and a host of others are always relied on by the contenders. How these problems will be curtailed is the task of this paper. The paper employs doctrinal and comparative approaches.The paper recommends the actual transfer of properties while the owner is alive as the main solution to crises that erupt following the death of the family's progenitor.

Keywords:*Inter-vivos, Property, Disposition, Family, Nigeria*

1.0 Introduction

The family is the basic unit of social organization. To protect the family as the basic unit of social organization, all societies have evolved rules of succession for the devolution of property of a dead person regardless of whether he/she (hereafter the masculine pronoun also denotes the feminine) died testate orintestate.[1]Thus, statutory law, customary law, and Islamic law apply to govern the devolution of property of a deceased person. The law applicable in any given case depends on the marriage contracted by that person and whether or not the person is subject to customary law. The right to dispose ofone's properties as one likes is one of the incidents of ownership and has been constitutionally recognized by the constitutions of most civilized societies.[2]These constitutionally recognized rights as can be seen under the 1999 Constitution of Nigeria (as amended)[3] not only guarantee one's right to acquire and dispose of hisproperty but also ensure that no person by circumstances of birth or sex be subjected to any deprivation. This right as we shall see later is not absolute in certain circumstances. In those instances where it is permitted, the owner is expected to exercise the power equitably and judiciously. It is regrettable that even where the deceased had been fair in the disposition of his properties in his Will, his beneficiaries will still find loopholes to contest the dispositions. As opposed to dispositions in a Will Inter vivos is a Latin phrase

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[1]AhmaduSeiduMaliki'An Examination of the Nature and Operations of Islamic and Statutory Laws of Testate Succession in Kaduna State Nigeria' (2012)June edition 8(1) *European Scientific Journal* pp178-188.

[2] See s 43 of 1999 Constitution of Federal Republic of Nigeria as amended.

[3]Ibid SS 42 and 43.

which means “while alive” or “between the living.” This phrase is primarily used in property law and refers to various legal actions taken by a given person while still alive, such as giving gifts, creating trusts, or conveying property.[4] Inter vivos disposition therefore is a legal term that refers to a transfer or gift made during one's lifetime, as opposed to a testamentary transfer that takes effect on the death of the giver. The hallmark of this right is that it enables the owner of the property to deal with it without any hindrance.Against this backdrop, this paper argues that *inter vivos* disposition is the only remedy for conflicts that will arise when the person is no more. The paper is divided into five parts. Part one is the introduction and it gives a general background of the paper. Part two discusses the different modes of acquisition of property in Nigeria. Part three deals with the disposal of self-acquired property. Part four focuses on the means of ending the family feud on the death of the family progenitor. Part five is the concluding part and it recommends the disposal of property when the owner is alive.

2.0 Acquisition of Property in Nigeria

Acquisition or ownership of property is one of the rights constitutionally guaranteed to every adult person in Nigeria.[5]Disposal of property on the other hand is an incident of ownership. Different types of properties can be acquired by an individual in Nigeria. They include realty and personal property. Realty refers to land, whatever is attached or affixed to the land, and interests in land. Personal propertyis those items of property that are movable.They can also be called chattels or personality. Properties can be acquired by inheritance, gift, and outright purchase.

2.1 Acquisition by Inheritance under Customary Law

Inheritance is the means by which properties pass from one generation to the other. Most systems of customary law in Nigeria provide rules of inheritance which in most cases follow the blood.The qualification for inheritance is generally traced or dependent on blood relationship. A person cannot qualify to inherit from a deceased on any basis under Customary Law outside being of the same blood.[6]These rules are applicable when a man dies intestate and is subject to customary law. Due to multiplicity of ethnic groups in Nigeria,

[4] See Legal Information Institute, ‘Inter vivos’ <https://www.law.cornell.edu/wex/inter_vivos> Accessed 16 August 2023.
[5] Ibid.
[6] MA Bello, ‘Principles and Practice of Succession under Customary Law’ being a paper delivered at the National Judicial Institute workshop on 22nd March 2017.<www.nji.gov.ng> workshop-papers. Accessed 15 August 2023.

