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A DOCTRINAL REVIEW OF LITERATURE ON MULTI-TIERED MARRIAGE IN NIGERIAN FAMILY LAW

Imam-Tamim, Muhammad Kamaldeen* ; Abdulraheem, Taofeeq Abolaji** & Folorunsho, Ahmad Hussein***

ABSTRACT

Pursuant to the plural nature of the Nigerian legal system, three systems of marriage operate in the country. These are the statutory, Islamic and customary law marriages. A fourth type of marriage is, however, emerging. It is an abridged type of marriage known as double-decked or triple-decked marriage both of which are described as multi-tiered marriage in this paper. This is a type of marriage where a single couple combines marriages under different systems of law. Their marriage will therefore be governed by more than one system of law. This scenario portends certain legal problems. But scholars and jurists of family law in Nigeria do not seem to discuss in detail the problems that could be caused by this type of marriage contract. The few that do so do not provide solution to those problems. This paper, therefore, review the available literature on multi-tiered marriage in Nigeria with a view to examining the reasons why Nigerians celebrate this type of marriage and its legal implication. The paper employs a legal doctrinal and content analysis of the literature. The paper concludes that there are gaps in the literatures as some of them are either narrow in scope or they exclude some vital issues that may arise as a result of celebration of the multi-tiered marriage.

Keywords: Double-decked Marriage, Marriage in Nigeria, Multi-tiered marriage, Nigerian family law, Nigerian marriage, Legal Pluralism.

INTRODUCTION

In many societies particularly in Nigeria, marriage is regarded as a prominent prerequisite for the establishment of a legitimate family¹. However, where a country is inhabited by people of different cultures and religions, it will also witness application of different systems of law pertaining to their respective customs and this reflects mostly in the forms of their ceremonies including marriage.² Nigeria is among such countries because about half of the population in the country is Muslim, followed by a large percentage of Christian, and a minority population of traditional religious practitioners and atheists³.

Nigerian family law recognises three systems of marriage – marriage under customary law, Islamic law and statutory law. The principles and legal rules applicable to each type of marriage are succinctly different. But due to the continuing evolution of the systems of law, aided by the legal transplantation, it has become a practice for the citizens to engage in multi-tiered marriage contracts by combining marriages under the different systems of law for one couple⁴. This type of marriage is becoming a more prominent phenomenon in Nigeria and is insidiously changing the operation of family law rules in the country. It is

* PhD Researcher, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia. Lecturer, Department of Private and Property Law, University of Ilorin

** PhD Researcher, Ahmad Ibrahim Kulliyah of Laws, Islamic Science University Malaysia. Lecturer, Department of Islamic Law, University of Ilorin

*** PhD Researcher, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia. Lecturer, Department of Islamic Law, University of Ilorin

¹ Nwogugu, E. I. *Family Law in Nigeria*. Ibadan: Heinemann Educational Books. (2006. See, *Ohochuku v Ohochuku* (1960) 1 All ER 253.

² Agbede, I. O. *Themes on Conflict of Laws*. Lagos: Shaneson C.I. Ltd. 1989

³ An-Na'im, A. A. (Ed.) *Islamic Family Law in a changing World: A Global Resource Book*. London: Zed Books Ltd. 2002

⁴ Watson, A. *Legal Transplants: An Approach to Comparative Law*. 2nd Ed. Georgia: University of Georgia Press. (1974).

bound to present certain legal challenges to the application of both substantive and procedural rules of Nigerian family law.

The effect of such practices appears to reflect in the uncertainty in the nature of the rules of family law applicable to such marriage relationships and indeterminacy of the superiority of the coexisting systems of law in the marriage in the event of internal conflict of the laws; the way couples (and in certain instances, their families), who entered into such multi-tiered marriage contracts (which is governed by the Marriage Act 1914, Matrimonial Causes Act, Wills Act, Child Rights Act, etc.) flout the provisions of the marriage statutes in favour of principles of marriage under their customary or religious laws despite the presence of punitive provisions in the statutes and yet no prosecution appears to have been made under those statutory laws. The effect also appears to be found in instances where several rules applicable to the respective systems of law are applied simultaneously by the parties in the course of their marital lives; indeterminacy of the court with appropriate jurisdiction in the event of any matrimonial proceedings, which could give room to forum shopping, inadequate protection of rights of women and children in the marriage (arising from the uncertainty of choice of laws), problematic application of the rules of succession, among others.

