

# PERCEPTION ENGINEERING ON INHERITANCE AND PROBLEM OF SUCCESSORS AMONG MUSLIMS IN LAGOS STATE: ISLAMIC ANTIDOTES

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## Abstract

Inheritance is an aspect of high importance in human life because of its role in sharpening the cord of kinship either through blood or marriage. It is actually one of the determinants of continuous existence of community in both social and religious aspects of life. All religions are of strong belief that estate of deceased should be conferred on his/her heirs after demise but differ on ways and manners through which such should be shared. Surprisingly, matters of inheritance have been a bane of peace and sanctity among living organisms without exception even among religionists. Though, research is yet to uncover in totality reasons why such mayhem occurs and why inheritance should not cause catastrophe among humans. This paper therefore tended to examine the gap between religious rules and practice of religious adherents that bring about the chaos. It was discovered that, lack of adequate practice of the term according to the guiding principles of Islam, disenfranchisement, covetous, and selfishness are among the indices of rooted chaos. The paper qualitatively put available literatures and historical antecedents into analysis coupled with personal observations. The paper concluded that, Islam has all embracing keys to fine-tuning the causes and provide meticulous method of sharing deceased estate without any iota of rancour. It finally recommended that, the guiding principles of Islamic law of inheritance should be sorted for in distributing deceased property to avert any form of chaotic development.

**Keywords:** *Mirath*, Islamic-Inheritance, solution to family disputes.

## Introduction

The practice of inheritance has been in existence in Yoruba land prior to the introduction of Islam into the territory. According to Yoruba customs and traditions, the property of a deceased is shared equally among the heirs according to the number of wives he (the deceased) had (Adeniji, 2002). The number of children a wife has is of no importance. However, the one who had no child for the deceased shared nothing. Though, the practice has its advantages, mayhem, disorder, chaos etc occur often as a result of disenfranchisement or perceived injustice in the sharing of a deceased estate. The end results of this are often catastrophic ranging from unhealthy rivalry, evil machination, among others.

In Lagos State, the practice of inheritance has taken an interesting dimension. The most valuable property in the area is land and the sharing of this among the heirs of a deceased often causes chaos. This is because some members of the family often try to outsmart others in the sharing of the landed property. Several methods are adopted to sideline some members of the family from sharing in the estate. Among the methods include influential personalities, the head or elders of the family colluding in disposing the properties secretly having suggested or agreed that it would be disposed collectively. Few members of the family or a single person will however take possession of everything. The practice usually begins with delay tactics. The sharing of the property is delayed beyond reasonable period of time with flimsy excuses. This period of postponement is used as an opportunity to commence sale of the property without the consent of others. At this time, the perpetrator shuns family meetings as that keeps the sharing postponed indefinitely.

However, if family members become aware of antics, it turns to 'might is right' or drawing the battle line among the family members depending on how powerful the person involved is. The community head at times supports the perpetrator most especially when sharing formula is involved. The process of confronting each other or one another by members of the family on sharing of deceased estate is known as problem of successors. Hoodlums known as land fighters (land grabbers) are at times invited to chase family members away and terrorise them; all in the name of monopolizing the property.

The sharing of non-landed properties is also characterised with similar problems among the Lagosians after the introduction of Islam and Christianity. The duo religions are known and regarded as sacred religions by their adherents. So, the duo are expected to solve related issues in traditional inheritance society, yet, the problem persists. In order to throw more light on the topic to forestall further inheritance problems, this research was carried out.

## Conceptual Clarification

### i. Inheritance

Olatunji (1982) proposes two different meaning to which inheritance can be classified. In his first opinion, he postulates that the word inheritance has link with something that can spoil if not used. He bases his interpretation on the Yoruba term of the concept that if something spoilt, Yoruba will say *o-gún*. So, in order not to allow properties of the deceased to be spoilt, it must be given to heirs.

In another term, he refers to it as something that has to do with sweat (*òógún*) in Yoruba usage. This means that, the properties to be shared has to do with what the deceased has laboured for during his/her lifetime. So, in order that what the deceased has laboured for should not be allowed to get spoilt, it must be given to the heirs.