rules of inheritance are as varied as the ethnic groups. In this work, reference will be made to the major ethnic groups which will highlight the unending discriminations which bothers on the fundamental human rights of a person most especially women still experienced in the course of disposition of an estate of an intestate deceased. Among the Yorubas, on the death intestate of a man, his properties are inherited by all his children in equal shares. No distinction is made between male and female children. However, management of the property is under the control of the eldest surviving son known as the *Dawodu*.[7] On the death of the *dawodu*, the eldest surviving child whether male or female takes over the management of the property.[8]Where it is a woman that died, her properties are inherited by all her children in equal shares.[9]These properties are held together under the family name and may be partitioned or shared according to number of wives with children or amongst all the children in equal shares. Until shared, no individual member of the family has any alienable interests in the family property.It is worthy to note that the wife of the deceased is not entitled to inherit the estate of her late husband under native law and custom of theYorubas.

Among the Ibos, on the death intestate of a man, his properties devolve on his eldest surviving son known as the '*Okpala'*who must manage the properties for his benefit and the benefit of his brothers.[10]The law is common inmost communities whereby the deceased's property devolves on the eldest son exclusively, in accordance with the rule of primogeniture, under which the eldest son is expected to look after the younger children. However, the *okpala* must maintain his mother and his sisters until they marry, become financially independent or die. Where there are no sons, the deceased brothers will inherit to the exclusion of the females. Women under indigenous Ibo customary law were not allowed to inherit properties.

The above was the position in Iboland until the Court of Appeal in *Mojekwu v Mojekwu*[11] declared that custom as repugnant to natural justice, equity and good conscience. The position in Iboland much recently following the decision in *Ukeje v Ukeje*[12] is that women can now inherit from their fathers.The Supreme Court in this case recognized that such

[7] See *Lewis v Bankole* [1908] 1 NLR 82.
[8] See *Folami v Cole* [1990] SC.
[9] See *Johnson v Macaulay* [1961] All NLR 773where the court held that the property of a Yoruba woman devolves on intestacy upon her children in common under native law and custom.
[10] See EI Nwogugu, *Family Law in Nigeria*, 3rdedn., (Ibadan: HEBN Publishers Plc, 2014) P.345. See also *Nwugege v Adigwe&Ors* (1934) All NLR 134.
[11][1997] 7 NWLR 283.
[12][2014] 11 NWLR (Pt 1418) 384.

discrimination touches on the fundamental rights of women and accordingly declared such custom that disinherits females from the inheritance of their intestate deceased father on the basis of sex as barbaric. According to his Lordship Olabode Rhodes–Vivour (JSC):

> No matter the circumstance of the birth of a female, such a child is entitled to an inheritance from her late father's estate. Consequently the ibo customary law which disentitles a female child from partaking in the sharing of her deceased father's estate is in breach of Section 41(1) and (2) of the Constitution, a fundamental rights provision guaranteed to every Nigerian. The said discriminatory customary law is void as it conflicts with section 42(1) and (2) of the Constitution

It is worthnoting that these fundamental rights which ensure no discrimination based on sex can be found in many international instruments for instance, Article 14 of ECHR provides:

the enjoyment of the rights and freedoms set forth in this convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin association with a national minority, property, birth or other status.

Similarly, the African Charter on Human and People's Rights[13] recognizes these fundamental human rights as it relates to freedom from discrimination on the basis of sex.When a woman dies in Iboland, her sons inherit her properties. Her female children only inherit her personal effects.A customary law wife is not entitled to inherit the estate of her late husband under indigenous native law and custom of the Ibos.[14] The recent decision of the Supreme Court in *Anekwe v Nweke*[15]appears to have remedied that situation. Women can now administer the estate of their late husband under Ibo customary law.

