

INHERITANCE AND SUCCESSION: ISLAMIC LAW

PRACTICE AND PROCEDURE

Being a paper presented by Hon. Kadi Muhammadu Ahmad Lamin of Shari'a Court of Appeal Jigawa State During the Refresher Course for Judges and Kadis of the Superior Courts of Record held on Wednesday 12th February, 2025 at Andrew Otutu Obaseki Auditorium National Judicial Institute Abuja.

1.0 INTRODUCTION

Bismillahi al-rahmani Al-rahim. Let me commence this presentation by expressing my profound gratitude and sincere appreciation to My Lord the Hon. Chief Justice of Nigeria Honourable Justice Kekere Ekun., the Administrator of the National Judicial Institute, Honourable Justice Salisu Garba (rtd) and the management of the institute who have graciously deemed it fit to invite me to make this presentation before this noble and august gathering of the honourable Judges and Kadis of the Superior Courts of record here present.

The topic of my presentation is thus; Inheritance and Succession: Islamic Law Practice and procedure. It is clear that the Shariah (Islamic Law) aims at a just and equitable society where all segments of the society is fairly treated. It is natural to have disparity in materials possessions of individual members of the society but efforts should, and is made under the Islamic law system, for re-distribution of wealth to alleviate and remove the burden of poverty from the disadvantaged and vulnerable groups in the society. The ultimate owner of all properties is Allah. After one's death the real owner takes control of one's property and this is shared among one's heirs based on the divinely fixed shares as contained in the Qur'an. Therefore, the deceased property includes all what he left behind such as money, physical property land, jewelry, etc. Inheritance, with its well-articulated guidelines is one of such formal institutions in Islam.

Inheritance or succession in Islamic law is generally guided by the principles of Islam contained in the Qur'an, prophetic tradition (sunnah), and other sources of Islamic law, such as Ijma', etc. In fact, Islamic law of succession generally has a universal application among muslims all over the world, though there might be some few variations depending on the Islamic school of thought a society adopts. But the manner in which the estate of a deceased is shared among those entitled, has already been provided in the Qur'an and other renowned sources of Islamic law. This therefore, makes Islamic law of succession/inheritance one of the most complete and all-inclusive system of inheritance. The complete and perfect nature of Islamic law is such that it has identified all those who are entitled to share in the deceased's wealth even before he dies. The aim of this paper is to discuss on the basic principles and rules governing the procedural and practical approach on inheritance under Islamic Law.

1.01: THE IMPORTANCE OF *ILMUL FAR'A'D* SUCCESSION/INHERITANCE UNDER ISLAMIC LAW

Within the framework of Islamic legal system as a whole, the laws of inheritance occupy a particular prominent and important position. The laws of inheritance reflect the structure of family ties and accepted social values and responsibilities within the Islamic community. For, in the edges of the law, rights of inheritance are generally regarded as the consideration of duties of protection and support owed to the deceased during his life time.¹

The Islamic law of inheritance is one of the most important areas of Islamic jurisprudence, as its rules and regulations have been categorically provided by both the Holy Qur'an and Sunnah of the Holy Prophet (PBUH). For instance, the Holy Qur'an in *Surah-Al-Nisaa*, verses 11,12, and 176 clearly explain the shares of almost all the legal heirs of the deceased. And the Sunnah has taken care of the explanation of the share of those heirs whose entitlement has not been

¹ Gurin A.M Op cit

explained by the Holy Qur'an. During the time of the Holy Prophet (PBUH) this subject was taught by prophet himself.²

The importance of Islamic law of inheritance has been shown by many traditions of the Holy Prophet (PBUH) some of which include:

- a. It is reported by Caliph Umar Bin Khattab (RA) that the Holy Prophet said: "Learn to fix ordinance of inheritance" Ibn Mas'ud (RA) added "and divorce and pilgrimage as they are of your religion"³
- b. It is reported by Abu-Hurairah (RA) that the Holy Prophet (PBUH) said: Learn inheritance (*Al-Fraaidh*) and teach it. Indeed, it is the half of the knowledge. And it (Inheritance) will be raised from any *Ummah* (The Followers)⁴

Hence, it is clear from the above-mentioned traditions of the Holy Prophet (PBUH) that the law of inheritance is one of the most important branches of knowledge. However, according to the muslim Jurists that learning of this knowledge is a collective obligation, (*Al-Faradh-Al-Kafiya*) upon the muslims.⁵

1.02: MEANING OF SUCCESSION IN ISLAMIC LAW

In Islamic jurisprudence there are two words used for the law of succession, they are *Al-Mirath* and *Al- Faraaidh*. The latter is more frequently used by the muslim jurists than the former. *Al-Mirath* is derived from the verb 'Waratha' which means to inherent anything. Another literal meaning of the word *Mirath* is that, it carries the handing over of a thing from one person to another. And the word *Al-Faraaidh* is plural of *Al-Farida* which is derived from the verb *Faradha*, which literally means "Fixed Share". In legal terminology, it is a knowledge about some rules of Shari'a which guide us on who will inherent and who will not and what shares will go to the heirs from the property of the deceased.⁶

