

Gender Dynamics in Household Property Inheritance among Rural Communities: The Case of BaKalanga Baka Nswazwi in North Eastern Botswana

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Abstract

This study explored gender dynamics in household property inheritance among rural communities using the BaKalanga Baka Nswazwi in North Eastern Botswana as a case study. Gender dynamics in inheritance related cases remains a contentious, multicultural issue in Botswana. Crossman (2017) argues that gender is a social construct and thus dictates how men and women behave across different cultures, and how in some cultures and societies, other genders exist too, consequently influencing the nature of research methods that were adopted. The study was undertaken between June 2017 and February 2018. Data was collected using both quantitative and qualitative research methods. A sample of 326 respondents was drawn using systematic sampling from a baseline population of 2165 inhabitants. The results of the study revealed that gender bias was a major factor, amongst other factors, that were considered in the allocation of household property in inheritance related cases in Nswazwi village. The study made significant recommendations to mitigate the challenges that were encountered in inheritance related cases and also presented the gaps for further research.

Keywords: Gender, Inheritance, Patriarchy, Will, Customary law

1.0 Statement of the Problem

Family conflicts over inheritance are a big issue in Botswana. The Rural Development Institute Report (2009) affirms that in Botswana, under customary law, the eldest son inherits most of his father's estate. This is in relation to most ethnic groups in Botswana, such as Bangwaketse, Bakalanga and Bangwato to mention but a few. Girls are more likely not to have the right to inherit property from their father.

Notable cases include, *inter alia*, the Ngwaketse community in southern district following *Mmusi and Others v Ramantele*. The case involved three sisters' dispute with their nephew's claims to inherit the family home under customary inheritance laws that tended to favor male descendants. Another notable case includes *Tsbiamo v Tsbiamo* in which the applicant sought an order declaring that she was the owner of a property that was registered in the name of her deceased son. The applicant alleged that the property derived exclusively from her deceased husband's estate and that the deceased son had only administered the property on her behalf. The respondents were the surviving children of the deceased son. The applicant was given the right of ownership to her property. More often than not, when there are no sons to inherit family property, the property could be passed to a distant male relative. Fombad (2004) argues that one of the most controversial areas of customary law has been the traditional exclusion of women from property inheritance. In contemporary Tswana society, men still continue to make gender biased family decisions regarding disposal of property against women counterparts. The argument put forward by the appellant throughout the Mmusi proceedings was that the Ngwaketse custom and practice recognized ultimogeniture rule according to which only lastborn son was entitled to inherit the parents' homestead to the exclusion of the other children. Consequently, gendered conflicts have persistently erupted over family property inheritance. These acrimonious disputes in Botswana seem to have escalated over the past two decades.

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1.1 Research Objectives

The overall objective of this study was to analyze how custom influenced household property in inheritance decisions among the BaKalanga BakaNswazwi village. The specific objectives of the study are therefore stated as follows:

1. To analyze socio-cultural factors influencing the allocation of household property in inheritance decision making in the context of customary law in Nswazwi village.
2. To examine the role of household headship on the allocation of household property in inheritance related cases in Nswazwi village.
3. To analyze the role of sibling alliances in household property inheritance contestations.

2.0 LITERATURE REVIEW

This section presents a literature review and theories that speak to the issue of gender dynamics in property inheritance in different countries and villages. The chapter also presents the theoretical and conceptual frameworks that were adopted for the study. It further gives an overview of ownership, administration and disposition of property in Botswana. The social construction of gender is also presented. Key to this section are theories which address the sociological perspectives on gender stratification in relation to power and culture.

2.1 Ownership, administration and disposition of property and gender relations in Botswana

An observed consensus by different scholars indicates that women in Botswana do not enjoy equality in relation to the ownership, administration and disposition of property since patrilineal inheritance leaves men in control of land and property (Rekha Kumar & Kumar, 2009) and (Cailleba & Kumar, 2010). The above authors note that the core of personal law is very much the domain of customary law. In the application of the personal law, it reinforces the social order by determining the obligations of men, women and children, their entitlement to resources, property ownership, marriage and divorce. In the absence of a guarantee that equality between men and women takes precedence over custom, traditional practices that discriminate against women may be lawful in some circumstances. Similarly, where there is no will (which is typically the case), male children's rights to inheritance under customary law take precedence over that of female children, with daughters in some cases even being disinherited altogether. The underlying customary norms promote and maintain male control of the nation's productive resources, primarily the land (Rekha Kumar & Kumar, 2009). Inheritance is organized through the male lineage, thus excluding women from gaining control over resources.

Furthermore, there is paucity literature that attempts to explain why African parents/elders/bread winners do not draw up a will. It is also common that African parents/elders/bread winners consider discussions on death to be a taboo matter for public/open discussion since issues of death are not openly discussed nor debated in most African cultures. Baloyi and Makobe-Rabothata (n.d) argue that Euro-American views that aim for universal applicability may be limited and exclude other realities such as those of Africans whose conceptions of death for example, are different in interpretation, representation and meaning. It may be argued that the issue of after death and having a will in the African culture may therefore be mutually exclusive to the tenets of Euro-American views which advocate for such practices and hence explains the absence of elders or family members having a will in the sample investigated. In other traditions like the Euro – Americans and Indians, it is widely known that they celebrate death than birth. This, therefore, puts them in a better position to address death and after death in a manner that is different from how Africans would. Studies have shown that in all nationalities and cultures, many people die without a will. The results of this study concur with the literature presented here.