Among the Hausas, under the indigenous native law and customstill obtainable in some areas like Chibok in Borno State,Biromin Plateau State, and Lugada of Adamawa State, on the death intestate of a man, his properties are inherited by his sons and women are not allowed to inherit.[16]Where there are no sons, the deceased brothers will inherit to the exclusion of the daughters. The same applies when it is a woman that dies. The daughters can only inherit the personal effects of their mother.[17] Under Islamic law, on the death intestate of a man, all the members of his household are entitled to inherit a certain portion of his estate.[18] The males inherit equally and the females inherit half the portion inherited by the males. Wives, the

[13] Article 2 and 18(3) African Charter on Human and People's Rights 1986.
[14] See *Nezianya v Okagbue&Ors* [1963] 1 All NLR 352.
[15][2014] LPELR-22697 (SC).
[16]IP Enemo,*Basic Principles of Family Law in Nigeria*, (Ibadan: Spectrum Books Ltd, 2008) p 98.
[17]Ibid.
[18]See Chapter 4 of the Quran Verses no 11-12 and 176.

deceased parents, and siblings also have portions they are entitled to.[19] Thus, it is only Islamic law that makes adequate provision for all the dependents of the deceased to inherit from his estate.[20]

2.2 Acquisition by Inheritance under Statutory Law

A person can acquire property by means of inheritance under the Act where his benefactors intestate and is married under the Act. In such situations, the Administration of Estate Law of the state of domicile of the deceased applies to govern the devolution of his properties. The laws provide for persons entitled to inherit from the deceased intestate and the quantum of inheritance. Persons entitled to inherit from the estate of the deceased include children, spouses, parents, sisters and brothers of the whole blood, sisters and brothers of half-blood, uncles and aunt of the whole and half blood.[21]

2.3 Acquisition by Gift

Another means of acquisition of property in Nigeria is by way of gift. One of the fundamental incidents of ownership is the right to deal with the property as one pleases. This right includes the right to give away the property by way of gift. An individual to whom a gift of a property is made thenceforth becomes the owner of the property, so long as the benefactor has proper title over the property. The recipient of the gift must therefore take steps to perfect and protect his title over the property.

2.4 Acquisition by Outright Purchase

An individual can also acquire title over a property by means of outright purchase. Any adult person with legal capacity can purchase any property of his choice at any time. This is otherwise known as self-acquired property. How an individual can acquire a property by outright purchase includes assignments, leases, and irrevocable power of attorney. Assignment according to Black's Law Dictionary[22] is the act by which one person transfers to another, or causes to vest in that other, the whole of the right, interests, or property which he has in any realty or personality, in possession or in action, or any share, interest, or subsidiary estate therein. Leases on the other hand are a conveyance of any lands or tenements,(usually in consideration of rent or other annual recompense,) made for life, for years, or at will, but

[19] Ibid.
[21] See s 49 Administration of Estates Law of Lagos State Cap A3 2018 for the respective quantum of inheritance of the dependents of the intestate. See also Administration and Succession Law of Enugu State 2004.
[22] BA Garner, *Black's Law Dictionary* 9th edn(St. Paul, MN, 2009)146.

always for a less time than the lessor has in the premises: for, if it be for the whole interest, it is more properly an assignment than a lease.[23] A power of attorney is an instrument authorizing a person to act as the agent or attorney of the person granting it.[24] A power of attorney may be revocable or irrevocable. As the name suggests, a revocable power of attorney can be revoked at any time by the donor, but an irrevocable power of attorney cannot be revoked by the donor because the donee furnished consideration for the power to be donated to him. This is the singular hallmark that differentiates an irrevocable power of attorney from an ordinary power of attorney, which makes it useful for the acquisition of properties. Apart from realty, an individual can purchase personality or any other chattel by simple purchase agreement and receipt evidencing the transaction.

The above represents the various means by which an individual can acquire property under Nigerian law. It should be borne in mind that it is only properties acquired by gift or outright purchase that can be dealt with or disposed of as one wishes. For those properties owned collectively or in conjunction with other family members, otherwise known as family property, no individual member of the family can deal with the property/s except with the consent of the other family members.

3.0 Disposal of Self-acquired Property

Every adult has a right (subject to certain limits) to dispose of his self-acquired property either by sale, gift, or in a Will.[25]A person can dispose of his properties either in his lifetime or at death. Disposal by way of sale and gift takes place in the lifetime of the owner (*intervivos* disposition) whereas disposal by Will even though made in the lifetime of the testator takes effect from the moment of his death.[26]

3.1 Inter vivos Disposition.

The term *'inter vivos'* is a Latin word meaning between the living.[27] It is a legal principle used to refer to a transfer or gift made during the lifetime of a person.[28]Any person can dispose of his self-acquired properties in his lifetime in the same manner in which he acquired them.*Inter vivos*disposition enables the head of the family to share or transfer his

[23] Ibid.
[24] Ibid.
[25] K Abayomi, *Wills Law and Practice*, (Lagos: Mbeyi and Associates (Nig) Ltd, 2004) P 8.
[26] Ibid.
[27] Legal Information Institute (n 4 above).
[28] Ibid.

properties to objects of his choice in his lifetime. This is an unfettered right concomitant with the right of ownership. The major advantage of this mode of disposition is that it enables the owner to share his properties as he likes without any limitation and the beneficiaries take freely without any hindrance.

