

WHO OWNS THE DEAD? BURIAL, MEMORY AND FAMILY AUTHORITY UNDER NIGERIAN CUSTOMARY LAW*

Abstract

Disputes over the burial of deceased persons have become a recurring feature of Nigerian litigation, often bringing customary norms into direct confrontation with individual wishes, religious convictions and competing family claims. Despite the frequency of such disputes, Nigerian legal scholarship has devoted limited attention to the deeper jurisprudential question of who possesses legal authority over the dead. This article examines the legal foundations of burial rights, posthumous family authority and the protection of the memory of deceased persons under Nigerian customary law. Through a doctrinal analysis of judicial decisions, customary law principles and relevant statutory provisions, the article explores the extent to which customary law recognises continuing obligations owed to the dead and the corresponding rights exercisable by surviving relatives. It argues that while Nigerian courts have resolved numerous burial disputes, the absence of a coherent legal framework has produced uncertainty regarding the relationship between customary practices, personal autonomy and contemporary constitutional values. The article contends that the law should move beyond the narrow question of burial location to develop a principled understanding of posthumous dignity and family authority within Nigeria's plural legal order. It concludes that a clearer jurisprudence of the dead is necessary to promote certainty, cultural legitimacy and social harmony in the resolution of burial-related conflicts.

Keywords: Customary Law, Burial Rights, Posthumous Dignity, Family Authority, Deceased Persons, Nigerian Jurisprudence.

1. Introduction

Few legal disputes expose the continuing influence of customary law within contemporary Nigeria as vividly as disputes concerning the burial of the dead. Questions relating to where a deceased person should be buried, who possesses authority to organise funeral arrangements, and whether the wishes expressed during the lifetime of the deceased should prevail over the claims of surviving relatives have repeatedly occupied the attention of Nigerian courts. Although such disputes often arise in circumstances of grief and emotional vulnerability, they invariably raise legal questions of considerable complexity. Beneath the immediate controversy lies a deeper contest concerning authority, identity, family responsibility and the place of customary values within a modern constitutional order. Burial disputes therefore occupy a unique position within Nigerian jurisprudence, situated at the intersection of law, culture, religion, kinship and communal memory.¹ The prominence of these disputes is closely connected to the manner in which death is understood within many Nigerian customary systems.

In numerous communities, death is not regarded merely as a biological event that terminates social existence. Rather, it is viewed as a transition from one stage of communal membership to another. The deceased remain connected to the family, lineage and ancestral community from which they emerged during life, and burial assumes significance far beyond the physical disposal of human remains.² Funeral rites are frequently understood as the performance of obligations owed not only to the deceased but also to the living family and the wider community whose history, traditions and collective identity are embodied in the person who has died.³ It is for this reason that disagreements concerning burial arrangements often generate intense social conflict. What appears at first sight to be a dispute over funeral logistics frequently conceals deeper disagreements concerning lineage affiliation, communal belonging, inheritance of family authority and the preservation of cultural continuity. Yet the assumptions that traditionally informed burial practices have become increasingly difficult to sustain in a rapidly changing society. Urbanisation, migration, inter-ethnic marriages, religious pluralism and the growth of individual rights consciousness have altered the social environment within which burial decisions are made. Increasingly, disputes arise between surviving spouses and extended families, between customary expectations and religious convictions, and between the personal wishes of deceased individuals and the claims advanced by relatives invoking lineage obligations and ancestral traditions.⁴ The result is a recurring tension between two competing visions of the individual: one that emphasises personal autonomy and regards burial preferences as an extension of human dignity and self-determination, and another that views the individual as inseparable from the family and community whose interests continue to subsist even after death. Nigerian courts are therefore frequently required to determine not merely where a person should be buried, but whose understanding of identity, obligation and belonging ought to receive legal recognition.

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¹ *Okonkwo v Okagbue* [1994] 9 NWLR (Pt 368) 301.

² E Bolaji Idowu, *African Traditional Religion: A Definition* (SCM Press Ltd 1973) 187.

³ A N Allott, *Essays in African Law* (Butterworths 1960) 118.

⁴ *Olowu v Olowu* [1985] 3 NWLR (Pt 13) 372.

