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**INTESTATE SUCCESSION LAW AND ITS EFFECTS ON FAMILY RELATIONSHIP IN ASANTE, THE CASE OF WIDOWERS**

***LEI DE SUCESSÕES DE INTESTADO E SEUS EFEITOS NAS RELAÇÕES FAMILIARES EM ASANTE, O CASO DOS VIÚVOS***

**Samuel Kwadwo Aboagye<sup>1</sup>**

**ABSTRACT:** The research investigated the effects of the application of the intestate succession law (PNDC Law 111) on family relationships, in the event of the death of Asante women. Five widowers who had applied the law in distributing the properties of their deceased wives were purposively sampled from different locations in Asante to constitute the target population, and in-depth interviews through an interviewers' guide were conducted with them and their family members. The study revealed widespread knowledge and application of the law. However, it appeared that the application of the law had marred relationships not only between widowers and their children – both biological and step-children – but also between widowers and members of the deceased's lineage. In some cases, such strained relationships were characterized by deep-seated animosity, insults, quarrels and bitterness as a result of the application of the law. In other cases, cordial relationships existed between widowers, children and the deceased's family members. Recommendations from the study, among other things, were that couples should register properties they acquire in the name of both partners, they should learn not only to make wills but also separate family properties from their personal ones.

**KEYWORDS:** Intestate, Succession, Family, Relationship, Widowers.

**RESUMO:** A pesquisa investigou os efeitos da aplicação da lei de sucessão sem testamento (Lei PNDC 111) nas relações familiares, em caso de morte de mulheres Asante. Cinco viúvos que aplicaram a lei na distribuição das propriedades das suas esposas falecidas foram propositalmente amostrados em diferentes locais em Asante para constituir a população-alvo, e foram realizadas entrevistas aprofundadas através

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<sup>1</sup> Dr. Samuel Kwadwo Aboagye is a full time lecturer at the Department of Educational Leadership (DEL) at the Akenten Appiah-Menka University of Skills Training and Entrepreneurial Development (AAMUSTED), Kumasi. I teach Theories of Educational Leadership, Organizational Behaviour and Culture in Education, Human Resource Development, and Philosophy of Education, and Trends in Ghanaian Education. I apply my skills in Educational Leadership in my research, especially in School Leadership. I have a number of books and other journal publications to my credit. I am a member of the Association of Moral Education – AME [An International Association]. I am married with four children. I have attended a number of International Conferences, and I look forward to achieving the best in any field of endeavour. Ph.D. in Educational Leadership.

de um guia de entrevistadores com eles e com os seus familiares. O estudo revelou amplo conhecimento e aplicação da lei. No entanto, parecia que a aplicação da lei prejudicou as relações não só entre viúvos e os seus filhos – tanto biológicos como enteados – mas também entre viúvos e membros da linhagem do falecido. Em alguns casos, essas relações tensas foram caracterizadas por animosidade profunda, insultos, brigas e amargura como resultado da aplicação da lei. Noutros casos, existiam relações cordiais entre viúvos, filhos e familiares do falecido. As recomendações do estudo, entre outras coisas, foram que os casais deveriam registar as propriedades que adquirem em nome de ambos os parceiros, deveriam aprender não só a fazer testamentos, mas também a separar as propriedades familiares das pessoais.

**PALAVRAS-CHAVE:** Intestado, Sucessão, Família, Relacionamento, Viúvos.

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## **1 INTRODUCTION**

The Intestate Succession Law, passed in 1985, was to resolve some of the long-standing issues affecting inheritance of property and the rights of women and children to inherit. The law “applies only to the self-acquired property of the deceased and not to property held by a man as a chief on behalf of his community or as a family head on behalf of his family” (MANU; ANYIDOHO, 2015).

The law abolished the distinction that previously existed between legitimate and illegitimate children. All children who have been acknowledged through customary naming by their father have a share in the property of the deceased. Again, the customary law conception of marriage which did not regard the wife as part of the husband’s family and which thereby limited the wife’s claim on the husband’s property upon his death intestate was redefined. The law has recognized the increasing importance of wives in their husbands’ families. It has consequently offered a larger portion of the deceased’s self-acquired property to spouses and children than was previously the case with customary law. The law has also directly identified parents as beneficiaries of the estate of their deceased children.

The passage of the law was met with approval particularly from urban women and women organizations. Over thirty years into its implementation however, serious tensions have characterized family relations. While some men and families have welcomed the law and have expressed satisfaction that the issue of intestate succession has been settled by law (MANU; ANYIDOHO, 2015), others have vehemently opposed it and have behaved as if the law did not exist. For instance, attention has been drawn to the fact that in some matrilineal societies, members of a man’s customary family have persisted in laying claim to the estate by forcibly taking over the estate as soon as the death is announced in attempts to defeat the objectives of the law.