² Lakhvi S.H.A, op. cit

³ Ibid

⁴ Ibid

⁵ Ibid

⁶ Lakhvi S.H.A, op. cit

1.03: ESSENTIAL COMPONENTS OF INHERITANCE

The presence of essential part of a thing, is so paramount that without it the whole thing will no longer be in existence⁷

ما كان جزءاً من الشئ فـلا يوجد ذلك الشئ إلا به

There are many Qur'anic verses which talked about inheritance. However, there are three fundamental verses on succession which stipulates the shares of the legal heirs. The three fundamental verses have been provided in Qur'an 4 (*Surah Nisa*) verses 11,12 and 176.⁸

Q4:11 – “*Allah enjoins you as regards your children is inheritance. To the male a portion equal to that of two females. If only two daughters, two or more their shares is 2/3 of the inheritance; if only one her share is a half (1/2). For parents 1/6 of the inheritance to each of the deceased's children, if no child, and the parents are the only heirs, the mother has 1/3, if the deceased left brothers and or sisters, the mother has 1/6. The distribution in all cases is after the payment of legacies and debt*⁹

Q4:12 – “*In what your wives leave, your share is 1/2 if they have no child, but if they have a child, you get 1/4 after payment of legacies and debts in what you leave; their share is 1/4 if you leave no child but if you leave child they get 1/8 after payment of legacies and debts*”. *If the man or woman whose inheritance is in question has left neither descendant nor ascendants but has a brother or a sister each one of the two gets 1/6 but if they are more than one, they share 1/3 after payment of legacies and debts.*¹⁰

Q4:176 – “*They ask you for legal decision; say Allah direct (thus) about those who leave no descendants or ascendants as heirs. If it is a man that dies leaving a sister but no child, she shall have 1/2 of the inheritance. If (such deceased was) a woman who left no child, her*

⁷ Saleh, F. A. Al-Tahqeeqatul Mardhiyyah fi Mabahithil Fardhiyyah Page 30-31

⁸ Idris D, (2021) An introduction to some aspects of Islamic law of succession (unpublished) ABU Zaria faculty of law, p.3

⁹ Ibid

¹⁰ Ibid pp 4-7

brother takes her inheritance. If there are two sisters they shall have 2/3 of the inheritance (between them). If there are brothers and sisters, (they share), the males having twice the share of the female".¹¹

Therefore, there are three major components thus:

- i) The deceased person, ii) an heir who must be alive at the time of the death of the deceased person and, iii) the property.

الموروث وهو الميت، الوارث وهو الحي بعد الموروث، حق موروث وهو التركة.

فمن مات ولا وارث له، أو ترك وارث ولا مال له فلا إرث

Person to be inherited who is the deceased person, an heir who must be alive at the time of the death of the deceased person, the subject matter of the inheritance which is the property left behind by the deceased. Therefore; whosoever died without property there will be no inheritance.

1.04: GROUNDS FOR INHERITANCE IN ISLAMIC LAW

Causes of inheritance are three, thus; blood relation, marriage and emancipation.

أسباب الميراث الوري ثلاثة* كلا يفيد ربه الوراثة

وهو نكاح وولاء ونسب * ما بعدهن للموريث سبب

The causes of inheritance are three, these are, marriage, emancipation of slave and blood relation.¹²

The Court of Appeal amplifies this principle in the case of DANGAYYA MALLAM GARBA V INNO ALHAJI UMARU where the Court held thus:

The law is trite that there are only three ways through which a person can inherit a prespositus as follows"

1. Relationship (Nasab)

¹¹ Ibid p. 7

¹² Muhammad, A. M. Manzumah Al-Rahbiyyah

2. Marriage (*Nikah*)

3. Emancipation of a slave (*Maulah Ni'ima*)¹³

According to some Maliki Jurists, there is another ground of inheritance, which is *Bait-al-maal* (Public Treasury). In other words, where a deceased is not survived by anybody who could come under any of the above stated grounds, then the estate goes to the *Bait-al-maal*.¹⁴

1.05: CONDITIONS OF INHERITANCE

Before one can have a share in the estate of a deceased person, there are three conditions that must be satisfied. These conditions are as provided;

شروط الإرث إجمالاً ثلاثة وهي: تحقق حياة الوارث بعد موت الموروث تتحقق موت الموروث, العلم بمقتضى الإرث

1. The survival of the heir at the time of the death of the deceased
2. Death of the deceased
3. There must be one of the ground of inheritance.¹⁵

In the case of SHEHU &1 OR V. SHEHU¹⁶ the Court of Appeal held thus:

Basically, there are some conditions that must be fulfilled for the devolution of the property of a deceased person to the heirs thereof viz;

- a. The death of a person to be inherited
- b. Proof of the legitimate surviving heirs
- c. The inheritable property...