Despite the frequency with which such disputes appear before the courts, comparatively little attention has been devoted to the broader jurisprudential question that underlies them all: who, in law, possesses authority over the dead? Existing scholarship has understandably focused on customary law, succession, family relations and burial disputes as discrete legal subjects.⁵ What remains largely underdeveloped, however, is a coherent theory explaining why particular persons or groups acquire authority over human remains, how burial wishes ought to be evaluated, and whether the law recognises continuing obligations toward the deceased after legal personality has ceased. This article argues that Nigerian customary law embodies a distinct conception of posthumous authority grounded in family responsibility, communal identity and cultural continuity. It further contends that the absence of a principled jurisprudence of the dead has contributed to uncertainty within Nigerian burial law and has obscured the proper relationship between customary authority, personal autonomy and constitutional values. Accordingly, the article advances a dignity-centred framework through which burial disputes may be resolved in a manner that respects both Nigeria's customary traditions and the demands of a modern constitutional democracy.

2. Conceptual Foundations of Death, Burial and Family Authority Under Nigerian Customary Law

The legal significance of death under Nigerian customary law cannot be fully understood through the narrow lens of biological cessation. While modern legal systems generally proceed on the assumption that legal personality terminates upon death, many African customary traditions adopt a more expansive conception of the relationship between the deceased and the living. Within numerous Nigerian communities, death is not regarded as extinction but as a transition into a different form of social existence.⁶ The deceased remain embedded within family history, communal consciousness and ancestral memory, continuing to occupy a place within the moral and cultural universe of the living. Consequently, legal questions arising after death often transcend the ordinary concerns of succession or estate administration and instead engage deeper issues concerning identity, kinship and communal responsibility.

This understanding reflects a broader characteristic of African customary thought. The individual is not ordinarily perceived as an isolated legal actor whose rights and obligations exist independently of family and community. Rather, personhood itself is often understood through relationships.⁷ Membership of a lineage, participation in communal life and connection to successive generations form part of the individual's social identity. Death therefore alters, but does not entirely dissolve, these relationships. The deceased cease to participate in communal life as living persons, yet they continue to be remembered, honoured and symbolically integrated within the family structure from which they emerged. It is this continuing connection that explains why disputes concerning the dead frequently generate claims that extend beyond personal preference and enter the realm of communal obligation. Against this background, burial assumes a significance far greater than the disposal of human remains. In many Nigerian communities, burial represents the formal completion of the deceased's transition from the world of the living into the ancestral realm.⁸ Funeral rites are therefore not merely ceremonial observances but important social institutions through which families acknowledge continuity between generations and fulfil obligations regarded as essential to cultural legitimacy and communal harmony. The failure to accord a deceased person a proper burial may attract not only social disapproval but also a perception that important duties owed to both the dead and the living have been neglected.⁹ Although burial practices vary considerably across ethnic and cultural groups, a recurring theme remains the understanding that burial serves collective interests extending beyond the wishes of any single individual. Through burial rituals, communities preserve cultural memory, reinforce family bonds and publicly affirm the place occupied by the deceased within the lineage and the broader social order.¹⁰

The centrality of the functions helps explain why customary law frequently vests authority over burial arrangements in the family rather than exclusively in a surviving spouse or other individual claimant. In many customary systems, burial is viewed as a matter affecting lineage interests and communal identity, with the consequence that decisions concerning funeral rites are regarded as collective responsibilities.¹¹ The authority exercised by family members does not arise from ownership of the deceased or from proprietary rights over human remains. Instead, it is rooted in the belief that family members bear continuing obligations toward the deceased and must ensure that those obligations are discharged in a manner consistent with custom and communal expectations. The deceased is thus perceived not solely as an autonomous individual but also as a member of a continuing family community whose history extends both backward to ancestors and forward to future generations.

⁵ E I Nwogugu, *Family Law in Nigeria* (3rd edn, HEBN Publishers Plc 2014) 391–396.

⁶ J S Mbiti, *African Religions and Philosophy* (2nd edn, Heinemann Educational Books 1990) 24.

⁷ I A Menkiti, 'Person and Community in African Traditional Thought' in R A Wright (ed), *African Philosophy*:

⁸ Mbiti (n 6) 122.

⁹ B Ray, *African Religions: Symbol, Ritual and Community* (2nd edn, Prentice Hall 2000) 89.

¹⁰ A A Oba, 'Religious and Customary Laws in Nigeria' (2002) 51 *Emory Law Journal* 881, 899.

¹¹ Nwogugu (n 5) 394.

