AN EXAMINATION OF THE APPLICATION OF ISLAMIC LAW OF INHERITANCE IN KWARA STATE *SHARĪᶜAH* JURIDICAL COURTS, 1994-2015

BY

MUHAMMAD JUM`AT DASUKI
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AN EXAMINATION OF THE APPLICATION OF ISLAMIC LAW OF INHERITANCE IN KWARA STATE *SHARĪ*

BY

MUHAMMAD JUM`AT DASUKI
SPS/14A/27PIS/001

BEING A THESIS SUBMITTED TO THE DEPARTMENT OFRELIGIONS, HISTORY AND HERITAGE STUDIES, KWARA STATE UNIVERSITY, MALETE IN PARTIAL FULFILMENTOF THE REQUIREMENTS FOR THE AWARD OF Ph.D DEGREE IN ISLAMIC STUDIES

MAIN SUPERVISOR

PROFESSOR SULAIMAN JAMIU

CO-SUPERVISOR

DR. SHAYKH LUQMAN JIMOH

MAY, 2018

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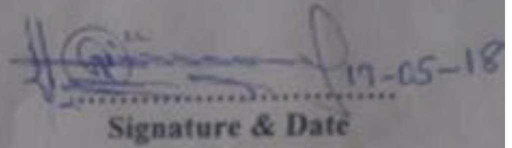
Professor Sulaiman Jamiu
Main Supervisor



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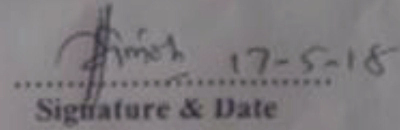

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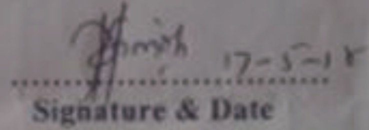

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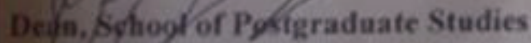

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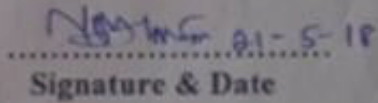

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Dedication

This work is dedicated to my late parents: Alhaji Ibrahim Imam Dasuki and AlhajaRahmatullahi ImamDasuki.May Allah shower His infinite Mercy andBlessings on them and grant them *Jannatu 'l-Firdaws;*and tomy Mentor, Father and Shaykh (Dr.) Imam Muhammad Bashir Imam Salihu (OON).May Allah give him long life, sound health and prosperity'*amin.*

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Acknowledgement

My humble thanks and gratitude are due to Allah (S.W.T) for His bounties, guidance and protection over me and for endowing me with the entire wherewithal required for the completion of this work.

My sincere appreciation goes to mymain supervisor Professor SulaimanJamiu, the pioneer Head of the Department. I really cherish his guidance, accommodation and usual words of encouragement. I acknowledge with appreciation and gratitude the supervisory role played by my respectable and amiable co-supervisor, Dr. ShaykhLuqmanJimoh, the present Head of the Departmenton this work. In spite of his tight schedule he took time to painstakingly go through the manuscript and make necessary corrections, c,omments and suggestions to improve the quality of the work. I owe both of them a lot to which I cannot repay. May Allah continue to support them in all their endeavours.

My sincere appreciation also goes to all my lecturers who played one role or the other in inpoving the quality of this work. Professor Abdul-Kabir Hussain Solihu,Professor Babalola, Dr. Abdus-Samiᶜi Imam Arikewuyo, Dr. Abdulkadir A. Sambo, Dr. Sherifat Hussain-Abubakar, Dr. S. S. Adua and Dr. Julius Adeshina. May Allah support everyone of them. I also wish to express gratitude to my colleagues in the department, Dr. Khalid Bello, Dr. B. O.Fawenu, Dr. A.SOlubitan, Dr. A. B.Oladosu and Mal. Ali Miqdad Ali for their words of encouragement, pieces of advice and support at all times.

My special gratitude goes to the honourable Justice Abdul-Raheem Ibrahim of the Kwara State *Sharīᶜah*Court of Appeal for his immense contributions to the success of this work. My appreciation also goes to the Secretary of the Estate Distribution Department,Kwara State *Sharīᶜah*Court of Appeal, Mr. MashoodGbalasa and Librarian

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of the Court, Alhaji Abdul- RazzaqIbiyinka for their immense contributions. I also express my gratitude to Judges Yusuf Olatunji Abdul-Hameed andAbdul-qadir Ibrahim Umar both of the Area Courts. May Allah reward them abundantly.

It is very pertinent at this juncture to give thanks to my brothers, sisters and friends who always show concern about my affairs and pray for me to complete this work especially Brother Muhammad Dasuki, Alhaji Isa Ibn Aliyu Ore,KhalifahAbubakarSalman, Abdul-Kadir Imam, Ibrahim KehindeEyitayo and Sa[c]idSalihu, Mrs. Khayriyyah Ahmad,MrsRahmah Ibrahim and KafilahSalihu. In fact, they are too many to mention. May Allah strengthen our love and togetherness forever.A special appreciation goes to my wives: SikirahJumatDasuki and HalimahJumatDasuki and my children for their love, endurance, co-operation and prayers. May Al,,,,lah grant us all long life to reap the fruits of our labour. *'Amin*

On a final note, since there is no way by which I can exhaust the list of those who deserve my appreciation, I would therefore conclude by praying to Allah to assist and reward all those who have contributed in one form or the other to the completion of this work. May Allah bless them all and crown their efforts with brilliant success.

Muhammad JumatDasuki

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Abstract

Inheritance also, known as succession or estate distribution is common to virtually all tribal cultures and all revealed religions. While it is a tradition in tribal cultures and a system in other religions, it is a law in Islam with profound bases in the Qur'an and the *hadīth*. Muslims are under obligation to follow the Islamic injunctions when distributing the estate of the deceased. Apart from individual Muslim scholars and certain organizations in Nigeria that embark on estate distribution, *Sharīᶜah* juridical courts equally embark on estate distribution. The*Sharīᶜah* juridical courts in Kwara State are apt examples. The Kwara State *Sharīᶜah* Court of Appeal even has a department solely established for estate distribution. This study is an examination of the Application of Islamic Law of inheritance in Kwara State *Sharīᶜah*juridical courts from 1994 to 2015. The main objective of the study is to examine and review cases of inheritance decided by the Area Courts and the *Sharīᶜah* Court of Appeal as contained in their records of proceedings and Annual Reports respectively. This is with the aim of ascertaining the correctness or otherwise of the courts' decisions and the level of competence of the presiding judges. Historical, exegetical and analytical research methods with interpretative approach are utilised in carrying out the study. The study reveals that while some distributions are accurate and carried out meticulously, there are many others that are laden with calculation errors and wrong distribution. The study also reveals that the Area Court judges show lower competence compared to their counterparts in the *Sharīᶜah* Court of Appeal. The study therefore concluded and suggested that there is the need for the *Sharīᶜah* juridical court judges especially those at the Area Courts to update their knowledge of estate distribution; and that those at the *Sharīᶜah* Court of Appeal should be more meticulous when distributing estates since wrong allotment will amount to putting some beneficiaries at a disadvantage and some others at wrong advantage.

Keywords: Allotment, Estate, Inheritance, Jahiliyyah, Juridical Courts, Legal Heir, *Sharīᶜah*

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List of Statutes

- Area Court Edict, 1967. Print
- Criminal Code Ordinance CAP 42 Nigeria Laws 1948.
- Criminal Procedure Code Law N.R. II of 1960.
- Criminal Procedure Ordinance CAP 43 Nigeria Laws 1948.
- Customary Courts Laws of Western Region of Nigeria CAP 31 Laws of Western Region of Nigeria 1959.
- Constitution of the Federal Republic of Nigeria CAP C23 Laws of the Federationof Nigeria 2004.
- High Court Laws of Northern Nigeria CAP 49 Laws of Northern Nigeria 1963.
- High Court of Kwara State, CAP 67 Laws of Kwara State of Nigeria 1991.
- Kwara State Wills Edict 1991, CAP 168 Laws of Kwara State of Nigeria 1994.
- Marriage Ordinance CArrrP 115 Revised Laws of Federation and Lagos 1958.
- Moslem Court of AppealN.R. 10 1956
- Native Courts Law 1960, CAP 78 Laws of Northern Nigeria 1963.
- Native Courts Ordinance No. 44 of 1963, CAP 142 Laws of Nigeria 1948.
- Native Courts Proclamation of 1906 No.1 of 1906 Laws of Northern Nigeria 1918
- *Sharīᶜah* Court of Appeal Law, 30th September, 1960. Print.
- Supreme Court Ordinance, 1876. Print.
- *Sharīᶜah* Courts Law, No 5 of 1999 (Zamfara State)
- *Sharīᶜah* Court of Appeal Law 1960, CAPS 122 Laws of Northern Nigeria 1963
- 1999 Constitution of the Federal Republic of Nigeria

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Table of Abbreviations

CB:-	Consanguine Brother.
CS:-	Consanguine Sister.
D:-	Daughter
DC:-	Deceased.
F:-	Father.
GB:-	Gerrrman brother(full brother).
GF:-	Grandfather.
GM:-	Grandmother.
GS:-	German Sister (full sister).
H:-	Husband.
HM:-	Hermaphrodite.
LCM: -	Lowest Common Multiple.
M: -	Mother.
MS: -	,Missing Son.
0: -	Zero (that is the person that will have nothing).
O/M: -	Old Master.
P: -	Pregnancy.
PCD: -	Pregnancy Considered Daughter
PM:-	Pregnant Mother.
PCS: -	Pregnant Considered Son.
PW:-	Pregnant Wife.
R:-	Residuary (one who takes the rest of the estate).

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RE: -	Return.
S: -	Son.
SD: -	Son`s Daughter (daughter of a son).
SS: -	Son`s Son.
SCA	*Sharīcah* Court of Appeal
UB: -	Uterine Brother: - (half brother from mother side).
UN: -	Uncle.
US: -	Uterine sister: - (half-sister from mother side).
W: -	Wife.
S.W.T. -	*SubhānahuwaTacālā.*
S.A.W. -	*Sallallāhucalayhiwa Sallama.*
R.A. -	*Radiyallāhucanhu.*
L.F.N. -	Laws of the Federation of Nigeria.
VOL. -	Volume.
Ed. -	Edited.
CDC	Constitution Drafting Committee
NCO	Native Courts Ordinance
CFRN	Constitution of Federal Republic of Nigeria

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Glossary

`Adab	All sorts of moralities, etiquettes or virtues
‘Adl	Justice
’Ahlu’dh-Dhimmah	People of Covenant – Jews and Christians
’Ahlu ’l-Kitāb	People of the Book
Alkali	An adulterated way of calling *Qādi*-a judge
’Ansār	Helpers or hosts in Madinah
‘Aqīdah	Belief or faith
Bayyinah	Evidence
Dāru ’l-Qadā`	Court of Justice
Da‘wā	A claim or law suit
Da‘wah	A call or invitation to the way of Allah
Fard	Obligatory act
Farā`id	Inheritance
Fiqh	Islamic Jurisprudence
Hadānah	Custody of children
Hadd	Prescibed punishment or offences underIslamic Law
Hadīth	Sayings, deeds and silent approval ofProphet Muhammad (S.A.W).
Hajj	Pilgrimage to Makkah
Halāl	Permissible
Harām	Prohibited or unlawful
‘Ibādah	Devotional aspects of Islam like prayer, almsgiving, fasting and Pilgrimage
‘Iddatu ’t-Talāq	Waiting period for a divorced woman
Idi-Igi	A Yoruba custom of distributing the property of the deceased on the basis of number of wives that have children

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'Ijtihād	Legal speculation of individual jurists
'Imām	A spiritual leader who leads prayers
'Istidlāl	Deduction or inference
.Jihād	Striving in the cause of Allah
Khalīfah	Successor or vicegerent
Khulᶜ	Divorce at the instance of wife under the Islamic law
Majlis 'sh-Shūrā	Consultative Forum
Mīrāth	Inheritance
Muhājirūn	The migrants from Makkah to Madinah
Mu'āmalāt	Transaction and Civil matters
Muftī	Jurist-consult
Mukhtasar	A compilation on Islamic law by Khalil al-Jundi
Murāfa'āt	Litigations
Nikāh	Marriage
Oba	A monarch or kingin Yorubaland
Ori-ojori	Yoruba custom of distribution to both male and female
Qādī	A judge
Qādi 'l-qudāt	Chief Judge
Qasam	An oath
Qiyās	Analogical deduction
Salāt	Five daily prayers
Sahīh	Valid or authentic
Shahādah	Witnessing/ Testimony
Sharīᶜah	Path of Allah ordained for mankind known as Islamic law or Canon law of Islam

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Sunnah	Custom, traditions and practises of Prophet Muhammad (S.A.W.)and that of his companions that received his tacit approval
Sunni	Practitioners of the tradition of Prophet Muhammad(S.A.W.)
Talāq	Divorce
'Ummah	Community
'Urf	Custom or customary law
Zakāt	Almsgiving
'Uqūbāt	Punishments or penalties under Islamic criminal law
Zinā	Adultery or fornication

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CHAPTER ONE

GENERAL INTRODUTION

Introduction

Islamic law of inheritance is a commandment of Allah given through the verses of the Glorious Qur'ān, which also describe the rightful beneficiaries of inheritance and their portions in detail. The Qur'ān has also brought some reforms, which did not exist in the previous laws. The law of inheritance has been ordered by Allah to provide justice to all Muslims. This law has a clear policy and is comprehensive in nature because it has divine source.

Nigerian Legal System comprises of different laws namely: English Law, Islamic Law, Customary Law and the Constitution. The Constitution is supreme to all these laws and if any of these laws is inconsistent with the Constitution, such a law is deemed invalid. In the case of Islamic Law of inheritance, it is recognized in the Nigerian Constitution as Islamic Personal Law together with other *Sharīᶜah* civil Matters such as Marriage, Divorce, and Gift etc.[1]

1.1 Background to the Study

Islam is a complete way of life that touches the whole aspects of human existence; it does not leave anything un-discussed. Islam is much more than a religion of rituals; it is guidance from God, which directs Muslims through this life into the next life. Allah in His infinite mercy has revealed many commandments in the Glorious Qur'ān through Prophet Muhammad.[2] He has done this in order to guide humankind to the straight path, the path that leads to paradise. It is the belief in Islam that one can only achieve this goal by following those commandments known as *Sharīᶜatul-Islam* (Islamic Law).

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Islamic inheritance law (^{c}*ilmul-farā`id)* is one of the most important subjects within the *Sharī^{c}ah.*Its acquisition falls into the category of *fardul-kifāyah* like *Salātul-Janāzah*, (i.e. it is a community responsibility, if some people perform it then the whole community is absolved of the responsibility, otherwise each individual in the community is liable).^{c}*Ilmul-farā`id*is considered as the most difficult. It is mentioned in *hadīth* literature that $^{c}$*ilmul-farā`id* will be the first knowledge to disappear from the world.

The Prophet said:

تعلموا الفرائض وعلّموها النّاس فإنّه نصف العلم وهو ينسى
وهو أول شيء يترع من أمتي.

> Acquire and teach the knowledge of inheritance because it is half of the entire knowledge (of Islam). It is easy to forget because it slips away easily and it is the first set of knowledge that will escape my people[3]

The Glorious Qur'ān and *Hadīth* of Prophet Muhammad (S.A.W.) have laid much emphasis on importance of inheritance and science of estate distribution. The Qur'anic bases for this are in *Sūratu 'n-Nisa'* verses 7-13 and 176-177. The Prophet (S.A.W.) had also in many '*Ahādīth* emphasized importance of the knowledge. For instance, he said:

العلم ثلاثة وما سوى ذلك فهو فضل آية محكمة أو سنة قائمة
أو فريضة عادلة.

> Knowledge is principally three, others are optional: the main knowledge consists of the legal verses of Qur'ān; that of *Sunnah*; and equitable distribution of estate.[4]

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He also said:

إن الله تعالى لم يكل قسمة مواريثكم إلى ملك مقرب ولا إلى
نبي مرسل ولكن تولى قسمتها أَبْيَنَ قسمة لاوصية لوارث.

> Certainly, Allah, the Most High did not assign the distribution of your estate to any close Angel nor did He delegate it to any appointed Messenger but He- Himself takes charge of the distribution in a clear-cut manner. There should be no will for an inheritor.[5]

According to Ash-Shabalanji,ᶜUmar Ibn al-Khaattab (May Allah be pleased with him) was reported to have said regarding thre importance of the science of inheritance: ''O people! Learn *farā'id* with the same concern and effort with which you learn the Qur'ān''.[6] It is also reported that he used to say: ''O Muslims! Learn *farā'id* for it is an essential part of your religion.''[7]

When a Muslim dies it becomes incumbent upon his family members to ensure that the properties left behind by him are distributed in accordance with the *Sharīᶜah* principles as prescribed by the Qur'ān and the *Sunnah* after the payment of the funeral expenses, his debts and execution of his will. Absolute disposition of one's property is limited to one's lifetime; once a person dies, the *Sharīᶜah* governs the distribution of his property. Allah Almighty says that Muslims must follow all His commandments (SWT) thus:

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وَمَا كَانَ لِمُؤْمِنٖ وَلَا مُؤْمِنَةٍ إِذَا قَضَى ٱللَّهُ وَرَسُولُهُۥٓ أَمْرًا أَن يَكُونَ
لَهُمُ ٱلْخِيَرَةُ مِنْ أَمْرِهِمْۗ وَمَن يَعْصِ ٱللَّهَ وَرَسُولَهُۥ فَقَدْ ضَلَّ ضَلَٰلٗا
مُّبِينٗا ٣٦

> It is not for a believer, man or woman, when Allah and His Messenger have decreed a matter that they should have any opinion in their decision. And whoever disobeys Allah and His Messenger has indeed strayed into a plain error (Q 33:36).

The importance and mandatory nature of Islamic law of inheritance on Muslims is evident and obvious from the way Allah concludes the verses that deal with inheritance shares. Allah says:

تِلْكَ حُدُودُ ٱللَّهِۚ وَمَن يُطِعِ ٱللَّهَ وَرَسُولَهُۥ يُدْخِلْهُ جَنَّٰتٖ تَجْرِي
مِن تَحْتِهَا ٱلْأَنْهَٰرُ خَٰلِدِينَ فِيهَاۚ وَذَٰلِكَ ٱلْفَوْزُ ٱلْعَظِيمُ ١٣ وَمَن
يَعْصِ ٱللَّهَ وَرَسُولَهُۥ وَيَتَعَدَّ حُدُودَهُۥ يُدْخِلْهُ نَارًا خَٰلِدٗا فِيهَا وَلَهُۥ
عَذَابٞ مُّهِينٞ ١٤

> These are limits set by Allah (ordainments as regards laws of inheritance) and whosoever obeys Allah and His Messenger will be admitted to Gardens under which rivers flow in Paradise to abide therein, and that will be the great success. Moreover, whosoever disobeys Allah and His Messenger and transgresses His limits, He will cast him into the fire to abide therein and he shall have a disgraceful torment (Q4:13-14).

It would be understood from the above verses that, distribution of the deceased Muslim`s estate is a decree from Allah and that the surviving relatives of the deceased must carry out the distribution according to the instructions given by Allah and His Messenger. In addition, when an estate is divided according to the divine system of law, which is

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outlined in the Qur`anic text and in the traditions of the Prophet, it would be highly rewarding in the sight of Allah. On the other hand, punishment of Hell Fire is promised those that refuse the order of Allah and His Messenger. In essence, it is mandatory (*wājib)* on Muslims to distribute the deceased`s estate, using the laid down principles in the Islamic law of inheritance only, while recourse to any other system of inheritance in distributing a deceased Muslim's estate amounts to a serious infraction that necessitates punishment of Hell Fire in the hereafter.[8]

Inheritance is not a new phenomenon among the various peoples and ages. Every religion and tribe has its distinct mode of sharing the property left by the deceased. We hereunder give brief description of some forms of inheritance known in human history.

Prior to Islam and within the Arabian Peninsula, the system of inheritance was confined to male descendants. Not only that women did not have any share of inheritance, they themselves were inheritable too. Siblings from the mother's side, like half-brothers or half-sisters, were completely excluded. Other Semitic cultures also practised primogeniture, under which all properties went to the eldest male child.[9]

Among the ancient Israelites, the father before his death would have bequeathed all his properties to only his male descendants. In this system, daughters would not inherit. In addition, the eldest son would receive twice as much as the other sons.[10]Inancient Spain, it was typical that all children, both male and female had a part of inheritance but the eldest male child also referred to as *Mellorado* would inherit one third or more of the inheritance while the left over would be shared by the other children.[11]In the Indian sub-continent, the right of inheritance is confined to male agnates. Ascendants including father were completely excluded by male agnatic descendants. Females in all capacities were generally

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deprived of hereditary rights. The same thing was applicable to Greek Roman law, Hebrew law and Jewish law to mention but a few, where they practised the same rule of primogeniture (i.e. daughters, widows and other female relations have no share in inheritance).[12]

In Nigeria, the patterns of inheritance have variations, as there are various ethnic groups in the country. In the Igbo custom, despite the variation in the inheritance system of various clans, the general principles are the same. Mostly, inheritance devolves on the first male child. This principle determines the right to succeed to property in Igbo land. The first male child known as *Okpara* is the one who takes over the whole property, satisfies himself first and then decides what portion goes to who and who should not have anything at all. Under this system, female do not have right at all to inherit landed property. In another development, if the deceased is a polygamist, his estate is distributed in relation to the number of wives who have male children. This is known as *Usoekwu* formula. The general rule is that the eldest son takes the largest share while the youngest takes the smallest. Instead of a daughter to inherit, she will be maintained by the *Okpara* until she is married out or dies.[13]

As for the Yoruba, there are two main methods of estate distribution. One is called *Idi Igi* (i.e. sharing per stripe) and the second one is known as *Ori o jori* (i.e sharing per capital). The former one is used in a situation where the deceased is a polygamist and the estate is distributed based on the number of wives of the deceased that had children for their husband irrespective of the number or gender of the children that each wife has while the latter is an equal share among the children, male and female, old and young, without any discrimination.[14]

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In the case of the Hausa Custom, the Islamic rules of inheritance, under Maliki school of law, have been largely absorbed into their indigenous system of inheritance. Among Hausa/Fulani before their Islam for example, the eldest son inherits his deceased father`s cattle, the main assert jn those days, out of which he makes presents of some of them to his younger brothers according to their needs.[15] But at present time it may be very difficult to differentiate between its traditional system of inheritance and that of the Islamic Law of inheritance especially in some Hausa land that are greatly influenced by the Islamic culture. [16]

The law of inheritance as far as Islam is concerned is based on the Qur'ān, *Sunnah*, and `*ijtihād* (the process of making a legal decision by independent interpretation of the legal sources). In the Qur'ān, there are two categories of verses that are related to inheritance, which are the *mujmal* verses (concise verses) and the *mufassal* verses (detailed verses).[17]The verses in the first category explain the beneficiaries` rights in general without discussing their portions in detail; while the verses in the second category, which are the *mawārīth* verses, explain the details regarding the beneficiaries and the portions or shares for each of the beneficiaries. Among the verses that are *mujmal* in nature are:

لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ ٱلْوَٰلِدَانِ وَٱلْأَقْرَبُونَ وَلِلنِّسَآءِ نَصِيبٌ مِّمَّا
تَرَكَ ٱلْوَٰلِدَانِ وَٱلْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ ۚ نَصِيبًا مَّفْرُوضًا

For men is a share of what the parents and close relatives leave, and for women is a share of what the parents and close relatives leave, be it little or much - an obligatory share (Q4:7).

وَأُوْلُواْ ٱلْأَرْحَامِ بَعْضُهُمْ أَوْلَىٰ بِبَعْضٍ فِى كِتَٰبِ ٱللَّهِ ۗ إِنَّ ٱللَّهَ بِكُلِّ
شَىْءٍ عَلِيمٌۢ ﴿٧٥﴾

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But those of (blood) relationship are more entitled to inheritance in the decree of Allah. Indeed, Allah is knowing of all things (Q8:75).

The *Mawārīth* verses, which detail the sharing, are:

يُوصِيكُمُ ٱللَّهُ فِيٓ أَوۡلَٰدِكُمۡۖ لِلذَّكَرِ مِثۡلُ حَظِّ ٱلۡأُنثَيَيۡنِۚ فَإِن كُنَّ نِسَآءٗ
فَوۡقَ ٱثۡنَتَيۡنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَۖ وَإِن كَانَتۡ وَٰحِدَةٗ فَلَهَا ٱلنِّصۡفُۚ
وَلِأَبَوَيۡهِ لِكُلِّ وَٰحِدٖ مِّنۡهُمَا ٱلسُّدُسُ مِمَّا تَرَكَ إِن كَانَ لَهُۥ وَلَدٞۚ فَإِن لَّمۡ
يَكُن لَّهُۥ وَلَدٞ وَوَرِثَهُۥٓ أَبَوَاهُ فَلِأُمِّهِ ٱلثُّلُثُۚ فَإِن كَانَ لَهُۥٓ إِخۡوَةٞ فَلِأُمِّهِ
ٱلسُّدُسُۚ مِنۢ بَعۡدِ وَصِيَّةٖ يُوصِي بِهَآ أَوۡ دَيۡنٍۗ ءَابَآؤُكُمۡ وَأَبۡنَآؤُكُمۡ لَا
تَدۡرُونَ أَيُّهُمۡ أَقۡرَبُ لَكُمۡ نَفۡعٗاۚ فَرِيضَةٗ مِّنَ ٱللَّهِۗ إِنَّ ٱللَّهَ كَانَ عَلِيمًا
حَكِيمٗا ١١ ۞وَلَكُمۡ نِصۡفُ مَا تَرَكَ أَزۡوَٰجُكُمۡ إِن لَّمۡ يَكُن لَّهُنَّ
وَلَدٞۚ فَإِن كَانَ لَهُنَّ وَلَدٞ فَلَكُمُ ٱلرُّبُعُ مِمَّا تَرَكۡنَۚ مِنۢ بَعۡدِ وَصِيَّةٖ يُوصِينَ
بِهَآ أَوۡ دَيۡنٖۚ وَلَهُنَّ ٱلرُّبُعُ مِمَّا تَرَكۡتُمۡ إِن لَّمۡ يَكُن لَّكُمۡ وَلَدٞۚ فَإِن كَانَ
لَكُمۡ وَلَدٞ فَلَهُنَّ ٱلثُّمُنُ مِمَّا تَرَكۡتُمۚ مِّنۢ بَعۡدِ وَصِيَّةٖ تُوصُونَ بِهَآ أَوۡ دَيۡنٖۗ
وَإِن كَانَ رَجُلٞ يُورَثُ كَلَٰلَةً أَوِ ٱمۡرَأَةٞ وَلَهُۥٓ أَخٌ أَوۡ أُخۡتٞ فَلِكُلِّ وَٰحِدٖ
مِّنۡهُمَا ٱلسُّدُسُۚ فَإِن كَانُوٓاْ أَكۡثَرَ مِن ذَٰلِكَ فَهُمۡ شُرَكَآءُ فِي ٱلثُّلُثِۚ مِنۢ
بَعۡدِ وَصِيَّةٖ يُوصَىٰ بِهَآ أَوۡ دَيۡنٍ غَيۡرَ مُضَآرّٖۚ وَصِيَّةٗ مِّنَ ٱللَّهِۗ وَٱللَّهُ عَلِيمٌ
حَلِيمٞ ١٢

Allah instructs you concerning your children: for the male, what is equal to the share of two females. But if there are only daughters, two or more, for them is two thirds of one's estate. In addition, if there is only one, for she is half. And for one's parents, to each one of them is a sixth of his estate if he left children. But if he had no children and the parents alone inherit from him, then for his mother is one third. And if he had male siblings or female siblings, for his mother is a sixth, after any bequest he may have made or debt. Your parents or your children - you know not, which of them are nearest to you in benefit. These shares are obligation

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imposed by Allah. Indeed, Allah is Ever knowing and Wise. And for you is half of what your wives leave if they have no child. But if they have a child, for you is one fourth of what they leave, after any bequest they [may have] made or debt. And for the wives is one fourth if you leave no child. But if you leave a child, then for them is an eighth of what you leave, after any bequest you [may have] made or debt. And if a man or woman leaves neither ascendants nor descendants but has a brother or a female sibling, then for each one of them is a sixth. Nevertheless, if they are more than two, they share a third, after any bequest, which was made, or debt, as long as there is no detriment [caused]. This is an ordinance from Allah and Allah is knowing and forbearing (Q4: 11-12).

يَسۡتَفۡتُونَكَ قُلِ ٱللَّهُ يُفۡتِيكُمۡ فِي ٱلۡكَلَٰلَةِۚ إِنِ ٱمۡرُؤٌاْ هَلَكَ لَيۡسَ لَهُۥ
وَلَدٞ وَلَهُۥٓ أُخۡتٞ فَلَهَا نِصۡفُ مَا تَرَكَۚ وَهُوَ يَرِثُهَآ إِن لَّمۡ يَكُن لَّهَا
وَلَدٞۚ فَإِن كَانَتَا ٱثۡنَتَيۡنِ فَلَهُمَا ٱلثُّلُثَانِ مِمَّا تَرَكَۚ وَإِن كَانُوٓاْ إِخۡوَةٗ رِّجَالٗا
وَنِسَآءٗ فَلِلذَّكَرِ مِثۡلُ حَظِّ ٱلۡأُنثَيَيۡنِۗ يُبَيِّنُ ٱللَّهُ لَكُمۡ أَن تَضِلُّواْۗ وَٱللَّهُ
بِكُلِّ شَيۡءٍ عَلِيمُۢ ١٧٦

They request from you a legal ruling. Say, "Allah gives you a ruling concerning one having neither descendants nor ascendants as beneficiaries." If a man dies, leaving no child but only a female sibling, she will have half of what he left. And he inherits from her if she dies and has no child. But if there are two female siblings [or more], they will have two-thirds of what he left. If there are both male siblings and female siblings, the male will have the share of two females. Allah makes clear to you His law, lest you go astray. And Allah is Knower of all things. (Q4: 176).

It is evident that while the earlier cited two verses are concise, the other three are detailed.

Those verses were said to have been revealed as response to case of inheritance brought to the Prophet which containrd in the following *hadith.*

إن امرأة سعد بن الربيع جاءت إلى رسول الله صلى الله عليه وسلم
بابنتيها من سعد فقالت يا رسول الله هاتان ابنتا سعد بن الربيع قتل

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أبوهما سعد معك بأحد شهيدا وأن عمهما أخذ مالهما فلم يدع لهما مالا، ولا تنكحان إلا بمال فقال صلى الله عليه وسلم يقضي الله في ذلك فنزلت أية المواريث (يوصيكم الله في أولادكم للذكر مثل حظ الانثيينفأرسلصلى الله عليه وسلم إلى عمهما أن أعط ابنتي سعد الثلثين وأمهما الثمن وما بقى لك.

> The wife of Sa^c^ad Ibn Rabi^c^ came with her two daughters by Sa^c^ad Ibn Rabi^c^ to the Messenger of Allah, and she said: O Messenger of Allah! Here are the two daughters of Sa^c^ad, their father was killed while fighting on your side on the day Uhud, and their uncle has taken their property. He has not left any property for them, and they cannot be married unless they have some property. He (the Prophet) said: Allah will decide about that. Then the verse of inheritance was revealed (i.e Q.4:11) so the Prophet sent for their uncle and said: Give the two daughters of Sa^c^ad two thirds, give their mother one-eighth and what remains is for you.[18]

These and other narations to be discussed in the subsequent chapters form bases of Inheritance in Islam.

1.2. Statement of the Problem

The Islamic law of Inheritance has been ordained by Allah (S.W.T.) in a wise and gradual manner. It is a complete and comprehensive system detailing the rightful beneficiaries of inheritance and the portions for each beneficiary.[19] It has determined the rulings and methods to distribute inheritance among all beneficiaries with the purpose to act fairly to all levels of beneficiaries and to avoid discrepancies among them. For this reason, the system is considered by Muslims to be complete and perfect. The perfect nature of the system however is one thing, its acceptability and practise by Muslim adherents is another.

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Among some Nigerian Muslims today, internecine scramble for the distribution of the „property of a deceased person has become a serious societal problem that requires profound attention. The struggle over inheritance of property has pitted children of the same father against each other. Conflicts among some Nigerian Muslims over inheritance have resulted in unrest in the society. It is observed that the crises sometimes arise because of issuance of wrong rulings by the *Alfas* called to distribute the estate or by Qādis especially at juridical Courts of lower status as a result of which the distribution is challenged in the *Sharīᶜah* Court of Appeal. Wrong rulings by juridical Courts of lower status and the *Sharīᶜah* Court of Appeal is the problem this research work seeks to find out and address.

1.3 Objectives of the Study

This study examines the application of Islamic law of inheritance in *Sharīᶜah* Juridical Courts in Kwara State. Objectives of the study are therefore:

1. To examine the application of Islamic inheritance system in *Sharīᶜah* Juridical Courts in Kwara State by comparing and contrasting the methodologies applied by the individual court in the study areas with the laid down Islamic principles of Islamic law of inheritance.

2. To appraise the correctness or otherwise of inheritance cases decided by the Area Courts and the *Sharīᶜah* Court of Appeal in Kwara State.

3. To appraise the contributions of the *Sharīᶜah* Juridical Courts in Kwara State, especially *Sharīᶜah* Court of Appeal to estate distributions in Kwara State.

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1.4. Significance of the Study

The law of inheritance in Islam has a clear policy and is comprehensive in nature because it is a commandment from Allah (S.W.T.) who has knowledge of all things. However, not all Muslims subscribe to the implementation of the Islamic law of inheritance in Kwara State. A few, who are not satisfied, end up taking themselves to Area Courts and then *Sharīᶜah* Court of Appeal. As a result, it becomes imperative to look at the reasons why estate distributed on the basis of the *Sharīᶜah* provisions are challenged in Area Courts; and why estate distributions by Area Courts are appealed against in the *Sharīᶜah* Court of Appeal.

This work presents the inestimable roles played by the *Sharīᶜah* Juridical Courts in Kwara State in estate distributions. The significance of this study also rests on creating further awareness among Muslims in Nigeria, Kwara State in particular, regarding the significance of Islamic law of inheritance, as well as its implementation. The work also enriches the understanding of Muslim scholars, judges, lawyers as well as students of Islamic law and Muslim populace especially in Kwara State concerning Islamic law of inheritance. The work also addresses the deficiencies in the dispensation of Islamic law of inheritance in the courts with a view to remedying them.

It also prompts the introduction of Islamic Inheritance Law in the form of written laws (statutes) that can be used as guidelines and common practises by the *Sharīᶜah* courts Islamic institutions or property management agencies, Islamic Law legal practitioners, corporate companies, trustees and Muslims in Nigeria in general. No doubt that many works have been written on the *Sharīᶜah* provisions on estate distributions. There is,

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however, none that has reviewed cases decided at both the Area Courts and *Sharīᶜah* Court of Appeal in Kwara State to ascertain their correctness or otherwise.

1.5 Scope of the Study

The study is mainly on Islamic law of inheritance with special focus on its practises and implementations in Kwara State. As the *Sharīᶜah* Juridical Courts in Kwara State hear out cases on inheritance, the study examines many of such cases of estate distributions decided, on the bases of provisions of the *Sharīᶜah* principles on inheritance by Area Courts and the *Sharīᶜah* Court of Appeal in kwara state as contained in the Record „„of Proceedings of Area Courts and Annual Reports of Kwara State *Sharīᶜah* Court of Appeal from 1994-2015. In the whole of the 59 Area Courts spread across all the sixteen Local Government Areas of Kwara Starrrrrrrrte, only fifteen inheritance cases were handled by the Area Courts between 1994 and 2015. We decided to review only 4 out of the fifteen cases because they are the ones with issues. In *Sharīᶜah* Court of Appeal, the Estate Distribution Department presided over 88 inheritance cases between 1994 and 2015 out of which, based on our study, only 11 have issues and need to be reviewed.

1.6. Research Methodology

Historical, exegetical and analytical research methods with interpretative approach are utilised in carrying out the study. The historical method is adopted in the areas of the study where we trace the historical development of *Shariᶜah* Courts in Nigeria. In our discussions on *Mīrāth*, especially on the general principles guiding its execution, we rely on verses of the Qur'ān and '*Ahādīth* of Prophet Muhammad. In such areas of the study, we adopt the exegetical method by relying on commentaries given by *Mufassirun* using interpretative approach. The analytical research method is adopted in the areas of the study

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where we review cases of inheritance decided by the Area Courts and the *Sharīᶜah* Court of Appeal as contained in their records of proceedings and Annual Reports respectively. Information was also generated through the use of library sources which include online sources; and one individual, face-to-face, semi-structured interview with judges of the Area Courts and Kādis of the Kwara State *Sharīᶜah* Court of Appeal. The interview lasted approximately 1 to 1½ hours. The interview was designed to elicit information from court registrars, judges and kādis on the application of Islamic Law of inheritance in the Kwara State *Sharīᶜah* juridical courts.

1.7.Conceptual Definition of Terms

For the purpose of clarity and better understanding, key- words which are central to the study are hereby explained:

i. **Inheritance:** Inheritance is defined as "money, property etc. that is received from someone who has died".[20]Another source defines it as "the right of an heir to succeed to property on the death of an ancestor".[21] Another word that is closely related to inheritance is "succession", which is defined by the Law Dictionary as "the devolution of title to property under the law of descent and distribution". [22] In legal texts, the use of this word "succession" to denote a situation where property of deceased person passes to his/her heirs seems to feature more frequently than "inheritance". However, in this work, the two words are used interchangeably.

ii. **Law:** Law is defined as "a rule that people in a particular country or area must obey."[23.]Another source defines law as "the body of the official rules and regulations generally found in constitutions, legislation, judicial opinions, and the like that are used to govern a society and to control the behaviors of its members, law is a formal

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mechanism of social control".[24] Law is one of the words that do not command a universally acceptable definition. Different scholars define it differently. However, on a general note, it implies the established set of rules and regulations agreed upon in a given society as the guide, norms and principles of that society.

iii. ***Sharīᶜah*:** *Sharīᶜah* (شريعة) means "the moral code of a Prophetic religion".[25] The term Islamic law, more specifically, means a law derived on the theological foundations of Islam, which Allah has sent, by way of revelation, all the rules and guidelines that humans need to prosper in this world and in the afterlife. *Sharīᶜah* (Islamic law) deals with several topics including crimes, politics and economics, as well as personal matters such as sexual intercourse, hygiene, diet, prayer, everyday etiquette and fasting. On a general note, *Sharīᶜah* is the path that Almighty Allah in His wisdom established and ordained as the only path through which man can be rightly guided towards Him.

iv. **Legal heir:** Legal heir is a term that is properly applied to those relatives upon whom properties of the deceased devolve.

v. **Share:** This is the fraction of the estate that an heir is entitled to inherit such as 1/2 1/3, 1/6, 1/8 and so on.

vi. **Valuation:** Is an estimation of the worth of the deceased`s estate for easier distribution.

vii. ***Jāhiliyyah:*** The'state of ignorance' or 'Days of ignorance' referring to the condition in which Arabs found themselves in pre-Islamic Arabia, i.e. prior to the revelation of the Qur'ān to Prophet Muhammad (S.A.W).

viii. **Resident:** Is the political agent of the British colonial Administration

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1.8. Review of Related Literature

Law of inheritance is a very important aspect of the Islamic Law and it plays a very significant role in the Islamic legal system. It is believed to be strongly indicative of society's normative system, social structure, and principles of family organization. This section comprises the ideas, views, as well as arguments of many renowned Islamic law jurists, who have made great contributions in the field of inheritance under Islamic law and whose works we find very resourceful.

It should be noted from outset that while there are quite a number of works written especially in Arabic on Islamic law of inheritance generally; those dealing with the application of Islamic law of inheritance in Kwara State are scanty. Nonetheless, we here-under review some existing works that are related in one way or the other to the study. The literature review includes books that are written in Arabic and English Languages.

Ambali`s book titled: *The Practise of Muslim Family Law in Nigeria* is recent and focuses on several topical issues in Islamic Jurisprudence. The book contains more than 300 pages of eighteen chapters. Two chapters (i.e. chapters fifteen and sixteen) are dedicated to inheritance and *Wasiyyah* (Islamic law on will-making). The work analyzes the issues of inheritance, such as bases of claim to inherit, Principles of *ᶜawl*, *Ar-Radd, Dhul`Arhām* and Share of hermaphrodite. The book is essentially based on the views of the four schools of Islamic jurisprudence, in relation to inheritance.

Interestingly the work discusses in details the roles and contributions of Kwara State *Sharīᶜah* Court of Appeal on the distribution of estate. It cites and examines some inheritance cases decided by the court.[26] However, since the work covers only cases

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decided in the Kwara State *Sharīᶜah* Court of Appeal up to the time it was published in 1997 while it also does not carry out any review of the cases, this present study is more comprehensive as it covers all *Sharīᶜah* Juridical Courts in Kwara State from 1994-2015 while it also reviews some of the cases up to 2015.

Orilowo, in his Master Dissertation submitted to the Department of Religions, University of Ilorin titled: "The Role of Kwara State *Sharīᶜah* Court of Appeal in the Distribution of Estate", analyses the issues of inheritance extensively. The work contains 78 pages and it is divided into five chapters. After the introductory chapter, the second chapter comprises the concepts, principles and conditions of inheritance. The author in chapter three discusses the role of the *Sharīᶜah* Court of Appeal in Kwara State while in chapter four, which is very resourceful as far as this work is concerned, he examines and appraises some decided cases and judgments delivered by Kwara State *Sharīᶜah* Court of Appeal, Ilorin, and he concluded with some recommendations.[27]

Although the author claims that he reviewed some cases when in actual fact, all he did was mentioning some inheritance cases decided by the Justices of the Kwara State *Sharīᶜah* Court of Appeal, Ilorin and giving some remarks. The work also limits its scope to the Kwara State *Sharīᶜah* Court of Appeal whereas our work has a wider scope covering all the *Sharīᶜah* Juridical Courts in Kwara State which embraces the Area Courts in all the Local Government Areas of the Kwara State and the Kwara State *Sharīᶜah* Court of Appeal. It also carries out thorough review of the cases and judgments delivered from those Courts by Judges of Area Courts and Justices of *Sharīᶜah* Court of Appeal.

Shafii A. Imam Malik in his M. A. dissertation titled:"Administration of Kwara State *Sharīᶜah* Court of Appeal (1975-1987)"[28] focuses on the administration of the Court

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starting with the establishment of the Court, its jurisdictions, method of appeal, administered law by the Court and proceedings. He further discusses the administration, positions and conditions of the staff of the Court; inside and outside the stations. He also looks at the impact of the Court on the people of Kwara State especially the Muslims, by revealing the relevance or otherwise of the system to the Muslims in the State between 1975 and 1987. It will be noted that while his work covers the period between 1975 and 1987, our work covers the period between 1994 and 2015.Ours is also of wider scope as it does not concentrate only on administrations of the Court and not limited to Kwara State *Sharīᶜah* Court of Appeal but extensively discsses Islamic law of inheritance and its application in all *Sharīᶜah* juridical Courts in Kwara State with the aim of examining and reviewing the cases decided in the Courts.

Musa Ali Ajetunmobi in his work titled: *Sharīᶜah* Legal Practise in Nigeria (1956-1983) examines the historical perspectives and the growth of Islam and its Law (*Sharīᶜah*) in Nigeria. It surveys the elements of *Sharīᶜah* legal practise in lower Courts (i.e Native/ Area Courts). It treats the organizational structure, jurisdiction and law of *Sharīᶜah* Courts. The plight of *Sharīᶜah* legal training in Nigeria and the relation of *Sharīᶜah* law to the Nigeria society are also considered in addition to the in-depth examination of the place of the organizational structure, jurisdiction and law of *Sharīᶜah* Courts in the country. It also examines the causes of crisis and tension in the juridical set up of Nigeria as well as scope of *Sharīᶜah* in the Federal Court of Appeal and the Supreme Court. It finally highlights the problems and prospects of *Sharīᶜah* legal practise in Nigeria and concluded with recommendations.[29] The work in its totality focuses on the aspect of *Sharīᶜah*practise in

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Nigeria from 1965 to 1983 without any specific discussion on Islamic law of inheritance which is the main focus of the present work.

The book: *Inheritance as it affects You* by S. O. Muhammad is very resourceful. The author in this book makes exposition and gives detail information on the entire field of Islamic law (*Sharīᶜah)* and Islamic law of inheritance in Nigeria. He gives explanations on general rules of inheritance like meaning and connotation of inheritance, qualifications required for inheritance, actual and ascertained liabilities with relevant verses of the Glorious Qur'ān and the *Hadīth* of the Prophet (SAW). He tries to analyze the practise of inheritance in some selected Traditions and Customs in Nigeria, which were found very significant. He finally touches the role of *Sharīᶜah* Court of Appeal on estate distribution.[30]Unlike the present work which carries out thorough examination of cases decided in the *Sharīᶜah* Court of Appeal and the Area Courts in Kwara State, Muhammad's work does not contain any review.

Oniye`s book titled: *The Distribution of Estate in Islam: The Law and Practise*, is more or less a replica of above reviewed book (*Inheritance as it Affects You*).The work is of 160 pages and comprises of six chapters, which concentrate on the general rules and concepts of estate distribution in Islam as well as different types of inheritance system in Nigeria.[31] While the work contains principles and general rules of inheritance, it does not concern itself with the application of the law in the *Sharīᶜah* Juridical Courts in Kwara State.

Doi`s book, *Sharīᶜah*: *The Islamic Law* is a book written to present an overview of Islamic law and its various sources. The book covers wide-range of topics on *Sharīᶜah* such as its sources, the founder of the Islamic schools of thought, family and its related matters,

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crime and punishment, the economic systems and international relation. Part four of the book, which consists of four chapters, centers on issues of inheritance and disposal of property. It discusses at length matters of inheritance and will-making.[32] However, the book does not deal with the practical application of the Islamic law of inheritance as is the case with the present work.

Gurin, in his book: *An Introduction to Islamic Law of Succession* discusses the rights of women to inheritance as stipulated in the Qur'ān. He explains the rationale behind apportioning greater share of the estate to men than women. According to him, Islam places greater economic obligations on men than women because men have responsibility for earning livelihood for the family. Hence, in Islam, the father maintains an unmarried woman while the husband maintains a married woman.[33] Beyond stating the theories, the present work deals with the practical application of the principles of Islamic law of inheritance; and that makes the difference between it and Gurin's work.

Bappa, in his book titled: *A Brief History of Sharīᶜah in the Defunct Northern Nigeria* discusses the concept of *Sharīᶜah*, its scope, its sources and the schools of Islamic law, Northern States and *Sharīᶜah* and the implementation of the constitutional provisions on the establishment of *Sharīᶜah* Courts in Nigeria. The history of operation of Islamic law in the former Northern Region of Nigeria from the time of the British colonial rule until after independence is also discussed.[34] This book, like all the earlier reviewed ones, does not have the practical application of the Islamic law of inheritance in the *Sharīᶜah* Juridical Courts in Kwara State as its focus.

In an Article titled "Prophet Muhammad`s Legacy on Women: Their Right of Inheritance" S.O. Muhammad examines the principles of inheritance under Islamic Law

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with special emphasis on the right of women. He discusses the principles of inheritance introduced by Islam which tremendously raised the status of women who were deprived of their right before the Islamic reforms.[35] This article like other books of inheritance touches some principles of inheritance before proceeding to the rights of women but without concentrating on the practical application of the Islamic law of inheritance especially in Kwara State.

A Case for Teaching Mīrāth as an Independent Course in Nigeria is an article by Mustapha Ali Khan in which he discusses the meaning and principles of *Mīrāth* as well as the different inheritance systems we have in Nigeria. The writer mentions the negative attitude of some Muslims towards the implementation of Islamic law of inheritance. He finally encourages Nigerian Muslims to allow the Islamic law of inheritance to thrive and suggested that an institutional framework should be designed to make Muslims implement the law as ordained by Allah.[36]The article is very resourceful to certain extent but covers very little aspect compared to the present study which covers the principles of inheritance and examines the implementation of Islamic law of inheritance in all *Sharīᶜah* Courts in Kwara State.

Muhammad Zubair *et al* in an article titled: *The Laws of Inheritance in Islam*concern themselves mainly with the *Sunni* law of inheritance. The article defines inheritance as "transfer of status to the living person from the deceased with respect to the specific estate/property objects". The authors in the article declare thus:

> Generally the laws of succession are divided into two groups: testamentary and intestate. Majority of the modern systems of succession are based on the individual's freedom to decide the future of devolution his estate upon his death. These are known as testamentary systems of succession. The case in which there is

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> compulsory imposition of succession rules by requiring that on the death of a person his property be transmitted in a foreseeable way to those entitled to it is known as the intestate succession system. [37]

Furthermore, the article discusses and concentrates on the principles of inheritance such as prior charges of inheritance and heirs (Legitimate) in Islam, ranging from *`Aṣḥābu'l-furūḍ*Beneficiaries, *ᶜAsabah* Beneficiaries (Residuaries) and *Dhawu'l-`Arḥām*Beneficiaries. It also explains some special cases in the Islamic law of inheritance such as Illegitimate Child, Adopted Child, A child in the womb, law relating to Hermaphrodite and Missing person. [38]

Mzee Mustafa Mzee in his article: "Islamic Law of Inheritance: The Case of Illegitimate Child and Possibility of Having an Asset of Deceased Father: A Tanzanian Case Study" after a brief discussion on the meaning of inheritance concentrates on the law relating to inheritance of Illegitimate Child for the reason that there is an allegation that the Islamic law of inheritance is unjust to its followers by giving a male child double the share of a female; and also by excluding an illegitimate child from inheritance.[39] This article addresses the question of inheritance according to Islamic law and the position of an illegitimate child under Islamic law. It also argues that, the illegitimate child has no right to inheritance from his biological father; but there is a room for him to have something which can support his life from the property of the deceased father, if a father wishes to do so before his death. The article after a lengthy discussion on *wasiyah*, its importance and the rules guiding will-making in Islam submits as follows:

> From this explanation it is clear that there is a room for a biological father to make a will to his illegitimate child. Provided that Will shouldn't exceed 1/3 of his whole estate. This action would go some way to alleviate the hardship often facing illegitimate children; it would make easier the task of the courts in handling such cases when

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> they go to court, and it would serve to put the conscience of the putative father at some ease. [40]

This article discusses a very small part of what our work discusses which covers all principles of Islamic inheritance and law related to special cases which illegitimate child is one of those cases. Our work also extends to review some cases of inheritance decided in *Sharīᶜah* Courts of Kwara State.

Abduls-Sami`I Arikewuyo in his article titled: *Women`s Inheritance Right in Yoruba Custom and the Islamic Law: A Comparative Analysis* investigates the inheritance rights of women both in the Yoruba culture and the Islamic law with a view to making comparison between the two. In his comparison between the two systems, he gives exposition thus:

> The two are similar in the basic constituents of inheritance namely: confirmation of death of the proprietor, existence of the heirs and availability of the estate. Thus in both systems, inheritance cannot hold in absence of these components. However, they differ largely in principles and practise. Essentially, Yoruba is a patriarchal society, the effect of which is mostly felt in under-playing the status of a woman in principle of inheritance. Contrarily, Islam is gender-friendly; hence it recognizes the independent right of each survivor regardless of sex or age. [41]

He finally concludes that the Yoruba system of inheritance exploits the woman-folk while the Islamic system of inheritance in its excellent provision guarantees woman inheritance rights.[42] Never-the-less, the article in its totality has addressed only a part of the present research work which discusses in a comprehensive manner almost all issues relating to Islamic law of inheritance and its practical application in *Sharīᶜah* Judicial Courts in Kwara State.

