

CONSEQUENCES OF DELAYING DISTRIBUTION OF ESTATE IN ISLAMIC LAW OF INHERITANCE: THE NIGERIAN EXPERIENCE

Ismael Saka Ismael¹

ABSTRACT

This paper investigates the consequences of delaying distribution of an estate of a deceased Muslim using a particular area of Nigeria (Ilorin, Kwara State) as a case study. The results show that inordinately delaying the sharing of the estate of a deceased Muslim has grave consequences which manifests socially, economically, religiously, and legally. This is illustrated through a number of decided and ongoing cases from the areas under reference. This study is therefore meant to serve as a standard by which Muslims may apply Shariah rulings regarding estate holdings in their respective communities. However, applications of the law may vary slightly depending on the particular madhab chosen.

Keywords: *delay, consequences, distribution, estate*

INTRODUCTION

In Islamic Law, the estate of a Muslim becomes due for distribution amongst his heirs as soon as he dies. The distribution, however, according to the law,

¹ Senior Lecturer, Department of Islamic Law, Faculty of Law, University of Ilorin, Ilorin, Nigeria, lawyerismael@yahoo.com and ismael@unilorin.edu.ng

is subject to the fact that the estate does not become exhausted as a result of debt² owed by the deceased and *waṣiyyah*³ to be executed from the estate. It is not a feature of Islamic Law to overtly stipulate or prescribe time within which the estate of a deceased Muslim must be distributed. Likewise, there is no legislation in the law of inheritance in Nigeria that stipulates a time limit within which to distribute estates of deceased Muslims. This silence of the law accounts for the principle that the right of inheritance in Islam is not barred no matter how long it takes before distribution is effected. That is, it is not affected by *Hauz* (prescription). This principle is clearly exemplified in *Iya Maiwaina v. Mamman Captain*.⁴ In this case, M. Adamu Dahiru was the father of the Appellant and the Respondent. The Appellant was the daughter and the Respondent the brother respectively. Upon the death of M. Adamu, Dahiru, the Respondent had, up until that point retained the estate, which at that point consisted of four houses and five farms. The properties were subsequently Dahiru's heirs on 9th July 1932, while the Appellant was away in marriage. Thirty years thereafter, in 1962, the Appellant demanded for her share in the estate of her father and the trial court held that:

“Because of the length of time that had elapsed, i. e. 30 years, from the date of the original judgment, the court could not review the matter...”

The Appellant, being dissatisfied with this judgment, appealed to the Sharia Court of Appeal, Northern Nigeria where the court held *inter alia* that:

“When property connected with an inheritance has been held by some of the heirs, the complaint of a woman or other heirs will always be heard; the length of time elapsed notwithstanding.”

² Debt takes precedence over *mīrāth*. See *Qur'an* 4: 11-12. So if the debt the deceased Muslim owes exhausts the estate, there will be nothing left to be distributed amongst the heirs. Instead of deriving benefit from the deceased's estate, the heirs may end up contributing pro rata to liquidate the debts. In other words, the heirs could end up inheriting liabilities instead of assets.

³ As in the case of debt above, *waṣiyyah* takes precedence also over *mīrāth* but differs in the sense that the estate can not be exhausted by *waṣiyyah* because it is limited to one-third of the estate, see al-Hafiz Ibn Hajar al-‘Asqalānī, *Bulūgh al-Marām min Adillah al-Aḥkām*, vol. 2 (Riyāḍ, Saudi ‘Arabia: Dār al-Salām Publications, 1996/1416 A. H.), *Hadith* No. 819, p. 339. However, where out of ignorance, a deceased Muslim makes a *waṣiyyah* exceeding one-third of the estate, the *waṣiyyah* is, through the principle of abatement of legacies reduced to one-third to enable the heirs share by way of *mīrāth*, the residue of two-thirds.

⁴ *Iya Maiwaina v. Mamman Captain* (1961-1989) 1 Sh. L. R. N., p. 8 at pp. 10-11.

This principle was also reiterated by the Sharia Court of Appeal, Jos, in *Hajiya Maryam Haruna v. AbdulKarim Idris*⁵ where the deceased, Mallam Lawal of Filin Ball, Nasarawa, Gwong, Jos died in 1964 and left behind a wife who claimed that she had not been given her share of inheritance; her share of the house had not been determined nor was the sharing and distribution of properties left behind by her late husband carried out. The Shariah Court of Appeal held that:

*“There is no fixed time as regards the period within which inheritance should be distributed, in other words, the length of time in the process of distribution of inheritance does not elapse.”*⁶

NATURE OF RIGHT OF INHERITANCE IN ISLAMIC LAW

There is no doubt that these decisions show that the length of time in the process of distribution of estate does not elapse according to Islamic Law, however this does not mean that the right of inheritance would subsist *ad infinitum* because it is a right that should be exercised in the life time of the person or persons concerned. This right is neither inheritable nor transferable to individuals other than those who can exercise such right; however, it does not cease beyond the life time of the heirs and may be claimed by their subsequent offspring, two or more generations after their death.

In Nigeria, particularly the Northern part which also includes Kwara State, where Muslims dominate, there are three modes of distribution of estate. The three modes are: by Islamic Scholars/Clerics, by instituting action in the relevant and appropriate Court,⁷ and by the family member(s) of the deceased.

TIME LIMIT WITHIN WHICH TO DISTRIBUTE ESTATE

The general notion amongst most Muslims is that Islamic Law does not stipulate nor prescribe time within which estate of a deceased Muslim must be distributed, it could however be inferred from the provisions of some

⁵ *Hajiya Maryam Haruna v. AbdulKarim Idris* (2006) N.N.L.R., 230.