The above conception of family authority is intimately connected with customary understandings of ancestry. Across many Nigerian societies, ancestors are not viewed merely as historical figures but as enduring symbols of family continuity and collective identity.¹² Funeral rites therefore perform functions that are simultaneously legal, cultural, social and spiritual. The burial process affirms the deceased's place within the lineage, strengthens communal solidarity and preserves the continuity of traditions through which communities define themselves. Seen from this perspective, disputes concerning burial location often conceal a more profound disagreement concerning family identity and lineage affiliation. A family asserting authority over burial arrangements is frequently asserting a claim that the deceased belongs, both culturally and historically, within its communal sphere.¹³

The social transformations of contemporary Nigeria have, however, exposed significant tensions within these traditional assumptions. Migration, urbanisation, inter-ethnic marriages and religious conversion have altered patterns of family life and weakened the relative homogeneity that once characterised many customary communities. Individuals increasingly express burial preferences that diverge from customary expectations, while surviving spouses frequently advance claims that conflict with those of extended family members.¹⁴ These developments have forced courts to confront difficult questions concerning the extent to which customary authority should yield to personal autonomy. The emergence of constitutional values has intensified the debate still further. Principles such as dignity, equality, religious freedom and individual choice now occupy a central place within Nigeria's legal order, yet they occasionally conflict with customary norms that continue to command substantial social legitimacy.¹⁵

Understanding burial disputes in Nigeria therefore requires more than an examination of succession law or family law in their conventional forms. Such disputes engage competing conceptions of personhood, family authority, cultural identity and constitutional citizenship. They reveal the continuing influence of customary traditions while simultaneously exposing the pressures exerted by modern conceptions of individual rights and autonomy. It is within this complex normative environment that Nigerian courts have been required to develop principles governing burial disputes. The manner in which they have attempted to perform that task forms the focus of the next section.

3. Burial Disputes and the Development of Nigerian Judicial Doctrine

The cultural and legal significance attached to burial within Nigerian customary law has inevitably generated substantial litigation. For decades, Nigerian courts have been required to resolve disputes arising from competing claims to the bodies of deceased persons, disagreements concerning burial locations, and conflicts between surviving spouses and members of the deceased's extended family. Although such cases are often presented as disputes over funeral arrangements, the underlying issues are considerably more profound. Questions concerning burial frequently implicate competing claims of family authority, lineage affiliation, communal identity and personal autonomy. The courts have therefore been compelled to navigate a complex normative terrain in which customary law, social expectations and evolving constitutional values intersect.¹⁶

A central turning point in the development of Nigerian burial jurisprudence is the decision of the Supreme Court in *Okonkwo v Okagbue*.¹⁷ The case remains the most influential judicial pronouncement on burial disputes in Nigeria, not merely because of its outcome but because of the broader assumptions that informed the Court's reasoning. Faced with competing claims regarding the burial of a deceased person, the Court declined to approach the matter as one involving ordinary personal preference or private entitlement. Instead, it recognised the continuing relevance of customary law and family interests in determining the appropriate disposition of the deceased.¹⁸ The significance of the decision lies in its implicit acknowledgment that burial engages interests extending beyond the immediate wishes of individual claimants. By treating customary obligations and family relationships as legally relevant considerations, the Court affirmed a conception of the deceased as remaining connected to a wider network of social and communal relationships even after death.

The jurisprudential importance of *Okonkwo v Okagbue* extends beyond the particular facts of the dispute. Properly understood, the decision reflects judicial recognition of a reality deeply embedded within many Nigerian customary systems: burial is not merely a private event but a communal act through which family identity and

¹² Idowu (n 2) 189.

¹³ *Okonkwo v Okagbue* (n 1).

¹⁴ M O A Ijalaye, 'Customary Law in a Changing Nigerian Society' (1991) 35 *Journal of African Law* 112.

¹⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 38 and 42.

¹⁶ Allott (n 3) 121.

¹⁷ *Okonkwo v Okagbue* (n 1).

¹⁸ *ibid* 324–326.

lineage continuity are publicly affirmed. The Court did not expressly articulate a theory of posthumous authority, nor did it attempt to develop a comprehensive framework for determining burial rights. Nevertheless, the judgment reveals an underlying assumption that questions concerning the dead cannot be resolved solely through the language of individual autonomy. The deceased remains situated within a cultural and familial context that the law cannot ignore without disregarding the social realities from which burial disputes arise. A similar judicial approach is evident in *Olowu v Olowu*,¹⁹ where the Supreme Court was again required to consider issues touching upon burial and customary law. Although arising within a different factual setting, the decision reinforced the principle that burial disputes must be resolved with due regard to the customs governing the deceased's family and community. The case further illustrates the reluctance of Nigerian courts to detach questions of burial from the broader social structures within which individuals live and die. What emerges from these authorities is a consistent judicial awareness that burial performs functions extending beyond the immediate disposal of human remains. It affirms communal membership, preserves lineage identity and symbolises the continuing relationship between the deceased and the family from which he or she emerged.