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Sada, in his article: *The Nature of Islamic law: A Rigid or Dynamic System* discusses the meaning and sources of *Sharīᶜah,* which is usually translated as Islamic law. He classifies the sources of Islamic law into two components, namely the divine and human sources. The divine source comprises the Qur'ān and the *Sunnah* of Prophet Muhammad while the human source comprises *`Ijmāᶜ, Qiyās,ᶜUrf, 'Istihsān* and *Maslahah* broadly termed as *`Ijtihād.* According to him, the divine source, which is unequivocally commanded by Allah on the messenger, is designated as *Sharīᶜah* in the strict sense of the word. He posited that since the Qur'ān with *Sunnah* are sometimes concise and supply only the general rules, it means that Allah, the Law Giver wants Muslims to work out the details of the law through interpretation and application of the injunctions of the *Sharīᶜah* to every contingency of life. He further explains that as human opinions and reasoning vary the interpretation and application of the injunctions of the *Sharīᶜah* vary from one person to another and from one community to another.[43]This article and the above two reviewed before it are relevant to this work especially when discussing*Sharīᶜah*.

Sharīᶜah: ItsMeaning and Philosophy in the Qur'ān and Sunnah is an article on *Sharīᶜah* written by Abdullahi Alhaji Shehu Sokoto. The paper is divided into three sections after thre introduction. The first section discusses the meaning of *Sharīᶜah.*The second section addresses the philosophy of *Sharīᶜah* while the third section summaries the article where the author concludes that "*Sharīᶜah* is much more than what happens in the law courts and it is much more than mere implementation of *Hudud* punishments. It embraces the whole of life of the Muslims from all his activities and actions including eating, habits, use of toilet, drinking, use of clothing and all facets of human life". [44]

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However, the article only discusses *Sharīᶜah* but does not relate it to the Nigerian society as it is done in the present research work.

As-Sābūni in his book titled *Al-Mawārīth fi-Sharīᶜatil-Islāmiyyah fi Daw`il-Qur'ān was-Sunnah* has made a good presentation for the understanding of a researcher because he touches various issues relating to gender inequality and basis of inheritance of the legal heirs. The book covers wide-range of general rules of inheritance, like meaning and connotation of inheritance, qualifications required for inheritance etc.[45]

Khalifa's book '*Ahkāmul-Mawārīth* is a contemporary book. The author deals with the principles and practise of the law of succession by giving about one thousand and four hundred (1,400) problems and their solutions. However, in treating all these problems, he would stop midway without giving final solution. The reader is therefore left to find the final answer, which is definitely a problem for a non-professional or a beginner.[46]

Sābiq, in his book *Fiqhus-Sunnah*, has a chapter on inheritance. The chapter however, in our opinion, is not comprehensive enough because its discussions do not cover inheritance concerning various legal heirs but only discusses the analytical and practical distribution of estate.[47]

Az-Zahiriy, in his book *Jawāhirul -`Iklīl,* which is based on Maliki School of law, devotes a section in volume two of the book to Islamic law of inheritance. The writer mentions the shares of each legal heir as prescribed in the Qur'ān and *Sunnah*. The work, which is analytical in its approach, gives good foundation to study the general knowledge of inheritance.[48]

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Aliyu in his book *Hāshiyatul -ᶜAdawi* identifies some legal heirs under the ground of blood relationship. He enumerates the members of the inner circle of family and points out those who are eligible to inherit.[49]Abu Zahra`s book *`Ahkāmut-Tarikah wal-Mawārīth* concentrates on the general rules and concepts of estate distribution in Islam and lays much emphasis on issues of estate of the hermaphrodite and the legal heirs as can be seen in the book.[50]Ashur, in his book, *ᶜIlmul- Mīrāth* discusses the topics concerning various legal heirs but he fails to go deep into analytical and practical distribution of estate among the legal heirs. It is a useful book for beginners because it gives skeletal framework of the subject for a researcher to build on.[51]

Muhammad B.I. in his book, *Al-fiqhul-Wādih minal-Kitāb was-Sunnah* covers different aspects of Islamic law of inheritance including will-making *(al-Wasiyyah).*He gives detail explanations on the eligible heirs and their legitimate shares. Circumstances that may necessitate exclusion, agnates and impediments to inheritance are extensively addressed. The book is also rich in mathematical calculations of some assumptive distributions in order to enrich the knowledge of the reader in practical aspects of inheritance.[52]

All reviewed Arabic books above are comprehensive works on inheritance and its principles. The main difference between them and our work is that while they focus only on the theory, our work covers both the theoretical and practical aspects of Islamic law of inheritance and carries out critical review of some cases delivered in Kwara State *Sharīᶜah* Juridical Courts.

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1.9. Conclusion

This Chapter serves as the general introduction for this research work. The research problem is identified while the aims and objectives of the study are also clearly stated. The methodology adopted in the research is stated while some existing literatures relating to the research topic are reviewed.

Since this work examines the application of Islamic law of inheritance in *Sharīᶜah* ,,,,,,,,,,Juridical Courts in Kwara State, the next chapter traces the history of *Sharīᶜah* in Nigeria with emphasis on the establishment and functions of *Sharīᶜah* Juridical Courts namely: Area Courts and *Sharīᶜah* Court of Appeal.

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Notes and References on Chapter One

1 Section 277 of the *Sharīcah* Courts of Appeal in 1999 Constitution of Federal Republic of Nigeria, 104.
2 Many verses of the Glorious Qur`ān attest to this fact such like Q2:138, Q4:26, Q6:157, Q9:33. Q10:57 and Q16: 89.
3 Ibn Mājah, *Sunanu Ibn Mājah* (*Hadīth* 2790, Vol 2). (Beirut: Dāru Ihyāit-Turāthil-Arabi (ND).
4 At-Tirmidhī, *Sunanu 't- Tirmidhī* (*Hadīth* 2886, Vol. 4). (Beirut: Dāru-Ihyāit-Turāthil- Arabi (ND) ,92
5 Al-Manāwī, *Faydul-Qadīr,* (vol 2). (Beirut: Dārul-Kutubil-cIlimiyyah. (ND), 254
6 Ash-Shabalanji, M. *Nuru 'l- 'absār fi Manaqibi āli 'n-Nabiyyi 'l-Mukhtār,* (Cairo: Dārul-Fikr 1434), 73- 74.
7 *ibid*
8 Suleiman, K. "The Application of Islamic law in Northern Nigeria: Problems and Prospects" in *Islamic Law in Nigeria (Application & Teaching)* ed. Sayed Khali Rashid (Lagos, Islamic Publications Bureau, 1988), 63
9 Khan, M. M. A. "A case for Teaching *Mīrāth* as Independent Courses"in *Islamic Law in Nigeria (Application & Teaching),* ed. Syed Khali Rashid(Lagos: Islamic Publications Bureau, 1988), 187. See also Muhammad, S. O. *Inheritance as it Affects You,* (Ilorin: Olalomi printers 2005), 8.
10 Muhammad, S. O. *Inheritance as it Affects You,* (Ilorin: Olalomi printers 2005), 9.
11 *ibid*
12 Khan, M.M.A. "A case for Teaching *Mīrāth* as Independent Courses" 187
13 Muhammad, S.O. *Inheritance as it Affects You,* 8
14 *ibid*
15 Oserogho and Associates," Inheritance , Succession, Wills and Private Trust" March 2003, www.oseroghoassociate.com. Assessed on 16/2/2018
16 The Hausa/Fulani people presently, have no other traditional system of inheritance other than the one stipulated by Islam; such places include: Kano, Katsina, Sokoto to mention just few.
17 Muhammad, S.O. *Inheritance as it Affects You,* 8
18 Al- Bukhārī, Muhammad Abu cAbdullahi, *Sahīhu 'l-Bukhārī, (Vol 12).* Beirut:Dārul-Fiqr, 1430 AH.Hadith 2885, p. 275
19 Oniye, M.A. *The Distribution of Estate in Islam, the law and Practise.* (Ilorin: Kewudamilola Printing Press at Computer Center, 2008), 191
20 *Longman Dictionaries of Contemporary English.*(New Edition)(2007), 835.
21 Chief Bryan, A. Garner, *Black`s Law Dictionary* (Seventh Edition) (United State of America: West Publishing Co. 2004)1431.
22 Otaluka, *Women and Children under Nigerian Law,* A. U. Kalu & Y. Osinbajo. (Eds.)Federal Ministry of Justice Law Review Series, 59.
23 *Longman Dictionaries of Contemporary English.*(New Edition)(NP) (2007), 909

المنارة للاستشارات
www.manaraa.com

24 Rehman, J. "The *Sharīcah* Islamic Family Laws and International Human Rights Law: Examining the Theory and Practise of Polygamy and *Talāq." International Journal of Law, Policy and the Family*.(2007),108.

25 *ibid*

26 Ambali, M. A. *Muslim Family Law.*(Zaria: Tamaza Publishing Company Limited 2012)

27 Orilowo, M. I. "The Role of Kwara State *Sharīcah* Court of Appeal in the Distribution of Estate". M.A. Dissertation, University of Ilorin, 2013.

28 Shafii, A. I. M. "Administration of Kwara State *Sharīcah* Court of Appeal (1975-1987)" M.A.Dissertation on Islamic studies. Department of Religions, University of Ilorin, Ilorin. 1989.

29 Ajetunmobi, M. A. *Sharīcah Legal Practise in Nigeria (1956-1983).* (Ilorin: Kwara State University Press, Malete, 2017)

30 Muhammad, S. O. *Inheritance as It Affect You.*

31 Oniye, M. A.*The Distribution of Estate in Islam.*

32 Doi, A. R. *Sharīcah; The Islamic Law, (*Malaysia: A.S Noordeen, 2005)

33 Gurin, M. A. *An Introduction to Islamic Law of Succession. (*Zaria: A. B. U. Press Limited, 2007).

34 Bappa, M. A. M. *A brief History of Sharīcah in the Defunct Nigeria. (*Jos: University Press Ltd Nigeria 2003).

35 Muhammad, S. O. "Prophet Muhammad`s Legacy on Women: Their Right of Inheritance" in *Muhammad: His Immortal Messages.* A Publication of Dacwah by Communication in Partnership with MCAN, 2008, 126-139

36 Khan, M. M. A. *"*A case for Teaching *Mīrāth* as Independent Courses", 181-194.

37 Prof. Muhammad Zubair, Prof. Sadia Khattak, Mr. Hidayat-ur-Rehman, Prof. Muhammad Aqeel Khan, "The Laws of Inheritance in Islam" in *Journal of Basic and Applied Scientific Research* **(**University Mardan K.Pk PakistanTextRoad Publication 2014), 84

38 *ibid*, 84-90

39 Mzee, M. M. "Islamic Law of Inheritance: The Case of Illegitimate Child and Possibility of Having an Assets of Deceased Father: A Tanzanian Case Study" *Journal of Law, Policy and Globalization* (Tanzanian 2016),55

40 *ibid*, 55-59

41 Arikewuyo, A.I. "Woman`s Inheritance Rights in Yoruba Custom and the Islamic Law: A Comparative Analysis" in *KWASU Journal of Religious Studies*, vol. 1 No 2, 2017, 134

42 *ibid,* 128-140

43 Sada, I.N."The Nature of Islamic law; A Rigid or Dynamic System" *Ahmadu BelloUniversity Journal of Islamic Law a Critique". Vol. 11 No 11, 2000-2001*

44 Abdullahi, S. S. "Shariah: Its Meanings and Philosophy in the Quran and Sunnah" in Isla and Democracy in Nigeria Proceeding of 20th National Conference of the Nigeria Association of Teahers of Arabic and Islamic studies. (NATAIS) 2004, 115

45 As-Sābūni, M. A *al-Mawārīth fi-Sharīcāti 'l-'Islāmiyyah fi-daw'i `l-Kitāb wa 's-Sunnah.*

46 Khalifa, M.T.A. *Al-'Ahkāmu 'l-Mawārīth, (*Cairo:Darussalam, 2007).

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47 Sābiq, A.*Fiqhu 's-Sunnah,* (Vol. 3), (Beirut Lebanon: Dārul Fikr, 1971).

48 Az-Zahiriyyi, S. *Jawāhiru 'l –'Iklīl* (Cairo (NP)N.D.)

49 Aliyu, A.*Al-Hāshiyatu 'l- Adawi,* (Vol. 2), (Beirut Lebanon: Darul Fikr,), (N.D)

50 Abu-Zahra, M. *Ahkāmu Tarika wal mawarīth.*(Beirut Lebanon: Dārul- Fikrul-Arabi, 2004).

51 Ashur, M. *cIlmul Mīrāth,* (Maktabatu Quran, 1988)

52 Muhammad, B. I. *Al-fiqhu 'l-Wadih mina 'l-Kitāb wa 's-Sunnah.*(vol.3) Cairo: Darul-Manar 2007.

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CHAPTER TWO

EVOLUTION OF *SHARĪᶜAH* JURIDICAL COURTS IN KWARA STATE

2.0 Introduction

Before the introduction of the British system of law and its courts in Nigeria, each tribe had its different Customary Law that bounded its people. For example, in the northern States where Kwara State belongs, they had Emir as the Supreme Ruler with *Alkalai* that constituted the Supreme Court of their lands.[1] They resolved disputes concerning land, family, inheritance issuesand criminal maters. The arrival of the British brought change to their existing law by introducing English Law and Courts partially comprising customary and Islamic Laws. This chapter deals with the History of *Sharīᶜah* Courts in Nigeria as a prelude to discussing evolution of *Sharīᶜah* Juridical Courts in kwara state. In addition the chapter unravels the challenges facing the *Sharīᶜah* Courts in Nigeria with particular reference to Kwara state.

2.1. Establishment of *Sharīᶜah* Courts in Nigeria

In Nigeria today especially the Northern parts, the Courts with jurisdiction in Islamic law matters in terms of hierarchy are Area Courts, *Sharīᶜah* Courts of Appeal, Couts of Appeal and Supreme Courts.This has been operating side by side with Islamic law since the introduction of English legal system in Nigeria in 1876 by the British.[2] The Islamic law however has been regarded as the native's law and custom is predominantly applied in the north, under the Native Courts Ordinance (NCO) OF 1918.[3] These Native Courts later became Area Courts when States were created. For the purpose of the Area Courts, sections 2 and 4 of the Area Court Law provide *inter-alia*:

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> Section 2: (1) In this Edict, unless the context otherwise requires: Area court' means a Court established under or in pursuance of this Edict or deemed to have been so established and shall include an Upper Area Court.
>
> Section 4: (1) An Area Court shall consist of the following member or members:
>
> An Area judge sitting alone, or An Area judge sitting with one or more members;
>
> The Upper Area Court shall consist of three judges, any two of whom sitting together to hear and determine appeals shall form a quorum. [4]
>
> (2) All questions of Moslem Personal Law shall be heard and determined by any Member of an Area Court learned in Moslem Law.[5]

The *Sharīᶜah* Court of Appeal is one of the constitutionally created courts which have its jurisdiction well rooted in theNigerian constitution.Its constitutional jurisdiction is limited to Islamic personal Status.[6] It was enacted as an appellate Court to hear and determine all appeals involving Islamic Personal law matters from the lower courts (Area Courts). The *Sharīᶜah* Court of Appeal was established by Section 275 of the 1999 Constitution of Federal Republic of Nigeria (CFRN) for any State that demands for it but mandatory in the Federal Capital Territory. [7]

Section 262 of the 1999 CFRN provides thus: the *Sharīᶜah* Court of Appeal shall exercise both appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal law, which the Court is competent to decide in accordance with the Constitution. The Court comprises of a Grand Kādi and other Kādis as the National Assembly or the State Houses of Assembly (as the case may be) may prescribe.[8]

Section 54 of the Area Court Edict vests the power of appeal in cases involving questions of Muslim personal law in the *Sharīᶜah* Court of Appeal. The High Court on the other hand has jurisdiction to hear all cases of Islamic civil causes and criminal matters

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inclusive[9] yet whenever a matter before the High Court is Islamic, the question often arises on what law is to be applied. No doubt, the High Court is empowered to apply principles of Islamic law treating it as a variety of native law and custom. This Islamic cases of appellate jurisdictions awarded to High Court, Court of Appeal and Supreme Court which are not grounded in Islamic law are in our observation, deliberate attempt to put the Islamic legal system in limbo in the country.

The Federal Court of Appeal and Supreme Court were established by Constitution (Amendment) (No. 2) Decree (No. 42) of 1976. They had no jurisdiction in *Sharīᶜah* until 1979 when sections 217, 218, 219, 223, 226 and 227 of the 1979 Constitution were enacted with sub-sections.[10] The 1979 Constitution of Federal Republic of Nigeria also provides for Appeals against the decisions of the Federal Court of Appeal as the highest judicial Court in the Country.[11] However the two superior courts(Court of Appeal and Supreme Court) have power to apply *Sharīᶜah*practise and procedures. Yet the fact remains that most of the appeals concerning*Sharīᶜah* cases normally stop at *Sharīᶜah* Court of Appeal.

2.1.1 *Sharīᶜah* Courts in Nigeria before Colonization

Historically, Maliki School of Islamic law had been operating in Northern Nigeria including Kwara State for over one hundred years prior to the advent of the colonial rulers.Kanem Bornowas the pioneer Islamic empire in the northern Nigeria when the 12th king of the empire, Umm Jilmi Bin Sulaiman embraced Islam and consequently declared his whole empire as Islamic state with Arabic language as the medium and an official language of communication.[12]

At the commencement of Shehu Usman Dan Fodio's Islamic reformation in 1804 in HausalandIslamic government becomes powerful in the north. Shehu Usman Dan Fodio

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was a Fulani preacher who dedicated himself to the spreading of Islamand its teaching, eradication of un-Islamic practises which were common in Hausaland, and the establishment of full Islamic law. The itinerant Islamic missionary activities ofDan Fodio influenced a large number of people who converted to Islam and they became his followers.

The*Sharīᶜah* continued growing in full fledges throughout the length and breadth of the Northern part of the country without omission. [13] The followers of Dan fodio in the *jihād* became the leaders of many principal towns like Adamawa,Bauchi,Gobir,Gwandu,Ilorin, Kano,Kastina,Kebbi, Nupe,Sokoto, Zamfara, Zazzau (Zaria), etc. These towns patterned their administration of*Sharīᶜah*and fully established Islamic system of government, under which *Sharīᶜah* was the legal codes in practise at the Emirs` Palaces and Alkali courts, with unlimited jurisdictions.[32]The Fulani *Jihād* resulted in the collapse of the old Hausa dynasties. The Hausa dynasties were replaced by Fulani emirates. By 1812, a Fulani Islamic Empire (Sokoto Caliphate) was established over many of the Hausa States in many parts of the present Northern States of Nigeria.[14] Islamic Law was applied vigorously as the law of the land and the basis of political administration in the Sokoto Caliphate.[15] In 1817, a *Jihād* was launched in Ilorin, which led to the establishment of a Fulani emirate in Ilorin, which hitherto was a dependency of the old Yoruba Kingdom of Oyo. By 1906 when the British took over the administration of Northern Nigeria, Islamic Law had taken root in many towns and villages of the Sokoto Caliphate. Islamic law was applied in criminal and civil matters to all Muslims by the Emirs' courts and Alkali courts within the Caliphate. [16]

According to Islam, the head of Islamic community must be an Imam, Caliph or Emir. His other assistants as laid down comprised the followings:

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i. *Wazīri*: - advisor to the caliph.

ii. *Kādi:* - judge who must be versed in *Sharīᶜah* and other aspects of Islamic knowledge.

iii. *Nāṣira'l-Maḍhālim:* - appeal court judges.[17]

All these were established in Hausaland; to the extent that the Sokoto caliphate was claimed to be the next in rank after Saudi Arabia and Afghanistan. [18]

From the sixteenth century, Katsina and Kano became great centers of Islamic learning which attracted Muslim scholars from the Maghrib, Middle East and Western Sudan e.g. Morocco and Egypt. Muslim scholars settled in these towns to teach Islamic doctrines, the Qur'ān and *Hadīth*. These Muslim scholars were interested in spreading Islamic learning. Thus, the Muslim scholars established numerous settlements over the entire Hausaland. Quranic schools flourished in many towns in Hausaland.

In addition, it was also recorded that by 1840 Islam had been firmly established in Badagry, Igboho, Ikoyi, Iseyin, Ketu, Eko and Oyo. By the time of colonial era between 1860 and 1894, the *Sharīᶜah* had been established in Iwo by Oba Momodu Lamuye who was enthroned in 1860.*Sharīᶜah* was the law applied in his domain and the administration of the town was done in line with Islam till he died in 1906. Similarly, Oba Oyewole of Ikirun established *Sharīᶜah* court in his domain, which was presided over by one Bako from Ilorin as *kādi*. There was also *Sharīᶜah* court in Ede established by Oba Habeeb Olagunju in an area called Agbeni. It was removed in 1914 to another area called Agbogbon and the first *kādi* was Sindiku.[19] In Epe, *Sharīᶜah* was operational and ranked second to Ilorin in terms of Islam and its knowledge, and Maliki *Fiqh* was the School followed by the people.[20]

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It was also mentioned that the Lagos Muslim community demanded for *Sharīᶜah* as early as 1894 and the agitation for *Sharīᶜah* in Yoruba continued for more than one hundred years. In 1938, Ibadan Muslim community asked for it and was denied the application for *Sharīᶜah*. Similarly, the Muslim Congress of Nigeria, Ijebu Ode requested for the *Sharīᶜah* with no result.[21]In contrast to that, other historians pointed out that the Yoruba Muslims merely practised Islam as a religion and not as a way of life.[22] In our own belief, by looking at these two opinions, it is a clear fact that Islam got to Yorubaland and flourished well, ever before the advent of colonial administration, but it remained a private religion. Islamic law is practised in matters like: *nikāh* (marriage) *talāq*, (divorce) and *mīrāth* (succession) but in a purely individual and private capacity. It has been observed that the impact of Sokoto *jihād* and its effect of establishing Muslim empires in the north for a period of one century accounted for why the *Sharīᶜah* succeeded in displacing various synergetic practises. It is equally arguable that the absence of *jihad* or its effect accounted for the low level of the practise of *Sharīᶜah* among the Muslims in the southwest compared to the north.[23]

2.1.2. *Sharīᶜah* Courts in Colonial Era

On arrival of the British as we earlier mentioned, they met the Islamic legal system already established. Mahmud referred to the well-established Islamic law operating in the defunct Northern Nigeria, when the British colonized it thus:

> When they came they found the Emirs' Courts filled with learned and pious jurists whose decisions were always based on the authorities from the Qurān, Hadith or other Islamic books … existing side by side with this were the Alkali's courts which were also engaged in the dispensation of justice based on *Sharīᶜah*.[24]

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In accordance with their indirect rule policy, they allowed the institution of state and machinery of government including the judicial system, which were in existence especially in the northern part of Nigeria to continue functioning within prescribed limits and subject to certain conditions, which shall be discussed later.

However, over the years, the British Colonial administration made various legislations to restrict scope of Islamic law and undermine it. The first legislation that was enacted to restrict the scope of Islamic law was Native Courts Ordinance 1933. By this Ordinance, appeals from certain native courts were to go to the Magistrate Court, the Supreme Court (i.e. the equivalent of the present High Court) and the West African Court of Appeal. Thus, for the first time in Northern Nigeria, appeals on matter decided on the principles of Islamic law by native courts were to lie to West African Court of Appeal.

It is pertinent to state that decisions from the Native Courts based on Islamic law, which went on appeal to the Magistrate Court, Supreme Court and West African Court of Appeal were subjected to the principles of English law. Therefore, such appeals were allowed on the ground of either repugnancy or incompatibility.

The main provisions of interest in relation to judicial matters in native courts are as follows:

1. The Resident [25] was empowered to establish in his province by warrant under his hand such native courts as he deemed fit.
2. The courts were to administer native law and customs prevailing in the area of jurisdiction of each court in both civil and criminal matters. In criminal matters, they might award any punishment, and in civil matters, they might make any order

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that native law and custom authorized- subject to the condition that no inhuman treatment could be inflicted. In addition, they could not inflict the penalty of death.

3. The Emir or Chief was to appoint the judges, subject to the Resident's approval. Where there was no emir or chief, the resident appointed the judges.
4. The resident had the power to enter the courts at any time and to inspect the records. He could transfer a case from one court to another, he could review the findings of a court and order a retrial or modify the sentence (or the order) of the courts.
5. The practise and procedure of the courts were to be governed by native law and custom subject to rules that might be made by the High Commissioner.[26]

From the above provisions, the intention of the British despot to reduce the power of *Sharīᶜah* Courts is very clear and observation of Kumo according to Ibrahim Ado Kurawa is therefore correct when he asserted that:

> As far as the *Sharīᶜah* was concerned, the provision introduced essentially fundamental changes. First the fact that the courts were established by the British officers who also had the power of control and supervision and secondly: the ouster of the application of *hadd* punishments for *zina* and burglary.[27]

In line with the British indirect rule policy, the Emir or Chief was given some powers by the proclamation in which the British encouraged Emirs and Chiefs to use *Siyāsa* (politics) in legal judgment so that *Sharīᶜah* may be completely abrogated or undermined. However, some of the Emirs to their eternal credit refused to be cowed by the British. Sarkin Kano, Abbas, was particularly conscious of the Islamic obligation of his heritage. He refused to succumb to the overture of using politics to get rid of Islamic law as planned by the British.[28]

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The native courts had no jurisdiction over non-native cantonment areas (i.e. areas reserved by the British for Government offices and quarters). They also had no jurisdiction over non-native or those natives who were in the Government`s service, and they had no jurisdiction to try statutory offences or to hear civil cases governed by English law. To deal with all these matters, there were established English courts which were in no way connected with the native courts.[29] The native courts only apply Islamic law in all civil matters and causes where Muslims are predominant. The law says:

Subject to the provisions of this law and in particular its section 24, a Native Court shall in civil cases and matters administer:

> The native law and custom prevailing in the area of the jurisdiction of the court or binding between the parties, so far as it is not repugnant to natural justice, equity and good conscience nor incompatible either directly or by necessary implication with any written law for the time being in force.[30]

After the amalgamation of Northern and Southern protectorates of Nigeria, the British despots graded the native courts into four according to the powers they were allowed to exercise, namely: Grade A, B, C and D Courts. Grade A Courts were given unlimited jurisdiction in both civil and criminal cases. The lowest court was the Grade D courts whose jurisdiction was limited to imprisonment of up to three months or fine of not more than ten pounds and in the civil matters of contracts and torts, where the subject matter of the litigation did not exceed 22 pounds. This ordinance also named the courts presided over by *Alikāli* as "*Alikāli* court" thus distinguishing them from other native courts.[31] Islamic law ceased to govern criminal matters when the Native Courts Law came into effect in 1957[32] and later was replaced by the penal Code Law of Northern Nigeria which says:

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In criminal cases, a native court shall administer the provisions of:

(a) The penal code Law, the Criminal Procedure Code Law, and any subsidiary legislation made there under,
(b) Any written law, which the court may be authorized to enforce by any order made under Section 27;
(c) All rules and orders made under the Native Authority Law or under any or superseded that Law and all rules, orders and by-laws made by legislation repealed a native authority under any other written law in the area of the jurisdiction of the court.[33]

By 1954, after fifty years of colonial rule in Northern Nigeria, a new constitution was promulgated in which High court was established for each of the regions. The regional legislative councils were empowered by the new constitution to establish or reform native/customary courts. Thus the Northern legislative council in 1956 passed the native courts law and the Muslim Court of Appeal which was later renamed as *Sharīᶜah* Court of Appeal in 1960.[34]Appeals from Native Courts (now Area Courts) only on civil matters particularly on family law go to *Sharīᶜah* Court of Appeal while appeals on civil matters other than family law cases and criminal matters go to High Court for determination.[35]

2.2. Brief history of Kwara State

Kwara State is one of thirty-six states of The Federal Republic of Nigeriawhichwas created on 27 May 1967, when the country was brokenthe four regions into 12 states during the Federal Military Government of General Yakubu Gowon. The state when was made up of the former Ilorin and Kabba provinces of the then Northern Region.[36]

Kwara State was bounded byby Benin Republic in the west,Kogi State in the east, Niger State in the north and by Oyo, Osun and Ekiti States in the south. The Statedue to its unique geographical position is considered to as the "gateway" between the north and the south of the country.[37]

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In 1976 the state was reduced considerably in size as a result of new state creation exercises took place in the country when the Idah/Dekina was carved out which was part of the state and merged with the then Benue/Plateau State to form Benue State. In 1991, five local government areas, namely: Oyi, Yagba, Okene, Okehi and Kogi were also carved out to form part of the new Kogi State, while Borgu Local Government Areas was merged with Niger State respectively.[38]

Ilorin which was Tthe capital of State is situated 500 km inland from the Federal CapitalAbuja and 306 km from the coastal city of Lagos.[39]The state comprises sixteen Local Government Areas as follows: Asa, Baruten, Edu, Ekiti, Ifelodun, Ilorin East, Ilorin West, Ilorin South, Irepodun, Isin, Kaiama, Moro, Offa, Oke-Ero, Oyun, and Pategi.[40]The major religions in the state areIslam and Christianity.

The State is currently dominated by five principal ethnic groups includes:Baruba which arefound mainly in Kaiamaand Baruten local Government Areas, Nupe whichdominate Edu and Patigi Local Government Areas, Yoruba whichYoruba are found in the almost twelve local government areas namely: Asa, Ekiti, Oke Ero, lfelodun, llorin East, llorin West, llorin South, Irepodun, Isin, Moro, Offa and Oyun and Hausa/Fulani that spread across Asa, Baruten,Edu, Kaiama,Patigi, llorin East, llorin West, llorin South and Moro Local Government Areas.[41]

The old Kwara, Kaduna and Katsina Statesmaintained one *Sharīᶜah* Court of Appealup to 1975 when Kwara State sets up its own judiciary, which since then holds its sessions in six local government headquarters as zonal officesup to today.[42] These Courts entertain appeals from Area Courts across all sixteen local government areas in the State.

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2.3. History and Structure of Area Courts

The court is a branch of Government vested with judicial powers.[43] It is generally regarded as the third arm of government and its function is the interpretation of the laws enacted by the legislature.[44] The legal pluralism, which is a prominent feature of the Nigerian legal system, is also fully represented in Kwara State.The Islamic law as an integral part of Islamic religion has been strongly administered in the northern parts of Nigeria as far back as the 14th century and in Ilorin, before the advent of the British colonial masters as we mentoned who brought the common law into Nigeria and into the capital of Kwara State, Ilorin, following their conquest of the town in 1898. the consolidation of the Fulani hegemony by Shehu Alimi around 1807 as well as the incorporation of the town into Islamic State assured the dominance of Islamic law in the town and many towns in Kwara State and Yorubaland. [45]

It should be noticed that Islamic law has not completely displaced customary law in Ilorin. There are different traditional communities in the towns. Many inhabitants of these towns still follow Yoruba traditions in their affairs. Even in Ilorin Emirate, customary law exists side by side with Islamic law.[46]

According to the history,Ilorin Emirate had formed part of the Sokoto Caliphate established by Usman Dan Fodio and his lieutenants prior the arrival of the British, where Islamic law was the applicable law in all its ramifications including the criminal aspects.[47] In the Sokoto Caliphate, there were *Sharīʿah* Courts in the principal towns, cities and villages which were complemented by Emir`s *Siyāsah* tribunals with each Emir in his own court. Apart from the Emir`s courts there were also alkali courts that manned by learned jurists in Arabic and Islamic knowledge.and who referred to Islamic law.[48]

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On the arrival of colonial masters, they applied the system of indirect rule by preserving Alkali courts but gradually seized the power of their administration,[49] where both Islamic law and customary law Courts administered under the supervision of the colonial masters.[50] The Native Proclamation of 1900 was enacted only for the better regulation of native courts, after the taking away of the power and control of the Alkali Courts from the Emirs and put it under the control of their representative known as Resident who upholds the power of the Native Courts.[51] In 1933, the Native Courts Ordinance among other things changed their name from Alikali Courts to Native Courts. This position was maintained after independence until 1967 when the Area Courts Edict was established known as Area Courts Law, and the name was finally changed from Native Courts to Area Courts till present time.

There are two types of Area Courts: Area Courts and Upper Area Courts. [52] The Area Courts are generally manned by single judge while Upper Area Courts which also serve as apallate courts by then consisted of three judges with a President as the head and two members, but later amended by the Kwara State Law Revision that two members can now constitute the court.[53]The Area courts are given power to combine the administration of the common, Islamic, and customary laws at the grassroots level as well as the criminal jurisdiction. They are the courts of first instance with jurisdiction in personal matters relating to customary and Islamic law.“They administer the Penal Code and are guided for this purpose by the Criminal Procedure Code. The Penal Code is ultimately traceable to the English law of crimes.”[54]In some Northern States of Nigeria including Kwara State, the administration of customary law is separated from Islamic law. The Area Courts are only dealing with Islamic Law while the Customary Courts are dealing with customary

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law.[55] Parallel to the Area Courts are the Magistrate Courts, which are dealing with criminal cases.[56]The Appeals go to the *Sharīᶜah* Court of Appeal from Area Courts only in matters of Islamic personal Law, i.e matters concerning marriage, divorce, inheritance, custody of children,*waqf* etc.but in all other Islamic law matters, the appeals go to the High Court from the Area Court and appeal finally go to the Court of Appeal from both *Sharīᶜah* Court of Appeal and the High Court and finally fromCourt of Appealto Supreme Court [57]

2.3.1 Qualifications of Area Court Judges

In the history of Kwara State before 2006 there was no specific qualification stipulated for Area Court judges, and thus virtually any person could be appointed. Persons with degrees, diplomas and certificates in law have been appointed over the years but since 2006, it was inserted by Kwara State Law Revision that only legal practitioners with the common law or the combined common and Islamic law are appointable as Area Court and Upper Area Court judges. [58] The factor that led to this establishment of law is the appearance of the Lawyers in the Area Courts who complain that qualified legal practitioners do not operate the Area Courts in the State.

However, the judges who are are not legal practitioners but are serving currently would be allowed to remain until the time of their retirement.[59] The former Grand Kādi of Kwara State, Hon. Justice Salihu Olohuntoyin Muhammadin his speech during the 2016 Legal year ceremony requested thus:

> At this juncture, we wish to use the forum to inform the whole world that we still strongly maintain our stand that Degree in Arabic and Islamic studies should be equivalent to L.L.B. *Sharīᶜah* as qualification for Area Court judges. We demand this much. This is because t,he majority of the cases handled by the Area Courts in the state are governable by Islamic law and knowledge of Islamic law through

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> Arabic cannot be replaced. It is very sad to know that some if not all the so called graduates of LLB *(Sharīᶜah),* do not know Arabic at all. They cannot consult original *Sharīᶜah* law authorities written in Arabic language. This, to say the least, is sadly unfortunate. Therefore appointment of such people on to *Sharīᶜah* benches makes mockery of the whole process and system.[60]

In Kwara State, Area Courts are under the administrative control of the Chief Judge of the State. He is the head of the body responsible for, the appointment and discipline of Area Court judges in the State which is known as Judicial Service Commission (JSC) Kwara State.[61] The Commission is made of seven-man panel dominated by legal practitioners with the Grand Kādi as the only representative of *Sharīᶜah*Courts in the State.

Islamic law is generally marginalized in controlling organs of the judiciary in the country. The Area Courts are under the general supervision of the High Court headed bythe Chief Judge of the State. The Kādis argue, that the Area Courts should be under the general supervision of the Grand Kādi of ,the*Sharīᶜah* Court of Appeal. [62]

One of the former Grand Kādis of Kwara State *Sharīᶜah* Court of Appeal, Hon. Justice Haroon had during the 2013 *Sharīᶜah* Legal Year celebration, requested the Kwara State House of Assembly to make law in this respect. He suggested that Area Courts that operating *Sharīᶜah* should be responsible directly to the Grand Kādi of *Sharīᶜah* Court of Appeal instead of the present arrangement in which all Area Courts in the state are accountable to the Chief Judge of the State. The former Grand Kādiclaimed that this would enhance the growth and development of law ans well as the quality of judgment of the Area Courts.[63]

Responding, to the request of the Grand Kādi, The Speaker, Rt. Hon Rasak Atunwa, said "the Kwara State House of Assembly would be willing to give accelerated passage to

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the bill as long as it came from the executive through the state Attorney-General".[64]He gave the assurance that "the legislature would give necessary support to the bid to fast track quick dispensation of justice in the state. But all efforts made at that time proved abortive."[65]

2.3.2 Jurisdiction of Area Courts

The jurisdictions of the Area Court under the Law include:

(a) All questions of Islamic Personal Law.

(b) Matrimonial Causes and matters between persons married under customary law.

(c) Suit relating to custody of children under customary law.

(d) Civil actions involving debt demand and damages.

(e) Matters relating to succession to property and the administration of estate under customary law.

(f) Matters concerning ownership, possession or occupation of land.[66]

2.3.3 Legal practitioners and their Impact on Proceedings in Area Courts

In the past, the courts were manned by the scholars who had basic training in Islamic law or were "versed in the customs of the people". Legal practitioners did not appear in the Area courts.[67] Justice Karibi-Whyte, in justifying the non-applicability of the common law-based Evidence Act to Area Courts, articulated the rationale for barring legal practitioners from customary cou,rts thus:

> Area Court judges are not learned in English Common law to enable them appreciate and understand provisions of the Evidence Law. Also in

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> accordance with the section 28(a) of the Area Courts Edict, Legal Practitioners are barred from appearing to act for or assist any party before an Area Court. It is therefore important to insulate them from problems of misunderstanding, misapplication of the law and injustice that will inevitably arise if they, with all the above limitations, are bound to apply the Evidence Act. (Kunso v Udo: 55)[68]

The position in Area Courts today differs from the above dictum in three major ways. Firstly, the qualifications for appointments as Area Court judges have changed as we have mentioed above while legal practitioners are now appointed and more significantly, the Area Courts are under the administrative control of the Chief Judge as we mentioned above who is also a trained legal practitioner. Secondly, legal practitioners now appear before Area Courts. Thirdly, the appearance of legal practitioners has been a mixed blessing because Legal practitioners do protect the interests of litigants, but they have stultified the customary law practise and procedure in the courts and have brought the technicalities of the common law, its attendant delays as well as high cost of litigation into the Area Court systems.[69]

"In 1982, the High Court decided in *Uzodinma v Police* that legal practitioners have a constitutional right of audience in all criminal cases in all courts including Area Courts. In 1984, the Court of Appeal in *Karimatu Yakubu and Anor v Alhaji Yakubu Paiko and Anor* extended this to civil cases."[70]

Area Courts as pointed out above have jurisdictions in both customary and Islamic law matters as well as criminal law. By the virtue of their education, many of legal practitioners are only familiar with English-style common law and totally ignorant of the rudiments of customary law and Islamic law.[71] Justice Belgore aptly summarized the

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pathetic situation of customary courts resulting from the activities of legal practitioners in Area Courts thus:

> In preparation for the beginning of our constitutional doom, some parts of the country started "renovating" the native courts by putting British trained lawyers as the judges. Instead of quick and just decisions, these customary court judges were only "customary judges" because the law says so, they are not even a cross of customary and common law judges. The courts got worse in matter of delays and ignominious adherence to precedents. In many cases, the judges never know the custom of the area they adjudicate upon. The net result is that they employ their personal moral standards on issues of succession, legitimacy, matrimonial causes, custody of children, contracts and other personal laws.[72]

2.4. History of Kwara State *Sharīᶜah* Courts of Appeal

The Sharīᶜah Court of Appeal is a Superior Court of Record established pursuant to Section 275, Constitution of the Federal Republic of Nigeria, 1999. The Court has been empowered to, in addition to such other jurisdiction as may be conferred upon it by the law of the State, exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal law which the court is competent to decide. Section 277, 278 and 279of the 1999 Constitution of the Federal Republic of Nigeria and Laws of Kwara State of Nigeria, No. 4 of 2006spell outthe functions thus:

> 277 (1) The *Sharīᶜah* Court of Appeal of State shall, in addition to such other jurisdiction as may be conferred upon it by the law of the State, exercise such appellate and supervisory jurisdiction in civil proceedings involving question of Islamic personal Law which the court is competent to decide in accordance with the provision of subsection (2) of this section.
>
> (2) For the purposes of subsection (1) of this section, the *Sharīᶜah* Court of Appeal shall be competent to decide-
>
> (a) any question of Islamic personal law regarding a marriage concluded in accordance with that law, including a question relating to the validity or dissolution of such a marriage or a question that depend on such a marriage and relating to family relationship or the guardianship of an infant;

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(b) where all the parties to the proceedings are Muslims, any question of Islamic personal Law regarding a marriage, including the validity or dissolution of that marriage, or regarding family relationship a founding or the guarding of an infant;

(c) any question of Islamic personal Law regarding a *waqf*, gift, will or succession where the endower, donor, testator or deceased person is a Muslim;

(d) any question of Islamic personal Law regarding an infant, prodigal or person of unsound mind who is a Muslim or the maintenance or the guardianship of a Muslim who is physically or mentally infirm; or

(e) where all the parties to the proceedings, being Muslims, have requested the court that hears the case in the first instance to determine that case in accordance with Islamic law, any other question

278. For the purpose of exercising any jurisdiction conferred upon it this Constitution or any law a *Sharīᶜah* Court of Appeal of a state shall be duly constituted if it consists of at least three kādis of the court

279. Subject to provision of any law made by the House of Assembly of the state, the Grand kādi of the *Sharīᶜah* Court of the state may make rules regulating the procedure of *Sharīᶜah* Court of Appeal. [73]

These sections were challenged by the former Grand Kādi of Kwara State, Hon. Justice Salihu Oloruntoyin Muhammad who solicits expansion of *Sharīᶜah* Court of Appeal jurisdiction. He calls for the amendment of the relevant section of the Constitution of the Federal Republic of Nigeria in order to expand the jurisdiction of the *Sharīᶜah* Court of Appeal while delivering his address at the 2016/2017 Legal Year ceremony of the *Sharīᶜah* Court of Appeal, Ilorin.[74]

He emphasized that Islamic Law should govern civil disputes in which all the parties are Muslims. He further said that if the amendment and expansion was granted, as provided for the Customary Court of Appeal, it would enable the *Sharīᶜah* Court of Appeal cover many more areas of adjudication and it would have positive effect in satisfying the yearnings of all Muslims who want all their civil matters adjudicated upon in compliance with the Islamic Law.[75]

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The Kwara State *Sharī^cah* Court of Appeal, Ilorin opened initially in 1975 under a rented private flat where it operated until 1982 when it had its own court. In 1990, a befitting court complex with three court rooms, a conference room and other facilities was constructed by the Military Governor of Kwara State, Ibrahim Alkali and was commissioned by the then Military President of the Federal Republic of Nigeria,[76] General Ibrahim Badamasi Babangida (GCFR), on the 21st of November 1990.[77] It holds sessions with a court of its own in six local governments' headquarters namely: Lafiagi, Patigi, Offa, Kosubosu, Omu-Aran, and Share as zonal offices.[78]

In 1975, a substantive Grand Kādi in person of Hon. Justice AbdulKadir Orire (retired pioneer Grand Kādi) was appointed. Hon. Justice Ustaz Yonous Abdullahi (the late pioneer Hon. Grand Kādi of Kogi States) and Hon. Justice Hussein Yahya (late) werethe then pioneer Hon. Kādis of the State. Later in 1982, an additional Kādi was appointed in person of Hon. Justice M.A. Ambali (retired Grand Kādi).[79]

In response to the demand of the volume of litigation in the sector of Muslim Personal Law, three K*ā*dis; Hon. Kādis A.K. Imam Fulani, F.I. Muhammad (late) and S.S. Olorunfemi (retired Grand Kādi of Kogi State) were also appointed in 1988. As a result of the creation of Kogi State, three Hon. Kādis who are indigenes of the new state chose to move to the state to lay a solid foundation for the administration of Muslim Personal Law. Efforts to replace them could not materialize until in 1994 when additional Kādis were appointed. The Hon. Kādis appointed were I. A. Haroon, M. A. Oredola (now Justice, Court of Appeal), A.K. Abdullahi (now late) and M.B. Haruna (now Chief Imam of Lafiagi). In 1999, Hon. Kādi S.O. Muhammad was appointed to the bench and in 2008; Hon. Kādis A.A. Idris and S.M. Abdul-Baki were appointed. Furthermore, in 2010 two

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additional Kādis were appointed; M.O. AbdulKādir and A.A. Owolabi, followed by the appointment of Hon. Kādi AbdulLateef Kamaldeen in 2012, while the last appointment was in 2014 when Hon. Kādi Abdur- Rahim A. Ibrahim moved to the bench.

As of today, Kwara State *Sharīᶜah* Court of Appeal has four Hon. Kādis: Hon. Kadi Masud Oniye, Hon. Kādi A. L. Kamaldeen, Hon. Kādi Abdur- Rahim A. Ibrahim withHon. Kādi M.O. AbdulKadir as the Grand Kādis. This brings to eight Grand Kādis the Court ever had.[80]The Court`s Kādis have been actively participating in Electoral Tribunal, right from 1979 to date within and outside the State.[81]

The overall administration of Kwara State *Sharīᶜah* Court of Appeal was initially under the supervision of the Chief Registrar of the State High Court of Justice until 1981 when Alhaji M.A Ambali (as he then was) was appointed the pioneer Chief Registrar. In April 1982, Alhaji A.K. Imam Fulani took over and was succeeded by Alhaji Jibril T. Patigi (deceased) in 1988.Alhaji I. A. Haroon was also appointed as Chief Registrar;Alhaji S.O. Muhammad took over in December, 1994; Alhaji Adam A. Idris (May, 1999); Alhaji M. O. AbdulKadir (April, 2008); Alhaji A. L. Kamaldeen (August, 2010). Alhaji A.R. Ibrahim took over in December 2012. The present Chief Registrar is Alhaji Abdur-Razaq Dagbo (2013).[82]

The acceptance of Islamic Personal Law in Kwara state has not only come to stay but it has been enjoying the confidence of the people as a just and legal system, which is meaningful to the life of the people. The expectation is to expand the jurisdiction of the court to all civil matters involving Muslims.[83]

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2.4.1 Qualifications of *Sharīᶜah* Courts of Appeal Grand Kādi and Kādis

The *Sharīᶜah* Court of Appeal is established by Section 275 of the 1999 CFRN for any state that requires it but mandatory in the Federal Capital Territory. The Court consists of a Grand Kādi and such other number of Kādis of the Court as may be prescribed by the House of Assembly in the case of a state.[84] The Grand Kādi and the Kādis of the *Sharīᶜah* Court of Appeal of a state are appointed by the Governor on the recommendation of National Judicial Commission (NJC) subject to the confirmation of such appointment by the House of Assembly of that state in the case of the Grand Kādi only. In the Federal Capital Territory, the appointment of the Grand Kādi is by the President on the recommendation of NJC subject to confirmation of such appointment by the Senate.[85]

Section 262 of the 1999 CFRN provides that the *Sharīᶜah* Court of Appeal shall exercise both appellate and supervisory jurisdiction in civil proceeding involving questions of Islamic Personal Law. For the purpose of exercising its jurisdiction, the *Sharīᶜah* Court of Appeal shall be duly constituted if it consists of at least three (3) Kādis of that Court.[86]

The minimum qualification for the appointment into the office of a kādi of the *Sharīᶜah* Court of Appeal is ten years post-qualification as a legal practitioner and the person must have obtained a recognized qualification in Islamic Law from an institution acceptable to the National Judicial Council. Or, in the alternative, the person has obtained a recognized qualification in Islamic Law from an institution approved by the National Judicial Council and has held the qualification for a period of not less than two years, and (i) he either has considerable experience in the practise of Islamic Law, or (ii) he is a distinguished scholar of Islamic Law. [87]

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The implication is that the Kādi of the courts need not be a lawyer provided he has attended an Islamic training institution approved by the National Judicial Council and has considerable experience, though the measure of this considerable experience is not specified. Islamic Law itself is regarded as Customary Law, or rules stated in the Qur`ān guiding devoted Muslims. The rule itself only binds those people subject to it and no other person. Therefore, the Kādi needs not be a lawyer, *parse* or trained under English Law, and the Rules of Evidence may not be strictly applicable in such court. The only reason why this court was established under the Nigerian Constitution is to enable those states that wish to practise the Islamic Law take the option.[88]

2.4.2 Jurisdiction of *Sharīᶜah* Courts of Appeal

The *Sharīᶜah* Court of Appeal is essentially an appellate court, and sits over appeals from inferior courts in civil proceedings involving questions of Islamic personal law and any dispute on Muslim law. The jurisdictions include:

a. Marriage concluded under Islamic Law, validity, dissolution of the Marriage, family relationship or guardianship of an infant.

b. Succession inheritance or Will where the deceased person is a Muslim

c. Any matter of Moslem law regarding a *waqf* (endowment) gift, where the endower, donor, testator is a Moslem.

d. Any question of Moslem law regarding an infant, prodigal or person of unsound mind who is a Moslem or the maintenance or guardianship of a Moslem who is physically or mentally infirm;

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e. Where all the parties to a dispute are all Muslims and have requested the lower court to determine their case according to Islamic Personal Law. [89]

There is absolutely nothing under the Constitution that permits the *Sharīᶜah* Court of Appeal to hear or determine Islamic Criminal Law. [90]

The Former Grand Kādi Hon. Justice Salihu Oloruntoyin Muhammad solicited in his speech during the 2016 Legal year ceremony thus:

> We wish to reiterate our demand for the expansion of the jurisdiction of *Sharīᶜah* courts of appeal to be at par with that of the customary courts of appeal. This demand shall remain a recurring decimal until justice is done. What we are saying is that Islamic law should govern all civil disputes in which all the parties are Muslims. It complies with the belief that justice demands that what is good for goose should also be good for the gander. If Nigerians whose matters are not governable by Islamic law enjoy the constitutional rights that all their civil matters be governed by their respective and chosen native law and customs, why are Muslims who have chosen *Sharīᶜah* law as their law be prevented from having their matters resolved in line with that chosen law. We certainly need your prayers in this regard and in this direction.[91]

Three Kādis constitute a court. The practise and procedure of the court is regulated by its practise and procedural rules made by a serving Kādi of the State. In Nigeria today, the *Sharīᶜah* Court of Appeal exists in all the Northern States, and each Northern State has adopted the *Sharīᶜah* Court of Appeal Law 1960 of the Northern Region.[92]

The provisions of the three constitutions of the Federal Republic of Nigeria i.e. 1979, 1989 and 1999 enacted to usher in democratic governments empowering states to establish *Sharīᶜah* Court of Appeal at State level to hear appeals on matters of Islamic personal law were just a compromise. Despite the provisions of these constitutions, only

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States in northern Nigeria and the Federal Capital Territory Abuja have *Sharīᶜah* Courts of Appeal.[93]

2.4.3 Kwara State *Sharīᶜah* Courts of Appeal Annual Reports

The Kwara State *Sharīᶜah* Court of Appeal has embarked on publishing all its past judgments to justify its existence, from 1994 to date. This system of collating and compiling the judgments decided in each year at the end of the session every year is at present adopted by the Kwara *Sharīᶜah* Court of Appeal only out of the whole *Sharīᶜah* Courts of the Northern States of Nigeria.[94] With this initiative, confidence of having competent kadi in the state is therefore retained.