The term inheritance is represented in Arabic as *Mīrāth* or *Farā'id*. The term *Mirath* is derived from verbal noun (Masdar) of trilateral verb wa-ra-tha. It means to share another person's property after his/her demise. Inheritance therefore is the state of taking over another person's property after his or her demise by kinsmen (Adeniji, 2002).

## ii. Will

The term 'will' means different thing to different people depending from which angle an individual is looking at it. Oxford Advanced Learner's Dictionary defines it as "a legal document that says what is to happen to somebody's money and property after they die." This is in-line with Oke (2001) who sees 'Will' as the written document of how the property of a deceased can be shared and received by the heirs. This definition could be taken to be English (Western) Law and Customary Law respectively. Ogungbe (2009 and 2004) and Sagay (2006) see will as the same with testate succession and hold the view that is the act whereby the deceased person disposes off his/her real and personal property after his demise.

The implication of a 'Will' is that, the property's owner determines whomever he wants to and whom not to inherit him/her. This may be at the detriment of some heirs as the sharing might have undue influence most especially where affection is shown to some children over others by the testator. The end result may therefore be unpalatable as several techniques may be implored to ensure that the properties are not beneficial to the heirs.

However, from Islamic point of view, Will is seen as bequest. This is because Stacey (2012) is of the opinion that, the Islamic Will in Arabic *Al-Wasiyah* (bequest) is a set of instruction that come into effect after a person's death. The will is acted upon after the payment of funeral expenses and any outstanding debts. This is quite different from Western point of view on Will because:

- a. Islamic will is a bequest to family and non-family members who are not either directly or indirectly heirs while Western will involves either all or part of heirs and or non-heirs.
- b. Bequest should not be more than one third ( $\frac{1}{3}$ ) of the total estate left behind by the deceased but in the Western world, it is the entire properties.
- c. This than one third ( $\frac{1}{3}$ ) is after deduction of funeral expenses and debt incurred by the deceased but this is not considered in the will as heirs are expected to foot the bill except where the deceased has made provision for such in the will.

## Inheritance across Lagos State Religious Adherents

There are three basic religions under which this heading was discussed. These are:

### 1. African Traditional Custom

Attention in this segment was geared towards non landed property as landed property has been made known to be family and it devolves on control of *Dawodu* (the eldest surviving child) according to Ogungbe (2004 & 2009). Though, other children have equal right to the said land if it actually acquired or purchased originally by their parent but if not, then, it becomes family's property and falls under the control of younger brother of the deceased (Sagay, 2012).

Olatunji (1982) affirms that, in ancient time, burial without sharing of deceased's property was considered incomplete; family and relatives would not be ease until the property was shared among the heirs. So, the process of inheritance was hastened up among the children and younger brothers and sisters of the deceased. This was to prevent future misunderstanding among others. The commonest time to which inheritance is shared is at the expiration of confinement of the deceased's wife which could either be three or six months or a year as the case may be. However, should there be rift among the heirs, this must be resolved first before the sharing of inheritance (Adeniji, 2002).

Dadem (2015) subscribes to the fact that, the prominent and conventional system of inheritance is *Idi-Igi* method. He explains this to mean a system by which the property of the deceased is shared per stripe in a situation by which the founder (deceased person) has more than one wife. The distribution is effected according to branches; each branch consist of a wife and her children. The share of each branch is distributed among the children of that branch in equal shares.

Ogungbe (2004) on the other hand, admits *Ori-Ojori* to be another system and method of distribution that permits property to be shared per capital among the children of the deceased. It should be noted here that, Ogungbe (2009) affirms the position of Dadem (2015) as she submits that *Idi-Igi* System is prominent than *Ori-Ojori* System which to her seems to be modern day method of distribution adopted to avoid unnecessary litigation. It should be stated clearly that, none of the duo methods share property to the wife of the deceased including *Idi-Igi* method. The focus is on the children and that is the reason the wife that bears no child for the deceased shares nothing.