An equally important feature of Nigerian burial jurisprudence is the rejection of proprietary claims over human remains. Consistent with long-established common-law principles, Nigerian courts have generally resisted any suggestion that a corpse constitutes property capable of ownership in the ordinary legal sense.²⁰ Rather than treating disputes as contests over ownership rights, courts have focused on identifying the person or group possessing the superior claim or responsibility to undertake burial arrangements.²¹ This distinction is of considerable jurisprudential importance. Once human remains are removed from the sphere of property law, burial disputes necessarily become disputes about authority, responsibility and legitimacy rather than ownership. The law is therefore compelled to search for alternative principles capable of explaining why particular individuals or groups may lawfully exercise control over burial decisions.

The practical consequence of this approach is that Nigerian courts have frequently relied upon factors such as family relationships, customary obligations, communal expectations and the circumstances surrounding the deceased.²² Yet while these considerations undoubtedly reflect the realities of Nigerian society, they have not always generated a coherent doctrinal framework. Judicial decisions often identify relevant factors without clearly explaining their normative foundation or relative priority. As a result, burial disputes have sometimes been resolved through a pragmatic balancing of competing interests rather than through the application of clearly articulated legal principles. The challenge has become more pronounced in contemporary society. Increasingly, burial disputes involve individuals whose lives transcend traditional communal boundaries. Inter-ethnic marriages, urban residence, religious conversion and professional mobility have complicated questions of family identity and customary affiliation.²³ A deceased person may maintain strong emotional ties to a spouse, belong culturally to one community, reside permanently in another and profess religious beliefs inconsistent with the customs of his or her ancestral lineage. In such circumstances, burial disputes frequently become contests between competing conceptions of identity itself. The courts are required not only to determine who should make burial decisions but also to decide which relationships and affiliations ought to carry the greatest legal significance. Faced with these complexities, Nigerian courts have generally adopted a pragmatic and context-sensitive approach. Rather than applying rigid rules, judges have sought to balance customary law, family interests, social realities and considerations of fairness.²⁴ This flexibility has enabled the courts to accommodate the diverse circumstances presented by burial disputes within a plural legal system. At the same time, however, it has contributed to doctrinal uncertainty. Similar disputes may produce different outcomes because the principles guiding judicial discretion are not always clearly defined.

Nevertheless, a careful reading of the authorities reveals an important underlying theme. Burial disputes in Nigeria are rarely resolved by reference to a single consideration. Courts routinely evaluate a constellation of factors, including customary law, family relationships, communal expectations and the particular circumstances surrounding the deceased.²⁵ The jurisprudence therefore reflects an implicit recognition that burial engages multiple dimensions of social life simultaneously. Yet the absence of a coherent theoretical foundation continues to limit the development of a consistent body of doctrine. Existing authorities demonstrate that burial disputes involve far more than questions of funeral arrangements; they engage fundamental issues of authority, identity, memory and belonging. The unresolved challenge is to identify a normative principle capable of bringing coherence to these competing considerations. That challenge becomes particularly evident when courts are

¹⁹ *Olowu v Olowu* (n 4).

²⁰ *Williams v Williams* [1882] 20 Ch D 659.

²¹ G Williams, 'The Legal Character of a Corpse' (1958) 25 *Modern Law Review* 95, 96–99.

²² *Ogunnaike v Ojayemi* [1987] 1 NWLR (Pt 53) 760.

²³ *Nwogugu* (n 5) 395.

²⁴ *Ijalaye* (n 14) 118.

²⁵ *Okonkwo v Okagbue* (n 1); *Olowu v Olowu* (n 4).

confronted with one of the most contentious questions in burial litigation: the extent to which the wishes of the deceased should prevail over competing claims grounded in family authority and customary obligation. It is to that question that the next section turns.

4. The Wishes of the Deceased and the Limits of Personal Autonomy After Death

Few issues have generated greater uncertainty within burial jurisprudence than the question whether the wishes of a deceased person should determine the manner and location of burial after death. The problem has assumed increasing importance within contemporary Nigeria as social mobility, urbanisation, educational advancement and religious pluralism have strengthened the value attached to individual choice. Many persons now express clear preferences regarding the place of their burial, the form of funeral rites they desire, the religious ceremonies to be observed and, in some cases, the individuals whom they wish to exercise authority over their remains.²⁶ Yet the legal status of such wishes remains far from settled. While modern legal thought instinctively favours respect for personal autonomy, burial disputes reveal the difficulty of extending autonomy beyond the point at which legal personality itself has ceased to exist.