The crux of the issue is that the understanding of the Law seems to focus on women more than men. According to Tsikata (1996), the contest has always been

between wives and lineages of the deceased men or between wives and children of different unions. Most men feel threatened by the presence of the law that seems to aim at their properties, irrespective of their custom in relation to property acquisition, property disposition, and succession, among others. There are more questions that call for answers: How can husbands claim the property of their deceased wives, in view of matrilineal inheritance system? Will such husbands be encouraged to take the self-acquired property of the deceased wives? And what is the perception of such husbands in the application of the law?

The purpose of the study was to find out how the application of the Intestate Succession Law (PNDC LAW, 111) has affected the relationship between widowers and family members of the deceased wives among the Asante people in Ashanti Region of Ghana. It also sought to find out the state of relationship between widowers and their children, how accessible widowers are to the properties of their deceased wives and the source of tensions among various interest groups.

The objectives of the study were to:

1. examine how the application of the Intestate Succession Law has affected relationships between widowers and families of the deceased wives.
2. ascertain the relationship between widowers and their children (biological and step-children).
3. find out the accessibility of widowers to the property of the deceased wives.
4. find out the issues around which tensions arise among the various interest groups.

The research sought to answer the following questions:

1. What is the nature of to the relationship between widowers and their in-laws in the event of the death of their wives?
2. What kind of relationship exists between the widower and his children on the one hand and children of other fathers on the other hand, after the distribution of the estate?
3. Do widowers have easy access to the property of their deceased spouses?

4. What are the main issues around which tensions arise among widowers, in-laws and children?

## **2 THE INTESTATE SUCCESSION LAW**

One study that informs the discussion about the application of the Intestate Succession Law on family relationships is Manu and Anyidoho's (2015) assessment of the impact of the law on wives and children. In this work, they contended that extended families had not yet reconciled themselves to the requirement that they relinquish the property of their deceased relatives. They further asserted that the unwillingness of extended families to let widows and children take advantage of the law and widows' insistence on the law for the distribution of the property of their deceased husbands had generated tensions. Dowuona-Hammond (1998) argues that tensions between the conjugal unit and the extended family have arisen because the law was a superimposition on social structures and institutions which have no place for the values and concepts espoused by the law. They then predict that with traditional norms, customs and values remaining as they are, the law has little chance of success in the rural areas. They cite illiteracy and the limited access to legal information to the rural folk as reasons for the failure of the law in rural areas. Dowuona – Hammond does not however provide evidence to show that the law has been a success in urban areas where the limitations associated with rural communities may not be widespread. Tsikata (1996) agrees that the imposition of change can breed conflicts.

Tensions that have arisen out of the application of the law have largely occurred between the deceased's customary family and his conjugal family. This creates the impression that all was well within the customary family with regard to the disposition of a deceased's property until the law introduced conflicts, which hitherto were not known in extended families. But Mikell (1989) holds a contrary view. She points out that the matrilineal system itself is not free from conflict. She agrees that the passage of marital laws has affected familial relationships but observes that tensions within the matrilineal

system are not new, and provides evidence to buttress her claim. She argues that one potential source of tension was among potential heirs within the lineage itself – because of the trend toward concentrating property in fewer hands exemplified by the inheritance of farms by brothers instead of nephews (HILL, 1963; OKALI, 1983).

While agreeing with Mikell in her observation that the concentration of property in fewer hands was a source of conflict in the matrilineal system, her assertion that conflicts arose because brothers of the deceased instead of their nephews inherited farms is contrary to Asante custom. The concentration of property in the hands of brothers, whether this generated conflict or not, is in line with Asante traditions and custom. Twumasi (1975) observes that on the death of the lineage head, his authority is almost automatically given to the next in age of his brothers, unless the next person in line of succession is regarded as physically, intellectually or morally unfit for the office. He contends that it is only when death has carried all the brothers away that leadership may fall on the brother's sister's sons. A situation where a nephew will contest an uncle for succession is therefore out of tune with Asante's custom.

Dowuona – Hammond (1998) draws attention to the widespread resistance to the Intestate Succession Law in matrilineal societies where it is believed to have introduced radical changes in the social structure.

It appears many extended families have not come to terms with the fact that women sometimes make financial contributions to the acquisition of properties that in most cases become subjects of litigation between widows and members of the deceased's lineage. Kuenyehia (1998) recounts that until a few decades ago; the husband was regarded as the sole breadwinner. The attitude of the courts presumed that any property acquired during the marriage belonged to the man and they therefore ignored the interests of married women. Tsikata (1996) argues that though under the law either spouse has the right to succeed to the property of the other, yet most of the cases arising out of the law are about the property of men. According to her, the contest has always been between wives and lineages of the deceased men or between wives and children of different unions.

## **2.1 The Asante Social System**

Every Asante is, by birth, a member of his or her mother's lineage. If either through marriage or migration, members of a matrilineage establish a new local residence in another area, they still find their real home in their original chiefdom, and retain their rights of membership in their natal homes. Dispersal does not, in any way, deprive members of their right and status including farming rights and office (RATTRAY, 1923).