Furthermore, the issue of the disposition of the mind of the owner at the time of the transferor undue influence from anybody is never called into question once the document evidencing the transaction is properly executed. Moreover, the presence of witnesses to the transaction makes it more credible and unassailable. A person can dispose his properties *inter vivos a*nd still retain life interests in the properties which will terminate on his demise. The implication here is that the interests of the beneficiary will ripen on the death of the benefactor. This enables the benefactor to be enjoying the proceeds from the property pending his death. Besides, some gifts are made subject to a condition and until the fulfillment of the condition, the beneficiary cannot take a beneficial interest in the property.

Inter vivos disposition is underutilized in this part of the world as a means of circumventing issues that will arise on the passage of someone. Some people prefer to give out their properties in their Will hoping that it will take care of all the issues that will arise on their demise. A host of others are skeptical about either making a Will or sharing their properties *inter-vivos* believing that those things will quicken their death. Those persons falling within this category end up dying intestate.*Inter-vivos* disposition is more advantageous than a Will because a person is free to share or transfer his properties to bounties of his choice without any limitation so long as those properties are his self-acquired property. A testator has certain limits to the properties he can devise in his Will. Again a Will is prone to be challenged at any slightest opportunity by the beneficiaries, whereas the beneficiaries to whom gifts were given under *inter-vivos* disposition take beneficial interests in those properties before the death of the benefactor and as such, there will be nothing left to be contested for on the death of the deceased.

3.2 Disposition by Will

Anyperson of statutory age can dispose of his properties by Will which will take effect from his death. A Will according to Abayomi[29]

[29] K Abayomi, (n 25 above) 6.

> is a testamentary and revocable document, voluntarily made, executed and witnessed according to law by a testator with sound disposing mind, wherein he disposes of his property subject to any limitation imposed by law and wherein he gives such other directives as he may deem fit to his personal representatives otherwise known as the executors, who administer his estate in accordance with the wishes manifested in the Will

This is a working definition of a Will as it contains all the salient ingredientsor features of a valid Will.[30] Thus, a Will is an instrument by which a person makes a disposition of his properties, to take effect after his demise.[31]

There are different types of Wills; statutory, privileged, customary, and nuncupative Will.A statutory Will is a Will made in accordance with the provisions of the relevant statute in force.[32] A privileged Will is a Will that need not comply with the requirements of the law for the making of Wills. A customary Will on the other hand is a Will made in accordance with the native law and custom of the maker. A nuncupative Will is an oral declaration made in anticipation of death. Customary and nuncupative Wills are valid and will be given effect to once they contain all the essential ingredients of a valid Will.[33]

The major advantage of making a Will is that it enables the testator to dispose of his properties as he likes. Other advantages of making a Will include: a Will displaces devolution of property according to customary law, a Will displaces devolution of property under statutory law, it enables the testator to appoint trusted people to manage his estate upon his demise, it enables a testator to appoint testamentary guardian for his minor children, it enables a testator to do charity, it makes for family cohesion and harmony, it enables thetestator to give directions as to his funeral, it gives the testator peace of mind that he has arranged his affairs when he is no more and finally the expenses for obtaining probate is cheaper than obtaining letters of administration. Thus, it is expected that a Will settles all the issues that will likely arise upon the death of the head of the family, but as we shall see in the later discussion in this paper, Wills in Nigeria have opened up floodgate of unending suits by family members. More worrisome is the fact that even when all the essential elements of a valid Will are present in the Will and the formal and the other requirements are complied with, family members still contest the authenticity of a Will. It is hoped that if the

[30] See IP Enemo (n 16 above).
[31] Ibid.
[32]K Abayomi(n 25 above) 6.
[33] Ibid.

recommendations set out in this work are complied with, crises rocking families after the death of their head will be laid to rest.