The common law has historically approached this issue with caution. Although courts have generally recognised that the wishes of the deceased deserve respect, they have rarely treated such wishes as legally binding in the strict sense.²⁷ The traditional justification is straightforward. Since legal personality ordinarily terminates upon death, the deceased cannot enforce burial instructions in the same manner as contractual rights or proprietary interests. Burial wishes therefore occupy an unusual legal position. They are neither wholly irrelevant nor absolutely controlling. Rather, they constitute an important consideration to which substantial weight may be attached depending upon the circumstances of the particular case.²⁸

Within Nigeria, however, the question acquires an added dimension because of the continuing influence of customary law. The issue is not simply whether burial wishes should be respected; it is whether they should prevail where they conflict with customary obligations regarded by surviving relatives as fundamental to family identity and communal continuity.²⁹ The conflict becomes especially pronounced where a deceased person deliberately rejects ancestral customs in favour of personal, religious or cultural preferences that differ from those traditionally observed by the family. In such circumstances, burial disputes often become contests between competing visions of the individual and the extent to which personal choice may legitimately redefine communal belonging.

At a deeper level, the controversy reflects two rival conceptions of personhood. The first conceives of the individual primarily as an autonomous moral agent whose values, beliefs and preferences deserve respect because they are expressions of personal dignity and self-determination. Under this view, burial wishes should ordinarily be honoured because they represent a continuation of the choices through which individuals define the meaning of their lives. The second conception views the individual as fundamentally embedded within a network of family and communal relationships that both shape identity and generate enduring obligations.³⁰ From this perspective, death cannot completely sever a person's connection to the lineage, traditions and social structures that contributed to the formation of that person's identity. Burial therefore remains a matter of legitimate communal concern rather than an exclusively personal choice.

The attraction of the autonomy-based approach is readily apparent. Respect for clearly expressed burial wishes acknowledges the importance of personal agency and recognises that decisions concerning death are often deeply connected to an individual's values, faith and understanding of self.³¹ The manner in which a person wishes to be remembered may represent the culmination of convictions formed over an entire lifetime. To disregard such wishes entirely risks reducing the deceased to an object of competing family claims and diminishing the significance of choices that were central to that person's identity while alive. In this sense, respect for burial preferences may be viewed as an extension of the broader commitment to human dignity that underlies modern constitutional thought. Yet the customary perspective cannot be dismissed as a mere relic of tradition. Burial has consequences that extend beyond the individual and affect relationships that survive death itself. Funeral arrangements frequently carry implications for family cohesion, lineage identity and communal legitimacy.³² A burial decision may determine how the deceased is remembered within the family, how ancestral connections are preserved and how obligations between generations are understood. Family members who insist upon customary burial practices are therefore not always motivated by a desire to override personal choice. In many instances,

²⁶ Nwogugu (n 5) 395–396.

²⁷ *Williams v Williams* (n 20) 665.

²⁸ R Kerridge, *Parry and Kerridge: The Law of Succession* (13th edn, Sweet & Maxwell 2016) 32.

²⁹ Oba (n 10) 903.

³⁰ Menkiti (n 7) 176.

³¹ J Feinberg, 'The Rights of Animals and Unborn Generations' in W T Blackstone (ed), *Philosophy and*

³² Mbiti (n 6) 122–125.

they regard themselves as discharging responsibilities owed both to the deceased and to the broader community of which the deceased remained a part.

Nigerian courts have generally sought to navigate these competing considerations through a process of balancing rather than through rigid adherence to either autonomy or customary authority. Judicial decisions reveal a willingness to consider the wishes of the deceased while simultaneously recognising the continuing significance of family interests and customary norms.³³ This approach reflects the realities of a plural legal system in which neither personal autonomy nor communal obligation can legitimately claim absolute priority in every case. The strength of the balancing model lies in its flexibility. Its weakness lies in the uncertainty that inevitably accompanies the absence of clear guiding principles.

The difficulty with existing jurisprudence is not that courts consider too many factors but that they often fail to explain why particular factors should prevail in a given case. Similar disputes may therefore produce different outcomes depending upon judicial perceptions of fairness, the strength of competing family claims or the perceived importance of customary practices. The result is a body of law that remains practical but insufficiently principled. A more coherent framework requires a normative foundation capable of explaining both why burial wishes deserve respect and why they cannot invariably be decisive.