In the matrilineage, the head of the lineage exercised some control over the individual. For example, an individual who wanted to use any portion of the lineage's land for farming had to seek permission from the lineage head who could prevent any member who refused to seek his approval before using the land. Upon the death of a lineage member, the lineage head poured a libation and settled all family disputes before the rites were performed. The individual's maternal uncle had some responsibilities towards him. There are some Asante men who still see the upkeep of their sisters' children as their responsibility despite the emphasis many educated Ghanaians now place on the nuclear family. The lineage head is the lineage's representative on the chief's council as well as the administrator of the lineage's property. He is also the custodian of the lineage's traditions and the arbitrator of disputes among the lineage members. A father, however, maintains spiritual relationships with his children, and this makes the children belong to their father's war camp in times of war.

## **2.2 The Asante Conception of Family**

Asantes practise a matrilineal system in which an individual traces his/her family from the maternal side. Matrilineal family members are united by the possession of common blood. The Asante say, "one lineage is one blood", and again they say that the lineage is "one person". According to Rattray (1923), this is not a question of LexCult, Rio de Janeiro, v. 9, n. 1, p. 9-35, jan./abr. 2025

physiological theories but a way of expressing the corporate unity of the lineage. In the matrilineal family, blood passes exclusively through the female line, and the typical family is made up of a woman, her uterine sisters and brothers, her children (both male and female), her sister's children, her daughter's children, and so on. It is membership in this group that determines what rights, interests, and duties an individual can possess or own. According to Fortes, this is the primary inheriting group, although in practice, inheritance rights can be restricted to a smaller subset within the matrilineage. This, he refers to as the "womb" group. He observes that having a common mother means having the same blood which is tantamount to replicating her in the next and all successive generations (FORTES, 1969). By definition, neither the wife nor children of an Asante male belong to his family since they are already members of a matrilineage. Some of the rights, privileges and responsibilities of members of a family include the following:

#### *2.2.1 Common liability to pay debts*

According to Sarbah (1968), members of a family and the head are jointly and severally responsible for any family liability. If a member of the family contracts a debt which benefits the family or commits a wrong for which he is liable to pay damages or give satisfaction, the other members of the family are bound to pay. Family members, in this respect, come together to pay funeral expenses on the death of a member.

#### *2.2.2 Common property*

Property may fall into ancestral, family and self-acquired or private (SARBAH, 1968). Ancestral property includes a house or land which had descended from an ancestor or relative. Family property includes those items such as gold rings, or a house purchased by the general contributions of a family. Self-acquired or private properties are those purchased or gained by a person by his individual effort or exertion. Property may not belong to an entire lineage but a small segment of the family.



### 2.2.3 Succession in Asante

According to Fortes, the presumptive heir is the deceased's oldest surviving sibling of the same sex. Next in line is a sibling descended from a common maternal grandmother. In the absence of a sibling, the right devolves on the sibling generation in the uterine line, that is, the deceased's own sister's children, in order of their mothers' respective ages. Failing any of these, in the case of a man's status and estate, the choice lies between own sister's daughter's sons' and collateral sister's (mother's sister's daughters).

### 2.2.4 Customary disposition of self-acquired property

Asante customary law knows three modes of disposing of self-acquired property. Firstly, it may be done by way of a gift inter vivos. This kind of disposition confers immediate possession on the donee. There is also a type of gift inter vivos which takes effect after the donor's death. The third is the "*death-bed declaration*", the equivalent of the nuncupative will as understood in Anglo-American jurisprudence (SARBAH, 1968). It appears that the most important requirement in gift-giving is that it should be made with the knowledge of the donor's family. Customary law specifically stipulates that a man has the right to transfer, by gift, a part of his privately gained property to a son or daughter, that is, to a member of a different lineage but such a gift is not valid unless it is made with the consent of the donor's "*family*". Asantes explain that a male person, in the bodily sense and in his politico-jural capacity, belongs to, and indeed "owned" by his lineage. His productive (but not reproductive) capacity is, strictly speaking, "owned by" the lineage. His self-acquired wealth should therefore accrue to the lineage patrimony. In many cases, the test as to whether a valid gift exists, at custom, is whether the donor's family has been customarily informed. The first requirement is that the disposition must be made in the presence of witnesses.

The second requirement is that the donee must acknowledge acceptance of the gift by providing drinks as “*thanks*” to the donor.

The death-bed declaration, is another effective mode of disposing of self-acquired property. The declaration must be voluntarily made in the presence of witnesses. The beneficiary need not be present at the time the declaration is made. As Agyei points out, the main difference between the “death-bed declaration” and a gift inter vivos is that unlike the latter, the “death-bed declaration” does not require the “*thanks*” ceremony. The rationale is partly that being a death-bed declaration, there would be no time for the ceremony. Death-bed gifts or “death-bed declaration” (things set apart by the ghost) made in the presence of witnesses must be particularly respected, since one cannot dispute with a ghost.