2.5. Challenges facing *Sharīᶜah* Courts in Nigeria

This section focuses on the challenges facing *Sharīᶜah* Courts in Nigeria. The challenges are multi-faceted but we have, in this section, identified the sources of the challenges as five. These are vividly discussed as follows:

i. Categorization of Islamic Law as Customary Law:

One of the legacies of the colonial rule is that Islamic law is tagged as a customary law and thereby treated as a specie of native law and custom. Consequently, no separate Provision was made for the application of Islamic Law.[95] In the courts where the bulk of Islamic Law is applied, namely the Area Courts and the High Courts of the Northern States, it is still regarded as such and it is governed by the same rules, which provide for the application of customary Law. There are many theoretical and practical distinctions between Islamic Law and Customary Law. Aside the statutory provision, Islamic law has nothing in common with customary law.[96] The Customary law has been described as body

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of law that evolved from the custom of the native people, while the *Sharīᶜah* is a complete system of universal Islamic Law and more universal than manmade Law. [97]

ii. Colonial Mentality

According to Ibrahim Adokurawa, Ibn Khaldunwas reported to have said that: "the vanquished will always want to imitate the victor in his distinctive characteristics, his dress, his occupation and all his other conditions and customs."[98] The reason for this is that the soul always sees the perfection in the person who is superior to it, it considers him perfect because it is impressed by respect it reserves for him.

Thus, the white man in the perception of the colonized people was a sort of perfect man who must be emulated at all cost, for he represents the peak of civilization. This is the main reason the colonized people; most of the time totally neglect their own religious and tribal civilization, in spite of the fact that the adventure of the white man on the African continent has been that of exploitation and victimization. This mentality has had adverse effect on the application of the Islamic law in Nigeria. The most painful aspect is that some nominal Muslims, for their love for English law and European way of life had been westernized and found amongst the most prominent in the war against the implementation of Islamic law on the ground that the punishments are too severe, without considering all the advantages contained therein.[99]

The fact remains that *Sharīᶜah* is the life of Islam itself. Therefore, any Muslim society in which the *Sharīᶜah* is not applied in its totality cannot be said to be truly Islamic even though all its members might claim to be Muslims. The test of the Islamicity of any society is the extent of its application of the *Sharīᶜah*. No amount of *Salāt*, *Zakāt*, *Sawm* or *Hajj* alone can make a society truly Islamic, if the *Sharīᶜah* is not applied as a comprehensive

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legal system. This is because to submit to a law other than that prescribed by Allah is to submit to another god beside Allah, which amounts to rejection of Islam. The Qur'ān in three different verses calls those who reject *Sharīᶜah* 'unbelievers', 'wrong-doers' and 'rebels' against the authority of Allah. It says:

وَمَن لَّمْ يَحْكُم بِمَآ أَنزَلَ ٱللَّهُ فَأُو۟لَٰٓئِكَ هُمُ ٱلْكَٰفِرُونَ ﴿٤٤﴾

Those who judge not by the law revealed by Allah are unbelievers. (Q 5:44).

It also adds:

وَمَن لَّمْ يَحْكُم بِمَآ أَنزَلَ ٱللَّهُ فَأُو۟لَٰٓئِكَ هُمُ ٱلظَّٰلِمُونَ ﴿٤٥﴾

Those who refuse to judge with the law revealed by Allah are wrongdoers. (Q5:45).

The Qur`ān concludes:

وَمَن لَّمْ يَحْكُم بِمَآ أَنزَلَ ٱللَّهُ فَأُو۟لَٰٓئِكَ هُمُ ٱلْفَٰسِقُونَ ﴿٤٧﴾

Those who judge not by the law revealed by Allah are rebels. (Q 5:47)

iii Position of *Sharīᶜah* in the Nigerian Constitution

The position of *Shariᶜah* in the Nigerian constitution can be summarized as follows:

a. It is recognized as one of the laws of Nigeria, the others being the English law and customary law.
b. It is reduced to the narrow confine of personal status. This can be seen from the jurisdictions of the *Sharīᶜah* courts. According to the constitution, the *Sharīᶜah* courts shall be competent to decide any question of Islamic personal

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law regarding marriage, divorce, endowment, gift, will and child custody and any other question to which the parties consent. Thus, all the other aspects of the *Sharīᶜah* have no relevance as far as those who drafted and those who ratified the constitution were concerned. [100]

By confining the application of the *Sharīᶜah* to personal status, the constitution overlooks the nature of the *Sharīᶜah* itself as well as the position of the *Shariᶜah* in the life of the Muslims.

The *Sharīᶜah* legal system relates to every aspect of human life be it religious, legal, moral, personal, social, economic, political, educational and national or international relationships. In other words, the *Sharīᶜah* is the totality of Allah's commandments and directives which included all `*Ahkām (*judgments) that are contained in the Qur'ān; Muslims must totally observe and practise the *Sharīᶜah* otherwise, they should be held responsible for defiance towards the divine laws of Allah (S.W.T.). The Qur'ān says:

أَفَتُؤْمِنُونَ بِبَعْضِ ٱلْكِتَـٰبِ وَتَكْفُرُونَ بِبَعْضٍ ۚ

Do you believe in some part of the book and disbelieve in the other part?"(Q2:85)

Restricting the jurisdictions of the *Sharīᶜah* courts to civil matters means denying Muslims their fundamental human rights. In order to make the life of Nigerian Muslims more meaningful to them religious wise, the jurisdiction of *Sharīᶜah* courts in the Constitution needs to be expanded to cover all aspects of Muslim life.

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There is no gainsaying the fact that Islamic law is a system that can control crimes and bring a greater degree of peace and security to the citizenry than any other Law. *Sharīᶜah* focuses on the individual as well as the good of the community. Islam pursues its social objectives through reforming the individual in the first place. The individual is thus seen as a morally autonomous agent who plays a distinctive role in shaping the community's sense of direction and purpose. *Sharīᶜah* has a role for individual rights, but those individual rights are exercised within a system that is primarily concerned with human relations.[101] Saudi Arabia, which applies the *Sharīᶜah* intoto, has the lowest rate of recorded crime in the world. That indicates that criminal law of Islam aims at creating peaceful society where the people will live in security. [102]

iv Unqualified Judges

Muslim jurists posited in their books regarding a Judge of Islamic law thus:

> It is stipulated that for a man to be appointed a judge, he should be a Muslim, free person, male and matured person. He should possess the capacities to hear and see He should be literate, conscious and should be capable to make independent research and interpretation of the Qur`an and the *Sunnah* or at least possess the capacity to interpret what an exponent of Islamic law has interpreted based on the Qur`ān and *Sunnah*.[103]

The appointment and empowerment of Judges who are unlettered in Islamic Law to administer Islamic civil causes is another challenge confronting *Sharīᶜah* Court in the Country. For instance, all a High Court Judge requires to be qualified to handle Islamic civil causes is that he/she only needs to qualify to practise as a legal practitioner in Nigeria (being called to the Nigerian Bar) and must have been so qualified for a period not less than ten (10) years. With this qualification, he/she is

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presumed to be versatile in the knowledge of the law on which he is to adjudicate. Obviously, the above does not cover the knowledge of Islamic law required of a Judge to adjudicate on Islamic civil causes.

The implication of the foregoing is that there are non-Muslim high court Judges who administer Islamic civil causes who cannot also identify any alphabet of the law they apply. What can be more repugnant to natural justice, equity and good conscience?[104]The appearance of unlettered legal practitioners in Islamic law in the *Sharīᶜah* courts also has its adverse effect and attendant challenges. The most serious problem is the assumption of those lawyers that English legal system is the standard after which other legal systems have to follow.[105] Their appearance can only be meaningful and fruitful if they take the pains to be conversant with the knowledge of Islamic law, and embrace Islam.

v. **Validity Test**

The *Sharīᶜah* criminal procedure seeks to satisfy twin goals of due judicial process and effective control of crime.[106] Criminal procedure seeks to accommodate protections for the accused one while promoting society`s interest in crime detection and prevention.[107] The system focuses on efficient prosecution and conviction of the guilty while trying to minimize the possibility of unjust convictions.[108]

The colonialists ignored all these goals and abrogated the capital punishment *hudūd* provision of the *Sharīᶜah* such as those on adultery and theft and they introduced 'validity test'[109] which directs the native courts to observe and enforce the observance of every rule of Islamic law which is not repugnant to natural justice, equity and good conscience. The colonialists ignored the benefits of *hudūd* (capital punishment) which are justice, equity,

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protection and good conscience. It must be noted here that *Sharīᶜah* is the manual of the Supreme Creator Who knows better about His creatures. It should therefore be applied in the same way as the Manufacturer's Manual. Allah says:

أَلَا يَعْلَمُ مَنْ خَلَقَ وَهُوَ ٱللَّطِيفُ ٱلْخَبِيرُ ﴿١٤﴾

> Should He not know, He that created? And He is the Subtle the Aware (Q67:14).

It is also pertinent to mention that inflicting punishments are not the focus of Islamic law but preservation and maintenance of the human rights as mentioned by Seyed Jawad Mustafa thus:

> Islam has never made physical torment as its lawful penance and punishment except in the case of the infringement of these laws…According to Islam, the formulation and standardization of these strict and tough laws are for the maintenance and preservation of human rights and their protection against harm by the ignorant and criminals. Islam considers the life, wealth and prestige of human beings as the most honourable and valuable elements that must be preserved and protected at any cost…Any aggressor must be punished proportionately to his crime so that the aggressor and the tool of his aggression is eradicated from the society.[110]

Moreover, the Colonialists deliberately brought in review of the capital punishments in Islamic law in order to weaken or reduce its potency. Few examples of such reviews are summarized below:

i. Retribution was replaced by hanging contrary to the Qur'anic or Islamic provision as contained in Glorious Qur'ān thus:

يَـٰٓأَيُّهَا ٱلَّذِينَ ءَامَنُوا۟ كُتِبَ عَلَيْكُمُ ٱلْقِصَاصُ فِى ٱلْقَتْلَى ۖ ٱلْحُرُّ بِٱلْحُرِّ وَٱلْعَبْدُ بِٱلْعَبْدِ وَٱلْأُنثَىٰ بِٱلْأُنثَىٰ ۚ فَمَنْ عُفِىَ لَهُۥ مِنْ أَخِيهِ

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شَيۡءٞ فَٱتِّبَاعُۢ بِٱلۡمَعۡرُوفِ وَأَدَآءٌ إِلَيۡهِ بِإِحۡسَٰنٖۗ ذَٰلِكَ تَخۡفِيفٞ مِّن
رَّبِّكُمۡ وَرَحۡمَةٞۗ فَمَنِ ٱعۡتَدَىٰ بَعۡدَ ذَٰلِكَ فَلَهُۥ عَذَابٌ أَلِيمٞ ١٧٨
وَلَكُمۡ فِي ٱلۡقِصَاصِ حَيَوٰةٞ يَـٰٓأُوْلِي ٱلۡأَلۡبَٰبِ لَعَلَّكُمۡ تَتَّقُونَ

O you who believe! prescribed for you is legal retribution for those murdered, the free for the free, the slave for the slave, and the female for the female, but whoever overlooks from his brother (i.e. the killer anything, then there should be a suitable follow-up and payment to him (i.e. the deceased's heir or legal representative) with good conduct. This is alleviation from your Lord and a mercy. However, whoever transgresses after that will have a painful punishment. In addition, there is for you in legal retribution (saving of) life, o you (people) of understanding, that you may become righteous (Q 2: 178-9).

Still on the issue of retribution and on the authority of Bukhari and Muslim, the Glorious Prophet was reported to have decreed during his lifetime that a Jew be killed by having his head smashed between two heavy stones because he killed a woman in the same manner.[111]

ii Stoning Adulterer and Adulteress to death was also replaced by jail terms, a punishment that Islamic law does not compromise because it was reported that the Glorious Prophet said: "stoning adulterer and adulteress to death is a law in divine revelation in as much as strong evidences are established either through pregnancy or true confession."[112] Without doubt, the Glorious prophet was to have established this act, by stoning Māizan and a woman of Ghamidiyyah.[113] In addition, the rightly guided Caliphs according to Islamic history established the same.[114]

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iii Amputation: Almighty Allah revealed and decreed in His divine book thus:

وَٱلسَّارِقُ وَٱلسَّارِقَةُ فَٱقْطَعُوٓاْ أَيْدِيَهُمَا جَزَآءَۢ بِمَا كَسَبَا نَكَٰلًا مِّنَ ٱللَّهِۗ وَٱللَّهُ عَزِيزٌ حَكِيمٌ ٣٨

> (As for) the thief, the male and female, amputate their hand in recompense for what they earned (i.e. committed) as a deterrent (punishment) from Allah. Moreover, Allah is exalted in Might and Wise. Nevertheless, whosoever repents after his wrongdoing and reforms, indeed, Allah will turn to him in Forgiveness. Indeed Allah is Forgiving and Merciful. (5: 38).

As found in the practise of the Glorious Prophet (SAW) and accepted by the consensus of Islamic scholars that whosoever steals anything worth and above a quarter of *dīnār* or three *dirham* should have one of his/her arms amputated.[115] Notable among those whose arms were amputated was Khiyar Ibn Addi and Marrat Ibn Sufyān during the time of the Glorious Prophet (SAW). [116] The colonial masters, have this act replaced with jail terms.

Furthermore, there are many cases in which the *Sharīᶜah* provisions applied were found to be repugnant to natural justice as interpreted by the British colonialists. One of such was that of M. Abba vs. Mary T. Baikic. In that case, the Kano Chief Alkali's court ruled that Mary who was a Christian could not inherit her father who was a Muslim because Islamic law of inheritance prohibits a Muslim from inheriting non-Muslim and vice-versa. One of the provisions of this law is the injunction based on the *Hadīth* of the Prophet (SAW) which was reported thus: "Neither does a Muslim inherit a non-Muslim nor does a

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non-believer inherit a Muslim".[117]Mary appealed to the Supreme Court, which ruled that the provision of Islamic law of inheritance that barred her from inheriting "is repugnant to natural Justice, equity and good conscience.[118]

The Supreme Court's ruling had nothing to do with logic or universal sense of justice, the purpose of the judgment was to present *Sharīᶜah* in bad light, since the court's objection was to fulfill the colonial objective of promoting western civilization. Had the Islamic law provision been that a Muslim could inherit a non-Muslim but the later cannot inherit the former, then the court may be justified in declaring the law as repugnant to its notion of natural justice and equity.

Similarly in Guri vs Hadeja *N.A*,61 the Emir of Hadejia's Court found Guri guilty of robbery and homicide while attempting to rob and therefore sentenced him to death. On appeal, the Supreme Court annulled the judgment on the ground that the accused was not allowed to defend himself.[119]This is because according to Islamic law of evidence, an accused is not allowed to give evidence on his behalf while under the English law, he can do so but in a witness box. The Court held that this rule of evidence of Islamic law was repugnant to natural justice, equity and good conscience. This is because they are ignorant of procedure of proofs and evidences in Islam thus:

> In the first place, in *Sharīᶜah* it is not all cases that a man who first came to court is made the plaintiff. Also, the statement of both the plaintiff and the defendant are never regarded as evidence to prove the case, but mere statement which needs proofs to substantiate it. Also the evidence of closer relative in favour of his relation will never be accepted.[120]

It is clear that the intention of the English law courts was the promotion of western civilization as against Islamic civilization. For example, if there was any conflict between

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customary law and English law, they promoted the customary law but in a similar case if, there was conflict between Islamic law and English law they would promote English law. An apt instance is the case of Dawudu Vs Danmole (1962)[121] in which the deceased person was survived by nine male and four female children and the estate was shared according to Yoruba custom of maternal affiliation of the heirs known as *idi-igi.*[122] Dawudu went up for highest appeal to challenge this ruling but he was not successful. [123] All the courts decided that since that was their custom, it has to be complied with. In other words, it was considered not repugnant to natural justice and equity.

2.6 Conclusion

The foregoing presentations have exposed the intrigues involved in the declining trend the application of Islamic civil causes has been assuming in the Nigerian courts. Sometimes the Laws providing for its application are either ambiguous or superfluous. At another time, the various constitutional developments in Nigeria always leave the provisions on Islamic civil cause in a worst position than they met it.

The chapter has traced the evolution of the *Sharīᶜah* legal system in Kwara State and have seen that our current court system originate from the customary and Islamic legal systems but gradually replaced by the colonial imported laws. Their aim is to enable a proper functioning of their own perception of law and subject the customary law of the people to tests of repugnancy in order to be acceptable in the English introduced courts.

Having discussed *Sharīᶜah* and issues relating to *Sharīᶜah* Courts in Nigeria with particular emphasis on Kwara State, the next chapter will zero in on the *Sharīᶜah* principles governing inheritance.

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Notes and References on Chapter Two

1 Ajetunmabi, M. A. *Sharī^{c}ah Legal Practise in Nigeria (1956-1983).* (Ilorin: Kwara State University Press, Malete, 2017), 30.

2 Muhammad, S.O. *Sharī^{c}ah in Nigeria (A Brief History)* (Ilorin, Olalomi printers, 2011), 30.

3 See (The Upper Area Courts (Appeals) Rules) in *Law of Kwara State of Nigeria* Prepared under t *Sharī^{c}ah* he authority of Revised Edition(Law of Kwara State of Nigeria) Law 2006 by the Law Revision Committee (vol.1) (Ilorin Kwara State, Lexis Nexis Butter Worths (PTY) LTD 2005), A9-79.

4 See section 2 and 4,Area Court Edict, 1967.

5 *Sharī^{cR}ah* Court of Appeal Law, 30th September, 1960 Session 10

6 *ibid* Section 4. See also Nigerian 1999 Constitution

7 *ibid*

8 Abikan, A. Q. I."The Application of Islamic law in Civil Causes in Courts" 18

9 Galandanci, A. S. *Harakatu 'l Lughati 'l-Arabiyyah wa 'l-'Adabiyyah fī Nijiriyā, 1804-1922,*(Riyadh,Aikan Publications, 2004), 143.

10 Cnstitution of Federal Republic of Nigeria

11 Ajetunmabi, M. A. *Sharī^{c}ah Legal Practise in Nigeria (1956-1983),* 139

12 Galandanci, A. S. *Harakatu 'l Lughati 'l-cArabiyyah wa 'l-'Adabiyyah fī Nijiriyā, 1804-1922,* 143.

13 Bappa, M. A. M. *A brief History of Sharī^{c}ah in the Defunct Northern Nigeria* (Jos Nigeria Jos University Press 1988), 1-2

14 *ibid.*

15 *ibid.*

16 Muri, O. "The Relevance of *Sharī^{c}ah* to Nigeria" in *Islam in Africa* (Ibadan, Spectrum Books Limited, Sunshine house, 1993), 23..

17 *ibid,* P. 23

18 *ibid,* p.25

19 KurawaI, A. *Sharī^{c}ah and the Press in Nigeria,* 282.

20 *ibid.*

21 *ibid.*

22 Ambali, M. A. *The Practise of Muslim Family Law in Nigeria,* (Zaria, Tamaza Publishing Company Ltd, 2003), 21.

23 Bappa, M. A. M. , *A brief History of Sharī^{c}ah in the Defunct Northern Nigeria* 1-2

24 Kumo, S. "The Application of Islamic law in Northern Nigeria: Problems and Prospects" in *Islamic law in Nigeria (Application & Teaching)*(Sokoto, University of Sokoto Press, 1988), 44

25 The Resident was the political agent of the British colonial Administration.

26 Kumo, S. "The Application of Islamic Law in Northern Nigeria,45.

27 Kurawa, I. A. *Sharī^{c}ah and the Press in Nigeria,*292

28 S. "The Application of Islamic law in Northern Nigeria: Problems and Prospects", 44

29 Kurawa, I. A. *Sharī^{c}ah and the Press in Nigeria,* 296.

30 Section 25 Native Courts Law[Cap 78],vol.2, The Laws of Northern Nigeria,1963

31 Kurawa, I. A. *Sharī^{c}ah and the Press in Nigeria,* 296.

المنارة للاستشارات
www.manaraa.com

32 *ibid.*
33 Section 25 Native Courts Law[Cap 78],vol.2, The Laws of Northern
34 *ibid.*
35 Tabiu, M. "Constraints in the application of Islamic law" in Nigeria, in *Islamic law in Nigeria (Application and Teaching)*, 81
36 http//en.wikipedia.org/wiki/kwara.states. Assessed on\ 20/8/2016
37 http//www.ngex.com.nigeria/places.states/kwara.htm. Assessed on 20/8/2016
38 http//www.onlinenigeria. com.states/kwara/blurb=311. Assessed on 20/8/2016
39 Other towns include Patigi, Erin-lIe,lIoffa, Adeleke Igbewere, Ejidongari, Osi, Lafiagi, Gure, Afon, Kaiama, Isanlu-lsin, Omu-Aran, Egbejila, lIota, Iponrin and Igbaja
40 http//www.ngex.com.nigeria/places.states/kwara.htm. Assessed on 20/8/2016
41 *ibid.*
42 http//www.onlinenigeria. com.states/kwara/blurb=311. Assessed on 20/8/2016
43 Abikan, A.Q.I. "The Application of Islamic Law in Civil Causes in Nigeria Courts*." Journal of International and Comparative Law.*8-12
44 *ibid*
45 Jimoh, L.A.K. *Ilorin: The Journey So Far*. (Ilorin: Atoto Press 1994), 35-62
46 Elias, T. O. "Ilorin land and the land tenure law" *Nigerian Law Journal* 5: (1971), 159-161.
47 Anderson, J.N.D. *Islam,ic Law in Africa*. (London: Frank Cass. 1978), 3
48 Okonkwo, C.O. *Okonkwo and Naish on Criminal Law in Nigeria*. (London: Sweet and Maxwell, 1979),4
49 Okany, M.C. *The Role of Customary Courts in Nigeria*. (Enugu: Fourth Dimension Publishers. 1984), 10-17
50 Keay, E.A. and. RichardsonI, S.S.*The Native and Customary Courts of Nigeria*. (London: Sweet and Maxwell 1966), 122-125
51 Mahmud, A. B. *A. Brief History of the Sharīcah in the Defunct Northern Nigeria*. (Jos: University of Jos Press. 1988), 9-11
52. Area Courts Law, Cap. A9, Section7, *Laws of Kwara State*, 2007.
53 Kwara State Law Revision (Miscellaneous Amendments) Law, 2006.
54 Karibi-Whyte, A.G. *History and Sources of Nigerian Criminal Law*. (Ibadan: Spectrum Books. 1993), 232
55 Customary Court of Appeal, 1979 (Plateau State), Section 2
56 Obilade, A.O. *Nigerian Legal System*. (Ibadan: Spectrum Law Publishing 1998), 202-206
57 Obilade, A.O. *Nigerian Legal System*.170-192
58 Kwara State Law Revision (Miscellaneous Amendments) Law, 2006.
59 Area Courts Law, Cap. A9, Section 4A (2), *Laws of Kwara State*, 2007.
60 Hon. Justice Salihu Olohuntoyin Muhammad, 2016, Speech at the ceremony marking the commencement of the 2016/2017 legal year.
61 Constitution, 1999, s. 197 and Part II, Third Schedule.
62 OBA, A. A. 'Kādis (Judges) of the *Sharīcah* Court of Appeal: The Problems of Identity, Relevance, and Marginalization within the Nigerian Legal System. -62.

المنارة للاستشارات
www.manaraa.com

63 Speech by Hon. Justice Harun at the ceremony marking the commencement of the 2013/2014 legal year

64 C:/ Users/Destop/Kwara Assemply seeks bill on 20 C:/Users/Destop/ Law of Nigeria – Wikipedia, the free encyclopedia.mht. Assessed on 5/9/2016. See also Area Courts #Ilorin,# Kwara News@IlorinInfo.mht. Assesed ON 30/8/2016.

65 C:/Users/Destop/ JURSDICTION AND COURTS ESTABLISHMENT BY THE CONSTITUTION.mht.Assessed on 30/8/2016. And see also Abikan, A.Q.I. "The Application of Islamic law in Civil Causes in Courts" in *Journal of International and Comparative Law* (June 2002) 6-9.

66 Area Courts Law, Cap. A9, Section 28 (1), *Laws of Kwara State*, 2007.

67 *ibid*.

68 Karibi-Whyte, A.G. *History and Sources of Nigerian Criminal Law*, 232.

69 *ibid*.

70 Tab`u, M. 'The Right of Audience of Legal Practitioners in *Sharīcah* Courts in Nigeria

71 Oba, A. A. Lawyers, Legal Education and the *Sharicah* Courts in Nigeria, 127-128

72 Belgore, S.M.A. "Developments in Appellate Practise in the Apex Courts" *The Jurist* (Unilorin1999/2000) 5: 45.

73 *Sharīcah* Court of Appeal Law, 30 September, 1960 and Section 4. See also Nigerian 1999 Constitution.

74 http//en.wikipedia.org/wiki/kwara.states. Assessed on 20/8/2016.

75 http//www.onlinenigeria. com.states/kwara/blurb=311. Assessed on 20/8/2016.

76 C:/Users/Destop/Kwara Sstate *Sharīcah* Court of Appeal.mht. Assesed on 20/8/2017.

77 *ibid*.

78 *ibid*.

79 *ibid*.

80 They are: Hon. Justice AbdulKadir Orire, *CON* (1975-1999), Hon. Justice AbdulMuttalib Ahmad Ambali, *OFR* (1999-2008), Hon. Justice AbdulKadir Imam Fulani, *OFR* (2008-2010) and Hon. Justice Idris Abdullahi Haroon, *FHNR* (2010-2014). Hon. Kādi Salihu Oloruntoyin Muhammad (2014-2016), Hon. Justice Sheikh Abdul-Bāqi (2016-2016) and Hon. Kādi M. O. AbdulKadir (2016-Date)

81 http//en.wikipedia.org/wiki/kwara.states. Assessed on 20/8/2016. And an interview conducted with the former Grand Kaadi, Hon. S.O. Muhammad on 2/7/2016 at Kwara *Sharīcah* Court of Appeal, Ilorin.

82 C:/Users/Destop/Kwara Sstate *Sharīcah* Court of Appeal.mht. Assesed on 20/8/2017

83 Sections 275, *Constitution of the Federal Republic of Nigeria*, 1999.

84 *ibid*

85 Sections 262, *Constitution of the Federal Republic of Nigeria*, 1999.

86 Sections 277, *Constitution of the Federal Republic of Nigeria*, 1999.

87 *ibid*

88 *ibid*

89 *ibid*

90 *ibid*

المنارة للاستشارات
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91 Hon. Justice Salihu Olohuntoyin Muhammad, 2016, Speech at the ceremony marking the commencement of the 2016/2017 legal year.
92 *ibid*
93 Constitution of the Federal Republic of Nigeria, 1979, 1989 and 1999.
94 An interview conducted with Hon. Kadi Abdur-Rahim Ibrahim on 25/8/2016 at Kwara Sharīcah Court of Appeal, Ilorin. Andat Kwara Sharīcah Court of Appeal, Ilorm2001 Annual Report, 1-2.
95 ParkA, E. W*The Sources of Nigeria Law* (London: Sweet and Maxwell, 2005). See also T. A Aguda. "Towards a Nigerian Common Law' in M. A. Ajomo (ed.), *Fundamentals of Nigerian Law* (Lagos: Nigerian Institute of Advanced Legal Studies, 1989), 260.
96 *ibid,* p. 82
97 *ibid*.
98 Kurawa I. A. *Sharīcah and the Press in Nigeria*, 292
99 *ibid*.
100 Sulaiman, I. K. R "The *Sharīcah* and the 1979 Constitution" in *Islamic Law in Nigeria (Application & Teaching),* 59.
101 Adekilekun, A. *Muslims and Islamic Law in Southern Nigeria 1899-1999*, (Ede, Moyanjuola Publishers, 2004), 3
102 *ibid*.
103 Muhammad, I. B.*Al-Fiqhu 'l-wādihmina 'l-kitābwa 's-sunnah*(vol. 2) (Cairo Darul-manar 2007), .321-323
104 Abikan, A. Q. I "The Application of Islamic Law in Civil Causes in Courts" 15
105 Ambali, M. A. *The Practise of Muslim Family Law in Nigeria*, 21.
106 Bappa, M. A. *Brief History of Sharīcah in the Defunct NorthernNigeria* 1-2
107 *ibid*.
108 *ibid*.
109 Kurawa, I. A, *Sharīcah and the Press in Nigeria*, 312
110 *ibid*.
111 Al-Bukhārī, M. A. A. *Sahīhu 'l-Bukhārī(*Beirut Darul-Fiqr, (Vol 12), 1430 AH), 204-205.
112 *ibid*.
113 *ibid*.
114 Dasuki M, J. *Sharīcah and its Comprehensiveness in the Aspect of Human Life*, (Ilorin,Aloba Prints, 2010), 45.
115 Al-Qushairy, M. H.*Sahīhu Muslim,* (Cairo, (Vol.10), 1346AH), 196
116 Al-Bukhārī, M. A. A.*Sahīhu 'l-Bukhārī*(*Bābu 'l-Mīrāth*) (Vol. 10), 260.
117 Jamiu, S., "Colonial Impact in the Application of *Sharīcah* in Nigeria" in *journal of the Nigerian Association of Teacher of Arabic and Islamic Studies*, (Vol. 6) No 1, 2001,26
118 *ibid*
119 Kurawa, I. A. *Sharīcah and Press*, 314.
120 Orire, A. K. "Uncertainty of Common Law Procedure: An Example of Capital Punishment and Certainty of *Sharīcah* how Capital Punishment had changed within 100 Years" in *Al-Maslaha Journal of Law and Religion. Issues in the Administration of Islamic Law in Nigeria.Essays in honour of Justice Abdulkadir Orire.*By Nigeria

المنارة للاستشارات
www.manaraa.com

Association of Muslim Law Student (NAMLAS), University of Ilorin, (Ilorin, Al-Fatiah Production, 2010), 258.

121 Kurawa, I. A. *Sharicah and Press*, 314.

122 In Yorubaland**,** distribution of an estate of a deceased person, who dies without a valid Will, is per stripe; i.e. by the number of Wives of the deceased that had children and not by the number of children.

123 Kurawa I. A. *Sharicah and Press*, 314.

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CHAPTER THREE

3.0 GENERAL PROVISIONS ON ISLAMIC LAW OF INHERITANCE

Introduction

Islam has clearly laid down rules and regulations that cover all aspects of human existence. There are Islamic laws governing the conception and birth of a child until death.[1] Hence there is no sphere of human endeavors that Islam has not touched or laid down regulations for. For this reason, Islam does not cover only spiritual aspect, but also the entire human existence while it also prescribes the values and regulations that govern the sharing of the estate left behind by a deceased Muslim.[2]

Allah in the Qur'ān has introduced a number of rights and restrictions on matters of inheritance, including general improvements to the treatment of women and family life compared to the pre-Islamic societies that existed in the Arabian Peninsula and other cultures in the world. The Qur'ān also contains provisions in fixing the laws of inheritance, and thus forming a complete legal system. This development is in contrast to pre-Islamic societies where rules of inheritance varied considerably.[3] Furthermore, Allah introduces in the Qur'ān additional heirs that were not entitled to inheritance in pre-Islamic times; mentioning nine relatives specifically of which six are female and three are male. In addition to the above changes, Allah imposes restrictions on testamentary powers of a Muslim in disposing his or her property. According to the Prophet (SAW), a Muslim can only, in his will, give out a maximum of one third of his property.[4]

The Qur`ān contains only three verses that give specific details of inheritance and shares, in addition to few other verses dealing with testamentary. The information contained in these verses are used as a starting point by Muslim jurists who expounded the

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laws of inheritance by further using *Hadīth* as well as methods of juristic reasoning like *Qiyās*. The law of inheritance or succession in the Islamic jurisprudence is a complex subject. It is comprehensive, covering a very wide area of relations, and providing for even remote members of the family. Furthermore, inheritance is considered an integral part of *Sharīᶜah* and its application by Muslims is mandatory.[5] In this Chapter, definitions of Islamic Law of Inheritance and all other provisions relating to it are explained.

3. I Definition of Islamic Law of Inheritance

Two Arabic terminologies are used to denote inheritance in Islamic law. These are: *Al-farā'id* and *Al-Mīrāth.*[6]The root verb of the former terminology is *farada*, which means to ordain, or decree and *farā'id* is the plural form of *farīdah* which means obligation or fixed share. The word In the Glorious Qur'ān was used in many places such like:

وَإِن طَلَّقْتُمُوهُنَّ مِن قَبْلِ أَن تَمَسُّوهُنَّ وَقَدْ فَرَضْتُمْ لَهُنَّ
فَرِيضَةً فَنِصْفُ مَا فَرَضْتُمْ

> And if ye divorce them before consummation, but after the fixation of a dower for them, then the half of the dower (Is due to them) … (Q2:237)

The root verb of the later terminology is *waritha*, which means to inherit or take over [7]. In the Glorious Qur'ān, the word is variously used such as:

وَوَرِثَ سُلَيْمَٰنُ دَاوُۥدَ

And Sulayman inherited Dawud''(Q27:16)

When the property of a dead person is gathered, collated, valued and shared among those who are entitled to it among his relatives, the word in this sense is used in the noun

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form as *mīrāth.* The science of Islamic law of inheritance is therefore referred to as ᶜ*ilmu 'l-mīrāth* or ᶜ*ilmu'l-farā'id*as this meaning is implied in the GloriousQur'ān:

وَلِلَّهِ مِيرَٰثُ ٱلسَّمَٰوَٰتِ وَٱلْأَرْضِ ۗ وَٱللَّهُ بِمَا تَعْمَلُونَ خَبِيرٌ ﴿١٨٠﴾

> To Allah belongs the inheritance of Heavens and the Earth; and He is well acquainted with all that you do. (Q3:180)

Technically, ᶜ*ilmu'l-mīrāth* or ᶜ*ilmu'l-farā'id* is the knowledge of how the property and estate left behind by a deceased is gathered, collated and shared among the deceased's relatives based on the *Sharīᶜah* laid down principles. Muhammad As-Sābūnī, a contemporary Muslim scholar defines Islamic inheritance as follows:

انتقال الملكية من الميت إلى ورثته الأحياء سواء كان المتروك

مالا أو عقارا أو حقا من الحقوق الشرعية

> Transfer of ownership of estate from the deceased to his living inheritors, whether the estate is wealth, landed property or legal rights and obligations." [8]

Thus, the transmissible rights include all rights to property as well as rights connected with property and other dependent rights, such as debts, rights to compensation etc.

According to the Encyclopedia of Social Sciences, "Inheritance is the entity of living persons into the possession of dead person's property and exists in some form wherever the institution of private property is recognized as the basis of the social and economic system."[9] Nevertheless, the actual forms of inheritance, the laws and custom governing it vary greatly from culture to culture and from time to time. Changed ways of owning and using property will always bring with them in the long run alteration in the laws and practises relating to the inheritance of wealth."[10]

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Death is inevitable. As a result, Islam has spelt out how the deceased's estate (i.e. the entire property a deceased leaves behind such as houses, cars, clothes, furniture, land, farm, cash (at hand and in bank), shares, bonds, and so on including socks and underwear; everything) should be shared among his heirs. Legal heirs, in the Islamic context, is a term which is properly applied only to those relatives upon whom property devolves, after the demise of its owner, by operation of law; and it is the rights of the legal heirs which are the keynote of the whole system of succession, for they are fundamentally indefeasible.

The aims of Islamic law of inheritance are to:

1. Eliminate hatred and separatism among family members.
2. Protect the deceased's property from going to wrong hands.
3. Eradicate all forms of discrimination and dispute that characterize the other systems of inheritance.
4. Encourage circulation of wealth in the society, as Islam does not want wealth to concentrate in the hands of few in the society.
5. Provide the dependants with something to live on after the death of their bread-winner.
6. Protect the rights of female and children.[11]

3.2. Historical Development of Islamic Law of Inheritance

Historically, the idea of succession is as old as the history of humankind.all tribal cultures and all revealed religions have their distinct mode of inheritance. This is because from time immemorial, people inherited properties from their predecessors which paved the way for the continuity of inheritance civilization.[12]Man, by nature, works hard to acquire wealth for his well-being and his family; and later died irrespective of how much

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he accumulates and leaves all of it behind, hence there is a need for the law or custom to determine how to distribute the wealth left behind by the deceased. As such, the rule of inheritance, whether religious or customary came up in the history with a view to making material provision for estate distribution of the deceasedamong his surviving relatives that are tied to him by a sertain relationship which should be determined by his cultural or religious factors. This depends on the practise or legal system agreed to be adopted by the deceased during his lifetime.

In the history of Jews, Romans, Israelites, Egyptians, Caledonians, pre-Islamic Arabs as well as most African customs long before the Advent of Islam,the idea of inheritance has featured very well but in these systems all, women were generally disadvantaged. This was aptly captured by Sani Idris thus:

> In all the schemes/system of inheritance that existed in the history of mankind prior to the advent of Islam and to some extent even thereafter up to today, women have been placed in a very disadvantaged position. In some systems, they are not only deprived from inheriting any portion, but they themselves are considered chattels capable of being inherited.[13]

3.2.1 Inheritance in the Pre-Islamic Arabia

Inheritance among the Arabs during the period of *Jāhiliyyah*[14] was confined only to male relations while daughters,mothers, widows, minors and incapable persons had no share in the inheritance of their deceased relations.[15]During this period women were also regarded as part among the inherited chattels by the male inheritors[16] As such the basic principle of inheritance among the pre-Islamic Arabs was based oncapability of someone to defend the honour and integrity of the family and the entire tribe.[17] Inheritance at that time descended exclusively on males tracing kindred entirely through males while the

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daughter, women and young ones could not inherit because they could not wield swords to fight and protect their family and tribes. It should be also mentioned that during that time,"fictitious relationship by adoption, oath of brotherhood and patronage for the protection of family or the tribes were common".[18]

The grounds of inheritance during the period of pre-Islamic Arabian custom include*Nasab* (blood relationship),*Nikāh* (marriage),*at-tabanni* (adoption), and *al-halaf* (defense pact) which favoured men only.[19]

During*Jāhiliyyah*periodthere were many customary practises by the Arabs concerning inheritance of women. The Arabs at that time used to ill-treat women especially the female orphans and the widows who were left with property by their deceased relatives. For instance, a widow could be inherited by therepresentative of the deceased like brother or her step-son especially the beautiful ones or rich among the women, the inheritor could either make her to be his wife or marry her off to somebody else [20] ordecide to keep her in suspension, thus, he would not marry her and would not allow her to marry any other person. He would only keep her in the housejust like a "hanging bag on the wall" until when he desired to set herfree, either by accepting ransom or otherwise.[21] In another situation, he would throw his garment on the widow indicating that she was reduced under his control; he could decide what to do with her to the exclusion of any one in the whole world,[22]and if she managed to escape to her parents or her relatios before the garment was thrown on her, she has become a free woman and could marry a man of her own choice[23]further more in a situation where the man inherited rich female orphan, he might decide to keep her as a proposed wife for hisown son until the time he grows up to marry

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her. His intention here is to preserve both the woman and her propertes for his son; the circulation of wealth was curtailed and maintained within only the family.[24]

The above were some of obtainable practises during the period of*Jāhiliyyah,* which tended to degrade women and the weak persons and tampered with their integrity and chastity as they were regarded just like chattels, which could be sold or disposed off by the owner whenever he wishes.

3.2.2 Inheritance during the Early Period of Islam and the Islamic Reforms

As vividly depicted in the above discussions, Inheritance among Arabs and non-Arabs, especially during the *Jāhiliyyah* period was unsatisfactory. Widows, daughters, mothers and other female beneficiaries were not given their right.[25]Similarly, in some other traditions; children who have not reached the adult age were not been allowed to inherit. Inheritance was only applicable to those who could fight and defend their familiy and tribe from the attack of their enemies.

The pre-Islamic customary rules of inheritance as highlighted above continued to be in practise until the time that the reformation of the rules took gradual process. Islamic law during the early time of Islam adopted some of the concept of *jāhiliyyah* period such like the concept ofinheritance of facilitations, relationship, adoption and oath of brotherhood and patron and the concept of '*Aṣabah,* the rule of priority of the agnates which determines who inherits to the exclusion of others.[26]All these pre-Islamic system of inheritancecontinuedtill the time a major reform was firstly introduced by the Prophet (S.A.W).Islam comes to stop those practises of the *jāhiliyyah* period so that people might avoid maltreatment of fellow human beings but takes the process gradually. It also comesto

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establish human rights, dignity, love, justice, kindness, affection and mutual help within the Muslim `*Ummah*.[27]

The first reform of inheritance in the Islamic era was initiated by the prophet (S.A.W.) as a tentative system of inheritance was based on immigration from Makkah to Madinah.The *Hijrah* marked the beginning of Madinah period.[28]After the Prophet`s *Hijrah* to Madinah, he became the head of state of the Muslim community which became a full-fledged Islamic state. The state was a divine state as the Prophet (S.A.W) received divine revelation used in governing the Islamic state from Allah. The first task ahead of him inMadinah was how unite the different *ummah* and howto consolidate the entire society. The Prophet (S.A.W) initiated a temporary system of inheritance based which was on Islamic fraternity called "*mu' ākhah*".[29]

Mu'ākhah is an inheritance system based on brotherhood, which in effect, means that when a Makkan immigrant died having no blood relatives in Madinah to inherit him, his Madinite brother in faith will inherit him and he can also iherit hisMadinite brother when he dies as well. The Prophet introduces this system in order to encourage Makkan Muslims to migrate to Madinah and to establish brotherhood, unity, love and affection among Muslim *Ummah,* especially the *Muhājirūn* (The migrants from Makkah to Madinah) and the `*Ansār* (helpers or hosts in Madinah).[30]This implies that during the early phase of the development of Islam, a *Muhājir* could inherit his `*Ansār* brother and vice-versa. The jurists interpreted this action of the prophet to be in accordance with the following verse where Allah (S.W.T) says:

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إِنَّ ٱلَّذِينَ ءَامَنُواْ وَهَاجَرُواْ وَجَٰهَدُواْ بِأَمۡوَٰلِهِمۡ وَأَنفُسِهِمۡ فِي سَبِيلِ ٱللَّهِ وَٱلَّذِينَ ءَاوَواْ وَّنَصَرُوٓاْ أُوْلَٰٓئِكَ بَعۡضُهُمۡ أَوۡلِيَآءُ بَعۡضٖۚ وَٱلَّذِينَ ءَامَنُواْ وَلَمۡ يُهَاجِرُواْ مَا لَكُم مِّن وَلَٰيَتِهِم مِّن شَيۡءٍ حَتَّىٰ يُهَاجِرُواْۚ وَإِنِ ٱسۡتَنصَرُوكُمۡ فِي ٱلدِّينِ فَعَلَيۡكُمُ ٱلنَّصۡرُ إِلَّا عَلَىٰ قَوۡمِۭ بَيۡنَكُمۡ وَبَيۡنَهُم مِّيثَٰقٞۗ وَٱللَّهُ بِمَا تَعۡمَلُونَ بَصِيرٞ ٧٢

> Those who believed and adopted exile, and fought for the faith, with their property and their persons, in the cause of God as well as those who gave (them) asylum and aid, these are (all) friend and protectors one of another. As to those who believe but came not into exile, ye owe no duty of protection to them until they come into exile (Q.8:72).

It should be noted, however, that the first Qur'ān revelation on inheritance came to abrogate inheritance on the basis of Islamic brotherhood among the *muhājirūn* and the *ansār*.This is because the Qur`anic revelation upholds the strength and priority of blood relationship without referring to the relationship established between the *muhājirūn* and the '*Ansār*.TheGlorious Qur'ān provides;

وَأُوْلُواْ ٱلۡأَرۡحَامِ بَعۡضُهُمۡ أَوۡلَىٰ بِبَعۡضٖ فِي كِتَٰبِ ٱللَّهِۚ

> Blood relations among each other have closer personal ties in the Decree of Allah (regarding inheritance)" (Q.8:75)

The abrogation of the Islamic fraternity as a basis for inheritancealso followed, then the abrogation of adoption and defense pact as ground of inheritance and in their place; while thedefinite rules were ordained to govern inheritance system under islam..[31]

The Islamic reforms repealed the *jāhiliyyah* rules of inheritance and introduced the principles of equality and justice among the sexes in accordance with their natural

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positions. These rules regulated the law of inheritance that the estate of the deceased should devolved on those relatives who by reason of consanguinity or affinity have the strongest claim to be benefited by it and in proportion to the strength of such claim, with harmonious distribution of estate among the dominants, in natural strengths of their claim. The elaborate provisions under Islamic law were made where relations entitled to inherit and categorically specified the shares they are inheriting in the Glorious Qur'ān. These provisions are contained in three verses of the GloriousQur'ān viz; 4:11, 12 and 176.

يُوصِيكُمُ ٱللَّهُ فِيٓ أَوۡلَٰدِكُمۡۖ لِلذَّكَرِ مِثۡلُ حَظِّ ٱلۡأُنثَيَيۡنِۚ فَإِن كُنَّ
نِسَآءٗ فَوۡقَ ٱثۡنَتَيۡنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَۖ وَإِن كَانَتۡ وَٰحِدَةٗ فَلَهَا
ٱلنِّصۡفُۚ وَلِأَبَوَيۡهِ لِكُلِّ وَٰحِدٖ مِّنۡهُمَا ٱلسُّدُسُ مِمَّا تَرَكَ إِن كَانَ لَهُۥ
وَلَدٞۚ فَإِن لَّمۡ يَكُن لَّهُۥ وَلَدٞ وَوَرِثَهُۥٓ أَبَوَاهُ فَلِأُمِّهِ ٱلثُّلُثُۚ فَإِن كَانَ
لَهُۥٓ إِخۡوَةٞ فَلِأُمِّهِ ٱلسُّدُسُۚ مِنۢ بَعۡدِ وَصِيَّةٖ يُوصِي بِهَآ أَوۡ دَيۡنٍۗ
ءَابَآؤُكُمۡ وَأَبۡنَآؤُكُمۡ لَا تَدۡرُونَ أَيُّهُمۡ أَقۡرَبُ لَكُمۡ نَفۡعٗاۚ فَرِيضَةٗ
مِّنَ ٱللَّهِۗ إِنَّ ٱللَّهَ كَانَ عَلِيمًا حَكِيمٗا ﴿١١﴾ ۞وَلَكُمۡ نِصۡفُ مَا تَرَكَ
أَزۡوَٰجُكُمۡ إِن لَّمۡ يَكُن لَّهُنَّ وَلَدٞۚ فَإِن كَانَ لَهُنَّ وَلَدٞ فَلَكُمُ ٱلرُّبُعُ
مِمَّا تَرَكۡنَۚ مِنۢ بَعۡدِ وَصِيَّةٖ يُوصِينَ بِهَآ أَوۡ دَيۡنٖۚ وَلَهُنَّ ٱلرُّبُعُ مِمَّا
تَرَكۡتُمۡ إِن لَّمۡ يَكُن لَّكُمۡ وَلَدٞۚ فَإِن كَانَ لَكُمۡ وَلَدٞ فَلَهُنَّ ٱلثُّمُنُ
مِمَّا تَرَكۡتُمۚ مِّنۢ بَعۡدِ وَصِيَّةٖ تُوصُونَ بِهَآ أَوۡ دَيۡنٖۗ وَإِن كَانَ رَجُلٞ
يُورَثُ كَلَٰلَةً أَوِ ٱمۡرَأَةٞ وَلَهُۥٓ أَخٌ أَوۡ أُخۡتٞ فَلِكُلِّ وَٰحِدٖ مِّنۡهُمَا
ٱلسُّدُسُۚ فَإِن كَانُوٓاْ أَكۡثَرَ مِن ذَٰلِكَ فَهُمۡ شُرَكَآءُ فِي ٱلثُّلُثِۚ مِنۢ

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بَعۡدِ وَصِيَّةٖ يُوصَىٰ بِهَآ أَوۡ دَيۡنٍ غَيۡرَ مُضَآرّٖۚ وَصِيَّةٗ مِّنَ ٱللَّهِۗ وَٱللَّهُ عَلِيمٌ حَلِيمٞ ﴿١٢﴾

Allah instructs you concerning your children: for the male, what is equal to the share of two females. But if there are only daughters, two or more, for them is two thirds of one's estate. In addition, if there is only one, for she is half. And for one's parents, to each one of them is a sixth of his estate if he left children. But if he had no children and the parents alone inherit from him, then for his mother is one third. And if he had male siblings or female siblings, for his mother is a sixth, after any bequest he may have made or debt. Your parents or your children - you know not, which of them are nearest to you in benefit. These shares are obligation imposed by Allah. Indeed, Allah is ever knowing and Wise. And for you is half of what your wives leave if they have no child. But if they have a child, for you is one fourth of what they leave, after any bequest they [may have] made or debt. And for the wives is one fourth if you leave no child. But if you leave a child, then for them is an eighth of what you leave, after any bequest you [may have] made or debt. And if a man or woman leaves neither ascendants nor descendants but has a brother or a female sibling, then for each one of them is a sixth. Nevertheless, if they are more than two, they share a third, after any bequest, which was made, or debt, as long as there is no detriment [caused]. This is an ordinance from Allah and Allah is Knowing and Forbearing. (Q.4:11-12).

يَسۡتَفۡتُونَكَ قُلِ ٱللَّهُ يُفۡتِيكُمۡ فِي ٱلۡكَلَٰلَةِۚ إِنِ ٱمۡرُؤٌاْ هَلَكَ لَيۡسَ لَهُۥ وَلَدٞ وَلَهُۥٓ أُخۡتٞ فَلَهَا نِصۡفُ مَا تَرَكَۚ وَهُوَ يَرِثُهَآ إِن لَّمۡ يَكُن لَّهَا وَلَدٞۚ فَإِن كَانَتَا ٱثۡنَتَيۡنِ فَلَهُمَا ٱلثُّلُثَانِ مِمَّا تَرَكَۚ وَإِن كَانُوٓاْ إِخۡوَةٗ رِّجَالٗا وَنِسَآءٗ فَلِلذَّكَرِ مِثۡلُ حَظِّ ٱلۡأُنثَيَيۡنِۗ يُبَيِّنُ ٱللَّهُ لَكُمۡ أَن تَضِلُّواْۗ وَٱللَّهُ بِكُلِّ شَيۡءٍ عَلِيمُۢ ﴿١٧٦﴾

They ask Thee for a legal decision. say: Allah directs (thus) about those who leave no descendants or ascendants As heirs. if it is a man that dies, leaving a sister but no child, she shall have half the inheritance: if (Such a deceased was) a woman, who left no child, Her brother takes Her inheritance: if there are two sisters, They shall have two-thirds of the inheritance (Between them): if there are brothers and sisters, (They

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share), the male having Twice the share of the female. Thus doth Allah make Clear to you (his law), Lest ye err. and Allah hath knowledge of all things. (Q4:176)

The above verses brought the total reforms on inheritance system and abrogated the previous systems. Testimony for this practise could be also found in the following *hadīth* of Prophet Muhammad (S.A.W):

روى ابن جرير عن ابن عباس رضي الله عنهما أنه قال: "لما نزلت الفرائض التي فرض الله فيها ما فرض, للولد الذكر, والأنثى, والأبوين كرهها بعض الناس وقالوا: تعطى المرأة الربع, والثمن, وتعطى الابنة النصف, ويعطى الغلام الصغير, وليس من هؤلاء أحد يقاتل القوم, ولا يحوز الغنيمة !! اسكتوا عن هذا الحديث, لعل رسول اللهينساه, أونقول له فيغيره.... فقال بعضهم: يا رسول الله أنعطي الصبي الميراث, وليس يغني شيئا, أنعطي الجارية ما ترك أبوها لا تركب الفرس ولا تقاتل القوم؟ .

