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AN EXAMINATION OF THE APPLICATION OF ISLAMIC LAW OF SUCCESSION IN NORTHERN NIGERIA: THE EVOLUTION OF UNWANTED PRACTICES

BY

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ABSTRACT

This paper examines the challenges and new evolution in the implementation of Islamic law of succession in northern Nigeria. Proper implementation of Islamic law of succession is an obligatory act to all Muslims as an *Ummah*. This denotes that, this aspect of Islamic law must be looked after and protected by the whole *Ummah*. In any situation where there is abnormality evolving in the distribution of a Muslim estate, it is the duty of the Muslims to provide solutions to such problems and to make sure this aspect of Islamic law is properly implemented. With this background in mind, some recent practices evolving in most Muslim communities, including Northern Nigeria, constitutes a major challenge in giving women and children their rightful shares in the distribution of an estate. Notably, the habit of refusal to write a will (*Wasiyyah*) by the deceased generates a lot of dispute over the ownership of certain properties after the demise of the owner. Unnecessary delays in the distribution and practices of leaving properties for the common use of all the heirs are another unwanted evolution in the implementation of Islamic law of succession. Some cases, where the distribution is carryout, it is not properly done, as erected buildings and farm lands are exclusively distributed to the male heirs, with the women given monetary compensations, without any consultation. This is another way of denying them their rightful shares.

Keywords: Islamic Law, Succession

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1.1 Introduction

The word "Islam" is interpreted to mean total submission to the will of Almighty Allah in all life endeavors and the hereafter. This encompasses the life of a man as duty and obligation towards His creator, the Almighty. The rights and duties of every Muslim is defined and regulated by the Islamic legal system with the objective of stimulating individual and collective well-being. The ultimate purpose of Islamic law is to achieve justice and fairness. Muslims are guided by the *Qur'an*, *Sunnah* and the expert ways of Islamic jurists.[1]

Based on the existing literatures, succession in pre-Islamic era in almost all the tribes of the world does not recognise the rights of women and children. This common phenomenon cut across many customary laws of the world at that time. Jewish law only considers male off springs with total exclusion of female off springs. Indian laws were no different. For the Arabs, not only women, weak male relatives were also excluded from succession. Only those who could fight and defend a clan could have shares in succession. Where a clan does not have enough of such able men, they engaged men from outside their clan to defend them and this automatically qualified such men to inherit from this clan. Worst, women were shifted as mere chattels that can be inherited among other inheritable properties. That was the situation before Islam but with the coming of Islam, some new rules were introduced and changes were effected.

Islamic law of succession is idiosyncratic in its wider outline as well as in its analysis. It is an invention like no other which is timeless in nature. It is aimed to make a family structure firm and consolidated. Through the implementation of Islamic law of succession, a Muslim carries out his duty to Islam by ensuring the subsistence of the family component which will produce a good foundation of human society.[2] Prof. N.J Coulson captured the importance of Islamic law of succession for the subsistence of the society as follows:

> From a sociological standpoint, the laws of inheritance reflect the structure of family ties and the accepted social values and responsibilities within the Islamic community. For in the eyes of the law, rights of inheritance are generally regarded as the consideration for duties of protection and support owed to the deceased during his lifetime; so that the stronger the family bond the greater the right of inheritance.[3]

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[1] Gurin. A.M. (1998) *An Introduction to Islamic Law of Succession, Testate and Intestate* (Zaria, Jodda Press) p.8

[2] Ibid. P 7.

[3] Coulson, N.J. (1971) *Succession in the Muslim Family*. London: Cambridge University Press.

Apart from ensuring that families were left in a strong position which by extension means strengthen the society. Islamic law of succession aims to ensure justice. Unbending rules that resulted in a comprehensive justice[4] were set out expertly and comprehensively with no room for new addition for all generation and time. The obvious justice and fairness embodied in the institution of Islamic law of succession left a renowned critic of Islamic law Macnaghten, with no option but to confess that:

> "In these provisions we find ample attention paid to the interest of all those whom nature places in the first rank of our affection; and indeed it is difficult to conceive any system containing rules more strictly just and equitable."[5]

This coming from a well-known critic of Islamic law is a great testament that Islamic law of succession is indeed a just and equitable law. Only those who are most ignorant of it can claim otherwise.