⁶ *Hajiya Maryam Haruna v. AbdulKarim Idris* (2006) N.N.L.R., 236. See also *Iya Maiwaina v. Mamman Captain* (1961-1989) 1 Sh. L.R.N. p. 8 at p.10 citing *Fath al-‘Aliyy, Juz’i* Chapter on *Hawizah*. Abū ‘Abd Allāh Muḥammad Ibn Aḥmad ‘Alaysh, *Fath al-‘Aliyy al-Mālik fī al-Fatwā ‘ala Madhhab al-Imām Mālik*, vol. 2 (Cairo: Matba’ah al-Faqaddum al-‘Ilmiyyah, 1902-1903).

⁷ This is most often resorted to when there is delay or and where a particular heir or a number of heirs are aggrieved with distribution of estate carried out by Islamic Scholars/Clerics or family member(s).

Aḥādīth that Islamic Law enjoins early and quick distribution of estate of a deceased Muslim amongst his/her heirs. This inference could be drawn from the provisions of the *Ḥadīth* on the making of *waṣīyyah* by a Muslim which provides that: “*A Muslim should not delay the making of his Will for more than two or three nights,*”⁸ and the *Hadith* which provides that: “*A believer’s soul remains in suspense until all his debts are paid off.*”⁹ Going by the provision of these *Aḥādīth*, it means that a soul’s salvation or perdition or its entry in to Paradise is held in abeyance until its debts are fully paid off and settled in case of a person who leaves some properties upon death. Apart from these *Aḥādīth*, inference can also be made from the principle of *Ta’ajjel* (adjournment) in Islamic Law Procedure where three months period is provided as the maximum adjournment in respect of suits involving succession or similar matters.¹⁰

The combined effect of the provisions of the above *Aḥādīth* and the Islamic principle of *Ta’ajjel* in suits involving inheritance provide the basis for inferring that Islamic Law enjoins the need to dispense or settle anything related to the deceased Muslim’s estate immediately after his death because death could catch up with anybody at any given time.

DELAY WITHIN THE CONTEXT OF ESTATE DISTRIBUTION

In spite of all these (authorities), it is not uncommon in Ilorin and among the Muslims of Kwara State to find the estate of a deceased Muslim delayed¹¹ before either being eventually distributed or in some cases remain undistributed forever. In order to appreciate the magnitude of this issue, delay would be examined through random examination of a few decided and undecided cases from Ilorin in particular and amongst the Muslims of Kwara State in general from two perspectives. The first, is from the perspective which ordinarily means “*a period of time when somebody or something has to wait because of*

⁸ H. A. M. At-Tirmidhi, *English Translation of Jami’At-Tirmidhi*, vol. 4 (Riyadh: DarusSalam, 2007), Hadith No. 2118, 181, see also M. M. Khan, (Translator), *Sahih Al-Bukhari (English-Arabic)* vol. 4 (Riyadh: Maktaba Dar-us-Salam, 1997), Hadith No. 2738, 15.

⁹ S. D. Muhammad and M. Z. Jamal al-Din, (Translators), *Fiqh us-Sunnah*, vol. 4 (Indiana, USA: American Trust Publications, 1991/1412 A. H.): 18.

¹⁰ S. M. Ibn Yusuf al-Kaafi, *Iḥkām al-Aḥkām ‘ala Tuhfah al-Aḥkām*, Commentary on Tuhfah (Cairo: Dar al-Fikr, 1357), 19. See also *Alhaji Baba Sule v. Gajere Hamidu* (1988) 4 NWLR (Pt. 90), p. 516 at p. 522.

¹¹ The term “delay” is relative with very serious consequences depending on whether a delay is ordinary or inordinate and cuts across all strata of the communities in Kwara State.

*a problem that makes something slow or late*¹² while the second is from the perspective of inordinate delay which can be defined as being a period of time far more than is usual or expected when somebody or something has to wait because of a problem that makes something slow or late.¹³ This would also be done through random examination of a few decided and undecided cases from Ilorin in particular and amongst the Muslims of Kwara State in general.

In illustrating cases that fall within the first category of delay, the estate of late *Aiyedun Shola Ganiyu* becomes relevant here. The deceased was a Muslim from Aiyedun in Kwara State, a small town on the border of Kwara and Ekiti States, died on the 2nd day of August 2008 at Lagos. He was survived by four heirs, to wit: Alhaja Adiza Aiyedun (mother), Alhaji Idris Aiyedun (father), Alhaja Risikat Folashade Aiyedun (wife) and Mohammed Aiyedun (son). Step to distribute his estate among the heirs did not commence¹⁴ until 30th October, 2009 vide a letter written to the Honourable Grand *Kadi* of Sharia Court of Appeal, Ilorin by the Solicitor, one Bar. Aiyedun Kunle Rahim (a brother of the deceased), to help distribute the estate in the Court's quasi-judicial function. From 2nd August 2008 to 30th October, 2009 is a period of a year and three months. This means, there is a delay of one year and three months from the date of death of the deceased to the date attempt is made to initiate distribution even though distribution is yet to be carried out due to the pending case between Creditors and the estate.¹⁵ The delay in this case, was initially caused by wrangling between the widow and other members of the family and the Creditors which later resulted into litigation between the widow and some members of the family and creditors in *Risikat Folashade Aiyedun & Anor. v. Idris Aiyedun & 3 Ors*¹⁶ now pending before Upper Area Court 1, Ilorin.

¹² A. S. Hornby, *Oxford Advanced Learner's Dictionary of Current English*, 7th ed. (Oxford: Oxford University Press, 2006): 386.