Notwithstanding these problems, a survey of literature on Nigerian family law shows that the requisite attention is not paid to them by legal scholars and jurists. Only few literatures directly discuss the emergence of the new marriage practice. Fewer among them attempt to examine the problems such marriage could present but this was considered only from narrow scope. The objective of this paper, therefore, is to analyse and review the available literature on Nigerian family law using doctrinal method to examine how effectively they have address the issue of multi-tiered marriage as an emerging legal issue in Nigerian family law. The paper, thus, used data from the literature to describe how multi-tiered marriage is contracted in the country and how it affects the application and operation of family law and practices in Nigeria.

EVOLUTION AND OPERATION OF THE PLURALISTIC FAMILY LAW IN NIGERIA

Family law is a subset of the general legal system in Nigeria. It, therefore, shares the same sources with the overall legal system in the country. These sources include customary laws that operate from time immemorial; Islamic law that enjoys uniform application among the Muslims, who are scattered across the country; received English laws brought into the country by the British as a result of colonisation; local enactments that were promulgated to either domesticate the received English laws or to cover legislative gaps left in the Nigerian local scene after the cessation of colonialism, and case laws that are handed down through judicial decisions to interpret the legislations.⁵

Historically, upon the arrival of the British in Nigeria like many other colonised societies, they encountered existing systems of law (including established systems of family law).⁶ In parts of the areas, they met only the indigenous customary law in operation, while in others; they met both indigenous laws and Islamic law operating simultaneously.⁷ In both of these jurisdictions, the Europeans superimpose their laws as the superior laws and decreed that in case of any conflict between their laws and the indigenous laws of the people, the European laws shall always prevail.⁸ Furthermore, whenever there is any question to be determined by the courts bordering on the indigenous laws, the fact of existence of that indigenous law

⁵ Onokah, M. C. *Family Law*. Ibadan: Spectrum Books Limited. 2003; Sagay I. *Nigerian Family Law: Principles, Cases, Statutes and Commentaries*. Lagos: Malthouse Press Limited. 1999; Asein, J. O. *Introduction to Nigerian Legal System*. Enugu: Ababa Press Ltd. 2005; See *Asiata v Goncallo* (1900) 1 NLR 41.

⁶ Tamanaha, B. Z. (2008). "Understanding Legal Pluralism: Past to Present, Local to Global". vol. 30 *Sydney Law Review* 381.

⁷ Ibid

⁸ Agbede, I. O. *Legal Pluralism*. Lagos: Shaneson C. I. Ltd. 1991

must be strictly proved before the court of the land before it can be accorded judicial notice whereas, the imported laws must have been judicially noticed by the courts without necessity of being proven⁹

Notwithstanding the imposition and introduction of both the validity and repugnancy tests machinery put in place to underplay the authority of the pre-colonial systems of law (including the customary family law and Islamic family law), it was not long to discover that the superimposed colonial laws would be unsuitable in particular instances¹⁰ The jumbling of the English rules of marriage with the customary and Islamic laws of marriage brought about pluralistic application and operation of family law in the country; and soon created dichotomy in what law should be applied where those rules become intertwined and hence conflict¹¹

Before the incursion of the British into Nigeria, the inhabitants had different systems of family law governing their affairs. Apart from the system of family law operating under the traditional customary law which is indigenous to the people, there were also rules of marriage under Islamic law. The Islamic law is not indigenous to any tribe and is prominently practiced in the areas presently within the northern region and some south-western parts of Nigeria.¹² But by virtue of section 2 of the Native Courts Ordinance 1914, Islamic law was categorised as customary law in Nigeria. This is also a subject of debates. Emiola and Adaramola¹³ believe that customary law in Nigeria is made up of native law and Islamic law although Adaramola¹⁴ categorises Islamic law as non-indigenous and non-ethnic customary legal system, which unlike the indigenous and ethnic based customary law is written (i.e. *lex scriptum*).