Ibn Jarir reported from Ibn 'Abbas (may Allah be pleased with both of them) saying: when revelation came on inheritance where Allah made shares compulsory for the male child, the female child, and for the two parents, some men did not like it and said: How can a woman be given one quarter (of property), one over eight and even a daughter up to a half and even share a child out of the estate! And these people do not partake in war and don't bring home any booty from the war front! Stop talking about this. The Messenger of Allah will soon forget it! Or, do we tell him so that he can change the law. They then went to the Prophet (S.A.W) saying: o the Messenger of Allah! Must we share a child (out of inheritance)? He has not been useful at all. Must we even

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share a girl half of what her father left and she has not been riding on horse-back neither has she participated in fighting any war?).[32]

The above-cited *hadīth*indicates that with the revelation of the verses of *Mīrāth*, Islamic law of inheritance has introduced some reforms that accorded women and children full recognition in the society. The turning point in the history of women's right of inheritance begins with the revelation of the Glorious Qur'ān chapter 4:7 thus:

لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ ٱلْوَٰلِدَانِ وَٱلْأَقْرَبُونَ وَلِلنِّسَآءِ نَصِيبٌ مِّمَّا تَرَكَ ٱلْوَٰلِدَانِ وَٱلْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ نَصِيبًا مَّفْرُوضًا ﴿٧﴾

From what is left by parents and the nearest relations there is a share for men and a share for women whether, the property be small or large determinate share. (Q4:7)

However, the reforms were introduced based on certain reasons some of which are brought to limelight in the following *hadīth:*

إن امرأة سعد بن الربيع جاءت إلى رسول الله صلى الله عليه وسلم بابنتيها من سعد فقالت يا رسول الله هاتان ابنتا سعد بن الربيع قتل أبوهما سعد معك بأحد شهيدا وأن عمهما أخذ مالهما فلم يدع لهما مالا، ولا تنكحان إلا بمال فقال صلى الله عليه وسلم يقضي الله في ذلك فنزلت أية المواريث (يوصيكم الله في أولادكم للذكر مثل حظ الانثيينفأرسلصلى الله عليه وسلم إلى عمهما أن أعط ابنتي سعد الثلثين وأمهما الثمن وما بقى لك.

The wife of Sa^cad Ibn Rabi^c came with her two daughters by Sa^cad Ibn Rabi^c to the Messenger of Allah, and she said: O Messenger of

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> Allah! Here are the two daughters of Sa^c^ad, their father was killed while fighting on your side on the day of Uhud, and their uncle has taken their property. He has not left any property for them, and they cannot be married unless they have some property. He (the Prophet) said: Allah will decide about that. Then the verse of inheritance was revealed (i.e Q.4:11) so the Prophet sent for their uncle and said: Give the two daughters of Sa^c^ad two thirds, give their mother one-eighth and what remains is for you.[33]

According to other report, the verses of inheritance were said to have been revealed in respect of the case of AbdurRahman bin Thabit whose brother Hasan Sha'ir died and was survived by a wife called Ummu Kahhata and his five other sisters while his surviving male relations seized the whole estate. His wife complained to the Glorious Prophet and the three verses on inheritance were revealed.[34] The fundamental reforms were, as a result introduced in the Islamic law of inheritance.

Another reason given for the revelation of inheritance verses was the complaint lodged tothe Prophet after the death of Aus Bin Thabit Al-Ansari who leftbehind a wife and two daughters. The two sons of his paternal uncle named Suwaid and Arfaja, in another report, the names are Qatadah and Arfaja took all his property leaving nothing to his wife and daughters. The wife complained to the Glorious Prophet, who called them and enquired about the matter. They replied: How can we give them when they do not fight against the enemies and defend our family? The Glorious Prophet said to them: Go and wait, I hope Allah will send a revelation about them, thereafter the verse was revealed. The Glorious Prophet sent to them not to distribute the estate of Aus because Allah had given his daughters a part from his property. The Glorious Prophet asked them to give the widow 1/8 and the daughters 2/3 and the remaining for them.[35]

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The revelation of the three verses of *al-māwarīth* marked a turning point in the history of inheritance system in Islam and more especially on women's rights in inheritance. It introduced fundamental reforms to the existing practises of inheritance, where Islam recognizes women by giving them the legal status of beneficiaries and their specific shares in the inheritance are determined. Out the 12 beneficiaries of '*ashāb al-furūd*, eight are female and only four are male.

Succinctly put, the reformations introduced in the Islamic Inheritance Law include:

1. Inheritance rights of beneficiaries are based on the relationship of consanguinity (kinship), marriage contract, *walā'* and Islam.
2. Not to deny the rights to inheritance between male and female, big or small, all of who are entitled to the inheritance left by the benefactor (the deceased).
3. Parents and children are not left out from receiving inheritance in any condition. Their portion of the inheritance might change if there are other beneficiaries.
4. Male and female siblings will not receive the inheritance if the father of the deceased is still alive. The presence of siblings/relatives will reduce the mother's share from 1/3 to1/6.
5. Where there are male and female beneficiaries in a single case, the male beneficiary will take two parts of the female beneficiary's shares, or two parts for the male beneficiary and one part for the female beneficiary.[36]

Therefore, the principle of Islamic law of inheritance as a whole is more comprehensive and just and it is more consistent with time and reason and good sense when compared with other systems of inheritance. Islam gives right to those who are excluded

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in other customs to inherit from their deceased relatives` property. In addition, even in some cases, it has given them priority over other beneficiaries who were accorded better recognition in other customs and systems. As obtainable in various customs and systems, the nearest agnate male inherits all the deceased's properties to the exclusion of others including wives, daughters, younger male children, parents etc. but Islam introduces a reform which mirrors and emphasizes more on the immediate family of the deceased person. The Qlorious Qur'ān establishes mutual rights of inheritance between a husband and his wife, his parents, his children, males or females, matured or young even if they survived few minutes after the deceased death to the extent that when they were born, they just breathed, cried and then died. Each of these beneficiaries has prescribed fixed fractional shares in Islam law of inheritance.

3.2.3 Views of Non –Muslims on Islamic law of inheritance

While some non-Muslims such as Swami Vivekananda and Winston Churchill[37]have criticized the Islamic law of inheritance and accused it of injustice, some others have appreciated it for its justice and equity. Professor Almaric Rumsey of King College, London, the author of many works on the subject of Muslim law of inheritance and a Barrister at law is one good example of non-Muslim scholars who appreciate the Islamic system of inheritance. He stated: ''The Muslim law of inheritance comprises beyond question the most refined and elaborate system of rules for the devolution of property that is known to the civilized world."[38]

Another orientalist, Lord M. Naughton also appreciated Islamic law of inheritance when he writes:

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> In this provision (i.e. Islamic rule of inheritance), we find simple attention paid to the interest of all those whom nature place in the first rank of our attention and indeed it is difficult to conceive any system containing rules more strictly, just and equitable.[39]

It is, however, equally pertinent to look at the accusation of inequality between male and female inheritors leveled against Islam by some non-Muslims, which has gained the sympathy of some female Muslims. It would be noticed that Islamic inheritance stipulates that the male heir takes double the share of the female heir. This is considered in some quarters as injustice.

The justification for the share of male being twiceof female is that, Islam has placed a strong financial responsibility on the male members while the females have been exempted from this burden. Islam takes this financial responsibility on male into consideration and therefore doubles the share of a male. That is because in Islam,provision for all the needs of an unmarried female who lives with her parents is an obligation of her father. And, in case of the death of her father, the responsibility will be shifted to her brother until her marriage time. Also after marriage, woman's financial responsibility is transferred to her husband who becomes responsible for her maintenance, which includes her feeding, clothing and residence; all her expenses are to be met by the husband. Even in old age or in case of the death of her husband, the woman's maintenance continues with her male children.

Based on the above, it becomes crystal clear that in Islam, a woman has a very few material-needs to satisfy her own account as compared with a man who has been saddled with heavy economic obligations and liabilities. This justifies the reason for giving a male a greater part in the estate of inheritance.[40]

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In some of the cases as mentioned above, a woman inherits half of what her male counterpart inherits. However, this is not always the case. For example in case where the deceasedleft no ascendant or descendent but has left the uterine brother and sister each of the two inherits one sixth. If the deceased has left children, both the parents, father and mother inherit an equal share whch is one sixth each. [41] This is a clear case of a situation where a woman inherits equal of what a man inherits.

In certain cases, a woman inherits a share that is double that of male. For example if the deceased is a woman who has left no children, brothers and sisters and is survived only by by her husband, father and mother. The husband inherits half of the property while the mother inherits one third and the father inherits the remaining one sixth. In this case the mother has gotten the double share of the father.[42]

3.3. Grounds for Inheritance in Islam (أسباب الإرث)

The right of inheritance in Islami rests upon the two principal grounds of blood relationship namely (*nasab*) and marriage (*nikāh*). There are also two secondary grounds, which can only be regarded in the absence of the above ones. The first is Clientage (*walā'*) or the relationship between a freed slave and his former master. By virtue of his act of manumission, the master acquired the right to inherit from his freedom if the latter died without any heir by blood. The second is*Baytu 'l- māl*(public Muslim treasury).[43]

3.3.1 Blood Relationship (النّسب)

Nasab means consanguinity or relationship existing between relatives such as between father, mother, children, brothers and paternal uncles. This is the category that is bound by blood relationship including descendant, ascendant, collaterals and uncles.

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Although, blood relationship was one of the indispensable grounds of inheritance before the advent of Islam; women and young children were generally barred or excluded from inheritance regardless of the extent of their relationship with the deceased person. [44]

According to Coulson, the family group knitted together by the web of social rights and obligations was the extended agnatic family of males linked through males to a common ancestor. Hence, although maternal relatives do have rights of inheritance, the main emphasis lies on the paternal connection and that the primary significance of *nasab* (blood relationship) is that of paternity. Thus, the right of inheritance through blood relationship is the one existing between relations of the deceased.[45]According to Lakhvi,[46] eight-blood relations are the descendants and the ascendants of the deceased person that includes his offspring, both male and female, parents, brothers and uncles.

3.3.2 Marriage (النكاح)

In Islam, for marriage to create a right of inheritance between spouses in a Muslim family, it must be valid and must exist actually or constructively at the time of the death of one of the spouses. A marriage is said to be valid when it conforms to the requirements of validity i.e. guardians, witness, dowry, and that one of the spouses does not fall within the prohibited degree of marriage.[47]A valid marriage contract makes the spouses eligible to inherit each other. The Qur'ān has established this right thus,

۞وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَٰجُكُمْ إِن لَّمْ يَكُن لَّهُنَّ وَلَدٌ ۚ فَإِن
كَانَ لَهُنَّ وَلَدٌ فَلَكُمُ ٱلرُّبُعُ مِمَّا تَرَكْنَ ۚ مِنۢ بَعْدِ وَصِيَّةٍ يُوصِينَ بِهَآ
أَوْ دَيْنٍ ۚ وَلَهُنَّ ٱلرُّبُعُ مِمَّا تَرَكْتُمْ إِن لَّمْ يَكُن لَّكُمْ وَلَدٌ ۚ فَإِن كَانَ

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لَكُمْ وَلَدٌ فَلَهُنَّ ٱلثُّمُنُ مِمَّا تَرَكْتُمۚ مِّنۢ بَعْدِ وَصِيَّةٍ تُوصُونَ بِهَآ أَوْ
دَيْنٍۗ وَإِن كَانَ رَجُلٌ يُورَثُ كَلَٰلَةً أَوِ ٱمْرَأَةٌ وَلَهُۥٓ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ
وَٰحِدٍ مِّنْهُمَا ٱلسُّدُسُۚ فَإِن كَانُوٓاْ أَكْثَرَ مِن ذَٰلِكَ فَهُمْ شُرَكَآءُ فِى
ٱلثُّلُثِۚ مِنۢ بَعْدِ وَصِيَّةٍ يُوصَىٰ بِهَآ أَوْ دَيْنٍ غَيْرَ مُضَآرٍّۚ وَصِيَّةً مِّنَ
ٱللَّهِۗ وَٱللَّهُ عَلِيمٌ حَلِيمٌ ﴿١٢﴾

In what your wives leave, your share is a half, if they leave no child. But if they leave a child, ye get a fourth; after payment of legacies and debts. In what ye leave, their share is a fourth, if ye leave no child; but if ye leave a child, they get an eight; after payment of legacies and debts … (Q.4:12)

This does not however include their parent or other relations. Therefore, either of the spouses is a legal heir to one another so far as their marriage is subsisting at the time that one of them dies. It has also been unanimously agreed upon by the Muslim jurists that if a man divorced his wife by a revocable divorce and died, she will inherit him if her ᶜ*Iddah* (waiting period) has not expired at the time of his death. However, if the divorce is irrevocable, then she cannot inherit him, whether her ᶜ*Iddah* has expired or not.[48]

However, Muslim Jurists hold differing opinions where the irrevocable divorce was pronounced during the death sickness, and the deceased person died due to the same sickness. According to the *Shafiᶜi* School of law, if the divorce is irrevocable one, it does not matter whether it is pronounced during death sickness or during his health time, she is not entitled to inherit him.[49] The *Hanafi* School of law holds a view that if an irrevocable divorce is pronounced during death sickness and the ᶜ*Iddah* (waiting period) has not expired; the wife is allowed to inherit her husband. However, if the irrevocable divorce is

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pronounced due to her own request against any amount during his death sickness, then she has no right to inherit him.[50]

The *Hanbali* school of law is of the opinion that if an irrevocable divorce is pronounced during death sickness, the wife has the right to inherit her late husband whether her ᶜ*Iddah* expires or not. However, if she has married another person before the death sickness of her ex-husband, whether her ᶜ*Iddah* had expired or not, or where it is pronounced on her own request, she has no right of inheritance.[51] However, if a man divorces his wife irrevocably and subsequently dies, she should not be entitled to inherit him at all because an irrevocable divorce bars him from returning her as his legitimate wife until she marries another husband who must cohabit with her and later divorce her on his own volition.

According to Coulson,[52] "a spouse relict in inheritance law is one whose marriage with the praepositus is valid and existing, actually or constructively, at the time of the deceased." Another point worthy of mention is that even though a Muslim man in Islamis allowed to marry a non-Muslim woman of Christian or Jewish faith, and that the right of inheritance ensures during the subsistence of a legally valid marriage, yet a non-Muslim wife of a Muslim husband is not entitled to inherit her Muslim husband and vice-versa.[53] This is because it is a settled principle of Islamic law that a non-Muslim cannot inherit from a Muslim and vice- versa. Some non-Muslims may view this as an injustice or a harsh law that runs against the right of the woman, but there is yet another side where Islamic law puts an antidote to their perceived injustice. This is where the Islamic law allows a person to make a will (*wasiyyah*) of not more than one-third of his netestate.[54] Therefore, a Muslim man who marries a non-Muslim woman may will out one-third of his net estate

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to his wife which is more than her fractional share of inheritance which is one-eight if he has children and one-fourth if he has no child.[55]

3.3.3 Clientage (الولاء)

Under this sub-heading, the Prophet (S.A.W) said, “the clientage is the exclusive right of him who sets a slave free”.[56] That means, the master or his child may inherit the deceased person but only to such an extent that the deceased is not survived by an heir or relation. Thus, a third ground of inheritance lays in the institution of clientage (*Walā*), or the relationship between a freed slave and his former master.[57]By virtue of his act of manumission, the master acquired the right to inherit from his freed slave if the freed slave dies without any heir by blood. As such, if a master emancipates his slave, he is entitled to inherit the free slave in the absence of any other heir of the deceased (free slave). In addition, Islamic jurists are unanimous that the right is not reciprocal. Hence, a freed slave cannot inherit his former master, even if the master dies without heirs. This view is in conformity with the *hadīth* of the prophet (S.A.W) which says:“*Al-walā’*(clientage) is for those who set him free”.[58]

3.3.4 Muslim Treasury (بيتالمال)

According to the *Maliki* School,[59]there is yet another ground of inheritance, which is *baytu ’l-māl* (Muslim Treasury). But this can only be a ground where a deceased is not survived by anybody who could come under any of the above mentioned grounds; hence the deceased’s estate goes to the Muslim treasury for the benefit of the Muslim ’*Ummah*.[60]

In some cases, there may be a left over after each heir has taken his share.That is in the case of where the deceased is survived by a daughter, son’s daughter and grandmother.

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The daughter takes half, son`s daughter takes one-sixth, and grandmother takes one-sixth. The remainder of one-sixth is therefore a subject of contention and debate among the jurists. In this situation, the *Maliki* School says;[61] the remainder one-sixth should be given to the Islamic Public Treasury, while the other three schools favored the returning of the remainder to the residuary heirs again at the original ratio. This is known as the doctrine of *Radd* under Islamic Law of Inheritance.[62]

3.4 Aspects of Priority before Distribution

According to the Islamic Law of Inheritance, there are certain liabilities or responsibilities that must be fulfilled by the beneficiaries before the *farā`id* is distributed. The liabilities or responsibilities must be fulfilled in the order of the following priorities: [63]

3.4.1 Funeral Rites and Expenses (الجنازة)

In Islam immediately after the death of a person, certain obligations as to his funeral service becomes due and these have to be from his estate unless if the responsibility is taken up by some people. Making payment for the funeral rites and expenses which include payment for the bath of his remains, the shroud, transportation of his bier to the cemetery, buying land for his grave, digging the grave and any other reasonable expenses in connection to his burial activities are part of the obligations.[64] All these should be catered for from what has been left behind by the deceased person within the legal requirement and the accepted customs. In the situation whereby the deceased person dies and does not leave behind any estate (property), his closest relations (heirs) should finance the enumerated burial expenses.

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Nevertheless, Muslim jurists differ as to whether a husband shall bear the expenses of his deceased wife. Imam Abu Hanīfa held the view that the husband is always bound to bear the cost regardless of his wife's financial status. This is deduced by way of analogy from the legal duty imposed upon him to maintain his wife.[65]

But Muhammad bin al-Shaybani, a disciple of Abu Hanīfa has dissented from this view. He opines that the wife's burial expenses should be borne from her estate and in the absence of any, the burden shifts to her relations who should have maintained her had she been unmarried.[66]Death, according to him, is an automatic natural divorce, which absolves the husband from any further responsibility on his deceased wife. The view of the Malikites is that no person should be held responsible towards funeral expenses of a dead person except a husband who is legally responsible to bear the burial expenses of his wife that predeceased him.[67]

We however wish to align with the views expressed by the hanafites and the malikites, which to us sounds more logical.[68] In so far the husband will inherit his wife after her death; he should shoulder her funeral expenses whether or not she leaves behind property.

3.4.2 Settling Debts of the Deceased (الدّين)

All debts owed by the deceased must be settled. These include debts owed Allah such as alms (*Zakāt)*, atonement (*Kaffārah)*, vows (*Nadhr)* and *Hajj*; or debts to other human beings. This is the opinion of majority of Muslim jurists. The Hanafites however do not require that debt owed Allah should be settled. To them, such has been removed by death itself. [69]

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According to this view, as far as the debt of Allah is concerned, they have lapsed after the deceased person's death. They based their argument on the fact that this debt is spiritual obligation upon him for which intention is an essential element in their performance, which is impossible from a dead person. Nevertheless, if the deceased bequeathed for their payment, then they will take the form of a will and might be carried out up to one-third of the remaining estate after payment of burial expenses and debts.However, the view of the majority should be aligned with that all debts, no matter the category, should be settled.

This is the second charge over the deceased property; his debt must be paid from his assets. This is because of the provision of the GloriousQur'ān that states categorically that estates should be distributed to heirs only:

مِنۢ بَعۡدِ وَصِيَّةٖ يُوصِينَ بِهَآ أَوۡ دَيۡنٖۚ

After the payment of legacies and debts (Q.4:12).

There are also many traditions of the prophet (S.A.W) to the effectthat whenever a person dies, and after his funeral expenses are satisfied, thenext is the payment of his debts from his estate. Abu Hurayrah Narated:

عن النبي صلى الله عليه وسلم قال"نفس المؤمن معلقة بدينه حتي يقضي.

> 'The Prophet (S.A.W) said, A believer's soul remains suspended until his debt is cleared."[70]

In another *hadīth*, Salama Ibn al-Akwa narrated:

كنّا جلوسا عند النّبي صلّى الله عليه وسلّم إذ أتي بجنازة فقالوا صلّ

عليها فقال هل عليه دين قالوا لا قال فهل ترك شيئا قالوا لا, فصلىّ

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عليه ثم أتى بجنازة أخرى فقالوا يا رسول الله صلّ عليها قال هل عليه

دين قيل نعم قال فهل ترك شيئا قالوا ثلاثة دنانير, فصلىّ عليه ثم أتى

بالثالثة فقالوا صلّ عليها قال هل ترك شيئا قالوا لا, قال هل عليه

دين قالوا ثلاثة دنانير : صلوا على صاحبكم قال أبو قتادة صلّ عليه

يا رسول الله وعلي دينه, فصلّى عليه Once, while we were sitting in the company of the prophet (S.A.W), a dead man was brought, the prophet (S.A.W) was requested to lead the funeral prayer for the deceased. He said, is he in debt? The people replied in the negative. He said, "Has he left wealth? They said, "No" so he led the funeral prayer. Another dead man was brought and the people said, "O Allah's messenger! Lead his funeral prayer". The prophet (S.A.W) said, is he in debt? They said "yes" He said: has he left wealth? They said, "Three Dinars". So, he led the prayer. Then a third dead man was brought and the people said, please lead his funeral prayer. He said, "Has he left any wealth? They said "No" He asked: ""Is he in debt? They said "yes" he has to pay three "Dinars". He refused to pray and said, "Then pray for your dead companion". Abu Qatadah said:"O Allah's messenger! Lead his funeral prayer, and I will pay his debt. Therefore, he led the prayer.[71]

In another *hadīth* of the prophet (S.A.W), Abu Hurayrah narrates:

جاء من حيث أبي هريرة أنّ رسول الله – صلى الله عليه وسلم كان

يؤتى بالرجل المتوفى عليه الدين فيسأل هل ترك لدينه قضاء؟ فإن

حدث أنهترك لدينهوفاء صلى عليه ، وإلا قال للمسلمين : صلوا على

صاحبكم.

Whenever a dead man in debt was brought to Allah's Messenger he would ask, "Has he left anything to repay his debt? If he was informed that he had left something to repay his debts, he would perform his funeral prayer, otherwise he would tell the people to offerthe funeral prayer for their man. [72]

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Another *hadīth* from Muhammad Ibn Jaysh says:

كُنَّا يوماً جلوساً في مَوْضِعِ الجَنَائِزِ معَ رسولِ الله صَلَّى الله عَلَيْهِ وَسَلَّمَ، فَرَفَعَ رَأْسَهُ إلى السماءِ ثم وَضَعَ رَاحَتَهُ على جَبْهَتِهِ وقالَ: "سُبْحَانَ الله مَاذَا أَنْزَلَ مِنَ التَّشْدِيْدِ»، فَسَكَتْنَا وَفَرِقْنَا، فلمَّا كانَ من الغدِ سَأَلْتُهُ فقلتُ: يا رسولَ الله مَا هَذَا التشديدُ الَّذِي أُنْزِلَ، قالَ: «في الدَّيْنِ، والَّذِي نَفْسِي بِيَدِهِ لو أَنَّ رجلاً قُتِلَ في سبيلِ الله ثم أُحْيِيَ، ثم قُتِلَ مرتينِ وعليهِ دَيْنٌ ما دَخَلَ حتَّى يُقْضَى عَنْهُ دَيْنه

> One day while we were sitting with the prophet (S.A.W) he raised his head towards the sky, then he put his palm on him forehead, then said Glory be to Allah how sternly it has been revealed! We remained silent and terrified. On the next day, I asked "O messenger of Allah! What is that stern (message) that has been revealed? On this he said, "By him in whose hand is my soul, if a man is killed in the way of Allah, and caused to come back to life and killed again two times. If he is in debt, he will not enter paradise until his debt is cleared.[73]

The above cited *'Ahādīth* show how fundamental the payment of debt of the deceased person after his death, and from his wealth is. However, if he dies indebted and does not leave any wealth, either his family or the Muslim community shall pay his debt, otherwise he is left with his debt.

It is a settled principle of Islamic law that a formal acknowledgement *('iqrār)* of a debt is binding and irrevocable. This acknowledgement of debts by dying person might be the only means by which he/she could establish a debt, which he in fact owned, and thereby avoid the serious sin of failing to provide for payment of his debts. As such, the deceased

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debts would be first settled prior to wills and gifts, etc.[74]For this purpose, debts are classified into two namely: secured and unsecured debts. Secured debts are those debts, which are attached to a part or whole of the estate, while unsecured debts are debts taken by the deceased personally not attached to his property.[75]

Muslim jurists however differ regarding the settlement of secured and unsecured debts of the deceased person. Imam Ahmad bin Hanbal was of the view that all debts must be paid after burial expenses, but the secured debts should be given preference over the debts of Allah. Imam Abu Hanīfa was of the view that the secured debts must be paid before funeral expenses while unsecured debts must be paid after funeral expenses.[76]

Imams Shafiᶜī and Malik[77]opined that the secured debts must be paid first even before funeral expenses, but those debts of Allah and unsecured debts should be paid after funeral expenses without any preference.However, the view that says the debts of whatever class should be paid after the funeral expenses should be also considered, because there is the need to carry out some verifications concerning whatever debts owned by the deceased. If debts were to be settled before funeral expenses, preliminary funeral rites would be delayed.

3.4.3 Fulfilling the will made by the deceased (الوصية)

The third right of a deceased person from his wealth is to fulfill his will from his estate. This is because of the provision of the Glorious Qur'an that says that estate distribution should be carried out after the payments of legacies and debts. Musᶜab Ibn Saᶜad (R.A) narrates from his brother, who said:

> I fell sick and sent someone to the Prophet (S.A.W).When he came, I said: "permit me to divide my entire wealth as I wish".

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> He did not agree. I said: “half of it”. He again did not agree. Then I said: “one third of it” The Prophet(S.A.W) remained silent on hearing of the one-third, and then said: “After one third (less than one-third) is permissible.[78]

The extent of *Wasiyyah* as agreed upon by Muslim jurists should not exceed one-third (1/3) of the deceased’s estate, so that the legal heirs should not be unnecessarily deprived. Bequest should be satisfied before any distribution of the deceased’s estate.[79] In addition, a will cannot be made to the rightful beneficiary of the inheritance. The Prophet (S.A.W) said:"لاوصيّة للوارث" “No bequest for inheritor” [80]

3.5. Distribution of the Inheritance (التقسيم)

Islamically, the estate should not be distributed to the heirs automatically and the heir’s right to the possession cannot be due unless all claims and liabilities against the estate or the praepositus personality as discussed above are settled first. Whatever remains after all the above have been deducted is distributed to the entitled heirs in accordance with the rules of succession in Islam.[81]

3.٥.١ Essentials of Inheritance (أركان الإرث)

The Islamic law of inheritance is built upon three elements and the distribution of inheritance will not occur unless those conditions are met, namely: The Deceased Person *(Al-Mayyit),* The Estate *(At-Tarikah)* and Heirs (*Wārithūn)***.**[82]

3.٥.1.1 The Deceased Person (الميّت)

There is consensus among Muslim jurists that, there must be a deceased person for a valid inheritance to take place. For the purpose of this subject, the deceased person must

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either die in fact (*al-mawtu 'l-Haqīqī*)[83]which may be established through any process by medical expert[84]or presumed dead legally (*al-mawtu 'l-Hukmī*),such like a missing person, whose death must be legally established by Islamic law, consequently his estate distribution. A deceased Muslim person is one who is no longer alive. He is a dead person whose estate is to be shared and transferred to those who are entitled to inherit him. Such transfer must be carried out according to the laid down principles of Islamic law of succession and not according to the customary rules of deceased`s family. The property must be transferred to those legal heirs who are entitled to benefit from his estate by virtue of special relationships that subsist between them, through blood, marriage or clientage.[85]

Death of person to be inherited is the first and fundamental factor to warrant inheritance process. However, for the death to be material, it must be actual and real or be legally presumed. This must be ascertained because the right to inherit accrues to the eligible heirs immediately with the death of that person and such aright need not be pronounced or declared by anyone else. Where the death is not actual but rather presumed, the right to inherit accrues only to the surviving heirs with effect from the date when the deceased's death is declared by the Court.[86]

3.٥.1.2 The Estate (التّركة)

Before determining who is a legal heir and what will be his fractional share in the deceased's estate, the praepositus must have left estate capable of being inherited. *Tarikah* or estate means what a deceased person left behind after death. The estate of the deceased person may consist of properties and other financial rights along with the liabilities that may be attached to it, and whether or not they are incumbent. The estate of the deceased person may include things which are in the person's possession, and those that are not in

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his possession such as his share of inheritance in the property of his relation that predeceased him, which has not yet been distributed.[87]

The estate of the deceased person, according to Lakhvi, consists of either moveable (*manqūl)* or immovable ('*A*^{c}*qār*). It also includes "the *Qiyyamī* or the *mithlī*. *Qiyyamī* are those things that are dissimilar and are not interchangeable like land, animals, house, etc". *Mithlī* are "those properties whose units or parts are similar to each other and are interchangeable without much difference, e.g. oranges, coins, books, etc". [88]

It should be noted at this juncture that the estate of the deceased must legally be pure under the Islamic law. Whatever is declared unlawful by the rules of the Islamic law is also prohibited and outside the purview of the Islamic law of succession, e.g. wine, pig etc. The prohibition also includes their value in monetary term. Musical instrument are also regarded as outside those things that are allowed to be inherited under the Islamic law.[89]

3.٥.1.3 Heirs (الوارثون)

Heirs are those to whom the property of a deceased person is transferred. However, before an heir can claim a share from the estate of the deceased, he must show that he was alive at the time of the death of the deceased and that there is no any impediment that befalls and debars him from inheriting from the deceased's estate. This means that the heir must have actually lived for a while. Survival, for the purpose of inheritance, may either be actual or presumed (such as in the case of an unborn child). The decision whether an unborn child shall be entitled to a share of the estate depends on whether the child was born alive or dead. If he /she is born alive, he /she is entitled to due share even if he or she lives for a stint, include breathing, crying and coughing. It is therefore best to wait till the child is born before distributing the estate.

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Furthermore, where some people died simultaneously and it is not possible to determine who dies first, none of them inherits the other even if they are father and son.[90] TheVerses of the Qur'an specifically dealing with the recognized heirs of a deceased person are Chapter. 4:9-13 and Chapter. 4:117. In the light of the above sources, the heirs are divided into three distinct categories, i.e. *'Aṣabah*(residuaries), *'ahlu 'l –farā'id* (Qur'anic heirs) and *Dhawu 'l-'arhām* (distant Kindred), which will be discussed later.

4.٦. Impediments to Inheritance (موانع الإرث)

Impediment means what could bar an heir from getting his/her share of the deceased's estate due to certain circumstances. Impediments to inheritance are those factors that would prevent an otherwise entitled heir from inheriting his deceased relation. Impediment to inheritance has been defined as: "a personal act or attribute which disqualifies from succession, an individual who would otherwise be an entitled heir on the ground of either marriage or blood relationship with the deceased persn."[91] The factors that may operate as impediment to inheritance include murder, difference of religion, *li^{c}ān* couples, illegitimacy, slavery, Simultaneous death and emergency marriage etc.

3.٦.1. Murder (القتل)

Homicide (*Qatl*) is technically an offence that debars an individual from inheriting the deceased's property even if the murder is an entitled heir. An heir who deliberately murders the deceased will neither inherit from the latter's estate nor from the *diyyah* (i.e. blood money). If the murder is accidental, he/she will inherit from the deceased's estate but not from the *diyyah*.[92]

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All schools of Islamic Jurisprudence accept the general principle that a killer does not inherit from his victim for some obvious reasons. It has been observed that the public interest requires that the killer be debarred from inheritance since, if he is allowed to inherit, killing would accelerate inheritance and lead to chaos.[93] That is why the offender is forbidden to make any valid claims to the property of his victim. This prohibition sounds rationally perfect because if people were allowed by the *Sharīcah* to inherit from the estate of their victims; unnecessary killings will be encouraged where people will kill their wealthy relatives just to benefit from their wealth. This prohibition is founded upon a *hadīth* reported by Abu Hurayrah in which he quoted the Prophet (S.A.W) assaying: "One who kills a man cannot inherit from him".[94]

It was also reported that the companions of the Prophet (S.A.W) in their consensus have adopted the above tradition in a case brought before Caliph cUmar Ibn Khattab (R.A) who debarred a person from inheriting his victim on the advice of the his fellow companions.[95]Therefore,Islamhas provided rules impeding the killer from inheriting his deceased victim. Hence, from the above mentioned *hadīth*, it is clear that a killer cannot inherit from the estate of the person he killed.[96]

There is considerable divergence of opinions among the Scholars of Islamic Jurisprudences to the precise instances in which homicide (*Qatl*) does constitute an impediment to succession under Islamic Law. Therefore, it is imperative to consider how homicide or killing is classified under Islamic law, at least, for considering which act of a killing constitutes a bar or an impediment to inheritance under the Islamic Law. [97]

According to the Maliki School of law, killing is classified into two, intentional killing (*Qatlu 'l- cAmd*) and accidental killing (*Qatlu 'l-Khata'*) relying on the provision of

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Qur`ān 4: 93. The school further held that a killing is intentional if it is malicious and legally unjustifiable; hence, it disqualifies an heir from inheritance, because it is a deliberate killing. The school defined intentional killing as:

> Any person of full age who is not an alien enemy *(harbi),* who strikes a protected person, with an object whether sharp or heavy, or with a light stick or a whip , or even with something of that nature that is not intrinsically likely to kill, and even though he does not intend to kill, or does not even intend to strike the person whom he in fact strikes, nevertheless where (death results and) he acts in anger or with hostile intent, and where his conduct does not amount to lawful chastisement, he commits the offence of intentional homicide.[98]

On the other hand, the school is of the view that unintentional killing impedes not the right of an heir to inherit but the heir would not receive anything out of the compensation (*diyyah*) that he paid as a result of the killing. While in the *Sharīᶜah*Courts applying Hannafi law, a person is debarred from inheritance if he killed his victim directly, whether his act is accidental or innocent in his intention, while the indirect killer will suffer no such impediment however criminal his intention may have been. The Hannafi and Hanbali schools of law, however held that, all killings that impose*Qisās*, *diyyah* or *Kaffārah* will bar the killer from in heriting his deceased's victim.[99]

3.6.2 Difference of Religion (إختلاف الدّين)

Undoubtedly, difference of religion between the heir and the deceased relation constitutes a bar to inheritance. A non- Muslim does not inherit from a Muslim relation no matter how close they are, and vice-versa. For instance, a non- Muslim father who has a Muslim son has no right to inherit from him and the other way round. This rule is derived from the following *hadīth* of the Prophet (S.A.W) as narrated by Usama Ibn. Zayd (A.S), which reads;

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لايرث المسلم الكافر ولاالكافر المسلم

> A Muslim cannot be the heir of a disbeliever nor can a disbeliever be the heir of a Muslim. [100]

Although mixed marriages are permissible under the Islamic Law only to the extent that aMuslim male may marry a Jewish or Christian woman. However, a non-Muslim wife has no right of inheritance from her Muslim husband and vice-versa, since the Islamic Law of inheritance is designed to distribute thedeceased's property among the surviving relations who are within the Islamic Community.[101] Therights of a non-Muslim woman can only deemprotected under bequest, because her Muslim husband is allowed under Islamic Law to bequeath 1/3 out of his property to anyone he wisheseven if not a Muslim except those who legally have rights in his estate. In that circumstance, he may bequeath to his non-Muslim wife. The husband is also not entitled to inherit his wife in such circumstance she may however give her property to him before her demise. Furthermore, an individual who converts to Islam cannot inherit from his/her non-Muslim relations and they cannot inherit from him too. This is the positions of all the four *Sunni Madhāhib.*[102]

It is necessary to mention here that some of the companions of the Prophet (S.A.W), namely: Muᶜādh Ibn Jabal, Hasan Ibn ᶜAli, Muᶜawiyyah Ibn Abi Sufyān, Ibn Musayyab and a host of others allowed a Muslim to inherit his non-Muslim relation, 'while a non-Muslim is not allowed to inherit a Muslim.[103]The Shi'ite adopts the same principle where they hold that while non-Muslims do not inherit from Muslims, Muslims are allowed to inherit from non-Muslims.[104] Under the Hanbali School, a relative who is not a Muslim at the time of the Muslim's death is entitled to inherit if he converts to Islam before the actual time of distribution of inheritance. It should be noticed that all these opinion are against

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the above quoted tradition of the prophet thus: A Muslim cannot be the heir of a disbeliever nor the disbelieeever be the hier of a Muslim.

3.6.3 Lia`n Divorce (اللّعان)

This happens when a man accuses his wife of adultery and they end up in swearing and cursing themselves as prescribed by Allah in the Qur'ān.

وَٱلَّذِينَ يَرۡمُونَ أَزۡوَٰجَهُمۡ وَلَمۡ يَكُن لَّهُمۡ شُهَدَآءُ إِلَّآ أَنفُسُهُمۡ فَشَهَٰدَةُ أَحَدِهِمۡ أَرۡبَعُ شَهَٰدَٰتِۭ بِٱللَّهِ إِنَّهُۥ لَمِنَ ٱلصَّٰدِقِينَ ٦ وَٱلۡخَٰمِسَةُ أَنَّ لَعۡنَتَ ٱللَّهِ عَلَيۡهِ إِن كَانَ مِنَ ٱلۡكَٰذِبِينَ ٧ وَيَدۡرَؤُاْ عَنۡهَا ٱلۡعَذَابَ أَن تَشۡهَدَ أَرۡبَعَ شَهَٰدَٰتِۭ بِٱللَّهِ إِنَّهُۥ لَمِنَ ٱلۡكَٰذِبِينَ ٨ وَٱلۡخَٰمِسَةَ أَنَّ غَضَبَ ٱللَّهِ عَلَيۡهَآ إِن كَانَ مِنَ ٱلصَّٰدِقِينَ ٩

> And for those who accuse their wives, but have no witnesses except themselves, let the testimony of one of them be four testimonies (i.e. testifies four times) by Allah that he is one of those who speak the truth. And the fifth (testimony) (should be) the invoking of the Curse of Allah on him if he be of those who tell a lie (against her). But it shall avert the punishment (of stoning to death) from her, if she bears witness four times by Allah, that he (her husband) is telling a lie. And the fifth (testimony) should be that the Wrath of Allah be upon her if he (her husband) speaks the truth. (Q24: 6 – 9)

In event of the death of either of them afterwards, it is prohibited to inherit each other but the child who happens to be the product of the controversial pregnancy that led to the *liʿān* inherits from his mother only. A *hadīth* of the Prophet (S.A.W) reported by Yahya from Malik which he heard from Urwa ibn Zubayr has itthat a child of *liʿān* and a child of fornication cannot inherit their imputed father nor can he inherit them if they die, but the mother can inherit them. [105]

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3.6.4 Illegitimate Child (ولد الزّنا)

Product of illegal intercourse between man and woman who are not legally married under Islamic law is regarded as illegitimate child and that there is no legal blood relationship (*Nasab*) between him and his adulterous father, which would give him the right of inheritance. Since there is no such a legal ground, the cause of inheritance does not exist. The Prophet (S.A.W) said regarding illegitimate child:

الولد للفراش والعاهرالحجر

> The child belongs to one on whose lawful bed it is born, while punishment of stoning is for the adulterer."[106]

Therefore, under the Islamic law, an illegitimate child cannot inherit his/her adulterous father in any way; he may only inherit from his mother, from her children, i.e. uterine brothers and from her other relations as a member of the outer family.

Thus, an illegitimate child who is not survived by his own son or son's son will have no agnatic residuary heirs. The Hanbali School, however, holds that the male agnate relations of the mother are to be considered for the purpose of inheritance,[107] as the male agnate relatives (those who take the remainder of the estate) of her illegitimate child. The same principle is applicable to a child of a woman who is separate from her husband through *li^{c}ān*. The child stands as an illegitimate child and his right of inheritance exists only through his mother but not through the imprecator because their relationship has been cut off by the act of *li^{c}ān.*[108]

The cases of *li^{c}ān* and illegitimate child are the same in Islamic law, where both of them inherit their mother only. The wisdom behind this, in our own view, is that Islam does not punish the child because he is innocent but Islam protects the family from mix up that

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may arise as a result of *li^c^ān,* fornication and adultery as well as awarding the right of inheritance to a wrong person.

3.6.5 Slavery (الرّق)

Riqq (Slavery) literally means weakness or helplessness in Arabic term. But under the Islamic law, *Raqīq*(slave) is a person who is directly under the control of another. This makes him to be legally incapacitated, for lack of free-will to act as he wishes. A slave and everything he owns belongs to his master. As far as he remains a slave, he will not inherit from his relations and they will not inherit from him. The logic is that if he inherits, whatever he gets belongs to his master and if his relations are to inherit from him, they will actually be inheriting part of the master's estate.[109]

Therefore, slavery as a bar to inheritance refers to where a person is completely under the control of another (his master) and he is regarded and being treated as a personal property of his master. It is also the unanimous opinion of Muslim jurists that a slave cannot inherit because a slave is regarded as the property of his master. Consequently, whatever he owns or acquires belong to his master. This rule was based on the provision of the Q.16.75:

وَضَرَبَ ٱللَّهُ مَثَلًا رَّجُلَيْنِ أَحَدُهُمَآ أَبْكَمُ لَا يَقْدِرُ عَلَىٰ شَىْءٍ

> Allah set forth this parable of two men. On the one hand, there is a helpless slave who is controlled, who lacks free-will of anything.…"(QQ16:76)

It should be noted that for the purpose of inheritance, the Muslim jurists have classified slavery into complete and partial slavery.

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a. Complete slavery is where the slave is not wholly or partially freed. This slave himself is a property of his master and can therefore neither inherit nor be inherited by others. The Prophet (S.A.W) said, "A slave will not own even if he owns".[110]

b. Partial slavery, which is classified into three:

   i. *Mukātab* is a slave who has contracted with his master to pay something agreed upon to buy himself free, and has made a part payment thereof. Here also, he cannot inherit anybody because of the saying of the Prophet (S.A.W) that "The *Mukātab* is a slave as long as a single *dirham* remains unpaid by him".[111]

   ii. *Mudabbar* is a slave who the master declares to be free after his death.

   iii. *Umm-Waladah* is a slave-girl who bears the master's child. In Islamic Law, she is to be freed after the death of her master.

These categories are all partial slaves, who during the period of waiting to regain their freedom cannot inherit anybody but they can inherit after the death of their masters. In the above mentioned circumstances, Muslim jurists are unanimous that a slave, whether complete or partial, shall not inherit nor will he be inherited when waiting to regain his freedom.[112]

3.6.6 Emergency Marriage or Marriage by a Dying Person

This refers to a marriage that took place when either the bride or groom is in a state of serious ill- health with a 50:50 percentage of survival and death or the percentage of

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death is higher than survival. It is viewed as reducing a quantum of share, which the already married wife or wives would have taken in the event of the death of the husband. Therefore, by this, the healthy partner will not inherit from the sick one if he/she dies as a result of that illness. Conversely, the sick partner will not inherit from the healthy one supposing the latter incidentally dies before the former. However, if the sick partner fully recovers, then either of them dies, this rule will not be applied then.[113]

3.6.7 Simultaneous Death

When two or more people who are rightful heirs of one another like father and son, husband and wife, etc died at the same time maybe by motor accident or under a collapsed building or in similar circumstance, and it is uncertain who died first; they will not inherit from each other. Nevertheless, if it is clear that the husband died before the wife, she will be listed among the surviving heirs of the husband and given her share of his estate. Thereafter, her own inheritors will inherit her estate plus her share of the husband's estate.[114]

3.7 Determination of the Beneficiaries and their Portions

Islamic Inheritance Law has comprehensively determined what the beneficiaries are entitled to receive of the inheritance. This is clearly spelt out in the Qur'ān and *Sunnah*. But before discussing the allotted portions, it is pertinent to know who the beneficiaries are. Beneficiaries are grouped into three categories namely:`*ashābu'l-furūd*, ᶜ*Aṣabah*and *dhawu 'l-'arhām*. [115]

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3.7.1 `*Ashābu ’l-furūd* Beneficiaries

’Ashābu ’l-furūd beneficiaries are those who have designated portions or shares in the distribution of inheritance according to the Qur`ān, the *Sunnah* and the consensus of jurists. *’Ashābu ’l-furūd* consists of 12 people namely: husband, wife, mother, father, grandfather (father’s father), grandmother (mother’s mother and father’s mother), daughters, daughter to a son (grand-daughter), female sibling of the same parents, female sibling of the same father, female sibling of the same mother and male sibling of the same mother. *’Ashābu ’l-furūd*group is the most important group of the beneficiaries and comes first in the distribution and receiving of inheritance compared to the *ᶜAṣabah*and *Dhawu’l-`Arḥām*beneficiaries. *’Ashābu ’l-furūd* beneficiaries will receive either one of the following shares or *fard*: 1/2, 1/4, 1/8, 1/6, 1/3, 2/3 or 1/3 balance.[116]

The *’Ashābu ’l-furūd* beneficiaries are divided into three classes, as follows:[117]

i. The main beneficiaries: these comprise husband, wife, mother, father and daughter. They are absolutely not dropped from receiving the inheritance.

ii. Replacement beneficiaries, which comprises grandfather, grandmother and daughter of a son. These beneficiaries will replace the main beneficiaries in receiving the inheritance such as the grandfather replacing the father; the grandmother replacing the mother and a daughter to a son replacing the daughter.

iii. Alongside beneficiaries comprise a female sibling from the same parents, a female sibling of the same father and male and female siblings of the same mother.

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i. **Husband (H)**

The husband has two shares; he gets 1/2 if his wife (the deceased) does not have any child (male or female) or grandchildren, or 1/4 if the deceased has a child (male or female) or grandchildren.

ii. **Wife (W)**

The wife also has two shares; she gets 1/4 if the deceased (the husband) does not have any child (male or female) or grandchildren, or 1/8 if the deceased has a child (male or female) or grandchildren.

iii. **Father (F)**

He gets 1/6 if the deceased has a son, or a son from a son, or 1/6 and ᶜ*Aṣabah*if the deceased has only a daughter or daughters, or inherits asᶜ*Aṣabah*if the deceased does not have any child (male or female), daughter to a son or younger.

iv. **Mother (M)**

She also has two shares; she gets 1/6 if the deceased has a son, or a daughter to a son, or has a few siblings (male or female); or 1/3 of the total inheritance value if the deceased has no such beneficiaries as mentioned above.

v. **Grandfather (GF)**

'The position of a grandfather is similar to the father, he will get 1/6,1/6 and ᶜ*Aṣabah*if the deceased has a daughter or daughters, or inherits as ᶜ*Aṣabah*if the deceased does not have any child (male or female), daughter to a son. But the grandfather will not inherit anything as long as there is a father because the father excludes a grandfather.

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vi. Grandmother (GM)

A grandmother will not receive any portion of the inheritance as long as there is the mother. The grandmother only receives 1/6 be it one person or more.

vii. Daughter (D)

Daughter has three shares; she receives 1/2 if there is only one daughter, 2/3 if there are two or more daughters or inherits as *ᶜAṣabah h bi ’l-ghayr* while being together with the son. A son gets two parts of a daughter’s portion.

viii. Daughter to a son

She has four shares; she inherits 1/2 if one, she gets 2/3 if there are two or more, 1/6 if the daughter is with a female child and she inherit as *ᶜAṣabah bi ’l-ghayr* when being with a son or more.

ix. Female sibling of the same parents

She has five shares; she receives 1/2 if there is only one, 2/3 if there are two or more. She inherits as*ᶜAṣabah bi ’l-ghayr* while being with a male sibling of the same parents; *ᶜAṣabah maᶜa ’l-ghayr* while being with a daughter or a daughter to a son or with both; or is shielded by the son or a male grandson or younger.

x. Female sibling of the same father

She gets 1/2 if one; 2/3 if two or more; 1/6 if with a female sibling from the same parents. She inherits as *ᶜAṣabah bi ’l-ghayr* if with a male sibling of the same father; *ᶜAṣabah maᶜa ’l-ghayr*while with a daughter or a daughter to a son, or with both, or shielded by a son, a grandson, a father, a male sibling of the same parents, two female siblings of the same parents (except when there is a male sibling of the

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same father) and by a female sibling of the same parents when she is receiving *ᶜAṣabah maᶜa 'l-ghayr.*[118]

xi. Female sibling of the same mother

She gets 1/6 if alone or 1/3 if two or more; or excluded by male or female descendants, father or grandfather.

xii. Male sibling of the same mother

He will receive 1/6 if alone or 1/3 if two or more; or shielded by either male or female descendants, father or grandfather.[119]

3.7.2ᶜ*Aṣabah*Beneficiaries (RESIDUARIES)(العصبة)

According to the *farāid* term, ᶜ*Aṣabah*beneficiary is a beneficiary whose portion of the inheritance is not clearly defined by either the Qur'ān or the *Sunnah*. Sometimes they receive all of the inheritance; sometimes just the balance and sometimes they do not receive any inheritance at all because the `*ashābu 'l-furūd* beneficiaries have taken all the inheritance.[120]

Types of ᶜ*Aṣabah*

ᶜ*Aṣabah*is divided into two types namely ᶜ*Aṣabah sababiyyah* (*qarabah hukmiyyah*) which refers to the beneficiaries who are free slaves and ᶜ*Aṣabah nasabiyyah* which refers to the beneficiaries who have blood relationships (relatives) with the deceased. This group may consist of men without any woman in between such as son, son to a son, father, and grandfather, male sibling of the same parents, the same father, and uncle of the same parents, the same father and their son. Similarly, the female `*ashābu 'l-furūd* beneficiaries when inheriting with their male siblings such as daughter when inheriting with a son, female sibling of the same parents when inheriting with a male sibling of the same parents

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and female sibling of the same father when with a male sibling of the same father. They are the ^c^*Aṣabah nasabiyyah* beneficiaries. [121]

^c^*Aṣabah nasabiyyah* is divided into three types namely: ^c^*Aṣabah bi 'n-nafs*, ^c^*Aṣabah bi 'l-ghayr* and ^c^*Aṣabah ma^c^a 'l-ghayr*.[122]

i. ***^c^Aṣabah bi 'n-Nafs*** **(**Residuary by himself) - This is ^c^*Aṣabah* with himself. The beneficiaries in this category include all male beneficiaries of the deceased without any woman in between. They consist of 12 people.[123] These are:

   a) Son
   b) Grandson or his descendant
   c) Father
   d) Grandfather or his ascendant
   e) Full brother(FB)
   f) Consanguine brother (CB)
   g) Full brother's son or his descendant
   h) Consanguine brother's son or his descendant
   i) Full paternal uncle (FPU)
   j) Half paternal uncle (HPU)
   k) Full paternal uncle's son or his descendant
   l) Half paternal uncle's son or his descendant

ii. ***^c^Aṣabah bi 'l-ghayr*** **Beneficiaries(Residuary by another)-**The ^c^*Aṣabah bi 'l-ghayr* beneficiaries comprise four female beneficiaries from the `*ashābu 'l-furūd* beneficiaries namely:[124]

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a) Daughter (D)
b) Granddaughter through son
c) Full sister (FS)
d) Consanguine sister (CS)

iii. They will receive the balance (ᶜ*Aṣabah*) while being with their male siblings of their equivalent, such as a daughter while being with a son, a daughter to a son while being with a son of a son, the female sibling of the same parents while being with a male sibling of the same parents and a female sibling of the same father while being with a male sibling of the same father.[141] The distribution rate in the *bi 'l-ghayr* balance (ᶜ*Aṣabah*) is that the male beneficiary`s portion is equivalent to 2 parts to the female beneficiary's portion or following a ratio rate of 2:1.[125]

iv. ***ᶜAṣabah maᶜa 'l-ghayr*** **Beneficiaries(Residuary with another)-** ᶜ*Aṣabah maᶜa 'l-ghayr* beneficiaries consist of only two types of people namely female siblings from the same parents and female siblings of the same father when receiving the inheritance together with a daughter or a daughter to a son or with both. Female siblings of the same parents or female siblings of the same father will receive the remainder (ᶜ*Aṣabah*) of the inheritance, if there is any, after it has been given to the `*ashābu 'l-furūd* beneficiaries namely the daughter or the daughter to a son. For example, a person dies and leaves behind a wife, a mother, a daughter, a daughter to a son and a female sibling of the same parents, thus the wife gets 1/8, the mother gets 1/6, the daughter gets 1/2, the daughter of a son gets 1/6 and the female sibling of the same parents receives the balance (ᶜ*Aṣabah*).[126]

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3.7.3 *Dhawu 'l-`Arhām* Beneficiaries (ذووالأرحام)

*Dhawu'l-`Arḥām*is a beneficiary who has family kinship or blood relationship with the deceased other than the `Aṣhābu'l-furūḍbeneficiaries and *Aṣabah,* whether male or female. In other words *Dhawul-`Arham* means those who are neither Quranic nor residuary heirs. Heirs in this category are called *Dhawul-`Arham* because they are either females or linked to the praepositus through females who are associated with wombs, such as a son and a daughter to a daughter, a son and a daughter to a female sibling, an uncle from the mother`s side, an aunt from father`s and mother`s sides, father of mother and so on.[127]

The rights and shares of*Dhawu'l-`Arḥām* in the estate are based on the rights and position of the persons through whom they are related to deceased. For example, the maternal grand father will take the position and right of her daughter who is the mother of the deceased while the son of the sister will take the position and right of his mother as the sister of the deceased.[128]

3.8. Exclusion (الحجب)

Exclusion means preventing a rightful beneficiary from having any share from the deceased's estate or reducing his share due to the presence of another beneficiary. The principle behind who excludes who is the degree of closeness to the deceased. The closer relations will exclude those who are not close.[129]It should be noted that there is a difference between exclusion and impediments to inheritance. In exclusion, a "stronger" heir eliminates a "weaker" one while impediment has to do with preventing an heir from inheriting due to circumstances like murder, difference of religion, slavery, etc.[130]

There are two types of exclusion namely: total and partial.