The Constitution of Botswana prohibits any discrimination whatsoever. Section 3 provides that any person whatever regardless race, place of origin, political opinions, color, creed or sex is entitled to fundamental rights and freedoms of the individual. The Government of Botswana recognises that in real life, women in Botswana do not experience and enjoy equality with men and that they do not fully participate in all aspects of national economic, social and cultural development. The Government of Botswana has tried to enhance the status of women and is still in the process of enhancing that status. In 2005 for instance, the Government of Botswana adopted a National Policy on Women in Development. The goal in adopting the Policy was to achieve effective integration and empowerment of women in order to improve their status, enhance participation in decision-making and their role in the development process

Ndulo (2011) posits that in its application, customary law is often discriminatory in such areas as bride price, guardianship, inheritance, appointment to traditional offices, exercise of traditional authority, and age of majority. The law tends to see women as adjuncts to the group to which they belong, such as a clan or tribe, rather than equals.

There is a major debate between human rights activists and traditionalists centered on whether customary norms are compatible with human rights norms contained in international conventions and national bills of rights in national constitutions.

These debates emanate from customary laws favoring men over women. In aspects such as bride price, the law makes men 'take' ownership of women and treating women as part of their property. Inheritance amongst others has never favored women until after the 21st century due to the fact that entitlement was given to men in inheritance related cases, while women were left out and did not equally benefit from inheritance. Cailleba & Kumar (2010) attest that customary law actually continues to affect the personal and property rights of women. Men are still being treated as the head of the family and granted guardianship rights over women and children.

Literature (Schapera, 1994; Griffith, 2002; and Bennett, 1994) indicates that this condition where the eldest son inherits property is predominant and is known as patrilineal primogeniture. This is also viewed as a customary practice among the Tswana people in Botswana, while patrilineal ultimogeniture, where the youngest son inherits, is also a customary practice among a number of cultures in Southern Africa. In this regard, gender is not only seen as a determinant for inheritance, but as a means of exposing the subtle power of birth order to determine the distribution in an inheritance and the type of persons who were entitled to inherit property in the Kalanga culture.

Jonas (2013) argues that whereas it is desirable that Africans must preserve their Africanness and cultural heritage, it is important that this must be done within a normative framework of human rights and international best practice. Ultimately, the rights of women to inherit can be meaningful only when all cultural constructs encompass and incorporate notions of women's rights. It makes little difference if women are liberated insofar as inheritance is concerned, but continue to live lives characterised by the deprivation of fundamental freedoms and rights. In some cultures effort is made to balance the distribution, but for as long as these efforts are not witnessed across all the parts of the country in Botswana, it becomes an exercise in futility.

2.2 Household headship and property allocation

Mishengo (2006) in a study conducted in Zambia, found that the culture of property inheritance has great consequences for female headed households as the system deprives them of the very much needed assets and resources for them to continue living normal lives. The argument presented here is that female headed households are continuously disadvantaged because the culture of property inheritance denies them an opportunity to benefit from the inheritance. On the same note Muwanei, a case of a victim of property inheritance in Zambia is presented, whose former husband was working as an operator in the Water Affairs Department at the time of his death, like most women in Zambia, was married under customary law, which discriminates women against property inheritance. The victim had this to say, "When my husband passed away, my in-laws inherited most of the property. The administrator shared the property among his relatives and just gave me some kitchen utensils. The administrator got most of the property which he claimed were for the children he was going to stay with." (Mishengo 2006:18).

2.3 Sibling alliances on property inheritance

Children with no prospect of any inheritance may contribute little or nothing to parents' long-term fitness (Gibson & Gurmu, 2010). When property inheritance is entitled to a predefined category of children, those with no prospect of any inheritance may not contribute to the welfare of their parents. They may cease to take responsibility of the family home. Rose (2006) on a different note argues that succession laws vary across the countries of Africa and are inevitably the subject of debate. Some countries, such as Botswana, do not have specific legislation dealing with inheritance.

On sibling alliances, Conway (2016) argues that when a parent makes a will, they should be aware that even reasonable and adult children behave in a different way when it comes to inheritance and may display immaturity. This is because when a beloved parent dies, what is being distributed may look like goods and chattels, but it feels a lot like love. A parent's will is not just a legal document; it is the last expression of their thoughts and feeling towards their children. It is a testament of love. Conway (2016) goes on to say that an unequal inheritance provides another excuse for keeping sibling feuds alive, long after the parent is dead. Inheritance disputes are not so much about money. People fight over the love they feel they did not receive.

According to Mokobi (2014:142), Common Law Roman-Dutch law does not recognise the relationship between a child born out of wedlock and his father. Barring the duty placed on the father to maintain the child, the law recognises the relationship between the child born out of wedlock and his mother and maternal relations – to the exclusion of his father and paternal relations. Mokobi (2014) further reiterates that in matters regarding succession, the child born out of wedlock in Botswana has no statutory right to inherit from his father in intestacy. Furthermore, Mokobi (2014) states that the common law rule that was set out in the case of *Green v Fitzgerald and Others* provided exclusions that the child born out of wedlock could not inherit from his or her father and paternal blood relations.