¹³ A. S. Hornby, *Oxford Advanced Learner's Dictionary of Current English*, 770.

¹⁴ On the first meeting, the wife of the deceased protested on the debt the deceased was owing inspite of relevant document supporting the debt and this became subject matter of controversy hence distribution could not be carried out because the creditors had to initiate a Suit at Upper Area Court 1, Ilorin to determine the extent of indebtedness of the deceased to the Creditors. This action has since stalled the distribution exercise because without determining and settling the debts, distribution can not be carried out.

¹⁵ Only God knows when the case would be concluded to give room for the distribution because of our snail like pace of administration of justice.

¹⁶ *Risikat Folashade Aiyedun & Anor. v. Idris Aiyedun & 3 Ors*, Unreported Suit No. CVFM/14/2010.

To further illustrate this class of delay is the case of one Muslim custom officer¹⁷ from Ilorin who died in 2005 or thereabout leaving behind a widow and a son among others. The widow of the deceased husband since then had remarried and blessed with two other children. All efforts made by way of persuasions and sending of emissaries on behalf of the widow to the guardian of the deceased who was having the custody of the properties left by the deceased for distribution fell on deaf ears.¹⁸ From 2005 to 2010, is a period of five years which translates to a delay of five years due to combined effect of fear of use of super natural power against the widow by the person in whose possession are the properties and financial weakness on her part. Though this is a case of Islamic Law where every Muslim has *locus standi* to take the matter to court to force the distribution of the estate, however, tradition and custom of the people would not permit as the heirs would not allow non-family members to interfere in their affairs without being invited.¹⁹ The situation is worsened by the dearth of Muslim NGOs in the area.

Another case that illustrates ordinary delay in distribution of estate in Ilorin and among the Muslims of Kwara State is the case of late *Alhaji Amusa Bashir*²⁰ who died on 13th March, 1985 leaving behind three wives (Alhaja Zainab, Alhaja Adijatu and Alhaja Mutiat), seven sons (Suleiman, Ibraheem, Daudu, Abdul-Kabir, Muhammad Mudasiru, Hamed Tijani and Hamed Rufai), ten daughters (Alhaja Mamunatu, Alhaja Moriyamo, Alhaja Aminatu, Aminatu (Oyo), Latifatu (Oyo), Fatimat, Radiyat, Sabitiyu, Salamatu and Bilikisu) and a building valued at ₦1,888,024.90 at No. 3, Fogo-Olorunhan Street, Off Stadium Road, Ilorin. This estate did not get distributed until 28th December, 1997. From 1985 to when the estate eventually got distributed is a period of 12 years.²¹ The delay in this case was due to tradition, custom and culture of the

¹⁷ Both the widow and her guardian wish to have the identities of the deceased husband and that of the widow to remain anonymous hence the use of the profession of the late husband to describe him and the use of the adjective-widow to describe the wife. The widow and her guardian implored the researcher to make further details of the case anonymous.

¹⁸ Alhaji Murtala Abdul-Ganiyu (uncle of the widow), in interview with author, 1 September 2010.

¹⁹ This is probably part of the reasons why both the widow and the guardian want the name and details to remain anonymous.

²⁰ *Alhaji Amusa Bashir* (1997) Annual Report of Kwara State Sharia Court of Appeal, Ilorin, pp. 159-165.

²¹ See also the estate of *Alhaji Mohammad Busari*, (1999) Annual Report of Kwara State Sharia Court of Appeal, Ilorin, pp. 140-147. In this case, the deceased died on 19th July, 1992. He was survived by a wife (Alhaja Ramata), five daughters (Aisha, Amina, Sa'adiyah, Baidau and Nusirat) and two sons (Ibrahim and

people. By tradition, it is a customary practice that the brother(s) or sister(s) (as the case may be) of a deceased person is/are more or less father of the children left behind by his deceased brother while the children of the deceased regard these uncles and aunts as their real biological fathers hence accord them the respect, loyalty and complement due to their deceased real biological parents. It is therefore more of an “abomination” for a person to accuse his uncle or aunt of sitting over the estate of his deceased father or demand its distribution as this will be contrary to tradition and customary practice.²²

Still on ordinary delay, the estate of XYZ²³ from Share, a town in Ifelodun Local Government Area of Kwara State, who died in 2004, did not get distributed until sometime in 2009. These dates show a delay of about 5 years before the distribution is carried out. The delay stems from *laissez-faire* attitude due to economic self-sufficiency of the children who constituted the majority of the heirs.

Within the class of what can be described as inordinate delay in the distribution of estate in Ilorin and among the Muslims of Kwara State is the case of estate of *Alhaji Yahaya Gold*²⁴ who died in 1965 and survived by four wives (Iya Afa, Mama Kano, Iya Eleyin Awo and Iya Nle), three sons (Alhaji Amusa, Alhaji Jami’u and Alhaji AbdulRasaq), four daughters (Alhaja Olori, Alhaja Kano, Rafa and Wulemot) and an estate consisting of a traditional mud house situated at No. 7, Darlington Street, Mokola, Ibadan valued at ₦1,500,000.00. Step to distribute his estate did not commence until 4th January, 2006 vide a letter of request by one Mudi Gold to the Grand *Kadi* of Kwara State Sharia Court of Appeal, Ilorin urging the Honourable Grand *Kadi* to direct a *Kadi* to assist in the distribution of the estate of the deceased. On a close examination of the date of death of the deceased vis-a-vis date of distribution of estate reveals delay of a period of forty-one years. The delay in this case, by whatever yardstick, is qualified to be described as inordinate. The researcher’s investigation shows that tradition, economic self-sufficiency and

Yahaya). The estate was distributed in 1999. From 1992 to 1999 is a period of seven years or thereabout. This shows a delay of 7 years or thereabout from the date of death of the deceased. The delay in this case is due to influence of custom/tradition of the people of the area the research is being undertaken.