¹³ (2018) 6. SQLR (PART III) PAGE 442-443

¹⁴ Ibid

¹⁵ Saleh F. A. Tahqeeqatul Mardhiyyah fi Mabahith al-Fardhiyyah Page 36

¹⁶ (2018) 6. SQLR (PART II) PAGE 202

The survival of the heir at the time of the death of the deceased: before an heir can inherit the deceased, it must be proved that he was alive at the time of the death of the deceased.

Death of the deceased: the death of the deceased must be actual or by the court pronouncement in a case of missing person.

There must be one of the ground of inheritance: for a person to claim share from the estate of the deceased, he must show that he falls under one of the grounds of inheritance. See case of ABDU ISA &6 ORS V. HARUNA where the Court of Appeal Held that:

It is equally an established Islamic Principle, that the claimant heir in an action for the distribution of the estate of praepositus shoulders the burden of establishing his legal relationship with the said praepositus through any of the grounds of inheritance.

- a. *Blood- Nasab (Qarabah)*
- b. *Marriage- Nikah (Zawaj)*
- c. *Emancipation-Itq (Walaaya)¹⁷*

1.06: EXCLUSION AND IMPEDIMENTS TO INHERITANCE IN ISLAMIC LAW

There are three things that may prevent an heir from participating in the distribution of the property of a deceased. These are; difference of religion, homicide and slavery.

* ويمنع الشخص من الميراث * واحدة من علل الثلاث رق وقتل واختلاف دين
فافهم فليس الشك كاليقين

one of the three causes impeded one from inheritance, thus; slavery, homicide and difference of religion...¹⁸

¹⁷ (2018) 6 SQLR (PART II) PAGE 223.

¹⁸ Al-Rahbiyyah

Religious Differences

Non-Muslims cannot inherit Muslims. In the same vein, Muslims cannot inherit the property of a non-Muslim. Restrictions on inheritance are based on the difference of religion. This is according to the Hadith which says:

لَا يرثُ الْمُسْلِمُ الْكَافِرَ وَلَا الْكَافِرُ الْمُسْلِمُ

*Muslim does not inherit a Non-Muslim as a non-Muslim does not inherit Muslim.*¹⁹

A Muslim that does not have an heir would have all his property deposited in Baytul mal (Islamic State Treasury). The property may also be used for the propagation of Islam. It may also be used to give assistance to the poor. Mosques may also benefit from the property of a Muslim whose relatives are non- Muslims. Non-Muslims can only benefit from the property of a Muslim before the death of a Muslim or through his will after his death. The benefit should not be more than 1/3 of his property.

Homicide

If an heir kills a person with the motive to inheriting him, he will be automatically deprived of inheriting his victim. In other words, a murderer cannot inherit the person he kills irrespective of whether the killing is intentional or unintentional i.e. both deliberate killing and killing by mistake prevent the killer from inheriting the deceased. The Prophet is reported to have said:

لَيْسَ لِلْقَاتِلِ مِنْ تِرْكَةِ الْمَقْتُولِ شَيْءٌ

A killer does not receive (a share of) inheritance (from the property of the deceased).

It is the consensus of Muslim Jurists that an intentional killer cannot inherit from the property of his victim and his blood-money.²⁰ Muslim

¹⁹ Sahih Al-Bukhari Hadith No: 6764 and Sahih Muslin Hadith No: 1614.

²⁰ Ibn al-Munzir Al-Ijma Page 54 S. 320

Jurists are also unanimous that an unintentional killer cannot inherit from the blood money of his victim.²¹

According to Maliki School, the killing which is impediment to inheritance is intentional killing, which must have been committed with a malicious and unjustifiable intention.²²

Slavery

A slave is under bondage. He could not own any property and could not therefore inherit.²³ Whatever he owns belongs to his master. If his master died, he cannot inherit him because he is considered to be part of the property of his master unless he is set free.

EXCLUSION AND IMPEDIMENTS

A legal heir may be prevented from inheriting in the presence of another person. This prevention may either be total exclusion or partial exclusion.²⁴ Also, a legal heir may be barred from inheritance on the grounds of certain impediments.²⁵ If any heir is excluded on the ground of impediment, his presence does not affect others for the purpose of exclusion e.g. a mother's share of 1/3 will not be reduced to 1/6 in the presence of two or more Christian siblings of the deceased; but where an heir is excluded by the presence of another heir, that excluded person affects others, even if he himself takes nothing. For instance, the mother's share of 1/3 will be reduced to 1/6 in the presence of two collaterals, who are themselves excluded by their father. Therefore, if a person dies leaving his mother, father and two full brothers. The mother will be entitled to 1/6, the father will exclude the two full brothers and will inherit the residue.²⁶

²¹ Ibid

²² Lakhyl, S. H. Almirath P.26

²³ Al-Sabuny, A. al-Mawarith fi Shari'ah al-Islamiyyah P. 23.