### **3 THEORETICAL FRAMEWORK**

There are a number of theoretical approaches when discussing the issues of rights. Some of these approaches are rights, modernization and cultural. These theories are considered appropriate for the research because each of the interest groups namely, spouses, children and family members of the deceased contesting for intestate property have at one time or another used the positions advanced by one of these theorists to make their claims.

The qualitative research design was used. Five widowers who had applied the law in distributing the properties of their deceased wives were purposively sampled from different locations in Kumasi to constitute the respondents, and in-depth interviews through an interviewers’ guide were conducted with them and their family members. Considering the small sample size of five widowers/families, the interview guide was considered the most appropriate. Also judging from the thrust of the research which was to elicit as much information as possible from respondents, the in-depth interview was considered and since respondents were persons bereaved, the interview remained the best option. Moreover, the nature of the research was such that the researchers were

not only interested in collecting data but also in capturing the emotions and feelings of respondents. The in-depth interview could meet this objective better than any other method. The interviewers' guide had twenty-one questions to guide the researchers in eliciting responses from respondents. These questions related to widowers' background, their perception of the law, knowledge of the law, relationship between widowers and in-laws and extended family members before and after death of spouse, relationships between widowers and step-children, if any, and the confidence level of widowers to lay claim to property of deceased spouse, among others. The selection of the widowers was based on how well the widower had been healed with respect to time. In this respect, those who had been widowers for at least, a year were selected to take part in the research. The researchers respectfully appealed to the respondents to be as objective and open as possible in sharing their stories. Kumasi in Asante was chosen for this research because it represents one of the well-known matrilineal communities in Ghana (Afre, 1975). This is particularly important because it has been asserted that most of the tensions that have arisen out of the operation of the law have occurred in matrilineal communities (DOWUONA-HAMMOND, 1998).

## **4 FINDINGS**

### **4.1 Case No. 1**

This case involved Kofi Brenya, a 57-year-old shoe-maker and his late wife's customary family. The deceased, known as Abenaa Afreh until her death, was a trader dealing in essential commodities in the Kumasi Central Market. She died intestate in 2019 (during the COVID 19) at the age of 54 years, leaving behind a daughter and two sons with the widower. They had been married for thirty-one (31) years.

When they first met, the deceased was in the provisions business with her mother, who died two years after the marriage. Since Abenaa Afreh had had her first daughter only six months by then, the work at the store became very difficult for her.

She therefore invited her husband to help her in running the provisions store till their daughter started walking.

Within a year when the couple worked together, the wife realized that there had been great improvement in the business, and since not long after that the wife conceived their second child, the couple decided that the husband leaves his shoe-making job and permanently operate the provisions store.

According to Brenya, everything went on successfully. Eight years after their marriage, they had given birth to their three children. The daunting task was combining their work with looking after their children. Since the couple had no opportunity of attending secondary school, Brenya said they vowed to do everything possible to ensure that their children received education to the highest level possible. He therefore made it very early in the morning to the Kumasi Central Market to open the store while the wife prepared the children for school before joining him around 10 a.m. each day in the market.

Brenya said it was with their fruits from the provisions business that they took care of their three children. The first daughter though could not make it to the University, managed to finish secondary school before she got married to a successful business man who took her to the United States of America. The second child, a boy after completing the university, received an invitation from his sister in the U.S.A and he joined them. The third child, also a boy, completed the university and is now a teacher in a Senior High School.

Throughout their marriage, Brenya said, they had lived in his family house where all his children had grown and the wife had been accepted as a family member. There had been very good relationship between not only him and his in-laws but also between his relatives and the relatives of his deceased wife. According to Brenya, the participation of both lineage members in functions or programmes and activities such as funeral ceremonies, weddings and naming ceremonies of the lineage made marriage beautiful. This, Brenya said, made him think that his in-laws were his own relatives. He entertained this thought until his wife died. At the death of the wife, all the couple could

boast of was an uncompleted house which had reached a roofing stage. They had a taxi but they had to sell it at the latter part of his wife's life when almost all they had had gone into curing his wife's sickness. Most of their money had been used on the education of their children.