Islamic Law of succession is generally referred to as *Ilm al-fara'id* which means knowledge of succession. To be able to carry out any distribution of a deceased estate to the legal heirs correctly, there is a need to learn this knowledge very well. Literally, inheritance can be seen as passing of personal or movable, tangible or intangible property. Technically, it can be interpreted to mean a science of learning rules that regulate the distribution of a deceased person's property in accordance with Islamic law.[6] Islamic law of succession as pointed out is a religious obligation which must be discharged accordingly. No any option is available for a Muslim when it comes to inheritance than to carry out the rules as they are, not only in succession matters, Muslims must adhere to the command of Allah and His messenger. The *Qur'an* states:

> "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"[7]

From the foregoing discussion, it is clear that before Islam female and children were not given inheritance in almost all the civilizations of the world. The major difference Islam introduced is the inclusion of women and children in succession. The Holy *Qur'an* provides:

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[4] Gurin, p. 7.

[5] Macnaghten, *Principle and Precedents of Mohammadan Law*, as quoted in Gurin, (1998) p. 10.

[6] Mzee Mustafa Mzee, (2016) "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*, vol. 45.

[7] *Qur'an: surah* al-Ahzab: verse 36.

"From what is left by parents and those nearest related, there is a share for men and share for women, whether the property is small or large a determinate share."[8]

It is clear from this verse that both men and women have the right to inherit from their relatives. The women folks are put side by side with their male counterparts. The *Qur'an* as the principle legislation defines the shares of the legal heirs in definite terms, allotting exactly what everyone is entitled to. The following verses highlight this point:

Allah enjoys you as regards to your children's (inheritance): to the male, a portion equal to that of two females; if only daughters, two or more, their share is two-thirds of the inheritance, if only one, her share is a half. For parents, one sixth of the inheritance to each, if the deceased left children, if no children, and the parents are the (only) heirs, the mother has one-third; if the deceased left brothers (or sisters), the mother has one-sixth (the distribution in all cases is) after the payment of legacies and debts. You know not whether your parents or your children are nearest to you in benefit. These are settled portions ordained by God, and God is all-knowing, all-wise.[9]

In what your wives leave, your share is a half, if they leave no child; but if they leave a child, you get a fourth; after payment of legacies and debts. In what you leave their share is a fourth, if you leave no child; but if you leave a child, they get an eighth; after payment of legacies and debts. If a man or woman whose inheritance is in question has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth, but if more than two, they share in a third; after payment of legacies and debts; so that no loss is caused (to any one). Thus, is it ordained by God and God is all-knowing, most forbearing.[10]

They ask you for a legal decision. Say; God 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

[8] *Qur'an; surah* al-Nisa'i: verse 7.
[9] *Qur'an: surah* al-Nisa'i: verse 11.
[10] *Qur'an: surah* al-Nisa'i: verse 12.

> 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 share) the male having twice the share of the female. Thus God makes clear to you (His law), lest you err. God hath knowledge of all things.[11]

From these verses, jurists were able to develop a very good formula by which inheritance is calculated and distributed according to the above directives. The minute detail of how this calculation is done is not the focus of this study and so will not be delved into. The Islamic jurists maintained that the first things to be done from the estate of a Muslim when he died is to pay for his funeral expenses, settle his debt, execute his will and what remains constitute the net estate to be distributed to his legal heirs.[12] It can be noted from the discussion so far that Islamic law brought about new changes in the succession system of previous civilization. These changes include addition of legal heirs from the relatives of the deceased who are not included before. Islam shifted the system of succession from the basis of tribe to individual with women and children the major beneficiaries. Unlike Western system of succession, Islamic law directs how succession should be carried out, rather than based on the whims and caprices of the deceased person. Even though Islamic law allows making of a will but it is with limitations.[13]

