



THE ISLAMIC PRINCIPLES OF INHERITANCE AND RESISTANCE ATTITUDE OF MUSLIMS IN THE APPLICATION OF THE LAW: HYPOTHESIS OF SOME JUDICIAL RULINGS

By

Fasasi Wasiu Adetayo*

&

Yusuf M. Abdulrasheed**

Abstract

The subject of inheritance remains a vital tool in the redistribution of wealth from a deceased to a living person(s). From the time immemorial succession or inheritance is known to create grudges and hostilities among siblings and family relations as a result of either greed from one person or group of persons or that the rules most especially among the indigenous customary practices creates vacuum for injustice, domination and over concentration of wealth in a single hand or a very few hands of people at the expense of the others. The Islamic Law established the most defined, elaborate and equitable principles of inheritance, attention were clearly and cleverly paid to all classes of persons who mature places in the affection of the deceased either on ground of blood or affinity. Notwithstanding the long time settled position of the Islamic Law whose subject are Muslims, seems either not understanding the embodiment of the Islamic Law of Inheritance or that many Muslims take pride in the resistance to the application of the Islamic Law of Inheritance in the circumstances of the distribution of the estate of the deceased Muslim. This paper discussed cardinals of Islamic principles of inheritance and the resistance attitude of the Muslims with reference to some judicial rulings. If you found that many people are found in these identifies problems as a result of lack of adequate knowledge and enlightenment on this subject among the Muslims. It therefore makes it imperative that there should be an organized mass campaign to educate and enlighten Muslims at various fore as lectures, Friday sermons and other public gatherings. This research adopted library literatures examination and oral interactions with a number of people among the youth Muslims.

1.0 INTRODUCTION

The word inheritance¹ is known to every society though it may have different local terminologies by

*LL.B (Common & Islamic) BL, LL.M, Ph.D email: wfasasiaa@gmail.com; 08066856863



various nations and tribe both in the primitive, medieval and modern world. In English usage it often times mean succession². Under the Islamic law of Inheritance and Succession, the two terms mean the same thing while (Will), testamentary disposition is distinguished from both of them. However, under the English law, Succession is an encompassing of Inheritance and will.

Under the Islamic law, Inheritance is defined to mean:

"A science by which persons (heir) who inherit one are distinguished from those who do not; the knowledge also ascertain (in most cases), the quantum of shares, each inheritor is entitled to take; it all centre on the estate (mal) left by a deceased person³

In any legal system of succession, the extent to which an individual can exercise his right and liberty in matters of inheritance are viewed as and are regulated by the personal law of the deceased. The Islamic law otherwise known as Shari' ah⁴ is the personal law of the deceased. The Islamic law otherwise known as Shari' ah⁵ is a complete way of life by its rules and regulations on one hand, and a path that those who have faith in the religion of Islam follow in their daily activities before, during and after death. On the other hand, Islamic law influences man's behavior and conducts towards his creator in this world and in the hereafter. The Islamic law imposes somewhat compulsory⁶ rules of succession of general application for the all Muslims regardless of their Social status or affiliation and requires that property of a deceased Muslim should be transmitted in a foreseeable manner to those held by law as best entitled to' it rather than to those whom the deceased might personally prefer as a result of certain parochial interest or unjust reasons at the expense of the nearest relation as long as they are not impeded or disqualified by the rules of impediment as it would be seen later in this chapter. The law intervenes to rescue those categories of people who are naturally handicapped and degraded by human nature such as weak individuals particularly the Minor, Women, the Old ones, It specifies the manner in which property of

** Professor of Law, Department of Islamic Law, Faculty of Law, University of Abuja, Nigeria; 08055240547

¹ Inheritance according to Oxford Advanced Learner's Dictionary 8th Edition (2010) P. 772. Inheritance means money or property e.t.c that you receive from somebody when they die.

² It is not generic as "Inheritance" Succession means; the process of following in order, it may be in taking over a particular position or ownership of property.

³ Bambale, V.V, *Acquisition and Transfer of Property in Islam law*. Lagos, Malthouse Law Press Ltd (2007) P. 69, see also Majid, Khaduri and Herbert J. Law in the Middle East, Vol. 1, William Byrd press Inc. Richmond Virginia 1995, pp, 160-174. Salah-Udin Bin Haider Ali Lakhvi Almirath AI-Maktabuah AI Muhamedia Gullah Mandi, Ranela Khurd, Pakistan.

⁴ Abdulrahman I. Doi, Basics of Shariah Centre for Islamic Legal Education, ABU Zaria, 1982, ppl-28 see also coulson H.L. A History of Islamic Law (1971) Cambridge University Press. P 1.

