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CHALLENGES OF *AL-FARĀ'IḌ* APPLICATION IN A MULTI-RELIGIOUS SOCIETY: THE CASE OF YORUBA MUSLIMS OF LAGOS AND OYO STATES, SOUTHWESTERN NIGERIA

Jamıu Muhammad Busarı[1]
Saheed Afolabi Ashafa[2]
Saheed Abdullahi Busari[3]

ABSTRACT

Yoruba Muslims of Southwestern Nigeria are among the foremost West Africans who had the earliest contact with Islam before the advent of British colonization in the 1850s. By 1775 C.E, Islam had been firmly entrenched in the nooks and crannies of Yorubaland, Southwest Nigeria, where Mosques and Madāris (Islamic Schools) were established to preach and teach the religion. However, with the British intrusion and amalgamation of the then Southern and Northern Protectorates to form a country called Nigeria, the colonialists had submerged all existing legal systems, whether

[1] Corresponding Author. Lecturer II, Islamic Law and Contemporary Studies, Sandwich Degree Programme Directorate, C/O Department of Religions and Peace Studies, Faculty of Arts, Lagos State University, Lagos, Nigeria, bmjamiu@gmail.com

[2] Lecturer I, Islamic Studies Unit, Department of Religions, Osun State University, Osogbo, Nigeria, saheed.ashafa@uniosun.edu.ng

[3] Assistant Professor, Department of Fiqh and Usul al-Fiqh, AbdulHamid Abu Sulayman Kulliyah of Islamic Revealed Knowledge and Human Sciences, International Islamic University, Malaysia, saheed@iium.edu.my

customary or religious, under the control of English common law; hence, the application of Islamic law (Sharī'ah) became a herculean task. To this end, with the dichotomy syndrome in Islamic law application between Northern and Southern Nigeria, Yoruba Muslims have been battling the non-statutory recognition of Sharī'ah for over a century with no solution in sight. This, without mincing words, has deeply affected the application of the Islamic law of inheritance (al-farā'iḍ) on deceased's estates as enshrined under Islamic law. Therefore, this present paper, through an analytical method, examines the challenges facing Yoruba Muslims in Lagos and Oyo States, Southwest Nigeria, in utilizing Islamic law of inheritance on deceased's properties amidst the enforcement of the Nigerian legal system, the Yoruba customary law and States' Administration of Estate Laws. It also enunciates the judicial prospects as being utilized by Muslims in the absence of statutory Islamic courts through the Independent Sharī'ah Panels. The paper discovered that the challenges of al-farā'iḍ application might not be overturned in the near future until Yoruba Muslims reinvigorate their agitations for constitutional review to enforce statutory Sharī'ah recognition and application in all matters that concern Muslims within the purview of the Nigerian legal system.

Keywords*: al-farā'iḍ, application, challenges, multi-religious society, Yoruba Muslims*

INTRODUCTION

The existence of mankind as God's viceroy on earth (*Khalīfah Allāh fī al-Arḍ*) is temporal and transient while his acquired properties are naturally inherited by the near or distant relatives or by the State where he resides. This process of inheritance connotes the process of becoming entitled to the property of a deceased by the operation of law or will.[4] It implies the transference of ownership from the dead to a living person with respect to the particular property; either material or immaterial, and as asserted by

[4] 'Abdus-Sami'i Imam Arikewuyo, 'Women's Inheritance Rights in Yoruba Custom and the Islamic Law: A Comparative Analysis', *Kwasu Journal of Religious Studies*, vol. 1/1 (2017): 129

Johnson, most of these inheritance distributive practices are vulnerable to abuse.[5] In every society, inheritance is as old as the society itself. The passage of the progenitors usually paves the way for the progenies through succession to enliven the lineage, tradition and customs of a race, develop human capacity building and break new ground in human procreation and development.

Centuries before the mission of Prophet Muhammad (Peace and blessing of Allah be upon him) up to 610 C.E, the world had witnessed various forms of inheritance procedures based on customs and norms of societies. The Greeks, Egyptians, Asians, Babylonians, Romans, Persians, Turks, Jews, pre-Islamic Arabs, Africans and other antiquated civilizations had all adopted and practiced different inheritance ordinances for centuries as dictated by their customs and beliefs. In many of these societies, practices of patriarchal hegemony and relegation of women who are presumed inferior were the norms.[6]

However, under Islamic law (*Sharī'ah*), the inheritance procedure is regulated through the Qur'ānic injunctions and the elucidation (*Sunnah*) of Prophet Muhammad (Peace and blessing of Allah be upon him). It is permissible for Muslims to acquire properties lawfully when they are alive either through ancestral inheritance, ownership transfer or through self-acquisition.[7] They could also assume the position of ownership either through private or public ownership;[8] and, without ambiguity, they have unfettered rights when alive to transfer or dispose of such property by sale, bequest or testate succession (*al-waṣiyyah*) or gift *inter vivos* (*al-hibah*) as laid down by *Sharī'ah*.[9] In Islam, the estate or property (*al-tarkah*) of a

5 Johnson Oluwole, 'Widows and Inheritance Hijacking Practices in Ilara-Mokin, Ondo State, Nigeria', *African Journal of Criminology and Justice Studies* (AJCJS), vol. 9/1 (2016): 116

6 Makama Godiya Allanana, 'Patriarchy and Gender Inequality in Nigeria: The Way Forward', *European Scientific Journal*, vol. 9/17 (2013): 116-117. See also, Sulaiman Kamaldeen Olawale 'The Justifications for a Male's Double Share of Female in Islamic Law of Inheritance', *Journal of Oriental and African Studies*, vol. 20 (2011): 168-174

7 Mohamad Khairul Anwar Osman, '*Farāi'ḍ* in the Pahang State of Malaysia: Theory and Practice' (Ph.D Thesis, Department of Arabic and Middle Eastern Studies, The University of Leeds, 2001), 26

8 Bambale Yahya Yunusa, *Acquisition and Transfer of Property in Islamic Law* (Lagos, Nigeria: Malthouse Press Limited, 2007), 1-15

9 Sultanul Alam Chowdury, 'The Problem of Representation in the Muslim Law of Inheritance', *Islamic Studies*, vol. 3/3 (1964): 376

deceased Muslim goes to the heirs that have been legally designated under Islamic law of inheritance (*al-farā'iḍ*).[10]

This law, as emphasized by Chowdury, has without any doubt for the last fourteen centuries decided and settled all questions regarding succession and inheritance of testate and intestate Muslims, and has been regarded by Muslim jurists as immutable and final.[11]

In Nigeria, a country that adopted an Anglicized Constitution built on British common law with an unprecedented negative impact on indigenous and religious law such as customary law and *Sharī'*ah,[12] the laws of inheritance and succession have generated inestimable controversies among religious adherents, scholars, legal practitioners and Courts from time immemorial. Therefore, with the syndrome of legal pluralism (in which the customary law, the super-imposed common law and Islamic law co-exist) and the failure of the Nigerian authorities for several decades to fully incorporate *Sharī'ah* into the country's legal system,[13] the application of *al-farā'iḍ* among Yoruba Muslims of Lagos and Oyo States has become political, legal and constitutional bickering till date.

CONUNDRUM OF *SHARĪ'AH* APPLICATION IN YORUBALAND, SOUTHWEST NIGERIA

Prior to the advent of Islam which ushered in *Sharī'ah* and colonialism which brought in Christianity and common law, communal disputes and inheritance impasses had been long settled in Nigeria and indeed in Africa

[10] Al-Jibali Muhammad, *Inheritance Regulation and Exhortation*, 2nd ed. (Al-Madinah, Saudi Arabia: al-Kitaab and as-Sunah Publication, 2005), 5

[11] Sultanul Alam Chowdury, 'The Problem of Representation in the Muslim Law of Inheritance', 375

[12] Tijani Muhammad Naniya, 'The Impact of the British Conquest on the Interpretation and Application of the Shari'a', in *Paideuma: Mitteilungen Zur Kulturkunde*, ed. Franz Steiner Verlag & Stuttgart (Germany: Frobenius-Institute, 1994):1-11, www.jstor.org/stable/40341682, accessed on 4 April 2018.

[13] Oba AbdulMumini Adebayo & Ismael Saka Ismael, 'Challenges in the Judicial Administration of Muslim Estates in the *Shari'ah* Courts of Appeal in Nigeria', *Electronic Journal of Islamic Law and Middle Eastern Law* (EJIMEL), vol. 5, (2017): 82-83 and 94.

by locally selected juries, chiefs and kings within their respective domains under the "Native and Customary Laws".[14]

In colonial Lagos, Oyo and other Southwestern States of Nigeria, agitations for the adjudication on civil matters involving Muslims according to *Sharī'ah* have been long witnessed. In July, 1894 C.E, the Lagos Muslim community led by Muhammad Shitta-Bey, the founder and the donor of the famous Shitta Bey Mosque and other Lagos Muslims of note petitioned the colonial rulers (through the Governor of the Colony) expressing their displeasure in the way in which they were subjected to British law which was inimical to the precepts of Islam and; hence, they demanded that their religious, educational and civil cases (which include inheritance, will, marriage and divorce) be subjected to Islamic law by Muslim arbitrators.[15] They demanded their religious and human rights as given elsewhere to Indian Muslims who, as of then, constituted only one-sixth of the Indian population compared to Lagos Muslims who were believed to have constituted more than one-third of Lagos population of the 19th century.[16] Subtly, the colonialists according to Gbadamosi outplayed the Muslims while their petitions were rendered invalid by the British.[17]

Furthermore, according to Makinde and Ostien, there were similar petitions in Ibadan, Oyo State in 1938 C.E by a group of Muslims and in Ijebu-Ode, Ogun State in 1940 C.E with a memorandum to Brooke Commission complaining the procedures used by Native Courts in cases of divorce and inheritance involving Muslims without any recourse to Islamic law. Also, in 1948 C.E, the Muslim Congress wrote a letter to the Chief Secretary of the Colonial Government and then to the Native Courts (Western Provinces) Commission of Inquiry seeking the establishment of

[14] Anderson James Norman Dalrymple, 'Colonial Law in Tropical Africa: The Conflict between English, Islamic and Customary Law', *Indiana Law Journal*, vol. 35/4 (1960): 435.