²⁴ Ibid p. 107

²⁵ Ibid p. 23

²⁶ Ibid p. 108

1.07: LEGAL HEIRS

An heir is defined as a person whose relation to the deceased legally entitles him to inherit part of the deceased's property depending on other factors, such as his relation to the deceased and presence of other heirs. All heirs are not equal as some of them have priority over others. Under Islamic Law of inheritance, the total number of heirs is twenty five. There are fifteen male heirs and ten female heirs.²⁷ The male heirs are;

Male Heirs:

1. Son
2. Son of son (how low so ever)
3. Father
4. Grandfather (how high so ever)
5. Full brother
6. Half brother
7. Uterine brother
8. Son of full brother
9. Son of half brother
10. Full paternal uncle
11. Half paternal uncle
12. Son of full paternal uncle (how low so ever)
13. Son of half paternal uncle (how low so ever)
14. Husband
15. Male emancipator

Females Heirs

1. Daughter
2. Daughter of son (how low so ever)
3. Mother
4. Grandmother (mother of father)
5. Grandmother (mother of mother)

²⁷ Ibid p. 30

6. Full sister
7. Half sister
8. Uterine sister
9. Wife
10. Female emancipator

The above heirs were mentioned in the book of *Rahbiyyah* thus;

الإِبْنُ وَابْنُ الإِبْنِ مَهْمَا نَزَلا * وَالْأَبُ وَالْجَدُ لَهُ وَإِنْ عَلَى
 وَالْأَخُ مِنْ أَيِّ الْجَهَاتِ كَانَ * قَدْ أَنْزَلَ اللَّهُ بِهِ الْقُرْآنَ
 وَابْنُ الْأَخِ الْمَدْلِي إِلَيْهِ بِالْأَبِ * فَاسْمَعْ مَقْالَاهُ لَيْسَ بِالْمَكْذُبِ
 وَالْعُمَّ وَابْنُ الْعُمَّ مِنْ أَبِيهِ * فَاشْكُرْ لِذِي الْإِيْجَازِ وَالْتَّنْبِيَهِ
 وَالزَّوْجُ وَالْمَعْتَقُ ذُو الْوَلَاءِ * فَجَمْلَةُ الْذُكُورِ هُوَ الْوَلَاءُ

بَنْتُ وَبَنْتُ ابْنٍ وَأُمِّ مَشْفَقَهُ * وَزَوْجَهُ وَجْدَهُ وَمَعْتَقَهُ
 وَالْأُخْتُ مِنْ أَيِّ الْجَهَاتِ كَانَتْ * فَهَذِهِ عَدْتُهُنَّ بَانِتَ

1.08: CLASSIFICATION OF INHERITANCE

Inheritance under Islamic Law is classified into two main classes thus; *Fardh* and *ta'asib*. It is stated in the book of *Al-Rahbiyyah* that:

وَعْلَمْ بِأَنَّ الْإِرْثَ نُوْعَانِ هَمَا * فَرِضاً وَتَعَصِّيَّا عَلَى مَا قَسَمَا

Take note that; inheritance is of two classes. *Fardh* and *Ta'asib* as it was prescribed.

1.09: Allotted Shares in the Qur'an

The allotted shares in the Qur'an are six shares thus; One-half $\frac{1}{2}$, One third $\frac{1}{3}$, One forth $\frac{1}{4}$, One Sixth $\frac{1}{6}$, One Eighth $\frac{1}{8}$, and Two-Third $\frac{2}{3}$.

فَالْفَرْضُ فِي نَصِ الْكِتَابِ سَتَةٌ * لَا فِرْضُ فِي الْإِرْثِ سَوَا هَا الْبَتَةُ
 نَصْفٌ وَرَبْعٌ ثُمَّ نَصْفٌ الرَّبْعِ * وَالثَّلَاثَةُ وَالسَّدِسُ بِنَصِ الشَّرْعِ
 وَالثَّلَاثَانُ وَهَمَا تَمَامٌ * فَاحْفَظْ فَكِلَ حَافِظٌ إِمَامٌ 14

Those entitled to One-Half

There are five Qur'anic heirs who can inherit One-Half of the estate of the deceased person as follows: husband, daughter, daughter of son, full sister and half-sister.

They are provided in the book of Al-Rahbiyyah that;

¹⁴ Al-Rahbiyyah

والنصف فرض خمسة أفراد * الزوج والأنثى من الأولاد وبنت الإبن عند فقدالبنت
* والأخت في مذهب كل مفتى وبعدها أخت التي من الأب
عند افرادهن عن معصب

1. Husband is entitled to One-Half where the deceased is his wife and left no child. Child in this regard means; son, daughter, son of son or daughter of son how low so ever.
2. Daughter is entitled to One-Half if she is alone or daughter of son if she is alone in the absence of a son, daughter and son of son.
3. A sister either germane or consanguine if she is alone and in the absence of germane or consanguine brother respectively, father, son and son of son how low so ever.