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⁵ It is said to be compulsory or mandatory because it is a command from God which is clearly stated in the Qur'an Chapter 4 verse 11-12) which is the first and main primary law and ground norm of Islamic law on inheritance to which all other sources derives its validity, and thing prescribed by the Qur'an as mandatory upon every Muslim.



a deceased Muslim shall devolve when a person dies wholly or partially intestate, that is to say, when he or she has or has not made a valid and executable will within the ambit of the law.⁷

The objective of Islamic law generally is to promote the welfare of the people both individual and collectively and its basic principles are justice, equity and brotherhood. The law has regulations and exhortations in every aspect of human life both individually and collectively. The basic sources of the law are the Glorious Qur'an, the Sunnah or Hadith of Prophet Muhammad, (S.A.W). These two are the primary sources. The juridical secondary sources include the (Ijma'a), Consensus of Opinion, and (Qiyas) Analogy, while the Tertiary sources include (Urf) Custom, Istislah (Equity), and many others; all of these shall be discussed later in this chapter. The chapter also analyzes the status of women as well as their' right of inheritance in various societies before the advent of Islam. Suffice to say that all the annotations in the discussion of Islamic Laws, principles and regulations on inheritance generally shall be based on all these sources of the Law.

2.0 THE ANTCEDENTS OF INHERITANCE AND REVOLUTION OF ISLAMIC LAW

Prior to the ardent of Islam an its legislation on inheritance, virtually all nations and tribes that existed to the are of Islam were noted with deficiencies in the require of intendance.

The societies deprived particularly females, be it daughters, wife, mother sister right to indent like their male counterpart.

The Hindus, Jews, Christians, Jahilhyah araihs and the indigenes histomary practices were not exceptions to the anomoeies that were found with inheritance matter

Upon the revelation of the verses on inheritance matters, the laws of inheritance became welded and properly consolidated to ensure justice, equity and fairness among Muslims so that property devolves around the ideal individuals whom nature places in the first ranks of affection in the degree of closeness to the deceased either on ground of blood or affinity without prejudice of sex or any unwarranting reason of bias or segregation.

With the Islamic laws of inheritance, a widow is entitled to receive one-forth (1/4) of her husband net estate, if the man is childless either with the surviving wife or wives or a wife in the former marriage (if any). The widow or widows receive one-eighth (1/8) if the man had a child. For a widower he receives half of the net estate, if she is not survived by a child or children either for the husband or in an earlier marriage, he is entitled to one-fourth (1/4) of the net estate. after the payment of debts and legacies. If the man or woman had no surviving-parents or children the siblings would inherit with the male portion would be double the share of the female after the deduction of legacies and debt⁸.

6 The limitation which generally held very vital for a valid will under the Islamic Law is that it must not be more than one-third (1/3) of the net estate and the beneficiary of such will should not be one of the legal heirs whom the law has already given a specific portion from the estate of the deceased.

8 The(1/4) one-forth is operative after the deduction of debts or any "bequest" disposition which is approved within the ambit of the law, usually the will sum, it should not be more than one third (1/3) of the net estate and the beneficiary must not one of the legal heir who Allah has give adequate shares, the {1/8}one-eight is operative after the deduction



Upon first glance at the Qur'anic text on inheritance, one may erroneously view the law that it does not seem to depict equality on woman's quantum in inheritance with what a man of the same degree of affiliation to deceased is allotted the double share of a female share, especially when Qur'an says blatantly that she share of males twice of that to the female. It seems that Islam made discrimination in regards to woman's share in inheritance.

But upon closer examination, one finds the reasons for this principle. The **two ratio one** for man and woman respectfully is laid down because, a woman is entitled to Mahr (dowry)⁹ as well as maintenance from the man she marries and she does not have the responsibility to take part in the provision of the family maintenance from her money. More so, she is absolved from the defense of her country. This is because the husband's responsibilities in a marriage are absolute and he is far more saddled with financial responsibilities of matrimonial home in this regard.

Therefore, a woman's inheritance in Islam being half of the male is already compensated elsewhere. This is known as the law of recompense¹⁰. The provision of, the Qur'an is plain in regards to women's inheritance share. To benefit everyone, God has assigned shares to each heir of the property left by parents and relatives¹¹.

This revolutionary development, if compared with the Hindus, Zoroastrians, Jews, Christians, the Jahiliyah Arabs and a host of the practices even amongst the indigenous African tribes whose cultural practices of inheritance did not recognize women as being capable and independent individuals to own property. Worst still, women were not recognized as part of the family since she could not inherit her father and husband rather she is regarded as a chattel¹².