1.2 Oblivion to the Position and Importance of Islamic Law of Succession under Sharia

Islamic Law of Succession, Like the Whole Islamic Legal System Has Its sources from the *Qur'an* and the *Sunnah* of Prophet Muhammad (peace be upon him). The rules guiding the distribution of a deceased estate in Islam is laid down under verses 11, 12 and 176 of chapter 4 of the holy *Qur'an* as previously quoted. Details in these verses were so minute that little room was left for further explanation by the prophet (peace be upon him) and his companions and the later jurists that followed them. This is because shares of each heir was expressly allotted with such precision and accuracy that all that remains is to carry out the implementation without any alteration or further efforts. That is the reason why

[11] *Qur'an: surah* al-Nisa'i: verse 175.
[12] Abid Hussain, (2016) "Islamic Laws of Inheritance". www.islam101.com/sociology/inheritance.htm. Accessed on 30th October, 2016.
[13] Mzee, p. 57.

there are few prophetic traditions on Islamic law of succession and only some few decisions from the companions of the Prophet (peace is upon him) over Islamic law of succession.

There are two types of obligation in Islam, that is obligation on individual basis and collective obligation. This entails that, where there is no body to carry out an obligation in the whole community then it becomes binding on the whole community to find a way out. However, where there are certain people in the community that can discharge such obligation then it is sufficient for the *Ummah*. This is the position of knowledge of succession under Islamic law. Where there is danger of this knowledge declining in the *Ummah* then the whole Muslim *Ummah* should come together and find a way out. However, where some individuals are capable of implementing the knowledge of succession then the *Ummah* is safe.[14] Lack of knowledge of succession means a family must expose their issues to the outsiders who will be invited to distribute the deceased estate and where there is dispute among the family members over the succession, the community will easily know about it.[15] There is a lot of accusation of connivance with the people invited to distribute an estate and some heirs to be given certain properties, which is wrong.

The importance of Islamic law of succession under the Islamic legal system is overwhelming and significant for the economic well-being of any society. This is based on the fact that succession in Islam empowers many people in the family from a wealth accumulated by a single individual, thereby, spreading the wealth to the whole society. By passing the deceased's properties to his beloved ones, the right of the deceased hard earned wealth is well respected. In Islamic law of succession, Muslims are made to be aware that all properties in their possession are just for safe keeping. Allah (SWT) is the absolute owner and the properties must be disposed according to the rules laid down by the Him.[16] Not following such rules will definitely lead to blatant injustice and dissatisfaction in a family and the society. This is evident in the manner of inheritance in the so-called advanced countries of the world, where an owner of a property has the right to dispose his property as he likes. In some instances, the whole estate will simply go to a single individual, thereby creating animosity within the family. It is very significant and a duty for Muslims to learn and practice this *ilm*. An act or omission that can constitute a breach to the proper

[14] Magaji, C. Abbo-Jimeta, U.S. & Bukar, Laminu. (2014) "Islam Versus Gender Equality: The Reality about the Islamic Principle of *Liddhakari Mithlu Hazzi Al- Unthayayn* (two female portion is equivalent to a male portion, 2:1) in the Distribution of a Deceased's Estates", *European Scientific Journal*, vol.10, No.19. p.272

[15] Mohamad Azhar bin Hashim, "Achieving Sustainability through Knowledge of *Al-Fara'id* (inheritance)".www.ikim.gov.my/index.php/en/the-star/8471-achieving-sustainability-through-knowledge-of-al-faraid-inheritance.