According to Mokobi (2014), this rule was still holding true in Botswana, for instance, the country's High Court decision of *Samsam v Seakarea* illustrates this point. In this case, the court had to determine whether children born out of wedlock to an unmarried couple had the right to inherit from their deceased father. The decision passed upheld as a common law principle, namely that children born out of wedlock do not inherit to their father and his relations, but to their mother and her relations. Consequently, Mokobi (2014) is of the opinion that the legal position of a child born out of wedlock is not very different under customary law.

Kealeboga v Kehumile sibling alliance case of siblings born of an unmarried couple, in the Kweneng District, Botswana. Their father, who passed on, wanted his children to be given the rights to inherit their father's assets since the family knew about them (children) and had accepted them. The ruling of this case confirmed the right of these siblings to inherit from their deceased father. (Court of appeal civil case No: CACGB – 045 – 13, High court civil case No: CAHLB – 000024 – 12).

The current dynamics of mothers having to register the names of their children's fathers in the birth certificate of the child and proof that the father did maintain this child might bring another dynamic to these cases. The latter legally binds the law to the welfare of these children, including their (children) right to inherit from their fathers.

In the Tanzanian, the case of *Ephraim v. Pastory*, a Haya woman inherited land from a deceased relative. She then sold the land to a third party. Her nephew challenged the sale pointing to a customary law rule that said while women could inherit land to use during their lifetimes, they could not, if there was a male of that clan, alienate it. The Constitution of Tanzania is silent on what is to happen in the event of a clash between customary norms and constitutional protection of equality before the law. The Court of Appeal held in favour of the aunt. In so doing it pointed to the fact that Tanzania had, by its ratification of the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), pledged to uphold human rights and not to discriminate against women. It also noted that the Constitution was built on the Universal Declaration on Human Rights (UDHR). Tanzania had of course ratified the African Charter on Human and Peoples' Rights, 1981. The court ruled that the customary law on inheritance was taken to have been modified and qualified and therefore any law banning women from selling inherited land was void and of no effect. (Banda 2006)

By way of contrast, is the Zimbabwean case of *Magaya v. Magaya*. A polygamous man died, leaving two sets of children. At the meeting held to appoint an heir, the eldest son refused to be heir, saying that he was not prepared to take on the responsibility of looking after the family. It then passed to his sister Venia. A younger brother challenged this appointment, arguing that the Shona customary law did not recognise the right of a woman to inherit. Venia Magaya argued that of all the children, she had been the one who had looked after her parents. She contended that the Shona rule of primogeniture constituted discrimination because of her sex and gender. An appellate magistrate ruled and Ms. Magaya's heirship was reversed. The newly appointed heir took his position as head of household, removed Ms. Magaya from her family home, and placed her in a shack in the neighbour's backyard.

2.4 Conceptual framework: patriarchy and gender dynamics

Coetzee (2001), Moghadam (1996) and Bhasin (1994) in Kalabamu (2006), define patriarchy as a concept that may be used for analysing power and kin relationships, an ideology and a gender-based system that results from the ability of fathers to bequeath to their sons the power to command resources. MacInness (1998) sees this as a legitimised, natural, godly and inevitable phenomenon. Further, Walby (1990) argues that it is a system in which the social structures and inherent practices allow for the dominance of men over women. Mishengo (2006) argues along the same line, that, in most African societies, the patriarchal inheritance system is still prevalent, it only allows sons to inherit their fathers' property.

Consequently, through the patriarchal inheritance system, women may not be guaranteed equal treatment in the inheritance of family land and other family properties. Kalabamu (2006) affirms that patriarchal structures within the state and cultural institutions have systematic policies and actions biased in favour of men's interests. Contrary to this belief, MacInnes (1998) highlights that the ability of men to dominate and oppress women in the private sphere is variably restricted by the state rules and regulations. Furthermore, Kandiyoti, (1998) in Kalabamu (2006) argues that power and the exercise of power is central to the definition of patriarchy.

The author denotes that power does not merely manifest itself in and through gender relations, but gender is constitutive of power itself insofar as relations which may not always literally be about gender utilize the language of sexual difference to signify or legitimize power differentials. Consequently, Kalabamu (2006) highlights that men derive their power from culturally constructed rules on marriage, inheritance, work, social status and participation in politics.

Facio (2013:1) defines patriarchy as:

...the gradual institutionalization of sex based political relations created, maintained and reinforced by different institutions linked closely together to achieve consensus on the lesser value of women and their roles. These institutions interconnect not only with each other to strengthen the structures of domination of men over women, but also with other systems of exclusion, oppression and/or domination based on real or perceived differences between humans, creating States that respond only to the needs and interests of a few powerful men.