## 2. Christianity

The Christianity law on Inheritance is according to Nigerian constitution because that it is the law that regulates social order among humans. It should be noted that Akintola (2001) submits that, the first Inheritance law in Christianity was the 1938 Inheritance Act of English land. According to him, the act gave liberty to property owner the liberty of whom to inherit and whom not to inherit according to the discretion. However, several other provisions have been made thereafter, such as Parliament Act of 1975. Akintola (2001) quoted Schaul-Yoder (1985) thus:

In 1975, Parliament enacted the Inheritance (Provision for family And dependants) Acts, altering in significant respects the balance struck in England between testamentary freedom and family protection. After more than a century during which testator had been at liberty to dispose of their property as they wished, the Inheritance Act of 1938 had partially restricted a testator's freedom by permitting certain relatives to apply to the court for maintenance from his estate, regardless of his testamentary dispositions. The 1975 Act expands the scope of the 1938 Act, giving courts the power to make "reasonable provision" out of a descendant estate not only for those relatives covered by the 1938 Act, but also for de facto dependants. The 1975 Act further provides that a court making an award to a surviving spouse need no longer be guided by a maintenance standard, but may make an award of any sum reasonable under all the circumstances, "whether or not it is required for maintenance."

The Inheritance law in the constitution has been discussed by scholars and legal practitioners using constitutional provision of section 42 (1&2) of the 1999 constitution of the Federal Republic of Nigeria according to Animashaun and Oyeneyin (2002) and Itua (2012), the constitution provides that:

- I. A citizen of Nigeria of a particular community, ethnic group, place of origin, sex or religion or political opinion shall not by reason of his birth:
  - a) Be subjected either expressly by, or in the practical application of any law in force in Nigeria or in any executive or administrative action of the government, to disabilities or restrictions to which citizen of Nigeria of other communities, ethnic group, places of origin, sex, religious or political opinions are not made subject to.

From the foregoing, it should be noted that no Nigeria citizen should be subjected to any disability or deprivation merely by reason of circumstance of his/her birth. This provision negates the position of virtually most if not all customary laws of ethnic groups in Lagos State for prohibiting females from inheriting the whole or part of deceased's property or prohibiting wives from inheriting their husbands' property.

On the other hand, the issue of illegitimate child as a result of monogamy marriage is of high importance in this regard. Though, some legal practitioners have argued that legitimation act has either directly or indirectly removed barrier of illegitimate in constitutional provision. Though, some are still of the opinion that, the barrier is not totally addressed from the statute of books. The constitution therefore has placed legality of any child on either legitimacy or legitimation.

Legitimacy according to Itua (2012) is the status acquired by a person who is born in lawful wedlock and such a person is regarded as been legitimate from child. The lawful wedlock in this regard includes, under the act, customary law and Islamic law, any child born during subsistent of these aforementioned marriages is legitimate.

Legitimation on the other hand, is the process by which a child that has not been born legitimate acquires the status of being legitimate. Ogungbe (2009) however points out that, subsequent statutory marriage or acknowledgement are the only two ways through which illegitimate child can acquire legitimation in Nigeria.

### **3. Islamic Religion**

Islam portrays money and property that are in possession of human as a trust from Allah and as a Muslim, the responsibility is to use it for the sake of Him because questions shall be asked on how such is acquired and spent. Doi (1984) contains the prophetic tradition thus:

The two feet of the son of Adam will not move on the Day of Judgement in front of his Lord until he is asked about five things: about his life, and how he lived it; about his youth and how he lived it; and about his money, how did he earn it and how did he spend it; and what did he do with his knowledge.

In Islam, the instruction of how property of a deceased should be shared is explicitly mentioned in Qur'an 4: 11-12. Allah says:

God commands you as regards your children's (inheritance): to the male, a portion equal to that of two females; if (there are) only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. For parents, a sixth share of inheritance to each if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers (or sisters), the mother has a sixth. (The distribution in all cases is) after the payment of legacies he may have bequeathed or debts. You know not which of them, whether your parents or your children, are nearest to you in benefit; (these fixed shares) are ordained by Allah. And Allah is Ever All-Knower, All-Wise.