[15] Makinde AbdulFatai Kola & Ostien Philips 'Legal Pluralism in Colonial Lagos: The 1894 Petition of the Lagos Muslims to their British Colonial Masters', *Die Welt Des Islams*, vol. 52/1 (2012): 59-62.

[16] Makinde AbdulFatai Kola & Ostien Philips 'Legal Pluralism in Colonial', 59-62

[17] Gbadamosi Tajudeen Gbadebo Olusanya, *The Growth of Islam among Yoruba 1841-1908* (London, UK: Longman Group Ltd press, 1978), 69

Sharī'ah Court in the then Western region of Nigeria that would deal with matrimonial cases and the question of inheritance among Muslims.[18]

In post-colonial Yorubaland, the questions of *Sharī'ah* application on any matters in Southern Nigeria continue to create legal complexity and renunciation. For example, as Olatoye posited in the case of Will validity in *Yinusa v. Adesubokan*[19] even though the deceased lived, died as a Muslim and wrote his Will according to Islamic dictates, the Nigerian Supreme Court ruled that there is no provision whatsoever that makes Muslim law enforceable separately or as part of any customary law in any court of the Southern Nigeria.[20]

There were further agitations for the implementation and establishment of *Sharī'ah* Courts in Yorubaland, Southwest Nigeria between 1976 and 1978 during the drafting of what became the Nigerian 1979 Constitution by the National Joint Muslim Organizations (NAJOMO) and other Muslim personalities.[21] All these petitions, agitations and cases are preludes of what has been applicable in Yorubaland in which Lagos and Oyo States are located for decades as regards the status of Islamic law adjudications among the Islamic adherents in which, the emergence of British imperialism had partially obliterated the dominance of Islam in Yoruba society in the area of culture language and religious activities. According to Adetona, this has greatly retarded the progression of Islamic propagation and *Sharī'ah* application and thus Islam becomes the religion of the weaklings and the downtrodden in the society.[22]

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18 Makinde AbdulFatai Kola & Ostien Philips, 'Legal Pluralism in Colonial', 59 62

19 Yinusa v. Adesubokan (1971) 1 ANLR, 225

20 Olatoye Kareem & Yekini Abubakar, 'Islamic Law in Southern Nigerian Courts: Constitutional and Conflicts of Laws Perspective', *Benin Journal of Public Law*, vol. 6 (2019): 128

21 Gbadamosi Tajudeen Gbadebo Olusanya, 'Shariah in Southern-Nigeria: The Experience of Yorubaland', in *Understanding Shari'ah in Nigeria*, eds. A. M Yakubu *et al* (Ibadan, Nigeria: Spectrum Books Limited, 2001), 120-121

22 Adetona Lateef Mobolaji, '*Da'wah* (Islamic Propagation) in Yorubaland- From the Advent of Islam to the End of Colonial Period', *The Journal of Oriental and African Studies*, vol. 19 (2010): 5. See also, Salisu Taiwo Moshood, '*Shari'ah*: The Missing Law in the Scheme of Legal Option in South-western Nigeria', *LASU Journal of Humanities*, vol. 9 (2014): 53-56.

It is also believed that the British incursion affected Yoruba Muslims' understanding of Islamic law[23] even though the existing legal framework- the Constitution, High Courts Law and Evidence Acts- in post-independence Nigeria according to Olatoye and Yekini support the recognition and application of Islamic law as *lex fori* (law of the forum).[24] This, in the view of Adegoke, had further resulted in more controversies and heated public literary, political and legal debates as regards *Sharī'ah* statutory application for over a century in both Northern and Southern regions of Nigeria.[25]

Though, as observed by Olatoye, Islamic inheritance law has been part of the Nigerian legal system since the introduction of Islam as far back as the 11th century, the presence of legal pluralism, conflict of law, as well as the choice of law to govern the devolution of the estate of a deceased has always generated some controversies; [26] hence, the administration of Yoruba Muslims' estates in both Lagos and Oyo States in the absence of statutory *Sharī'ah* courts would always brew challenges of high magnitude.

It is based on this unresolved conundrum; that this study examines the challenges and prospects of *al-farā'iḍ* application among Yoruba Muslims of the two states by analyzing and juxtaposing the incongruities between *al-farā'iḍ*, Nigerian law of succession, the Lagos and Oyo States' Administration of Estate Laws and the Yoruba law of succession.

CONCEPTUAL DISCUSSIONS AND REVIEWS

In this section, this study concisely reviews some related views of scholars on inheritance procedures in pre-Islamic Arabia, the Islamic law of inheritance, Yoruba customary law of succession, Nigerian legal system and succession law and the Administration of Estate Laws of Lagos and Oyo states.

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23 Philips Ostien & Albert Dekker, '*Shariah* and National Law in Nigeria', in *Shariah Incorporated: A Comparative Overview of the Legal System of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden: Leiden University Press, 2010), 553-612.

24 Olatoye Kareem & Yekini Abubakar, 'Islamic Law in Southern Nigerian', 126.

25 Adegoke Kazeem Adekunle, 'Shari'a Debates and Constitutional Development in Nigeria', *Waikato Islamic Studies Review*, vol. 6/1 (2020): 33-43.

26 Olatoye Kareem, 'Inheritance in a Muslim Family: The Nigerian Experience', in *A Digest of Islamic Law and Jurisprudence in Nigeria*, ed. Zakariyau I. Oseni (Auchi, Nigeria: Darun-Nur, 2003), 57.

1. Inheritance in Pre-Islamic Arabia

Arabia before Islam is noted for tribal feuds, unjustifiable warfare of vengeance, usurpation of property by more powerful uterine and consanguine relatives at the expense of the legitimate heirs, primogeniture and practice of infanticide during the period of ignorance (*al-'Aṣr al-Jāhiliyyah*).[27] Therefore, the grounds of inheritance in pre-Islamic Arabia include inheritance through blood ties and prosperity (*al-Irth bi al-Nasab wa al-Bannuwah*), inheritance through adoption (*al-Irth bi al-Tabbanny*), inheritance through oath and covenant (*al-Irth bi al-Ḥilf wa al-Ahad*), inheritance through marriage (*al-Irth bi al-Nikāḥ*) and inheritance through clientage or defense pact (*al-Irth bi al-Wilāyah wa al-Irth bi al-Ḥalaf*).[28]

In the words of David Powers, the pre-Islamic Arabia was patrilineal in structures and patriarchal in ethos. The rules, as he noted, were to consolidate and preserve the tribe's patrimony by limiting inheritance rights to only male agnate relatives (*'aṣabah*) of the deceased.[29] Thus, as a patriarchal society, the common principles of inheritance in *Jāhiliyyah* were:

i. Only men who could defend or protect the honour of the family or the clan had the right to inherit. Women were regarded as part of the property and could be used for the settlement of debts while the weak, old, sick and minors were given no share.

ii. A widow could be inherited by her deceased husband's representative or her stepson or by her husband's brother.[30]

iii. Descendants were preferred to ascendants and ascendants to collateral while the practice of defying the rights of female heirs was a norm.[31]

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27 Abdul Musa Oloyede, *The Classical Caliphate, the Islamic Institution* (Lagos, Nigeria: Islamic Publication Bureau, 1998), 4.

28 Jaafar Imani, 'Practical Islamic Estate Planning: A Short Primer', *Mitchell Hamline Law Review*, vol. 42/3 (2016): 928, http://mitchellhamline.edu/mhlr/vol42/iss3/4, accessed on 4 January 2020.

29 Powers S. David, 'The Islamic Inheritance System: A Socio-Historical Approach', in *Islamic Family Law Series*, eds. Chibli Mallat and Jane Conners (London: Trotman, 1990), 11.

30 Jasni Sulong, 'Inheritance Law for Women: Islamic Feminism and Social Justice', *Journal of Islamic Studies and Culture*, vol. 3/1 (2015): 11-12.

31 Bambale Yahya Yunusa, *Acquisition and Transfer of Property in Islamic Law*, 78

iv. Daughters, women, widows and minors and incapable person had no share in inheritance on the ground that they could not defend the honour of their clan or tribe.[32]

Abdul-Hamid Siddiqui in his own narration depicting the inheritance practice in pre-Islamic Arabia says:

> *"In pre-Islamic Arabia and other countries where there had been tribal societies, not only were the women deprived of the right to inheritance but even the weak, sick persons and minors (children) were given no share in the inheritance. The common practice was that "he alone is entitled to inherit who wields the sword".* [33]

2. Inheritance Law in Islam

In 610 C.E, Prophet Muhammad (SAW: Peace and blessings of Allah be upon him) through divine revelation, launched a reformative mission in the Arabian Peninsula to cleanse human societies from all social, religious, economic and tribal anomalies that were deemed ruinous by the Creator of the universe. One of such anomalies is the inheritance procedures and systems which were hitherto sandwiched with inequalities such as denying women their legal rights.

Therefore, as Al-Jibāly emphasized, the Islamic mode of succession provides a systematic process of passing down wealth from predecessor to successor.[34] This is in tandem with *Sharī'ah* provisions which regulate mankind's earning and spending, and in detailed form, this method of estate transference and acquisition is termed "*Inheritance or Succession Law in Islam- al-farā'iḍ* or *al-mīrāth*" while the whole body of rules, regulations and legislations that governed it are derived from the Qur'ān, *Sunnah* and *Ijmā'*.