Facio (2013) therefore conceptualises patriarchy as a system consisting of three (3) distinct social structures: i) the gradual institutionalization of sex-based relations; ii) the existence of a consensus on the lesser value of women; and iii) the existence of patriarchal institutions. Facio (2013:1) defines gradual institutionalisation as "the historical process that proves patriarchy is not natural, has not always existed, and is not identical in all cultures and in all generations". The existence of a consensus on the lesser value of women is based on "the tacit and subconscious agreement between each member of a community that women and everything relating to women is worth less than men, and everything relating to men" characterised using sexist language "which establishes the feminine as "the other" and the male as the norm and that which represents or contains the feminine" (Facio, 2013:1). Further, Facio (2013) states that the term consensus refers to an ideological standpoint and a language that explicitly devalues the role of women, relegating them only to the performance of household chores, in a social environment that is less worth than that of their male counterparts. Additionally, Facio (2013:1) defines patriarchal institutions as "the set of mechanisms, practices, beliefs, myths and relationships, organizing relatively stable patterns of human activity with respect to the distribution of resources, the reproduction of individuals, and the type of societal structures within a given patriarchy". Facio (2013) argues that these institutions include, but are not limited to the following: governments, the family, human languages, universities, hospitals, business corporations, and legal systems.

Patriarchy as a conceptual framework is thus derived from the above definitions as proposed by Kalabamu (2006) and Facio (2013) and was used as a basis upon which this study was conducted, *inter alia*, by examining the social structures of sex-based relations through which males dominated women, and gender dynamics as defined within the patriarchal institutions. The theoretical framework upon which this argument is based is adopted from Kalabamu (2006: 239), 'Patriarchy is both a system and an ideology that shapes and determines gender relationships and rights in a society.'

Research Methodology

3.0 Introduction

This section presents the research methodology and covers the following aspects: the study area, the research design, sample design and the criteria that were used for sample selection. The chapter also presents the major research instruments that were used to collect data, including their structure and administration. A conclusion, then follows, which shows the major highlights of the research methodology.

3.1 Study Area

The study area is Nswazwi Village in Botswana (see Figure 3.1). It is a village in the Central District of Botswana and is located close to the border with Zimbabwe. The GPS coordinates of Nswazwi village are: Latitude: -20.663044 | Longitude: 27.220492, 21°5'S 27°30'E (Google Earth, 2017). A baseline population of 2165 inhabitants was derived from Botswana Statistics. There was neither any new data to reflect the current population of Nswazwi Village nor any data available on the number of births and/or deaths and migrations from the area during the period 2011 to 2017 in order to provide an adjusted population statistic.

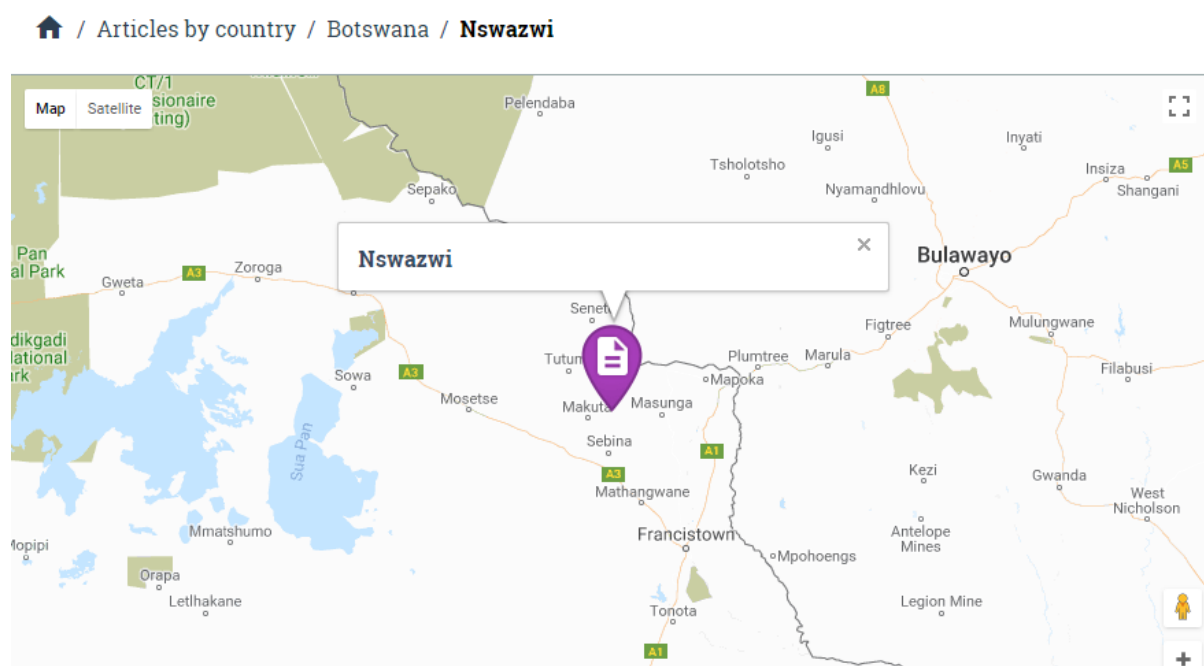


Figure 3.1 North East District Coordinates: 21°5'S 27°30'E: Source: Google Maps, 2017

3.2 Study Design

The research design for this study was a descriptive cross-sectional and an interpretive case study that was analysed through both a quantitative and qualitative approach. Questionnaires were used to evaluate the participants' responses and to determine their perceptions and experience with respect to gender dynamics in inheritance related cases. A descriptive statistical method coupled with a description of situations and events was used to analyse the data. Face-to-face interviews and focus-group discussions were to collect and triangulate the investigation.