The revolution of Islam on the law of inheritance is far reaching and comprehensive. The basic laws are contained in the verses of the glorious Qur'an, the verses were expatiated by the Hadith of the Prophet Muhammad (S.A. W) for proper comprehension by mankind, the consensus of the Muslim community, individual juridical analogy and other tertiary sources of Islamic law played vital roles in the formation and consolidation of the Islamic law of inheritance. It is therefore pertinent to briefly examine the sources of Islamic law of inheritance where the bulk of the law originates and derives its authority.

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⁹ It is a bride prize payment usually paid to women to legitimate the relationship and make intercourse lawful

¹⁰ www.netmuseum.org/.../islamic.../citedon the 8th March 2015

¹¹ Qur'an 4:33

¹² Christensen A. *The Cambridge Ancient History*, (Vol. XII 1965), University Press Ltd. United Kingdom).



3.9 CHARACTERISTICS OF ISLAMIC LAW OF INHERITANCE

As said earlier, Islamic law of Inheritance is a branch of Islamic law, which emanates from the religion of Islam and it is divine in nature. It is therefore pre-supposed that Islamic law of inheritance is also divine. Therefore, the first and fundamental feature of Islamic law of inheritance is its divinity. This is so because the manner in which it is made is prescribed by Allah who says in the Qur'an;

"From what is left by parents and those nearest relation, there is a share for man and a share for woman, whether the property is large or small. A share made compulsory"¹³

It therefore means that the laws and rules guiding inheritance in Islam is ordained by Allah and not

لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرٌ
نَّصِيبًا مَّفْرُوضًا ۝

manmade. The shares allotted to each heir in every case and circumstances are prescribed by Allah through various sources of Islamic law as explained earlier.

The law is also characterized by the fact that it is interwoven with the belief system and the moral values of Islam. For instance, a "Walad Zina" (Illegitimate child)¹⁴ is prevented from inheriting his biological father, this is so in order to preserve the sanctity of the institution of marriage, such a child can only inherit his or her mother and his maternal relations and vice-versa. The biological father cannot also inherit from such child in this case.

¹³ Q4verse 7, See also, Q 4 verses 11-12, See also, M. I Abdullah, *AI- Ummu*, (Daar Fikr Publications, 1980) p.60

¹⁴ A child is presumed to be illegitimate in Islam if he or she is born outside valid wed lock



A non-Muslim cannot inherit a Muslim (and vice-versa) regardless of the closeness whether on ground of consanguinity or affinity, as a result of difference of religion. In the Islamic law of inheritance they are known as **Rules of Impediments**. All these are manifestation of the divinity of the Islamic law of Inheritance.

Another feature is that the law seems to be somehow rigid, in the sense that the shares of each inheritor is fixed by the law¹⁵ which is not amendable to suit the interest of an individual by setting aside the quantum fixed by Allah Himself to favour whom the deceased may personally prefer. In fact the rule of reduction "Awl" and Addition or Return "Radd" are all applied to operate on the basis of the ratio of each inheritor that is originally fixed.

Another major feature of Islamic law of inheritance is that the criteria for determining the legal heirs and their proportionate shares are based on the law of proximity of relationship to the deceased. This proximity is also pre-determined by Allah and not left in the fallible opinion and discretion of man. In determining the legal heir, the Qur'an provides that;

"Between your Parents and Sons, you do not know which of them is nearer to you in benefit. Allah is undoubtedly most knowledgeable and most wise"¹⁶.

From this provision, it is clear that Allah has accordingly specified the shares of heirs based on the law of proximity of relationship and no other nexus between the heirs to the deceased; the heirs are not of the same rank. They are of different cadres and some are given priorities over others.

For example, father's father cannot inherit in the presence of the father; similarly, son's son cannot inherit in the presence of the son. But in the absence of father's and son, father's father

1.

son's son can inherit respectively. This is based on the principle of exclusion¹⁷, under the Islamic law of inheritance.

In addition to the above, there is a fundamental issue in Islamic law of inheritance concerning the subject matter of inheritance. In Islamic law it is not every kind of property that is inheritable by a Muslim. To be inheritable by a Muslim, the subject matter itself must be legal in the eyes of the Islamic law. For instance, pork or its ranch, breweries where intoxicant is being produced are things of illegality and impurity that a Muslim is not supposed to consume or deal with and therefore cannot be inherited as property of inheritance.

From the foregoing, the characteristics of Islamic law of inheritance include its divinity, uncompromising allocated shares, and the restriction on the inheritable properties and the criteria of determining the bonafide heirs which are carefully detailed without any omission.

¹⁵ Q4 verses 11-12

¹⁶ Q4 verse 11

¹⁷ The Islamic Law provides for two types of exclusion, there is absolute exclusion termed (Hajab Kuli) and partial exclusion termed (Hajab Naqis).