Such a foundation may be found in the recognition of a rebuttable presumption in favour of clearly expressed burial wishes. Where a deceased person has unequivocally communicated preferences concerning burial, those wishes should ordinarily be respected because they represent an important manifestation of personal identity and dignity. The presumption should not, however, be absolute. It must remain capable of being displaced where compliance would be unlawful, impossible or fundamentally inconsistent with compelling customary obligations serving legitimate communal interests. This approach preserves the moral significance of personal autonomy without disregarding the social reality that individuals remain connected to families and communities whose interests do not vanish at the moment of death.

Ultimately, the tension between burial wishes and customary authority illustrates a broader challenge confronting Nigerian law. The issue is not whether individual autonomy should triumph over communal values or vice versa. Rather, it is how both may be accommodated within a legal framework that respects the dignity of the deceased while recognising the legitimate interests of surviving relatives and customary communities. The search for such a framework points toward a concept that is capable of transcending the autonomy-versus-custom dichotomy and providing a more coherent basis for decision-making. That concept is posthumous dignity, which forms the subject of the next section.

5. Posthumous Dignity and the Emergence of a Jurisprudence of the Dead

The preceding analysis demonstrates that burial disputes cannot be reduced to disagreements about funeral arrangements, family preferences or competing customary claims. Beneath these controversies lies a more fundamental question that Nigerian jurisprudence has yet to address directly: what legal significance, if any, should be attached to the dead after death? The question is both deceptively simple and profoundly important. Modern law ordinarily proceeds from the premise that legal personality ceases upon death. Yet the law continues to regulate the treatment of human remains, intervene in burial disputes, protect gravesites and recognise obligations connected with deceased persons.³⁴ These realities suggest that while death may terminate legal personality, it does not entirely extinguish every legally relevant interest associated with the individual who has died.

It is within this conceptual space that the notion of posthumous dignity assumes significance. Posthumous dignity may be understood as the continuing respect owed to a deceased person by virtue of his or her humanity, identity and enduring social significance. The concept does not require the fiction that the dead continue to possess rights in the same manner as living persons. Nor does it imply that legal personality survives death. Rather, it recognises that certain interests associated with the deceased remain worthy of legal protection because respect for human dignity cannot be confined exclusively to the period between birth and death.³⁵ A legal system that values human dignity during life may reasonably be expected to preserve aspects of that dignity after death, particularly where questions concerning memory, burial and personal identity are concerned.

Although the language of posthumous dignity rarely appears expressly within judicial decisions, the underlying idea is far from foreign to law. Courts routinely intervene where human remains are threatened with unlawful interference. Criminal sanctions exist for conduct that desecrates graves or improperly disturbs the dead. Civil

³³ *Okonkwo v Okagbue* (n 1).

³⁴ *Williams* (n 21) 95–97.

³⁵ D Sperling, *Posthumous Interests: Legal and Ethical Perspectives* (Cambridge University Press 2008) 21–29.

disputes concerning burial are adjudicated on the assumption that the treatment of the deceased matters in ways that cannot be explained solely through property rights or contractual obligations.³⁶ Indeed, if human remains were legally insignificant once death occurred, there would be little justification for judicial involvement in burial disputes at all. The fact that courts repeatedly concern themselves with such matters reveals an implicit recognition that society owes continuing obligations to the dead.

The concept acquires even greater force within the context of Nigerian customary law. Across many Nigerian communities, funeral rites are regarded not as optional ceremonies but as important obligations owed to the deceased and to the wider family.³⁷ The elaborate nature of many burial customs reflects a deeply rooted belief that the dead remain worthy of honour, remembrance and respect. Burial serves not merely to dispose of a body but to acknowledge a life lived, to affirm family continuity and to preserve communal memory. These practices are difficult to explain if death is viewed as the complete erasure of all legally and socially relevant interests. They become far more intelligible when understood through the lens of posthumous dignity.

The concept also illuminates why burial wishes deserve serious consideration. As argued in the previous section, such wishes should not be treated as absolutely binding. Nevertheless, they cannot be dismissed as legally irrelevant merely because the person who expressed them is no longer alive. Burial preferences often embody deeply held convictions concerning faith, identity, family relationships and the manner in which individuals wish their lives to be remembered.³⁸ Respecting those wishes therefore serves a function extending beyond personal preference; it acknowledges the dignity of the person whose life is being commemorated. The law's willingness to consider burial wishes reflects a recognition that dignity is not exhausted at the moment legal personality ceases.