Tobi, Agbede, Ambali and Yakubu argued per contra.¹⁵ Agbede¹⁶ states that even though Islamic law operates in some countries as indigenous customary law, in Nigeria, it operates as a distinct legal system. Ambali¹⁷ traces the evolution and application of Islamic law in Nigeria and concludes that despite different obstacles to the application of Islamic law in the country, it still endures as a system of law thus leading to its being constitutionally recognized by section 275 of the Constitution of the Federal Republic of Nigeria 1999. Ambali further concludes that Islamic law applies as the personal law of Muslims in Nigeria. He based this position on the decision in the case of *Khairie Zaidan v Fatimah Khalil Mohssen* (1973) 11 SC 1. Yakubu¹⁸ agrees with Ambali's position. He argues that even though *shariah* (Islamic law) is grouped under customary law, it is a distinct variant system of law. It operates as a major source of personal law for the Muslim adherents According to Tobi¹⁹ the categorization of Islamic law as customary law in Nigeria is a reflection of the negative and uncompromising approach to *shari'ah*. He further posits that describing Islamic law as a customary law undermines its status as a system of law on its own because 'custom' (*urf*) is already one of the many (secondary) sources of Islamic law as a legal system. Therefore Islamic law, unlike the traditional customary law does not allow for conjecture and speculation in its application. Tobi thus, calls for the recognition of the impact of Islamic law in the development of Nigerian legal system and its proper entrenchment as a proper and distinct source of Nigerian legal system.

⁹ Ibid See Sections 16-19 Evidence Act 2011).

¹⁰ Ambali, M. A. *The Practice of the Muslim Family Law in Nigeria*. 2nd ed. Zaria: Tamaza Publishing Ltd. 2003.

¹¹ Ibid

¹² Ibid p.14

¹³ Emiola, A. *The Principles of African Customary Law*. Ogbomoshoh: Emiola (Publishers) Ltd. 2005
Evidence Act 2011. Cap. E14, Laws of the Federation of Nigeria 2004.

¹⁴ Ibid

¹⁵ Ibid (Tobi (1996, pp.136-140), Agbede (1991), Ambali (2003) and Yakubu (2006)

¹⁶ Agbede 1991. P.1

¹⁷ Ambali (2003)

¹⁸ Yakubu, J. A. *Within and Without: The Relevance and Potency of the Law beyond our Frontiers*. Ibadan: University Press. 2006.

¹⁹ Tobi, N. *Sources of Nigerian Law*. Lagos: MIJ Professional Publishers Ltd. 1996.

This will go a long way to solve the dichotomy raised by the application of Islamic law to the lives of its adherents alongside the received English law. However, the author (including his co-proponents) failed to give suggestions on how this could be achieved in a legal pluralistic country like Nigeria neither did he provide a model towards the achievement of same.

MULTI-TIERED MARRIAGES UNDER THE PLURALISTIC NIGERIAN FAMILY LAW

Ordinarily, three types of marriages are recognised under the Nigerian family law - statutory, Muslim and customary marriages²⁰ but due to the advancement in the westernization of cultures, rapid urbanisation of the country, it becomes common and rampant to find a particular couple who conduct a marriage in a manner that the incidents of that marriage will have a cross-cutting effect by having elements of indigenous law, the common law and even Islamic law. This kind of marriage simultaneously combines the different types of marriages for a single couple. It is known as multi-tiered marriage. According to Nichols²¹ the term "multi-tiered marriage" presupposes intersection of different systems of marriage laws in marriage and divorce situations, which arises mostly in family law "systems that have more than one possibility of marriage and divorce in their civil law" or family law systems whereby jurisdiction over marriage and divorce matters is shared between different authorities²² Nigerian family law fits both description of multi-tiered marriage rendered by Nichols. Apart from being pluralistic as noted above, the accommodation of multi-tiered marriage contract under Nigerian family law can also be deduced from the provision of section 35 of the Marriage Act 1914, which provides to the effect that couples are not allowed to conduct any other form of marriage(s) after the celebration of marriage under the Act either with themselves or with a third party. Any such marriage conducted is pronounced null and void and punishments are provided in sections 47 and 48 of the Marriage Act 1914.

