

A LEGAL ANALYSIS OF GENDER DISCRIMINATION IN THE HOUSING SECTOR IN NIGERIA

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Introduction

Housing discrimination is the illegal practice of discriminating against buyers or renters of dwellings based on race, colour, religion, national origin, sex, family status or disability.¹ A quick survey of the housing sector in Nigeria would reveal gender discrimination as the leading form of housing discrimination in the country.

An online survey conducted by the Guardian revealed that 83.3% of Nigerian women have experienced housing discrimination as single adults.² Single working-class women in Nigeria struggle to rent property particularly in sought after states such as Lagos, Abuja, Kano, Oyo among others. Some women have to go as far as presenting their brothers, friends, co-workers or even strangers to act as their husbands or partners just to secure accommodation.



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[1] Retrieved from <https://www.bankrate.com/glossary/h/housing-discrimination/> on November 11, 2020.

[2] Retrieved from <https://guardian.ng/features/single-men-suffer-rental-housing-discrimination-its-not-just-women/> on November 9, 2020.





In August 2018, BBC News reported that many landlords in Nigeria suspect single women of being prostitutes, making it difficult for them to rent apartments,³ a report which was corroborated by Punch newspaper that same month.⁴

Stears Business also reported the same issue in 2019 as did the Nation Newspaper in August 2020,⁵ establishing that this is a trend that is becoming progressively worse.

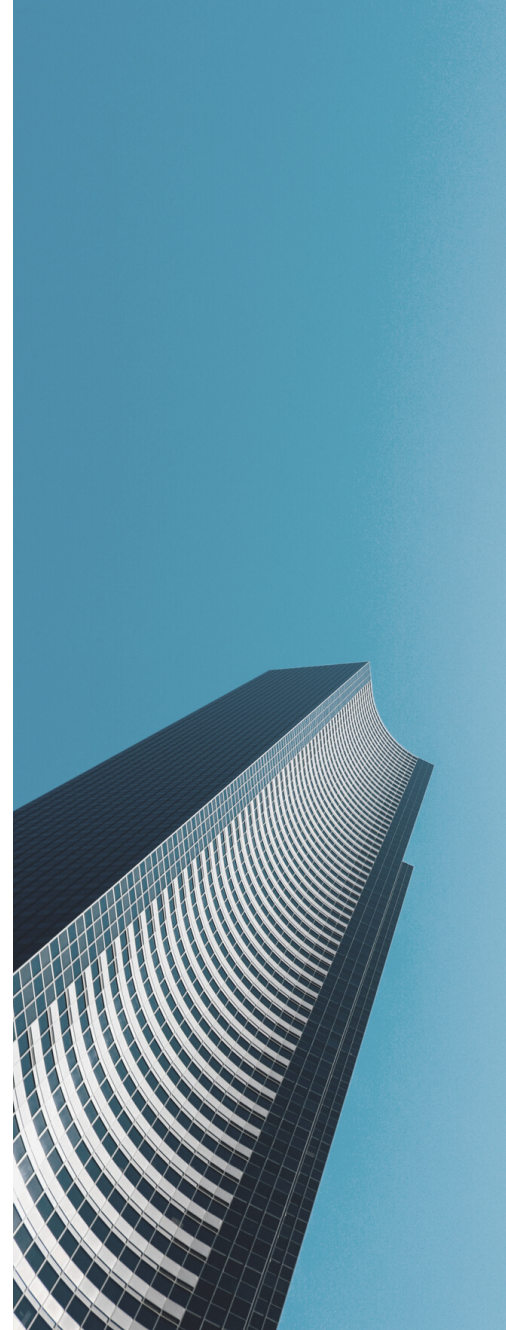
While it has been argued that single men also face housing discrimination on the basis that landlords often profile them as fraudsters, popularly referred to as “yahoo boys”, it is clear that single women always have it worse. Today, landlords continue to refuse to rent property to single women for no reason other than their gender and age.

Who is a Tenant?

The Supreme Court in *Abeke v Odunsi & Anor* (2013) LPELR- 20640(SC) defined a tenant as follows:

*...Unless the context otherwise requires, "tenant" includes a sub-tenant or any person occupying any premises whether on payment of rent or otherwise but does not include a person occupying premises under a bonafide claim to be the owner of the premises." The qualification, therefore, for becoming a tenant under the law is lawful occupation. See; *Ibiyemi Odunje v Nigeria Airways Ltd* (1987) NWLR (Pt.55) 126.⁷ (Underlining for emphasis).*

From the above definition of a tenant stated by the Court, it is clear that there is no gender requirement for being a tenant in Nigeria, it is enough that the tenant is a person in law. The Court established what a person in law means in *FRN v Dariye* (2011) LPELR- 4151(CA), when it held:



"Today, landlords continue to refuse to rent property to single women for no reason other than their gender and age."

[3] Retrieved from <https://www.bbc.com/news/world-africa-45169688> on November 9, 2020.

[4] Retrieved from <https://punchng.com/landlords-dread-renting-out-their-houses-to-us-they-see-us-as-prostitutes-single-women/> on November 9, 2020.

[5] Retrieved from <https://www.stearsng.com/article/single-women-cannot-rent-property-in-nigeria> on November 9, 2020.

[6] Retrieved from <https://thenationonline.ng/what-do-landlords-have-against-single-ladies/> on November 9, 2020.