²² Yahaya Kale Sa’ad (a lawyer with vast legal practice in Islamic Law and custom of the people of Ilorin), in interview with author, 23 February 2011.

²³ Researcher was an active observer of and participant in the distribution which was done by a private legal practitioner, Bar. Yahaya Kale Sa’ad who is learned in Islamic Law of Inheritance and equally experienced in the art of estate distribution in accordance with Islamic Law.

²⁴ (2006) Annual Report of Kwara State Sharia Court of Appeal, Ilorin, pp. 308-320.

laissez-faire attitude of the heirs combine to constitute the cause of the delay in the distribution of this estate.

Further still, a case that amply describes inordinate delay in distribution of estate in Ilorin and amongst the Muslims of Kwara State is the case of *Alhaja Senabu Abebi Masingba v. Alhaji Alabi Opobiya*.²⁵ For the purpose of merely highlighting inordinate delay in the distribution of estate, it will suffice here to briefly state that this case involves the distribution of estate of one late *Tukur Gogo Olowo* who died in 1924 but move to distribute his estate did not commence until sometime in 1979 by way of litigation before Ilorin Area Court 2, No. 1 presided over by Honourable Judge *A. Temimu*, now of blessed memory. From the date *Tukur Gogo Olowo* died (1924) to 1979 is a period of fifty-five years and from 1979 to date (2010) is another thirty-one years. Therefore, from 1924 to date (2010) is a period of eighty-six years. Detail facts of the case shall be examined in the subsequent part of this paper because it seems to be a *locus classicus*²⁶ in the area where the research is being undertaken. From 1924 to 1979, culture, custom and tradition²⁷ of the people are responsible for the delay while from 1979 to date; protracted litigation amongst the “heirs” is responsible for the delay.

The issue of delay in the distribution of estate of deceased Muslims in the area within the scope of this research work traverses all the strata²⁸ of the people

²⁵ (1982) C. A. 11 (Pt. 1), p. 206. This same case has metamorphosed into *Alhaji Saka Opobiya v. Layiwola Muniru* in unreported Suit No. CA/IL/SH/3/99.

²⁶ The case has a very chequered history, it has been to Kwara State Sharia Court of Appeal twice, Court of Appeal, Kaduna Judicial Division as Suit No. FCA/K/7/82 reported in (1982) C. A. 11 (Pt. 1), pp. 206-214, Court of Appeal, Ilorin Division as Suit No. CA/IL/SH/3/99 and now at Supreme Court of Nigeria, Abuja as Suit No. SC. 30/2005.

²⁷ Yahaya Kale Sa’ad (a lawyer with vast legal practice in Islamic Law and custom of the people of Ilorin), interview by author, Ilorin, 23 February 2011.

²⁸ To buttress this assertion, by an application dated 19th August 2007, one Princess Bilikisu Zulkanani Gambari wrote to the Grand *Kadi* of Kwara State Sharia Court of Appeal, Ilorin to exercise its quasi-judicial function to distribute the estate of her late father, His Royal Highness, Late Emir of Ilorin, Alhaji (Dr) Sulu Gambari who died on 23rd February 1992. See the Nation Newspaper, 13 September 2007, p. 8. Though, the estate is said to have been distributed before then. If it had actually been distributed, why the agitation from the said Princess? See also: *Alhaji Abdul-Wahab A. Ayuba Jabaje v. Alhaja Rihanat Arowolo & 5 Ors.* unreported Suit No. UAC/CVF/290/09 (Area Court Grade 11, Ilorin), *Madam Iyabo Imam v. Mr Akanni Akibu & 5 Ors.* unreported Suit No. UAC/CVF/9/2002 (UAC 1, Ilorin) delivered on 8th April 2005 and *Madam Iyabo Imam v. Mrs Tinuke*

of Ilorin and Muslims of Kwara State in general and the cases highlighted above are not exhaustive²⁹ on the issue.

CONSEQUENCES OF DELAYING DISTRIBUTION OF ESTATE

The consequences of delaying the distribution of estate of a deceased Ilorin Muslim in particular and other Muslims of Kwara State can be analysed from four major angles, i. e.: social, economic, religious and legal.

1. Social Consequences

The cardinal social objective of Islamic Law of Inheritance is, like the institution of *zakāh*,³⁰ to avoid concentration of wealth in the hands of few individuals and spread it among the larger section of the society.³¹ That is the reason why in Islamic Law of Inheritance, a number of persons are beneficiaries of the estate of a deceased Muslim. Among these beneficiaries are: parents (father, grandfather, mother, grandmother), children (sons, son's son, son's daughter, daughters, daughter's son), spouses (husband and wife), brothers (consanguine, germane, uterine), uncles and *Bayt al-Māl* (for the general use of the Muslim *Ummah*, where no heir exists) to mention but a few.³² Therefore, where distribution of the estate of a deceased Muslim is unnecessarily and unreasonably delayed, this objective would somehow be

Akibu, unreported Suit No. UAC/CVF/3/2007 (UAC 1, Ilorin) delivered on 9th May 2007.

²⁹ The researcher, apart from being a Law Lecturer, is also a legal practitioner involved in a number of litigations involving application of Islamic Law in Ilorin and its environs, has selected these cases which amply represent both ordinary delay and the extreme case of inordinate delay of estate distribution in Ilorin in particular and Kwara State in general.