The Act is, however, silent on the effect of any other type of marriage conducted prior to the celebration of the statutory marriage. Rather, it goes further to provide that except as provided in that section, nothing in the Act shall render any "customary law" marriage invalid. As at 1914, the term customary law was intended to include Islamic law. This intention was conveyed in section 2 of the Native Court Ordinance 1914. Therefore, it is clear that the Marriage Act is incapable of resolving any legal issues that may arise where a multi-tiered marriage is contracted. To support this supposition, Onokah²³ (2003, p. 144) argues that even punitive measures provided in section 48 to curtail contract of any other type of marriage after the celebration of statutory marriage are hardly enforced thereby further widening the scope of the kinds of multi-tiered marriage contract in the country.

Reasons for conducting Multi-tiered Marriage in Nigeria

Onokah²⁴ appears to be the first to examine the social reasons for the contract of multi-tiered marriage by combining both statutory and customary marriages. The investigation reveals that Nigerians are induced to conduct the multi-tiered marriage for different reasons. The customary marriage is conducted for reasons such as showing the community that the couple are actually husband and wife (*Oloko v Oloko* ; to avoid any doubt about the ownership of the children of the marriage, giving the parties the feeling that they are properly married, maintain traditionally acceptable parent/child relationships with their respective families and ensuring the bride price was given to the family (Onokah 2003, pp.144-146). The latter statutory marriage is conducted majorly for its "legality" and "monogamous security", the official purpose that the

²⁰ Tonwe S. O. and Edu O. K. *Customary Law in Nigeria*. Lagos: Renaissance Law Publishers Limited. 2007.

²¹ Nichols, J. A. (2007). "Multi-Tiered Marriage: Ideas and Influences from New York and Louisiana to the International Community". vol. 40 *Vanderbilt Journal of Transnational Law* 135-196.

²² Ibid. P135-137

²³ Note5 Onokah 2003

²⁴ Ibid

certificate serves, etc. (Onokah 2003, pp.147-151). Examined from the United States perspective, Brummer (2003)²⁵, while criticising the multi-tiered tendency of some marriage laws in some states in the United States of America made an argument that is similar to some of the above findings. She noted that one of the spill-over of multi-tiered marriage system is that it gives "false impression that couples who married under one form are somehow "more married" and thus entitled to greater protection than those who enter into traditional marriage" (Brummer 2003, p.293; Nichols, 1998; Spaht, 1999). In another perspective, Nichols (2007, p.139) hinges the reason for such type of marriage on the point that having a unitary jurisdiction and uniform application of marriage laws (which the Marriage Act ordinarily aims at) does not enjoy any historical mandate or uniform acceptability among the citizens (and even the comity of nations at international level).

Yakubu however, believes that the change in the nature marriage contracts generally in the country (including the contract of multi-tiered marriage) is as a result of the cessation of "racial discrimination and other discriminatory tendencies" as well as the continuous fluidity of human interactions. These factors now allow people of different colour, culture and tribes to marry each other thus cross fertilising cultures. Therefore, it is not surprising to find couples conducting at the same time, concurrently or simultaneously marriages under different systems of law that have varying understanding of notion and legal effects of the concept of marriage (Nichols²⁶ also moot this point when they reason that:

The reason why double marriages (i.e. multi-tiered marriage) are contracted is because marriage under the Act is alien, uncustomary and unacceptable to the elders of the Nigerian families as a cardinal and sufficient method of contracting marriage. Since the would-be couple would need the blessing of their parents, there is need to first marry under customary law before proceedings (sic) to marry in accordance with the provisions of the marriage Act. Sometimes when the Act marriage is first contracted either overseas or in Nigeria, the couple must further contract another marriage under customary law to obtain parental blessings when they return to Nigeria or are able to do it. (p.153)

It should, however, be noted that the above works only examined some of the social causes of multi-tiered marriages. That is the role played by the society in forcing the affected couple to conduct such kind of marriage. None of them considered the legal causes, that is, the role played by the legal structure of Nigerian family in luring the couple into conducting multi-tiered marriage.