[16] www.esinislam.com/invitation/inheritance.htm#AllahIsGreat. Accessed on 7th November, 2016.

implementation of succession in Islam is considered as transgression. Any misappropriation of succession property, no matter how little it is, is described as snatching properties of other people unjustly.[17] Allah (s.w.t.) warns sternly against this. The *Qur'an* provides:

> "These are limits (set by) Allah and whoever 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"[18]

The prophet (peace be upon him) further warned against the usurpation of others' property without their consent, as he (peace be upon him) was reported to have said:

> "Whosoever usurps anything of others illegally, without his permission, he, on the Day of Judgment would be thrust into seventh layers of the earth."[19]

The above cited authorities clearly depict the importance of this aspect of Islamic law. Besides the above warnings, there are many traditions of the prophet (peace be upon him) as well as the saying of his companions that expressly called upon Muslim *Ummah* to learn and protect the knowledge of inheritance. In one report, this *'ilm*, was referred to as half of the knowledge of Islam by the prophet (peace be upon him). The prophet was reported to have said:

> "Learn the knowledge of inheritance and teach it to people, for it is half of knowledge; and it will eventually be forgotten. It will be the first knowledge to be taken away from my *Ummah*."[20]

In another tradition, the prophet (peace be upon him) was reported to have said:

> Learn the *Qur'an* and teach it to mankind and learn and teach knowledge of *al-fara'id* (knowledge of inheritance) to mankind, indeed I am a man who will leave this world and indeed the knowledge the knowledge will be taken away, and later there will be persecution, until two people disagree about the distribution of the estate and no one was able to resolve between the two.[21]

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[17] www.islamicteachings.org/forum/topic/21975-importance-of-inheritance-in-islam. Accessed on 7th November, 2016.

[18] *Qur'an: surah* al-Nisa'i: verses 13-14.

[19] www.islamicteachings.org/forum/topic/21975-importance-of-inheritance-in-islam. Accessed on 7th November, 2016.

[20] *Ibn Majah* vol. 4. Book 23, hadith 2719.

[21] Mohamad Azhar bin Hashim, "Achieving Sustainability through Knowledge of *Al-Fara'id* (inheritance)".www.ikim.gov.my/index.php/en/the-star/8471-achieving-sustainability-through-knowledge-of-

Many writers on Islamic law of succession cited the above traditions to emphasize the importance of this aspect of Islamic law. However, there is disagreement as to the authenticity of these traditions, some jurists categorised those traditions as weak and should be discarded.[22] Nonetheless, the importance of the knowledge of inheritance in Islam can never be over emphasized as it has to do with the establishment and implementation of justice in the Muslim *Ummah.* It consolidates the circulation of wealth and passing down of worldly materials to the next generation.[23] It is very significant for the sustenance and continuity of the family and society. In addition, the implementation of the rules of inheritance as laid down in the *Qur'an* is an obligation that cannot be overlooked as it is an integral aspect of the *Shari'ah.* However, like other aspects of Islamic law, there is growing concern over the attitude of Muslims towards this subject. Many Muslims are not confident to even talk about this aspect of *Shari'ah* talk less of delving into its practical application. People are afraid of going into it and people are doing nothing to change such attitude. Unconsciously, the *Ummah* is going back to injustice meted out to women and children before Islam by denying them their rightful shares. There is a need to rise up to this challenge and see that Islamic law of succession is implemented according to the rules laid down in the *Qur'an* based on the footsteps of the companions of the prophet (peace be upon him) so that Muslims can live in peace and avoid the wrath of Allah (S.W.T.)

1.3 Evolution of Certain Practices as Major Challenges in the Implementation of Islamic Law of Succession in Northern Nigeria

The ultimate purpose of Islamic law as provided in the *Qur'an* and the *Sunnah* is the establishment of justice, elimination of discrimination, bias and any form of injustice. Islamic law also aims to achieve mutual support within the family and by extension the society at large.[24] This can be seen in the way and manner Islamic law of succession was revealed. There are a lot of verses in the holy *Qur'an* and many traditions of the messenger (peace be upon him) that demand for the establishment of justice. The Islamic law jurists considered the overall provisions and concluded that the ultimate purpose of Islamic law is the establishment of justice and fairness throughout human endeavor. In any situation justice must be served. The *Qur'an* provides thus:

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al-faraid-inheritance.

[22] Muhammad Al-Jibali, *Islamic Will & Testament*, https://d1.islamhouse.com>data>single. Accessed on 10th November, 2016.

[23] Ibid.