³⁰ This is a legal measure in Islam to spread out income and wealth among the people such that nobody remains poor and destitute forever. See Surah al-Baqarah, 2: 43, Surah al-Baqarah, 2: 3, Surah al-Tawbah, 9: 103, and Surah al-Ḥasyr, 59: 7.

³¹ Surah al-Ḥasyr, 59: 7. See also *Hadith* where the Prophet (PBUH) is reported to have said: “*A town in which a man stays hungry and wakes up in the morning hungry, loses the promise of protection and safety from God,*” see Abū ‘Abd Allāh Aḥmad bin Muḥammad bin Ḥanbalī al-Shaybanī, *Isnād Imām Ahmad bin Ḥanbalī*, vol. 2 (Riyāḍ: Maktabah Dār al-Salām, 2012), 33.

³² Surah al-Nisā’, 4: 7, Surah al-Nisā’, 4: 11, Surah al-Nisā’, 4: 12, Surah al-Nisā’, 4: 176. See also A. B. Mahmud, “Succession Under the Shariah in Nigeria”, *N. C. L. Rev.*; The Journal of the Nigerian Institute of Advanced Legal Studies (1982): 125-127.

defeated because of the saying that justice delayed is tantamount to justice denied as the whole estate to be distributed would remain in the hand of a single or few individual(s).

In order to fully appreciate the social consequence of delaying the distribution of the estate of a deceased Ilorin Muslim and those of other Muslims of Kwara State, the estate of *Alhaji Yahaya Gold*³³ who died in 1965 would be used to illustrate the point. In this case, as at when the deceased (Alhaji Yahaya Gold) died, he was survived by the following heirs: 4 wives (Iya Afa, Mama Kano, Iya Eleyin Awo and Iya Nle), 3 sons (Alhaji Amusa, Alhaji Jamiu and Alhaji AbdulRasaq) and 4 daughters (Alhaja Olori, Alhaja Kano, Alhaja Rafa and Alhaja Wulemot). By 2006 when the estate eventually got distributed, all the heirs were dead save three of them – Alhaji AbdulRasaq, Alhaja Rafa and Alhaja Wulemot (a son and 2 daughters).

The 4 wives: Iya Afa (died in 1976), Mama Kano (died in 1977), Iya Eleyin Awo (died in 1989) and Iya Nle (died in 1995) while 2 of the 3 sons: Alhaji Amusa (died in 1989) and Alhaji Jamiu (died in 2005); and 2 of the 4 daughters: Alhaja Olori (died in 1982), Alhaja Kano (died in 2001).

The heirs that eventually survived and witnessed the distribution in 2006 were Alhaji AbdulRasaq, Alhaja Rafa and Alhaja Wulemot (a son and 2 daughters). The shares of the deceased heirs were eventually shared among their respective heirs. The result produced in this case is not the intended objective of the law hence if the estate had been distributed timely, the deceased heirs would have personally “enjoyed” their shares of the inheritance as envisaged or intended by the law. From the date when the deceased died to 2006 when the estate was eventually distributed, the estate had been in custody or possession of some body that had been deriving some benefit from it contrary to the intended social objective of Islamic Law of Inheritance.³⁴ Other social consequences arising as a result of delaying distribution of estate include acrimony which breeds and damages ties of kinship.

2. Economic Consequence

From economic perspective, delaying the distribution of estate of a deceased Ilorin Muslim and other Muslims of Kwara State diminishes and in some rare cases increases the value of the estate. This is because every item or piece of property to be distributed is expected to be given a monetary value for easy

³³ *Alhaji Yahaya Gold* (2006) Annual Report of Kwara State Sharia Court of Appeal, Ilorin, pp. 308-320.

³⁴ Ismael, S. I., ‘Socio-Economic and Religio-Legal Importance of Estate Distribution in Islamic Law,’ *IIUM Law Journal*, 19 (2011): 77.

and accurate distribution. This value usually depends on some variables such as rate of inflation in Nigeria, Ilorin in particular and Kwara State in general, type of property,³⁵ location of property in case of real property and of course the model and design of the property in vogue (in case of electronic gadgets) to mention but a few. So the more the estate is delayed, the more the items that constitute the estate to be distributed either diminishes or appreciates³⁶ in value.

Apart from the value of the items appreciating or depreciating, the estate may get exhausted or drastically reduced due to payment of certain compulsory Islamic levies³⁷ payable on yearly basis. The longer the delay in the distribution of estate, the more the adverse effect is felt on both the estate and the heirs. On the part of the estate, it continues to get depleted while on the part of the heirs, the value and or quantum of what goes to them becomes very negligible which is highly contrary to the objective and spirit of the law of inheritance in Islamic Law as the Prophet is reported to have said:

وعن سعد بن أبي وقاص رضي الله تعالى عنه قال: قلت يا رسول الله! أنا ذومال، ولا يرثني إلا ابنة لي واحدة، أفأتصدق بثلثي مالي؟ قال: لا، قلت: أفأتصدق بشطره؟ قال: لا، قلت: أفأتصدق بثلثه؟ قال: الثلث، والثلث كثير، إنك أن تذر ورثتك أغنياء خير من أن تذرهم عالة يتكففون الناس. متفق عليه.