3.2.1 Capacity to make a Will

Under Nigerian law, only an adult can make a Will notwithstanding his gender.[34] Infants and persons of unsound mind cannot make a valid Will. Blind and illiterate persons can make a Will but the law requires a special attestation clause in the case of Wills made by these classes of persons.[35]Thus, there must be a *jurat* to the effect that the person acting for the illiterate or the blind person was authorized to act for the illiterate or the blind person, that the document was read over and explained to the illiterate or the blind person who appeared perfectly to understand the contents of the writing before appending his thumbprint, and that what was written correctly represents the instruction given by the illiterate or the blind person.

3.3Limitations on Testamentary Capacity

S. 3 of the Wills Act[36]gives unfettered freedom to every adult to dispose of his properties in a Will. The said section provides:

> It shall be lawful for every person to devise, bequeath or dispose of, by his Will, executed in manner hereinafter required, all real estate and all personal estate which he shall be entitled to either at law or in equity which if not bequeathed shall pass to his heir at law[37]

The absolute freedom accorded to testators under the foregoing provision has been limited in Nigeria due to local circumstances. Thus, a testator's right to dispose his properties in a Will is limited by his customary law, Islamic law, family property and family and dependents provision.

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[34] S 7 of the Wills Act provides for 21 years as the mandatory age for making of Wills.Similarly s 5 of the Wills Law, 1959 of the old Western Region (applicable in states that are carved out of the old Western Region such as Ondo, Ekiti, Osun, Delta and Edo (Oyo State has its own Wills Law, 1990) provides for 21 years as the statutory age for making of Wills; Under the Wills Law of Oyo and Lagos States, it is 18 years. See s 5, Wills Law 1990 of Oyo State and S 3 Wills Law, 2004 of Lagos State. Note however, that soldiers in active military service, members of the Airforce or Mariners or Seamen at sea or a crew members of a commercial airline may validly dispose their property even where they are not up to the statutory age. See S11, Wills Act, 1837; S9, Wills Law, 1959 of Old Western Region; S 6, Wills Law, 2004 of Lagos State; and S 8, Wills Law, 1990 of Oyo State.

[35] See *InstifulvChristain* 13 WACA 347.
[36] 1837 as amended in 1852.
[37] Section 3 Wills Act 1837 as amended in 1852.

Under customary law a testator cannot dispose of in his Will any property which he does not have right to dispose of under his customary law. These properties must devolve according to the customary law of the deceased. Properties coming under this head include the family seat e.g the *Obi* in Iboland and the *Igiogbe* in Benin.[38] The restriction imposed by customary law is not to take away the right to make Wills, customary indeed recognizes the right to make Will but instead places some restrictions or limitations on the properties the testator can dispose of in his will.The restriction imposed on the right of a testator under customary is provided for in the local Wills Law of the states. For instance, s 3(1) of the Wills Law[39] of the old Western Region provides:

> Subject to any customary law relating thereto, it shall be lawful for every person to devise, bequeath or dispose of, by his Will, executed in manner hereinafter required, all real estate and all personal estate which he shall be entitled to either at law or in equity[40]

Thus, a testator can make a Will, but cannot dispose of properties which he has no right to deal with under customary law.

3.3.1 Limitation imposed by Islamic Law

Islamic law just as its counterpart recognizes the right of every Muslim to make a Will and it encourages Muslims to make their Wills. However, a Moslem is not free to dispose of all his properties in his Will. He can only dispose of 1/3 of his property in a Will. The rest must be disposed of according to Islamic prescriptions.[41]

3.3.2 Limitation Imposed by Family Property

Family property is a property left by the head of the family for the benefit of all the members of the family. It is held in common and no individual member of the family can deal with the property without the consent of the other members of the family first had and obtained. The implication therefore is that none of the members of the family can give out the property in his Will.[42]

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[38] See *Idehen v Idehen*(1991) 6 NWLR (pt.198) 382; *Lawal-Osula v. Lawal-Osula* (1995) 9 NWLR (pt. 419)259.
[39] 1959.
[40] S 3 Wills Law Western Region of Nigeria 1959.
[41] See *Ajibaye v Ajibaye*[2007] All FWLR (Pt 359) 1321.
[42] See *Oke v Oke* [1974] 3 SC 1.