[24] Mohammad Hashim Kamali, (2012) *Maqasid Al Shari'ah*: The objectives of Islamic Law. www.sunniforum.com/forum/showthread.php?6176-Maqasid-al-Shariah-The-Objectives-of-Islamic-Law. Accessed on 14th November, 2016.

We sent our messengers with the clear signs and sent down the book and the balance with them so that mankind might establish justice.[25] In another verse the *Qur'an* said:

> You who believe! Be upholders of justice, bearing witness for Allah alone, even against you or your parents and relatives. Whether they are rich or poor, Allah is well able to look after them. Do not follow your own desires and deviate from the truth. If you twist or turn away, Allah is aware of what you do.[26]

From the above, it is clear that injustice in any form is not condoned in Islam and any seeming injustice should not be allowed in the Muslims world. One of the major reasons of the revelation of verses over the implementation of Islamic law of succession is to eliminate injustice against women and children. Sadly, these injustices the Islamic law of succession eliminated are actually taking another form in many Muslim societies through the evolution of new practices. These practices will be discussed one after another as follows:

1.3.1 Nonchalant Attitude towards Writing of a Will (*Wasiyya*)

When a Muslim dies, succession to his properties will be carried out after the execution of his will (*Wasiyyah*) and settlement of his debt.[27] A will is an express wish by a person over the way and manner his estate should be administered and other directives which will be executed after his death. The will, may include allocation of certain property to another person,[28] declaration of ownership of certain business or any other clarification over certain properties in his possession. Wills and Islamic law of succession essentially complement one another. The two are first to be taken into consideration when a person dies. Muslims living in non-Islamic societies can write their wills based on the Islamic law of succession to avoid any confusion as to their succession after their deaths. This will be more acceptable by the secular authorities they were living under as they have a right to dispose their properties as they like. By this, any tendency to injustice is blocked.[29] Through the will, the deceased person can declare any liability or debts unknown to his family as well as other hidden assets and

[25] *Qur'an: surah* al-Hadid: verse 25.
[26] *Qur'an: surah* al-Nisa'i: verse 135.
[27] Ahmadu Seidu Maliki,(2012) "An Examination of the Nature and Operations of Islamic and Statutory Laws of Testate Succession in Kaduna State, Nigeria" *European Scientific Journal*, vol.8, No.13. p.179.
[28] Mzee. p. 58.
[29] Muhammad Al-Jibali, *Islamic Will and Testament* (Al-Kitab & As-sunnah Publishing). http://d1.islamhouse.com>data>single. Accessed on 14th November, 2016.

possessions.[30] Islam places so much importance on making will to the extent that the prophet (peace be upon him) was reported to have said: "It is not rightful for a Muslim person, if he has anything to bequeath that he sleeps two consecutive nights without having his will written with him."[31] All the verses relating to the implementation of Islamic law of succession, states clearly at the end that all the distributions will only be carried out after settlement of debt and will. This shows the importance of making a will in Islam. Unfortunately, this important and semi-compulsory act is now abandoned in most of the Muslim communities, particularly, the northern states of Nigeria.

The nonchalant attitude towards will is a great challenge to the implementation of Islamic law of succession in most parts of northern Nigeria. A lot of dispute over the ownership of properties followed the death of many Muslims which a will (*Wasiyyah*) would have prevented. Some cases in the *Shari'ah* courts are testament to that.

In the case of *Muhammad Modi & others v. Umar Modi*[32] the plaintiff claimed that the deceased gave him a piece of land as a gift, however, other legal heirs refused to consent to the claim on basis of lack of will from the deceased whether written or verbal. This is dispute could have been prevented through a valid will (*Wasiyyah).*

People are not ready to correct this mistake. Making a will is seen as if one is inviting death upon oneself. Unaware that refusal to honour the directives of the prophet (peace be upon him) over making a will can proved fatal. In another way, failure to comply with the prophet's directives brings about dishonesty. Those who work for the deceased for their entire life usually claim something to be their own because they do not want to end up with nothing. This dishonesty will have been prevented with an allocation of some property to that worker from the deceased through a will. However, many people maintained that Allah will provide for all, so there is no need to create unnecessary tension by leaving a will behind.[33]