Sa'd b. Abi Waqqas reported that: "The Prophet came to visit me in the year of the farewell pilgrimage when I was afflicted with a severe illness". I said to him: "O Prophet, you see how ill I am. I have property and no heir except my daughter. Shall I then give away two-thirds of my property as alms?" He replied "No". I

³⁵ Real property such as land or building depends on location. For instance, a land or building in a ghetto would not have value like one situated in a lay out/commercial area. Likewise, the type of building, mud built house would not appreciate in value like one built with cement and cement blocks. Bungalows will likely have monetary value than probably a "face me I face you" type of house while a storey building may most likely have value than a bungalow.

³⁶ This is subject to some degree of uncertainty which is called *gharar* akin to gambling in Islamic Law parlance. Muslims are highly enjoined to avoid what is uncertain for what is certain.

³⁷ One of such levies is *zakāh*. Where such items or property that constitutes the estate are "zakatable" and up to *niṣāb*, i. e. amount subject to payment of *zakāh*. For instance, idle money in bank which is up to or more than *niṣāb*.

said “A half then?” He still said “No”. I then asked “A third?” He replied: “A third. And a third is much. It is better that you leave your heirs rich than that you should leave them destitute, begging from their neighbours.”³⁸ (Emphasis mine).

From the highlighted part of the above *Hadith*, it can be deduced that the economic objective and spirit of Islamic Law of Inheritance is to make the heir(s) economically buoyant and not to pauperize them. Therefore delaying the distribution of estate, ordinarily or inordinately, goes against the economic objective and spirit of Islamic Law of Inheritance.

3. Religious Consequence

From religious point of view, a Muslim does not have choice in whatever aspect of the religion that has been made mandatory or obligatory by way of command of Allah. The law relating to inheritance, therefore being one made obligatory, is expected to be complied with immediately without delay. That is, by carrying out the distribution of the estate as soon as possible within reasonable time.

In order to properly appreciate the religious consequence of delaying distribution of estate, the observance and out right carrying out of the provisions relating to *mīrāth* (inheritance) can be likened to the provisions relating to the observation and performance of the five daily prayers. Each prayer has a time for its due performance. Though, unlike prayer, Islamic Law seems to be silent about when the property constituting the subject matter of inheritance should be distributed,³⁹ however, from analogical deduction made earlier somewhere in this paper, one cannot but agree that the law enjoins early and immediate distribution of the deceased Muslim’s estate as soon as the Muslim is dead. Therefore delaying its distribution is religiously synonymous to disobedience or disregard of lawful command of Allah which amounts to transgressing the bounds of Allah. Allah says:

وَمَا كَانَ لِمُؤْمِنٍ وَلَا لِمُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ
مِنْ أَمْرِهِمْ وَمَنْ يَعْصِ اللَّهَ وَرَسُولَهُ فَقَدْ ضَلَّ ضَلَالًا مُّبِينًا

³⁸ al-Ḥafiz Ibn Ḥajar al-‘Asqalānī, *Bulūgh al-Marām min Adillah al-Aḥkām*, vol. 2 (Riyāḍ, Saudi Arabia: Dār al-Salām Publications, 1996), Hadith No. 819, 339.

³⁹ Y. Sodiq, ‘An Analysis of Yoruba and Islamic Laws of Inheritance,’ *The Muslim World*, vol. 86/3-4 (April 2007): 322.

“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.”

(Surah al-Aḥzāb, 33: 36)

The particular religious consequence of delaying giving effect to the provisions of the law relating to *mīrāth* becomes obvious from the verses immediately following those verses giving specific details on inheritance shares.

تِلْكَ حُدُودُ اللَّهِ وَمَنْ يُطِيعِ اللَّهَ وَرَسُولَهُ يُدْخِلْهُ جَنَّاتٍ
تَجْرَى مِنْ تَحْتِهَا الْأَنْهَارُ خَالِدِينَ فِيهَا وَذَلِكَ
الْفَوْزُ الْعَظِيمُ ﴿١٣﴾ وَمَنْ يَعِصِ اللَّهَ وَرَسُولَهُ وَيَتَعَدَّ حُدُودَهُ
يُدْخِلْهُ نَارًا خَالِدًا فِيهَا وَلَهُ عَذَابٌ مُهِينٌ ﴿١٤﴾

“These are limits (set by) Allah (or ordainment as regards laws of inheritance), and whosoever obeys Allah and His Messenger will be admitted to Gardens under which rivers flow (in Paradise), to abide therein, and that will be the great success. And whosoever disobeys Allah and His Messenger, and transgresses His limits, He will cast him into the Fire, to abide therein; and he shall have a disgraceful torment.”

(Surah al-Nisā’, 4: 13-14)

To avoid this consequence is to therefore effect early distribution of estate of a deceased Muslim amongst his or her legitimate heirs.

4. Legal Consequence

The legal consequence of inordinately delaying distribution of the estate of a deceased Muslim is devastating. It is in the sense that the estate may end up not being distributed at all and at the end of the day; the estate or property would end up in the hand of the wrong person—a person not entitled to the estate at all. To illustrate this consequence, the case of *Alhaja Senabu Abebi Masingba v. Alhaji Alabi Opobiyyi*⁴⁰ which later metamorphosed in to *Alhaji Saka Opobiyyi*

⁴⁰ *Alhaja Senabu Abebi Masingba v. Alhaji Alabi Opobiyyi* (1982) C. A. 11 (Pt. 1), pp. 206-214.

& *Anor v. Layiwola Muniru*⁴¹ as a result of prolonged litigations and death of the original parties to the case, comes in handy.

In the case under reference, one Tukur Gogo Olowo died in 1924 and at the time of his death, he had two wives: Aminat (who died in 1943) and Awero (who died in 1943). Aminat had four children to wit: Salami, Saratu, Aishat and Salamatu. While Awero (the second wife), had a child-Usman as legal heirs who are entitled to inherit Tukur Gogo Olowo's estate among other heirs.