3.3 Sample Design and Selection

3.3.1 Sampling Procedure

Systematic sampling was used as the major sampling procedure and carried out using a seven (7) step approach as suggested by Pasien et al. (2010), namely: i) defining the population as above; ii) choosing the sample size; iii) Listing the population; iv) assigning numbers to cases in the population; v) calculating the sampling fraction; vi) selecting the first unit and vii) selecting the sample.

3.3.2 Defining the Study Population

The study population that was recorded in Nswazwi Village in the 2011 Botswana census was 2165 inhabitants. There was neither new data to reflect the changes to the current population of Nswazwi Village nor any data available on the number of births and/or deaths and migrations from the area during the period 2011 to 2017 which could have influenced changes to the population. It was thus difficult to create a meaningful forecast of the population for 2017. As such, a baseline population of 2165 inhabitants were assumed in calculating the size of each household and a systematic sample. Using the ArcGIS data for the average household size in Botswana for 2015 of 3.7 people per household, an estimate of 585 households was considered for the study population for Nswazwi Village. This was derived as a ratio of the Total Population of Nswazwi Village divided by the National Average Household Size. The study population was therefore defined as comprising 585 households, made up of the male and female household heads, and sons and daughters of age.

3.3.2 Sample Size

The sample size was determined through a series of steps; firstly, the sample size of an infinite population was calculated and then secondly, this was applied to a baseline population of Nswazwi as a finite population in order to calculate the number of households that would be required for the study.

Selecting the sample

Using a random number to decide where to start on the sampling frame helped to identify the subsequent numbers to be selected. If the random number selected was 4, then the following households were selected as such from the list: 4th; 11th; 18th; 25th; 32nd and so on until 280 respondents for questionnaire administration were selected. Consequently, the remaining 46 respondents (326-280) were purposively selected from the desired sample size, with 20 respondents being selected for interviews and 26 respondents for focus group discussions.

4.0 DISCUSSION OF RESULTS

This section presents a discussion of the findings. The discussion is centred on how the data addresses the research objectives and is linked to the literature reviewed. This section also includes the results of the transcribed data from the interviews and focus group discussions. As a consequence of the above, the significance of demographic data in relation to the topic is highlighted. Further, the link between the research objectives and the results is exposed, and how the following helped to address the objectives: gender dynamics in the distribution of household property in inheritance related cases in the BaKalanga BakaNswazwi tribe; sibling alliances and conflict resolution in the distribution of household property; problems and challenges faced with inheritance related cases and the results from interviews and focus group discussions.

4.1 The Impact of Demographic Data on Research Topic

The results showed that 54%, (N=280) of males participated in the study while the percentage of female participants was 46%, (N=280). This reflected a relatively fair gender balanced sample. According to Leduc (2009), a gender balanced sample allows for a more gender sensitive research methodology that is usually more participatory. Leduc (2009) also argued that a gender balanced sample contributed greatly to empowering people, notably women. In this study, a gender balanced sample promoted the need for both men and women concerned with a problem to analyse an issue, understand its causes, and find solutions. It was therefore mandatory to have a gender balanced sample in order to socially construct knowledge from the perspectives of both male and female participants.

The study results also showed that the relative percentage of the educational background in relation to gender was higher for male respondents than female respondents whereupon the male respondents had attained higher educational qualifications across each defined educational category than their female counterparts at the secondary school educational level, tertiary level and vocational level. This implied that the male respondents were likely to be more informed than the female respondents and were likely to access information better on property rights, deceased estate management, and constitutional obligations regarding gender and inheritance than female respondents who had attained mostly a basic primary school education. These findings are supported in Bronwyn (2007) who argued that men were more likely to be literate on a global average, although women were more prevalent in some countries. Agrawal (2014) asserted that a large part of educational inequality was due to intra-sector inequality.

The results of the study showed that the majority of people, 87%, (N=280) did not have a will while 88%, (N=280) of the respondents indicated that there was no evidence of a family member leaving a will. It was evident that the elders did not draw up a will that could be used to guide an executor of a deceased estate in the distribution of the estate, thus leading to cases of intestate successions. A number of intestate succession cases have been reported through the courts in Botswana, namely: The case of *Tape v Matopo* 2007 (1) BLR 512 (CA) in which the respondent had been married to the deceased in community of property and together they had had four children. The deceased had subsequently commenced an adulterous relationship with the appellant, causing the respondent to leave the common home to live at her parents' house. The respondent took her furniture with her when she left, but left the children behind in the former common home. The deceased purported to marry the appellant and they cohabited for over 30 years. 10 children were born of the union between the deceased and the appellant. Upon the deceased's death, there was a dispute regarding the division of the estate ensued.' (2007 (1) BLR: 513). The findings of this study revealed that the lack of a will was a contentious issue as perceived by both male and female respondents.

4.2 Section B: gender dynamics in the distribution of household property in inheritance related cases in the BaKalanga tribe

The issue of gender dynamics in the distribution of household property in inheritance related cases in the BaKalanga tribe was explored. The above helped to address the first research objective which was stated as follows: "*to analyze socio-cultural factors influencing allocation of household property in inheritance decision making in the context of customary law in Nswazwi village.*" The social cultural factors that were identified included the following:

The birth order and its significance, the type of persons who were entitled to inherit property in the Kalanga culture, history of disinheritance in the family and the reasons thereof, asset preferences and ranking, and the procedures that were followed in the distribution of property in inheritance related cases among different social groups in the family at a Kgotla level.