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Total exclusion:it means preventing a rightful beneficiary from getting any share from the deceased's estate.[131]For example, a son will exclude grandson. A grandson can only inherit in the absence of a son since the latter is closer to the deceased than the former.

Partial exclusion: it means reducing the share of the estate an heir should have collected due to the existence of another heir.[132] For instance, a husband inherits half (½) of his wife's estate if she has no child, but where she has a child even if from a previous husband, he gets one quarter(¼) of her estate. This reduction from ½ to ¼ is called partial exclusion. [133]

3.9. Inheritance Rights for the Fetus, *Khunthā, Mafqūd* and *Al-Khāmisah*

Islamic Inheritance Law determines the rights to inherit to a few specific groups among which include the foetus in the womb of its mother, *khunthā,mafqūd* and *khāmisah*. The Islamic Inheritance Law, as a comprehensive system, protects the rights of these four groups and ensures justice to them.

3.9.1 Inheritance Right of the Fetus (ميراث الحمل)

With regards to the inheritance rights for a fetus, Muslim jurists agree that a fetus is entitled to the inheritance of a deceased benefactor together with the other beneficiaries. However, the inheritance rights for the fetus are subject to the following two conditions:

a. The fetus is already present in its mother`s womb at the time of death of the benefactor.
b. The fetus is born alive even for a few seconds. [134]

The Islamic Law of Inheritance has identified several signs that indicate that the fetus is born alive such as crying, feeding, breathing, moving its limbs etc. According to

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the majority of jurists, the inheritance can be distributed before the birth of the fetus, and kept for it until its birth alive.[135] The share that is kept should be a share of a male and if it happens that it is a female, the remaining would be shared among all beneficiaries. Another opinion comes from Maliki School of law that the inheritance should not be distributed until the baby is born.[136]However the last opinion is more preferable in order to avoid any confusion that may arise as a result of the first opinion.

3.9.2 Inheritance Right of the Hermaphrodite (ميراث الخنثى)

In Islamic law, a *khunthā* (HM) is a person who has both male and female genitals, or has no sign of being either a male or a female but has a point for urination.[137]Inheritance for the *khunthā*has been discussed in the Islamic Law of Inheritance in detail to ensure their status and position in receiving the inheritance either as a male or female beneficiary.

In determining the sex of a *khunthā*, jurists have identified a few signs one of which is by observing the point where the *khunthā,* while still a child, urinates through. If it urinates through the penis, it is treated as a male and inherits as a male beneficiary. If it urinates through the female genital, it is treated as a female and inherits as a female beneficiary. If it urinates from both sexual organs, then it should be observed from which genital the urine is produced more. If the urine comes out more from the penis, then the *khunthā* is regarded as a male and vice-versa.[138]

However, the majority of *fuqāha' (*jurists)are of the opinion that the determination of sex should be made by observing which of the genitals that produce urine first. If the urine comes out from the penis first, then the *khunthā*is regarded as a male and vice-versa. If the *khunthā*is an adult, then the indicators that prove him a man are such signs as having moustache, beard and the like. Then, it is regarded as a man and inherits as a male

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beneficiary. If there are signs that the *khunthā*is a woman such as having menstruation, growing breasts, pregnancy and the like, the *khunthā*is regarded as a woman and inherits as a female beneficiary.[139]

Another opinion says that if the gender of a *khunthā* cannot be determined, then the gender will be determined by counting the number of rib bones at the bottom left side of the body. If it is obvious that the number of rib bones on the left is less than the right, it is regarded as a male beneficiary. There are other views, which say that, the gender determination of a *khunthā*is by its instinct and desire either towards a female or towards a male. If *khunthā*`s interest inclines towards a woman, the *khunthā* is regarded as a man and vice-versa.[140]

3.9.3. Inheritance Right of the Missing Person(ميراث المفقود)

Mafqūd means a person who is missing without knowing whether the person is still alive or has passed away.[141] In the *mafqūd* case, the Islamic Inheritance Law pays special attention to the distribution of inheritance to them. His property may not be inherited and the rights of the missing person must be maintained until there is clear evidence whether he is alive or dead.

According to Muslim jurists, the power to determine and decide whether a *mafqūd* is alive or dead lies on the court based on evidence, investigation or the expiry of waiting period. When the court decides that the *mafqūd* has died, then his time of death is counted as the same time the ruling is issued. The beneficiaries who are present at the time of the court ruling are entitled to inherit the property of the *mafqūd*. Similarly, a *mafqūd* may inherit a benefactor`s property before a court ruling is made against him/her. If the ruling

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of a *mafqūd*`s death has been made by the court, but it turns out later that the supposed *mafqūd* is still alive, then he/she would not be able to re-claim the property that has been spent by the beneficiaries, except only to take any leftover property.[142]

3.9.4. The Inheritance Right of Fifth Wife(ميراث الزوجة الخامسة وأبنائها)

A situation where a man marries a fifth wife or more is referred to as *khāmisah* in Arabic. This sometimes occurs in some cases of inheritance. Muslim scholars are unanimously agreed that it is not permissible for a man to have more than four wives at a time. This is because of the *hadīth* narrated by Ibn 'Umar (may Allah be pleased with him) that:"Ghaylān ibn Salamah al-Thaqafī became Muslim and he had ten wives during the *Jāhiliyyah*; they became Muslims along with him, and the Prophet (S.A.W) commanded him to choose four out of them."[143]

It is clear from the above that it is not permissible for a Muslim man to marry a fifth wife. The *Sahābah*, the four Imams and all `*Ahlu 's-Sunnah wa 'l-Jamāᶜah* agreed, in word and deed, that it is not permissible for a man to have more than four wives at a time, except the Prophet (S.A.W). [144] Ibn Taymiyah quoted ᶜUbaydah al-Salmānī as saying:

> The companions of Muhammad (peace and blessings of Allah be upon him) did not agree on anything as much as they agreed that a fifth wife cannot be married. Whoever wants to have more than four wives is going against the Book of Allah and the *Sunnah* of His Messenger Muhammad (S.A.W). [145]

If this has taken place, then the marriage contract is invalid, and the followings are the 'position of the wife and the child according to the jurist:

There is unanimous agreement among Muslim scholars that if the person who marries the fifth wife is aware of the Islamic legislation behind his action but he

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intentionally does it, the action is considered as adultery. In that case, both the wife and the child will not inherit him. However, if the man is totally ignorant of the Islamic legislation behind it and he does it unintentionally, the marriage is still invalid, butin this case, the child will inherit the father but the wife has no right to inherit [146]

3.10. Inheritance Arithmetic

It is important to mention here the role of Islamic inheritance in the development of Islamic mathematics. The Islamic law of inheritance served as an impetus behind the development of algebra (derived from Arabic *al-jabr*) by Muhammad Ibn Musa al–Khwarizmi and other medieval Islamic mathematicians.[147] Al- Khwarizmi's *hisabu 'l-jabri 'l-Muqabalah* (the foundational text of algebra), devoted its third and longest chapter to solving problems relating to Islamic Law of inheritance using algebra. He formulated the rules of inheritance as *lineal* equation.[148] Al-Hassar, a Mathematician from *Maghrib* (North Africa) specializing on Islamic inheritance jurisprudence during the 12th century also developed the modern mathematical notation for fraction.[149]

It should be emphasized that inheritance calculations involve only addition, subtraction, multiplication and division, and not the whole of mathematics.[150] In any inheritance problem, the aim is to determine the minimum base number that will enable the distribution of the estate among the heirs such that each will get his/her portion, without a remainder or decimal.[151]

It is very important to have sound knowledge of Lowest Common Multiple (LCM) for a successful treatment of any case in Islamic law of inheritance. In order to understand this, the following terms must be defined:

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1. **Share:** This is the fraction of the estate that an heir is entitled to inherit such as 1/3, 1/6, 1/2 and so on. It should be noted that every 'fraction' has a (numerator) that is number on top of the slash and a (denominator) which is the number at the bottom of the slash. In the above fraction the numerators are 1, 1 and 1 while 3, 6 and 2 are the denominators.
2. **Base number ('*aslu 'l- mas`alah*):** It is a whole number that facilitates the distribution of the estate in accordance with the shares of all the heirs and generates the portion of each. This is the number that can divide the denominators without a remainder or decimal. In the above example, the denominators can be divided by 6 without any remainder or decimal.
3. **Portion:** This is the number of segments of an estate an heir will receive. This must necessarily be a whole number, not a fraction or number with decimal. Our base number in this problem is 6. This means that the estate should be divided into 6 'A' takes 2 (1/3 of 6), 'B' gets 1 (1/6 of 6) and 'C' receives 3 (1/2 of 6). Therefore, differentiating between Share and Portion, the shares of 'A', 'B' and 'C' are 1/3, 1/6 and 1/2 respectively; while their portions are 2, 1 and 3 respectively.[152]

3.11. Conclusion

In conclusion, it should be noted that inheritance as prescribed by the Islamic law comes into operation only when some grounds and conditions exist. These include the essentials that come by reason of three causes *Nasab* (relationship), *Nikāh* (Marriage) and *Wilā'*. There will never be a valid right of inheritance without a person being deceased and there must be properties left by the deceased person capable of being inherited and, of

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course, there must be *wārithūn* (Heirs) who inherits the property of the deceased. Nevertheless, a situation may arise where an otherwise potential heir may lose his right of inheritance either directly through his act or any other attribute like difference of religion or apostasy, or through the acts or omission of his parents through whom he may claim the right of inheritance i.e. by killing the deceased person. The majority of the Islamic jurists agree upon these impediments.

It also becomes evident from our discussion of the verses of the Glorious Qur'ān on inheritance that women in their capacities as wives and daughters who were denied inheritance during the pre- Islamic periodas Qur'anic or primary heirs have rights of inheritance. Wives and daughters of a deceased man in the context of Islamic law are among the proper relatives upon whom the estates of the deceased should first devolve by operation of law. In addition, specific shares of a deceased's estates are allotted to them in the Glorious Qur'ān.

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Notes and References on Chapter Three

1 As-Sābūnī, M. A., *Mawārīth fi 'sh- Sharīᶜa ti 'l-'Islāmiyyah calā daw'il-Kitāb was-Sunnah*. (Damshiq: Darul-Qalam. 2005), 2-4

2 *ibid*

3 Gurin, A. M. *An Introduction to Islamic Law Testate/Intestate* (Jodda Press Ltd 2007),40

4 *ibid*

5 *ibid*

6 Research Studies Centre *The bilingual Dictionary Arabic-English, English-Arabic-* (Lebanon: Dar al-Kutub al-Umiyyah. 2008), 743

7 *ibid*

8 As-Sābūnī, M. A., *Mawārīth fi 'sh- Sharīᶜati 'l-''Islāmiyyah* ..., 34

9 Mannan, M.A. *Islamic Economics Theory and Practise* (A comparative study) (Lahore, Pakistan: Muhammad Ashraf, Kashmiri Bazar, 1980) 167,

10 *ibid*

11 *ibid*

12 Hussaini, A.*The Islamic Law of Succession*, (Riyad: Darussalam 2005), 31

13 Idris, S. "An Appraisal of Women's Right of Inheritance under Islamic Law" in A. B. U. J. I. L., vol. iv-v,(Kongo, Zaria, Faith Printers International, 2007); 8.

14 *Jāhiliyyah* means 'the state of ignorance' or 'Days of ignorance' referring to the condition in which Arabs found themselves in pre-Islamic Arabia, i.e. prior to the revelation of the Qur'ān to Prophet Muhammad (S.A.W).

15 Idris, S. "An Appraisal of Women's Right of Inheritance under Islamic Law", 13-14

16 *ibid*

17 As-Sābūnī, M. A., *Mawārīth fi 'sh- Sharīᶜati 'l-'Islāmiyyah* ..., 33

18 Rahim, A. *Islamic History*, I.P.B (Lagos Nigeria, 1987),7

19 Gudub, M. *Fizilalil Qur'an*, Dauru Shurug, Vol. 1, (1971), 284

20 *ibid*

21 As-Sābūnī, M. A., *Mawārīth fi 'sh- Sharīᶜati 'l-'Islāmiyyah* ..., 33

22 *ibid*

23 *ibid*

24 *ibid*

25 As-Sābūnī, M. A., *Mawārīth fi 'sh- Sharīᶜati 'l-'Islāmiyyah* ..., 20

26 *ibid*

27 *ibid*

28 Coulson, N. J; *Succession in the Muslim Family*,(Cambridge University Press, Great Britain, 2002), 31-32

29 *ibid*

30 *ibid*

31 Qadri, A. A. *Islamic Jurisprudence in the Modern World* (Delhi, Taj Company, 1982), 40

32 Al- Bukhārī, M. A.A.*Sahīhu 'l-Bukhārī, (Vol 12).* Beirut: Dārul-Fiqr, 1430 AH.Hadith 2885, p. 275.

المنارة للاستشارات
www.manaraa.com

33 *ibid*
34 As-Sābūnī, M. A., *Mawārīth fi 'sh-Sharīcati 'l-'Islāmiyyah…*, 74
35 Abu-Dawud, *Sunanu Abi-Dawud ,* Hadith 2885, (NP) ND.), P275
36 Abu-Al-Hamid, M. M. '*Ahkāmu 'l-Mawārīth fi 'sh- Sharīcati 'l-'Islāmiyyah 'ala 'l-madhāhibi 'l- 'a'immati 'l-'arbacah*. (Beirut: al- Maktabah al-Asriyyah. 2004), 59
37 https://en.wikipedia.org/wiki/Criticism_of_Islam. assessed on 20/10/2017.
38 Khan, M. M.A., *"*A case for Teaching *Mīrath* as an independent course" *Islamic law in Nigeria Application and teaching* Edited by Khalid Rashid Jan.(Lagos, Kaduna, Ilorin Bauch Islamic publications Bureau,1988), 182.
39 *ibid*
40 Muhammad, S, O, *Inheritance as it Affects You* (Ilorin: Olalomi Printers 2005), 10-11
41 The Revival, "Under Islamic law, why is a woman`s share of the inherited wealth only half that of a man" www.therevival.co.uk, published on 27 january, 2014. Assessed on 16/2/2018.
42 *ibid*
43 Zughool, I.A.S. *A Comprehensible Manual on the Islamic Law of Estate Distribution.* (Ilorin: Kewudamilola Printing Press and Computer Centre, 2005)10-11
44 *ibid*
45 Coulson, N. J; *Succession in the Muslim Family*, 10
46 Lakhvi, S.B. *Al-mīrath: Justice of Islam in the Rules of Inheritance*, 11
47 Orire, A. K. *Sharicah*: *A Misunderstood Legal System*, (Zaria: Sankore Educational Publishers Ltd.), 1-3
48 Lakhvi, S.B. *Al-mīrath: Justice of Islam in ohe Rules of Inheritance*, 21
49 Abdullah, Y A, *The Glorious Qur'an Translation and Commentary*, (Bierut, Lebanon: Dar-el Fikr, 2005), 177.
50 *ibid*
51 Ambali, M.A, ' *The Practise of Muslim Family Law in Nigeria,* (Zaria: Tamaza Publishing Company Ltd, 2003), 175
52 Coulson, N. J, *Succession in the Muslim Family*, 10
53 *ibid*
54 Ambali, M.A, ' *The Practise of Muslim Family Law in Nigeria,* (Zaria: Tamaza Publishing Company Ltd, 2003), 175
55 *ibid*
56 Al- Bukhārī, M. A. *Sahīhu 'l-Bukhārī, (Vol 12)*, p. 350
57 Coulson, N. J, *Succession in the Muslim Family*, 10
58 Pindiga, U.A., *Practise Guide to the Law of Succession (Mīrath) in the Sharīcah* (Kongo-Zaria: Tamaza Publishing Company Limited, 2006). 27.
59 Naseef, O.A. *Encyclopedia for Seerah,* vol. II, (London, Dares Salam, 2002), 456
60 *ibid*
61 Ambali, M.A, ' *The Practise of Muslim Family Law in Nigeria*; 285
62 *ibid*
63 Salah-uddin, B. H. *Justice of Islamic Rules of Inheritance*.(Pakistan Gulla Mahdi, Remala Khurd-Okora, 2003), 64. See also Keffi, S. U. D. *Some Aspect of Islamic Law of Succession,* 10

المنارة للاستشارات
www.manaraa.com

64 Doi, I. A, *Sharīach: The Islamic Law,* (United Kingdom: Ta-ha Publishers, 2005) See also Zughlool I.A.S. *A Comprehensible Manual on the Islamic Law of Estate Distribution.* 10-12
65 Pindiga, U.A., *Practise Guide to the Law of Succession (Mīrath) in the Sharīcah,* 15
66 *ibid*
67 *ibid*
68 *ibid*
69 Sabiq, A. *Fiqhu 's-Sunnah,* (Vol. 3), (Beirut Lebanon: Darul Fikr, 2002).425-426
70 Al-Bukhārī, M. B.I. *Sahīhu 'l-Bukhārī, Arabic-English*, (Ankara-Turkey: Hilal Yymlari,), 1076
71 *ibid.*
72 *ibid*, 2133
73 An-Nasā'ī, *Sunanu 'n-Nasā'ī 'l-Kubrā*, (Vol. 4), (Beirut Lebanon: Darul Fikr, (N.D), 57 and Al-'Imāmu 'l-Bayhaqī, *Sunanu 'l-Bayhaqi 'l-Kubrā* (Vol. 8), (Beirut Lebanon: Darul Fikr, (N.D). 287
74 Sābiq, A.*Fiqhu 's-Sunnah,* vol. 2, 427.
75 Khalid, S.H.& Najah, A. *Al-Mawārith*, 2nd edition, (Beirut: Dar. Cebaiou, (ND), 31
76 Lakhvi, S.B. *Al-mīrath: Justice of Islam in the Rules of Inheritance*, 18
77 David, P. and Werner M. *Muslim Family Law,* (London: Sweet & Maxwell 2002), 440.
78 Hajjaj, B. M. *al- Jāmic's- Sahīh*, (Cairo, 1349 A.H.) .415
79 Muhammad, I. B.*Al-Fiqhu 'l-wādihmina 'l-kitābwa 's-sunnah*(vol. 3) (Cairo Darul-manar 2007), .321
80 Alqadi, H.A.B. *Subulu 's-Salām Sharhu Bulūghu 'l- Marām min Jāmic`I- 'Adillati 'l-'Ahkām. (*Beirut Labuan Darul Fikr 2000),vol 3: 929
81 Sābiq, A. *Fiqhu 's-Sunnah,* (Vol. 3), 425-426
82 *ibid*
83 Keffi, S. U. D. *Some Aspect of Islamic Law of Succession.*10
84 Khalid, S.H.& Najah, A. *Al-Mawārith*, 2nd edition, (Beirut, Dar. Cebaiou, 28
85 *ibid*
86 Pindiga, U.A., *Practise Guide to the Law of Succession (Mīrath) in the Sharīcah*, 11
87 Doi, I.A, *Sharīcah: The Islamic Law,* (United Kingdom: Ta-ha Publishers, 436
88 Lakhvi, S.B.*Al-mīrath: Justice of Islam in the Rules of Inheritance*, 17
89 Pindiga, U.A., *Practise Guide to the Law of Succession (Mīrath) in the Sharīcah* 26
90 *ibid*
91 Abu Zahrah, M. *al- Mīrath cinda 'l- Jacfari 'l- Jamhuriyyati 'l Islāmiyyah*,(Iran1404) 84-86
92 Coulson, N. J; Succession in the Muslim Family, 176
93 *ibid.*
94 Tirmidhī & Ibn Majjah in Asqalani, I. H*Bulūghu 'l- Marām min Jāmic`I-'Adillati 'l-'Ahkām*,(Beirut Lebanon. N.D). 197,
95 Pindiga, U.A., *Practise Guide to the Law of Succession (Mīrath) in the Sharīcah,* 20
96 Coulson, N. J, *Succession in the Muslim Family*,182
97 Khalīl, S. *Jawāhiru 'l- 'Iklīl*, (Arabic Text) vol. 2, p. 256
98 Abu Zahrah, M. *al- Mīrath cinda 'l- Jacfari 'l- Jamhuriyyati 'l Islāmiyyah*, 90
99 Al-Bukhārī, A.A.I. *Sahīhu 'l-Bukhārī,* 807

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100 Khalīl, S. *Jawāhiru ’l-’Iklīl*, (Arabic Text) vol. 2, 256
101 Abu Zahrah, M. *al- Mīrath cinda ’l- Jacfari ’l- Jamhuriyyati ’l Islāmiyyah*, 90
102 *ibid.*
103 *ibid.*
104 Imām Mālik, *al- Muwatta’,* (London: Diwan Press, 1979), 336
105 *ibid.*
106 Abu Zahrah, M. *al- Mīrath cinda ’l- Jacfari ’l- Jamhuriyyati ’l Islāmiyyah*, 90-95
107 Coulson, N. J, *Succession in the Muslim Family*, 173
108 *ibid.*
109 *ibid.*
110 *ibid.*
111 Sufi, A.A (n.d.) *Nizāmu ’l- Mawārith fi ’sh-Sharīcati ’l-’Islāmiyyah cala ’l-Madhāhibi ’l- ’Arbacah,*(Egypt:Darul Kuttabil Arabi,), 24. See also Gurin M. A. *An Introduction to Islamic Law of Succession. (*Zaria: A. B. U. Press Limited, (ND), 21.
112 Pindiga, U.A*., Practise Guide to the Law of Succession (Mīrath) in the Sharīcah*, 19
113 Khalid, S.H.& Najah, A. *Al-Mawarīth*, 2nd edition, (Beirut, Dar. Cebaiou), 50
114 Qadri, A. A. *Islamic Jurisprudence in the Modern World,* 426
115 Oniyem M.A*The Distribution of Estate in Islam* 26
116 Coulson, N. J, *Succession in the Muslim Family*, 35
117 *ibid.*
118 *ibid.*
119 Hussain, A.*The Islamic Law of Succession (*Riyadh, Darussalam, 2005), 176
120 Attasuliyu, A. *Al-bahjatu fi Sharhi-Tahfa*, Vol.2, (Darul Islami 2003), 395
121 Al-Qurtubī, M. *Bidāyatu ’l-Mujtahid wa nihayatu ’l-Muqtasid*, Vol.2,(Beirut Lebanon: Darul fikr 1975), 339
122 Sābiq, A. *Fiqhu ’s-Sunnah,* 618
123 Badran, B. *Al-Mawārith wa ’l-Wasiyyah wa ’l-Hibbah*, (Askandariyyah, Egypt, (N.D), 73
124 Dibawi, *Khulāsatu cIlmi ’l-Farā’id* (Cairo: Darussalam, 2004), 15
125 Badran, B. *Al-Mawārith wa ’l-Wasiyyah wa ’l-Hibbah*, 67
126 *ibid.*
127 Muhammad, A. *Fathu ’l-Bārī,*Vol.12, (1402 H), 8-9
128 Zahili, W. *Fiqhu ’l- ’Islām wa ’adillatuhu*, Vol. 8, (N.D), 283
129 Ambali, M.A. ' *The Practise of Muslim Family Law in Nigeria*; 286
130 Khalifa, M.T.A. *Al-’Ahkāmu ’l-Mawārith,* (Cairo: Darus-Salam, 2005), 377-378
131 Zuqlool.I.A.S.*A Comprehensible Manual on the Islamic Law of Estate Distribution.* 56-57
132 *ibid.*
133 *ibid.*
134 Khalifa, M.T.A. *Al-’Ahkāmu ’l-Mawārith,* (Cairo: Darus-Salam, 2005), 377-378
135 Sābiq, A. *Fiqhu ’s-Sunnah,* (Vol. 3), 449
136 Mobeen, C. “Towards a Codification of the Muslim Law of Inheritance (*Mīrath*)”. M.A. Dissertation, faculty of Law. Rand Afrikaans University, (1996), 43
137 Muhammad, B.I. *Al-fiqhu ’l-Wādih mina ’l-Kitāb wa ’s-Sunnah.*(vol.3), 169
138 Sābiq, A. *Fiqhu ’s-Sunnah,* (Vol. 3), 449
139 Khalifa, M.T.A. . *Al-’Ahkāmu ’l-Mawārith*, 378

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140 *ibid,* 510
141 Sābiq, A. *Fiqhu 's-Sunnah,* (Vol. 3), 454
142 Ibn Abidinm M. A. *Raddu 'l-Mukhtār,* (Vol.3) (Pakstan 1431 A.H) 358-360
143 Khalifa, M.T.A. *Al-'Ahkāmu 'l-Mawārith*,543
144 At-Tirmidhī, *Sunanu 't-Tirmidhī* (vol.1 hadīth 320). (Beirut: Daru Ihyait-Turathil-Arabi (N.D.), 48
145 Ibn Taymiyyah, A.A. *al-Fatāwā al-Kubrā* (vol. 4) (Cairo, Darul-Fajir Li-Turath 2009) 154.
146 htt/go.micosoft.com/wlink, assessed on 7/8/2017
147 *ibid*
148 Gandz, S.*The Algebra of Inheritance: A Rehabilitation of Al-Khuwarizmi* (2003)319–91.
149 *ibid*. See also: Livio, M.*The Golden Ratio*. (New York: Broadway, 2003), 96
150 Another specialist in Islamic inheritance jurisprudence is Abu Hassan Ibn cAli al-Qalasadi who also contributed to the development of mathematics around 15th century in no small measure.
151 Livio, M. *The Golden Ratio*. (New York: Broadway, 2003), 96
152 *ibid*.

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CHAPTER FOUR

REVIEW OF SELECTED INHERITANCECASES PRESIDED OVER BY THE KWARA STATE AREA COURTS

4.0 Introduction

In this chapter, selected cases decided in some Area Courts in Kwara State are reviewed. The review of the inheritance cases decided in the Area Courts is very important since the law of inheritance is perhaps the most complicated within the Islamic law, due to the complications involved in calculation and later division of the estate according to its rules. It will be established through this review the competence or otherwise of the judges and the correctness or otherwise of their decisions on the inheritance cases presided over by them.

4.1. Selected Inheritance Cases

All the sixteen local government Areas in Kwara State have Area Courts, because all the Alkalis and Emirs` courts, which were established before and during the colonial era, were all converted to Area Aourts. We however observe that the inheritance cases that go to lower courts are scanty because of the Estate Department established by the Kwara State *Sharīᶜah* Court of Appeal that caters for the estate distributions out of litigation. People prefer to go to where dispute is settled out of litigation. This Department plays significant roles as it is going to be discussed in the next chapter. Another reason for few number of inheritance cases that go to Area Courts is that people use the power vested in the Area Courts only to retrieve the entitlements of their deceased person from government and banks and later withdraw the case from the court for distribution outside the court.

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Another reason responsible for scantiness of inheritance cases in Area Courts is the appeal of some Area Court judges to litigants to settle the matter out of court by referring them to Estate Department of the *Shari*^{c}*ah* Court of Appeal or to other private bodies that deal with inheritance distributions.

The following table shows the number of the Local Government Areas,number of Area Courts in each Local Government Area as well as the number of cases revisited and reviewed in this research work.

S/NO	Local Government Area	Number of Area Courts	Number of inheritance Cases	Number of reviewed Cases
1	Asa	6	-	-
2	Baruten	4	2	1
3	Edu	3	1	-
4	Ekiti	1	-	-
5	Ifelodun	7	2	1
6	Ilorin East	4	2	-
7	Ilorin West	2	3	1
8	Ilorin South	4	2	-
9	Irepodun	6	-	-
10	Isin	4	-	-
11	Kaiama	2	-	-
12	Moro	6	-	-
13	Offa	4	2	1
14	Oke-Ero	1	-	-
15	Oyun	2	-	-
16	Pategi	3	1	-
	Total	**59**	**15**	**4**

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In the whole of the 59 Area Courts spread across all the sixteen Local Government Areas of Kwara State, only fifteen inheritance cases were handled by the Area Courts between 1994 and 2015. We decided to review only 4 out of the fifteen cases because they are the ones with issues. As for the remaining 11, the judges displayed competence and carried out the distribution with diligence.

The four cases that have issues are:

1. Afusat Ayanda Vs Olatunde Akanji
2. Alh. Muhammadu Mando Vs Alhaja Awawu Manujoro
3. Abibat Salami Vs Ramata Salami, Issa Salami, Sifawu Salami
4. Mrs. Monsurat Raheem Vs Mrs. Mero Raheem and Mr. Akeem Raheem

4.1.1. Afusat Ayanda Vs Olatunde Akanji

This case that has registration number UCAO/CVA/92 was decided on 8th July, 1994 by the Upper Area Court, Omu Aran in Irepodun Local Government Area of Kwara State. The background of the suit before the trial court was that the plaintiff, Afusatu Ayanda, sued that the estate of her late husband, Omomeji, Ayanda be distributed. The defendant was the brother of the plaintiff's husband.

The breakdown of the estate valued at ₦100, 000.00 by the trial court was itemized and prices fixed by the trial court as follows:

1. All the 20 bundles of roofing iron sheets and planks removed from the 10 rooms Bungalow are valued at Ten thousand naira. ₦ 10, 000
2. The 2,000 Blocks purchased out of the sale of some roofing sheet at Budo Ile are valued at Ten thousand naira ₦ 10,000.

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3. The 5 plots of land; one plot at Agbamu upon which the dismantled 10 rooms, bungalow was built, and a plot situated at Oyo Ile are all valued at Twenty five thousand naira. ₦25,000
4. The old grinding Engine at Oke Oyi valued at Thirty thousand naira ₦30,000
5. The Suzuki 100 model valued at ₦20, 000
6. The 5 small cows and one old pick up car all admitted sold ₦5, 000 (sic)

The trial court also distributed the estate as follows:

1. The Plaintiff – ₦5, 000.00 as wife to the deceased
2. The Plaintiff's (2) daughters – ₦ 20,000
3. The second wife of the deceased – ₦5, 000
4. The Second wife's daughter – ₦10, 000
5. The second wife's 3 sons – ₦60, 000[1]

Review of the Case

It was noticed that the trial court's record of proceedings did not show whether the learned trial judge obtained or worked on the opinion of a *Mukhbir* (an Expert)in civil construction, agriculture, motorcycle engineering or dealership in the items such as iron sheets, motorcycle, grinding engine or cows. Because it appears that the valuation of the items was done arbitrarily and the sharing of the estate did not follow the Qura'nic proportion. The decision therefore cannot stand the test of time and law.

It was found in the record of proceedings that the heirs are the plaintiff and another wife, three male children and three female children. Assuming that the total estate was

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valued ₦100, 000.00. Yet the distribution is not based on the law which is relevant to the parties.

In a case like this, the following steps should be followed:

(i) The experts or dealers in the items involved should be brought in for proper determination of their worth. This is in compliance with the class of evidence termed as *Khibrah*, **(**the evidence of the expert) in the glorious Qur'an:

فَسۡـَٔلُوٓاْ أَهۡلَ ٱلذِّكۡرِ إِن كُنتُمۡ لَا تَعۡلَمُونَ ﴿٤٣﴾

Ask those who know if you know not" (Q.16:43).

(ii) In the alternative, the disputing heirs should either agree on fixed price for the items, the court aggregate their prices to determine the price to adopt for a particular price. Also the items could be sold and the amount shared according to proportion of the estate due to the heirs.

(iii) The following ratio must be followed when the total value of the estate is found. The plaintiff who is the first wife and the second wife should be given 1/8 as decreed by Qur'an for cases like this thus:

فَإِن كَانَ لَكُمۡ وَلَدٞ فَلَهُنَّ ٱلثُّمُنُ مِمَّا تَرَكۡتُمۚ مِّنۢ بَعۡدِ وَصِيَّةٖ تُوصُونَ بِهَآ أَوۡ دَيۡنٖۗ

> If you have a child, then they (wives) shall have an eight of that which you leave after payment of legacies that you may have bequeathed or debt"Q.4:12.

The balance of the estate in this case goes to the other heirs who are 3 sons and 3 daughters as applied in the same chapter:

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يُوصِيكُمُ ٱللَّهُ فِىٓ أَوْلَٰدِكُمْ ۖ لِلذَّكَرِ مِثْلُ حَظِّ ٱلْأُنثَيَيْنِ ۚ

Allah commands you concerning your children a male shall have as much as the share of two females. (Q.4:1١).

Fractional share of the estate:

The whole estate based on this case which is ₦100,000 should be shared as follows among the heirs:

Both wives will receive 1/8 = ₦12.500

Each daughter will have half share of a male =₦ 9,722.22

Each son will have twice share of a female = ₦19444.44

The followings are shares of individual heir:

The first wife	₦6250
The second wife	₦6250
The first son	₦19444.44
The second son	₦19444.44
The third son	₦19444.44
The first daughter	₦9,722.22
The second daughter	₦9,722.22
The third daughter	₦9,722.22
Total	**₦100, 000.00**

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Real distribution of the Estate

Heir Entitlement Allotment

Wife 1 ₦6250 1 plot out of 5 plots cost ₦5, 000. 00

Credit balance ₦1, 250.00

Wife 2 ₦6250 1 plot out of 5 plots cost ₦5, 000. 00

Credit balance: ₦1, 250.00

Son 1 ₦19444.44 the old grinding Engine at Oke Oyi valued at thirty thousand naira ₦30, 000.

Debit balance ₦10,555.56

Son 2 ₦19444.44 Remaining 3 plots out of 5 plots cost ₦ 15,000.00

Credit balance: ₦4,444.44

Son 3 ₦19444.44 the Suzuki 100 model valued at ₦20, 000

Debit balance:₦555.56

Daughter 1 ₦9, 722.22 The 2,000 Blocks purchased out of the sale of some roofing sheet at Budo Ile are valued at Ten thousand naira ₦ 10,000.

Debit balance: ₦277.78

Daughter 2 ₦9, 722.22 All the 20 bundles of roofing iron sheets and planks 'removed from the 10 rooms Bungalow are valued at Ten thousand naira. ₦10, 000.

Debit balance: ₦277.78

Daughter 3 ₦9,722.22 The 5 small cows and one old pick up car all admitted sold ₦5,000.

Credit balance: ₦4, 722.22

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Table of the Balance Sheet

S/NO	GROUP	ENTITLEMENT	TOTAL RECEIVED	CREDIT BALANCE	DEBIT BALANCE
1	W 1	N6250	₦5, 000. 00	N1,250.00	
2	W 2	N6250	₦5, 000. 00	N1,250.00	
3	S 1	N19444.44	₦30, 000		₦10,555.56
4	S 2	N19444.44	₦15,000.00	₦4,444.44	
5	S 3	N19444.44	₦20, 000		₦ 555.54
6	D 1	N9,722.22	₦10, 000.		₦277.78
7	D 2	N9,722.22	₦10, 000.		₦277.78
	D 3	N9,722.22	₦5, 000	₦4,722.22	
	Total	N100,000.00	N100,000.00	₦11,666.66	₦11,666.66

Credit balance means the remaining amount to balance the beneficiary who has not gotten his/her entitlement completely and whatever remains for him/her to complete the entitlement is considered as credit balance. While debit balance indicates the over-payment received by the beneficiary and whatever is increased over his/her entitlement is considered as debit balance.

Furthermore, the debtor has two ways of settling the debit balance, first is to take it to the court and court will pay it to the receiver. The second is for the debtor to pay it directly to the receiver.

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4.1.2.Alh. Muhammadu Mando Vs Alh. Awawu (Manu) joro

This case was decided in the Area Court Kosubosu in Baruten Local Government of Kwara State on 9th January, 2004 between Awawu (Manu) Joro of Gaa Gure, who was the plaintiff and Alhaji Mohammadu Mando who was the defendant. The plaintiff prayed the trial court to compel the defendant herein, to surrender 33 cows left behind by her late husband, Baba Joro. Her statement of claim went thus: "I want the assistance of this court to assist me to compel the defendant to release the estate of my late husband (sic) Baba Jaro and to distribute same for his surviving children who are four in number and their names are: 1. Muhammad, 2 Aishatu 3 Awawu and 4. Ajia"[2].

Lawyer Sabi Muhammad,who represented the defendant prayed the trial court not to accede to the prayers of the plaintiff until the children are of age. His reasons include that the plaintiff has remarried. She married a religiously irresponsible man, whom he feared would mismanage the estate of the orphans and that he, as a senior brother to the deceased was well placed to superintend over the estate. Qur'an 2:220 was cited to support the case of defendant before the trial court. He called Salih of Yashikira and Aliyu Musa of Boriya as witnesses.

When parties closed their respective cases, the trial court made its findings in respect of the legitimate heirs at page 13 of its record of proceedings. Finally it gave the three daughter 13 (thirteen) cows and their brother was given 6 (six) cows. The plaintiff was given 4 (four) cows, while parents of the deceased were given ten cows altogether. It directed that the shares of the daughters of the deceased be handed over to the plaintiff with whom they live and that of their brother be in the care of the defendant in whose custody

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the orphan is. This is until he is of age and marries. The defendant was ordered to hand over the shares of the parents of the deceased as soon as they are back from their journey.[3]

Review of the Case

In a dispute of estate distribution of this nature, the trial court should:

i. Identify all the eligible heirs on the evidence before the court and documented by the court.

ii. Ascertain the estate based on the evidence placed before the court and well recorded.

iii. If the items of the estate can be counted, weighed or measured, then distribute it according to its weight/measure.

This follows an Islamic Law provision that says:

إن كان المال مما يعد أو يكال أو يوزن فاقسم عدده
على العدد الذي صحت منه الفريضة

> If the items of the estate are measureable or can be weighed, then distribute it in accordance with the Islamic Law of succession ordinances.[4]

إن كان المال مما يعد أو يكال أو يوزن فاقسم عدده على العدد الذي
صحت منه الفريضة وإن كان المال مما يعد أوكان عروضا أو عقارافيقوم
وتقسم قيمته

> If the estate is countable or it is an item that can be measured or weighed, then distribute it according to the ordinance of estate sharing in Islamic Law. But, if they are other assets or landed property, place value on them."[5]

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iv. In respect of items of estate, which can neither be measured nor weighed, resort should be made to their values in monetary terms.

This is in line with Islamic Law provision that says:

وقسم العقار وغيره بالقيمة لابالمساحة ولا بالعدد

> The sharing of landed items of an estate as well as other movable items shall be based on value rather than size or quantity".[6]

v. Although cows, for instance, are countable, courts should consider whether they are male or female, their age and size to determine their monetary values.

vi. Calculate the fractional shares of each eligible heir according to the ordinances of Islamic Law of succession.

vii. Relate (v) to the estate in question.

viii. Except the heirs reach a consensus on the other method, adopt Qur'an (balloting) to determine which heirs takes which item of the estate according to his or her entitlement.

All parties need to approve the value placed on the items. This is in line with the Islamic Law provision, which states thus:

والمراد بالقيمة ما يتراضيا عليه الورثة لا ما يساويه للعرض في السوق

> Valuation here stands for whatever value the heirs approve and not necessarily the market values of the items of the estate.[7]

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The allocation of the trial court as mentioned above goes like this:

Daughters	3	13 (thirteen) cows
Son	1	6 (six) cows
Wife	1	4 (four) cows
Father		5(five) cows
Mother		5(five) cows

It is very clear that this distribution lacks merit and justice. In determining the value, the court has to bring expert (*Mukhbir*) in the field as stipulated by the Islamic Law and the heirs have to approve whatever values placed on the items by the experts. Where the heirs give or propose varying prices, the court finds and works with the aggregate.

In a case where the deceased left behind Father, Mother, 1 wife, one son and three daughters, their shares are as follow:

Father = 1/6

Mother = 1/6

Wife 1= 1/8

Son 1 = gets double of what a daughter gets out of remainder

Daughters 3 = each daughter gets half of what a son gets out of remainder.

For example the total cows is 33 and if each cow was valued as ₦30, 000. ₦ 30,000 x33 =990,000

Father = 1/6 ₦ 990,000÷6=₦ 165,000

Mother = 1/6 ₦ 990, 000÷6=₦ 165,000

Wife 1= 1/8 ₦ 990, 000÷8=123,750

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The total of the above is=₦ 453,750

Less ₦536,250 for 1 son and 3 daughters

1 son= 2 plus 3 daughters= ₦ 536,250÷5= ₦ 107,250

Each daughter takes ₦ 107,250 while the son takes twice of the daughter ₦ 214,500

Summary:

Father =₦ 165,000

Mother =₦ 165,000

Wife 1=₦ 123,750

Son 1= ₦ 214,500

Daughters 1=₦107,250

Daughters 2=₦ 107,250

Daughters 3=₦ 107,250

Total= ₦ 990,000

Table of the Real distribution of the Estate

S/NO	GROUP	ENTITLEMENT	TOTAL RECEIVED	TOTAL AMOUNT	CREDIT BALANCE	DEBIT BALANCE
1	F	₦ 165,000	5 cows	₦ 150,000	₦ 15,000	
2	M	₦ 165,000	5 cows	₦ 150,000	₦ 15,000	
3	W	₦ 123,750	4 cows	₦ 120,000	₦ 3,750	
4	S	₦214,500	7 cows	₦ 210,000	₦ 4,500	
5	D 1	₦ 107,250	4 cows	₦ 120,000		₦ 12,750
6	D 2	₦ 107,250	4 cows	₦ 120,000		₦ 12,750
7	D 3	₦ 107,250	4 cows	₦ 120,000		₦ 12,750
	Total	₦ 990,000	33 cows	₦ 990,000	₦ 38,250	₦ 38,250

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4.1.3. Abibat Salami Vs Ramata Salami, Issa Salami, Sifawu Salami

Abibat Salami was the defendant in an inheritance suit filed by Ramat Salami, Issa Salami and Sifawu Salami at the 2nd Upper Area Court, Oloje, Ilorin in case No. CVFM/258/2006 dated 1st September, 2006, containing 15 pages record of proceedings. When the trial Area Court asked the 1st plaintiff of her claim on behalf of herself and the other two plaintiffs, she said at page 1 of the record of proceedings:

> I sued for distribution of estate left behind by our father named AbdulSalami who died on the 25th February, 2003 at home in Baboko. The said AbdulSalami is, survived by his wife named Sifawu adult and left 3 surviving children named Alhaja Abibat adult. Ramata aged 35 years and Issa Salami aged 30 years.[8]

She also gave the estate to be shared on the same page as "Two houses at odo-oba where he has gone to trade. Out of the two houses at Odo-Oba, one is already demolished while the second one is intact and contained 10 rooms. He left one house in Ilorin at Baboko containing 8 rooms."[9]

On the next adjourned date at the trial court on 15th September, 2006, the 1st plaintiff tendered two exhibits marked page 01 and page 02 respectively. Exhibit page 01 was a letter dated 16th October, 1991 and prepared by Mr. Salami Iyanda, the late husband of the 3rd respondents. He is henceforth referred to in this judgment as "the deceased". Exhibit page 02 was a video-cassette recording of the distribution of the estate of the deceased in his life-time. She also called two witnesses to support her claim: Babatunde Olanrewaju Odo-Oba (PWI) and Saadu Iyanda Odo-Oba (PW2).

The defendant agreed with the estate as listed by the plaintiffs both at Ilorin and at Odo-Oba. She however argued that she and the deceased jointly owned the house in Ilorin.

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She said at Page 7 of the records: "On the issue of the house built by my father at Idi Sanga at Baboko, Ilorin. It was myself and my father that contributed in building the house and it is 8 rooms."[10]

She added that when wind blew off the roof of the house, she was the one that repaired it and even put a tenant in one of the rooms. She went further to allege that the deceased also had 7 of sewing machines which were later sold to buy 2 grinding machines one for grinding cassava and one for grinding guinea-corn. She also alleged that the proceeds from these grinding machines were with the plaintiffs. She concluded that she had no witness to call and no exhibit to tender.

The trial Area Court judge reviewed the case after paying visit to the two houses in question. Thereafter, the house at Baboko, one other house at Odo-Oba and the N200,000.00 cash being proceeds from the sale of the second demolished house at Odo-Oba were distributed among the defendant, the 1st and the 2nd plaintiffs. The 3rd plaintiff, who was the wife of the deceased, was not given any share.[11]

Review of the Case

The judgment is against the weight of evidence for the following reasons:

1. The lower court erred in law when it relied on a video-cassette recording of the Deceased Estate by the deceased in his life time. When Exhibits Page 01 and Page 02 where the deceased took charge of the distribution of his estate when he was alive are viewed critically, it will be realized that there is nowhere in the Qur'an where this action is allowed. Chapter 4 verse 7 states:

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لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ ٱلْوَٰلِدَانِ وَٱلْأَقْرَبُونَ وَلِلنِّسَآءِ
نَصِيبٌ مِّمَّا تَرَكَ ٱلْوَٰلِدَانِ وَٱلْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ
نَصِيبًا مَّفْرُوضًا ﴿٧﴾

> For men is a share of what the parents and close relatives leave, and for women is a share of what the parents and close relatives leave, be it little or much - an obligatory share. (Q. 4:7).

The word *"taraka"* repeated twice in this verse is used in the past tense form. The noun is *tarka* (Estate). Shaykh Muhammad ᶜAli As-Sābūnī gave the proper meaning of *tarka*(Estate)when he said:

والتر كة هي ما يتر كه الشخص' بعد مو ته....

> *Tarkah* is what a personleft behind after his death …[12]

This is what is otherwise known as *`Irth* (inheritance) under the Islamic Law when Shaykh Salih Bn Fawzan Bn Abdullahi `Alu Fawzan said:

الإرث: إنتقال مال الميت إلى حي بعده حسبما شرعه الله.

> *Al-`Irth* is transfer of the property of the deceased to those who survived him in accordance with the law of Allah."[13]

Furthermore, Muhammad Bakri also said:

يشترط في تحقق المير اث موت الموروث.

> Death of the *Mawruth* (the deceased) is a condition for sharing of (his) estate."[14]

The effect of all these provisions is that estate distribution of a Muslim person can only take place, under Islamic Law, after his or her death and not during his or her lifetime. Therefore, the action of the deceased taking charge of the distribution of his property by himself while alive as estate distribution violated the Islamic Law provisions.

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2. The Lower Court erred in law when it refused to take the claim of the defendant into consideration where she said: "On the issue of the house built by my father at Idi Sanga at Baboko, Ilorin. It was myself and my father that contributed in building the house and it is 8 rooms."[15]

   The trial court supposed to establish the fact in this regard to prove or disprove the claim.

3. The lower court erred in law when it held that what is left to be shared from the estate of the deceased, Mallam Salami Iyanda is 16 rooms and ₦200,000.00 only. The estate and the heirs of the deceased were not ascertained by the trial Area Court. Also, the proceeds from the sale of the grinding machines should have form part of the estate and valued together with other properties.

   It is also mandatory that all the items of the estate should be reduced to Naira and Kobo for convenience in order to attain justice on the matter. For instance, a room atBaboko and a room at Odo-Oba are not necessarily of the same value considering their locations and quality of building materials used.

> (وقسم العقار) أى الأرض وما اتصل بها من بناء وشجر (و) قسم غيره ..... (بالقيمة)...
>
> Sharing of landed property, be it bare land, structure or plantation goes by the value.[16]

.

4. The trial Area Court erred in law to have excluded the 3rd respondent from the estate of her husband. This is because the action violated Qur'an 4:12 which provides that:

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وَلَهُنَّ ٱلرُّبُعُ مِمَّا تَرَكۡتُمۡ إِن لَّمۡ يَكُن لَّكُمۡ وَلَدٞۚ فَإِن كَانَ لَكُمۡ
وَلَدٞ فَلَهُنَّ ٱلثُّمُنُ مِمَّا تَرَكۡتُمۚ مِّنۢ بَعۡدِ وَصِيَّةٖ تُوصُونَ بِهَآ أَوۡ دَيۡنٖۗ

> They (i.e wives) will have one quarter of what you leave behind if you leave no child; but if you leave a child, they will have one eight of what you leave behind after payment of legacies that you may have bequeathed or debts…(Q.4: 12).

It was indeed clear from the record of proceedings, that the heirs of the deceased have been identified as follows

(i) Shifawu: Wife. She is the 3rd plaintiff

(ii) Ramata: daughter and 1st plaintiff

(iii) Issa: son and 2nd plaintiff

(iv) Abibat: daughter and the defendant

That the items of the estate identified and proven to belong to the deceased are:

(i) The house at Ile Sango, Baboko, Ilorin

(ii) The house at Odo-Oba,

(i) and (ii) above should be valued by a *Mukhbir*(an expert).

(iii) ₦200, 000 = being the proceeds from the sale of the demolished house at Odo-Oba.

(iv) The two grinding machines including the proceeds realized therefrom.

The portion of each heir goes thus:

1. Shifawu Wife has 1/8

2 Issa son has double share of a female share out of the remainder

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3. Abibat daughter has half share of a male out of the remainder

4. Ramata daughter has half share of a male out of the remainder

In conclusion, the following Formula should be followed for sharing in this circumstance by using 32 as LCM.