3.3.3 Limitation Imposed by Family and Dependents Provision

Following developments in England,[43] Nigerian legislature has fashioned a way to cushion the effects on dependents left out of a Will. Such dependents are to bring up an application within six months of the grant of probate asking the court to make reasonable financial provision for them out of the estate of the deceased. Depending on the state, persons who can bring up such applications include children, spouses, parents, sisters and brothers if they can prove that they were being maintained by the deceased prior to his demise.[44]

3.4 Characteristics of a Will

A Will has basically three principal characteristics. It must be in writing, it is ambulatory and it is revocable.A Will must be in writing in order to be valid. An exception is made in cases of nuncupative Wills which are oral declarations made in anticipation of death. The law recognizes such oral declarations where the essential requirements of a Will are present. No particular form of writing is required so long as the wordings are clear enough to indicate the intentions of the testator.

A Will is ambulatory. A Will speaks from the grave. By this is meant that all the declarations made in the Will cannot take effect until the death of the testator. Therefore until his death, the testator is free to deal with all those properties comprised in the Will and none of the beneficiaries can take any beneficial interests in any of the properties comprised in the Will until the death of the testator.

The third characteristic of a Will is that it is revocable by the testator in his lifetime. So long as the testator is alive, he has a right to revoke his Will at any time. He can add to, alter, cancel or destroy his Will so long he is of sound mind at the time of revoking the Will.

3.5 Validity of Wills

For a Will to be valid, it must comply with all the formal requirements laid down by statute and in addition, the testator must be of sound disposing mind at the time of making the Will and must be free from undue influence. The formal requirements as stipulated by s 9 of the

[43]See the Inheritance (Provision for Family and Dependent'sAct 1975.
[44] See Section 2(1) Wills Law, Cap.W2, Laws of Lagos State, 2004; Section4(1) Wills law, no.13, Laws of Oyo State, 1990; section 4(1) Wills Law, Cap.37, Wills Law of Abia State, 1991-2000.

Wills Act[45]are that; a Will must be in writing, signed at the end or foot thereof by the testator in person or by some other person in his presence and by his direction, the testator shall sign or acknowledge his signature in the presence of two or more witnesses present at the same time, who shall then sign their own signature in the presence of the testator. Non-compliance with the foregoing renders the Will invalid and of no effect.

Another important requirement of a valid Will is that the testator must be of sound disposing mind at the time of making the Will. Sound disposing mind connotes that the testator must be in control of his faculties or senses at the time of making the Will. On this premise, no Will made by an insane person will be valid, but a Will made by a sane person who later becomes insane is valid.[46] For a testator to be said to be of sound disposing mind, three things must be present at the same time, he must be able to recollect the nature and extent of his bounty, he must know that he is giving out his property to one or more objects of his choice and he must understand the nature of the claim on him by those he is including in the Will and those he is excluding.[47]

Freedom from undue influence is another important requirement of a valid Will. The testator at the time of making the Will must exercise his will as a free agent. He must not be coerced or forced to exercise his will one way or the other.It is instructive to note that Undue pressure from any source no matter how infinitesimal vitiates a Will.[48] However, a difference is made between pressure and persuasion. Persuasion only appeals to the feelings of the testator and does not overpower his judgment. Persuasion is therefore not unlawful but pressure if so exerted as to overcome the volition without convincing the judgment of the testator, will constitute undue influence, though no force has been either used or threatened.[49] The fact that a son or daughter appeals to his father to give him a particular property does not amount to undue influence. And the fact of special relationships does not amount to undue influence. In

[45] 1837 as amended in 1852. The Act was a statute of general application in force in some states like former Northern and Eastern regions. Western Region enacted its own Wills law. See equivalent provisions in s 6 Lagos State Wills Law, s 4 Wills Law of Oyo State.
[46] See *Cartwright v Cartwright*[1940] SCR 659.
[47] See *Banks v Goodfellow* [1870] LR 5 QB 549 where the court held that even though the testator suffered delusions but that they did not affect his mind in making the Will so as to vitiate the Will. See also *Johnson&Ors v Maja&Ors*13 WACA 290 for the same proposition.
[48] See *Edkins v Hopkins* [2006] EWHC 2542 (Ch); *Hall v Hall* [1868] 1P& D 481.
[49] Per Sir JP Wilde in *Hall v Hall* Ibid.