A study conducted by Ahmadu Seidu Maliki[34] in Zaria, a city in the northern Nigeria, reveals that many Muslims did not know that a Muslim is expected to make a will. Some of them were aware of it but since it is not obligatory on them, they never bother about making any will. Some even consider

[30] Al-Jibali, p. 24.
[31] *Sahihul Bukhari*, 51:1.
[32] *Muhammad Modi & others v. Umar Modi, SC/ms/cv/71/2015.* (Unreported).
[33] Maliki, p. 180.
[34] Maliki, P. 184.

making will as trying to correct what Allah (SWT) already make Himself[35] i.e. distribution of the deceased estate. This actually sums up the prevalent attitude of Muslims in northern Nigerian states towards will. Most people are simply oblivious of it and this constitutes a major challenge in the implementation of Islamic law of succession in Northern Nigeria.

1.3.2 Unwarranted Delay in the Distribution of the Estate of the Deceased

Another common failing on the implementation of law of succession in most of the Muslim communities, notably, Northern Nigeria, is the unnecessary delay in the distribution of the deceased's estate. From the foregoing discussion, it has been pointed out that Islamic law demand that all encumbrances on the deceased's estate must be settled immediately. What remains should be distributed among the heirs as soon as possible. Any unwarranted delay in carrying out the distribution of inheritance may result in complications and suspicions which may lead to disputes or injustice. Sometimes the complexities bring about from such delays can compromise some heir's just right.[36] In some instances, an heir can die without benefiting from his share due to undue delay. In some situation, grandchildren from different families lay claims to a succession which would have been distributed long before they were born. A lot of complications ensure from this as a result of such undue delay. The causes of this delay may be from the part of the deceased family, the attitudes of *Shari'ah* Courts or lawyers and lack of knowledge of Islamic law of succession from the local scholars engaged in distribution of deceased's estate. The following analysis will explain this point.

One of the reasons of this ugly act includes fear of social resentment, in the sense that distribution of the succession immediately after death will bring social disapproval. The community will consider that the families are more concerned with the property and not the death. However, the most important thing is to comply with the command of Allah (S.W.T.) and not the opinion of people. The opinions should not matter at all. The heirs must be informed that Islam demands the distribution of inheritance as soon as possible.[37] One notable practice is that while delaying the distribution of the estate to the legal heirs, those in possession of some of the properties of the deceased during his life time still continue using such properties. Most notably, houses and farm lands, deriving benefit from them without minding the fact that the properties are now objects of succession.

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[35] Ibid.
[36] Abdul Ha'i A'rfi. (1994) *Islamic Law of Inheritance* (Karachi, Darul Ishaat).
[37] Ibid. p. 62.

Another factor causing unnecessary delay in the implementation of Islamic law of succession is the attitude of *Shari'ah* Courts in handling cases of succession. As mentioned earlier, *Shari'ah* Courts are one of the institutions saddled with the duty of distributing a deceased's estate in Northern Nigeria, alongside local scholars and legal practitioners. People in most part of Northern Nigeria are very reluctant to go for litigation over succession issues due to reasons already discussed. In addition, cases over succession are not much and are mostly disposed at *Shari'ah* Courts level being courts of first instance, without going on appeal to the superior courts of record. Very few cases went on appeal. This explained the reason over the scarcity of reported cases on succession.[38] However, where an issue of succession went to *Shari'ah* Courts, the Courts for one reason or another dragged the distribution for a long period of time. This can be seen in *obiter dictum* in the case of *Abdullahi Ibrahim v. Baba Tapa & Ibrahim Koto* where the grand *Khadi* of *Kwara* State *Shari'ah* Court of Appeal, lamented that:

> ...we want to take judicial notice of the fact that we had cause in 2004 to listen to the same complaint from the same party on the same matter and in the same manner. We must confess that we are worried, sad and concerned that this suit, on the succession of two rooms, filed since 16th March, 2001 remains unresolved till today. It is unfortunate to say the least. In the Upper Area Court 1, it suffered seven adjournments before it was transferred to Upper Area Court II, Ilorin in December, 2003...[39]

The above statements clearly capture the situation over many cases of Islamic law of succession in *Shari'ah* Courts of Northern Nigeria. Needless delay in estimating the value of the estate and charging money to visit personal properties of the deceased before the actual distribution is all part of the problems. The preliminary arrangements for the distribution of an estate is handle by the office of the registrar as the law vested all financial issues in that office.[40] Most of the delays come from the office, even when the issue does not go for litigation.