Equally important, posthumous dignity provides a more convincing explanation for family authority over burial arrangements than traditional notions of control or entitlement. Families do not ordinarily exercise authority over the deceased because they own the body or possess proprietary rights in human remains. Rather, their authority arises from the responsibilities they bear toward the deceased as members of a continuing familial community.³⁹ The role of family members is therefore better understood as custodial than proprietary. They act as custodians of obligations owed to the dead, charged with ensuring that burial occurs in a manner consistent with dignity, cultural identity and legitimate communal expectations. This perspective also offers a bridge between customary law and constitutional values. At first glance, tensions between customary burial practices and modern constitutional principles may appear irreconcilable. Customary law often emphasises family authority and communal identity, whereas constitutionalism places considerable weight on autonomy, dignity and individual freedom. Yet both traditions ultimately rest upon a shared concern for the value of the human person.⁴⁰ The language through which that concern is expressed may differ, but the underlying objective remains remarkably similar. Posthumous dignity therefore provides a common normative foundation capable of accommodating both customary obligations and constitutional commitments without subordinating either entirely to the other.

Perhaps the most significant contribution of posthumous dignity lies in its ability to transform the way burial disputes are conceptualised. The traditional question, who owns the dead? - is fundamentally misguided. Ownership is a concept drawn from property law and is ill-suited to the treatment of human remains. It encourages courts and litigants to frame disputes in terms of control and entitlement rather than obligation and responsibility. The more meaningful inquiry is who bears responsibility for ensuring that the deceased is treated with dignity, respect and fidelity to both personal identity and legitimate communal values.⁴¹ Once the question is framed in this manner, the apparent conflict between family authority, burial wishes and customary obligations becomes considerably easier to understand.

Viewed through the lens of posthumous dignity, burial disputes cease to be contests for dominance among competing claimants. Instead, they become inquiries into which proposed outcome most effectively protects the dignity of the deceased while accommodating the legitimate interests of surviving relatives, customary communities and constitutional values. This shift in perspective supplies a normative coherence that is largely absent from existing case law. It enables courts to move beyond *ad hoc* balancing exercises and toward a principled framework capable of producing greater consistency and predictability in judicial decision-making.

The emergence of a jurisprudence of the dead therefore represents more than an academic exercise. It reflects the need for a conceptual framework capable of explaining why burial disputes matter, why the wishes of the deceased

³⁶ Williams (n 21) 101–103.

³⁷ Idowu (n 2) 187–190

³⁸ Kerridge (n 28) 34.

³⁹ Mbiti (n 6) 125.

⁴⁰ Oba (n 10) 907.

⁴¹ Sperling (n 35) 65.

deserve respect, why families retain obligations after death and why courts continue to intervene in matters affecting persons who are no longer alive. By recognising posthumous dignity as the organising principle of burial law, Nigerian jurisprudence can move beyond fragmented doctrines and develop a more coherent understanding of the relationship between death, memory, family authority and human dignity. The practical implications of such a framework are considered in the next section, which proposes specific principles for resolving burial disputes within Nigeria's plural legal order.

6. Toward a Coherent Framework for Burial Disputes in Nigeria

The analysis undertaken in the preceding sections reveals a recurring difficulty within Nigerian burial jurisprudence. Although courts have generally succeeded in resolving individual disputes, the principles guiding those decisions remain fragmented and insufficiently articulated. Existing authorities recognise the relevance of customary law, acknowledge the interests of surviving relatives and occasionally take account of the wishes of the deceased. Yet the relationship between these considerations remains uncertain. Judicial outcomes often appear persuasive in their immediate context but difficult to reconcile into a coherent body of doctrine. If burial disputes are to be resolved with greater consistency and predictability, a clearer normative framework is required.⁴²

Any satisfactory framework must begin by rejecting the assumption that burial disputes are disputes about ownership. The language of ownership introduces concepts derived from property law into a context where they sit uneasily. Human remains are not commodities, and the relationship between the living and the dead cannot properly be reduced to questions of possession or proprietary entitlement.⁴³ Courts should therefore avoid approaches that implicitly encourage litigants to frame burial disputes as contests for control. The central inquiry should instead concern responsibility. The relevant question is not who owns the deceased but who bears the responsibility of ensuring that the deceased is treated in a manner consistent with dignity, lawful custom and the legitimate expectations arising from family and communal relationships.

From this starting point emerges the first principle of the proposed framework: burial disputes should be approached primarily as questions of custodial responsibility rather than competing proprietary claims. Such an approach more accurately reflects both customary understandings of burial and the existing judicial reluctance to treat a corpse as property. It also provides a conceptual basis for evaluating competing claims without reducing the deceased to the object of legal ownership.