LEGAL DEBATES ON MULTI-TIERED MARRIAGE

In Nigeria, one of the incidences of multi-tiered marriages is the kind of marriage termed 'double-decked' marriage under the Nigerian family law. 'Double-decked' marriage is the kind of marriage whereby the same couple conduct marriage in accordance with the rules of their indigenous customary law and then go further to conduct a separate marriage in accordance with the received English law thereby engaging in a marriage that is governed by distinct rules. In the Muslim community, this kind of marriage could even be 'triple-decked' because the couple may start by conducting wedding in accordance with their customary law, then conduct the *aqd nikkah* and finally proceed to the marriage registry to solemnize the marriage in accordance with the received English law.

Although the debate over the legal status of such kinds of marriage in Nigeria has started for over many decades, many of those materials are outdated, antiquated and out of print. The debate started around 1900 with the case of *Asiata v Goncallo* (1900) 1 NLR 41. After then, the few works that discussed this issue

²⁵ Brummer, C. E. (2003). "The Shackles of Covenant Marriage: Who holds the keys to Wedlock?" 25 U. Ark. Little Rock L. Rev. 261-293.

²⁶ Nichols 2007

include Morgan (1965), Onyechi (1974), Olufon (1970), and Philips and Morris (1971).²⁷ The debate however was rekindled by Nwogugu in 1974 when he briefly treated the issue under the heading, "The resultant effect where statutory marriage is preceded by customary law marriage between the same parties" (Nwogugu 1974, pp.66-69). His work focused primarily on two Nigerian judicial authorities of *Asiata v Goncallo* (1900) and *Ohochuku v Ohochuku* (1960) that determined whether a later statutory marriage supersedes the previous customary law marriage for all intents and purposes or they both exist side by side. He examined the reasoning behind the judgments in those cases and concluded that where such marriage is conducted, the latter statutory marriage shall supersede the earlier customary law marriage (Nwogugu, 1974, p.67).

It must be pointed out that though Nwogugu's conclusion gave superiority to the official law (Marriage Act); the work did not critically examine the issue from the perspective of multi-tiered marriage contract neither did it critically examine why Nigerians engage in the practice of conducting multi-tiered marriage nor the legal implication of such marriage for Nigerian family law. The work merely examined the scenario from judicial positions taken by judges adjudicated over matters related to the multi-tiered marriage. Further to this, the work also did not consider the role played by the coexistence of the different systems of marriage laws in the country to lure the affected couples into conducting such kind of marriage. However, between the 1976 and 1999, it appears no further research was done on this issue in Nigeria. Sagay (1999, pp.831-832) considered the issue again. Sagay's conclusion is also in tandem with Nwogugu's. Notwithstanding, the work also failed in the same respects as Nwogugu's. Furthermore, both works only focused on the effect of the marriage in the event of divorce while basically disregarding other aspects of matrimonial relationships in which the implication of contracting multi-tiered marriage could be felt. Tonwe and Edu (2007, p.153) also arrived at the same conclusion as Nwogugu and Sagay although their conclusion was not supported by any argument or basis. They merely rely on the same case of *Jadesinmi v Okotie-Eboh* (1996) cited by the two earlier authors. The work like the previous ones did not examine Islamic law marriage.

This thus called for further research on the subject matter by Onokah (2003) and the outcome was far revealing as the empirical data gathered by the author largely negate the general position already taken by the earlier authors and judges (cf. Onokah 2003, p.143). This work was the first to term this kind of marriage 'double-deck marriage' (cf. Olokooba 2010). The work started by stating that where any form of marriage is conducted after the celebration of a statutory marriage, that marriage will be void pursuant to section 35 of the Marriage Act 1914. However, after a close reading of section 33 of the Marriage Act, Onokah (2003, p.146) finds that a couple married under Islamic and customary laws do not prohibit any further marriage under another system of law after the Islamic or customary marriage. The provision therefore plays a role in the accommodation of multi-tiered marriage within the Nigerian family law even though the general *corpus juris* point to the opposite.