There are almost 35 Qur'ānic verses referring to inheritance or succession or testamentary wills; these verses are known as *ayāt al-mawārīth* by jurists. They are either directly or indirectly discussing the

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[32] Gurin Aminu Muhammad, *An Introduction to Islamic Law of Succession* (Zaria, Nigeria: Tamaza Publishing Company, 1998), 8

[33] Siddiqui Abdul Hamid, *The System of Inheritance in Islam* (n.p.: n.p., 2007), www.readingislam.com and www.islamonline.net/shariah-and-humanity, accessed on 26 January 2017

[34] Al-Jibali Muhammad, *Inheritance Regulation and Exhortation*, 3

testamentary disposition of property (such as Q2:180-182, 2:240, 4:33, 5:106-107) or giving specific details of inheritance shares (such as Q4:7, 11, 12 and 176) or deal with the subject of succession in passing.[35] Examples of these distinct *ayāt al-mawārīth* through which the main themes and theories of the Islamic inheritance law were derived 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﴾

"Allah directs you concerning your children: for a male there is a share equal to that of two females. But, if they are (only) women, more than two, then they get two-thirds of what one leaves behind. If she is one, she gets one-half. As for his parents, for each of them, there is one-sixth of what he leaves in case he has a child. But, if he has no child and his parents have inherited him, then his mother gets one-third. If he has some brothers (or sisters), his mother gets one-sixth, all after (settling) the will he might have made, or a debt. You do not know who, out of your fathers and your sons, is closer to you in benefiting (you). All this is determined by Allah. Surely, Allah is All-Knowing, All-Wise".

(Surah al-Nisā', 4: 11)

۞ وَلَكُمۡ نِصۡفُ مَا تَرَكَ أَزۡوَٰجُكُمۡ إِن لَّمۡ يَكُن لَّهُنَّ وَلَدٞۚ فَإِن كَانَ لَهُنَّ وَلَدٞ فَلَكُمُ ٱلرُّبُعُ مِمَّا تَرَكۡنَ مِنۢ بَعۡدِ وَصِيَّةٖ يُوصِينَ بِهَآ أَوۡ دَيۡنٖۚ وَلَهُنَّ ٱلرُّبُعُ مِمَّا تَرَكۡتُمۡ إِن لَّمۡ يَكُن لَّكُمۡ وَلَدٞۚ فَإِن كَانَ لَكُمۡ وَلَدٞ فَلَهُنَّ ٱلثُّمُنُ مِمَّا تَرَكۡتُم مِّنۢ بَعۡدِ وَصِيَّةٖ تُوصُونَ بِهَآ أَوۡ دَيۡنٖۗ وَإِن كَانَ رَجُلٞ يُورَثُ كَلَٰلَةً أَوِ ٱمۡرَأَةٞ وَلَهُۥٓ أَخٌ

[35] Hussain Abid, *The Islamic Law of Succession*, 1st ed. (Riyadh, Saudi Arabia: Maktaba Dar-us-Salam, 2005), 26

أَوْ أُخْتٌ فَلِكُلِّ وَٰحِدٍ مِّنْهُمَا ٱلسُّدُسُ ۚ فَإِن كَانُوٓاْ أَكْثَرَ مِن ذَٰلِكَ فَهُمْ شُرَكَآءُ فِى ٱلثُّلُثِ ۚ مِنۢ بَعْدِ وَصِيَّةٍ يُوصَىٰ بِهَآ أَوْ دَيْنٍ غَيْرَ مُضَآرٍّ ۚ وَصِيَّةً مِّنَ ٱللَّهِ ۗ وَٱللَّهُ عَلِيمٌ حَلِيمٌ ﴿١٢﴾

"For you there is one-half of what your wives leave behind, in case they have no child. But, if they have a child, you get one-fourth of what they leave, after (settling) the will they might have made, or a debt. For them (the wives) there is one-fourth of what you leave behind, in case you have no child. But, if you have a child, they get one eighth of what you leave, after (settling) the will you might have made, or a debt. And if a man or a woman is Kalalah (i.e. has neither parents alive, nor children) and has a brother or a sister, then each one of them will get one-sixth. However, if they are more than that, they will be sharers in one-third, after (settling) the will that might have been made, or a debt, provided that the will must not be intended to harm anyone. This is a direction from Allah. Allah is All-Knowing, Forbearing".

(Surah al-Nisā', 4: 12)

Therefore, as Abdul Hai A'rfi asserted, *al-farā'iḍ* is a law which connotes the set of rules and regulations that govern the sharing and devolution of an estate left behind by a Muslim intestate among his legitimate heirs in accordance with the laid down rules as codified in the Qur'ān and *Sunnah*.[36] The rationales (*Maqāṣid al-Shar'iyyah*) of *al-farā'iḍ* is to cleanse societies worldwide from anomalies which, as Elizabeth Cooper described as hitherto inherent with visible complex in all modes of property transfer and acquisition because of their over-dependency on social and cultural conventions and norms.[37] It also includes material provision for surviving dependents and relatives, creation of mutual ties

[36] Abdul Hai A'rfi, *Islamic Law of Inheritance (Extracted from Ahkam-E-Mayyit*), 1st ed. trans. Muhammad Shamim (Karachi, Pakistan: Darul Ishaat Publication, 1994), 7-9

[37] Cooper Elizabeth, *Women and Inheritance in 5 Sub-Saharan African Countries: Opportunity and Challenges for Policy and Practice Change* (n.p.: Chronic Poverty Research Centre, 2010), 3

and responsibilities which stem from blood relationships among the deceased's relatives, [38] removal of sex discrimination and to allow circulation of wealth, that is, the law ensures that the wealth is not concentrated within a few hands as Allah says "……so that it may not circulate only between the rich among you" (Surah al-Ḥashr 59:7).

3. Yoruba Customary Law of Succession

In many parts of Africa, customary law is practiced, accepted and enforced within communities in cases of succession or inheritance, land disputes, marriage, divorce, kingship, and so on. According to Bamgbose, various indigenous African nations (Nigeria inclusive) for centuries had evolved vibrant judicial systems practiced in various local courts that were presided over by Kings or their appointees before the emergence of Islam and Christianity among Africans.[39] One of such groups with ancestral customs, laws and practices is the Yoruba people of Southwest Nigeria.

The Yoruba nation is one of the largest ethno-linguistic groups in sub-Saharan Africa and a major ethnic group in Nigeria which geographically occupies the Southwestern part of the country which comprises Oyo, Ogun, Osun, Ondo, Ekiti and Lagos States transcending into some Yoruba dominated areas in Kwara and Kogi States (in the present North-central geopolitical zone of Nigeria) and some parts of West African region.[40] According to Onakoya, Yoruba customary laws consist of acceptable native laws and customs which are the legal vehicles for rules of conduct, practices and beliefs that are essential to Yoruba social and economic system. [41] Therefore, Yoruba native inheritance laws and customs are

[38] Coulson Noel James, *Succession in the Muslim Family* (Cambridge: Cambridge University Press, 1971), 1

[39] Bamgbose Oluyemisi, 'Dispute Settlement Under Yoruba Culture: Lesson for the Criminal Justice System', in *The Yoruba in Transition: History, Values and Modernity*, eds. Toyin Falola and Ann Genove (Durham: North Carolina, Carolina Academic Press, 2006), 126

[40] Opeloye Muhib Omolayo, 'The Yoruba Muslim's Cultural Identity Questions', *Ilorin Journal of Religious Studies*, vol. 2 (2011): 1

[41] Onakoya Olusegun, 'Family Head versus Family Members: Legal Issues in Management of Family Land under Yoruba Customary Law', *IISTE Journal of Law, Policy and Globalization*, vol. 39 (2015): 222-223

largely patrilineal in practice.[42] Among the various inheritance and estate acquisition methods of Yorubas are:

i. *Ori-o-jori* and *Idi Igi* Succession Methods: Under the Yoruba customary law of succession, *Ori-o-jori* (share *per* head) and *Idi-igi* (share *per* branch) are the two most famous ways of inheritance and acquisition of estate. *Ori-o-jori* denotes a situation where the deceased's estate is devolved equally based on the number of children he had (*per* head) irrespective of their gender, age or status; while on the other hand, *idi-igi* is a succession method where the deceased's property or estate is devolved equally according to the number of wives he had (*per* branch) irrespective of the number of children these wives had for the deceased.[43]

According to Piwuna, these two inheritance methods adopted under the administration of estates among the Yorubas were clearly elucidated by Ademola CJN (as he was then called) in *Akinyede v. Opere*[44] *inter alia:*

> *"It is a common ground that the Yoruba customary law admits of two methods of distribution of assets when the progenitor died intestate. Distributions are usually made by what the Yoruba call "Idi-igi or Ori-o-jori".* [45]

These two succession methods were also upheld in cases of *Dawodu* and *Ors v. Danmole* and *Ors,*[46] *Taiwo v. Lawani,*[47] *Johnson& Ors. v. Macaulay & Anor,*[48] *Amodu v.* Obayomi.[49]

ii. *Dawodu* (Eldest Son Supremacy or Primogeniture): Yoruba people attached the highest respect and veneration to the position of the eldest

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42 Toriola A. Oyewo, *A Handbook on African Laws of Marriages, Inheritance and Succession*, 1st ed. (Nigeria: Jator Publishing Company, 1999), 55

43 J. O. Ajibola, *Administration of Justice in the Customary Courts of Yorubaland* (Ibadan, Nigeria: University Press Limited, 1982), 4. See also, Yusuf AbdulRasheed & Sheriff Ekong, *Succession under Islamic Law* (Lagos, Nigeria: Malthouse Press Limited, 2011), 15-17

44 Akinyede v. Opere (1968) ALL LR 65 at 67

45 M. G. Piwuna, 'An Appraisal of Selected Native Estate Laws and Custom in Nigeria', *Journal of Private Law*, vol. 1/1 (2013), 332, https://dspace.unijos.edu.ng/jspui/bitstream/123456789/1792/1/an%20appraisal%20of%20selective%20native.pdf, accessed on 27 April 2022