The second principle is that posthumous dignity should serve as the primary normative value informing judicial decision-making. Throughout this article, it has been argued that the continuing legal significance attached to burial, remembrance and funeral arrangements is best explained through the concept of posthumous dignity.⁴⁴ Courts should therefore evaluate competing claims by asking which proposed outcome most effectively preserves the dignity, identity and humanity of the deceased. This approach avoids the limitations of frameworks based exclusively on family authority, personal autonomy or customary entitlement. It directs attention instead to the interests that burial law ultimately seeks to protect.

Recognition of posthumous dignity naturally leads to a third principle: clearly expressed burial wishes should enjoy a rebuttable presumption of validity. Where a deceased person has unequivocally communicated burial preferences during his or her lifetime, those wishes should ordinarily be respected because they constitute an important expression of personal identity and autonomy.⁴⁵ However, the presumption should remain rebuttable rather than absolute. Circumstances may arise in which compliance is unlawful, impossible or fundamentally inconsistent with compelling customary obligations that serve legitimate communal interests. The objective is not to elevate individual preference above every competing consideration but to ensure that burial wishes receive the substantial weight demanded by respect for human dignity.

A fourth principle concerns the place of customary law within burial jurisprudence. Customary burial practices continue to possess profound social significance across many Nigerian communities and remain an important source of cultural legitimacy. Courts should therefore resist any tendency to treat customary norms as inherently inferior to modern conceptions of individual choice.⁴⁶ The persistence of customary law within Nigeria's plural legal system reflects its continuing relevance to the communities that observe it. Judicial analysis should consequently begin from a position of respect for customary practices while recognising that their application must remain consistent with broader legal principles.

⁴² Ijalaye (n 14) 121.

⁴³ Williams (n 21) 103.

⁴⁴ Sperling (n 35) 82–84.

⁴⁵ Kerridge (n 28) 35.

⁴⁶ Allott (n 3) 124.

Respect for customary law, however, cannot imply unquestioning acceptance of every customary practice. The Constitution remains the supreme law of Nigeria and provides the ultimate framework within which all legal norms must operate.⁴⁷ Customs that undermine human dignity, perpetuate unjustifiable discrimination or conflict with constitutional guarantees cannot prevail solely by virtue of historical acceptance. The task of the courts is therefore neither to displace customary law nor to subordinate constitutional values. Rather, it is to harmonise both in a manner that preserves cultural legitimacy while remaining faithful to the foundational principles of the legal order.

Particular care is required in disputes involving surviving spouses and members of the deceased's extended family. Such disputes constitute a substantial proportion of burial litigation and frequently expose tensions between intimacy and lineage, between marital relationships and ancestral affiliations.⁴⁸ Burial disputes should not be resolved by automatically favouring either the surviving spouse or the deceased's extended family. Rather, courts should focus on the outcome that best respects the dignity and wishes of the deceased while balancing legitimate family and cultural interests. In doing so, burial should be viewed as a matter of responsibility rather than ownership, with the deceased's expressed wishes given significant weight, customary law respected where it promotes justice and dignity, and constitutional values serving as the ultimate guide. Such an approach would not only improve the resolution of burial disputes but also contribute to a more coherent jurisprudence of posthumous dignity in Nigeria.

7. Conclusion

Burial disputes remain among the most sensitive legal controversies in Nigeria because they engage questions of identity, family, culture and respect for the dead. As this article has shown, such disputes cannot be satisfactorily resolved through concepts of ownership or property. Human remains are not objects capable of possession, and the language of ownership often obscures the real issues at stake. Rather, burial disputes are fundamentally concerned with responsibility, obligation and dignity.⁴⁹ Nigerian courts have long recognised the importance of customary law in burial matters, yet modern social realities have created tensions that traditional approaches do not always address with sufficient clarity. A more coherent framework is therefore required. This article has argued that posthumous dignity provides the most convincing foundation for resolving burial disputes because it accommodates legitimate customary interests, respects the wishes of the deceased and remains consistent with constitutional values.⁵⁰ Ultimately, the question is not who owns the dead, but who bears the responsibility of ensuring that the deceased is treated with dignity and respect. A jurisprudence founded on posthumous dignity rather than ownership offers a principled path for resolving burial disputes while promoting justice, cultural legitimacy and social harmony.⁵¹

⁴⁷ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 1(1) and (3).

⁴⁸ *Okonkwo v Okagbue* (n 1).

⁴⁹ *Williams v Williams* (n 20).

⁵⁰ *Sperling* (n 35) 115.

⁵¹ *Nwogugu* (n 5) 396.