Social Cultural Factors

Birth Order, Types of Persons Entitled to Inherit and History of Disinheritance

The results of the study indicated that birth order played a significant role in the distribution of property 73%, (N=280) while 27%, (N=280) of the respondents did not find birth order as having any significant role in the inheritance of property. It was evident that the inheritance of property was given priority to the first-born son and the last-born son as single major entities within the family structure notwithstanding the fact that the respondents also recognised the fact that any child was entitled to inheritance. The results show that the pattern followed in allocating inheritance thus, in most cases, first and last-born males are favoured. The allocation is silent on middle sons, daughters inclusive of married and unmarried. The findings here reveal the intersection of gender, birth order and marital status. The results also suggest that last born sons are more likely to be favoured as legitimate claimants to high order property (especially cattle and farmland) family inheritance. This is in contrary to the literature reviewed (Griffith 2002) that stated, the firstborn males are favoured as legitimate claimants to high order property. This therefore indicated that the first born male and the last-born males were highly likely to be at the top ladder as legitimate claimants. It was also evident in the study that females received minor considerations, for example, only 3%, (N=280) of the respondents indicated that the middle daughter was entitled to inheritance, while only 25%, (N=280) of the respondents believed that the last-born daughter was entitled to inheritance and 2%, (N=280) of the respondents believed that the first-born daughter was entitled to inheritance.

Procedures followed to distribute property

The procedures that were followed to distribute property inheritance among different social groups in the Kalanga families were given as follows: i) female siblings: the general sentiments regarding married female siblings was that married women were normally not given an opportunity to inherit from their parents' with the assumption that they will inherit from their husband's estate. Boys and girls should have the right to inherit the same amount of their parent's property, regardless of whether they are married or not (COHRE, 2004; Griffith, 2002). Furthermore, Griffith (2002) reported *invo* inheritance dispute cases which took place in Molepolole, Kweneng District, Botswana. One case involved two sisters and the other a sister and her brother. Faced with the constraints of a patriarchal society, women find themselves differently situated in terms of their power and ability to construct and pursue their claims to property. The first case showed that two sisters argued over the family household inheritance. The second case showed that a brother and a sister were at loggerheads over the household inheritance, which the sister had contributed to a large extent in building the house. Disputes discussed show women overcoming the constraints facing them. These women are able to reformulate the terms of debate that confront them to enable new forms of discourse. These cases relate to the findings of the research in the sense that in both scenarios siblings' conflict over family property inheritance.

The argument presented is that women are always under the shadow of men. If they are not married, they are under the shadow of their father, if married under their husband and when old (never married) under the shadow of their sons. Given the patrilineal nature of Tswana society, it is not surprising that male offspring are privileged over female offspring when it comes to inheritance under customary law with the eldest son receiving the greatest share of all the property in recognition of the responsibilities that he adopts as head of the family. In the dispute between the two sisters, (*KhumoetsileModibedivKelebogileKelerile*) in the Kweneng District, Molepolole, Botswana. The dispute represented a longstanding conflict between the sisters over control of their parents' estate. The two sisters were the only surviving children of the deceased. There were no male children to take control of the inheritance. The judgement taken was to split equally between the two sisters what was left. In another case of Goitsemanang (unmarried sister) and her brother, the sister argued that she had built the family compound from her earnings. The judgement consequently favoured the sister over her brother. (Griffith 2002).

The assumption that married women should not inherit from their parents, but rather from their husband's side is not supported by the findings in this study. The literature reviewed (Griffith, 2002) does not support the results (married women not inheriting from their parents). The findings of the study and the literature reviewed indicate that married women suffer a certain discrimination which they are not supposed to suffer if everyone was aware of the need to promote equal and fair sharing amongst siblings. Furthermore, the issue of female siblings who were never married is that they were given an opportunity to inherit but given less than what their male counterparts would generally receive.

Divorced female siblings were given an opportunity to inherit from their parents, although the share given to females was usually less than the share given to males; ii) married male siblings were given an opportunity to inherit. However, male siblings who were never married and those who were divorced were also given an opportunity to inherit. The findings of this study show that generally, females whether married or not, get a small portion of the share, while the males, whether married or not generally get a larger portion, with last born and first-born males getting the biggest portion. Griffith (2002) confirms, although that a daughter can acquire livestock and not infrequently does acquire livestock, her share is never on a par with that of her brothers, especially her eldest brother, who takes over the responsibility for the family group on his father's death.

Household Headship and Allocation of Property

The perceptions on whether male and female headed households applied similar customary procedures in dealing with inheritance related issues were also investigated. This helped to address the research objective which was stated as follows: *“to examine the role of household headship on allocation of household property inheritance in Nswazivi village”*. On the issue of household headship, about 50%, (N=280) of respondents affirmed and 50%, (N=280) disagreed whether male and female headed households applied similar customary procedures in the distribution of property. This therefore means that siblings are at the mercy of the household headship to get a share of their family household property inheritance. Furthermore, the equal balance in the sample between male headed households and female headed household is best explained by Van De Wall (2015:1) who argued that “nearly one in four households in Africa are headed by a woman...with countries in Southern Africa having substantially higher rates while households in West African countries are less likely to be headed by a woman.” Van De Wall (2015) further argued that the trend in all countries was that female headship has been increasing.