On the death of the wife, Brenya said he received the necessary sympathy from his in-laws until the 40<sup>th</sup> day when the funeral costs were to be accounted for. He said he paid half of the eighteen thousand Ghana cedi (GH¢18,000) funeral debt, that is, nine thousand Ghana cedis (GH¢9,000). It was after this that the family head of his deceased wife asked him to make accounts about the store he was operating with the deceased. When he questioned the basis of that account he was questioned whether the deceased had not told him about the owners of the store. The two sisters of the deceased joined in the ensuing questioning and it became clear to him that they wanted to take the store from him and claim even the uncompleted building. Their contention was that his deceased wife was allowed control of the store which belonged to their mother because she never had the opportunity to go to school like her sisters and the only brother. On her death, therefore, the store had to return to the surviving sisters. They also questioned the source of funding of their uncompleted house. That was after they had taken all the personal belongings of the deceased from the widower's family house including even cooking utensils. Brenya said being an Asante man, he knew he could not customarily contest his in-laws over ownership of the store but for them to question the source of funding of the only property – an uncompleted house – without asking how his three children managed to reach where they were on the educational ladder and in life made him see the wickedness of his in-laws. Consequently, he had no option but to listen to the advice of a friend to take the case to court, but according to him that marked the end of the cordial relationship between him and his in-laws. The widower said his children who were in the U.S.A came to Ghana but they went back soon after the funeral. The son in Ghana stood neutral during the court case.

It was ruled that both the store and the uncompleted house be returned to the lineage of the deceased wife. The High Court Judge's explanation was that the store

was a family property held in trust by the deceased wife and with her death, the property passed on to her customary family. With the uncompleted house, the judge's explanation was that proceeds from the store had been used to acquire and develop it and since the store belonged to the deceased's family, the same went with the uncompleted house.

The man's worry was that his in-laws had not treated him fairly. They did not consider his services for the 30 years that he was married to their daughter. What pained him the most was his last son's neutrality during the court proceedings. Brenya said he felt so cheated not only by his in-laws but also by his own children. He vowed not to follow his son, the teacher when he was due for marriage.

#### **4.2 Case No. 2**

Kwaku Manu and Yaa Mansa had been married for 12 years until Mansa died in the year 2017. The deceased was a 46-year-old popular chop bar operator at Apatrapa while the 49-year-old widower was a commercial car driver. The deceased was assisted by her younger sister at the chop bar. The 30-year-old younger sister of the deceased had just got married and was preparing to live with the husband at Dunkwa when her sister passed away. Before they got married in 2005, they each had two issues from previous marriages. The twenty-two and twenty-year-old daughters of the deceased were both seamstresses while the twenty-five and twenty-three-year-old-sons of the widower were both trained teachers. Incidentally, there was no direct issue between the deceased and the widower.

Before Mansa passed away, Manu said, they had been able to put up a four-bed-room house on the premises where Mansa was operating the chop bar and that was where they lived for four years before Mansa's unannounced visit to the ancestors. Before then, they had lived in a rented three bed-room flat. They also had a plot of land at Abuakwa on which was the foundation of another four bed-room house,

the same style as the house on the premises of the chop bar. In addition, they had a joint account containing fifty thousand Ghana cedis.

The widower said that though there had been peace in his matrimonial home, all was not well between him and his in-laws. The source of the strained relationship between him and his deceased wife's relatives was the rumour that he was taking better care of his own sons than his step-daughters. The rumour had it that that was why his sons were trained teachers and his step-daughters were mere seamstresses.

Manu recounted the effort he put up together with the deceased wife in ensuring the education of their children. According to him, his step-daughters did not like school. They liked running home even during school hours. He said he tried to discipline them but it did not go down well with them and their mother who thought he was being unnecessarily harsh on her daughters. Since that was at the early part of their marriage and he did not want to experience a second divorce, he toned down his disciplinary action a bit. Manu believed that even resulted in his sons' inability to go to the University but ending up at the training college.

The widower said he saw the true colours of his in-laws and even his step-daughters after the funeral rites of his deceased wife. When his in-laws met on the 40<sup>th</sup> day to account for the funeral expenses, the head of family declared that there was neither losses nor gains. Manu said since he followed the funeral arrangements closely, he knew there should be a gain of not less than twenty thousand Ghana cedis. He could however, not raise any objection because as Asantes, on the death of his wife, he had no control over her body, funeral, property or even his step-daughters. The head of family of his deceased wife's lineage declared the younger sister of his late wife who assisted her in her chop bar business as the customary successor. The head of family asked him series of questions as to where the other properties of Mansa were and whether the deceased owed anybody some debt or not. The widower narrated that the leader of his late wife's family further asked him when he was prepared to quit the deceased's house. He said that was when he realized he needed the intervention of some law.

The widower said that at a meeting later with his family members, when he suggested the intervention of the Intestate Succession Law because his wife had died intestate, some of his family members were not in favour of a court action. His head of family suggested they used traditional negotiations in resolving the issue. The issue, as the widower's head of family pointed out, was that the widower had no direct children with the deceased and secondly, as Akans, a man was not expected to fight over his wife's properties. Indications were clear to him that he would lose through traditional negotiations, considering how his late wife's family had started it. He therefore initiated court proceedings against his in-laws over the properties he believed, he owned jointly with his late wife. When the in-laws received the summons, they rained insults on him and his family as lazy people who wanted to reap where they had not sowed. The widower said even his step-daughters who he thought liked him did not spare him. They teamed up with his wife's family and threatened to meet him at the court.