46 Dawodu and Ors v. Danmole and Ors (1958), 3 FSC 46

47 Taiwo v. Lawani (1961) 5 ANLR 733

48 Johnson & Ors. v. Macaulay & Anor (1992), 5 NWLR (pt.242), 503

49 Amodu v. Obayomi (1997), 2 NWLR (pt.486), 144

son of the family. He is known as *Dawodu, Daodu* or *Dawudu* while in the general rule of inheritance among the Yorubas, the eldest son succeeds to land and other properties in the place of his father for his benefit and that of all family members and relations.[50]

As practiced under Yoruba customs, *Dawodu* becomes the *Olori-ebi* (head of the family) of his deceased father's lineage and has the authority to manage, administer and devolve the inherited properties and estates either through *ori-o-jori* or *idi igi* mode of estate devolution.[51] He is being likened to a "trustee" under English law as Okunola affirmed.[52] The Dawodu's unrestricted power and authority was confirmed in cases such as *Lewis and Ors. v. Bankole,*[53] *Akinyede and Ors. v. Yahya Mustapha and Ors.*,[54] and *Yusuf v. Dada.*[55]

iii. Women as Inheritable Estates (*Ajemoogun*): In Yoruba customs, women are the most ridiculed in the scheme of inheritance. The women had no identity; therefore, a wife (widow) is regarded as a chattel, a part of inheritable commodities left behind by the deceased. This custom was upheld in the case of *Suberu v. Sunmonu*[56] where the court with the judgement delivered by Jibowu F.J proclaimed that:

> *"Under Yoruba custom, a wife has no inheritance since herself is like a chattel to be inherited by her late husband relatives, and when there are no child/children alive to inherit the deceased, the property devolves on the members of the husband's family".*[57]

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50 Toriola A. Oyewo, *A Handbook on African Laws of Marriages, Inheritance and Succession*, 56

51 Sagay Itse, *Nigerian Law of Succession: Principles, Statuses and Commentaries* (Lagos, Nigeria: Malthouse Press Limited, 2006), 269-270

52 Okunola Muritala, 'Relationship between Islamic Law and Customary Law of Succession in Southern Nigeria', in *Towards a Restatement of Nigerian Customary Law*, vol. 10, eds. Prince Bola Ajibola, Yemi Osinbajo & Awa U. Kalu (Lagos, Nigeria: Federal Ministry of Justice,1991), 160

53 Lewis and Ors. v. Bankole (1968) Unreported Suit No SC 216/1967; 269-271, 294

54 Yahya Mustapha and Ors (1990) NWLR (pt.146), 657

55 Yusuf v. Dada (1957) SCNLR 45

56 Suberu v. Sunmonu (1957) SCNLR 45

57 Yusuf AbdulRasheed & Sheriff Ekong, *Succession under Islamic Law*, 10

The above pronouncement was also upheld in the case of *Akinnubi v. Akinnubi*[58] where the Supreme Court held *inter alia*:

> *"It is a well settled rule of native law and custom of the Yoruba that a wife could not inherit her husband's property. Indeed, under Yoruba customary law, a widow under intestacy is regarded as a part of the estate of her husband to be administered or inherited by the deceased's family".*[59]

In essence, according to Yoruba customary law of succession, a wife cannot inherit her husband's estate. She is part of the estate to be acquired and inherited. In fact, under the administration of the estate of the Yoruba people, a wife cannot be appointed as "administratrix" of her late husband's estate as held in the case of *Akinnubi v. Akinnubi.*[60]

4. Nigerian Legal System and Succession Laws

Nigeria, the greatest Islamo-Christian nation in the world[61] was invaded and weakened through the imposition of direct and indirect rules on the people of the country. This was achieved with the ceding and conquest of Lagos as a British colony in 1886 C.E, weakening of the existing strong empires such as Oyo, Benin and Sokoto Caliphate, and the amalgamation of Northern and Southern Protectorates to form an entity called "Nigeria" in 1914 C.E.[62] It is on record according to Olatoye and Yekini that the Supreme Court Ordinance of 1863 (later replaced by Supreme Court Ordinance of 1874) which was passed by the British colonialists introduced the English-style judicial system for Lagos Colony, and by extension, all Southern parts of Nigeria and laid foundation for the demeaning of

58 Akinnubi v. Akinnubi (1997), 2 NWLR (pt.486), 144

59 A. A. Kolajo, *Customary Law in Nigeria through the Cases* (Nigeria: Spectrum Books, 2000), 159-160; Yusuf AbdulRasheed & Sheriff Ekong, *Succession under Islamic Law*, 10

60 M. G. Piwuna, 'An Appraisal of Selected Native Estate Laws and Custom in Nigeria', 334

61 John Onaiyekan, 'Shariah in Nigeria: The Issues from a Christian Perspective', in *Understanding Shariah in Nigeria*, ed. A. M Yakubu *et al* (Ibadan, Nigeria: Spectrum Books Limited, 2001), 182-183.

62 Cynado Ezeogidi, '*British Conquest, Colonization and Administration in Nigeria*', https://www.researchgate.net/publication/334377114, 1-19, accessed on 18 March 2019

customary and religious judicial power previously enjoined by kings in their courts in all cases.[63]

In the words of Merryman, as quoted by Yadudu, the legal system is an operating set of legal institutions, procedures and rules.[64] In essence; the legal system is the procedure or process for interpreting and enforcing applicable law. This Nigerian legal system is plagued with legal pluralism. Thus, as posited by Niki Tobi, legal pluralism means the existence of variance but interwoven laws in a legal system acceptable and enforceable within a geographical entity at a particular period.[65] Therefore, the Nigerian Constitution recognises a common legal system with the plurality of laws such as English law, Islamic law and customary laws.[66] However, English law has an unassailable influence on the Nigerian legal system with the enactment of Section 45(1) of the Interpretation Act which was in force in England from 1st January, 1900.[67] This assertion was corroborated by Obilade when he stated that:

> *"One of the most notable characteristics of the Nigerian legal system is the tremendous influence of English law upon its growth. The historical link of the country with England has left a seemingly indelible mark upon the system"*.[68]

Unequivocally, the Nigerian legal pluralism syndrome has affected all spheres of Nigeria's legal administration, especially in the area of succession procedure, administration of estate, application of customary

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63 Olatoye Kareem & Yekini Abubakar, 'Islamic Law in Southern Nigerian Courts', 124

64 Yadudu Auwalu Hamisu, '*Shariah* in a Multi-Religious Society: The Case of Nigeria', in *Understanding Shariah in Nigeria*, ed. A. M Yakubu *et al* (Ibadan, Nigeria: Spectrum Books Limited, 2001), 146

65 Tobi Niki, *Sources of Nigerian Law* (Lagos, Nigeria: MIJ Publishers, 2006), 153

66 Oba AbdulMumini Adebayo & Ismael Saka Ismael, 'Challenges in the Judicial Administration of Muslim Estates in the *Shari'ah* Courts of Appeal in Nigeria', 82

67 Section 45(1) of the interpretation Act provides that: "*the Common Law of England and the doctrines of equity and statutes of general application which were in force in England on 1st January, 1900 are applicable in Nigeria, only in so far as local jurisdiction and circumstances shall permit*".

68 Obilade Akintunde Olusegun, *The Nigerian Legal System* (Ibadan, Nigeria: Spectrum Law Publishing, 1979), 41

law and the administration of criminal justice.[69] According to Paul Okhaide, the law governing succession in Nigeria can be broadly categorized into two; namely, testate and intestate succession. Testate succession consists primarily of wills and as he said, there is no uniformity of applicable laws relating to wills because many Nigerian States still apply the English Will Acts of 1837 and the Will Amendment Acts of 1852 except a few such as Lagos state that adopted the Western Nigerian Law (Cap. 133, Laws of Western Nigeria, 1959) by the virtue of applicable laws Edict of 1972.[70]

Consequently, as Okhaide further posited, Will law in Nigeria was a re-enactment of the provision of the Will Act of 1837, Wills Amendment Act of 1852 (Soldiers and Sailors) and Wills Act 1918 with the inclusion of some prevailing customary laws and beliefs that regulate succession under customary law in some states.[71] On the other hand, intestate succession in Nigeria involves the application of three systems of laws *viz-a-viz* the common law, administration of Estate Laws of the various Nigerian states and the customary law (which includes Muslim Law).[72]

This has brought about unresolved and recurring litigations on succession pronouncements in courts of law because in many cases the English-received law or "the common law" is given preference over other indigenous or religious laws whenever the conflict of legal pluralism occurs in litigation as in the cases of *Ahmadu Usman* v. *Sidi Umaru*[73] and *Yinusa* v. *Adesubokan*[74] where it was affirmed that whenever a customary law (in which Islamic law was categorized) conflicts with applicable English received law, the latter prevails.[75]

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69 Dalhat A. Idris, 'An Appraisal of Legal Pluralism in the Administration of Criminal Justice in Nigeria' (PhD Thesis, Department of Public Law, Ahmadu Bello University, Zaria, Nigeria, 2018), 2-6 and 23-33

70 Okhaide Paul Itua, 'Legitimacy, Legitimation and Succession in Nigeria: An Appraisal of Section 42(2) of the Constitution of the Federal Republic of Nigeria 1999 as Amended on the Rights of Inheritance', *Journal of Law and Conflict Resolution*, vol. 4/3 (2012): 34

71 Okhaide Paul Itua, 'Legitimacy, Legitimation and Succession in Nigeria', 34

72 Okhaide Paul Itua, 'Legitimacy, Legitimation and Succession in Nigeria', 34

73 Ahmadu Usman v. Sidi Umaru (1992)7 NWLR (pt.254) 377

74 Yinusa v. Adesubokan (1971)1 ANLR, 225

75 Sagay Itse, *Nigerian Law of Succession: Principles, Statuses and Commentaries*, 141

In essence, according to Sagay, the laws governing intestate succession in Nigeria are the common law, the administration of estate laws of various states and customary law which speciously includes Muslim law.[76] Though, *Sharī'ah* is categorized as customary law under the Nigerian legal system;[77] it is pertinent to state that the Muslim law of succession (*al-mīrāth*) is recognised by the Constitution and can be invoked judicially by Muslims in devolving their properties in accordance with *Sharī'ah* provisions especially to the level of the *Sharī'ah* Courts of Appeal,[78] a religio-legal based Court that can be established by any state within Nigeria as specified in Section 275, subsection 1 of the 1999 Constitution.