Onokah's work distinctly set out the two theories underlying the debates regarding the status of this kind of marriage, that is, the 'conversion theory' and 'co-existence theory' and posits that irrespective of the weight of arguments supplied by proponents of each theories, practical application of either of them is beset with problems (Onokah 2003, p.153). The empirical study finally reveals that the argument cannot be concluded and settled at the courts as majority of the persons who engage in this kind of marriage do not

²⁷ Onyechi, J. N. M. (1974). "Indigenisation of Nigerian Law: A Problem of Assimilation or Dominance". Park A. E. W. (1963). *The Sources of Nigerian Law*. London: African University Press. Philips, A. and Morris, H. F. (1971) *Marriage Laws in Africa*. Oxford: Oxford University Press. Spaht K. S. (1999). "Marriage: Why a Second Tier Called Covenant Marriage?" 12 *Regent U. L. Rev.* 1.

even know the legal effect of their actions. The significance of the two theories identified by Onokah is that they were technically formulated by judges with a view to resolving the conflict of law issue that may arise in the multi-tiered marriage. However, the debates do not appear to have been settled by the jurists because while other scholars and jurists approach the evolving issues from the juristic perspectives, Onokah who did a qualitative research did little to suggest a way out of the imbroglio created by such marriage.

It is important to point out that though all the family law texts reviewed above attempted to examine the pluralistic nature of family law in Nigeria but the discourses were only limited to statutory law and customary law marriages leaving out Islamic law.

ISSUES AND IMPLICATIONS OF MULTI-TIERED MARRIAGES UNDER NIGERIAN FAMILY LAW

The celebration of multi-tiered marriage is bound to present certain legal problems, especially relating to how rules applicable under the distinct and respective systems of family law governing the family relationship should be applied to the parties.

It has been noted by Ibrahim (2004) and Ibrahim, Abdul Hak and Che Soh²⁸ that one of the issues that could come up in a marriage governed by multiple regimes is determination of status and quantum of ownership of matrimonial property. While examining the effect of the double-deck marriage in Nigeria on properties acquired during the subsistence of such marriage, Abdulmalik (2008)²⁹ noted that the wife will be disadvantaged where the co-existence theory applies as against the conversion theory which favours the womenfolk.

It also appears that another aspect where problem would likely arise in respect of this kind of marriage is at the point of termination of the marriage between the parties. This particular point was examined by Olokooba³⁰ who observed that the raging debate between the 'conversion' and 'co-existence' theorists will only create further problems for the parties who intend to dissolve the marriage and even for the court which would be faced with two opinions. The author's position is that in practical terms, it is not always the intention of parties to this kind of marriage to convert their customary marriage to statutory one.

Abdulmalik's and Olokooba's works³¹ like others appreciate the predicament that could arise in the rules to be applied in respect of the marital causes between multi-tiered marriage couples, especially where the latter are treated as subordinate to the former. Nevertheless, as much as these works identify issues in such multi-tiered marriages, the scope of their discourses is narrow as there are other germane issues left untouched. Also none of them examine the role played by the coexistence of the different systems of family law in luring Nigerians into conducting such marriages. Their works like the previous ones also limit their discourses to the statutory and customary law marriages leaving out the Islamic law marriage.

While examining the legal implication of contracting this kind of marriage from the Islamic law perspective, with a focus on its effect on succession, Ambali (2007, pp.299-300) observed that the

²⁸ Ibrahim, N. (2004). "A study on the Malaysian Civil Law Relating to Matrimonial Property after Dissolution of Marriage". Ph.D Thesis, Malaysia, International Islamic University Malaysia. Ibrahim, N., Abdul Hak, N. and Che Soh, R. (2012). "Duty of Full and Frank Disclosure in the Division of Matrimonial Property: The Law and Practice in Malaysia". vol. 6 no.11 *Australian Journal of Basic and Applied Sciences*, 307.

²⁹ Abdulmalik, S. M. (2008). "Double-Decker Marriage under the Nigerian Law". vol. 1 No. 1 *LCULJ*, 170.

³⁰ Olokooba, S. M. (2010). "Customary Law and Statutory Marriages between the same parties: Whither Nigerian Law?" vol. 1 No. 1 *UBJPPL* 306.