Those entitled to One-Quarter

There are only two Qur'anic heirs who can inherit One-Quarter of the property left behind by the deceased person. They are husband and a wife or wives.

1. Husband can inherit One-Quarter of the property of his deceased wife where the wife left a child.
2. Wife or wives can inherit One-Quarter of the property of her or their deceased husband where the husband left no child.

والربع فرض الزوج إن كان معه * من ولد الزوجة من قد منعه
وهو لكل زوجة أو أكثر * مع عدم الأولاد فيما قدرها
وذكر الأولاد البنين يعتمد * حيث اعتمدنا القول في ذكر الولد
Note that; child in this case includes son of son.

Those entitled to One-Eighth

Only one Qur'anic heir will get one eighth of the estate and that is a wife where the husband leaves a child. Even if the wives are four they share the one eighth of the estate amongst themselves.

والثمن للزوجة والزوجات * مع البنين أو مع البنات أو
مع أولاد البنين فاعلم * ولا تظن الجمع شرطاً فافهم

a wife or wives inherit One-Eighth of the property in the existence of son or daughter or in the existence of son of son or daughter of son.²⁸

Those entitled to Two-Thirds

Four of the Qur'anic heirs get two thirds of the estate and these are:

1. Two or more daughters where the deceased left no son.
2. Two or more son's daughters, if the deceased left no son or daughter or son's son.
3. Germane sisters, two or more, where the deceased left no father, no child and germane brother.
4. Consanguine sisters, two or more, where the deceased left no father, no child, no germane brother or sister, and no consanguine brother.

والثلاث للبنات جمل * مازاد عن واحدة فسما
وهو كذلك لبنات الإبن * فافهم مقالى فهم صافى
الذهب
وهو لأختين فما يزيد * قضى به الأحرار والعبيد
هذا إذا كن لأم وأب * أو لأب فاحكم بهذا تصب 16

Those entitled to One-Third

There are three heirs who get one third of an estate, these are:

1. A mother if the deceased left no child and left no brothers. In case where the deceased left behind a father mother and wife or father mother and husband in such a case the mother is entitled

²⁸ Al-Juhny, K.M. Al-Taqreerat al-Sunniyyah ala Manzumah al-Rahbiyyah P. 53

to OneThird of the residue after the Qur'anic heir take his portion. This is what is called *Umariyyatani*.

2. Uterine brothers or sisters when they are more than one. They share the One-Third equally amongst themselves, if deceased person left no father, grandfather or child.
3. A grandfather if he is inheriting with more than two brothers or more than four sisters. He inherits 1/3 of the remaining property satisfying other Qur'anic heirs excluding the Sisters¹⁷

Those entitled to One-Sixth

There are seven heirs who get one-sixth of an estate and these are: Mother, father, paternal grandfather, paternal or maternal grandmother, uterine brother or sister, son's daughter and consanguine sister.

والسدس فرض سبع من العدد *أب و أم ثم بنت ابن وجد والأخت بنت الأب
ثم الجدة * و ولد الأم تمام العدة¹⁸

They are entitled to One- Sixth as follows;

¹⁶ Al-Rahbiyyah

¹⁷ Gurin A. M. Islamic Law of Succession P.50

¹⁸ Al-Rahbiyyah

1. Mother: Where the deceased left a child, or where he leaves more than one brother or sister, whether they are germane, consanguine or uterine and whether they are inheriting or not, they will reduce the mother's, share from one-third to one-sixth. In case the child is one daughter, the father will take the residue in addition to his

1/6.²⁹

2. A paternal or maternal grand-mother in the absence of a mother.
3. A father where the deceased left a child.

²⁹ Al-Juhny, K.M. Al-Taqreerat al-Sunniyyah ala Manzumah al-Rahbiyyah P. 63

4. A paternal grandfather in the absence of a father.
5. A uterine brother or sister, in the absence of a child, father or grandfather.
6. A son's daughter, in the presence of one daughter who will take her Qur'anic share of one-half and the son's daughter will get one-sixth, to complete the total share of the females i.e. two-thirds.