The results of the study showed that males favoured male children and females favoured female children in the distribution of property. On women favouring female children, Kalabamu (2009) observed that parents are increasingly inclined to favour daughters over sons, partly as an appreciation of current financial and material investments made by daughters (notably unmarried ones) in the accumulation of family wealth and house construction. On men favouring male children, Wanjala (2014) observed that in most African communities, the rights over land were mostly passed to male household members through inheritance, while women gained access to land through their relationship with a male relative, father, husband, brother and so on. Inheritance was an important public policy in most African countries largely because it was seen as part of the larger problem of property rights regimes that were discriminatory against women.

4.3 Section C: Sibling Alliances, Conflict and Conflict Resolution

The issue of sibling alliances and conflict in the distribution of household property was observed from several fronts. This section helped to address the research objective which was stated as follows: *“to analyze the role of sibling alliances in household property inheritance contestations”*. The reasons for sibling conflict in the study were attributed to the following: conflict arising from half siblings inheriting from a deceased estate, greediness of siblings leading to unfair sharing, jealousy of siblings, and parents acting as stimulants of sibling conflict. The above results are supported in Griffith (2002) who observed that compared with Tswana women, Tswana men have a greater degree of control over access to resources which ties this argument to unfair sharing and parents acting as stimulants of sibling conflict. The mechanisms for resolving conflict were highlighted and the following were suggested as relevant means for resolving conflict: i) the use of contemporary courts, ii) the use of the traditional Kgotla, and iii) the engagement of the traditional family structure to intervene in dispute resolution. This also included the engagement of the surviving parent, uncles and the extended family as mediators to resolve conflict. On conflict resolutions, the literature reviewed, Griffith (2002) concurs, when parties are in dispute, especially when family matters are concerned, the matter will first be raised privately with the senior male relatives of the parties on both sides. When this fails to promote agreement, the dispute will be taken to the headman of one party's Kgotla. In the event of failure, the dispute will move up through the social hierarchy from headman to sub-ward head to the ward head and end up, finally in the chief's Kgotla.

A contentious issue in sibling rivalry has been noted to be that arising from half siblings inheriting from a deceased estate. Mokobi (2014:140) observed that in Botswana, the possibility of a child born out of wedlock inheriting from his or her father's estate continues to cause disquiet in legal circles. On a similar note, it is revealed that 76.1 percent of births that occurred and were registered in 2014 were born to single mothers, accounting for the largest percentage of all the births, followed by the married with 23.5 percent. The divorced and widowed accounted for 0.3 percent of all births in 2014. (Statistics Botswana, 2014). This therefore indicates that there is a large population of children who are not born in marriage who are susceptible to legal battles especially in the context of family inheritance.

With the new law for children's birth certificates to reflect non marital paternity, this might be a solution to this rivalry implying that children can be legal custodians of their father's property, even if they were born out of wedlock.

4.4 Section D: Problems, Challenges and Solutions

The following problems and challenges in property inheritance were highlighted in the findings, namely conflicts among surviving siblings, unfair/ unequal distribution of family assets, embedded gender bias in civil and customary processes and procedures (at household and community level), birth order bias, lack of a will, discrimination of married female children, lack of consensus on inheritance related issues, and intensive siblings' rivalry over inheritance. Conflicts among siblings resulted in hostilities that divided families. In some instances, siblings are alleged to have killed one another over inheritance of property.

Inequitable distribution of property based on birth order basis was also a major source of conflict. The lack of a will to guide the execution of a deceased estate was also a major concern. However, Conway (2016) argued on the same note that when a parent makes a will, they should be aware that although their children may be reasonable adults in every other respect, when it comes to inheritance, maturity dissolves into a puddle of childish resentments. The proposed solution was that parents were required to make a fair and equal will in order to avoid any legal contests or disputes that arose from the distribution of their estate. Griffith (2002) confirms that unfair and unequal distribution occurs since women are given a less share compared to men. Furthermore, customary laws in Botswana traditionally excluded women from property inheritance. (Otlhogile 1994; Schapera 1994 in Kalabamu 2009). Kalabamu (2009) further illustrates that conflicts arise because of the new civil laws of inclusion, in which women can inherit property, but these revisions have not been effected in customary procedures.

4.5 Focus Group Discussions Results

The results from the three (3) focus group discussions indicated that the wife took over all assets following the death of her husband. In the case of the death of a surviving married wife, the respondents agreed that, the last born child should take over the house/home. The respondents also advocated for parents to make a will.