³¹ Ibid

operation and application of the three systems of law constituting the Nigerian legal system is not properly coordinated thereby leading to inconsistency especially in the area of succession by Muslims. He mused that while Islamic law recognizes monogamous marriage which is the essence of the Marriage Act; the converse is the situation in the latter Act which out rightly shuts Islamic law out of the lives of the Muslims who entered into statutory marriage contract. Ambali is referring to the provision of section 36 (1) of the Marriage Ordinance 1958 to the effect that when a person who was subject of Islamic law marries under the Ordinance and dies intestate, his legacy will be distributed in accordance with common law. The provision was applied in *Adesubokan v Yinusa* reported in (1973) 3 UILR 22 or (1971) NNLR 77. Ambali then argued that any Muslim who marries under the Marriage Act in Nigeria has rejected the injunctions of Allah regarding marriage and succession because forcing himself to monogamy when there are circumstances requiring him to take additional wives will amount to his making unlawful (*haram*) for himself what Allah has made lawful (*halal*) for him. Also because a Muslim never dies intestate as the manner of distributing a Muslim deceased's property is clearly explained by the *shari'ah*, such a Muslim would have subjugated the rules of succession in *shari'ah* for the rules of succession under common law, which is applied through the Administration of Estates Laws of various states in Nigeria. This conclusion is based on the decision in *Adesubokan v Yinusa* (1973) where it was held that a Muslim who contracted marriage under Islamic law but wrote a Will in accordance with Wills Act must be deemed to be governed by common law. Ambali concluded that the laws of marriage and succession constitute part of a Muslim's faith, which is not supposed to be varied by human whims and caprices. It must be pointed out that though the issue raised by the author is legal but his position is not based on the legal perspective of the issue but on theological stance, which could not solve the problem of dichotomy arisen already. Nevertheless, this is the only treatise on Islamic family law in Nigeria that pointedly addresses this issue.

In a similar vein, Kolajo (2005)³² examines the conflict of law issue that could arise in situations where statutes, common law and customary law coexist. Among the areas through which he examines the above issue is family law. To underscore the likely problem that multi-tiered marriage could create in the legal framework of family law in Nigeria, Kolajo notes that ordinarily, should customary law conflict with a statute, the provision of the statute shall prevail but conversely, before such provision can be deemed to enjoy prevalence over the customary law, the statute must expressly contain provision to that effect; or there must be express provision in the statute that the customary law directly runs contrary to thereby abrogating the customary law (p.62). Tonwe and Edu (2007) also support Kolajo's position on the determinant factor for the superiority of statute over the customary law. They also observe that while choice of law problem may not arise where the statutes expressly super imposes its provision over the rules of customary law, the situation will change where the statute preserves the application of customary law on the subject matter of the legislation (Tonwe & Edu 2007, p.37). And as noted earlier, there is no express provision in the Marriage Act prohibiting couples from conducting customary law marriage prior to the statutory marriage. The Act rather validates customary marriages so long as they do not occur after the statutory marriage. Kolajo's and Tonwe and Edu's works as hinted above squarely examine customary law and apparently exclude Islamic law from their scope. Also the books are only synoptic without any in-depth discourse of the subject matter.

Guardianship and custody of children born of a marriage are common issues that often arise in many matrimonial proceedings. And following Nichols description, entering into a multi-tiered marriage presupposes that each of the systems of family law has its own peculiar understanding of marriage rules and distinct application, the problem may arise about how to determine the appropriate party to get custody or guardianship of the infant. The likely tension that could arise in the deciding custody or guardianship of

³² Kolajo, A. A. (2005). *Customary Law in Nigeria through Cases*. Revised edition. Ibadan: Spectrum Books Limited. Marriage Act. Cap. M6, Laws of the Federation of Nigeria 2004. Matrimonial Causes Act. Cap. M7, LFN 2004.

minors where multiple regimes of family laws apply to the couple was examined by Mohd Zin and Che Soh (2012) and Yusoff (1993) in their works.³³ The imbroglio has a tendency of working against the 'best interest of a child' (a concept that also has different connotation under each of the systems of family law) thus resulting in inadequate protection of the infant's right (Yusoff 2009).