RESISTANCE OF THE MUSLIMS IN THE APPLICATION OF THE LAW

Generally speaking, man is known for denial of truth, justice and equality. In matters of inheritance, the rules provided for both Total¹⁸ and Partial¹⁹ exclusion.

This regrettable, in most practical scenarios, what is found playing is that person who are totally excluded often times compete or even attempts to eliminate or dominate original laws.

The case of Zainab and Abdullateef and I or UC/114/2017 (Unreported and suit No CU/167/2021) (Unreported field at Gwagwalada grade (1) and upper court respectively sulfides as illustrations.

In Zainab Yusuf VS Abdulateef Yusuf and I or the plaintiff is the deceased wife who is so moved with two male children. The deceased left unsecured debt in the sum of about N 150,000 and 3 bedroom flat with some undeveloped law at Old Kutunku Area, Gwagwalada Area council, Abuja valued about 3 millionaire at the year 2017.

The plaintiff (widow) without the contribution of any siblings to the deceased or any other relation paid off the debt that was left by the deceased husband and began to rear or train the two children of her late husband.

About 8 years after the demise of the late husband. The plaintiff decides and got married. The re-marring of the plaintiff was held as a crime by the defendants and other siblings of her late husband as a crime and as a reason why she must not only be ejected from the property that was left by her deceased husband but must not also be allowed to benefit from the property in any form.

The plaintiff dissatisfied, faced a snit, and after hearing the matter and a visit to locus in quo ie the property itself. The court directed an estate value to ascertain the value of the properties (the three bedroom flat and the undeveloped parcel of law) and awarded the one-eight (180) of the sum after subtracting the debts which was owned by the deceased as paid by the plaintiff

The defendant were restrained from further harassing the plaintiff and were all impeded from the inheritance

In the recent case of distribution of estate late Aisha Ofaru CU/167/2021 (unreported) ruling delivered on 16th September, 2021

The deceased was a medical officer till her death. She has no child and there was no subsist marital life. She was survived by a full brother, and a uterine sister with twelve consanguine brother. The deceased also survived with an adopted girl.

¹⁸ Total exclusion is a rule hereby a closer to relative prevents a more distance one from inheritance.eg where there is son to the deceased to inherit, the son's son is total out of the heir.

¹⁹ Partial exclusion, just as the name implies, it is a situation that the exclusion is absolutes, what it means is that there are instance where the presence of the certain heirs and their God-given ratio or quantum of inheritance gives reduction to what accrues to others, such situation is partial exclusion.



It is noteworthy that adoption as it known in common law is unaccepted in Islam and it is not a sound for inheritance under the Islam law²⁰.

Upon the death of, relatives and consanguine brothers were all determine and struggling to succeed the property of the deceased since she was childless. Conjugal to the deceased filed an action an established the existence of testanaty documents by the deceased which were all in live with the basic of the Islamic law of inheritance.

The judge having received all exhibits and testimonies of the witness after several authorities, established the mollification and exclusion of all the consanguine brothers and sisters on the strength of the law and the principles of exclusion, that all those reacted through the deceased father were excluded. Effect was given to the lawful terms of the “Wassiyah, and the estate was shared accordingly.

Testamentary statements of the deceased

CONCLUSION

From the discussions it is established that poise to the advert of Islam and the evolution of Islamic Law of instance, there were clear practices of injustices and immunity suffering from gender bias and other discrimination on account of disability to defend the dignity of a gene clan Islamic Principles of in heritance rerolled all the divides and established a very comprehensive, elaborate, all inclusive pattern of inheritance.

Noturtha standing the composition of the law which is most devined and just, may Mushins were formed to object to the assurance of the law resulting from both ignorance of the principles and mostly on account of greed and self-comfreys.

It therefore becomes very necessary to unsure on institution reformed, intermarry and Islamic legal education on the subject, guarder sensitive training, Advocacy campaign on the subject to enhance a good comprehension in the good will of the law.

²⁰ 1.2 Fa Ahamed Ibn Caunain Ibn Salim, Figh LiL Dawawany Ala-Risald (2019) Vol 2 p255,256, Also, to Alhaji Yahuza Ibn Saad, Fatih Jawaad Fi Sharih Lrshaad, (2010) rol.2 pp 428-451 Also, Budyatul Mujtaluid Warihayyatul Musqtasid Also, Fiqh Al-Maisar, Also Dr. Abdullahi Iruhaid Altaya, Al-figh Al-Waadih Min Kitaby Wassundh Ala Madhahe Arbrah PR284-286, ad second edition Vol.2pp 622-628 ad p 632.