1.10: The Definition of Al-Asib

The technical definition of Al-Asib is an heir who gets all of the wealth if he is alone (without any other claimants to the inheritance) or he gets what is left over after the shares of inheritance are distributed, if there is anything left. The Asib is deprived of receiving any of the wealth if nothing remains after the shares of inheritance are distributed from the wealth left by the deceased. This is due to the Prophet's statement that is recorded in the *Sahih*:

الحقوا الفرائض بأهلها فما بقي فلأولى رجل ذكر

"Give the Fara'idh (shares of inheritance designated in the Qur'an) to those who are entitled to them and whatever is left over belongs to the closest male relative (of the deceased)." ³⁰

Categories of Asabah

Asabah are of three categories as follows:

1. **Asib bi-Nafsihi:** This is the father, the grandfather and so forth in ascending lineage. It also includes the son, and the son of the son (grandson) and so forth in descending lineage. It also includes the full brother and the half-brother by the same father, and the son of the full brother (nephew) and the son of the half-brother by the same father and so forth in descending lineage. It also includes the

³⁰ Sahih al-Bukhari No: 6737 Sahih Muslim No: 1615

father's full brother (uncle) and his half-brother by the same father, and the son of the father's full brother (cousin) and the son of the father's half-brother by the same father and so forth in descending lineage. It also includes the person who manumits a slave (in reference to a deceased slave), whether the manumitted is a male or female. The male relatives of the manumitted who are themselves direct relatives (of the manumitted) are also included in this category, and so is the public treasury.

2. **Asib bi-Ghairihi:** This is every female who gets a portion of what remains due to relationship to a male. Thus, she inherits with him according to the principle that the male gets twice the amount of the female. These women are the following:
 1. The full sister who inherits with her full brother.
 2. The half-sister by the same father who inherits with her half brother by the same father.
 3. The daughter inherits with her brother (the son).
 4. The granddaughter, by the son, inherits with her brother or the grandson by a (different) son, if she does not have a designated share (Fardh). If she has a designated share (Fardh), she does not get a share of what remains after distribution of the inheritance with the great-grandson by the son (who is below her in the family line). This is, for instance, if a man dies and leaves a daughter, a granddaughter by a son and a great grandson by a son. In this case the daughter gets half and the granddaughter by the son gets a sixth, which completes two thirds. The remainder (one-third) goes to the great-grandson due to At-Ta'sib (i.e. he is the closest remaining male relative). If the deceased leaves a granddaughter by a son and a great grandson by a son, then the granddaughter by the son gets half as her designated share (Fardh) of the inheritance and the remaining half goes to the great-grandson due to At-Ta'sib (i.e. he is the closest remaining male relative).

If the deceased leaves two granddaughters by a son and a great-grandson by a son, then the two granddaughters by the son get two thirds as their designated share (*Fardh*) of the inheritance and the great-grandson gets the remaining (one third) due to *At-ta'sib*. All of this is when the granddaughter by the son is equal to the grandson by the son in the level of family lineage, or higher than him. However, if she is lower than him (for example, if she is the great-granddaughter and he is the grandson) by a degree or more of family lineage, then he blocks her completely and thus she does not inherit at all.

3. **Asib ma'a Ghairihi:** This is every female who becomes Asibah (one who gets the remanence of the inheritance due to family relations) when she is left along with another woman. These are the following: The full sister or more (i.e. sisters) along with the daughter, or daughters, or along with the granddaughter by the son or the granddaughters. The half-sister by the same mother is just like the full sister in all of this. Therefore, what remains for the daughter or daughters or the granddaughter or granddaughters, the sister inherits (gets) it if she is alone or with her sisters who are equal to her in family relations if she has sisters. It should be noted that the full sister here has the status of the full brother and thus she blocks off the half-sister by the same father. Also, the half-sister by the same father has the status of the half-brother by the same father and

thus she absolutely blocks off the son of the brother (nephew) of the deceased.

1.11: Doctrine of Al-Awl

Al-Awl technically means an increase in the number of shares and a decrease in their amounts. The Companions (may Allāh be pleased with them) agreed that using it is acceptable, with the exception of Ibn 'Abbas. For this reason, it is a practice that is found among the general populace of the Muslims.

Cases that involve *Al-'Awl*

Al-'Awl enters into only three fundamental cases. They are the case of six shares, twelve shares and twenty-four shares.

The six shares may be changed to up to ten shares by the odd individual and the husband. The twelve shares may be changed to up to seventeen shares only by the odd individual. The twenty-four shares may be changed one time to up to twenty-seven shares by the odd individual.

1.12: Doctrine of Radd

Radd is the allocation of the excess left over the estate to those heirs who are entitled to it (i.e.*Ashabul Furudh*) in proportion to their original shares. In other words, Radd entails the redistribution of the excess property of inheritance to the Qur'anic heirs (*Ashabul Furudh*) in proportion to their shares allocated to them.³¹

³¹ Al-Sabuny A.I. Almawarith P. 100

It is also the returning of what remains in excess from the shares of the respective heirs in proportion of their shares in the absence of any other person deserving it.³² From the above definitions *Radd* can simply be described or defined as redistribution of the remaining property of inheritance to the Qur'anic heirs.