On a different note, the respondents stated that when partners have been living together, but not married, no one from outside has a right to inherit anything whilst the other partner is still alive, in fact the matter should be treated just like that for a married couple although some of the participants felt that the partner should not inherit since it is irresponsible to stay together in a cohabitation. Furthermore, other authors (Smock 2000 in Mokomane 2006) view cohabitation as a threat to the institution of marriage and may play a major role in its gradual decline. However, the prevailing policy in Botswana on cohabiting couples is that marriage should be encouraged (Otlhogile, 1994:3). But there are other factors that contribute to sexual relations which commonly take place within heterosexual relations in marriage. These reflect multiple partnering by women and men in Botswana that occur in and outside marriage. Socio-cultural factors which contribute to the fluidity of sexual relations outside marriage boundaries in contemporary Tswana society in the country include a significant increase not only in the proportion of those never married, but also a high percentage of de jure women-headed households, unmarried mothers, and high divorce rates (Mokomane, 2004). It is not surprising that within the plethora of plausible sexual relations in the country, the government project under the Ministry of Home Affairs, commonly known as *Re a Nyalana* (We are Marrying) is a state concerted effort to encourage cohabiting partners to solemnize/institutionalize the relationship, thereby invariably contain unbounded pluralistic sexual liaisons by enforcing normative heterosexual relations in marriage. The programme (*Re a Nyalana*), aimed at helping those who cannot afford the cost of marriage give their union legal recognition, was launched in 2011 when the first mass wedding ceremony was held at Bokaa Kgotla in the Kgatleng District. *Re a Nyalana* is a non-governmental organisation formed after a Presidential Commission on "Social Ills", chaired by Kgosi Puso Gaborone, discovered cohabitation to be a growing problem in Botswana. The commission also found that partners and children from such relationships were not legally protected and often lose out on inheritance when the other partner dies. The findings led to the formation of *Re a Nyalana* Association, which is aimed at educating Batswana to the economic and social disadvantages of cohabiting, as well as encouraging couples to formalise their relationships. (Dubani, 2017).

Consequently, not only is cohabitation unrecognised as an institution by the two systems of law that operate simultaneously in the country (general and customary law), but neither of the two systems gives cohabitants any legal protection.

Under customary law, for example, there is no length of cohabitation considered to amount to marriage or give rise to inheritance rights between the partners or their issue (Dow and Kidd, 1994:32 in Mokomane 2006). The literature reviewed and the results of this study indicate that although it is appreciated that cohabiting couples may work together in building their home or paying the bills or maintaining their home, in the case of death of one partner, if the parents of the deceased partner are selfish, they will claim and fight to take everything acquired in such a relationship. There is no absolute protection of the law covering or protecting cohabiting partners as opposed to married couples, regardless of the number of years the cohabitation was. Cases may be taken to the court of law, in case one party wants to appeal the disinheritance over assets they worked for.

5.0 Recommendations

The following recommendations based on the findings of this study are thus made:

Parents should make a will that will guide the distribution of the property to be inherited. Secondly, property inheritance should be fair, equal and unbiased. All children, regardless of gender, age and or marital status should be considered in the process of distribution. The communities should be sensitised, with discussions being done at a Kgotla level focusing on the need for a fair and equal distribution. Thirdly, children under the legal age of majority in Botswana, which is below the age of 21, should be protected under a trust to manage large assets, like houses and farms so that all children equally benefit from the trust. Lastly, the application of the common law of inheritance should be amended to include all sibling categories, including those not included currently, then the application of this law must be encouraged on any deceased family. The policies on property inheritance should be standard and they should tally with the revised common law of inheritance.

5.1 Conclusion

The study covered all the intended research objectives as stated in section 1.1. The research methodology that was used to investigate the problem space was found to be appropriate. However, there was a minor challenge with the administration of research instruments in that in a few homesteads, people who were supposed to be interviewed had gone to the fields for ploughing since the survey was conducted during the ploughing season. These people were then rescheduled for Sunday since they do not go to the fields on Sundays. Generally, the respondents were very welcoming and willing to share their experiences with the researcher. The research topic was of interest to the community looking at their level of enthusiasm displayed during data collection. The approach used, questionnaire, focus group discussions and face to face interviews managed to extract people's opinions on the topic investigated.

The literature reviewed in the proposal argued that there seemed to be a gender imbalance in distributing property inheritance. The literature reviewed provided the theoretical framework upon which this study was conducted. The findings of the study affirmed that the distribution of property inheritance was gender biased. The literature further stated that Botswana was guided by both the customary law and the common law in distributing inheritance. This was confirmed in the research findings that at times the customary practice and norm was used to guide inheritance whilst in other cases the common law was used to resolve disputes.

There were several problems and challenges that were identified in inheritance allocation. These included: unequal sharing, gender biased allocation, lack of a will to guide execution, polygamous and cohabiting partners being excluded from the distribution of an estate, greedy and selfish siblings who failed to accommodate other siblings and the extended family handling the distribution using their own unfair discretion. The findings of the study indicated that the community was generally unhappy about how the distribution was handled. In resolving these challenges, there were suggestions revealed from the findings. These were: parents to make a fair will that would guide execution, siblings to share equally in the absence of a will, and the need to have a consensus on how distribution should be handled. It was also encouraged that parents should avoid being gender biased in allocating property inheritance. It is important to note that several families have adjusted the norm and are allocating inheritance fairly not based on gender or age. Nonetheless, a significant enough number is still held back to the old practice of favouring sons over daughters.

Sibling rivalry arising from inheritance conflicts was confirmed by the research findings. Siblings from the same parents had conflicts over the inheritance and siblings from different parents (half siblings) also experienced conflicts over inheritance. These conflicts emanated from the fact that gender, age, blood relations, marriage and other social factors were used to allocate inheritance. These factors led to other groups being discriminated and these discriminations led to disputes. Disputes were reported at the customary court and at the magistrate court of law.

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