1. Shifawu (Wife) should be given 4 out of 32

2 Issa (son) should be given 14 out of 32.

3. Abibat (daughter) should be given each 7

4. Ramata (daughter) 2hould be given each 7

The following sample shows the template of the distribution of the estate:

Valuation of the properties

1. The house at Ile Sango, Baboko, Ilorin ₦400,000
2. The house at Odo-Oba, ₦400,000
3. two grinding machines ₦100,000
4. ₦200, 000 = being the proceeds from the sale of the demolished house at Odo-Oba.

Grand total of the estate= ₦1,100,000

Fractional share of the estate:

Cash distribution

Total = ₦200,000

Shifawu (Wife) ₦ 200,000 ÷8=₦ 25,000

Less 175,000 for 1 son and 2 daughters

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1 son= 2

2 daughters = 2

4 working figure

₦ 175,000÷4=₦ 43,750 for each daughter and the son will take double share of a daughter=₦ 87,500.

Summary

1. Shifawu (Wife) ₦ 25,000

2. Issa (son) ₦ 87,500

3. Abibat (daughter) ₦ 43,750

4. Ramata (daughter) ₦ 43,750

Total = ₦ 200,000

House distribution

Shifawu (Wife) ₦ 900,000÷8=₦ 112,500

Less ₦ 787,500 for 1 son and 2 daughters

1 son= 2 daughters

2 daughters = 2

4 working figure

₦ 787,500 ÷4= ₦ 196,875 for each daughter and the son will take double share of a daughter=₦ 393,750

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Summary

2. Shifawu (Wife) ₦ 112,500

2. Issa (son) ₦ 393,750

3. Abibat (daughter) ₦ 196,875

4. Ramata (daughter) ₦ 196,875

Total = **₦ 900,000**

Real Estate Distribution:

Heir	Entitlement	Allotment
1. Shifawu(Wife)	₦ 112,500.	Two grinding machines N100,000
		Credit balance: ₦12,500
2. Issa (son)	₦ 393,750	The house at Odo-Oba, N400,,000
Debit balace: ₦ 6,250		
3. Abibat (daughter)	₦ 196,875	The house at Ile Sango, Baboko, Ilorin
4. Ramata (daughter)	₦ 196,875	₦400, 000. for two daughters, ₦196,875foreach daughter.

Debit balace for each daughter: ₦3,125

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Balance sheet of cash and kind distribution.

S/NO	GROUP	ENTITLEMENT	CASH RECEIVED	KIND RECEIVED	CREDIT BALANCE	DEBIT BALANCE
1	W	₦ 137,500	₦25,000	₦ 112,500	₦12,500	
2	S	₦ 481,250	₦ 87,500	₦ 393,750		₦6,250
3	D 1	₦ 240,625	₦ 43,750	₦ 196,875		₦3,125
4	D 2	₦ 240,625	₦ 43,750	₦ 196,875		₦3,125
	Total	₦ 1,100,000	₦ 200,000	₦900,000	₦12,500	₦12,500

4.1.4. Mrs. Monsurat Raheemvs Mrs. Mero Raheem and Mr. Akeem Raheem

Mrs. Monsurat Raheem was the plaintiff at the trial Ibolo Area Court Grade 1 No 1 in the Offa judicial Division of Kwara State held at Offa on the 26th Day of June, 2013. She instituted a court action against the defendants, Mrs. Mero Raheem and Mr. Akeem Raheem to move the court to distribute the estate of late Raheem Ori-Olowo who happened to be their father. The plaintiff, who was represented by A.A. Bello Esq., mentioned on the floor of the trial Area Court that the estate in question should be distributed among them thus: "I pray the court to share the landed properties and the shop on equal terms." as contained on page 6 of the record of proceedings of the trial court. The plaintiff at the trial court called four witnesses who all testified in favor of the plaintiff.

On the 11/03/2014, when the case was slated for continuation of hearing, the first and second defendants were absent in court; subsequently, their counsel addressed the court and therefore, the trial Judge eventually adjourned the hearing till 28/05/2014, where the 2nd defendant, who happened to be the step-mother to the respondent, gave evidence

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confirming that the plaintiff, Monsurat Raheeem, and the first appellant, Akeem Raheem are only surviving children after her husband, Raheem Ori-Olowo.

In page 20 – paragraph 25 – 30 of the same records of proceeding of the trial court, the same second defendant confirmed to the effect that:" It is true that I said that the landed property left behind by Raheem Ori-Olowo belongs to the plaintiff and the 1st defendant in exclusion of the 2 shops which belong to me."

On the 25/09/2014, the first defendant later appeared at the trial Court and gave evidence thus:"my late father left behind a landed property, I was later aware through my mother that the plaintiff is my sister and the property we are talking about has not been shared between the plaintiff and myself. Presently, there are two shops built on the said land, which was built by my mother who is the 2nd defendant in this case. Aside from the shop, there is a plank counted on the remaining land, I want this court to share the remaining land between me and the plaintiff that is all".

During the cross examination by the plaintiff's Counsel the 1st defendant affirmed his statement by repeating it thus: "It is true that the property left behind by my late father has not been shared and there is no written will/Document to deny the paternity of the plaintiff by my father before death." All these had been reflected within pages 25-26 of the trial Court records of proceedings.

The defendant's counsel finally urged the trial Judge to share the properties in line with the Islamic Law as contained in the complaint before this court within the parties. Eventually, the trial court decided the case and made the following orders:

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(1) That the plaintiff (Monsurat Raheem) and the 1st defendant (Akeem Raheem) who are the children of late Raheem Ori-Olowo are to share the two shops accordingly.

(2) The 2nd defendant (Mrs. Mero Raheem) who is the wife is to take over the video club labeled as landed property but before then an account of money collected as rent on the second shop belonging to the plaintiff since 1st June 2011 are to be rendered.[17]

Review of the case

Having adequately studied the decision of trial court as contained in the record of proceedings of the trial Court, the following are observed:

1. It is observed that the trial court failed to establish the fact about the claim of the second defendant who said:"It is true that I said that the landed property left behind by Raheem Ori-Olowo belongs to the plaintiff and the 1st defendant in exclusion of the 2 shops which belong to me."
2. It is also observed that the decision was incorrect. The case is a pure case of inheritance but the trial court had derailed, having applied the wrong procedure by distributing the same portion for male and female. The trial judge fails in considering the laid down Islamic law principle for inheritance. The position of law is very clear on the distribution of inheritance, where it is stipulated in Qur'an 4: 11

يُوصِيكُمُ ٱللَّهُ فِيٓ أَوۡلَٰدِكُمۡۖ لِلذَّكَرِ مِثۡلُ حَظِّ ٱلۡأُنثَيَيۡنِۚ

Allah instructs you concerning your children: for the male,
what is equal to the share of two females. (Q4: 11)

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In line with the above provision, it could be observed that the applicable law at the lower court to distribute the property of the deceased person in this case is distasteful to Islamic law of inheritance and render it null and void.

In this case, the heirs are three namely one wife, one son and one daughter. It is mandatory, in order to attain justice on the matter and for convenience, that all the items of the estate should be reduced to Naira and Kobo. For instance, the two shops and the remaining land should be valued by expert as contained in *Jawahiru 'l-'Iklil* thus:

(وقسم العقار) أى الأرض وما اتصل بها من بناء وشجر (و)

قسم غير .....(بالقيمة)...

> Sharing of landed property, be it bare land structure or plantation goes by the value."[18]

Another important issue is that the judgment lacks fair hearing. The claim of the second defendant, Mero Raheem was not given fair hearing. Mero claimed thus:"It is true that I said that the landed property left behind by Raheem Ori-Olowo belongs to the plaintiff and the 1st defendant in exclusion of the 2 shops which belongs to me."[14]

The learned judge does not order for investigation or request for verbal or written evidence in order to approve or disapprove the claim.The Islamic golden principle is that "violation of fair hearing is capable of rendering the whole judgment a nullity'. The court is expected to give listening ears to the parties before delivering its judgment.

ولا يحكم القاضي حتى يسمع تمام الدعوى والبينة ويسأل

المدعى عليه: لك مدفع؟

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> The trial judge will not deliver his verdict on any matter until he listens to all the statements of claims and evidence in their support. He then asks the defendant:Do you have any defense?[19]

In this case, it is clear from the record of proceeding that the heirs are three namely:

1. Wife
2. Son
3. Daughter

The properties to be shared are:

1. Two shops
2. Video club labeled as landed property.

These two properties must be firstly valued. Assuming each shop is valued at ₦100,000 and the landed property is valued at ₦250, 000.

The total Estate= ₦450, 000.

Fractional share:

The wife takes 1/8 of the total estate, that is ₦450, 000 ÷8=₦56,250 less ₦373,750, which will be divided into 3 as follows: ₦373,750 ÷ 3=₦ 131,250

The son takes 2/3 = ₦ 262,500

The daughter takes 1/3=₦ 131,250

Real distribution

The wife will take one shop= ₦ 100,000 with debit balance of ₦ 43,750

The son will take landed property= ₦ 250,000 with credit balance of ₦ 12,500

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The daughter will take one shop= ₦ 100,000 with credit balance of ₦ 31,250.

Final table of balance sheet of the distribution:

S/NO	GROUP	ENTITLEMENT	TOTAL RECEIVED	CREDIT BALANCE	DEBIT BALANCE
1	W	₦56,250	₦100,000		₦43,750
2	S	₦262,500	₦250,000	₦12,500	
3	D	₦131,250	₦100,000	₦31,250	
	T,,,,otal	**₦450, 000**	**₦450, 000**	**₦43,750**	**₦43,750**

4.2. Conclusion

W,e have reviewed in this chapter four cases out of a total of fifteen cases of inheritance decided in Area Courts in Kwara State between 1994 and 2015. The other eleven, after critical study and analysis, do not have issues. We have tried to identify the problem associated with the cases and do a review by giving a step by step analysis of how the cases should have been handled by the trial Courts.

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Notes and References on Chapter Four

1 Upper Area Court, Omu Aran, Court Judgments file July, 1993.
2 Area Court Kosubosu in Baruteen Local Government of Kwara State. Judgments file of 9th January, 2004. 10
3 *ibid*1-15
4 Al-Kashnawī, A. H,'*Ashalu 'l- Madārik* , (N.D) p. 242
5 Ibn Jawzī, *Al-Qawāninu 'l-Fiqhiyyah*(N.D) p. 242-243
6 Az-Zāhirī, S. *Jawāhiri 'l-'Iklīl* (Cairo, Darul-Fikr (N.D.) ,165
7 Al-Kashnawī, A. H. '*Ashalu 'l- Madārik* , (N.D) p. 24١
8 2nd Upper Area Court. Oloje Ilorin, Judgments file 1st September, 2006. 10
9 *ibid* 11
10 *ibid* 12
11 *ibid* 1-15
12 As-Sābūnī, M. A., *Mawārīth fi 'sh- Sharīᶜati 'l-'Islāmiyyah calā daw'il-Kitāb was-Sunnah*. (Damshiq: Darul-Qalam. 2005), 34
13 Fawzan, S. A.*Al-Mulakhkhasu 'l-Fqhi*, (N.D.); 469
14 Muhammad, B. I.. *Al-fiqhu 'l-Wādih mina 'l-Kitāb wa 's-Sunnah.*(vol.3) (Cairo: Darul-Manar 2005.), 142
15 2nd Upper Area Court. Oloje Ilorin, Judgments file 1st September, 2006. 12
16 Muhammad, B. I. *Al-fiqhu 'l-Wādih mina 'l-Kitāb wa 's-Sunnah.*(vol.3) 142
17 Offa Judicial Division of Kwara State held ay Offa Judgments file, June 2013
18 Az-Zāhirī, S. *Jawāhiri 'l-'Iklīl (*vol. 2), (Cairo, Darul-Fikr (N.D.) ,105
19 Al-Kashnawī, A. H. '*Ashalu 'l- Madārik* , p. 240

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CHAPTER FIVE

REVIEW OF SELECTED INHERITANCE CASES DECIDED BY KWARA STATE *SHARĪ^C^AH* COURT OF APPEAL

5.0. Introduction

This chapter looks at the contributions of Kwara State *Sharīᶜah* Court of Appeal to estate distributions in Kwara State. The Court has decided many cases of inheritance and helped in great deal in settling issues and showing problems that could have caused acrimony between two or more parties in the society.[1] The cases are well documented in its Annual reports.In this section the review of some cases of inheritance decided by the Kwara State *Sharīᶜah* Court of Appeal are carried out.

Remarkably, not much technical errors are noticeable in the inheritance cases decided in this honourable court. The Errors identified are errors of calculations, typographical errors, lack of orderliness etc. It should be stressed that such errors and mistakes are not to be condoned in issues of inheritance because of their serious implications. The Kwara State *Sharīᶜah* Court of Appeal has a department called Estate Distribution Department established purposely to reduce, to the barest minimum, litigations among Muslims on inheritance matters.

5. 1. Estate Distribution Department of Kwara State *Sharīᶜah* Court of Appeal

For the purpose of estate distribution in Kwara State, *Sharīᶜah* Court of Appeal established an Estate Distribution Department. It was established by Honourable Justice Abdul-Qadir Orire in the 1990s[2] in addition to the main jurisdictions assigned to *Sharīᶜah* Court of Appeal by the constitution as an appellate court. During the time of Honourable

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Justice Abdul-Qadir Orire when the department commenced operation, the committee used to go to houses of the people to serve them. It was when Honourable Justice M.A. Ambali became the Grand kādi of Kwara state in 2000 that the department got full approval of the Estate Revenue Charges from the government.[3] At the same time, the Committee secured a place in the *Sharīᶜah* court for the service and stopped going to various houses for estate distributions.The main activity or function of the Estate Department is to maintain peace and harmony among the Muslim populace by distributing their deceased's estates out of litigation as well as resulvings arising from inheritance between family members.[4] To a large extent, this service has reduced drastically the litigation process on issues related to inheritance in the State. [5]

The procedure adopted by the Estate Department in distributing estate after receiving the request letter from the family of the deceased seeking the service of the Court on the properties of their deceased Muslim are as follows:

i. **Invitation:** In order to avoid any discord among the heirs during and after the distribution of estate, the Court invites members of the family including heirs as well as witnesses from outside the family circle like friends and neighbors. This is quite important, as it helps in strengthening the affirmation of the involved parties and confirming not only their awareness but also their consent to the invitation letter sent by the family, requesting the Court to carry out the distribution. This is because the letter may be written not with the consent of all the parties and that may lead to litigation.

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ii. **Confirmation:** The Court commences the distribution by identifying and confirming the heirs as well as the properties left behind by the deceased person. The heirs and the properties at this stage will be listed.

iii. **Valuation:** The next procedure is the valuation of the properties by the experts, which will be used for the distribution among the heirs. The panel assigns the family this responsibility.

iv. **Distribution:** The panel, after receiving the valuation report, carries out the distribution based on that report and call for final meeting where the properties will be allocated to individual heir and everyone will sign his/her own potion.[6]

v. **Administrative charges:** Kwara State *Sharīᶜah* Court of Appeal collects certain revenue charges for the Estate Distribution Department based on the grand total of whole estate, as presently proposed.

The following is an example of the Estate Distribution carried out by Estate Department of the Kwara State *Sharīᶜah* Court of Appeal, Ilorin: [7]

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INVITATION LETTER

Hakeem Ijaya & Co. Okin Chambers,
14, Muritala Mohammed Way,

Beside Olufunmilaye Record

Stores, P.O. Box 6438,
Ilorin, Kwara State.

15th February, 2012.

The Honorable Grand Kādi,
Sharīᶜah Court of Appeal

Ahmadu Bello Way ,

Ilorin,

Kwara State.

Dear Sir,

<u>APPLICATION TO SHARE THE ESTATE OF ALHAJI MUSTAPHA KAJOGBOLA IJAIYA (DECEASED)</u>

I have the mandate of the family of Alhaji Mustapha Kajogbola Ijaiya (Deceased) who died on 16th April, 2009 at Offa, Kwara state to humbly apply for the sharing of the deceased estate in-accordance with the Islamic rites.

Please find attached the details of the deceased estate for your kind consideration.

Thanks and God bless.

Yours Hakeem Ijaiya

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ESTATE OF ALHAJI MUSTAPHA KAJOGBOLA IJAIYA

(DECEASED)

Father's Name: Alhaji Mustapha Kajogbola Ijaiya

Wife (if any) at the time of Death: Nil

Children:

1.	Dr. Hakeem Ijaiya	-	First Son
2.	Mrs. Mujidat Giwa	-	Daughter
3.	Alhaja Idayat Adebiyi	-	Daughter
4.	Mr. Mojeed Ijaiya	-	Son
5.	Mr. Lukman Ijaiya	-	Son
6.	Mr. Ismaila Ijaiya	-	Son
7.	Mr. Tajudeen Ijaiya	-	Son
8.	Mrs, Rasheedat Amao	-	Daughter
9.	Mr, Habideen Ijaiya	-	Son
10.	Mr, Othman Ijaiya	-	Son
11.	Miss, Aishat Ijaiya	-	Daughter
12.	Mr, Mohammed Ijaiya	-	Son

4. Children groupings:

***Group* A**

1. Dr. Hakeem Ijaiya
2. Mrs. Mujidat Giwa

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3. Alhaja Idayat Adebiyi

4. Mr. Mojeed Ijaiya

Group B

1. Mr. Lukman Ijaiya

Group C

1. Mr. Tajudeen Ijaiya

Group D

1. Mr. Ismaila Ijaiya

2. Mrs. Rasheedat Amao

Group E

1. Mr. Habideen Ijaiya

2. Mr. Othman Ijaiya

3. Miss. Aishat Ijaiya

Group F

1. Mr. Mohammed Ijaiya

Landed Properties:

House situated at Abdulrasaq Olatunwa Road, G.R.A., Offa Kwara State (See valuation Report, Annexures 1)

House situated at No. 44 Stadium Road, Ilorin Kwara State. (See Valuation Report, Annexure 2).

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Vehicle:

Peugeot 505 Saloon Car (see Valuation Report, Annexure 3)

Generator:

Generator set (See Valuation Report Annexure 3)

Shares:

The value of the shares has not been determined (see certificate of additional assets attached to the letter of administration annexure 4)

Cash :

Total cash is ₦3,160,000.00 (Three million, One Hundred and sixty thousand naira Only)

Dated this 15th day of February, 2012.
Dr Hakeem Ijaiya

For: Alhaji Mustapha Kajogbola Ijaiya

(Deceased) Family

Ref. No. KWS/SCA/151.193/4

16th March, 2012

Dr, Hakeem Ijaiya

14, Murtala muhammed Way,

P.O. Box 6438,

Ilorin.

Assalamun Alaekum,

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RE: DISTRIBUTION OF THE ESTATE OF THE LATE

ALHAJI MUSTAPHA KAJOGBOLA IJAIYA

NOTICE OF MEETING

I am directed to inform you to arrange for the affected family members /heirs of the Late Alhaji Mustapha Ijaiya to attend the preliminary meeting on the distribution of the estate of the deceased.

The meeting will God –willing take place as stated below.

Date: Monday 19/03/2012

Venue: Sharia Court of Appeal, Ilorin

Time: 11:00am Prompt.

Please be Punctual

SGD

Yusuf M. Gbalasa

For: Chief Registrar.

MINUTES OF THE PRELIMINARY/FINAL MEETING OF THE DISTRIBUTION OF THE ESTATE OF THE LATE ALHAJI MUSTAPHA KAJOGBOLA IJAIYA HELD AT THE *SHARI^{C}AH* COURT OF APPEAL, ILORIN ON MONDAY 19TH MARCH, 2012

ATTENDANCE:

1.	Hon. Kadi S.O Muhammed	Chairman
2.	Hon. Kadi A.A. Idris	Officiating Minister
3.	Hon. S.M. Abdulbaki	Officiating Minister
4.	Hon. M.O. Abdulkadir	Officiating Minister

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5.	Hon. Owolabi	Officiating Minister
6.	Alhaji Hamzat Olaoti Ijaiya	Brother
7.	Alhaji Musa Ijaiya	Brother
8.	Alhaji Tunji Ijaiya	Brother
9.	Dr. hakeem Ijaiya Esq.	Son
10.	Mrs. Mujidat Giwa	Daughter
11.	Alhaja Idayat adebiyi	Daughter
12.	Mr. Mojeed Ijaiya	Son
13.	Mr. Lukman Ijaiya	Son
14.	Mr. Ismaila Ijaiya	Son
15.	Mr. Tajudeen Ijaiya	Son
16.	Mrs. Rasheedat Amao	Daughter
17.	Mr. Habideen Ijaiya	Son
18.	Mr. Othman Ijaiya	Son
19.	Mr. Muhammed Ijaiya	Son
20.	Mr. Mohammed Ijaiya	Son
21.	Alhaji M.J. Dasuki	Asst. Sec.
22.	Yusuf M. Gbalasa	Secretary

OPENING PRAYER

The meeting opened with prayer led by Hon. Kadi A.A Idris at 12:30noon.

OPENING REMARKS

The Chairman, Hon Kadi S.O Muhammed welcomed all the family members of the deceased to the meeting and prayed for God's guidance.

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MATTERS ARISING

List of Heirs: the list of the legal heirs of the deceased was confirmed according to their groups.

DISTRIBUTION OF THE ESTATE OF THE LATE ALHAJI MUSTAPHA KAJOGBOLA IJAIYA REAL ESTATE DISTRIBUTION

WORKING OF PAPER 'A'

LIST OF HEIRS

Group A

1.	Dr, Hakeem Ijaiya	(Son)
2.	Mrs, Mujidat Giwa	(Son)
3.	Alhaja Idayat Adebiyi	(Daughter)
4.	Mr. Mojeed Ijaiya	(Daughter)

Group B

1.	Mr. Lukman Ijaiya	(Son)

Group C

1.	Mr. Ismaila Ijaiya	(Son)

Group D

1.	Mr. Tajudeen Ijaiya	(Son)
2.	Mrs. Rasheedat Amao	(Daughter)

Group E

1.	Mr. Habideen Ijaiya	(Son)
2.	Mr. Othman Ijaiya	(Son)
3.	Mrs. Aishat Ijaiya	(Daughter)

Group F

1.	Mr. Mohammed Ijaiya	(Son)

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WORKING PAPER 'B'

LIST OF ITEMS OF THE

ESTATE AS LISTED IN THE VALUATION REPORT.

Property 1: Comprise a block of 2no. 3 bedroom flat on ground floor (i.e wing AB) and 5 no. bedroom flat with 2no. Living room at the first floor, located along Abdulrasaq Olatinwo Road, G.R.A Offa valued as follows.

(i) Left wing Ground Floor (flat 1) 3 BR= ₦3,458,677.50

(ii) Right wing Ground Floor (flat 2) 3 BR= ₦3,458,677.50

(iii) 5 bedroom (1st Floor) =₦6,917,355.00

Total N13,834,710.00

Property 2: Comprise a block of 4no 3 bedroom flat located at No44, Stadium Road, Ilorin valued.

(i)	Flat 1 (left wing) (G/F)	=	₦4, 756,697.50
(ii)	Flat 1 (Right wing) (G/F)	=	₦4, 756,697.50
(iii)	Flat 3 (Left wing) 1st floor	=	₦4,756,697.50
(iv)	Flat (Right wing) 1st floor	=	₦4,756,697.50
		Total	**₦19,026,790.00**

Property 3: vehicles

(i)	Motors vehicle	=	₦422, 500.00
(ii)	Generator set	=	₦30, 000.00
			₦452,500.00

GRAND TOTAL ₦33, 314,000.00

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WORKING PAPER 'C'

FRACTIONAL SHARES OF REAL ESTATE DISTRIBUTION

Total Estate	=	₦33,314,000.00
8 Sons	=	16
4 Daughter	=	4
		20 Working Figure

i.e each Daughter will have ₦1.665,700.00 worth of the real estate. While each son will have twice ₦3,331,400.00 worth of the real estate.

SUMMARY

1.	Son	=	₦3,331,400.00 X 8	=	₦26,651,200.00
2.	Daughter	=	₦1,665,700.00 X 4	=	₦6,662.800.00
			TOTAL :		**₦33,314.000.00**

WORKING PAPER 'D'

GROUP SHARES OF REAL ESTATE DISTRIBUTION

Group A

ENTITLEMENT

1.	Dr, Hakeem Ijaiya	(Son)	₦3,331,400.00
2.	Mrs, Mujidat Giwa	(Son)	₦3,331,400.00
3.	Alhaja Idayat Adebiyi	(Daughter)	₦1,665,700.00
4.	Mr. Mojeed Ijaiya	(Daughter)	₦1,665,700.00
			Total : ₦9,994,200.00

Group B

1.	Mr. Lukman Ijaiya	(Son)	**₦3,331,400.00**

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<u>Group C</u>

1.	Mr. Ismaila Ijaiya	(Son)	**₦3,331,400.00**

<u>Group D</u>

1.	Mr. Tajudeen Ijaiya	(Son)	₦3,331,400.00
2.	Mrs. Rasheedat Amao	(Daughter)	₦1,665,700.00
			Total : ₦4,997,100.00

<u>Group E</u>

1.	Mr. Habideen Ijaiya	(Son)	₦3,331,400.00
2.	Mr. Othman Ijaiya	(Son)	₦3,331,400.00
3.	Mrs. Aishat Ijaiya	(Daughter)	₦1,665,700.00
			Total :₦8,328,500.00

<u>Group F</u>

1.	Mr. Mohammed Ijaiya	(Son)	**₦3,331,400.00**

GROUP SUMMARY

1.	**GROUP 'A'**	=	**₦9,994,200.00**
2.	**GROUP 'B'**	=	**₦3,331,400.00**
3.	**GROUP 'C'**	=	**₦3,331,400.00**
4.	**GROUP 'D'**	=	**₦4,997,100.00**
5.	**GROUP 'E'**	=	**₦8,328,500.00**
6.	**GROUP 'F'**	=	**₦3,331,400.00**
		GRAND TOTAL	**₦33,314,000.00**

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PHYSICAL SHARING OF REAL ESTATE DISTRIBUTION

Group A Dr. Hakeem, Mojeed Mujidat and Idayat Ijaiya

ENTITLEMENT **₦9,994,200.00**

Property 3 **Vehicle**:- Motor Vehicle Abdulmojeed	₦422,500.00
Property 1: Located Along Abdulrasaq Olatinwo Road, GRA, offa 4 bedroom at the first floor: Property 2: Located at No 44 stadium Road, Ilorin 1 no. flat 3 bedroom Ground floor left wing	₦5,533.884.00 ₦4,756,697.50
Total received	**₦10,713,081.05**
Desit Balance	**₦718,881.05**

Group B **Lukman Ijaiya** (Son) **ENTITLEMENT** **₦3, 331,400.00**

Property 2	Located at No 44 Stadium Road, Ilorin 1no. flat 2 rooms Ground floor right wing	₦3,171,131.66
	Total received	**₦3,171,131.66**
	Credit Balance	**₦160.268.34**

Group C **Ismail iyaiya** (Son) **ENTITLEMENT₦3, 331,400.00**

Property 3: generator	₦30,000,00
Property 2: located at No 44, stadium Road, Ilorin 1 on room ground floor right wing. 1 no room left wing	₦1,585,565.83 ₦1,585,565.83
Total received	**₦3,201,131.66**
Credit Balance	**₦130,268.34**

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Group D: **Tajudeen and Rasheedat Ijaiya**(Son)

ENTITLEMENT **₦4,997.100.00**

Property 2: Generator **Property 2:** Located at No. 44, Stadium Road, Ilorin 1 no flat. Flat \2 right wing. Ground floor.	**₦4,756.697.5**
Total received	**₦4,756.697.5**
Credit Balance	**₦240,402.5**

Group E: **Habideen, Othman and Aishat Ijaiya** **ENTITLEMENT: ₦8,328,500.00**

Property 1: Located along Abdurasaq Olatinwo Road, GRA offa, Ground floor left wing (flat 1) 3 Bedroom 1 no room out of 5 bedroom flat	₦3,458,677.50 ₦3,458,677.50 ₦1,383.471.00
Total received	**₦8,3000.826.00**
Credit Balance	**₦27,674.00**

Group F: **Habideen, Othmen and Aishat Ijaiya** **ENTITLEMENT: ₦3,331,400.00**

Property 1: Located No.44 Stadium Road , Ilorin 2no. room left wing	₦3,171,131.66
Total Received	**₦3,171,131.66**
Credit Balance	**₦160,268.34**

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SUMMARY / BALANCE SHEET

S/NO	GROUP	ENTITLEMENT	TOTAL RECEIVED	CREDIT BALANCE	DEBIT BALANCE
1	'A'	₦9,994,200.00	₦10,713.081.05		₦718.881.52
2	'B'	₦3.331,400.00	₦3,171,131.66	₦160,268.34	
3	'C'	₦3.331,400.00	₦3,201,131.66	₦130,268,34	
4	'D'	₦4,997.100.00	₦4,756,697.05	₦240,402.05	
5	'E'	₦8,328.500.00	₦8,300,826.00	₦27,674.00	
6	'F'	₦3.331,400.00	₦3,171,131.66	₦160,268.34	
	TOTAL	**₦33,314,000.00**	**₦33,314,000.00**	**₦718,881.52**	**₦718.881.52**

5.2 Review of Selected Inheritance Cases

The productions of the Annual Reports of Kwara State *Sharīᶜah* Court of Appeal started in 1994 and almost all of them contain different estate distributions. This work reviews those cases that have issues from 1994- 2015 which is the last as of the time of writing this research work. The following table shows the number of the estate distributions in each Annual Report and number of the estates that are reviewed in this work:

S/NO	Year of Annual Report	Number of the Estate Dtribution	Number of Reviewed Estate	Remarks
1	1994	2	-	No Issue
2	1995	-		No Estate
3	1996	3	-	No Issue
4	1997	1	-	No Issue
5	1998	1	-	No Issue
6	1999	-	-	No Report
7	2000	2	-	No Issue
8	2001	2	-	No Issue
9	2002	-	-	No Report
10	2003	-		No Report
11	2004	3	-	No Issue
12	2005	-	-	No Report
13	2006	6	-	No Issue,
14	2007	16	-	No Issue

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15	2008	7	1	Reviewed
16	2009	**7**	-	Reviewed
17	2010	5	1	Reviewed
18	2011	6	3	Reviewed
19	2012	6	2	Reviewed
20	2013	**7**	2	Reviewed
21	2014	7	1	Reviewed
22	2015	**7**	1	Reviewed
	Total	**88**	**11**	

The above table shows that the Estate Distribution Department presided over 88 inheritance cases between 1994 and 2015 out of which, based on our study, only 11 have issues and need to be reviewed.

The review will be done in two segments. The first segment deals with cases that have calculation errors while the second segment is a general review bothering on issues of disorderliness in the presentation of the cases in the reports.

5.3 REVIEW OF CASES WITH CALCULATION ERRORS

5.3.1 ANNUAL REPORT 2008

1. **Distribution of the estate of Late Asumo Agunbiade** [8]

This estate is on pages 147-159 of 2008 Annual Report. The estate left by the deceased worth ₦ 49,200,000.00 which should be shared among three wives who will take 1/8 and twenty seven children eleven son and sixteen daughters who are sharing the remainder between themselves where a son takes double share of a daughter. The following is the physical sharing of the estate in order to make the review of the distribution clear.

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PHYSICAL SHARING

GROUP 'A' ENTITLEMENT : N8,846,368.149

S/NO	DETAILS OF PROPERTIES ALLOCATED	AMOUNT
1.	4 Nos.2-Bedroom flats on Yoruba Road as follows:-	
	(a) Flat 6 occupied by Mrs. Toki	₦900,000.00
	(b) Flat 8 occupied By Mrs. Abdullahi	₦900,000.00
	(c) Flat 14 occupies by Oyeyemi	₦900,000.00
	(d) Flat 16 occupies by Mr.Odejide (Jesufemi)	₦900,000.00
	(a) Rooms/parlor Nos. 1 and 3 occupied by Iya Liadi and Iya Dolapo	₦600,000.00
	(a) No. 3 occupied by Mr. Toyin	₦300,000.00
	(b) No.7 occupied by Iya Ibeji	₦300,000.00
	(c) No. 2 occupied by Baba Tapa	₦300,000.00
4	One room boy's quarter at Sabo-Line	
	(a) No.1 Rooms No.2	₦150,000.00
5	A room and parlour No.4 at Sabo-Line No.3 occupied by Alfa Saka	₦300,000.00
6	A lock-up shop No. 4 at Yoruba Road, being used by Alhaja Oniyangi	₦200,000.00
7	A 3-bedrooms flat No. 2 at Yoruba Road, occupied by Mr	₦1,400,000.00
	Rapheal Adebisi	
8	A 4-bedrooms flat and a garage at Herald Area occupied by Mr. Effion John	₦1,400,000.00
9	One single self contain room at G.S.S. Ilorin	₦300,000.00
10	Share from Sabo-Line No.3 building in the 2 Nos single room to be refunded to the family for its share in the 2 Nos. single room at Sabo-Line	
	TOTAL RECEIVED	**₦8,925,000.00**

DEBIT BALANCE = ₦77,631.581

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GROUP 'B' ENTITLEMENT : N14,511,842.09

S/NO	DETAILS OF PROPERTIES ALLOCATED	AMOUNT
1.	4 Nos.2-Bedroom flats on Yoruba Road as follows:-	
	(a) Flat 1 occupied by Mrs. Adeniyi	₦900,000.00
	(b) Flat 5 occupied By Mr. Ojo	₦900,000.00
	(c) Flat 9 occupied by Mr. Ganiyu Bello	₦900,000.00
	(d) Flat 12 occupied by Mrs.Ogungbemi	₦900,000.00
	(a) Room No. 6 occupied by Antie Aolat	₦300,000.00
	(b) Room No. 6 occupied by Iya Abiola	₦300,000.00
	(a) No. 1 occupied by Baba Fatimoh	₦300,000.00
	(b) No.5 occupied by Baba Bilikis	₦300,000.00
	(c) No. 9 occupied by Iya-wa	₦300,000.00
4	2 Nos. Single Room Boys' quarter at Sabo-Line, Nos 1 and 4	
	(a) Room No. 1 occupied by Shuaib Amoo	₦150,000.00
	(c) room no. 6 occupied by Majeed	₦150,000.00
5	A room and parlour at Sabo-Line No. 3 Occupied by Iya Sunday	₦300,000.00
6	Lock-up shop No. 3 occupied by Mrs. Ogungbemi at Yoruba Road.	₦200,000.00
7	3. bedroom flat No. 4 at Yoruba Road	₦1,100,000.00
8	3. bedroom flat Sabo-Line No. 2 occupied by Baba Sadiq	₦1,100,000.00
9	2 Nos. 3 bedroom bungalows Nos.1 and 4 at Kulende being occupied by Alhaji Ahmed Ndama and Idiat	₦2,600,000.00
10	Flat No. 3 at G.S.S. Ilorin occupied by Mall. Bashir Ahmed	₦2,600,000.00
11	1 No. 3 bedroom flat at opposite St. Clare's College, Offa (1st floor)	₦1,100,000.00

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12	3 Nos. Boys' Quarter At Kulende, Nos, 4, 5 and 6 occupied by Mr. Wale Lawal, Mr. F.O Akintomide and Mr. Yusuf Taiwo	₦300,000.00
13	1 No. room and parlour at Yoruba Road	₦300,000.00
14	One shop at Gambari, Ilorin occupied by Alhaja Mulikat	₦250,000.00
15	N75,000.00 cash on the 2 Nos. single rooms at Sabo-Line No. 3 returned to the family	₦ 75,00.00
	TOTAL RECEIVED	**₦14,275,000.00**

Credit balance = ₦236,842.09

GROUP 'C' ENTITLEMENT :₦14,511,842.09

S/NO	DETAILS OF PROPERTIES ALLOCATED	AMOUNT
1.	4 Nos.2-Bedroom flats on Yoruba Road as follows:-	
	(a) Flat 4 occupied by Mr. George	₦900,000.00
	(b) Flat 10 occupied By I. K.	₦900,000.00
	(c) Flat 11 occupies by Reimi Ibrahim	₦900,000.00
	(d) Flat 17 occupies by Mrs. Eniola	₦900,000.00
	(a) Room No. 5 occupied by Bro. Mufutau	₦300,000.00
	(b) Room No. 7 occupied by Iya Mudashir	₦300,000.00
3	4 Nos. Rooms / parlors at Sabo-Line Nos. 1 and 4 are as follows	
	(a) No. 1 occupied by Omo Baba Tapa	₦300,000.00
	(b) No.4 occupied by Baba Wasiu	₦300,000.00
	(c) No. 5 occupied by Baba Hoah	₦300,000.00
	(d) No. 8 occupied by Kehinde Tiamiyu	₦300,000.00
4	2 Nos. Single Room Boys' quarter at Sabo-Line, Nos 1 and 4 as follows:-	
	(a) Room No. 4 occupied by Abubakar	₦150,000.00
	(c) room no. 5 occupied by Alfa La'aro	₦150,000.00

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5	A room and parlour at Sabo-Line No. 3 Occupied by Iya Kabirat	₦300,000.00
6	Lock-up shop No. 2 occupied by Mrs. Oyesanya	₦200,000.00
7	3. bedroom flat No. 3 occupied by Mr. Bazil (B-system at Yoruba Road)	₦1,100,000.00
8	2 Nos. 3 bedroom bungalow at Kulende, Ilorin occupied by:-	
	(a) Flat No. 2 occupied by Mr. Iyiola Akeem	₦1,300,000.00
	(a) flat no. 5 occupied by mallam Mahmood	₦1,300,000.00
9	2 Nos. 3 bedroom flats at G.S.S. Ilorin	
	(a) Flat No. 2 occupied by Yusuf Sadiq	₦1,100,000.00
10	1 No. 3 bedroom flat group floor at opposite Clare's School Area Offa	
11	3 Nos. Boys' Quarter At Kulende, Ilorin as follows	
	(a) Flat No. 1 occupied by Mr. Iyiola Akeem	₦150,000.00
	(a) Flat No. 2 occupied by Bila Ahmed	₦150,000.00
	(a) Flat No. 3 occupied by Muftau Ejo	₦150,000.00
12	N75,000.00 cash on the 2 Nos. single rooms at Sabo-Line No. 3 returned to the family	
	TOTAL RECEIVED	**₦14,275,000.00**

Debit balance = ₦130, 263.12

GROUP 'D' ENTITLEMENT : N14,511,842.09

S/NO	DETAILS OF PROPERTIES ALLOCATED	AMOUNT
1.	4 Nos.2-Bedroom flats on Yoruba Road as follows:-	
	(a) Flat 2 occupied by Mr. Afolabi	₦900,000.00
	(b) Flat 3 occupied By Mr. David Alade	₦900,000.00
	(c) Flat 7 occupies by Ganiyu Durodola	₦900,000.00

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	(d) Flat 13 occupies by Braxil (B-System)	₦900,000.00
2	2 Nos. room and parlor within Sabo-Line No. 3 properties as follows:-	
	(a) Room/parlor No. 2 occupied by kannal	₦300,000.00
	(b) Room/parlor No. 4 occupied by Alhaja Kuburat	₦300,000.00
3	4 Nos. Rooms and parlors at Sabo-Line No. 1 and 4 are as follows:-	
	(a) No. 2 occupied by Muniru	₦300,000.00
	(b) No. 3 occupied by Iya Ajia	₦300,000.00
	(c) No. 6 occupied by Musa Ede	₦300,000.00
	(d) No. 10 occupied by Joshua Oluwafemi	₦300,000.00
4	2 Nos. Single Room Boys' quarter at Sabo-Line, Nos 1 and 4 as follows:-	
	(a) Room No. 3 occupied by Iya Ajarat	₦150,000.00
	(c) Room No. D2 occupied by Omo Baba Onile	₦150,000.00
5	A room and parlor at Sabo-Line No. 3 ilorin Occupied by Iya Aladalu	₦300,000.00
6	A Lock-up shop at Yoruba Road, occupied by Alhaja Alimat Yusuf	₦200,000.00
7	3. bedroom flat No. 1 at Yoruba Road occupied by Mr. Ejike Odiana	₦1,100,000.00
8	4 bedroom bungalows (House No.1 occupied by rasaq okoya at Herald House	₦1,400,000.00
9	3 bedroom flat at Sabo-Line No.3 occupied by Semiu Agunbiade	₦1,100,000.00
10	One 3 bedroom bungalow at kulende, Ilorin occupied by Alhaji Asiriabo	₦1,300,000.00

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11	One 3 Bedroom Flat At G.S.S. Ilorin Occupied By Gregory Unijoh	₦1,100,000.00
12	As obtained with other groups, this group also to have a share of N75,000.00 in the 2 Nos. single rooms at Sabo-Line No. 3 properties to be returned to the family with its status quo maintained.	₦75,000.00
	TOTAL RECEIVED	**₦12,275,000.00**

Debit balance = ₦ 28,947.37

Review of the Case

Looking at the detail allotment of this distribution as given in the above tables, the distribution was accurately carried out and the estate was allotted correctly but great error was committed in the balance sheet, which is the final work that is supposed to show the beauty of the work. The credit balance does not correspond with debit balance, the total of credit balance is ₦265,789.47 and the debit balance is ₦207,894.70.

FINAL BALANCE SHEET

S/NO	GROUP	TOTAL ENTITTLEMENT	TOTAL RECEIVED	CREDIT BALANCE	DEBIT BALANCE
1	(a)	₦8,847,368.41	₦8,925,000.00		₦77,631.58
2	(b)	₦14,511,842.09	₦14,275,000.00	₦236,842.09	
3	(c)	₦13,594,736.87	₦13,725,000.00		₦130,263.16
4	(d)	₦12,246,052.62	₦12,275,000.00	₦28,947.37	
	Total	**₦49,199,999.99**	**₦49,200,000.00**	**₦265,789.47**	**₦207,894.70**

The correct Balance Sheet is as follows:

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S/NO	GROUP	TOTAL ENTITTLEMENT	TOTAL RECEIVED	CREDIT BALANCE	DEBIT BALANCE
1	(a)	₦8,847,368.41	₦8,925,000.00		₦ 77,631.58
2	(b)	₦14,511,842.09	₦14,275,000.00	₦236,842.09	
3	(c)	₦13,594,736.87	₦13,725,000.00		₦130, 263. 13
4	(d)	₦12,246,052.62	₦12,275,000.00		₦ 28,947.374
	Total	**₦49,199,999.99**	**₦49,200,000.00**	**₦236,842.09**	**₦ 236,842.08**

It is very clear when comparing the two tables that the error occurred in the share of group D, which was credited in the first table where it is supposed to be debited; and the wrong total for credit and debit.

6.3.2 ANNUAL REPORT 2010

2. **Distribution of the Estate of Late Alhaji Ishola Alaya[9]**

The estate of Alhaji Ishola Alaya is on pages 271-299. The working papers B and C will be enough to explain the errors contained in this distribution. A total amount of ₦ 1,349,877.1 was left behind by the deceased to be shared between two wives that entitled to 1/8 and nine children, four sons and five daughters that share the remainder where a son takes double share of a daughter.

WORKING PAPER 'B'

An amount of (One Million, three hundred and twenty-two thousand, seven hundred and sixty-four Naira, Forty-two kobo) ₦1,312,764,.42 was received via the intercontinental Bank Plc., Ibrahim Taiwo Road, Ilorin (Thirty-seven thousand, one

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hundred and twelve Naira, Sixty-eight kobo) ₦37,112.68 was also received via the First Bank of Nigeria Plc., Unity Road, Ilorin.

WORKING PAPER 'C'

FRACTIONAL SHARES:-

Total cash = ₦1, 349,877.1

1/8 of ₦1, 349,877.1 = ₦168, 734.73 for the two wives

=N1, 039,354.595/2 = ₦519, 677.30 for each wife

Total Cash = ₦ 1,349,877.1

Less = ₦1, 181,142.463 for 4 Sons and 5 Daughters

Balance = ₦7, 275,482.165 for 4 Sons and 5 Daughters

4 Sons =8 Daughters

5 Daughters =5

13 working figure

i.e Each Daughter will have ₦90,757.112 worth of the cash while each sons will have twice = ₦181,714.225 worth of the cash.

Review of the Case

The above fractional share is on page 294. It contains two calculation errors as follows:

1. There is error in the fractional share of two wives which is 1/8 of the grand total which is ₦1, 349,877.1. In the above share, ₦168, 734.73is given as the fractional share of the two wives and ₦519, 677.30 for each wife. The calculation is wrong. The correct share of the two wives is₦1, 349,877.1÷8=₦168, 734.63 for two wives while ₦84, 367.31 is for each wife.

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2. The second error is in the fractional share of a daughter, which is given in the above calculation as ₦ 90,757.11. The calculation is wrong.Thecorrect calculation is ₦118, 142.46÷13= ₦90, 857.11. The share of each daughter therefore is =₦90, 857.11.

6.3.3ANNUAL REPORT 2011

3. Distribution of the Estate of Late Alhaji Umar Farook Banni[10]

This estate is on pages 315-35 but we make use of only working papers C and D that start from page 346 to34. The deceased left a total estate worth of ₦201,454,413.07. The heirs are 3 wives that take 1/8 and 25 children, 11 sons and 14 daughters that take the remaining estate.

WORKING PAPER 'C'

FRACTIONAL SHARES OF THE REAL ESTATE DISTRIBUTION

TOTAL ESTATE = N201,454,413.07

$^1/_8$ of ₦201, 454,413.07 = ₦25, 181,801.63. for the 3 wives

₦25, 181,801.635 ÷ 3 = ₦8, 393,933.87 for each wife.

Balance = ₦176,272,611.45 for 11 Sons and 14 Daughters

11 Sons = 22 Daughters

14 Daughters = 14

= 36 Working Figure

i.e each Daughter will have ₦4,896,461.42 worth of the real estate, while each son will have twice (i.e.₦9, 792,922.85) worth of the real estate.

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Summary

1.	Wife =	₦8, 393,933.87	x	3	=₦25,181,801.63
2.	Son =	₦9, 792,922.85	x	11	=₦107, 22,151.43
3.	Daughter =	₦4, 896,461.42	x	14 =	₦68, 550,460.06
		GRAND TOTAL		=	**₦201, 454,413.07**

WORKING PAPER 'D'
GROUP SHARES OF REAL ESTATE DISTRIBUTION

	GROUP 'A'			ENTITLEMENT
1.	Alhaja Sherifat Umar Banni	(wife 1)	-	₦8, 393,933.87
2.	Umar Abdullateef	(Son)	-	₦9, 792,922.85
3.	Umar Lawal	(Son)	-	₦9, 792,922.85
4.	Umar Muritala	(Son)	-	₦9, 792,922.85
5.	Umar Abdulwaheed	(Son)	-	₦9, 792,922.85
6.	Umar Falilat	(Daughter)	-	₦4, 896,461.42
7.	Umar Balikis	(Daughter)	-	₦4, 896,461.42
8.	Umar Moridiyat	(Daughter)	-	₦4, 896,461.42
			TOTAL =	**₦62, 255,099.59**

GROUP 'B ENTITLEMENT

1.	Alhaja Hajarat Umar Banni	(Wife)	=	₦8, 393,933.87
2.	Umar Abdulganiyu	(Son)	=	₦9, 792,922.85
3.	Umar Abdulrahaman	(Son)	=	₦9, 792,922.85
4.	Umar Jamiu	(Son)	=	₦9, 792,922.85
5.	Umar Ramatallahi	(Daughter)	=	₦4, 896,461.42

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6.	Umar Taibat	(Daughter)	=	₦4, 896,461.42
7.	Umar Muinat	(Daughter)	=	₦4, 896,461.42
8.	Umar Hafsat	(Daughter)	=	₦4, 896,461.42
		TOTAL	**=**	**N57, 358,548.16**

GROUP 'C ENTITLEMENT

1.	Umar Lukman	(Son)	=	₦9, 792,922.85
2.	Umar Abdulfatai	(Son)	=	₦9, 792,922.85
3.	Umar Muibat	(Daughter)	=	₦4, 896,461.42
4.	Umar Rasheedat	(Daughter)	=	₦4, 896,461.42
		TOTAL	**=**	**₦29, 378,768.57**

GROUP 'D'ENTITLEMENT

1.	Alhaja Idowu Umar Banni	(wife)	=	₦8, 393,933.87
2.	Umar Abdullahi	(Son)	=	₦9, 792,922.85
3.	Umar Ibrahim	(Son)	=	₦9, 792,922.85
4.	Umar Muslimat	(Daughter)	=	₦4, 896,461.42
5.	Umar Lateefat	(Daughter)	=	₦4, 896,461.42
6.	Umar Salimat	(Daughter)	=	₦4, 896,461.42
7.	Umar Halimat	(Daughter)	=	₦4, 896,461.42
8.	Umar Zainab	(Daughter)	=	₦4, 896,461.42
		TOTAL	**=**	**₦52, 462,086.73**

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GROUP SUMMARY

1.	GROUP 'A'	=	₦62, 255,099.59
2.	GROUP 'B'	=	₦57, 358,548.16
3.	GROUP 'C'	=	₦29, 378,768.57
4.	GROUP 'D'	=	₦52, 462,086.73
	GRAND TOTAL	=	**₦201, 454,413.07**

Review of the case

In the above distribution, the fractional shares are correct but there is a serious error of calculation but the table of final allotment of estate is not given and without the table, it becomes difficult to detect the error. The essence of giving the final table of credit balance and debit balance is to check the correctness of the allotment.

We however give a final table of credit and debit balance based on allotment in the working paper.

S/NO	GROUP	ENTITLEMENT	TOTAL RECEIVED	CREDIT BALANCE	DEBIT BALANCE
1	Group "A"	₦ 62,255,099.59	₦62,157,469.01	₦97,540.58	-
2	Group "B"	₦ 57,358,548.16	₦57,459,840.02	-	₦101,291.85
3	Group "C"	₦ 29,378,768.57	₦29,381,004.99	₦ 2,236.42	-
4	Group "D"	₦ 52,462,086.73	₦54,316,670.39	-	₦1,854,483.65
				₦ 99,777	₦ 1,955,775.5

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The grand total for this estate is 201,454,412.8, and from the above table, the error of this distribution becomes manifest.

Looking at this final table above, it is clear that the error of calculation in this distribution has occurred during the allotment of share of the groups. The following table supplied by us shows the correct allotment.

S/NO	GROUP	ENTITLEMENT	TOTAL RECEIVED	CREDIT BALANCE	DEBIT BALANCE
1	Group "A"	₦ 62,255,009.59	₦60,997,569.2	₦1,257,440.3	-
2	Group "B"	₦ 57,358,548.16	₦57,459,840.02	-	₦101,291.852
3	Group "C"	₦ 29,378,768.57	₦29,381,004.99	-	₦2,236.42
4	Group "D"	₦ 52,462,086.73	₦ 43,984,78	₦ 8,477308.8	-
	TOTAL	₦ 201.454,412.8	₦191,823,19	₦9,734,749.1	₦ 101,294,08

In comparing the two tables above, the following errors have been detected:

1. The total of the estate received by group "A" according to analysis in the report is ₦ 60,997,569.2 as against ₦ 62,157,469.01 in the first table.
2. The total of the estate received by group" D" according to the analysis in the report is ₦ 43,984,78 as against ₦ 54,316,670.39 in the first table.
3. The total of the whole estate is ₦ 201.454, 412.8 and the only allotted properties to the heirs amount to ₦ 191,823,19. The question is; where is the balance of Nine

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million, six hundred and thirty-one thousand, two hundred and seventeen naira (₦9, 631, 21)?