This is in line with the constitutional provisions under paragraph (C) of Section 277, subsection 2 of the 1999 Constitution as amended in which the Islamic law question that can confer jurisdiction on the *Sharī'ah* Court of Appeal as regards succession is on three specific matters; as mentioned, these are endowment (*waqf*), gift (*hibah*) and will (*waṣiyyah*) or succession (*mīrāth*).[79] This invariably means that Nigerian Muslims possess an unfettered right to invoke the provision of the Constitution in devolving their estate according to the Islamic law of inheritance while alive through *waṣiyyah* since the law, (that is, *Sharī'ah*) is universal as in the cases of *Mrs Adamo Ajibaiye v. Risikat Ajibaiye & 6 Ors*[80] and *Khairie Zaidan v. Fatimah Khalil Mohssen*[81] or contend with the consequences of dying "intestate" in which their estate devolved according to the native law and custom of his community as recorded in the case of *Molade v. Ojumola*.[82]

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76 Sagay Itse, *Nigerian Law of Succession: Principles, Statuses and Commentaries*, 73

77 Jamiu Muhammad Busari, 'Shari'a as Customary Law? An Analytical Assessment from the Nigerian Constitution and Judicial Precedents', *AHKAM*, vol. 21/1 (2021): 25-44

78 Mutallib Atanda Ambali, *The Practice of Muslim Family Law in Nigeria*, 2nd ed. (Lagos, Nigeria: Princeton Publishing, 2003), 21-23

79 See The 1999 Constitution of the Federal Republic of Nigeria as amended (2011), 145; Yusuf AbdulRasheed & Sheriff Ekong, *Succession under Islamic Law*, 2

80 Mrs Adamo Ajibaiye v. Risikat Ajibaiye & 6 Ors (2007) All FWLR (part 359), p.1321 at 1324

81 Khairie Zaidan v. Fatimah Khalil Mohssen (1974), 4 UILR 283;1

82 Molade v. Ojumola (1942) 8, WACA 39

5. The Statutory Lagos and Oyo States' Administration of Estate Laws

As enshrined under Nigerian federalism, all the federating units (states) have constitutional rights to enact statutory laws through State Houses of Assembly. Such laws become legal, binding and enforceable once it receives the Executive's assent. The power vested in the State Houses of Assembly (SHA) to legislate and pass laws as presented by the executives, legislatures or citizens is derived from the Nigerian Constitution as enshrined in Section 100, subsection 1 and 2.[83]

These enacted laws vary from one state to the other in Nigeria because of distinct peculiarities and the needs of the society while the constitutional prerogative of pronouncing and enforcing it lies with the judiciary, the executive, the legislature themselves and the law enforcement agencies. One such areas in which all Nigerian states are allowed to formulate and enact laws for adjudications and enforcements is the succession and administration of estates. Therefore, many states in Nigeria have enacted laws governing the administration of intestate deceased.[84]

According to Ipaye, the present Lagos and Oyo States' Will, Succession and Administration of Estate Laws (AEL) were drawn from the old Western Nigerian 1959 Cap. 113 Laws as applicable in the then-old Oyo, Ondo, Ogun and Bendel States and the Lagos State Administration of Estate law Cap.2 of 1973.[85] Therefore, these states had respectively re-enacted new AELs as carved out of AEL 1959; for example, in 1973, Oyo state had Estate Law, in 1978, Administration of Estate Law and Oyo State Will Edicts Acts of 1989 with little amendment in 2012 and 2015. On the other hand, there is Lagos State Estate Law of 1972, 1978, the Lagos State Administration of Estates Law of 1994 and the Will Laws of Lagos State 2005 and 2015 respectively.

Administratively, as statutorily enacted in the present Lagos and Oyo States' AELs, some of the contents of the AEL's include the definitions of

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83 The 1999 Nigerian Constitution as amended, 69

84 Opeloye Muhib Omolayo, 'The Realization of the *Shari'ah* in South-western Nigeria: A Mirage or Reality?', in *A Digest of Islamic Law and Jurisprudence in Nigeria*, ed. Zakariyau I. Oseni (Auchi, Nigeria: Darun-Nur, 2003), 40

85 Ipaye O. A, 'Intestate Succession in Oyo, Ondo, Ogun, Bendel and Lagos States', *The Nigerian Journal of Contemporary Law*, vol. 16 (1989): 144-146

small estates,[86] the power of the substantive States' chief judges to review the number of small estates,[87] clarifications on legal surviving beneficiaries to deceased's estates,[88] reversion of unclaimed estates to the states' covers[89] as *bona vacatia*,[90] power of probate registries under the seal of courts to issue Letter of Administration (LA),[91] recognition of the adopted child as a real son or real daughter,[92] treating spouses as individuals for estate distribution and acquisition,[93] nullification of inheritances in case of death ambiguity,[94] provision for payment of debt before estate distribution[95] and so on.

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86 See Law Reform Commission of Lagos State, *Laws of Lagos State of Nigeria*, vol. 2 (UK: Thomson Reuters Limited, 2015), Chapter A4, Section 7, page A4-4, Supplement of Oyo State of Nigeria Gazettes, No 12, Vol.37 of 6th September, (2012), Part A, No 4, Schedule 7, page A15 and Supplement of Oyo State of Nigeria Gazettes No 3, Vol.41 of 5th May, (2016), Part B, No 1, page B1

87 Law Reform Commission of Lagos State, *Laws of Lagos State of Nigeria*, vol. 2, page A4-3

88 Law Reform Commission of Lagos State, *Laws of Lagos State of Nigeria*, vol. 2, page A4-3

89 Law Reform Commission of Lagos State, *Laws of Lagos State of Nigeria*, vol. 2, page A4-3 and Supplement of Oyo State of Nigeria Gazettes, No 12, Vol. 37 of 6th September, 2012, Part A, No 4, Schedule 7, page. A16

90 *Bona vacatia* means property not disposed of by a deceased's will and to which no relative is entitled under intestacy laws.

91 Law Reform Commission of Lagos State, *Laws of Lagos State of Nigeria*, vol. 2, Chapter A4, Section 3, subsection 1-3, pages A4-2 to A4-3, Chapter A5, Section 7, pages. A5-7, Chapter A5, Part 3, Section 17-21 and 23, pages A5-10 to A5-13, Chapter A5, Part 3, Section 29, subsection 1 and 2, pages A5-15; Oyo State Government of Nigeria, *The Laws of Oyo State, Nigeria*, rev. ed. vol. 1 (Ibadan: Government Press, 2000), Chapter 1, Cap.1, Part 3, Section 6-18, pages 8-12 and Cap.1, Part 4, Schedule 19-34, pages 13-18

92 Law Reform Commission of Lagos State, *Laws of Lagos State of Nigeria*, vol. 2, page A4-3; Supplement of Oyo State of Nigeria Gazettes No 12, Vol. 37 of 6th September, 2012, Part A, No 4, Schedule 6 (a-g), page A16

93 Law Reform Commission of Lagos State, *Laws of Lagos State of Nigeria*, vol. 2, Chapter A5, Part 5, Section 46, subsection 5, pages A5-27; Oyo State Government of Nigeria, *The Laws of Oyo State, Nigeria*, Vol. 1 Chapter 1, Cap. 1, Part 6, Section 49 (2), page 28

94 Law Reform Commission of Lagos State, *Laws of Lagos State of Nigeria*, vol. 2, Chapter A5, Part 5, Section 46, subsection 5, pages A5-27; Oyo State Government of Nigeria, *The Laws of Oyo State, Nigeria*, Vol. 1, Chapter 1, Cap. 1, Part 6, Section 49 (3), page 28

CHALLENGES OF *AL-FARĀ'IḌ* APPLICATION IN LAGOS AND OYO STATES

In this section, the study analyses the challenges of *al-farā'iḍ* application on deceased's properties among Yoruba Muslims in Lagos and Oyo States, Nigeria. These include the incongruities of Nigerian Constitution, Lagos and Oyo States' AELs and Yoruba Customary law of succession with the provisions of *al-farā'iḍ* and the non-availability of *Sharī'ah* Courts in Southwest Nigeria.

1. Incongruities of the Nigerian Constitution with *Al-Farā'iḍ*

The Nigerian Constitution has unassailable supremacy over other existing laws (such as customary law and *Sharī'ah*) when it says in Section 1 (1) *inter alia*: "This Constitution is Supreme and its provision shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria."[96] It further says in Section 1(3) that: "If any other law is inconsistent with the provision of the Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void".[97] These constitutional assertions are not in tandem with the divinity of *Sharī'ah* because both Nigerian legal system and the Constitution are products of man-made arrangement while *Sharī'ah* is divine and binding on all Muslims irrespective of their races and regions; hence, altercation between the two is inevitable.