One more factor for the causes of unwarranted delay in the implementation of Islamic law of succession in Northern Nigeria can be attributed to the practice of the lawyers. In the few cases where estates distribution goes for litigation and the issue involves a lawyer, there is usually a lot of delay. This is either through asking for unnecessary adjournments on frivolous grounds or unnecessary appeals

[38] Ismael Saka Ismael, (2013) "An Examination of Causes of Delay in the Distribution of Estates in Ilorin and Its Environs," *Journal of Islamic Thought and Civilization, vol.3. No.2.* p. 3.

[39] *Abdullahi Ibrahim v. Baba Tapa & Ibrahim Koto* (2006) Annual Report of Kwara State Sharia Court of Appeal, Ilorin. 262. As quoted in Ismael. p. 4.

[40] The Bauchi State Sharia Courts (civil procedure) rules. 2011. Order, 14 (2).

over trivial issues and mostly due to the lawyer's fault.[41] Such attitude makes the Nigerian Court of appeal to observe that:

> "...Both counsels are to be blamed for unnecessary delaying the hearing of this matter to its logical conclusion. It is clearly from the record that the land in dispute, which is the subject matter of inheritance, was in fact, unscathed and untouched..."[42]

This is basically what is happening in *Shari'ah* Courts of most of Northern Nigerian states and it is part of the reason most people are reluctant to engage lawyers in succession cases. They have to pay a certain percentage to the lawyers and most of the times have to endure the unnecessary delay.

In some cases, a mistake in distributing an estate by a local scholar can be the source of the delay, due to lack of proper knowledge of Islamic law of inheritance. It was reported that a local scholar distributes an estate which involved two real properties, a modern building in a commercial and urban location and the other a mud house in a rural area. It was clear that one is far more valuable than the other; the local scholar allocated the buildings in equal proportion to different heirs, who are from different mothers. This made the heirs halted the whole distribution of the estate.[43] This delay automatically resulted from lack of proper knowledge of Islamic law of succession.

1.3.2 Leaving Certain Properties for the Common Use of All the Heirs

The ugliest practice among the practices that evolved over the years regarding the implementation of Islamic law of succession in northern Nigeria is the refusal to distribute certain properties or businesses of a deceased person. In some cases, it is not only some of the properties but the whole estate. Some of the reasons include that the unity of the family may be at stake and for the continuity of the business. However, under this kind of arrangement it is only some of the heirs that benefit the most. Women and children are discriminated against, especially married women.

The settings of the families in almost the whole northern Nigeria are a polygamous one, with extended family living in the same compound. The main house usually has the eldest sons and their family living with the parents, (although there is drastic change now as the community is rapidly growing).

[41] Ismael, p. 2.
[42] *Opobiyi v. Muniru (2004) 5 F. R. 43.* As cited in Ismael, p. 3.
[43] Ismael, p. 4.

When the father dies the eldest son take over the main house under the pretense that it is for the common use of all the heirs.[44] However, the reality is that it is the eldest son and his family that benefit at the detriment of some of the legal heirs, specifically married women who may never come back to reside in the house. Sometimes the eldest son may even erect a new building on the land or renovated an existing one, spending a lot of money. This is despite the fact that the building is a subject of succession and doing all these without any proper consent from the rest of the heirs, unmindful of all the warnings from the *Qur'an* and the *Sunnah* of the prophet (peace be upon him) against such an act.[45]