[7] *Abeke v Odunsi & Anor* (2013) LPELR-20640(SC)

"... So far as legal theory is concerned, a person is any being whom the law regards as capable of rights and duties. Any being that is so capable is a person, whether a human being or not, and no being that is not so capable is a person; even though he be a man...".⁸

Flowing from the above, it suffices to say that a tenant may be a man or a woman so long as such a person has the capacity to pay rent and obtain lawful occupation of the property.

It is therefore surprising that single women in Nigeria are subjected to housing discrimination on the basis of their gender and marital status even where they have shown that they have the capacity to pay the necessary rent and other charges necessary for lawful possession of rental properties.

What Constitutes Discrimination?

The United Nations Human Rights Committee in General Comment No.18 on Non-Discrimination defines discrimination to include:

"Any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms." (Underlining for emphasis).

The Convention on the Elimination of all Forms of Discrimination against Women provides greater protection for women as in Article I, it defines discrimination against women to mean;

"Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status on a basis of equality of men and women, of human rights and fundamental freedoms in the economic, social, cultural, civil or any other field." (Underlining for emphasis).

It is important to contextualise and consider the position of statute and case law on discrimination in Nigeria especially in relation to acquisition and rental of property.

In the case of *NMCN v Adesina* (2016) LPELR-40610(CA), the Court, borrowing from the Black's Law Dictionary, Ninth Edition defined discrimination as a failure to treat persons equally when no reasonable distinction can be found between those favoured and those not favoured.

Section 42 of the 1999 Constitution of the Federal Republic of Nigeria also provides that;

"A citizen of Nigeria of a particular community, ethnic group, and place of origin, sex, religion, or political opinion shall not, by reason only that he is such a person:

a) Be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions, or political opinion are not made subject to; or

b) Be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or

administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, and places of origin, sex, religions or political opinions."

This provision was restated by the Court in *Okafor & Ors v Ntoka & Ors* (2017) LPELR-42794(CA).

Housing Discrimination Laws in Nigeria.

Although at the moment, Nigeria does not have specific laws against housing discrimination, the Constitution provides some guidance in this respect.

Section 43 of the Constitution states very clearly that every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria. While the words 'acquisition and ownership' used by the drafters of the Constitution may be interpreted to connote an outright purchase of a property, it is submitted that this provision may be extended to include tenancy arrangements as they also qualify as a form of acquisition. This is because a tenant pays rent to acquire temporary possession of the rental property.

In the same vein, there is no direct judicial authority against discrimination on the basis of gender in Nigeria. However, it can be deduced from the recent decision of the Court of Appeal in *Chiduluo & Ors v Attanse & Anor* (2019) LPELR-48243(CA) that the courts are against property discrimination against women.

[8] Note that man includes man and woman in this context

[9] For example, marital status.

In this case, while deciding on whether the Igbo native law and custom which disentitles a female from inheriting her late father's estate is in conflict with Section 42(1), (a), (2) of the 1999 Constitution, the Court held:

"It is now settled law that the Igbo native law and custom which disentitles a female from which inheriting her late father's estate is in conflict with Section 42(1) & (2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). See Okafor v. Isitorh & Anor (2015) LPELR-25892 (CA)."

The Supreme Court has also described such a practice as not only barbaric but the height of insensitivity, shameful, unacceptable and a custom that only belonged to the Stone Age.

Housing Discrimination Laws in Other Jurisdictions.

In the United States, the Fair Housing Act was enacted in 1968 to prohibit all forms of discrimination in the purchase, sale, rental or financing of housing. The Act was created on the principle that Americans should have an equal opportunity to seek a place to live, without being afraid of discrimination due to factors outside their control.

The Act forbids discrimination in housing based on the following seven factors: race, skin colour, sex, familial status, nationality, discrimination or religion.

In the United Kingdom, the Equality Act 2010 also contains provisions against housing discrimination.

In South Africa, Section 4(1) of the Rental Housing Act 1999 provides:

"In advertising a dwelling for purposes of leasing it or in negotiating a lease with a prospective tenant or during the term of a lease, a landlord may not unfairly discriminate against such prospective tenant or tenants, or the members of such tenant's household or the bonafide visitors of such tenant, on one or more grounds including race, gender, sex, pregnancy, marital status, sexual orientation, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, language and birth."

Recommendations/Conclusion

While it is agreed that landlords should have a say in who they have as their tenants, the practice of denying single women the opportunity to rent property on the basis of their gender is not only unjust but also unconstitutional.

It is therefore important that Nigeria takes a cue from countries such as the United States, United Kingdom and South Africa among others to have specific laws/regulations checking gender discrimination in the housing sector.

This is crucial because having a legal framework in place would play an important role in curbing this menace. Furthermore, there should be creation of awareness on the equal rights of women. It is hoped that as a signatory to several international covenants, some of which prohibit discrimination against women, the Nigerian government would begin to take a cue

from its peers in demonstrating a socio-political will to tackle these deep-seated discriminatory practices dictated largely by cultural and religious norms.

In conclusion, the unequal status of women (in this context, as it relates to housing) has been described by the international community as dated and highly unacceptable. Single women in several countries such as the United States, United Kingdom and South Africa do not experience this difficulty. All that is required to rent property in these countries is good credit and adequate purchasing power, gender is almost an inconsequential factor.

The continuous unequal treatment of women in the housing sector on the basis of gender is not only discriminatory and infuriating but it continues to counteract the achievement of an egalitarian society in Nigeria, one that guarantees everybody's freedoms.

Finally, although litigation on housing discrimination is an uncharted territory in Nigeria, it would be very interesting to have this issue adjudicated upon in our courts. It is hoped that when this is done, this paper would be a compass to providing direction to a successful claim.

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