For instance, under inheritance law, the Nigerian legal system advocates testate and intestate succession. Testacy entails the writing of a Will as advocated by English law and various states' succession laws while intestacy necessitates the application of existing law as enforced by the Constitution or individual state's AEL in devolving the deceased's estate.[98]

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95 Law Reform Commission of Lagos State, *Laws of Lagos State of Nigeria*, vol. 2, Chapter A5, Special Schedule, Section 35, Part 1, Section 1, 2(a-c) and Part 2, Section 1-8, pages A5-38 to A5-3; Oyo State Government of Nigeria, *The Laws of Oyo State*, *Nigeria*, Vol. 1, Chapter 1, Cap. 1, Part 1, Section 37, Schedule 1, page 36 and Chapter 1, Cap.1, First Schedule, Section 37, Part 1, Schedule 2 (a) (i-iv), page 37

96 The 1999 Nigerian Constitution,19-20

97 The 1999 Nigerian Constitution,19-20

98 Okhaide Paul Itua, 'Succession under Benin Customary Law in Nigeria, Igiogbe Matters Arising', *Journal of Law and Conflict Resolution*, vol. 3/7 (2011): 118-119

In Section 43 of the 1999 Constitution as amended, Nigerians are guaranteed freedom and rights "to acquire and own properties (real, land, personal) anywhere in the country" while in Section 44 subsection 1, it stated clearly that no "moveable properties or any interest in an immovable property shall be taken possession of compulsorily except through process prescribed by a law".[99]

Therefore, in *Apatira v. Akanke*[100], a Will which was made by a Muslim testator under the Will Act of 1837 subjected to the Wills Amendment Act of 1852 became the subject of litigation. The plaintiff has prayed the court to overlook the technical flaws of attestation as noticed in the will document which made it invalid under the Will Act[101] and to rule that the Will be deposited and admitted to probate under Islamic law since the deceased had lived his life as a Muslim. The trial judge dismissed the prayer and his judgment is paraphrased *inter alia*:

> *"The testator had clearly intended his will to take effect under English law and therefore it was by the standard of that law that it should be judged; the will reads as if it was made in accordance with English law".* [102]

The judge was also believed to have pronounced the judgment as such on the legal premise that "in the event of a conflict between the Will Act provision and a rule of native and customary in which *Sharī'ah* was categorized), the former prevailed over the latter". These incidents negated the provisions of property devolution and acquisition under *Sharī'ah*, in which a Muslim (either as a testator or testatrix) is expected not to die intestate because his or her property is subject to the dictates of *al-farā'iḍ*.[103]

Furthermore, another anomaly is the Marriage Act absolutism. The Act gives absolute power to anyone who contracts marriage through it to

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99 The 1999 Nigerian Constitution, 4

100 Apatira v. Akanke (1944) 17 NLR 149

101 The Will document was not signed by two witnesses as required by the Will Act.

102 Sagay Itse, *Nigerian Law of Succession: Principles, Statuses and Commentaries*, 126

103 Mutallib Atanda Ambali, *The Practice o*f *Muslim Family Law in Nigeria*, 3rd ed. (Lagos, Nigeria: Princeton Publishing, 2013), 389. See also, Ismael Saka Ismael & Oba Abdulmumini Adebayo, 'Legal Challenges concerning some Beneficiaries of Estates Law in Nigeria', *IIUM Law Journal*, vol. 25/1 (2017): 65

dispose of his estates to anyone he wishes, including his concubines, while such devolvement would stand in a court of law.[104] It further theorizes that a Muslim contracting marriage under the Act has excluded the operation of both customary and Islamic law in his life and death; thus, these are regulated by English law. In Section 36(1) of the Marriage Act Ordinance (Cap. 115) of 1958, it was clearly stated that:

> *"Where any person who is subject to native law and custom contracted a marriage in accordance with the provision of this ordinance and such person dies intestate, his personal and real properties and any properties he might have disposed of by will, shall be distributed in accordance with the provision of the law of England relating to the distribution of the personal estate of intestates".* [105]

This, according to Doma-Kutigi is a major hindrance imposed on Nigerian Muslims and it clearly means that whenever anyone who was subject to customary laws (including *Sharī'ah* as the Constitution stipulated) dies intestate while married under the Ordinance, his legacy or bequest will be distributed in accordance with the English law.[106] This notion according to her was upheld in the popular case of *Yinusa v. Adesubokan*.[107] The Court's decision flagrantly contradicted the Islamic principle which allows Muslims to marry non-Muslims (including the Christians), upholds their religious rights under Islamic State and even permits the appropriation of *al-waṣiyyah* to them as gratification.[108]

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[104] Toriola A. Oyewo, *A Handbook on African Laws of Marriages, Inheritance and Succession*, 5

[105] Raimi, A.I, 'The Concept of Will (*Wasiyyah*) under the Shari'ah', *Ife Jurist Review: Journal of Contemporary Legal and Allied Issues, IFJR*, Part 1, (2014): 199

[106] Doma-Kutigi Halima, 'Certification of Islamic Marriages in Nigeria: Realities, Challenges, and Solutions', *Electronic Journal of Islam and Middle Eastern Law* (EJIMEL), vol. 7 (2019): 28

[107] Yinusa v. Adesubokan (1971)1 ANLR, 225

[108] Okunola Muritala, 'Relationship between Islamic Law and Customary Law of Succession in Southern Nigeria', 155-156

2. Incompatibilities of Lagos and Oyo States' AELs with *Al-Farā'iḍ*

As enacted and provisioned under the AELs of the two states, there are provisions which are antithetical to Islamic tenets. These include the following:

i. Small Estates Syndrome:

Both States adopted the concept of "Small Estates" and how to inherit them with different measures and applications, and to an extent, the states retained legal whims and caprices to determine and review the maximum value of what could be termed as small estate periodically. According to the States' AELs, a small estate is declared as "any estate where the deceased left money in the bank or other institution or with any person in a sum not exceeding N100,000.00K (One Hundred Thousand Naira only) excluding real property".[109]

However, under Islamic law, no estate or property is regarded as "small estate"; because under *al-farā'iḍ*, any assets or estates bestowed by Allah upon His servant are shareable among the deceased's legitimate heirs either meager or enormous. This is an injunction given by Allah in affirming the necessity of sharing properties among both men and women when He says in the Glorious Qur'ān: "For men there is a share in what the parents and the nearest of kin have left. And for women there is a share in what the parents and the nearest of kin have left, be it small or large, a determined share". (Q4:7) Thus, sharing deceased's estate either meager or enormous without discrimination is the core value of Islamic inheritance law. This is aimed at alleviating the sufferings of the bereaved while reviewing or determining the quantities of small estate is anti-Islam.

ii. Adopted Child as an Estate Beneficiary:

In enumerating the beneficiaries to testate and intestate estates, both states included the adopted child/children among the beneficiaries. It has to be reiterated that this is not legal under Islamic law. Prior to the revelation of the Qur'ān, adoption was a norm among the pre-Islamic nations and noteworthy to mention that, even Prophet Muhammad also adopted a free slave by the name of Zayd bin Ḥārithah as a son who afterward was known

[109] Law Reform Commission of Lagos State, *Laws of Lagos State of Nigeria*, vol. 2, Chapter A4, Section 7, page A4-4 and Supplement of Oyo State of Nigeria Gazettes No 12, Vol.37 of 6th September, 2012, Part A, No 4, Schedule 7, page. A15

as Zayd bin Muḥammad through a process known then as *al-Tabbanī* (pre-Islamic adoption) until the revelation of Surah al-Aḥzāb, Chapter 33, verses 4 and 5 where it was decreed by Allah that adopted sons must be known and called by their biological parents.

In Western culture, adoption is allowed in which an adopted child is legalised to inherit from his or her adoptive parents,[110] and this is replicated under Nigerian legislation with different procedures and applications from one state to the other.[111] The legalisation of birthright to adopted child as a real son or daughter and subsequent inheritance is prohibited in Islam. In place of this, *Sharī'ah* allowed for a legal alternative mechanism known as *Kafālah* (Islamic fosterage).[112]

According to Yusuph, *Kafālah* is a form of foster care for children that entails commitment to undertake the maintenance of a child, including education in the same way a parent would for their biological child but would not create a legal parent-child status (legitimate filiation) producing specific personal status legalising entitlements nor confer on the adopted child rights to inheritance from the adoptive parents.[113] Though, adoption or fosterage is not only permissible in Islam, but highly regarded as a rewardable duty of Muslim *Ummah* by treating the orphans and adopted children kindly and generously (see Q.4:36 and 127, Q.93:9 and Q.107-1-3), only agnatic line of descent which is borne out of paternal line and procreation established by birth through maternal line could confer on anyone lineage (*nasab*) which validates inheritance rights.

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[110] United Nations, *Child Adoption: Trends and Policies* (New York: Department of Economic and Social Affairs, 2009), 67

[111] E. I. Nwogugu, *Family Law in Nigeria* (Nigeria: HEBN Publishers Plc, 1990), 320-322; Onuorah Chioma Patricia, 'Child Adoption: Prospects and Problems in Nigerian Contemporary Society', *Nigerian Journal of Social Sciences*, vol. 10/1 (2014): 64-82

[112] Andrea Buchler & Eveline Schneider Kayasseh, 'Fostering and Adoption in Islamic Law-Under Consideration of the Laws of Morocco, Egypt and the United Arab Emirates', *Electronic Journal of Islamic and Middle Eastern Law* (EJIMEL), vol. 6 (2018): 40-55; Shabnam Ishaque, 'Islamic Principles on Adoption: Examining the Impact of Illegitimacy and Inheritance Related Concerns in Context of a Child's Right to an Identity', *International Journal of Laws, Policy and the Family*, vol. 22 (2008): 401-403

[113] AbdulRaheem Abdulwaheed Yusuph, 'Adoption under Islamic Law: Correcting Misconception', *Islam and Civilization Renewal* (ICR), vol. 9/2 (2018): 190 and 199

In confirming the position of Islam on the inheritance of an adopted child, Yusuph further posited *inter alia:*

> *"Adopted child is not allowed inheritance from his or her adoptive parents while under Sharī'ah, his or her properties are also separated from an adoptive parents' properties."*[114]

In essence, under Islamic law, the only succor which is not abhor by either Qur'ān or *Sunnah* is the act of bequeathing one-third of properties or less by the adoptive parents to the adopted child through *waṣiyyah*, or setting *waqf* for the sustenance and caring of the adopted child/children after their demise.[115]

iii. Delaying of Estate Distribution:

Under the States' AELs, assets of an intestate (if litigated upon in courts) would not be distributed by an administrator, executor or personal representative until the "Letter of Administration" is granted by a Court of competent jurisdiction.[116] This is the injustice of the highest order because consequently, the legal beneficiaries would be denied their legitimate rights to succession at the right time. As the law stipulated, such letter would be granted by the State's High Court when a person died intestate and made no valid Will, or the Will made has no appointed executors or was rejected by Court for irregularities.[117]