At the Kumasi High Court, the deceased's family contended that the chop bar and the house were situated on a family land and that they belonged to the deceased alone. They said the deceased and the widower were doing their properties separately and that the widower had used his money on the education of his own children and that was why his own house at Abuakwa was only at the foundation level. They said it was because the deceased used her money on her house and business that her daughters could not attain education to any appreciable level. The widower said he wept when he was asked to open up a defense.

Consequently, the court ruled that since the deceased was assisted at the chop bar business by her sister, before and even during her marriage, and since the house and the chop bar were situated on a family land, the properties belonged to the deceased. In her absence, however, the properties passed to her sister and children. The children in this context, the judge explained, were the two biological daughters of the deceased because the difference between them and the deceased's step-sons were so clearly marked that with the demise of the deceased, the sons parted company with her and went along with their father. About the money in the joint account, the judge



ruled that the money be divided equally so that as the deceased's daughters and sister took one half, the remaining half would be taken by the widower to develop his house at Abuakwa.

The widower said he was stunned at the ruling and wondered whether it was true, as some people in the community had alleged, that the Intestate Succession Law was a law meant for the protection of women. He said people who knew how he had toiled with his late wife advised him to seek redress at a traditional hearing. However, deep within him and considering what his head of family told him before he initiated the court action; he felt it was too late. The widower said he regretted not living with his late wife according to strict legal rules.

Concerning his current relationship with his in-laws, the widower said some of his in-laws who knew how he sacrificed for his late wife, when she was alive, did greet when they met him but most of them, including even his step-daughters, were not on talking terms with him. When he was asked what he was doing about it, he said he had taken the ruling of the learned judge to heart – that just as his sons, on the death of his late wife, parted company with the deceased so also he was parting company with his late wife's family.

### **4.3 Case No. 3**

This involved two customary families of a couple who died on the same day in an accident. Sampson Nimo and Dina Frema, both at twenty-eight years old had been married for three years. They were both traders in yam. They met their untimely death in an accident when they had loaded a full track of yams from Kintampo to Kumasi. They died intestate, leaving a four bed room house and a Hyundai truck. Their two-year old daughter had been left in the company of the deceased wife's sister on that particular day.

Their funeral celebration was performed together, and since their death was so tragic, their funeral attracted a lot of people and donations. When the two families

gathered together to balance the accounts of the funeral expenses, no losses were made. Rather, a profit of twenty thousand Ghana cedis was made. The families agreed to give the money to the orphan by buying Treasury bills for her. The successors to the deceased husband and wife were chosen.

It is unfortunate however, that the good relationship between the two families could not be sustained. The issues of tension were the estate of the couple – a Hyundai truck and a four bed room house. Whereas the deceased wife's family thought the properties should be given to the orphan, and for that matter the family, the deceased husband's family felt the properties should be divided equally between the two families. Since the families could not agree on a common stance, the court had to step in to decide about the properties of the deceased.

The high court judge, in her ruling, first commended the two families for agreeing to do things together after the death of the deceased couple. She was full of praise to the families especially for investing the proceeds of the funeral celebration in Treasury Bills for the orphan.

The judge ruled that the four bed room house be given to the orphan. The house therefore was to be held in trust for the orphan till she grew up to take over it. Concerning the Hyundai truck, the judge said that since the successors of the deceased couple had been laboured with the responsibility of taking care of the orphan, they needed some encouragement. She therefore ruled that the Hyundai truck be sold and the proceeds divided equally for the successors.

The ruling of the court did not go down well with both families of the deceased couple. Whereas the deceased wife's family felt all the properties should have been given to the orphan, and for that matter, the family, the deceased husband's family felt cheated for not getting a portion of the house. The successor of the deceased husband observed that though the deceased couple had sweated together, it was only the deceased wife's family that was going to benefit from the sweet of their relative. He questioned the researcher what he was to do in case half of the proceeds from the truck which was given him got finished. Asked how he saw the relationship between the two

families of the deceased couple, the successor of the deceased husband told the researcher that it could not be so cordial. At best, it could be lukewarm.

## **5 ANALYSIS**

A number of issues arise from the cases studied. An issue which runs through all the cases is that though the cases were taken to court by the widowers, they did not rush in doing so. They studied the attitudes and actions of their deceased wives' families and waited to hear something from them especially, about the manner of distribution of the properties, they believed, they either owned jointly with their wives or they had contributed greatly to their acquisition before they resorted to the law to invoke its jurisdiction. This implies that widowers are not likely to invoke the provisions of the law if they have no cause to suspect the sharing formula to be adopted by the customary family regarding customary disposition of intestate property. The wait-and-see attitude of widowers before resorting to the Intestate Succession Law as a measure of first resort constitutes a certain kind of legal culture which, as Friedman (1969) explains, is about the network of values and attitudes which determines why, when, where and how people employ legal structures and why legal rules work or do not work.