As for businesses, those heirs that are running the business in the lifetime of the deceased person automatically continue to hold on to the business without any proper accountability. They cannot even gives some token amount to the other heirs periodically. The business can grow and yield a lot of profits. What complicated the situation more is when a decision is taken to distribute the estate. Claims on the original capital, the cost for running the business and profits gained are always subject of serious dispute.[46] Where there are many businesses and various heirs holding it for the deceased in his lifetime, mostly, they continue holding such businesses, for "all the heirs" and this applies to assets too. They try to convince themselves with some excuses to hold something unlawful for themselves and sadly, even those that are seen as educated fall into this trick. In some situations, they try to console themselves and convince the weaker heirs that all of them are one as a family. As such, there is no need to distribute the properties as they can all share the properties together.[47] However, this is just a maneuver to benefit from the properties of others unjustly. Heirs that are young or too shy (like women), to speak out have to suffer in silence. This amounts to usurpation of orphan's wealth, which is seriously warned against in Islam as previously cited in this study.

Women and children are treated in the same manner when it comes to dealing with farmlands that are subject to succession. The able male heirs automatically cultivate those farmlands and whatever products or benefits accrued from these farms are taken by the person who cultivated the farm. In a very rare circumstance some of the farm products are sent to married women among the heirs and the widows. The single female heirs and children are deprived of their legal shares.[48] The unreported case in the upper *Shari'ah* Court of Misau Bauchi

[44] Abbo, Jimeta U.S & Mafa, U.M., (2004) "The Tradition of Reservation of Property for Heir's Common Use in Nigeria: The Islamic Perspectives," *University of Maiduguri Law Journal*, vol.7. p. 132.
[45] Ibid.
[46] A'rfi, p. 68.
[47] Ibid.
[48] I.N Sada. "Promoting Women's Rights through Sharia in Northern Nigeria" Center for Islamic Legal Studies, Ahmadu Bello University, Zaria. www.africabib.org>rec. Accessed on 19th November, 2016.

state is a testament to this problem. In the case of *Fatima Dada & 4 others v. Sa'idu Mohammed*,[49] the deceased left five children, one male and four females; the male heir holds on to the four farm lands. Cultivating the lands for years and giving nothing to the other four female heirs. The husband of the one of the female heirs represents his wife and took the matter to the court.

Islamic law makes it obligatory to follow the rules of succession. Those that are allocated shares must be given their shares without any maneuver. The rationale behind the law is to establish justice and fairness and any act that contradicts the sense of justice must be prevented. Female heirs, children and other weak heirs must be given their due shares allocated for them under Islamic law.[50] With all the information and Islamic lectures so rampant it is high time for the women to speak out against such discrimination and the whole community must stand against such injustice. This similar injustice was the basis of the revelation of *Qur'anic* verses on succession as related in the tradition of the prophet (peace be upon him) already discussed.

1.4 Conclusion

The challenges for the proper implementation of Islamic law of succession as discussed above are by no means exhaustive but they are the most glaring ones. If not promptly and swiftly checked, the *Ummah* will be dragged back to the pre-Islamic era where women and children were not recognised as having any right to inherit any property. As we have seen these challenges come in different forms and manner. This can be from the failure of the deceased to write a will, unnecessary delays in the distribution of the deceased's estate caused by courts, lawyers or due to lack of proper knowledge of Islamic law of succession from the local scholars. In addition, it includes the ugly practice of leaving uncertain properties for the "common use of all heirs" which indirectly deny some heirs their legal shares allocated to them specifically in the holy *Qur'an* and confirmed by the *sunnah* of the prophet (peace be upon him). The most disturbing reality over the issue of Islamic law of succession in Northern Nigeria is the fact that people are oblivious of all these challenges. This is evident in the non-existence of literatures covering these challenges. The authorities need to do something about this situation. Any injustice resulting from refusal to make a will may bring about the wrath of God in any form and the whole community may suffer from it. All the state governments in Northern Nigeria can make laws to regulate its affairs and should seek a way to remedy this situation.

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[49] *Fatima Dada & 4 others v. Sa'idu Mohammed, usm/msa/cvf/01/2014.* (Unreported).
[50] A'rfi, p. 72.