Furthermore, the process outlined by various state's High Court to obtain the letter of administration from the Probate Registry [118] is cumbersome and negates the spirit of Islamic injunction which advocates

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[114] AbdulRaheem Abdulwaheed Yusuph, 'Adoption under Islamic Law: Correcting Misconception', 195

[115] Shabnam Ishaque, 'Islamic Principles on Adoption: Examining the Impact of Illegitimacy and Inheritance Related Concerns in Context of a Child's Right to an Identity', 407-409

[116] Letter of Administration is a document that authorises an estate beneficiary to oversee the estates of an intestate relative under the Court supervision through an appointed legal administrator. See https://legalpuzzles.wordpress.com/2017/07/31/how-to-obtain-letters-of-administartion-in-nigeria, accessed on 8 November 2019

[117] Lagos State Judiciary, *High Court of Lagos State Civil Procedure* (Lagos, Nigeria: Lagos State Printing Corporation, 2019), 186-187 and 193-220

[118] Dadem Yilzum Yusufu, *Property Law Practice in Nigeria*, 2nd ed. (Jos, Nigeria: Jos University Press Ltd, 2012), 336-341; S. T. James, 'Issues and Challenges in the Grant of Probate in Nigeria', *African Journal of Law, Political Research and Administration*, vol. 7/3 (2024): 36-37

speedy devolution of deceased's estate after the settlement of debt and legacy (see Q.4: 11 and 12). For example, the judicial power vested in the Probate Registry could be deduced from Lagos State High Court Order 62, Rule 2 (1) which stipulates that:

> *"Every original Will of which probate or administration with Will annexed is granted, shall be filled and kept in the Probate Registry, in such a manner as to secure at once, the due preservation and convenient inspection of the same."*[119]

This onerous process includes the writing of an application letter for the issuance of a letter of administration, collection of the death certificate, oath or justification by sureties, declaration of the next of kin, passport photograph of the applicant and sureties, a duly completed bond by the applicants to pay debts and liabilities of the deceased's estate, payment of legal charges and so on to mention but a few. In essence, if a Muslim dies intestate without a will written and deposited in court's probate registry, the High Court's Law of Estate Administration as obtainable in Lagos and Oyo states would be enforced (once any of the presupposed heirs or beneficiaries approaches the Court) while the legal heirs would be denied timely acquisition of their legitimate shares from the properties.

iv. Improper Share Allotments:

There are improper estate allotments in both Lagos and Oyo States' AELs which are not in tandem with Islamic provisions. For instance, the surviving spouse (either husband or wife) would inherit one-third of the deceased's estate in the presence of the issues who would inherit the remaining two-third whether the parents or brothers and sisters of whole blood are alive or not".[120] The law allotted one-third to the surviving spouse and two-third to the children exempting the parents from inheriting.

This allotment is prone to injustice under Islamic law because the surviving spouse, the children and the parents are all Qur'ānic or obligatory sharers (*aṣḥāb al-furūḍ*) who could not be exempted from inheriting under any circumstances (see Q.4:11-12) except when the debts incurred by the deceased had consumed the whole estate or they involved in homicide

[119] Lagos State Judiciary, *High Court of Lagos State Civil Procedure*, 194

[120] Law Reform Commission of Lagos State, *Laws of Lagos State of Nigeria*, vol. 2, Chapter A4, Section 7, page. A4-3

(*qatl*) or had difference of religion (*ikhtilāf al-dīn*) with the deceased under impediments to inheritance (*mawāni' al-mīrāth*).[121]

Therefore, the deceased's parents, according to *al-farā'iḍ* provisions, are entitled to one-sixth (*sudus*) each in the presence of the deceased's children, in some occasions if inheriting alone, the mother would inherit one-third (*thuluth*) and the father inherits two-third (*thuluthān*), the surviving spouse (as a wife) is entitled to one-eighth (*thumn*) in the presence of the deceased's child/children and one-fourth (*rub'*) in their absence, and (as husband), he is entitled to one-fourth with the presence of his wife's child/children and would inherit half (*niṣf*) of the estate in their absence while the children (males and females) would inherit the residue on the basis of "…for a male there is a share equal to that of two females" (Q.4:11). that is, ratio 2 to 1.

v. Problem of Double Share to Male Heir:

Lastly, the two states' AELs failed to distinguish between the allotted shares of male and female heirs. In all sections and subsections in which allotments were made, nothing therein differentiates between the shares of the male and female inheritors and this contradicted *al-farā'iḍ* provisions. In the Holy Qur'ān, Chapter 4 verses 11 and 176, Allah says "…for a male there is a share equal to that of two females…*li al-dhakar mithl ḥaẓ al-unthayayn"* and this among others as enunciated by various scholars, was due to the premium importance of higher responsibilities, financial obligations and other responsibilities imposed upon male heirs by Allah which, if duly adhered to could be reduced through inherited properties.[122]

3. Incongruities of the Yoruba Customary Law of Succession with *Al-Farā'iḍ*

There are provisions under Yoruba customary law of succession which are adversative to *al-farā'iḍ*, prominent among these customs and practices are as follow:

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[121] Busari Jamiu Muhammad, *A Concise Primer to inheritance Law in Islam* (n.p.: Lambert Academic Publishing, 2018), 30-33.

[122] Mohammad Aminfard, 'Why Does Islamic Thought believe in Half Inheritance of Women in Comparison to Men Inheritance?', *Journal of American Science*, vol. 9/4 (2013): 210-212; Sara Haghi *et. al.*, 'A Glance to Islamic Feminism Thought and Women's Inheritance Issue', *Journal of Social Issues and Humanities*, vol.1/6 (2013): 30-32

i. *Ori-o-jori* and *Idi-igi* Syndrome:

Under these succession methods, the only legal heirs or beneficiaries of *Ori-o-jori* and *Idi-igi* are the deceased's children and surviving wife or wives ostracising the deceased's surviving parents, husbands and other blood relations. For example, recently, the exclusivity of deceased's children to estate were further reinforced legally in the case of *Amodu v. Olayemi* [123] and *Okelola v. Adeleke* [124] when the Nigeria apex Court pronounced that, only surviving children of an intestate would inherit the deceased's property. The Court says:

> *"Where a person dies intestate, leaving children surviving him, in accordance with Yoruba customary law, all his properties devolved on his surviving children to the exclusion of other blood relations."* [125]

The exclusivity of this judgment was a grave injustice against other blood relations who have been all catered for under *al-farā'iḍ.* These excluded blood relations include both Qur'ānic sharers and the residuaries (*al-'aṣabah*) who are entitled to shares.

Therefore, application of these methods is adversative to Islamic provision and negated Allah's wisdom of wealth distribution among blood relatives as in Surah al-Nisā', verse 7.

ii. Prohibition of Husband and Parent's Shares of Estate:

In Yoruba custom, the deceased's husband and the deceased's parents are not considered as heirs during estate distribution and acquisition as such act is termed "anathema". This negates Islamic provisions which provided shares for husbands and parents respectively. Islam has made adequate provisions to ameliorate the husband and parents' suffering by allotting to them specific shares as Qur'ānic and obligatory sharers.

Compassionately, husband is allotted one-fourth ($^1/_4$) in the presence of child/children and half ($^1/_2$) in their absence (see Q.4:12) while the parents are also allotted one-sixth ($^1/_6$ for both parents), one-third ($^1/_3$ for mother) and two-third ($^2/_3$ for father) under different circumstances. (see Q.4: 11).

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123 Amodu v. Olayemi (1992)5. N.W.L. R (pt.242),503

124 Okelola v. Adeleke (2004) 13 NWLR (pt. 890) 307

125 Titus Adekunle, 'Succession and Inheritance Law in Nigeria: Resolving the Discriminatory Proprietary Rights of Widows and Children', *Property Law Review*, vol. 1 (n.d): 7

iii. Widows as Chattel:

Among Yoruba people, widows are parts of inheritable properties as previously enunciated. However, under *al-farā'iḍ*, women (either as widows, daughters or female blood relatives) have equal unconstrained rights to inheritance as possessed by men once they are not impeded from such rights through divorce, slavery, homicide and illegitimacy. This right is affirmed by Allah in Q.4, verse12.

iv. Equal Shares for Male and Female:

Furthermore, as envisioned under Yoruba customs, all the deceased's children inherit equally irrespective of their genders either through *ori-o-jori* or *idi-igi* method. This was legally upheld in *Salami v. Salami*[126] where it was pronounced that "It is immaterial whether a child is male or a female, and his or her right is not diminished by sex".[127]

In essence, the deceased's children have the rights to inherit equally in both real and personal estates without any discrimination. This custom contradicts *al-farā'iḍ* provision which allotted to a male twice of shares given to a female as pronounced in Surah al-Nisā', verses 11 and 176.

4. Non-Establishment of Statutory *Sharī'ah* Courts in Southwest Nigeria.

For over a century, Yoruba Muslims have agitated for the statutory establishment and recognition of *Sharī'ah* court in Yorubaland and this has not come to fruition. As provisioned in Section 275 (1) of the 1999 Nigerian Constitution as amended in 2011, states have the constitutional power to establish religious courts such as *Sharī'ah* Court to uphold individual rights to freedom of thought, religion and conscience as affirmed in Section 38, subsection 1 of the 1999 Constitution. However, this has become a mirage till present time in Lagos and Oyo states.

This *proviso* (as in Section 275 (1) of the 1999 Constitution) which is practiced in the Northern part of Nigeria (with the judicial presence and operation of various strata of *Sharī'ah* Courts up to *Sharī'ah* Courts of Appeal)[128] has not been replicated in the Southern part which include

[126] Salami v. Salami (1924) 5 NLR 43 or (1957) WRNLR 120

[127] Titus Adekunle, 'Succession and Inheritance Law in Nigeria: Resolving the Discriminatory Proprietary Rights of Widows and Children', 7

[128] For roles, places and strata of *Sharī'ah* Courts in Northern Nigeria within Nigerian Legal System. See Ibrahim Abikan Abdulqadir & Hussein Ahmad

Lagos and Oyo states. Though, in the current democratic dispensation, the *Sharī'ah* declaration and implementation in Zamfara and other Northern states of Nigeria which occurred over two decades ago[129] had spurred Yoruba Muslims to demand statutory *Sharī'ah* implementation through *Sharī'ah* Courts but, the agitations were to no avail.