Another common thread that runs through the cases studied is that properties of the deceased are distributed on the fortieth day of their death or before that. This is contrary to what Manuh, (1997) observed in other communities in Ghana where property of the deceased does not get distributed until a year after death.

Relationship between some customary families and widowers and their children have been greatly marred. This situation exists because before the distribution of intestate property by the courts, some families and widowers trade insults and accusations, and this makes it difficult for the two groups to have anything to do with each other.

In a similar manner, when widowers insist on their rights through the Intestate Succession Law, tensions are created in families. It also emerged from the cases studied that whereas some widowers and their wives' relatives do not get on well after the distribution of the property, others have maintained good relationships with their late wives' relatives after the distribution of the property.

The customary family's insistence that intestate property should devolve to the lineage has its foundations in the arguments of cultural theorists who state among other things that people who are related by blood share a bond which those who are unrelated do not share. Their contention therefore is that it is wrong for people of different blood to succeed to the property of those they do not share a common blood with. To them, the extended family serves not only as a social refuge but also a social safety net against the effects of poverty and illness. They believe that since individuals from poor immediate backgrounds are assisted with their education or trade in times of need, it is only fair that people who have benefited from the support of the extended family also reciprocate by assisting other members or bequeathing their properties to the lineage (KONDOR, 1993).

Again, relationships between step-children of the deceased wives and those of the widowers have been found to be seriously strained. These divisions created in families by the application of the law vindicate Nhlapo's (1991) theoretical position that because custom and tradition symbolize social continuity and authority, any attempt to forcefully replace them with the modern will be notoriously resisted. It also confirms Dowuona-Hammond's (1998) prediction that since the Intestate Succession Law was a superimposition on existing structures and institutions, it had limited chance of success, especially in matrilineal societies. Findings from most of the cases show that some customary families do recognize the legitimate entitlement and right of children to succeed to the property of their mothers but oppose strongly to widowers having any such rights. Again, his contention that the granting of reliefs to widows and children under the law may lead to the diminishing significance of the customary family stands firm. This is so, considering the fact that such reliefs granted to widows and children are

also granted to widowers under the Intestate Succession Law. It is true therefore that as the law breaks into custom to set aside certain customary practices, the significance of the customary family also diminishes. However, Dowuona-Hammond's argument that the law will be a failure because of illiteracy and limited access to legal information seems to be contrary to the findings in the study. This is because access to legal information does not seem to be that limited. In the study, it was found out that legal actions were initiated either by the widowers or the deceased's family, that is, the aggrieved person or persons. It is worth recognizing that when one is aggrieved, one seeks, untiringly, means of addressing one's grievances. In such situations, where one even lacks knowledge of the law, one's close relations or even outsiders might be willing to offer free advice on it. Again, in the study, the educational background of respondents did not reveal illiteracy.

It also appears that there is a stiff opposition from the deceased's family to the widower's succession to the deceased's properties, especially where the deceased received some support from her customary family whilst alive. In such instances, the family members are of the conviction that since the deceased has benefited from the resources of the extended family, she must reciprocate the family's gesture by giving to the family what she took from it

It appears from the cases studied that relationships between widowers and their deceased wives' families after the distribution of properties do not depend so much on the relationships that existed between the two parties before the demise of the women. The distribution of the deceased's properties in most cases marked the beginning of strained relationships between the widower and the deceased's relatives, even if cordial relationships existed between them before the demise of the woman. The successful operation of the Intestate Succession Law in some Asante families, however, vindicates Owusu-Sekyere (2021) theoretical position that although law may be able to only weakly or slowly effect change on questions that affect basic mores and values, it does not follow that the law cannot achieve a particular result within a certain culture by making use of the tools which work best for the culture.

However, in general, it is evident from the cases studied that relationships among children of different fathers have been characterized by deep seated animosity, hatred, insults and open confrontations. This confirms the contention by Tsikata (1996) that the customary law regime which allows polygyny to operate together with ordinance marriage system poses problems to the smooth operation of the law. It also bears out Dowuona-Hammond's (1998) assertion that the law, in seeking to satisfy all interested parties namely, the spouse, all the children, the parents and customary family of the deceased, has ended up creating factions within the recognized groups of beneficiaries. However, Tsikata's argument that the contest has always been between wives and lineages of the deceased men or between wives and children of different unions needs to be looked at again. This is so because men have also contested lineages of some deceased women, as the study revealed.

One issue that emerged was that the properties the widowers acquired jointly with their wives or contributed greatly in their acquisition were on premises, the ownership of which the widowers did little to find out. The widowers who lost their cases or felt cheated in the distribution of the properties did not consider the legal implications of building on lands or working in stores, the ownership of which could be contested by the deceased's family. The widowers met such unfortunate situations because they did not anticipate that properties made on, or from such premises would become subjects of dispute someday.

The research has shown that the size of the estate does not matter much in conjugal-lineage conflicts. There are instances where the deceased had left behind an uncompleted building or one house which had devolved to the widower and his children or the deceased's family and her children in accordance with the provisions of the Intestate Succession Law.