4. **Distribution of the estate of the Late Alhaji S.A.P Laufe** [11]

This estate is personal effects distribution contained on pages 365-397 of2011 Annual Report. The grand total = **₦709,707.20,** shared for 4 wives who share 1/8 among themselves equally and 17 children, 11 sons and 6 daughters who share the remainder as agnatic heirs where a daughter takes half of the share of a son. The detail is as follows:

WORKING PAPER A

LIST OF HEIRS:

GROUP A

1 Alhaji Maryam Laufe - Wife

2 Ahmad olarongbe - Son

3 Isiaka Olayinka - Son

4 Usman Oladimeji - Son

5 Abdulsalam Bolakale - son

6 Afusat Afolawiyo - daughter

GROUP B

1. Alhaja Aishat Laufe Wife
2. Hamidu Afolabi - Son
3. Abdulkadir Oladipo - Son
4. Ahmad Kolapo - Son
5. Hawau Arinola - Daughter

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GROUP C

1. Madam Idowu Laufe - Wife
2. Uthman Olatunji - Son
3. Muhammed Laufe - Son
4. Habibat Oyelodun - Daughter
5. Halimat Olajumoke - Daughter

GROUP D

1. Madam Hajarat Laufe - Wife
2. Issa Agboola - Son
3. Abubakar Kolawole - Son
4. Mariam Olawepo - Daughter
5. Zainab Madamidola - Daughter

This is the correct list given as beneficiaries.

WORKING PAPER C

FRACTIONAL SHARES OF PERSONAL EFFECTS DISTRIBUTION

TOTAL = ₦ 709,707.21

1/8 of₦709, 707.21 = ₦88, 713.40 for 4 wives

₦88, 713.40 – 4 = ₦22, 178.35 for each wife

Balance = ₦620, 993 for 11 Sons 6 Daughters

11 Sons = 22 daughters

6 Daughters = 6

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28 Working Figure

i.e each daughter will have ₦ 22, 178.35 worth of the estate while each son will have twice ₦44,356.70 worth of the estate.

SUMMARY

1. Wife = ₦22, 178. 35 x 4 = ₦88,713.40
2. Son = ₦44, 356.70 x 6 = ₦133, 070. 10
3. Daughter =₦22,178. 35 x 6 = ₦133,07. 10

GRAND TOTAL =₦709,707.20

Review of the case

Looking at the above summary of the fractional shares, there is wrong calculation in the total numbers of the son. The sons are 11 as against 6 given in the report. The correct share of the sons is:

Sons =₦ 44,356.70 x 11=₦487, 923.70.

Another error occurred in the following working paper D is completely wrong:

WORKING PAPER D

Group A		**Entitlement**
1. Alhaja Mariam Laufe	(wife)	₦ 22,178.35
2. Hamidu Afolabi	(son)	₦ 44,356.70
3. Abdulkadir Oladipo	(son)	₦ 44,356.70
4. Ahamed Kolapo	(Daughter)	₦ 22,178.35
Total		₦ 177,426.8

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Group C		Entitlement
1. Madam Idowu Laufe	(wife)	₦ 22,178.35
2. UthmanB Olatunji	(son)	₦ 44,356.70
3. Muhammed Lausa	(son)	₦ 44,356.70
5. Habibat Olajumake	(Daughter)	₦ 22,178.35
6. Halimat Olajumake	(Daughter)	₦ 22,178.35
	TOTAL	**₦ 155, 248.45**

Group D		Entitlement
1. Madam Hajarat Laufe	(wife)	₦ 22,178.35
2. Issa Agbolola	(son)	₦ 44,356.70
3. Abubakar Kolawole	(son)	₦ 44,356.70
4. Mariam Olawepo	(Daughter)	₦ 22,178.35
5. Zainab Madamilola	(Daughter)	₦ 22,178.35
	TOTAL	**₦ 155, 248.45**

The errors contained in working paper D are as follows:

1. For group A, the total given is not correct the group was given ₦177, 426.8 instead of **₦221,783.5**
2. The heirs were divided into four groups as seen in working paper A but provided only three groups: A, C and D when giving the group shares in working paper D while group B is completely missed out.

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3. There is a mix-up of the names of the groups where some names that suppose to be in group A were brought to group D or C and vice-versa. All this led to wrong calculation and giving of wrong total.

The following is the correction of working paper D:

WORKING PAPER D

LIST OF HEIRS:

GROUP A **Entitlement**

1 Alhaji Maryam Laufe	-	Wife	₦ 22,178.35
2 Ahmad olarongbe	-	Son	₦ 44,356.70
3 Isiaka Olayinka	-	Son	₦ 44,356.70
4 Usman Oladimeji	-	Son	₦ 44,356.70
5 Abdulsalam Bolakale	-	son	₦44,356.70
6 Afusat Afolawiyo	-	daughter	₦ 22,178.35

TOTAL₦221,783.5

GROUP B

6. Alhaja Aishat Laufe		Wife	₦ 22,178.35
7. Hamidu Afolabi	-	Son	₦ 44,356.70
8. Abdulkadir Oladipo	-	Son	₦ 44,356.70
9. Ahmad Kolapo	-	Son	₦ 44,356.70
10. Hawau Arinola	-	Daughter	₦ 22,178.35
TOTAL			**₦177,426.8**

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GROUP C

6. Madam Idowu Laufe - Wife ₦ 22,178.35
7. Uthman Olatunji - Son ₦ 44,356.70
8. Muhammed Laufe - Son ₦ 44,356.70
9. Habibat Oyelodun - Daughter ₦ 22,178.35
10. Halimat Olajumoke - Daughter ₦ 22,178.35

TOTAL **₦155,248.45**

GROUP D

6. Madam Hajarat Laufe - Wife ₦ 22,178.35
7. Issa Agboola - Son ₦ 44,356.70
8. Abubakar Kolawole - Son ₦ 44,356.70
9. Mariam Olawepo - Daughter ₦ 22,178.35
10. Zainab Madamidola - Daughter ₦ 22,178.35

TOTAL₦ 155,248.45

CORRECT GROUP SUMMARY

Group A = ₦221,783.5
Group B = ₦177,426.8
Group C = ₦155,248.45
Group D = ₦155,248.45
TOTAL = = ₦ 709,707.21

5 **Distribution of the estate of Late Alhaji Shaykh Muhyiddeen Madele** [12]

This estate is in page 480-512 of 2011 Annual Reports. The grand total of the whole cows to be distributed is **₦ 1,587,000.00.** The heirs are mother who takes 1/6, two wife that

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take 1/8 and three sons and four daughters that share the remainder and a son takes double share of a daughter. The following is the summary of fractional share followed by group summary of cows' distribution and allotment.

SUMMARY

Mother	=	₦264,500.00	x	1	=₦ 264,500.00
Wife	=	₦97,187.5	x	2	=₦ 198.375.00
Son	=	₦204,386.36	x	3	=₦ 613,159,09
Daughter	=	₦102,193.18	x	4	=₦ 510,965.90
		GRAND TOTAL		=	**₦ 1,587,000.00**

GROUP SUMMARY OF COW DISTRIBUTION

GROUP 'A'			**ENTITLEMENT**
1.	Alhaja Aminat S.Muhideen	(Mother)	**₦ 264,500.00**

GROUP 'B'

1.	Alhaja Fatimoh Muhideen	(Wife)	₦ 99,187.05
2.	Sheik Saheed Muhideen	(Son)	₦ 204,386.36
3.	Muhammad Awwal Muhideen	(Son)	₦ 204,386.36
4.	Aminat Muhideen	(Daughter)	₦ 102,193.18
5.	Sofiat Muhideen	(Daughter)	₦ 102,193.18
6.	Aishat Muhideen	(Daughter)	₦ 102,193.18
7.	Kaosarat Muhideen	(Daughter)	₦ 102,193.18
8.	Mariam Muhideen	(Daughter)	₦ 102,193.18
	TOTAL	=	**₦ 1,018,926.13**

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GROUP 'C'

1. Alhaja Hawau Muhideen (Wife) ₦ 99,181.5

2. Sheik Soliu Muhideen (Son) ₦ 204,386.36

Total = ₦ 303, 573.86

DISTRIBUTION/ALLOTMENT

GROUP 'A' **Alhaja Aminat S. Omodele**

ENTITLEMENT **₦ 264,500.00**

S/NO	NO OF COW	VALUE
1.	Big cow female (2no)	₦ 140,000.00
2.	Medium Size (2no)	₦ 100,000.00
3.	Small size (1no)	₦ 30,000.00
	Total Received	**₦ 270,000.00**
Debit Balance ₦ 5,500.00		

GROUP 'B' Alhaja Fatimoh Muhideen and Children

ENTITLEMENT **₦ 1,018,926.13**

S/NO	NAME	NO OF COW	VALUE
1	Alhaja Fatimoh	Big Cow Male(1no)	₦ 90,000.00
2	Sheik Saheed	Medium Size (4no) Baby cow A (1no)	₦ 200,000.00 ₦ 7,000.00
3	Muhammed Awwal Muhideen	Medium size (2no) Pregnant cow (1no)	₦ 100,000.00 ₦ 60,000.00
4	Aminat Muhideen	Medium Size (2no)	₦ 100,000.00
5	Sofiat Muhideen	Medium Size (2no)	₦ 100,000.00
6	Kaosarat Muhideen	Medium Size (2no)	₦ 100,000.00
7	Aishat Muhideen	Medium Size (2no)	₦ 100,000.00
8	Mariam Muhideen	Medium Size (2no) Small Size (1no)	₦ 100,000.00 ₦ 30,000.00
	Total Received	**₦ 987,000.00**	

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Debit Balance	**₦ 31,926.133**

GROUP 'C' **Alhaja Hawau Muhideen and Soliu**

ENTITLEMENT **₦ 303,573.863**

S/NO	NAME	NO OF COW	VALUE
1	Alhaja Hawau Muhideen	Big Cow Male(1no)	₦ 90,000.00
2	Sheik Muhideen	Medium Size (4no) Baby cow A (2no) Baby cow B (2no)	₦ 200,000.00 ₦ 14,000.00 ₦ 12,000.00
		Total Received	**₦ 316,000.00**
		Debit Balance	**₦ 12,426.13**

S/NO	GROUP	ENTITLEMENT	TOTAL RECEIVED	CREDIT BALANCE	DEBIT BALANCE
1	Group "A"	₦ 264,500	₦ 270,000	-	₦ 5,500
2	Group "B"	₦ 1,018,926.13	₦ 987,000	₦31,926.133	-
3	Group "C"	₦ 303,573.86	₦ 316.000	₦12,426.137	
	Total	**N1,586,999.99**	**N1,573,000**	**₦ 44,402.27**	**₦ 5,500**

Review of the Case

From the grand total of the estate which is ₦1,587,000.00, it would be realized that the estate is small. However, the errors contained in its distribution are crucial ones.

Firstly, there are a lot of miscalculations in the table given. The entitlement of group B is ₦919, 738.63, as against ₦1, 018,926.13 given in above table. The balance of group B therefore should be ₦721, 926.13 as against ₦31, 926.13 credit balance given to the group in this table.

This is because the group comprises one wife, two sons and 5 daughters as follows:

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GROUP B	HEIR	ENTITLEMENT
1. Alhaja Fatmoh Muhyideen	Wife	₦ 99,187.5
2. Shaykh Saheed Muhyideen	Son	₦ 204,386.36
3. Muhammad Auwal Muhyideen	Son	₦ 204,386.36
4. Aminat Muhyideen	Daughter	₦ 102,193.18
5. Sofiyyat Muhyideen	Daughter	₦ 102,193.18
6. Aishat Muhyideen	Daughter	₦ 102,193.18
7. Kaosarat Muhyideen	Daughter	₦ 102,193.18
8. Mariam Muhyideen	Daughter	₦ 102,193.18
TOTAL		**₦ 919,738.63**

The total value of cows received by this group is ₦ 897,000 as against ₦ 987,000 given in the first table. Group C on its own case should be debited and not credited.

The following table shows the correct distribution.

S/NO	GROUP	ENTITLEMENT	TOTAL RECEIVED	CREDIT BALANCE	DEBIT BALANCE
1	Group "A"	₦ 264,500	₦ 270,000	-	₦ 5,500
2	Group "B"	₦ 919,738.63	₦ 897,000	₦121,926.13	-
3	Group "C"	₦ 303,573.86	₦ 316.000		₦12,426.13
	Total	₦1,487,812.49	₦ 1,483,00	₦121,926.13	₦17,926.13

On a final note, the total value of all cows that are supposed to be allotted to all groups is ₦1, 587,000whereas ₦1,573,000 is given in the report.

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5.3.4 ANNUAL REPORT 2012

6. **Distribution of the estate of the Late Alhaji Issa Alabi Usman** [13]

The deceased Alhaji Issa Alabi Usman left behind a total estate that worth fourty million naira to be shared among three wives that share 1/8 within themselves equally and fourteen children, four sons and ten daughters who share the remainder where a son takes double share of a daughter. The following is the sharing as contained in the report:

WORKING PAPER 'C'

FRACTION SHARES OF REAL ESTATE DISTRIBUTION

Total Estate = ₦40, 000.000.00

$^1/_8$ of ₦40,000.000.00 = ₦5,000.000.00 for the 3 wives

₦5,000.000.00 ÷ 3= ₦1,666,666.66 for each wife

Balance = ₦35,000.000.00 for 4 Sons and 10 Daughter

4 Sons	=	8	Daughters
10 Daughters	=	10	
		18 working Figure	

i.e each Daughter will have N1,944,444.44 worth of the real estate.While each son will receive twice N3, 888.888.88 worth of the real estate.

Wife	=	₦1,666,666.66	x	3	=	₦5,000,000.00
Son	=	₦3,888,888.88	x	4	=	₦15,555,555.55
Daughter	=	₦1,944,444.44	x	10	=	₦19,444,444.44

GRAND TOTAL = N40, 000,000.00

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WORKING PAPER 'D'

GROUP SHARES OF REAL ESTATE DISTRIBUTION

GROUP 'A'ENTITLEMENT

1	Alhaja Alimotu Issa	Wife		₦1,666,666.66
2	Alhaja Memunat Issa	Daughter		₦ 1,944,444.44
3.	Salamotu A.Issa	Daughter		₦ 1,944,444.44
		TOTAL		**=₦ 5,555,555.54**

GROUP 'B'

1	Hassan Issa	Son		₦ 3,888,888.88
2.	Rasaq Issa	Son		₦ 3,888,888.88
3.	Khadijat Issa	Daughter		₦ 1,944,444.44
		TOTAL	=	**₦ 9,722,222.00**

GROUP 'C'

1	Mariam Issa	Daughter		**₦ 1,944,444.44**

GROUP 'D'

1	Hassanat Issa	Daughter		₦ 1,944,444.44
2	Rihanat Issa	Daughter		₦ 1,944,444.44
		TOTAL	=	**₦ 3,888,888.88**

GROUP 'F'

1	Kudirat Issa	Wife		₦ 1,666,666.66
2	Nimota Issa	Daughter		₦ 1,944,444.44
		TOTAL	=	**₦ 3,611,111.1**

GROUP 'G'

1	Jimoh Issa	Son		₦ 3,888,888.88
2	Salamotu M. Issa	Daughter		₦ 1,944,444.44
		TOTAL	=	**₦ 5,833,333.33**

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GROUP 'H'

1	Rukayat Issa	Daughter		**₦ 1,666,444.44**

GROUP 'I'

1	Ibidun Issa	Wife		₦ 1,666,666.66
2	Issa Issa	Son		₦ 3,888,888.88
		TOTAL	=	**₦ 5,555,555.55**

GROUP SUMMARY

1.	GROUP 'A'	=	₦ 5,555,555.54
2.	GROUP 'B'	=	₦ 9,722,222.00
3.	GROUP 'C'	=	₦ 1,944,444.44
4.	GROUP 'D'	=	₦ 3,888,888.88
5.	GROUP 'E'	=	₦ 1,944,444.44
6.	GROUP 'F'	=	₦ 3,611,111.1
7.	GROUP 'G'	=	₦ 5,833,333.33
8.	GROUP 'H'	=	₦ 1,666,444.44
9.	GROUP 'I'	=	₦ 5,555,555.55

Review of the Case

This estate is on pages 256-294. The table of fractional shares of real estate distribution was not provided which will show the correctness or incorrectness of the distribution. The following final balance sheet however shows the type of error involved in the distribution.

S/NO	GROUP	ENTITLEMENT	TOTAL RECEIVED	CREDIT BALANCE	DEBIT BALANCE
1	Group "A"	₦ 5,555,555,54	₦ 5,800,000	-	₦244,444.46
2	Group "B"	₦ 9,722,222.00	₦ 9,750,000	-	₦ 27,777.78
3	Group "C"	₦ 1,944,444.44	₦ 1,950.000	-	₦ 5,555.56

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4	Group “D”	₦ 3,888,888.88	₦ 3,850,000	-	₦ 38,888.88
5	Group “E”	₦ 1,944,444.44	₦ 1,950.000	**-**	₦ 5,555.56
6	Group “F”	₦ 3,611,111.1	₦ 3,550,000	-	₦ 61,111.1
7	Group “G”	₦ 5,833,333.32	₦ 5,600,000	₦233,333.32	-
8	Group “H”	₦ 1,944,444/44	₦ 1,950.000	-	₦ 5,555.56
9	Group “I”	₦ 5,555,555,54	₦ 5,600,000	-	₦ 44,444.46
	Total	**N40,000,000**		**₦233,333.32**	**₦433,333.36**

The above table represents the distribution made for this estate, which contains some errors. The errors are clearly manifest when the table given above based on the report is compared with the one underneath prepared:

S/NO	**GROUP**	**ENTITLEMENT**	**TOTAL RECEIVED**	**CREDIT BALANCE**	**DEBIT BALANCE**
1	Group “A”	₦ 5,555,555,54	₦ 5,800,000	-	₦244,444.46
2	Group “B”	₦ 9,722,222.00	₦ 9,750,000	-	₦27,777.78
3	Group “C”	₦ 1,944,444.44	₦ 1,950.000	-	₦5,555.56
4	Group “D”	₦ 3,888,888.88	₦ 3,850,000	₦38,888.88	-
5	Group “E”	₦ 1,944,444.44	₦ 1,950.000	**-**	₦5,555.56
6	Group “F”	₦ 3,611,111.1	₦ 3,550,000	₦ 61,111.1	-
7	Group “G”	₦ 5,833,333.32	₦ 5,600,000	₦233,333.32	-
8	Group “H”	₦1,944,444.44	₦ 1,950.000	-	₦5,555.56
9	Group “I”	5,555,555,54	₦ 5,600,000	-	₦44,444.46
	Total	**N40,000,000**	**N40,000,000**	₦ 333,333.3	₦333,333.3

The two main errors are:

1. Group D was debited where itis supposed to be credited.
2. Group F also was debited where it should be credited.

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This type of error has serious implication because the group that should rather be given credit balance is in the report, being debited wrongly.

7. Distribution of the Estate of Late Alhaji Sulaiman Oba Carpenter [14]

This estate is on pages 327-335 of 2012 Annual Report. The deceased left behind two wives who share 1/8 equally and fifteen children, five sons and ten daughters who share the remaining property as agnate heirs while the real estate to be shared worth ₦12,200,000.00. The following is the detail distribution of the estate as contained in the Report:

REAL ESTATE DISTRIBUTION

WORKING PAPER 'A'

LIST OF HEIRS:

Group 'A'

Alhaji Khadijat Sulaiman - Daughter

Group 'B'

1. AbdulGaniyu Sulaiman - Son
2. Iyabo Sulaiman - Daughter
3. Abolore Sulaiman - Daughter
4. Fatimoh Sulaiman - Daughter

Group 'C'

1. Alhaji Sidikat Sulaiman - Wife
2. Tosho Sulaiman - Son
3. Lanre Mustapha Sulaiman - Son
4. Zainab Sulaiman - Daughter
5. Ajarat Sulaiman - Daughter

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6.	Aminat Sulaiman	-	Daughter
7.	Bilikis Sulaiman	-	Daughter

Group 'D'

1.	Kola Sulaiman	-	Son
2.	Ibrahim Sulaiman	-	Son
3.	Suliyat Sulaiman	-	Daughter

Group 'E'

1.	Alhaja Alimat Sulaiman	-	wife
2.	Memunat Sulaiman	-	Daughter

WORKING PAPER 'B'

LIST OF ITEMS OF THE ESTATE AS LISTED IN THE VALUATION REPORT

Property 1: is a 3 bedroom flat and a sitting room located at No.2, Mandate 3, Housing Estate Yidi Road, Ilorin valued at **₦3,000,000.00.**

Property 2: is a storey building located at Surulere Area, Ganmo consists as follows:

House (1):

Ground Floor:

4 no rooms valued at N200, 000.00 each x4= ₦800,000.00

1 no. store valued at = ₦75,000.00

Total = ₦875,000.00

1st Floor

4 no rooms valued at N200,000.00 each x 4= N800,000.00

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1 no. store valued = ₦75,000.00.

Total = ₦875,000,00.

House II:

Is a storey building located at Surulere Area, Ganmo consists the following:

Ground Floor:

4 no rooms valued at N200,000.00 each x 4= ₦800,000.00

1 no. store valued at = ₦75,000.00

Total = ₦875,000.00

1st floor:

4 no rooms valued at N 200,000.00 each x4 = ₦ 800,000.00

1 no. store valued at = ₦75,000.00

TOTAL = ₦875,000.00

House III: is a storey building located at Surulere Area, Ganmo consists as follows.

Ground Floor: (left wing)

1 no sitting room (big) value at =₦300,000.00

3 no. rooms valued at N200,000.00 =₦600,000.00

TOTAL =₦900,000.00

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Ground floor: (right wing)

4 no rooms valued at ₦200,000.00 each x 4 = ₦800,000.00

1st floor: (right wing)

3 no bedroom flat and a sitting room valued at**₦1, 000,000.00**

Property 3: is (Boys Quarters) at the back of the house (1) and beside the house (III) located at Surulere Area, Ganmo consiststhe followings:

(a) At the back of house (1)

4 no rooms and pallor = ₦400,000.00 x 4= ₦ 1,600,000.00

2 no rooms=₦200,000.00 x 2 = ₦400,000.00

Total =₦2,000,000.00

(b) Beside House (III) a storey building:

Ground floor

Mosque and I no store not for distribution

Grand Total=₦12,200,000.00

WORKING PAPER 'C'

FRACTIONAL SHARES OF REAL ESTATE DISTRIBUTION

1/8 of ₦ 12,200,000.00 =₦1, 525,000.00 for the 2 wives

₦1, 525,000 ÷ 2 =₦ 762,500.00 for each wife

Balance = N10, 675,000.00 for 5 sons 10 daughters

5 sons = 10 daughters

10 daughter 10

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20 working figure

i.e each daughter will have N533,750.00 worth of the real estate. while each son will have twice N1, 067,500 worth of real estate.

SUMMARY

4. Wife = ₦762,000 x 2 = ₦1,525,000.00
5. Son = ₦1,067,500.00 x 5 = ₦ 5,337,500.00
6. Daughter = ₦533,750.00 x 10 = ₦ 5337,500.00

TOTAL **N 12,200,000.00**

WORKING PAPER 'D'

GROUP SHARES OF REAL ESTATE

DISTRIBUTION

Group 'A'

ENTITLEMENT

Alhaja Khadijat Sulaiman - daughter N 533,750.00

Group 'B'

1	Abdul Ganiyu Sulaiman	- Son	₦ 1,067,500.00
2	Iyabo Sulaiman	- Daughter	₦ 533,750.00
3	Abolore Sulaiman	-Daughter	₦ 533,750.00
4	Fatimoh Sulaiman	-Daughter	₦ 533,750.00
	TOTAL	=	**₦ 2,668,750.00**

Group 'C'

1	Alhaja Sidikat Sulaiman	-	Wife	₦ 762,500.00
2.	Tosho Sulaiman	-	Son	₦ 1,067,500.00

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3.	Lanre Mustapha Sulaiman	-	Son	₦ 1,067,500.00
4.	Zainab Sulaiman	-	Daughter	₦ 533,750.00
5.	Ajarat Sulaiman	-	Daughter	₦ 533,750.00
6.	Aminat Sulaiman	-	Daughter	₦ 533,750.00
7.	Bilikis Sulaiman	-	Daughter	₦ 533,750.00
	TOTAL		=	**₦ 5,032,500.00**

Group 'D'

1.	Kola Sulaiman	-	Son	₦ 1,067.00
2.	Ibrahim Sulaiman	-	Son	₦ 1,067,500.00
3.	Suliat Sulaiman	-	Daughter	₦ 533,750.00
	TOTAL	=	**₦ 2,668,750.00**	

Group 'E'

1.	Alhaja Alimat Sulaiman	-	wife	₦ 762,500.02.
	Memunat Sulaiman	-	Daughter	₦ 533,750.00
	Total	=	N **1,296,250.00**	

GROUP SUMMARY

1.	Group 'A'	=	₦ 533,750.00
2.	Group 'B'	=	₦ 2,668,750.00
3.	Group 'C'	=	₦ 5,032.000.00
4.	Group 'D'	=	₦ 2,668,750.00
5.	Group 'E'	=	₦ 1,296,250.00
	Grand Total	=	**₦ 12,200,000.00**

PHYSICAL SHARING

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GROUP ‘A’

ALHAJA KHADIJAT SULAIMAN (DAUGHTER) 533,750.00

S/NO	PROPERTIES RECEIVED	
1	Property 2: is a storey building	
	located at Surulere Area, Ganmo	
	House I:	
	1st floor: 2 no rooms	₦ 4, 00,000.00
	1 no store	₦ 75,000.00
	Total received	**₦ 475,000.00**
	Credit Balance	**₦ 58,750.00**

Group ‘B’

ABDDULGANIYU, IYABO, ABOLORE AND FATIMOH SULAIMAN

₦2, 668,750.00

S/NO	PROPERTIES RECEIVED		
1.	Property 2: House II is a storey building		
	located at surulere Area, Ganmo. Consist as follows:-		
	ground Floor:		
	4 no rooms valued at N200, 000.00 each x 4		₦ 800,000.00
	1 no store value at		₦ 75,000.00
	Total	**₦ 875,000.00**	
2.	Property 2: House II is a storey building		
	located at surulere Area, Ganmo shared		
	1st floor: right wing		₦ 1,000,000.00
	Total received	**₦ 2,750,000**	
	Credit Balance		**₦ 81,250.00**

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GROUP 'C'

ALHAJA SIDIKAT SULAIMAN, TOSHO, MUSTAPHA, ZAINAB AND AJARAT SULAIMAN = ₦5,032,000.00

S/NO	PROPERTIES RECEIVED	
1.	Property 1: is a 3 bedroom flat and a sitting room located at No. 2, Mandate 3, Housing Estate Yidi Road, Ilorin valued at	₦3,000.000.00
2.	Property 3: is (Boys Quarters) at the back of house I and beside house III located at Surulere Area, Ganmo	
	consists 4 no rooms and parlour N4,000,000.00 X 2	₦ 1,600,000.00
	2 no rooms N200, 000.00 X 2	₦ 4,000,000.00
		₦ 2,000,000.00
	Total received	**₦ 5,000,000.00**
Credit Balance		**₦ 32, 000, 00**

GROUP 'D'

KOLA IBRAHIM AND SULIAT SULAIMAN =₦2,668,750.00

S/NO	PROPERTIES RECEIVED	
1.	Property 2: is a storey building located at Surulere Area, Ganmo, Consists as follows	
	Ground Floor: (Left Wing)	
	1 No sitting rooms (big) valued at	₦3,000,000.00
	3 no rooms valued at N 2000,000.00 each x 3	₦6000, 000.00
2.	Ground floor: (Right Wing)	
	3 no rooms valued at N200, 000.00 each x 4	₦ 800,000.00
	1st floor: (left wing)	₦ 1,000,000.00
	Total received	**₦ 2,700,000.00**

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Debit Balance **₦ 31,250.00**

GROUP 'E'

ALHAJA ALIMAT AND MEMUNAT SULAIMAN =₦1, 296,250.00

S/NO PROPERTIES RECEIVED

1 Property 2: House 1 is a storey building located at Surulere Area, Ganmo. Consit as follows:

Ground floor:

4 no rooms valued at N200, 000.00 each x 4 ₦ 800.000.00

1 no store valued at ₦ 75,000.00

1st Floor: 2 no rooms ₦ 400,000.00

Total Received **₦ 1,275,000.00**

Credit Balance **₦ 21,250.00**

SUMMARY BALANCE SHEET

S/NO	GROUP	ENTITLEMENT	TOTAL RECEIVED	CREDIT BALANCE	DEBIT BALANCE
1	Group A	₦ 533,750.00	N475,000.00	₦58,750.00	-
2	GroupB	₦ 2,668,750.00	₦ 2,750,000.00	-	N 81,250.00
3	Group C	₦ 5,032,500.00	₦ 5,000,000.00	₦32,500.00	-
s4	Group D	₦ 2,668,750.00	₦ 2,750,000.00	-	₦32,250.00
5	Group E	₦ 1,296.250.00	₦ 1,275,000.00	₦21,250.00	-
	TOTAL	**₦12,200,000.00**	**₦12,200,000.00**	**₦112,500.00**	**₦112,500.00**

Review of the Case

The distribution has two serious errors apart from many typographical errors such as writing millions instead of thousands in many places above.

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1. The first serious error is in allotment of group B:

S/NO	PROPERTIES RECEIVED	
1	Property 2: House II is a storey building located at surulere Area, Ganmo. Consist as follows:- ground Floor:	
	4 no rooms valued at N200, 000.00 each x 4	₦ 800,000.00
	1 no store value at	₦ 75,000.00
	TOTAL	**₦ 875,000.00**
2.	Property 2: House II is a storey building located at surulere Area, Ganmo shared	
	1st floor: right wing	₦1, 000,000.00
	Total received	**₦2, 750,000**
	Credit Balance	**₦ 81,250.00**

The total estate received by this group is₦1, 875,000 not N₦, 750,000 as written above and the credit balance is₦793,750 as against ₦81,250,000 given above.

2. The second error is in the summary balance sheet which has the total received as ₦12,200,000 instead of ₦12,250,000.Of course, the total received should be ₦12, 200,000 and not ₦12,250,000. This error occurs when the total received by group D which is ₦2, 700,000 was written in the balance sheet as ₦2,750.

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This occurred as a result of wrongly adding the total of property 2 which is ₦875, 000 to the real total received which is ₦1, 875,000. These properties are:

House II:

A story building located at Surulere Area, Ganmo which consists:

1st floor:

4 no rooms valued at N 200,000.00 each x4 = N 800,000.00

1 no. store valued at = ₦75,000.00

TOTAL = ₦875,000.00

When we look at the whole properties allotted, it will be realized that the rooms with store of the same worth (₦875,000.00) are four whereas only three were shared leaving one unshared.

5.3.5 ANNUAL REPORT 2013

8. Distribution of the Estate of the Late Barrister Abdul-Mumeen O. Ayinla. [15]

This estate distribution is on pages 267-280. It contains two different distributions namely: vehicle and real distributions. The deceased left behind one wife who alone takes 1/8 and three children, two sons and one daughter that share the remainder where double share of a daughter will be taken by a son. The following is the detail of vehicle distribution worth ₦900, 000.00.

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INDIVIDUAL SHARES OF VEHICLE DISTRUBUTION ENTITLEMENT

	NAME		**ENTITLEMENT**
1.	Hajia Hamudalat A. (Wife)	=	₦112, 500.00
2.	Muhammed Mukhtar A. (Son)	=	₦315, 000.00
3.	Muhammed Mukhtar A. (Son)	=	₦315, 000.00
4.	Mulikat A.A. (Daughter)	=	₦157, 500.00
	GRAND TOTAL	**=**	**N900, 000.00**

PHYSICAL SHARING (BY BALLOTING)

	NAME		**ENTITLEMENT**
1.	Muhammed Mukhtar A. (Son)	=	₦315, 000.00
	Received 1 No. Honda Xterra	=	₦250, 000.00
	Credit Balance	=	N65, 000.00

Muhammed Mubarak A. (Son) = ₦315, 000.00

Received 1 No. Nissan Xterra = ₦650, 000.00

Debit Balance = ₦335, 000.00

Hajia Hamudalat A. (Wife) = ₦112, 500.00

Received Cash as Credit Balance = ₦112, 500.00

Mulikat Abisola A. (Daughter) = N157, 500.00

Received Credit Balance = N157, 500.00

BALANCE SHEET/SUMMARY OF VEHICLE DISTRIBUTION

S/N	NAME	ENTITLEMENT	RECEIVED	CREDIT	DEBIT
1.	Muh'd Mukhatar (S)	₦315,000.00	₦250,000.00	₦650,000.00	₦335,000.00
2.	Muh'd Mubarak (S)	₦315,000.00	₦650,000.00		-

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3.	Hajia Amudalat (w)	₦112,500,00		₦112,500.00	-
4	Mulikat A.A. (D)	₦157,500.00		₦157,500.00	
		₦900.000.00	₦900.000.00	₦335,000.00	₦335,000.00

Review of the Case

Looking at the balance sheet, there are wrong calculations. For instance, if Muhammad Mukhtar is entitled to ₦315, 000 and received ₦250, 000, why is he credited with ₦650,000.00 and also at same time debited too with ₦335,000.00?

Muhammad Mubarak in his own case is entitled to ₦315, 000.00 but received ₦650,000.00, yet nothing is debited against him. However, going through the valuation report above, the errors mentioned as appeared in the above table have been discovered.

We hereunder prepare the correct balance sheet:

S/N	NAME	ENTITLEMENT	RECEIVED	CREDIT	DEBIT
1.	Muh'd Mukhatar (S)	₦315,000.00	₦250,000.00	₦65,000.00	
2.	Muh'd Mubarak (S)	₦315,000.00	₦650,000.00		₦335,000.00
3.	Hajia Amudalat (w)	₦112,500,00		₦112,500.00	-
4	Mulikat A.A. (D)	₦157,500.00		₦157,500.00	
		₦900.000.00	₦900.000.00	₦335,0000.00	₦335,000.00

Though, the estate is well and correctly distributed; the problem is in the balance sheet as could be seen when we compare the one given in the report and the one we prepare.

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9. Distribution of the Estate of the Late Barrister Abdul-Mumeen O. Ayinla.

The second Estate is house distribution for the same above heirs one wife who alone takes 1/8 and three children, two sons and one daughter who share the remainder where double share of a daughter will be taken by a son. The detail is as follows:

REAL ESTATE (HOUSES)

PHYSICAL SHARING (BY BALLOTING)[16]

ENTITLEMENT

Muhammed Mukhtar A. (Son) N32, 550,000.00

Received a 5 No. bedroom bungalow located at

No. 279,, Iju-Ishaga Road, Ifako-Ijaiye , Lagos

State valued at = ₦32, 000.00

Debit Balance = ₦5, 450.00

Muhammed Mukhtar A. (Son) ₦32, 550,000.00

Received a 4 bedroom flat on the first floor

And 2 no. 2bedroom apartment on the ground

Floor located at No. 22, Bola Oshikoya Street

Off, Yakoyo Road, Ojodu, Ogun state value at =

= ₦ 32,000.000.00

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Credit Balance = ₦550, 000.00

Alhaja Amudat (wife)₦11,625,000.00

Received a 2no. 3bedroom flat 1st floor

Located at No. 13, Babanloma Street

Off Rasheed Yekini Road. Gaa – Akanbi

Ilorin valued at = ₦11, 500,000.00

Credit Balance = ₦125, 000.00

Mulikat Abisola A. (Daughter) = ₦11, 500,000.00

Received a 2no. 3bedroom flat

Ground floor located at No. 13, Babanloma Street

Off Rasheed Yekini Road. Gaa – Akanbi

Ilorin valued at = ₦11, 500,000.00

Credit Balance = ₦4,775,000.00

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BALANCE SHEET/SUMMARY OF REAL ESTATE DISTRIBUTION

S/N	NAME	ENTITLEMENT	RECEIVED	CREDIT	DEBIT
1.	Muh'd Mukhtar (S)	₦32,550.00	₦38,000.00	-	₦5,450.000.00
2.	Muh'd Mubarak (S)	₦315,000.00	₦650,000.00		
3.	Hajia Amudalat (W)	₦11,625,000.00	₦11,500,000.00	₦125,000 .00	-
4.	Mulikat A.A. (D)	₦16,275,000.00	₦11,500,000.00	₦157,500 .00	
		N93,000,000.00	₦930,000.000.0	₦5,450,0 00.00	₦5,450,000.00

Review of the Case

This estate distribution is on pages 278-280 of the same 2013 Annual Report and of the same person. This estate is a real distribution of the houses. It however, contains wrong calculations, wrong allotment and poor arrangement.

1. The grand total of the estate is not given as well as the valuation of the estate, which are the two major things in estate distribution. This has adversely affected this estate distribution.
2. Looking at the given balance sheet, it does not correspond withthe physical sharing of the house as seen above.
3. Millions are also written as thousands.
4. There is serious typographical error when Muhammad Mubarak is written as Muhammad Mukhtar. When we compare the following table prepared by us with above one, the errors become manifest:

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BALANCE SHEET/SUMMARY OF REAL ESTATE DISTRIBUTION

S/N	NAME	ENTITLEMET	RECEIVED	CREDIT	DEBIT
1.	Muh'd Mukhtar (S)	₦32,550.000.00	₦32,000,000.00	₦550,000.00	
2.	Muh's Mubarak (S)	₦32,550,000.00	₦32,000,000.00	₦550,000.00	
3.	Hajia Amudalat (w)	₦11,625,000.00	₦11,500,000.00	₦125,000.00	
4.	Mulikat A.A. (D)	₦16,275,000.00	₦11,500,000.00	₦4,775,000.00	
		₦93,000,000.00	₦87,000.000.00	₦6,000,000	

The second shows the total share of individual heir and allotment. The total of the house properties is₦93, 000,000.00 and allotted only₦87,000.000.00.

₦93,000,000.00-₦87,000.000.00= ₦6,000,000 and every beneficiary was credited. The question is: where is the debit balance of ₦6, 000,000?

However, since the list of houses and their valuations are not given as shown above, we could not trace out the balance of ₦6,000,000.

5.3.6 ANNUAL REPORT 2014

10. Distribution of the Estate of Late Alhaji Sanni Babatunde[17]

The estate of Alhaji Sanni Babatunde is on pages of 148-160 of 2014 Annual Report with the grand total estate of ₦17, 221, 111.38 to be shared between 1 wife who entitled to 1/8 and fourteen children, seven sons and seven daughters who are sharing the remaining estate and a son will take double share of a daughter.

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Here is the balance sheet as contained in the Report.

S/NO	GROUP	ENTITLEMENT	TOTAL RECEIVED	CREDIT BALANCE	DEBIT BALANCE
1	Group "A"	₦ 4,430,277.84	₦4,369,861.13	₦60,416.71	
2	Group "B"	₦ 2,953,518.56	₦2,850,138.80	₦103,679.68	
3	Group "C"	₦ 5,907,033.12	₦5,818,194.67	₦88,842.45	
4	Group "D"	₦ 4,430,277.84	₦4,702,916.72		₦252,638.88
		₦ 17,221,111.38	₦17,741,111.319	₦252,638.839	₦252,638.88

To detect the errors contained in this distribution, there is the need to bring down the whole valuation of the estate:

WORKING PAPER B

LIST OF ITEMS OF THE ESTATE AS LISTED IN THE VALUATION REPORTS.

Property 1: located at No. 29, Pakata Road, behind Prison Yard, Ilorin. Consist of 6no. rooms Boys Quarters valued at (₦ 244,444,44 per room) ₦ 244,444,44 x 6 = ₦ 1,446, 666.64

Property 2: located at No. 59, Agbo-Oba Street, Ilorin. Consist of 1no. storey building of 2no. 3 bedroom flat at the ground floor and 2no. 3 bedroom flat at the first floor. Valued as follows:

(a) Ground Floor:

2no. 3 bedroom flat

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(₦ 2,281,250.00 each flat) = ₦ 4,562,500.00

(b) **First Floor:** 2no.3 bedrrom flat (2,281,250.00 each flat) = ₦ 4,562,500.00

TOTAL = #9,125,000.00

(c) Small pieces of land at the back of the house. Valued at = ₦ 375,000.00

Property 3: located at No. 59, Agbo-Oba Street Ilorin. Consist 1no. storey building facing the main road , with 8no. rooms at the ground floor and 8no.rooms at the first floor. Valued as follows:

(a) **Ground Floor:** 8no. rooms at ₦ 273,611.11 each room

₦ 273,611.11 x 8 = 2,188,888.88

(b) **First Floor:** 8no. rooms at₦ 273,611.11 each room

₦ 273,611.11 x 8 = ₦ 2,188,888.88

TOTAL = ₦ 4,377,777.76

(c) **Boys Quarter:** 10no. rooms at ₦ 231,666.7 each

₦ 231,666.7 x 10 = ₦ 2,316,667.00

(d) 1no. room at old family house at ₦ 80,000.00

GRAND TOTAL = ₦ 17,721,111.40

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WORKING PAPER C

FRACTIONAL SHARES OF REAL DISTRIBUTION

Total Real Estate = ₦17,721,111.40

$^{1}/8$ of₦ 17,721,111.40 = ₦ 2,215, 138.92 for the wife.

Balance 15,505,972.48 for 7 sons and 7 daughters

7 Sons =14 daughters

7 Daughters = 7

= 21 Working Figure

i.e each Daughter will have ₦ 738, 379.64 worth of the real estate.

While each Son will have twice ₦ 1,476,759.28 worth of the real estate.

SUMMARY

1.	Wife	= ₦ 2,215,138.92 x 1 = ₦ 2,215,138.92
2.	Son	=₦ 1,476,759.28 x 7 = ₦ 10,337,314.98
3.	Daughter	=₦ 738,379.64 x 7 = ₦ 5,168,657.48

GRAND TOTAL = ₦ 17,721,111.38

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WORKING PAPER D

GROUP SHARES OF REAL DISTRIBUTION

GROUP A			ENTITLEMENT
1.	AbdulMumini Babatunde	(Son)	₦ 1, 476,759.28
2.	Isiaq Babatunde	(Son)	₦ 1, 476,759.28
3.	Amudat Babatunde	(Daughter)	₦ 738,379.64
4.	Baliqees Babatunde	(Daughter)	₦ 738,379.64
		TOTAL =	**₦ 4,430,277.84**

GROUP B

1.	Abubakar Babatunde	(Son)	₦ 1, 476,759.28
2.	Fatimoh Babatunde	(Daughter)	₦ 738,379.64
3.	Salamat Babatunde	(Daughter)	₦ 738,379.64
		TOTAL =	**₦ 2,953,518.56**

GROUP C

1.	Alhaja Medinat Babatunde	(Wife)	₦ 2,215,138.92
2.	AbdulRasaq Babatunde	(Son)	₦ 1, 476,759.28
3.	Ismail Babatunde	(Son)	₦ 1, 476,759.28
4.	Sherifat Babatunde	(Daughter)	₦ 738,379.64
		TOTAL =	**₦ 5,907,037.12**

GROUP D

1.	Sulieman Babatunde	(Son)	₦ 1, 476,759.28
2.	Yusuf Babatunde	(Son)	₦ 1, 476,759.28
3.	Kudirat Babatunde	(Daughter)	₦ 738,379.64
4.	Hassanat Babatunde	(Daughter)	₦ 738,379.64
		TOTAL =	**₦ 4,430,277.84**

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GROUP SUMMARY

1.	GROUP A	=	₦ 4,430,277.84
2.	GROUP B	=	₦ 2,953,518.56
3.	GROUP C	=	₦ 5,907,037.12
4.	GROUP D	=	₦ 4,430,277.84
	GRAND TOTAL	**=**	**₦ 17,221,111.38**

PHYSICAL SHARING OF REAL DISTRIBUTION

GROUP A **ENTITLEMENT** ₦ 4,430,277.84

Property 1: At Pakata Area, Ilorin 2no, rooms at ₦ 244,444.44 x 2 = ₦ 488,888.88

Property 2: At Agbo-Oba I

Grand Floor: 1no. 3 bedroom flat at ₦ 2,281,250.00

Property 3: At Agbo-Oba II

Ground Floor: 2no. rooms at ₦ 273,611.11 x 2 =₦ 547,222.22

First Floor: 2no. rooms at₦ 273,611.11 x 3 = ₦ 820,833.33

Boys Quarter: 1no. room at ₦ 231,666.7

Total Received = ₦ 4,369,861.13

Credit Balanced = ₦ 60,416.71

GROUP B: **ENTITLEMENT** #2,953,818.56

Property 1: At Pakata Area, Ilorin 2no. rooms at ₦ 244,444.44 x 2 = ₦ 488,888.88

Property 2: At Agbo-Oba I

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Grand Floor: 1no. 3 bedroom flat at ₦ 2,281,250.00

1no. room at old family house = ₦ 80,000.00

Total Received = ₦ 2,850,138.80

Credit Balanced = ₦ 103,679.68

<u>**GROUP C**</u> **ENTITLEMENT** ₦ 5,907,037.12

Proper,ty 1: At Agbo –oba I

Fist floor: 1 no. 3 bedroom flat at₦ 2, 281 ,250 .00

Property 2: At Agbo oba II

Ground Floor: 4no. rooms at ₦ 273,611.11 x 4 = ₦ 1,094,444,44.

First Floor : 3no rooms at₦ 273,611.11 x 3 =₦ 820,833.33

Boys Quarter: 7no. rooms = ₦ 1,621,194.67

Total Received = ₦ 5,818,194.67

Credit Balance =₦ 88,842.45

GROUP D: **ENTITLEMENT** ₦ 4,430,277.84

Property 1: At pakata area, Ilorin 2no. rooms at ₦ 244,444.44 x 2 =

Property 2: At Agbo –Oba I

First floor: 1 no. 3 bedroom flat at ₦ 2,281,250.00

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Property 3: At Agbo-Oba

Grond floor: 2no. rooms at ₦ 273,611.11 x 2 = ₦ 547,222.22

First floor: 2 no. rooms at ₦ 273,611.11 x 2 = ₦ 547,222.22

Boys Quarter: 2no. rooms at ₦ 231, 666.7 x 2 = ₦ 463,333.40

Small piece of land at the back of the house at = ₦ 375,000.00

Total received = **₦ 4,702,916,72**

Debit balanced = ₦ 252, 638, 88.

Review of the Case

Every bit of this distribution is correct in terms of the share of individuals and allotment based on total given for the estate, but there is serious error of calculation. There is therefore need to check the whole estate thoroughly.

1. There is wrong calculation in valuation report as reflected above in:

   Property 1: located at No. 29, Pakata Road, behind Prison Yard, Ilorin which consists of 6 rooms (BoysQuarters) valued at (₦ 244,444,44 per room)₦244,444.44 x 6 = 1,446, 666.64

   The wrong calculation here is the total given as ₦ 1,446, 666.64 while the correct is=₦ 1,466, 666.64.

   This total changed the whole total of the estate from ₦17,721,111.38 to ₦17,741,111.38.

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2. Another wrong calculation occurred in the allotment received by group C where 7 rooms were allotted to this group and each one is valued at ₦ 231,666.7 x7 which translates to ₦1,623.666.4. Instead, the figure on the report is ₦1,621,194.67.

These miscalculations have grosssly affected the grand total of the estate and the share of individual heir. The following is the correct share of each heir:

FRACTIONAL SHARES OF REAL DISTRIBUTION

Total Real Estate = ₦17,741,111.38

$^{1}/8$ of ₦17,741,111.38 = ₦ 2,217, 638.92249 for the wife.

Balance ₦15,523,472.4574 for 7 sons and 7 daughters

7 Sons =14

7 Daughters = 7

= 21 Working Figure

i.e each Daughter will have ₦739, 212.974 worth of the real estate.

While each Son will have ₦1,478,425.94 worth of the real estate.

SUMMARY

1. Wife = ₦ 2,217, 638.92249 x 1 = ₦2,217, 638.92249
2. Son = ₦1,478,425.94 x 7 = ₦ 10,348,981.6382
3. Daughter = ₦ 739, 212.971 x 7 = ₦ 5,174,490.8191

Total =₦ 17,741,111.38

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5.3.7 ANNUAL REPORT 2015

11. Distribution of the Estate of Late Alhaji Issa Usman [18]

This Estate is on pages185-194 of 2015 Annual Report.The grand total for the real estate distribution is ₦16,259,000.00 shared among 1 wife that takes 1/8 and nine children, two sons and seven daughters who inherit together as agnant heirs where a son entitled to double share of a daughter.

The estate was well distributed but the only observation is in the share of a daughter on page 190.As a result, we will not bring the whole report; rather we will concentrate only on Kulu (daughter of the deceased) share. The following is what is contained in the Report for Kulu.

Kulu Daughter **Entitlement** **₦1,580,736.11**

Received: property 1 at no 14B Sabojo, Lagos.

1 no room and palour = ₦ 1,440,000.00

CREDIT BALANCE = ₦ 1,40,736.11

Property 3: at Agbo-Oba Area, Ilorin

1 no room =₦ 61,111.11

Total Received =₦ 1,519,625.00

CREDIT BALANCE = ₦ 79,625.00

Review of the Case

1. The Report has it that Kulu received a total of ₦1, 519,625.00 whereas, looking at the allotment of Kulu above on page 190 and calculating carefully, it was discovered that Kulu

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(daughter of the deceased) actually recieved₦1,501,111.00and not₦1, 519,625.00 as reported.

2. The credit balance given above under property 1 as ₦1,40,736.11 is not correct if she received ₦1,440,000.00 of I,580,736.11. The credit balance should be ₦140,736.11.

3. Also,as can be seen above, two different credit balances: (i.e Credit Balance=₦ 1, 40,736.11and Credit Balance= ₦79,625.00) are given thereby creating confusion.

The following is the correct calculation of Kulu share:

Entitlement ₦1, 580,736.11

The first allotment=₦ 1,440,000.00

The second allotment= ₦61,111.11

₦ 1,440,000.00 +₦61,111.11=N 1,501,111.11

Total received =₦1,501,111.11

The credit balance is₦1, 580,736.11-1,501,111.11= 79,625.00

The real credit balance is ₦79, 625.00.

5.4 GENERAL REVIEW

Aside the specific errors noticeable in the individual cases reviewed, there are general observations which are discussed here-under:

1. **Failure to give grand total for the estate distribution**: There are many estate distributions in the Annual Reports where the grand total is not given. A good

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example is the Distribution of the estate of Late Barrister Abdul-Mumeen O. Ayinla.[17] Another example isthe Distribution of the estate of Alh. Yahaya Ganiyu Adisa,**[19]**

It is known by experts in this field that without the grand total of all the estate in question, all workings to that effect will be deemed futile. In addition to this, the share of each heir in a given estate will certainly remain unknown, without the grand total. The implication of this is that the whole work will be appear unprofessional.[20]

2. **Compartmentalization of the distribution:** This is the situation whereby a single estate of a deceased is divided into various segments and each segment is distributed among the heirs independent of others. In the case Alh. Yahaya Adisa, Toyota Corolla valued at ₦600,000, despite that it is not distributable, coupled with the fact that only a heir can posses it without causing harm to others, was earmarked as first distribution; while physical sharing of uncompleted building was earmarked as second distribution and the cash as third distribution, all in a single case. The implication of this is that, the compartmentalization makes the allotment of the property very difficult and causes disorderliness in the distributions.

   For the purpose of clarifications, we hereunder give the distribution of late Alh. Yahaya Adisa`s estate: [21]

(1) **LIST OF HEIRS:** The list of the legal heirs of the deceased was confirmed as follows:-

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GROUP"A'

1. Alhaji Yahaya S. Ayinla — Father
2. Alhaja Juwerat S. Ayinla — Mother

GROUP "B'

1. Mrs Yahaya Rahamat O — Wife
2. Mukhtar Yahaya — Son
3. Fatia Yahaya — Daughter
4. Safau Yahaya — Daughter

(2) LIST OF PROPERTIES:

The list was also confirmed as it was listed in the valuation report.