Johnson v Maja,[50] the court held that there was no evidence that the man's mistress influenced him in the making of the Will.

The above represents the salient ingredients that must be present in every Will.Non-compliance with the formal and other essential requirements of a Will makes the Will invalid. Thus, where there islack of due execution, lack of testamentary capacity, lack of knowledge and approval, fraud, and undue influence, such a Will cannot stand and will be vitiated.It is surprising that even where all these essential ingredients are present in a Will, families are still rocked by crises on the death of their progenitor. More worrisome is the fact that even with the testimony of the attesting witnesses that they witnessed the execution of the Will, beneficiaries still contest the Will.

All these have shown that a Will is not the solution to family crises on the death of their progenitor. This is not to say that the making of Wills is not good, what this writer is canvassing for is that the head of the head should share his properties in his life and execute proper instrument of transfer on behalf of the beneficiaries.

4.0 Causes of Family Feud on the Death of the Family Progenitor

In most cases, family crises on the death of the head of the family are inevitable where he left properties behind. Where no properties survived the deceased, there will not be anything for the family to struggle for. The most likely causes of a family feud on the death of the head of the family is where he died intestate or he made a Will but did not provide for all the beneficiaries in the Willor made preferential treatment in favour of some of the beneficiaries or was inequitable in the distribution of his properties.

On intestacy, where the deceased is subject to customary law, his customary law applies to govern the distribution of his estate. Where the deceased is married under the Act, the Administration of Estate Law of his place of domicile applies to govern the distribution of his estate. Both customary and statutory law provide for mode of distribution and quantum of inheritance by all the beneficiaries, but we find out that in most cases, the members of the family are not satisfied with the prescriptions of their customary law or the provisions of the statute regarding distribution of the intestate estate, or the administrator wants to take up the entire property or would not consult the co beneficiaries in the management of the estate. Crises therefore erupt soon after the funeral of the deceased and at times before his funeral.

[50] *Johnson v Maja* (n 47 above).

Where the deceased left a Will, issues that are likely to arise are that some of the beneficiaries are not provided for or adequately provided for, or the testator was not equitable in his distribution.These issues would not have arisen if the testator shared out his properties in his life time.

4.1 Panacea for ending family feud on the death of the family progenitor

As already stated, Wills are no solution to family crises on the death of the family progenitor. Even when the testator was fairly equitable in his distribution, beneficiaries still find loopholes to challenge the Will. Factors usually relied on in challenging the Will is that the testator was not of sound disposing mind at the time of making the Will or that he was unduly influenced in making the dispositions. The crises are sometimes worse when the deceased dies intestate. The members of the family will never agree on the persons that will apply for and obtain letters of administration to manage the property. These developments have led to a quest to finding solutions to these unending crises.

The best way to circumvent this crises is to encourage people to share their properties in their lifetime. Thus, the family progenitor can in his lifetime share all his properties to his dependents and execute instruments of transfer in their favor.Whena person shares all his properties in his lifetime, there will be nothing left for the family to struggle for on his demise.

5.0 Conclusion

The discourse above has demonstrated that in as much as people are encouraged to make Wills distributing their properties to bounties of their choice which in turn displaces the application of the customary and statutory rules of intestacy to their estate on their demise, that has not solved the problem of family crises on the death of the head of the family.The presence of Will in most families has even caused more problems than if the head of the family died intestate. These contenders never advert their mind to the fact that the owner of the property has the right to give out his properties the way he likes within the prescribed limits. They seem to be carried away by the supposed duty the head of the family owes to protect the family members which is characteristic of the family as the unit of social organization. We are by no means saying that Will is not good, Will is good but that will not solve the problems erupting from families on the death of the family head. *Inter vivos* disposition should be encouraged as the only solution to family feud. When the head of the

family has shared and transferred all his properties to his beneficiaries and other bounties of his choice, there will not be any property for the family to struggle for on the death of that person, the members of the family will learn to move on with their life and allow the dead to rest peacefully.