Nature of *Radd*

Radd by its nature, it concerns with the redistribution of the surplus property or estate of the deceased after carrying out the original distribution as prescribed by the rule of inheritance.³³ This is to say by its nature where the amount of shares to be distributed is less than the total estate then there is *Radd* in which case it is to be decided as to whether the remainder goes to the public treasury or back to the

Qur'anic heirs (*Ashab-Al-Furudh*).³⁴

Radd is also applied in the presence of the *Qu'ranic heirs*, in the absence of any *Asabah* (agnatic heir) in the case, and if there is remainder from the deceased's property after taking the Qur'anic heirs their shares.

Radd also by its nature affects females. In other words, it applies on females not males except uterine brother.³⁵

Application of *Radd*

Before the application of the doctrine of *Radd* there are essential elements that qualify the application of the

³² Sabiq, S. *Fiqh al-Sunnah* Vol. 2 P.316

³³ Ibid

³⁴ Muhyiddenn, M. *Sharh al-Rahbiyyah* P. 173

³⁵ Ahmad, U. *Murji'u al-Tullab fi al-Mawarith ala Mazhab Al-Maliki* P. 187.

doctrine. According to the general view of Islamic schools of thought is, the application of *Radd* arises where: -

- 1) There is remainder from the estate after distribution.
- 2) All the existing heirs have taken their prescribed shares.
- 3) There is no any agnatic heir who survived the decease.

1.13: PROCEDURAL ASPECT OF INHERITANCE IN ISLAMIC LAW

Islamic Jurists maintained that the first things to be done from the estate of a muslim when he dies is to pay his funeral expenses, settle his debts, execute his will and what remains constitute the net estate to be distributed to his legal heirs.³⁶

The constitution of the Federal Republic of Nigeria³⁷ under section 277 (2) (c) gave the Sharia Court of Appeal of a state (by extension Sharia Courts) jurisdiction to entertain matters of Islamic law of succession. The Section provides: “any question of Islamic personal law regarding a *Wakf*, Gift, will or succession where the endower, donor, testator or deceased person is a muslim”.

The Supreme Court held in the case of **FAUZIYA ALI & ORS V. MANDU BASHIR MAIDUGURI (2024)** on the issue of jurisdiction of Sharia Courts under section 277 of the constitution, that: “*the jurisdiction of the Sharia Court of Appeal (and by implication/extension, the Sharia Court) under section 277 of the Constitution of the Federal Republic*

³⁶ Garba A.H and Yakubu B. Op cit p. 80

³⁷ 1999 Constitution (as amended) of the Federal Republic of Nigeria

of Nigeria 1999 (as amended), pertains to all questions of what is termed Islamic persona law? The court in the case of **GWABRO v GWABRO (1998) 4 NWLR (PT.544) 60 at 68-69** outlines the types of disputes that can be subject to succession proceedings under section 277 of the 1999 constitution, which included, “*a dispute over any heritable estate which any person withholds away from the heirs*”. Consequently, the court held that since the respondent’s claim relates to a share of inheritance which was allegedly withheld from the respondent by the 1st Appellant, it was clear that the respondent’s claim come within the meaning of a dispute over any heritable estate which any person withheld away from the heirs”, and within the ambit of section 277 (2) (c) of the 1999 constitution as amended. The Supreme Court further, held that the lower court had jurisdiction to entertain and determine the matter, and resolved the issue in favour of the respondents.³⁸

The Upper Area Court of the Federal Capital Territory Abuja held in the case of **HALIMA ABDULLAHI MUHAMMAD & 5ORS V. HADIZA A. MOH'D 6ORS (2019)** on the issue of distribution of estate of a deceased among his legal heirs under Islamic law, that; “Distribution of estate of a deceased among his legal heirs under Islamic law is predicated upon the existence of three requirements, which are:

- a. Actual or declaration of death of the person to be inherited.
- b. Survival and relationship to the deceased of legal heirs to inherit.

³⁸ Retrieved from <https://www.thisdaylive.com/index.php/2024/11/19/jurisdiction-of-sharia-courts-under-section-277-of-the-constitution/> Accessed on 3/02/2025

c. Availability and ownership of inheritable estate.³⁹

1.14: ADJUCATING CASES OF INHERITANCE

A legal heir may apply to the court for the distribution of the estate of a deceased. This may be commenced by a claimant personally or through authorized representatives, orally or in writing before a judge in the Area or Sharia Court. He files his claim and some is registered in the *Diwanul-Qadai* (Court's Register Book) and a date for mention is fixed and the defendants will be served with a hearing notice.⁴⁰

Order 2 Rule 2 Area Courts (Civil Procedure) Rules 1971, provides that every civil case shall be commenced by a complaint made in person or the authorized representative of the person making the complaint. Rule 3 provides that the Court shall cause the clerk to enter the substance of such a matter in books to be kept for the purposes as prescribed in Order 27. The Court shall under Rule 4 refuse to entertain a matter which fails to disclose any cause of action which must be stated. If the Judge ascertains the details of the complaint he shall issue summons to the Defendant whose address must be supplied by the Plaintiff.⁴¹

If a legal heir or group of legal heirs apply to the Court for the distribution of the estate of the deceased they must establish the following before distribution of the estate and allocation of shares;

- a. It must be established before the court, the death of the propositus.