It also happened that it is not all customary families of the widowers that agree with them about their decision to resort to legal means of distributing the properties of their deceased wives. These disagreements between the customary family and the widower arise mainly because while a section of the family recognizes the legitimate

right of widowers and children to succeed to intestate property, others are of the opinion that the customary family, including the deceased's children are entitled to intestate property.

For a father to think of refusing to marry for his son or receiving the marriage payments of their daughters because he has been denied succession to his deceased wife's properties contradicts well-known Asante traditions where fathers are obligated to give their daughters in marriage and receive any marriage payments (MANU; ANYIDOHO, 2015).

When the relationship between the widower and his in-laws get strained, the relationship between the widower's relatives and those of the deceased also get strained. This lends credence to the fact that among the Akans, marriage is seen as a relationship not just between two people but that between two families.

The inability of some widowers to separate lineage property from their wives' self-acquired property becomes a source of tension and intense litigation between customary families and some widowers. What happens in some cases is that some widowers, unknowingly, lump their wives' self-acquired property together with properties that belong to the lineage and claim them as intestate property. These lineage properties which widowers claim as intestate properties are linked with those the deceased either developed on lineage lands or inherited but used her resources to either improve upon or from which further developments were made. The attempt by the customary family to isolate such properties leads to misunderstandings between the widower and the lineage. However, when the courts finally rule in favour of the lineage, the widowers accept the verdict. Their regret, in most cases, emanates from their inability to anticipate that such properties might become subjects of dispute at later dates.

Mikell (1997)'s opinion that the "abusua" relationship has challenged the stability of the conjugal unit can be confirmed, considering the fact that the obligations of men and women to the offspring of their lineages are seen as preventing them from focusing on the conjugal family. Indeed, men and women cannot strip themselves of all

obligations to the offspring of their lineages. Again, Mikell's statement that the matrilineal system itself is not free from conflict can be confirmed. No institution, indeed, is free from conflict, and the matrilineal system, as a customary institution, is not expected to be free from conflict

Men whose wives leave only they and their children have their interests better guaranteed than those whose wives have different sets of children. This is because apart from the deceased's lineage, they do not have any other interest group to contend with.

Another finding is that the break in relationship between widowers and their children and some members of the customary family stems from the fact that most often, relatives of the deceased who were benefiting from the resources of the deceased may have such benefits cut, upon the death of their relative. These relatives become bitter against the widower and his children because they believe that they have suffered that plight because of the widower and his children. Some widowers were not happy even when the Intestate Succession Law had been used in their favour because of the strained relationship between them and their in-laws

The three theoretical approaches namely, Rights, Modernization and Cultural that under girded the research were evident in the cases studied. For instance, the threat of a customary successor to give up her position as a successor if all efforts failed to turn up the ruling of the court or the minds of the children against their father in apparent protest against the court's decision to apply the Intestate Succession Law to the benefit of the widower and children is influenced by Culturalists' position which states that property should devolve to people with common blood. In most of the cases where members of the customary family have made a claim for intestate property, they have used culturalists' arguments to make their claim. For instance, they have argued that since the deceased has benefited from the resources of the extended family, it is fair that her property goes back to the family to assist other needy members.

Widowers and children have also used the arguments of Rights and Modernization theorists to make their claim for intestate property. Widowers have



argued in the cases studied that since they have lived and worked together with the deceased, and more importantly, have acquired properties together or contributed to the acquisition of properties of the deceased, it is right for them to inherit intestate property. Widowers' contention is that the state after all, has laws that recognize their contribution in this respect. The Intestate Succession Law, after all, is a two edge sword that cuts from both sides. The law is applicable to each of the spouses in respect of their properties, irrespective of matrilineal or patrilineal background. It is for this reason that in all the cases studied, widowers went to court to seek redress whenever they had reason to believe that their wives' families were attempting to take their right from them.

It was noted from the research is that the application of the Intestate Succession Law has, to a greater extent, destroyed relationships between widowers and members of the deceased's family.

There have been times biological children teamed up with their father and times they teamed up with the customary family. However, step-children, in most cases, had strained relationship with the widower and rather teamed up with the customary family. Perhaps, modernization and cultural theories have a role to play in these instances. It is worthy to note that but for the Intestate Succession Law, widowers have never had easy access to the property of their deceased wives. Another notification was that neither the widower nor the customary family is against the children benefiting from the properties of the deceased through the Intestate Succession Law. The problem, however, lies with either the widower or the customary family claiming succession to the deceased and her properties.

In the light of the findings, it was recommended that various groups, churches, traditional authorities and other bodies interested in the well-being of children, widowers and widows should encourage couples about the need to make wills and also to ensure that properties they acquire jointly are registered in the name of both partners, and that they isolate such properties from family lands and other properties. The courts must also make the process of will-making less difficult to attract more people, particularly married people.

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