Salami, a direct son of Tukur Gogo Olowo, begot Senabu Abebi who begot Muniru Adeshina while Muniru Adeshina begot Layiwola Muniru. Saratu, a direct daughter of Tukur Gogo Olowo, begot: Salamatu, Alabi Opobiyyi, Garuba Opobiyyi and Abebi Opobiyyi. Aishat, another direct daughter of Tukur Gogo Olowo, begot Oba Shuaib Adangba while Salamatu (another direct daughter of Tukur Gogo Olowo and the fourth of Aminat's children) begot: Abebi Kosoko, Omomeji Alatise and Baba Eko who begot Ganiyu Alatise.

On the other hand, Usman, the only direct son of Tukur Gogo Olowo from Awero begot: Garuba Usman, Baba Usman, Dende Usman, Aduke Usman, Alimotu Usman, Adijatu Usman and Kulu Usman.

The legal tussle between the parties in the case under consideration is the distribution of the estate of late Tukur Gogo Olowo which originally started in 1979 between late Senabu Abebi (daughter of Salami and Tukur's son's daughter) and Alabi Opobiyyi (son of Saratu and Tukur's daughter's son) amongst other heirs while Layiwola Muniru is Senabu Abebi's grandson (Senabu's son's son).

From the abridged facts of this case, at the time of death of Tukur Gogo Olowo, out of the numerous heirs he left behind, those eligible and competent to inherit his estate in accordance with Islamic Law were: his two wives (Aminat and Awero), two sons (Abdul Salami and Usman) and three daughters (Saratu, Aishat and Salamatu). But, because the estate was not distributed at the right and appropriate time between the eligible and entitled heirs during their life time, those now fighting over the estate are interlopers and they lack the necessary locus standing⁴² to sue and be sued on the estate.

⁴¹ *Alhaji Saka Opobiyyi & Anor v. Layiwola Muniru*, Unreported Suit No. CA/IL/SH/3/99 delivered on 11th July, 2002 now Suit No. SC. 30/2005.

⁴² The parties litigating fall within the category of heirs known as *Dhul Arham-Distant Kindred*. This class does not inherit in the presence of *Qur'anic* heirs. See Abubakar Ibn Hassan Al-Kashnawi, *As-halul Madarik*, Vol. III, (Beirut: Dar al-Fikr, n. d.): 331 where distant kindred is said to include among other distant kindreds, Son's of daughters, see further M. U. S. Jung, *The Muslim Law of*

At the inception of the case in 1979 and going by the claim of Alhaji Alabi Opobiyi that:

*“I want to claim our share out of the land belongs to our grandfather of the mother side from Alhaja Abebi who selflessly (sic) held the whole land without release our share.”*⁴³

This estate may never get distributed through litigation because the parties both lack the standing⁴⁴ to sue and be sued respectively on the estate of late Tukur Gogo Olowo which is the resultant effect of delay in the distribution of the estate. Consequent upon this, the Court of Appeal, Ilorin Division, held in a preliminary objection raised by this researcher as Respondent’s counsel, on capacities of the parties to sue and be sued respectively, that:

*“Since the three issues of the Preliminary Objection are resolved in favour of the Respondent/Objector, the Preliminary Objection is hereby upheld. Appeal is struck out on the ground of lack of jurisdiction. The heirs as they are today are at liberty to commence this suit de novo...”*⁴⁵ (emphasis mine).

By this judgment/ruling, the Respondent/Objector who has been in possession of the subject matter of litigation continues to exercise such control and possession of the subject matter of litigation because the outcome of litigation in this case can never lead to the estate being distributed. The salient

Inheritance (Compiled from original Arabic Authorities with Arabic Text of Sirajiyah, Quranic Verses and Hadis and their English Translation), (New Delhi: Kitab Bhavan, 1990): 13 where Son’s Daughter is totally excluded by two or more daughters of the deceased (as in this case).

⁴³ (1982) C. A. 11 (Pt. 1.), p. 206 at 208. The Plaintiff in further clarification of his claim stated: *“I am telling the court that the land in dispute belongs to our grand father and grand mother. The defendant Alhaja Abebi is also a grand daughter she wanted to occupy the whole land. We asked her to give us our share because we are from the same family. Her father is the senior brother of my mother our grand father’s name is Tukur Owolabi and our grand mother’s name is Aminat.”*

⁴⁴ See M. A. Ambali, *The Practice of Muslim Family Law in Nigeria* (Zaria: Tamaza Publishing Limited, 1998): 284. See also Hammuda Abd al ‘Ati, *The Family Structure in Islam* (Lagos: Islamic Publication Bureau, 1982): 257-258 where the law is stated thus: *“A relative of the second grade, e.g. a grand parent of the deceased does not inherit if there is among the survivors another relative of the first grade, such as a parent. Nor does a grand child inherit with the son.”* See further Ruxton, F. H., *Maliki Law* (Summary from French Translations of the Mukhtasar of Sidi Khalil) (London: n. p., 1914): 373.

⁴⁵ See Judgment in *Alh. Saka Opobiyi & Anor v. Layiwola Muniru*, Unreported Suit No. CA/IL/SH/3/99 delivered on 11 July 2002, 9.

legal consequence of very long years of delay has produced an irreversible situation because the competent parties who can sue and be sued on the estate of late Tukur Gogo Olowo are: his wives (Aminat and Aweru), Salami, Usman (sons) Saratu, Aishat and Salamat (daughters) and they are all dead. About three generations have passed away after the death of all the competent heirs whose rights it is to compel and enforce distribution. Litigation and agitation for distribution did not commence in the life time of any of these competent heirs.