³⁹ Hon. Sidi Bello Rufai (2019) Selected Judgments and Rulings in Criminal and Civil Proceedings: Part One p.

⁴⁰ Abubakar A., op cit p. 6

⁴¹ Ibid

- b. The claimants must establish their relationship with the deceased/propositus.
- c. The claimants must equally establish that the property is owned by the propositus.
- d. The court must establish all the legal heirs that are entitled to inherit whether present or not.⁴²

In the Case of **SODA V. KURINGA**⁴³ the Court of Appeal Stated the adjudicatory method thus; “*...where one of the heirs claims his share of inheritance (by filing a case in Court) even if the remaining heirs do not give their consent to such a claim it is mandatory on the court to accept the claim and adjudicate over it. In this regard, even if the parties do not specially give their authority, the court must make them parties to the suit so that the exact share of each heir would be calculated according to the fractions he or she is entitled to receive*”⁴⁴

The Courts in Nigeria have consistently maintained that it is an heir’s right to request for his or her share of inheritance and he or she can go to Court and demand it even if the remaining heirs do not give their consent to the suit. However, all cases of inheritance filed in the Area Courts and Sharia Courts are normally instituted by way of complaints.⁴⁵ Therefore, one may add that, Islamic Courts in Nigeria follow the Maliki School and thus rely heavily on textbooks from

⁴² Alkali Usman Muhammad Daura (1996) Jagorar Masu Hukunci: Tarjamar Tuhfatul-Hukkum, Hudahuda Publishing Co. Ltd, Zaria p. 377

⁴³ Soda v Kuringa (2015) 3 SQLR (pt. 3) 447-480

⁴⁴ Ibid

⁴⁵ Saka-Ismael I., and Oba A., (2019) Judicial Practice in Distribution of Inheritance (Mirath) in Islamic Courts in Nigeria, De jure: Jurnal Hukum dan Syari’al vol. II p. 6 Retrieved from

https://www.researchgate.net/publication/334835563_Judicial_Practice_in_Distribution_of_Inheritance_mirath_in_Islamic_Courts_in_Nigeria Accessed on 3/02/2025

that school. These include various editions of classical and modern Maliki textbooks and manuals.⁴⁶

In the case of **YARI v MIKAILA**,⁴⁷ the Court of Appeal held that a trial Court in relation to the distribution of estates in cases filed in the Court; a) Confirm the death of the deceased person; b) enquire into the affinity of each of the legal heirs to the deceased; c) confirm the deceased's exclusive ownership of the estate; d) enquire into whether the deceased owned debts; and e) whether the deceased made any will. According to the Court of Appeal, all these preliminary issues must be established by evidence before the trial Court.⁴⁸

CONCLUSION

It is worthy of note that Islamic law of inheritance is a divinely instructed instrument where Allah gives each and every heir his/her share from the Tarikah. These injunctions must be adhered to strictly according to the dictates of the Qur'an and Sunnah. The paper has given detailed discussion on the system of succession/inheritance under Islamic Law. It has discussed on the system of Islamic law of Succession/Inheritance and how universal it is in application across the Islamic world. This universality has made the system complete and acceptable as it has provided for all humans, thereby respecting the right to the dignity of human persons, especially for women who were hitherto excluded from inheritance during the pre-Islamic Arabia and

⁴⁶ Ibid

⁴⁷ Yika v Mikaila (1998) 5 NWLR (pt. 46) 1064

⁴⁸ Saka-Ismael I. and Oba A., op cit p. 8

other parts of the world. It is evident from the forgoing discussion that no system of inheritance has made a comprehensive provision for women similar to Islamic law. The paper has discussed the Islamic law of procedure in the Nigerian courts as far as Islamic inheritance is concerned, thereby discussing legislative and judicial provisions on the matter. It has been observed that the procedure is perfect, only that new issues do come up in the course of proceedings which might not have been taken care of by existing legislations, such as *istihqaq*. However, issues like these could be handled by Judges who are knowledgeable in Islamic Law of Succession as they arise.

Being a complicated area of law, it is hereby recommended that take a proactive step in training all sharia/Area court Judges and Judges of higher bench in the area of Islamic law of inheritance, by organizing short and medium term courses in the area, at regular intervals, in order to boost their capacity. Although workshops and seminars like this one might be good starting points, detailed and more rigorous courses are necessary.

Finally, I wish to acknowledged the valuable contribution of my learned brother Hon. Kadi Bara'u Basiru Musa of Shari'a Court of Appeal Jigawa State Judiciary and my learned Friend Prof. Dahiru Sani Muhammad of Faculty of Law A.B.U in the process of writing this paper jazakumullahu khairan.

THANK YOU FOR LISTENING