CASH IN BANK AND AT HAND: was confirmed as follows

(a)	Cash at Hand	= ₦4,134,000.00
(b)	Cash in Bank	=<u>₦2,432,379.00</u>
Total		**<u>₦6,566,379.55</u>**

(4) PERSONAL EFFECTS: Family to take care and report

<u>Distribution /allotment</u>

(a) <u>Vehicle Distribution</u>

<u>List of Vehicle</u>

1 No. Toyota Corola = N600,000.00

1/6 of ₦600,000.00 = ₦100,000.00 for the father

1/6 of ₦600,000.00 = ₦100,000.00 for the mother

1/8 of ₦600,000.00 = ₦75,000.00 for the wife

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Balance ₦325,000.00 for 1 Son and 2 Daughter

1 Son	=2	
2 Daughter	=2	4

i.e each Daughter will have ₦81.250 worth of the vehicle.

while son will have twice ₦162,500.00 worth of the vehicle.

SUMMARY

1.	Father	=	₦100,000.00	x1	= ₦100,000.00
2.	Mother	=	₦100,000.00	x1	=₦ 100,000.00
3.	Wife	=	₦75,000.00	x1	= ₦75,000.00
4.	Son	=	₦162,500.00	x1	= ₦162,500.00
5.	Daughter	=	₦81,250.00	x2	=₦162,500.00

GRAND TOTAL = ₦600,000.00

WORKING PAPER 'D'

INDIVIDUAL SHARES OF VEHICLE DISTRIBUTION

GROUP 'A'		**ENTITLEMENT**
1.	Alhaji Yahaya S.Ayinla	Father ₦100,000.00
2.	Alhaja Juwerat S. Ayinla	Mother ₦100,000.00
	TOTAL	= **₦200,000.00**

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GROUP 'B'			ENTITLEMENT
1.	Mrs. Yahaya Rahmat O	Wife	₦75,000.00
2.	Mukhtar Yahaya	Son	₦162,500.00
3.	Fatai Yahaya	Daughter	₦81,250.00
4.	Safau Yahaya	Daughter	N81,250.00
	Total		**=₦400,000.00**

Physical Sharing of Vehicle Distribution

Mrs. Rahmat Yahaya (Wife) Entitlement = ₦75,000.00

Received = 1 No. Toyota Corola value at ₦600.000.00

Debit Balance = ₦525,000.00

REAL (HOUSE) DISTRIBUTION

LIST OF HOUSE (S) AND FRACTIONAL SHARES

House: uncompleted valued at N4,000,000.00 4 no bedroom located at Offa Garage Area Ilorin.

1/6 of ₦4,000,000.00= ₦666,666.66 for father

1/6 of ₦4,000,000.00= ₦666,666.66 for the mother

1/8 of ₦400,000.00=₦500,000.00 for the wife

Balance ₦2,166,666.68 for 1 son and 2 daughters

1 son =2

2 daughter = 2

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4 w.f.

i.e each daughter will have ₦541,666.67 worth of the real estate.

while son will have twice ₦1,083,333.34 worth of the real estate.

SUMMARY

1.	Father	= ₦666,666.66 x1 =₦666,666.66
2.	Mother	= ₦666,666.66 x1 =₦666,666.66
3.	Wife	= ₦500,000.00 x1 =₦666,666.66
4.	Son	= ₦1,083,333.34 x1 = ₦1,083,333.34
5.	Daughter	= ₦541,666.67 x2 = ₦1,083,333.34

Grand Total = ₦4,000,000.00

WORKING PAPER 'D'

INDIVIDUAL SHARES OF REAL DISTRIBUTION

GROUP 'A'		**ENTILTEMENT**
1.	Alhaji Yahaya S. Ayinla	Father = ₦666,666.66
2.	Alhaja Juwerat S. Ayinla	Mother = ₦666,666.66
	TOTAL	**₦1,333,333.32**

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GROUP 'B'		ENTITLEMENT
1.	Mrs. Yahaya Rahmat O	Wife = ₦500,000.00
2.	Mukhtar Yahaya	Son = ₦1,083,333.34
3.	Fatai Yahaya	Daughter = ₦541,666.67
4.	Safau Yahaya	Daughter = ₦541,666.67
	TOTAL	= **₦2,666,666.68**

Physical Sharing Of Real House Distribution

Father, Alhaji Yahaya S. Ayinla, Mother Alhaja Juwerat S. Ayinla and Wife Mrs. Yahaya Rahmat O. unanimously agreed to give their shares in the real house distribution to the children of the deceased. The house is an uncompleted 4 no bedroom flat located at Offa Garage Area, Ilorin. Valued at ₦4,000,000.00.

(c) CASH DISTRIBUTION

Available Cash and Fractional Shares

(1) Cash at Hand = ₦4,134,000.00

(2) Cash in Bank = ₦2,432,379.55

₦6,566,379.55

Less = ₦100,000.00 For family use

Balance = ₦6,466,379.55 For distribution.

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1/6 of ₦ 6,466,379.00 =₦ 1,077,729.92 for the father

1/6 of ₦ 6,466,379.00 =₦ 1,077,729.92 for the mother

1/8 of ₦ 6,466,379.00 =₦ 808,297.37 for the wife

Balance ₦ 3,502,622.34 = for 1 son and 2 daughter

1 son = 2

2 daughter =2

i.e each Daughter will have ₦ 875,655.58 worth of the cash.While son will have twice ₦ 1,751,311.17 worth of the cash.

SUMMARY

1.	Father	=₦ 1,077,729.92	x 1 =₦ 1,077,729.92
2.	Mother	=₦ 1,077,729.92	x 1 =₦ 1,077,729.92
3.	Wife	=₦ 808,297.37	x 1 =₦ 808,297.37
4.	Son	=₦ 1,751,311.17	x 1 =1,751,311.17
5.	Daughter	=₦ 875,655.58	x 2 =₦ 1,751,311.17

Grand Total = **₦6,466,379.55**

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WORKING PAPER 'D'

INDIVIDUAL SHARES OF CASH DISTRIBUTION

GROUP 'A'		ENTITLEMENT
1. Alhaji Yahaya S. Ayinla	Father	₦ 1,077,729.92
2. Alhaja Juweratu S.	Mother	₦ 1,077,729.92
Total **₦2, 155,459.84**		

GROUP 'B'			ENTITLEMENT
1.	Mrs. Rahmat Yahaya	(Wife)	₦ 808,297.37
2.	Mukhtar Yahaya	(Son)	₦ 1,751,311.17
3.	Fathia Yahaya	(Daughter)	₦ 875,655.58
4.	Safau Yahaya	(Daughter)	₦ 875,655.58
	Total	=	**₦ 4,310,919.71**

This estate of Alhaji Yahaya Adisa is on pages 197 – 205. It contains three properties namely:

1. Toyota Corolla valued at ₦600, 000,
2. Uncompleted building valued at ₦ 400,000 and
3. Cash at Hand and Bank ₦ 6,566,379.55

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Instead of embarking on distributions of these properties one by one, they can be totalled together and distributed. The distribution will be in order and the wrong method of compartmentalization will be avoided.

The following is an abstract of proper way for distributing this estate:

i **Estate**

- Uncompleted House - ₦4, 000,000.00
- Toyota Corolla - ₦600, 000.00
- Cash at Hand - ₦4, 134,000.00
- Cash at Bank - ₦2, 432,379.55

ii **Grand Total - ₦ 11,166,3779.55**

iii **Legal share of each heir**

- Father - ₦1, 861,063.00
- Mother - ₦1, 861,063.00
- Wife - ₦1, 395,797.00
- Son - ₦3, 024,277.00
- 2 daughter - ₦1, 512,113 for each

iv Detailed share of each heir

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Group A

	1 son and 2 daughters -		₦6, 048,554.00
-	Uncompleted House	-	₦4, 000,000.00
-	Cash	₦2, 048,453.00	
-	Son		₦1, 024,226.5
-	Each daughter	-	₦512, 113.00

Group B

-	**Wife**	**-**	**₦1, 395,797.00**
-	Corolla		- ₦600, 000.00
-	Cash		- ₦795, 797.00

Group C

-	**Father/Mother**	**₦3,722,130.00**	
-	Father -	Cash	₦1, 861,065.00
-	Mother-	Cash	₦1, 861,065.00

It is observed that this estate should have been one of the easiest estate distributions for the year under review, but due to compartmentalization and failure to provide grand total for the whole estate, it constitutes one of the crookedly executed estate for the year under review.

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5.5 Conclusion

It is expedient and germane to submit by way of conclusion that, the position of inheritance as a segment of *Sharīᶜah* cannot be overemphasized. It is no doubt an instrument used by Islam to break the capitalistic monopoly of wealth in the society. Legacy distribution strengthens brotherhood ties among relatives, because once a member dies; the position of the other relatives is thus recognized.It will be sad therefore to find the fruits of one's efforts being taken over by undeserving elements, as it will also be sad to find any inadequacy or injustice in the process of distribution in the name of mistake or miscalculation.Therefore, much attention must be paid to estate calculations and distributions; thorough checking of the credit and debit balance before allotment of share to the beneficiaries in order to ensure that justice prevails.

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Notes and References on Chapter Five

1 This is due to the fact that the cases were handled by qualified and knowledgeable justices and scholars.
2 An interview with Honourable Justice Abdur- Raheem Ibrahim of Kwara State *Sharīcah* Court of Appeal, Ilorin on 20/7/2017.

3 *ibid*.

4 An interview with the Secretary of the Estate Distribution Department, Mr. Mashood Gbalasa, Kwara State *Sharīcah* Court of Appeal, Ilorin, on 29/8/2017

5 An interview with Alhaji AbdulRazaQ Ibiyinka,Kwara State *Sharīcah* Court of Appeal, Ilorin, on 29/8/2017.
6 An interview with Honourable Justice Abdur- Raheem Ibrahim of Kwara State *Sharīcah* Court of Appeal, Ilorin on 8/8/2017.

7 *Sharīcah* Court of Appeal, 2012 Annual Report, 325-338
8 *Sharīcah* Court of Appeal, 2008 Annual Report, 147-159
9 *Sharīcah* Court of Appeal, 2010 Annual Report, 271-299

10 *Sharīcah* Court of Appeal, 2011 Annual Report, 315-358
11 *ibid.* 365-397
12 *ibid*, 480-524
13 *Sharīcah* Court of Appeal, 2012 Annual Report, 258-296
14 *ibid* 327-335
15 *Sharīcah* Court of Appeal, Annual Report 2013, 267-280
16 *ibid.*

17 *Sharīcah* Court of Appeal, 2014 Annual Report, 432-446
18 *Sharīcah* Court of Appeal, 2015 Annual Report, 185 -194

19 *Sharīcah* Court of Appeal, 2015 Annual Report, 197 – 205

20 As-Sābūnī M. A., *Mawārīth fi 'sh-Sharīcati 'l-'Islāmiyyah calā daw'il-Kitāb was-Sunnah*. (Damshiq: Darul-Qalam. 2005),124
21 *Sharīah* Court of Appeal, 2015 Annual Report, 197 – 205

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CHAPTER SIX

SUMMARY, FINDINGS, RECOMMENDATIONS AND CONCLUSION

6.0 Introduction

This chapter serves as the concluding part of the study. It gives a brief summary of the issues discussed in the preceding chapters. The chapter, after the summary, also states the findingsof the study, gives recommendations and suggests areas for further research.

6.1. Summary

The introductory chapter of this research work comprises the general background of the entire work. It discusses the statement of the problem, highlighting how Muslims today fight over the distribution of the property of a deceased person and how such has become a serious societal problem that requires profound attention. The aims and objectives of the research work were also analyzed in the chapter. The justification for the study is also stated as well as the scope and limitation. The chapter also contains literature review of relevant materials used in the study. The method adopted, detailing the plan of the thesis, is also contained in the introductory chapter.

Chapter two discusses the definition and importance of *Sharīcah* to Muslims. It focuses on the history of *Sharīcah* (Islamic legal system) in Nigeria, which is as old as the history of Islam in the country. It states that Islamic law in its totality was operational in what later became northern Nigeria before the advent of the British who tried to scrap it completely. The scheming which led to the reduction of the Islamic legal system from full fledged legal system to ordinary law of personal matters called "Islamic personal law" while the criminal aspect of the legal system was totally expunged and replaced by the

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penal code. The chapter extensively discusses the establishment of *Sharīᶜah* Courts in Nigeria since the introduction of English legal system in Nigeria in 1876, which has been operating side by side with the Islamic law.

The chapter also traces the evolution of the legal system and revealed that the current court system originated from the Islamic law but gradually replaced by the colonial imported laws. This is done to enable a proper functioning of the British law and subject the Islamic law of the people to tests of repugnancy in order to be acceptable in the English introduced courts. Challenges facing *Sharīᶜah* Courts in Nigeria ranging from categorization of Islamic Law as Customary Law, Colonial Mentality, Position of *Sharīᶜah* in the Nigerian Constitution, problem of unqualified judges and Validity Test are equally discussed. Chapter three discusses the evolutionary trends of Kwara State *Sharīᶜah* Juridical Courts with focus on the history and structure of Area Courts, jurisdiction of Area Courts and qualifications of Area Court Judges. It also deals with history of Kwara State *Sharīᶜah* Courts of Appeal, qualifications of *Sharīᶜah* Courts of Appeal Kādis and Grand Kādi.

Chapter three discusses the *Fiqh* provisions on Islamic law of inheritance, tracing the historical development of Islamic law of inheritance starting from the issues of inheritance under the pre-Islamic Arabian customs. It explains the Arabian inheritance system during the Advent of Islam but before revelation of the verses that specifically deal with inheritance, detailing how to distribute a deceased property after his death and to whom the properties of the deceased person shall devolve. Then inheritance according to the Qur'anic provisions and *hadīth* of the Prophet (S.A.W) is also discussed under this chapter. The history and reason behind the revelation of the verses dealing with inheritance

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is also highlighted; but before that, inheritance based on brotherhood under Islamic law and abrogation after the revelation is also discussed.

The chapter also analyses the grounds and conditions upon which right of inheritance can be established under Islamic law. The essentials of inheritance, that is, the deceased person himself, his property and the heirs of inheritance are itemized and discussed. The grounds upon which an heir may claim the right of inheritance, i.e. marriage, blood relationship and clientage are also itemized. Impediments to inheritance under Islamic law are equally discussed. The chapter also highlights the Islamic guidance before distributing the deceased's estate under which issues such as settling of debts, funeral expenses and wills of the deceased are discussed.

Chapter four and five of this work are review of some cases presided over by the Kwara State Area Courts and *Sharīᶜah* Court of Appeal. The contribution of Kwara State *Sharīᶜah* Court of Appeal on estate distributions by establishing the Estate Distribution Department, which maintains peace and harmony among the Muslim populace by distributing the estate out of litigation, is also recognised.Some errors contained in the estate distribution done by the courts are identified and corrected.

Finally, chapter six (i.e. the concluding chapter) gives summary of the entire work, its findings and recommendations. The chapter also identifies areas of further studies.

6.2. Findings of the study

Knowledge of estate distribution is a somewhat technical one that requires expertise. One with half baked knowledge will do more harm than good. Our findings in

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the reviewed cases in chapter five shows that while some judges in the Area Courts in Kwara State have requisite knowledge of estate distribution; there are a few others who have shallow knowledge. A vivid example is the judge that shared the estate of Alh. Muhammadu Mando Vs Alh. Awawu (Manu) joro[1] who gave the same share to both male and female as against the Qur'anic provision that a male should take double of the female shares.

However, when the competence of Area court judges in handling estate distribution cases is compared with that of the justices in the *Sharīᶜah* Courts of Appeal, it was found that the Kādis in the *Sharīᶜah* Courts of Appeal are more competent. This finding is evident in the fact that, of the number of cases of inheritance decided by the *Sharīᶜah* Courts of Appeal between 1994-2015, only 11 cases have issues, which are either typographical or miscalculation errors, and not due to incompetence. Unlike some cases in the Area Courts which are purely due to incompetence.

Findings also reveal that one of the major problems identified in the reviewed cases is failure of trial courts to employ the services of property valuation experts *(Mukhbir)* and as such, properties that ought to be valued are distributed to heirs not putting into consideration their value based on location, sizes etc. A good example of this is the case of Abibat Salami Vs Ramata Salami, Issa Salami and Sifawu Salami.[2]

Another finding is the failure of trial courts in some instances to give listening ears and carry out proper investigation on some claims of the parties. An apt example of this is the case of Abibat Salami Vs Ramata Salami, Issa Salami, and Sifawu Salamiwhen the defendant claimed that she joined hand with their deceased father to build an eight room

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apartment.[3] The trial court refused to put the claim into consideration and refused to investigate the truth behind the claim in order to establish the true picture of the claim before going to distribution exercise.

Findings also reveal that virtually all the estates distributed in the reports of Kwara State *Sharīᶜah* Court of Appeal are characterized with grouping. Although, it is understandable that the justification for grouping is as result of making attempt to conform to the cultural reality. This is acceptable since the *Sharīᶜah* does not go against custom that seems to breed general interest. It is therefore appropriate to merge siblings from same mother in a property than doing otherwise. Nevertheless, it is observed that such grouping in the case of Estate Distribution of Kwara State *Sharīᶜah* Court of Appeal has three major defects that make it unacceptable to the principles of Islamic Inheritance Law:

i. **Indiscriminate use of grouping:** Grouping should be resorted to only if there is no alternative. The general principle is that each heir is entitled to his/her share independent of others. Resorting to grouping should only come after the futility of the general principle. Going through the reported estate distribution, it is glaring that grouping is fast becoming the principle that characterizes all the distributions. It is also observed that in some estate distributions wherein it is very possible for each heir to get his share separately, the heirs were still subjected to un-necessary grouping. This is evident in the cases of Alhaji. Ahmed Olumoh,[4] and Alhaji Abubakar Amasa Jidda.[5]

ii. **The grouping does not fulfill the principle of Islamic Inheritance**: We observe that the share of each heir is not definite and distinct in the grouped property. Heirs who are not of the same rank and shares are grouped together

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with equal access to the property in question. This is evident in all the reviewed cases in the Report.

iii. **Partial introduction of *Idi-igi* system:** It seems that the concept of *Idi-igi* of Yoruba culture whereby estate is distributed on the number of wives that a deceased left is still manifesting in the grouping method whereby a wife and her children are seen as group 'A' and another wife and her children are seen as group 'B'. This is evident in all the cases in the Reports.

6.3. Recommendation

In the light of the above findings, it could be recommended as follows:

i. When appointing lower court judges, the Judicial Service Commission concerned should appoint judges, who have knowledge of the Islamic law, especially the Islamic law of inheritance. A clear legislation affecting Islamic civil cases should be made having only competent judges of Islamic law administering them from the court of first instance to the apex court. We wish to reiterate in this regard that English-style laws should be administered exclusively by the Magistrate courts, customary law by customary courts and Islamic law by *Sharīᶜah* courts. Furthermore, the general supervision of the Area Courts should be given to the Grand Kādi as head of the *Sharīᶜah* Court of Appeal, the court to which appeals from *Sharīᶜah* Courts lie, while the Chief Judge supervises the Magistrate courts, appeals from which lie to the High Court.

ii. Concerning the issue of valuation, the trial courts judges should give special priority to the reduction of all the items of the estate to Naira and Kobo for convenience in

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order to attain justice on the matter. This is in accordance with the provision of principle of inheritance thus:

> يكـال أو يـوزن فاقسم عدده على العدد الذي صحت منه الفر يضة وإنكان المال مما يعد أوكان عروضا أو عقارافيقـوم وتقـسم قيمته
>
> If the estate is countable or it is an item that can be measured or weighed, then distribute it according to the ordinance of estate sharing in Islamic Law, but, if they are other assets or landed property place value on them.[6]

iii. Trial court should give listening ears to the parties before delivering its decision. The Law says:

> ولا يحكم القاضي حتى يسمع تمام الدعوى والبينة ويسأل المدعى عليه لك مدفع؟
>
> The trial judge will not deliver his verdict on any matter until he listens to all the statements of claims and evidence in their support. He then asks the defendant: Do you have any defense?"[7]

iv. With regard to grouping, there is the need to exercise some restraints so that some heirs with high shares would not be shortchanged for being grouped together with heirs withlow shares. It is also recommended that heirs with same share should be considered for grouping.

However, where necessity calls for otherwise, certain criteria should be set for indentifying whose shares supersede others in the given estate. For instance, heirs who show interest in being grouped together regardless of mother variance

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should be grouped together. This will go a long way in tightening and further strengthening family affinity which the Qur'an advocates for in Chapter 49 verse10.

v. Kwara state government should renovate all dilapidated courts in order to create conducive environment for Islamic judicial system. It was observed that some of the Area Courts visited in Kwara state are not conducive for carrying out the judicial assignment effectively as expected.

vi. The Area Courts in the State should endeavor to publish reports contain the judgments given by the judges of these courts as undertaken in Kwara State *Sharīᶜah* Court of Appeal. Kwara State government should provide enough funds for the Area Courts to ease the challenges of improper documentation facing them.

vii. A summarized report of the estate distribution duly stamped and signed by the court should be given to individual heir for record purposes.

Apart from the above recommendations all of which have direct bearing on the study, the following general recommendations to enhance *Sharīᶜah* application and implementation in Nigeria generally and Kwara State in particular are neccssary:

i. The jurisdiction of *Sharīᶜah* juridical courts in Nigeria should be expanded to cover all aspects of *Sharīᶜah* laws including the criminal laws. This will accommodate protections for the accused one while promoting society`s interest in crime detection and prevention and focuses on efficient prosecution and conviction of the guilty while trying to minimize the possibility of unjust convictions.

ii. The introduction of the Islamic Inheritance Law in the form of written laws (statutes) is needed. The laws can be used as guidelines and common practises

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in the *Sharīᶜah* Courts, Islamic institutions or property management agencies, Islamic Law legal practitioners, corporate companies, trustees and Muslims in Nigeria in general.

6.4. Areas for Further Research

This study has focused mainly on inheritance cases decided upon by both the Area courts and *Sharīᶜah* Court of Appeal in Kwara State with a view to ascertaining the correctness or otherwise of the courts` decisions and distribution of deceased`s estates.

Since virtually all the states in northern part of Nigeria have Area Courts and *Sharīᶜah* Court of Appeal entertaining cases of inheritance, further research into the operations of the courts in these states *vis-a-vis* inheritance could be carried out. This will reveal the competence of the judges who handled inheritance cases in those states and also be a good ground to compare the competence and meticulousness of the judges and the courts.

Also, there is the need to extend the research to other collective and individual bodies that, in their capacity, deal with inheritance issues in order to check the correctness of their services and at the same time encourage them to increase their good services in enhancing the decree of Allah among the Muslim communities.In addition, the existence of *Sharīᶜah* Panels in some south-western States which also handle cases of inheritance call for a similar study in that respect with a view of ascertaining the level of competence and meticulousness of the judges in these *Sharīᶜah* Panels.

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5.5 Conclusion

In conclusion, Islamic System of inheritance is a divinely ordained and the most equitable system of inheritance. It allows both strong and weak relatives of the deceased person to inherit out of his estate accordingly. The system of inheritance under Islamic law is essentially meant to protect the rights of the weak members of the deceased relatives, such as female, minors, insane etc. against the injustices of the pre-Islamic period.

In the light of the above, we wish to encourage Muslim students, lawyers, judges etc to acquire the knowledge, following the instruction of Prophet Muhammad (S.A.W) as reported by Abu-Hurayrah thus: "Learn the knowledge of inheritance and teach it to others because it is half of knowledge and it is easily forgotten and it is first knowledge to be lifted from my `*Ummah*."[8]

Abdullah ibn Mas^cud also reported that the prophet (S.A.W) said to him:

> Acquire the knowledge and impart it to the people. Acquire the knowledge of *Farā'id* (laws of inheritance) and teach it to the people, learn the Qur'ān and teach it to the people; for I am a person who has to depart this world and the knowledge will be taken away and turmoil will appear to such an extent that two people will not agree in regard to a case of inheritance distribution and find none who would decide between them.[9]

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References on Chapter Six

1 Area Court Kosubosu in Baruteen Local Government of Kwara State. Judgments file of 9th January, 2004
2 2nd Upper Area Court. Oloje Ilorin, Judgments file, 1st September, 2006, 12
3 *ibid* p 3.
4 *Sharīcah*Court of Appeal, 2015 Annual Report, 220-225
5 *Sharīcah*Court of Appeal, 2015 Annual Report, 232-255.
6 Az-Zāhirī, S. *Jawāhiru 'l-'Iklīl* (Cairo, Dārul-Fikr (N.D.) ,165
7 Al-Kashnawi A. H. '*Ashalu 'l- Madārik*, p. 240
8 Ibn Mājah, *Sunanu Ibn Mājah* (Hadīth 2790, Vol 2). (Beirut: Dāru 'Ihyā'I 't-Turāthi 'l-cArabi (ND), p. 908.
9 At-Tirmidhī, *Sunanu 't-Tirmidhī*(Hadīth 329, Vol. 4). (Beirut: Dāru 'Ihyā'I 't-Turāthi 'l-cArabi (ND),p. 90

المنارة للاستشارات
www.manaraa.com

Bibliography

A. Arabic Books

[c]Abdul-Fattah, M. M. *Al-Fiqhu `l-Muyassar Mina `l-Qur`ān Wa `s-Sunnah.* Ed. Reima Y. Shakeir. Egypt: Dāru `l-Manārāh, 2004.

[c]Abdul-hamid, M. S. *Rahabbiyyatu Fī'ilmi `l Mawārīth,* (NP)2006.

Abu-Al-Hamid, M.M. *'Ahkāmu 'l-Mawārīth Fī 'sh-Sharī[c]ati 'l-'Islāmiyyah [c]alā 'l-madhāhibi 'l- 'a'immati 'l-'Arba[c]ah.*Beirut: al- Maktabah al-Asriyyah. 2004

Abu `Isa, M. ibn [c]Isa At-Trimidhī, *Al-Jām1[c]u `s-Sahih,* Beirut: 2007.

Abu Zahrah, M. *al- Mīrāth [c]inda 'l- Ja[c]fari 'l- Jamhuriyyati 'l Islāmiyyah*, `Iran, 1404.

Abu-Zahra, M. *Ahkāmu Tarika Wa `l-Mawārīth.* Beirut Lebanon: Dārul Fikrul Arabi, 2004.

Al-Azhari, S.A. *Jawāhiru `l-Iklīl Sharh Mukhtasari `l- Khalīl, Vol. 2,* Cairo Northern: (NP) (N.D).

Al-Bukhārī, M. A.[c]A.*Sahīhu 'l-Bukhārī, (Vol 12).* Beirut:Dāru `l-Fiqr, 1430AH.

[c]Aliyu, A. *Al-Hāsiyatul Adawī,* Dāru `l Fikr, Beirut Lebanon: (NP) (N.D)

Al-Jazairī, Abubakar Jabir.*Minhājul-Muslim.*Beirut: Dārul-Fikr, 2005.

Al-Kashnawī, A. H. *Ashalul- Madārik* , (N.D)

Al-Manāwī, *Faidul-Qadīr*, (vol 2).Dāru `l-Kutubi `l-[c]Ilimiyyah. (ND)

Alqadi, H.A.B. *Subulu 's-Salām Sharhu Bulūghu 'l-Marām Min Jāmi[c] `I-'Adillati 'l-'Ahkām.* Beirut: Lebanon, Darul Fikr, 2000

Al-Qushairy, M. I. H. *Sahīhu Muslim,* Cairo: (NP) 1430AH.

Al-Zuhaylī, W. *al-Fiqh al-islami wa adillatuh.* Damsyiq: Dāra `l-Fikr. 2008.

Al-Zuhaylī, M. *Al-Farāid wa `l-Mawārīth Wa `l-Wasoya*. Damsyiq: Dāru`l-Kalim al Tayyib. 2007.

An-Nasā'ī, *Sunanu 'n-Nasā'ī'l-Kubrā*, Beirut Lebanon: Dāru `l Fikr, (N.D)

As-Sābūnī, M. A., *Mawārīth Fi 'sh-Sharī[c]ati 'l-'Islāmiyyah [c]Alā Daw'il-Kitāb was-Sunnah*. Damshiq: Dāru `l-Qalam. 2005.

المنارة للاستشارات
www.manaraa.com

As-Sāyis, M.A. *Tārīkhi `l-Fiqhi `l-Islāmī.*Egypt: Maktabah Muhammad Ali Sabih. (ND)

Ash-Shabalanjī, M. *Nūrul-absār Fī Manāqibi ālin-Nabiyyil-Mukhtār,* Cairo: Dāru `l-Fikr 1434

Ashur, M. *ᶜIlmul Mīrāth*, Maktabatu *Qur`ān*, (N.D),

Attasuliyu, A. *Al-bahjatu Fī Sharhi-Tahfa*, Dāru `l Islami 2003

At-Tirimidhī, *Sunnanu `t- Trimidhī* (Hadīth 329, Vol. 4). (Beirut: Dāru `Ihyāi `t-Turāthil-Arabi (ND)

Azzahiriyy, *SarihJawāhiri `l-Iklīl* Cairo: (NP) (N.D.)

Al-Qayrawanī, I. *Risāla,* (NP) (ND)

Al-Qushairy, M. H.*Sahīhu Muslim,*Cairo: (NP) 1432 AH.

Al-Qurdabī, M. *Bidāyatul-Mujtahid Wanihāyatu `l-Mugtasid*, Vol.2, Beirut Lebanon: Dāru `l -fikr 1975

Arif, M. *Khulāstu ᶜIlmu `l-Frāid* (NP) 2002.

Badran, B. *Al-Mīrāth Wa `l-wasiyyah Wal Hibah*, Egypt, (N.D).

Dibawī, *Khulāstu ᶜIlmu `l Farā'id* Cairo: Dāru `s-Salam, 2004.

Faozan, S. A. *Al-Mulakhkhas Al-Fqhi*, (N.D.)

Galandanci,A.S. *Harakatu `l-Lugati `l-Arabiyyah wa `l-Adabiyyah Fin-Nijiriyah, 1804-1922*. Riyadh: Aikan Publications, 2004.

Gazalī, H. Y. *Al-Mīrāth ᶜala Madhāhibil arbaᶜah* Durasatin Watatbigan, 2008.

Gudub, M. *Fizilāli `l-Qur'ān*, Dauru Shurug, 2003

Hasanayn, M. *Al-Mawārīth Fī `sh-Shariᶜatul-Islāmiyyah.*3rd Print.Matbaᶜah `l-Jannah `l-Bayan `l-Arabī. 2002.

Hindaawī, A.H. *Hashiyata-Qalyūbī Wa ᶜUamayrah ᶜAlā Kanznir-Ragibīna Sharih Miniahaji `t-Tālibīna Li `n-Nawawi.* Lebanon:Al-Maktabatul-ᶜAsriyyah, 2008.

Ibn Rushd, *Bidāyat `l-Mujtahid wa Nihayat `l-Muqtasid. Juz.2.* Beirut: Dāra `l-Jil.

المنارة للاستشارات
www.manaraa.com

Makhluf, 2006.

Ibn Kathīr, I. B. U. *Tafsīr al- Qur'ān, `l-Azim*, Cairo: (NP) (N.D).

Ibn Mājah, *Sunanu Ibn Mājah* (Hadīth 2790, Vol 2). Beirut: Dāru `Ihyāi `t-Turaathil-Arabi (ND),

Ibn Taymiyah, A.A. *Al-Fatāwa al-Kubrā,* Cairo: Dāru `l-Fajir Li-Turath 2009

Imam Malik, *Al-Muwatta.*London: Dīwan Press, 2003.

Imamul-Bahaqi, *Sunanuul-Bahaqi `l-Kubra* Beirut Lebanon: Dāru `l-Fikr, (N.D).

Khalifa, M.Y. *Al-Ahkam Al-Mawārīth,* Riyadh: arussalam, 2007.

Khalid, S.H.& Najah, A. *Al-Mawārīth*, 2nd edition, Beirut: Dar. Cebaiou (ND)

Maliki, U. H. *Siraji `s-Saliki Sharh Ashali `l-Masāliki,* Vol. 1, Mustafal Babi Alhalabi, Egypt: (N.D).

Muhammad, B. I. *Al-Fiqhu `l-Wādih Mina `l-Kitāb Wa `s-Sunnah.*(vol.3) Cairo: Darul-Manar 2007.

Muhammad, A. *Fathu `l-Bari*, (NP) 1429 H.

Muhammad, Muhiy al-Din Abd.Al-Hamid.*Ahkāmu `l-Mawārīth Fish-Shari[c]atil-Islāmiyyah [c]Ala al- Madhahib `l-A'immah `l-Arba'ah.*Beirut: al- Maktabah al-Asriyyah. 2003.

Mustafa, Ashur,*[c]Ilm `l-Mirath.*Qahirah: Maktabat al-Qur'an. (ND)

Rushdi, A. *Bidāyatul Mujtahid Wa Nihāyatul-Muqtasid*, Beirut: Darul Fikr, 2004.

Sabiq, A. *Fiqhus-Sunnah,* (Vol. 3), Beirut Lebanon: Darul Fikr, 2004.

Shiqeety, M. A., *Altashee'il Islamy wa hikimatihi,* Madina: Saudi Arabia, 2006.

Sufī, A.A (n.d.) *Nizāmu 'l- Mawārīth fi 'sh-Sharī[c]ati 'l-'Islāmiyyah [c]ala 'l-Madhāhibi 'l-'Arba[c]ah,*Egypt:Darul Kuttabi 'l-[c]Arabi, (ND)

Umar, A. *Ahkamul Mawārīth Fī `sh-Sharī[c]atI `l-Islāmiyyah,* Alexandria: (NP) 2005.

Zuhnilī, W. *Al-Fiqh `l-Islamī* Damaseus: (NP) 2005.

المنارة للاستشارات

www.manaraa.com

B. English Books

[c]Abdallah, Y. A.*The Glorious Qur'ān Text, Translation and Commentary.*Beirut, Lebanon: Daraul Arabia, 2005.

Adekilekun, A. *Muslims and Islamic law in southern Nigeria 1899-1999*, Ede: Moyanjuola Publishers, 2006

[c]Abdul-Wahab, T. *Application of Sharī[c]ah in Southern Nigeria.* The Hoax, The Truth Al Furq'aan Publishers Nigeria, 2006.

Akbar, S. N. *The History of Islam,* Riyadh: Darussalam International Publishers & Distributors, 2007.

Ajayi, J. F. A. *History of West Africa Vol.1, 2nd Edition,* London: Longman Group Ltd, 1976.

Ajetunmobi, M. A. *Sharīcah Legal Practise in Nigeria (1956-1983).* Ilorin: Kwara State University Press, Malete, 2017

Al- Haj Muhammad, U. *The Muslim Law of Inheritance* India: Kitab Bhavan 2002.

[c]Aliyu, D.*An Introduction to Sharī[c]ah.*Lagos: Benchmark Publishers Nigeria 2005.

[c]Ali- Khan, M. M. *Islamic Law of Inheritance; A New Approach.* India: Kitab Bhavan, 2004.

Al-Jibaly, M. *Inheritance Regulations and Exhortations,* Second Edition, Al-kitab and A `s-S-unnah Pub.(N.D).

Al-Obeidy, A.M. *Treatise on Inheritance in Islam.*Madinah: Bukhāri, 2004.

Al-'Uthaymeen, M. I. S. *Differences of Opinion Amongst Scholars: Their Causes and Our Position Towardsthem.* United Kingdom: Al-Hidaaya, , 2007.

المنارة للاستشارات
www.manaraa.com

Ambali, M.A. *The Practise of Muslim Family Law in Nigeria (2nd)* Zaria: Tamaza Publishing Company Ltd, 2003.

Animashaun, T.O.G. and Oyeneyin*, Law of Succession, Wills and Probate in Nigeria.* Lagos: MIJ Professional Publishers Ltd Nigeria 2006.

Asein, J.O., *Introduction to Nigeria Legal System.* Lagos: Sam Bookman Nigeria 2005.

Al-Jibaly, M. *Inheritance Regulations and Exhortations,* Second Edition, Al-kitab and Assunnah Pub.(N.D)

Bappa, M. A. M.*A Brief History of Sharīᶜah in the Defunct Nigeria.*Jos: Jos University Press Ltd Nigeria 2003.

Biobaku, S.O., *Sources of Yoruba History.* Clarendon Press Oxford, 2004.

Coulson, N. J. *Succession in the Muslim Family.* Great Britain: Cambridge University Press, 2002.

Chief Bryan, A. G. *Black`s Law Dictionary* (Seventh Edition) (United State of America: West Publishing Co. 2004.

Dasuki, M. J. *Sharīᶜah and its Comprehensiveness in the aspect of Human Life.*Ilorin: Aloba Prints 2010.

David, P. and Werner M., *Muslim Family Law.* London: Sweet and Maxwell, 2002.

Doi, A. R. *Shariᶜah; The Islamic Law,* Malaysia: A.S Noordeen, 2005.

Gurin, M. A. *An Introduction to Islamic Law of Succession.*Zaria: A. B. U. Press

Limited, 2007.

Gandz, S.*The Algebra of Inheritance: A Rehabilitation of Al-Khuwarizmi* (NP) 2003

Hamdullahi, A.A *Family Structure in Islam.*Lagos: Academy Press Limited, 2007.

www.manaraa.com

Hassan, H. H. *An Introduction to the study of Islamic Law*, India: Adam Publishers and Distributors. 2010.

Hogben, S. J. *An Introduction to the History of Islamic States of Northern Nigeria.* Lagos: Oxford University Press, Nigeria, 2000.

Hussain, A. *The Islamic Law of Succession.* Riyadh: Darussalam, 2005.

Ibrahim, Ado Kurawa. *Shari^cah and the Press in Nigeria.* Kano, Kurawa Holding Limited, 2000

Illustrated Oxford Dictionary Dorling Kindersley & Penguin Books, India: (NP) 2006

Jami`u, S. *Islam and Politics in Nigeria 1903-1983,* Ilorin: Lavgark Investment LTD, 2012.

Jimoh, L.A.K. *Ilorin: The Journey So Far.* Ilorin: Atoto Press 20044

Kaeffi, S. D. *Some Aspects of Islam i.e. Law of Succession,* Rukhsa Publication, 2005

Karibi-Whyte, A.G. History and Sources of Nigerian Criminal Law. Ibadan: Spectrum Books, 2003.

Keay, E.A. and. RichardsonI, S.S.The Native and Customary Courts of Nigeria. London: Sweet and Maxwell 2002.

Kurawa, I. A, *Shari^cah and the Press in Nigeria,* Kano, Kurawa Holding Limited, 2000

Lakhvi, S. H. *Almirath Justice of Islam in the Rules of Inheritance*, Kano: (NP) 2003.

Longman Dictionary of Contemporary English (New Edition).(NP) 2007.

Mahmud, A.B. *Supremacy of Islamic Law.* Zaria: Hudhuda ,2002.

Mahmud, A. B. A. Brief History of the Sharīcah in the Defunct Northern Nigeria. Jos: University of Jos Press. 2005.

المنارة للاستشارات

www.manaraa.com

Macnaughten, W. H. *Principles and Precedents on the Moohoommean Law.*Ketchey Road, Lahore: Law Publishers Company, 2004.

Mannan, M.*A Islamic Economics Theory and Practise*(A Comparative Study) Lahore, Pakistan: Muhammad Ashraf, Kashmiri Bazar, 1980.

Muhammad, S. O. *Inheritance as It Affects You.* Ilorin: Olalomi printers, 2005.

Muhammad, S. O. *Shari^c ah in Nigeria: A Brief Account.* Ilorin: Olalomi printers, 2011.

Muhammad, Imran Muhammad.. *Inheritance in Islam,* Minna:Sadaqatu TayyibatunFoundation, 2012.

Muhammad, O. A. *Encyclopedia for Seerah. Vol. 2,* London: (NP) 1970.

Naseef, O.A. *Encyclopedia for Seerah,* vol. II, (London, Dares Salam, 2002)

Obilade, A.O. *Nigerian Legal System*. Ibadan: Spectrum Law Publishing 2003.

Odinkalu, A.C. *1992 Justce Denied (The Area Courts System in the Northern States of Nigeria).*Ibadan: Kraft Books Limited, 2992

Okonkwo, C.O *Introduction to Nigerian Law.*London: Sweet & Maxwell 2002

Okany, M.C. *The Role of Customary Courts in Nigeria.*Enugu: Fourth Dimension Publishers. 2002.

Oniye, M.A. *The Distribution of Estate in Islam, the law and Practise.* Ilorin: KewudamilolaPrinting Press at Computer Center, 2008.

Orire, A.K.*Sharī^c ah: A Misunderstood Legal System.* Zariah: Sankare Education Publishers Limited, 2007.

Otaluka, A. O. *Women and Children under Nigerian Law.*Abuja: A. U. Kalu & Y. Osinbajo. (Eds.) Federal Ministry of Justice Law Review Series. (ND)

Oyewo, A.T. Issues in African Judicial Process. Ibadan: Jator Publishing Co. 2003.

المنارة للاستشارات

www.manaraa.com

Park, A.E. W.*The Sources of Nigeria Law.*London: Sweet and Maxwell, 2005.

Philips, A.B. *Islamic Studies (Book 4)* Riyadh: International Islamic publishing house, 2005.

Pindiga, U. E.*Practise Guide to the Law of Succession (Mirath) in the Sharīᶜah.* Zaria: Tamaza Publishing Company Limited, 2006.

Qadri, A. A. *Islamic Jurisprudence in the Modern World.* Delhi: Taji Company, 2005.

Rahim, A. *Islamic History*, Lagos: I.P.B Nigeria 2007.

Research of Studies Centre. *The Bilingual Dictionary Arabic-English,(English-Arabic).* Lebanon: Dar Al-Kutub al-Umiyyah. 2008.

Salah-uddin, B. H. *Justice of Islamic Rules of Inheritance.*Pakistan: Gulla Mahdi, Remala Khurd-Okora, 2003.

Sagay, I. *Nigerian Law of Successions*, Malthouse Press Limited, 2006.

Sheikh, K. U. D.*The Glorious Qur'an Text, Translation and Commentary.*Beirut, Lebanon: Daral Arabia, , 2006.

Siddiq, A. H. *Sahih Muslim Translated into English*, Vol. 13, Darul Arabiyyah, Beirut, Labanon: (N.D),

SuleimanI.N & Sama'ila, A.M, *'Islamic Personal Law and Practise in Nigeria'* Makurdi: Oracle Publishing Company Ltd.(ND).

Zughlool, I.A.S. *A Comprehensible Manual on the Islamic Law of Estate Distribution.*Ilorin: Kewudamilola Printing Press and Computer Centre, 2005.

C. Oral Sources Interview, Focus Group Discussion (FGD)

An Interview conducted with the former Grand Kaadi, Hon. S.O. Muhammad, Kwara*Sharīᶜah* Court of Appeal, Ilorin

المنارة للاستشارات
www.manaraa.com

An Interview with Honourable Justice Abdu `r-Raheem Ibrahim of Kwara State *Sharīᶜah* Court of Appeal, Ilorin.

An Interview conducted with his honour Yusuf Olatunji Abdul-Hameed. Area Court Judge, Ilorin South,

An Interview conducted with his honour, Abdul-Qadir Ibrahim Umar. Area Court Judge, Ilorin west,

An Interview conducted with Mr. Mashood Gbalasa, Estate Secretary,Kwara*Sharīᶜah* Court of Appeal, Ilorin.

An Interview conducted with Alhaji Abdul- Razzaq Ibiyinka, the Librarian, Kwara*Sharīᶜah* Court of Appeal, Ilorin.

D. Journals/ Magazines/Newspapers

Abdullahi, S. S..“*Sharīᶜah:*Its Meaning and Philosophy in the \Quran and Sunnah.”*Islam and Democracy in Nigeria.*20th National Conference of the Nigeria Association of Teachers of Arabic and Islamic Studies (NATAIS).

Abikan, A. Q. I. “The Application of Islamic Law in Civil Causes in Nigeria Courts.*” Journal of International and Comparative Law.*June 2002 .

Abdul Fatah, K. M. *“*The place of *Sharīᶜah* Legal System*” Islam and Democracy in Nigeria.* 20th National Conference of the Nigeria Association of Teachers of Arabic and Islamic Studies (NATAIS), Shebotimo Publication, Ijebu ode, 2004.

Ahmad, A.F.. *“Sharīᶜah* as Foundation for an Idea Socio-Political System” *.Islam and Democracy in Nigeria.*20th National Conference of the Nigeria Association of Teachers of Arabic and Islamic Studies (NATAIS), Shebotimo Publication 72, Ijebu ode, 2004.

Arikewuyo, A.I. “Woman`s Inheritance Rights in Yoruba Custom and the Islamic Law: A Comparative Analysis” in KWASU Journal of Religious Studies, vol. 1 No 2, 2017,

المنارة للاستشارات
www.manaraa.com

Ibrahim, K.R. Sulaiman. "The *Shari*[c]*ah* and the 1979 Constitution."*Islamic Law in Nigeria, Application and Teaching.*Islamic Publications Bureau, 1988.

Muhammad, S.O.*"*Prophet Muhammad Legacy on Woman: their Right of Inheritance". *Muhammad: His Immortal Messages.* God wills Publishers; Good will House Abeokuta, 2008.

Martha, M.*"*The Family, Inheritance and Islam: A Re-examination of the Sociology of Fara'id Law 3*", Islamic Law: Social and Historical Contexts.* Aziz Al Azmeh, ed. Routledge 1988.

Mustapha, A. K.."A Case for Teaching Mirath as an independent course in Nigeria".*Islamic law in Nigeria, Application and Teaching*.Islamic Publications Bureau, 1988.

Muhammad, Z. Sadia Khattak, Hidayat-ur-Rehman, Muhammad Aqeel Khan, "The Laws of Inheritance in Islam" in *Journal of Basic and Applied Scientific Research* (University Mardan K.Pk PakistanTextRoad Publication 2014), 84

Mzee, M. M. "Islamic Law of Inheritance: The Case of Illegitimate Child and Possibility of Having an Assets of Deceased Father: A Tanzanian Case Study" *Journal of Law, Policy and Globalization*. Tanzanian, 2016.

Oba, A. A. *Lawyers, legal education and the Sharī*[c]*ah courts in Nigeria.*' Journal Legal of Pluralism 49: 113–161. 2004.

Oba, A. A. '*Kādis (Judges) of the Sharī*[c]*ah court of appeal: The Problems of Identity, Relevance, and Marginalization within the Nigerian Legal System.* Journalof Commonwealth Law and Legal Education 2/2: 49-71. 2004.

Opeloye, M. O. *"The Realization of Sharī*[c]*ah in South-Western Nigeria: A Mirage or Reality' A digest onIslamic Law and Jurisprudence in Nigeria Essays in Honour of Justice Umaru Faruk Abdullah. President Court of Appeal Abuja. 2003.*

المنارة للاستشارات
www.manaraa.com

Rehman, J. “The *Sharīᶜah* Islamic Family Laws and International Human Rights Law: Examining the Theory and Practise of Polygamy and Talaq.*” International Journal of Law, Policy and the Family*. 2007.

Sada, I.N. *“The Nature of Islamic law; A Rigid or Dynamic System? Ahmadu Bello University Journal of Islamic Law A Critique”. Vol. 11 No 112000-2001*

Shebotimo Publication, Street Ijebu ode, 2004.

Jamiu. S. M. “Colonial impact in the Application of *Sharīᶜah*in Nigeria” *Journal of the Nigerian Association of Teacher of Arabic and Islamic Studies,* (Vol. 6) No 1, 2001.

Kumm, S.”The Application of Islamic Law in North Nigeria. Islamic Law in Nigeria*”*. *Islamic Law in Nigeria, Application and Teaching*. Islamic publications Bureau, 1988.Shaltut M. *al Islam (*Cairo al-Azhar Press (ND)

Wahab, O.E.“Muslim in the Legal Profession: The Need for Steadfastness*”, Muhammad: His Immortal Messages.* God will Publishers; Good will House Abeokuta, 2008.

E. Dissertation /Thesis

Arikewuyo, A.S.I. “The Right of a Woman to Acquisition, Ownership and Disposal of Property: The *Sharīᶜah* Perspective”, Ph.D Thesis, Department of Religions, University of Ilorin, 2003.

Ahmad, B. **“**Blood Relationship as a Basis of Inheritance under Islamic Law: A Case Study of the Inner and Outer Circle of Family” LLM Thesis, Department of Islamic Law, Ahmadu Bello University Zaria, 2012.

Angulu, M.O. **“**Appraisal of the Impediment to Inheritance under Islamic Law”, LLM Thesis,Department of Islamic Law, Ahmadu Bello University Zaria, 2010.

Jaiyeola, M. B. “A Comparative Study of Women’s Rights of Inheritance in Nigeria under Islamic Law and some Customary Laws” Ph.D Thesis, Faculty of Law, University of Ilorin, 2011.

المنارة للاستشارات
www.manaraa.com

Mobeen C. “Towards a Codification of the Muslim Law of Inheritance (Mirath)”,. M.A. Dissertation, faculty of Law. Rand Afrikaans University, 1996

Orilowo M. I. “The Role of Kwara State *Sharīᶜah* Court of Appeal in the distribution of estate”. M.A. Dissertation, University of Ilorin, 2013.

Salihu, M. A. “Critical Examination of the Right of Artificially Inseminated Child to Inherit under Islamic Law” LLB Long Essay,Department of Islamic Law, University of Ilorin, 2011.

Shafi`i A. I. M..“Administration of Kwara State *Sharīᶜah* Court of Appeal (1975-1987)” M.A.Dissertation on Islamic studies.Department of Religions, University of Ilorin, Ilorin. 1989.

F. Online Sources

The Revival, “Under Islamic law, why is a woman`s share of the inherited wealth only half that of a man” www.therevival.co.uk, published on 27 january, 2014. Assessed on 16/2/2018.

Oserogho and Associates,*“*Inheritance , Succession, Wills and Private Trust” March

2003, www.oseroghoassociate.com. Assessed on 16/2/2018

http//www.ngex.com.nigeria/places.states/kwara.htm. Assessed on 20/8/2016

http//www.onlinenigeria. com.states/kwara/blurb=311.Assessed on 20/8/2016

http://martinslibrary.blogspot.com.ng/2013/01/the-evolutionary-trends-of-nigerian.html.Assessed on 20/8/2016

http://martinslibrary.blogspot.com.ng/2013/01/the-evolutionary-trends-of-nigerian.html.Assessed on 20/8/2016

C:\Users\userss\Desktop\Law of Nigeria-Wikipedia, the free encyclopedia.mht. Assessed on 20/8/2016

المنارة للاستشارات

www.manaraa.com

C:\Users\userss\Desktop\Kwara Assembly seeks bill on20 Assessed on 20/8/2016

Area Courts #Ilorin, #Kwara News @IlorinInfo.mht. Assessed on 20/8/2016 and 30/8/2016

C:\Users\userss\Desktop\Jurisdiction and Courts Established by the Constitution. mhtAssessed on 20/8/2016

http//en.wikipedia.org/wiki/kwara.states. 5/9/2016

http//www.onlinenigeria. com.states/kwara/blurb=311. 5/9/2016

C:/Users/Destop/Kwara State *Sharīcah* Court of Appeal.mht. Assessed on 5/9/2016

htt/go.micosoft.com/wlink. 7/8/2017

المنارة للاستشارات

www.manaraa.com