CONCLUSION

This paper has identified delay as a major problem associated with distribution of estates in Ilorin in particular and Kwara State of Nigeria in general. The cases of *Iya Maiwaina v. Mamman Captain*,⁴⁶ *Hajiya Maryam v. Abdulkareem Idris*⁴⁷ and *Alhaji Saka Opobiyi v. Layiwola Muniru*⁴⁸ have been used to determine and illustrate the nature of right of inheritance in Islamic Law in order to show the essence of time as an important factor in the distribution of estate. From the inferences and on the strength of these cases, conclusion is drawn that the right of inheritance in Islamic Law is not a right in perpetuity but a right meant to be exercised and enforced by the possessor or holder of such right in his or her life time. It is neither transferable to another person nor exercisable by two or more generations after the death of the person whose right it is to enforce or exercise such right.

The various overt and salient consequences of delaying distribution of estate have also been highlighted using both decided and undecided cases to illustrate these grave consequences with a view to create awareness and revert to practice of pristine Islamic Law of Inheritance - by effecting distribution of estates of deceased Muslims within reasonable time with very minimal delay.

REFERENCES

- A. B. Mahmud, 'Succession Under the Shariah in Nigeria,' *N. C. L. Rev., The Journal of the Nigerian Institute of Advanced Legal Studies*. (1982).
- A. S. Hornby, *Oxford Advanced Learner's Dictionary of Current English*, 7th ed. (Oxford: Oxford University Press, 2006).

⁴⁶ *Iya Maiwaina v. Mamman Captain* (1961-1989) 1 Sh. L. R. N. p. 8 at p. 10-11.

⁴⁷ *Hajiya Maryam v. Abdulkareem Idris* (2006) N.N.L.R. 230.

⁴⁸ *Alhaji Saka Opobiyi v. Layiwola Muniru*, Unreported Suit No. CA/IL/SH/3/99 delivered on 11 July 2002.

- Abū ‘Abd Allah Aḥmad bin Muḥammad bin Ḥanbal al-Shaybanī (Riyāḍ: Maktabah Dār al-Salām, 2012).
- F. H. Ruxton, *Maliki Law (Summary from French Translations of the Mukhtasar of Sidi Khalil)* (London: n. p., 1914).
- H. A. M. al-Tirmidhi, *English Translation of Jami’ At-Tirmidhi*, vol. 4 (Riyadh: DarusSalam, 2007).
- H. Abd al ‘Ati, *The Family Structure in Islam* (Lagos: Islamic Publication Bureau, 1982).
- al-Ḥafiz Ibn Ḥajar al-‘Asqalānī, *Bulūgh al-Marām min Adillat al-Aḥkām*, vol. 2 (Riyāḍ, Saudi Arabia: Dār al-Salām Publications, 1996).
- Ibn Aḥmad Alaysh, Abū ‘Abd Allāh Muḥammad, *Fatḥ al-‘Aliyy al-Mālik fī al-Fatwā ‘alā Madhhab al-Imām Mālik*, vol. 2 (Cairo: Matba’a al-Faqaddum al-‘Ilmiyyah, 1902-1903).
- Ibn Ḥassan, Abū Bakar al-Kashnawī, *As-Halul Madarik*, vol. 3 (Beirūt: Dār al-Fikr, n. d.).
- M. A. Ambali, *The Practice of Muslim Family Law in Nigeria*, 2nd ed. (Zaria: Tamaza Publishing Ltd., 1998).
- M. M. Khan (trans.), *Sahih al-Bukhari (English-Arabic)*, vol. 4 (Riyadh: Maktaba Dar-us-Salam, 1997).
- M. U. S. Jung, *The Muslim Law of Inheritance* (Compiled from original Arabic Authorities with Arabic Text of Sirajiyah, Quranic Verses and Hadis and their English Translation) (New Delhi: Kitab Bhavan, 1990).
- S. M. Ibn Yūsuf al-Kāfi, *Iḥkām al-Aḥkām ‘ala Tuhfah al-Aḥkām, Commentary on Tuhfah* (Cairo: Dār al-Fikr, 1357 A. H.).
- Sa’id Dabas Muḥammad & Jamāl al-Dīn, *Fiqh al-Sunnah*, vol. 4, trans. M. Zarabozo (Indiana, USA: American Trust Publications, 1991/1412 A. H.).
- Y. Sodiq, ‘An Analysis of Yoruba and Islamic Laws of Inheritance,’ *The Muslim World*, vol. 86/3-4 (April 2007).
- Yusuf Abdullah Ali, *The Holy Qur’an, Text, English Translation of “The Meanings and Commentary”* (Madinah al-Munawarah: King Fahd Holy Qur’an Printing Complex, 1411 A. H.).

Cases

- Alhaja Senabu Abebi Masingba v. Alhaji Alabi Opobiyi* (1982) C. A. 11 (Pt. 1), pp. 206-214.

Alhaji Saka Opobiyi v. Layiwola Muniru, Unreported Suit No. CA/IL/SH/3/99 delivered on 11 July 2002.

Iya Maiwaina v. Mamman Captain (1961-1989) 1 Sh. L. R. N. p. 8 at p. 10-11.

Hajiya Maryam v. Abdulkareem Idris (2006) N.N.L.R. 230.

Interview

Alhaji Murtala Abdul-Ganiyu (uncle of the widow), in interview with author, 1 September 2010.

Yahaya Kale Sa'ad (a lawyer with vast legal practice in Islamic Law and custom of the people of Ilorin), in interview with author, 23 February 2011.