In another work, Yusoff (2010) examines the perspectives through which the different systems of family law address the issue of wife battering. Yusoff highlights the fact that despite that there are laws criminalising wife battering in Malaysia, the act is still on the rise due to the cultural beliefs and the misunderstanding of Islamic principles of husband's authority over his wife (Yusoff 2010, 621; Ong Chin Lai 2008)³⁴. Although multi-tiered marriage is not a front issue in the paper, such act of wife battering and how to address is also one of the women's rights problems that may present themselves in such marriage. This position is premised on the fact that while the customary family law in Nigeria generally has a lukewarm attitude to rights of women in marriage, both Islamic family law and statutory family law have strong rules relating to rights of women in marriage.

It must be noted, however, that although Ibrahim (2004), Ibrahim, Hak and Che Soh (2012) Yusoff (2010, 2009 & 1993), and Mohd Zin and Che Soh's (2012) works focus on the state of family law in Malaysia and do not directly address contract of multi-tiered marriage and its implications, they are apposite to this study because they identify issues of conflict that arise in pluralistic family law. This study therefore draws from the experiences in those works, especially as they relate to resolving related issues between Islamic family law and the statutory law.

It is worthy to point out that all the Nigerian texts examined herein recognise the reality of the pluralistic nature of Nigerian family law, the growing trend of couples entering into multi-tiered marriage and the likely implications of such marriage to family law in general. They made subtle references to the fact that the changing nature of marriage law and practices in Nigeria and their attendant problems are rooted in the dichotomisation of the applicable norms and rules within the Nigerian family law in Nigeria, which operates around both the marriage statutes (Marriage Act and Matrimonial Causes Act) and other living laws (Islamic and indigenous laws). It should be further noted that even though all the literature reviewed in this study were able to show that where a multi-tiered marriage occurs, the court will always be at crossroads on what rules should apply but none of them made any critical examination of the role played by the coexistence of the different systems of marriage laws in luring Nigerians into such marriage and how the issues should serve as impetus for a long deserved reform of Nigerian family law in general. Therefore, of all the treatises reviewed, only Onokah identified the social reasons for the conduct of multi-tiered marriage while all of the literature (including Onokah's) did not identify the legal causes of such kind of marriage nor did they suggest any means of effectively resolving the issues whenever they present themselves.

CONCLUSION

Although there are several literatures on the evolution, operation and application of rules of marriage laws in Nigerian family law, materials discussing the subject matter from the perspective of contract of multi-

³³ Mohd Zin, N. and Che Soh, R. (2012). "Legal Disputes in Determining the Religion of the Child when one Parent Converts to Islam under Malaysian Law". vol 6 no. 11 *Aust. J. Basic & Appl. Sci.* 66-73.

³⁴ Yusoff, R.C.S. (1993). "Guardianship and Custody of infants: A comparative study of the Islamic Law and the Malaysian Law". Master Dissertation, International Islamic University Malaysia. Yusoff, R.C.S. (2009). "For the best interest of the child" : A study on the welfare principle in child custody disputes under the Malaysian laws". PhD Thesis, International Islamic University Malaysia. Yusoff, R.C.S. (2010). "The Cultural and Legal Perspectives on Wife Battering in Malaysia". *The Law Review* 613-622.

tiered marriage and its implication for Nigerian family law are scarce. Likewise, only few of the materials available examined how the coexistence of plural systems of marriage laws within the family law influenced and lured Nigerians into contracting multi-tiered marriages. There is also paucity of literature on the need for reform of Nigerian family law even though the existing marriage statutes have been enacted since 1914. The scarcity of literature on the effect of celebration of multi-tiered marriage has created a gap in the development of the law in that direction. It perpetuates the ignorance of the citizens because they could not get appropriate and adequate advice from legal practitioners. It also creates systemic problems among the judicial institutions. Courts are unnecessarily faced with situations where they need to decide first about the superiority of systems of law under the Nigerian legal system before they attend to the real subject matter of the case brought before them. One of the implications of the indeterminacy of court with jurisdiction or of the applicable law is that parties waste valuable resources – time, money and energy to prosecute their matrimonial proceedings. There is, therefore, a need for the reform of the marriage laws in the country. But this could be made easier for the law and policy makers by the research outputs of the legal scholars and jurists, which are lacking presently. It is therefore imperative that scholars and jurists take up research in family law particularly focusing on the legal challenges posed by the emerging phenomenon of multi-tiered marriage.