Therefore, the non-recognition and establishment of *Sharī'ah* Courts had denied Yoruba Muslims of the states under review their constitutional, religious and human rights of implementing Islamic law provisions in both family and personal engagements, especially in employing *al-farā'iḍ* to devolve the estate of their deceased ones.

THE LEGAL PROSPECT: INDEPENDENT *SHARĪ'AH* PANELS (ISPs) IN LAGOS AND OYO STATES

Going by all the aforementioned incongruities which are all antithetical to the precepts of Islam, it is crystal clear that the Yoruba Muslims of Southwest Nigeria including Lagos and Oyo states are starved of justice and fundamental human rights in practicing their religious rights of devolving their estates as dictated by Allah in the Glorious Qur'ān and as enunciated by Prophet Muhammad through his *Sunnah*, hence, the need for alternative avenues is inevitable. However, the option that could be leveraged on by Yoruba Muslims according to Makinde and Ostien had been suggested over a century ago in 1894 C.E by the then British Chief Justice of Lagos Colony when the Lagos Muslims agitation for Islamic court was thwarted. The Colony Chief Justice was reported to have said:

> *"You are, as a fact, in no way bound to come to our Courts in civil cases. You have perfect liberty to appoint an arbitrator among yourselves, agree to be bound by his decision, and have it registered as a judgment of the Supreme Court."*[130]

This leverage as proposed above has never been realized due to various political and religious hurdles mounted by *Sharī'ah* antagonists. Therefore,

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Folorunsho, 'The Status of *Shari'ah* in the Nigerian Legal Education System: An Appraisal of the Role of Mada'ris', *IIUM Law Journal,* vol. 24/2 (2016): 463-472

[129] Sanni Amidu, 'Shari'ah Conundrum in Nigeria and Zamfara Model: The Role of Nigerian Muslim Youth in the Historical Context', *Journal of Muslim Minority Affairs*, vol. 27/1 (2007): 126

[130] Makinde AbdulFatai Kola & Ostien Philips 'Legal Pluralism in Colonial Lagos', 51

in the absence of statutory *Sharī'ah* Courts and incompatibility of the Nigerian legal system with the provisions of Islamic law especially on Islamic family law such as *al-farā'iḍ*, divorce (*Ṭalāq*) and marriage (*Nikāḥ*) among others; religious and intellectual Yoruba Muslims institutionalized Independent *Sharī'ah* Panels (ISPs), an independent, private, non-binding and non-conventional courts of law in Lagos, Oyo and Osun states respectively.

Though, these ISPs have not possessed judicial power to pronounce nor enforce both civil and criminal judgement because of their non-recognition by the Nigerian Constitution and legal system, their acceptability among Muslims is unprecedented.

The ISPs adjudication is based on Qur'ān, *Sunnah* and other *Sharī'ah* sources and had bestowed on mindful Muslims sense of relief either as plaintiffs, defendants and adjudicators.[131] Therefore, in the last two decades, ISPs had adjudicated several family legal issues as alternative dispute resolution centres and non-statutory Islamic courts to ameliorate the sufferings of Muslims who are *Sharī'ah* conscious.[132]

The institutionalization and operations of ISPs in the last two decades have been documented by Adetona,[133] Sanni,[134] Makinde,[135] Salisu,[136] Makinde and Ostein,[137] Tijani *et al*,[138] Makinde[139] among others.

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131 Adetona Lateef Mobolaji, 'The Dynamism of Independent *Shariah* Panels in Lagos State, South-Western Nigeria', *NATAIS Journal of the Nigeria Association of Teachers of Arabic and Islamic Studies*, vol. 8 (2005): 36

132 Makinde AbdulFatai Kola & Ostien Philips, 'Independent *Sharia* Panel of Lagos State', *Emory International Law Review*, vol. 25 (2011), 921-944

133 Adetona Lateef Mobolaji, 'The Dynamism of Independent *Shariah* Panels in Lagos State, South-Western Nigeria', 30-40

134 Sanni Ishaq Kunle, 'Independent *Sharia* Court Enriching the Nigerian Legal System: Oyo State in Spectrum', *AL-MASLAHA* (2008): 35-49

135 Makinde AbdulFatai Kola, 'The Entanglement of *Shari'ah* Application in South-western Nigeria', *Africology: The Journal of Pan African Studies*, vol. 10/5 (2017): 87-93

136 Salisu Taiwo Moshood, 'An Analytical Study of the Attitude of Muslims to *Tawsiyyah* (Will-Making) in South-Western Nigeria, 1976-2010' (Ph.D Thesis, Department of Religions and Peace Studies, Lagos State University, Lagos, Nigeria, 2011), 168-174

137 Makinde AbdulFatai Kola & Ostien Philips, 'Independent Sharia Panel of Lagos State', 921-944

138 Tijani Abdul-Lateef Aremu, Musa-Jeje Ibrahim Aladire & Alimi Lawal Sikiru, 'An Assessment of Independent *Sharī'a* Panel (ISP) and Its Roles in Resolving

In Lagos state, the ISP holds its session at 1004 Estates Central Mosque and Gowon Estate Central Mosque while in Oyo state, the ISP sits at Oja Oba Central Mosque in Ibadan. These ISPs have adjudicated hundreds of inheritance impasses that were voluntarily submitted by individuals. The judgements of ISPs on inheritance and other cases were commended by scholars including Yadudu who said:

> *"In conclusion I may say that I have found these judgements to be soundly written by person learned in laws applicable in Nigeria and immensely qualified to adjudicate disputes. The analyses of laws, consideration of social and political matters and the review of fact contained in these decisions and personnel who have rendered them have, without doubt portrayed a breadth and depth of knowledge of Sharī'ah principles, Nigerian law and procedure that can rival decisions of the higher bench in the Nigerian Court system; both in the Sharī'ah and common law types. I can vouch that the judgement can stand judicial scrutiny at appellate levels."*[140]

It is therefore on records that these voluntary judicial adjudications based on *Sharī'ah* precepts as embarked upon by the ISPs are promising prospects of lessening the burden of Islamic law application in Lagos and Oyo states and have, for the main time reduced the challenges facing Muslims of the two states under review.

RECOMMENDATIONS

This study suggests that Yoruba Muslims of Lagos and Oyo states should intensify agitations for the implementation of *Sharī'ah* in Yorubaland while Islamic scholars should at all times enlighten their followers about the obligations and exigencies of *al-farā'iḍ* application through lectures and publications. These faithful Muslims should also embark on an

Marital Conflicts in Osun State of Nigeria', *Al-Ahkam*, vol. 32/2 (2022): 233-252

[139] Abdul-Fatah Kola Makinde, 'The Evolution of Independent *Sharī'ah* Panel in Osun State, South-west Nigeria', in *Sharī'ah in Africa Today: Reactions and Responses*, ed. John Chesworth & Franz Kogelmann (Leiden, The Netherlands: Brill, 2015): 71-101

[140] Supreme Council for *Shariah* in Nigeria (Lagos State Chapter), *Selected Judgements of the Lagos Independent Shariah Panel*, vol. 1 (Lagos: Lagos State Chapter of SCSN, 2005), p. ii

enlightenment programme to intimate Muslims and non-Muslims alike on the need for the implementation of *Sharī'ah* in Yorubaland. An example of such programmes was held by the Muslim Rights Concern (MURIC), an Islamic human rights campaign group in 2003 at the Lagos Airport, Ikeja, Lagos.[141]

Also, Muslims should lobby the government to create Islamic law division out of the existing court systems-customary, magistrate or high courts-in which judges with expertise on *Sharī'ah* would be appointed to deal with Islamic law disputes. According to a recent report, the Lagos state Judiciary in 2020 had activated such a provision by creating an "Islamic Customary Court" out of the existing Magistrate Divisions of Lagos situated in Ifako-Ijaiye judicial division of Lagos State to entertain Islamic personal laws.[142]

Muslims should also demand constitutional review to delist *Sharī'ah* from being a customary law in Nigeria through a peaceful and issue-based agitation for law reform to press home their fundamental human rights as guaranteed by Sections 38(1) of the Nigerian 1999 Constitution as amended.

CONCLUSION

The study enumerated the challenges facing Yoruba Muslims of Lagos and Oyo states, Southwest Nigeria in devolving their deceased's estate according to Islamic law of inheritance. It was discovered that the existence of legal pluralism has compounded the woes of Muslims in which the inheritance procedures of English law, which was imposed on Nigeria through colonialism, the Lagos and Oyo States' AELs, the Yoruba customary law and the non-existence of statutory *Sharī'ah* courts in Yorubaland had all heightened the challenges. Therefore, to ameliorate these religious, human rights and judicial imbalances, Yoruba Muslims must agitate for constitutional review through which *Sharī'ah* would be

[141] 'MURIC Calls for Review of *Shari'ah* System', Muslim Rights Concern's (MURIC), https://www.muricnigeria.com/about-muric/publications/, accessed on 16 September 2021.

[142] Muslim News Nigeria, 'MULAN visits, commends Lagos Chief Judge for Customary court hearing of Islamic personal laws', Muslim News, https://muslimnews.com.ng/2021/10/16/mulan-visits-commends-lagos-chief-judge-for-customary-court-hearing-of-islamic-personal-laws/, accessed on 12 November 2023.

delisted from being a customary law and become a distinct source of law which could only be appealed at *Sharī'ah* appellate courts. Through this, Muslims in every part of Nigeria would possess both religious and constitutional rights of applying Islamic law and indeed *al-farā'iḍ* in devolving their estates without hindrance.

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