Islamic scholars have derived several essential instructions from this verse, the most important include:

- i) Debts and bequests are taken from the estate before distribution amongst the heirs
- ii) A son receives twice as much as a daughter
- iii) If the deceased children are female only, they receive two-third of the estate to be divided equally among them. The leftover will be returned to them if there are no residual heirs.
- iv) If the deceased is survived by only a daughter, she receives half of the estate. The leftover would still be given to her if there are no residual heirs.
- v) If there are children, parents receive one-sixth of the estate each.
- vi) In the absence of children, if the deceased leaves siblings (paternal or maternal), the mother then receives one-sixth.
- vii) In the absence of children and siblings, the mother then receives one-third of the estate.
- viii)

In that which your wives leave, your share is a half if they have no child; but if they leave a child, you get a fourth of that which they leave after payment of legacies that they have bequeathed or debts. In that which you leave, their (your wives) share is a fourth if you leave no child; but if you leave a child, they get an eighth of that which you leave after payment of legacies that you may have bequeathed or debts. If the man or woman whose inheritance is in question has left neither ascendants nor descendants, but has left a (maternal) brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third, after payment of legacies he/she may have bequeathed or debts, so that no loss is caused (to anyone). This is a command from Allah; and Allah is Ever All-Knowing, Most Forbearing (Qur'an 4:12).

From this verse, the scholars deduced the following rules:

- i. If a married woman dies without children, her husband receives half of her estate; if there are children, he receives one-fourth.

- ii. A wife is a woman who was lawfully married to the deceased; when he dies, if there is more than one (maximum of four) their share is divided evenly. A wife's share of her husband's estate is one-quarter if there are no offspring; if there are, her share is eighth.
- iii. The shares for males and females of the same rank (brother and sister, son and daughter etc) are that
- iv. the male receives twice as much as the females.
- v. The maternal siblings are the only exception to the above rule. If there is only one maternal sibling, he/she receives one-sixth. If they are two or more, they share one-third.

According to Salako (2013), the first category of inheritors in Islam are the Qur'anic heirs whose shares have been mentioned by Allah and cannot be tampered with. In his words:

Quranic Heirs are those whose shares are specifically mentioned in the Quran. The property of the deceased goes to the Quranic heir and if the estate is not exhausted, then it goes to the Agnatic heirs and in the absence of the Agnatics, it goes to the Distant Kinsmen.

Quranic Heirs consist of close relations to the deceased to whom specific shares are allotted in the Quran such as  $\frac{1}{2}$ ,  $\frac{1}{4}$ ,  $\frac{1}{6}$ ,  $\frac{1}{8}$ ,  $\frac{2}{3}$ .

As the shares are fixed by the Quran, they take precedence over the other two classes. The Quranic heirs consist of males and females. (Salako, 2013).

### **Factors Militating against Smooth Conduct of Muslim Inheritance in Lagos State**

There are several factors militating against hitch-free sharing of deceased estate among Muslims in Lagos State. Some of these factors are expatiated below:

- a) **Disenfranchisement of an heir:** this is one of the major problems confronting smooth administration of inheritance among Lagos State Muslim residents as a result of either gender bias or foreign influence of monogamy. This is against the Islamic law of inheritance. One should not be debarred from inheritance due to gender or polygamous form of marriage because this has been taken care of in the law of Allah.
- b) **Over Affection:** having unrestricted affection for some children over the others at times causes giving undue advantage to whom affection is tailored thereby short-changing other children with little or no affection. This is equally against the Islamic law of inheritance as immediate family members have their shares already prescribed by Allah and should not be tampered with by any creature.
- c) **Ignorance:** as it is known to be a disease, it has affected smooth administration of inheritance significantly thereby giving rise to unnecessary havoc among heirs that may result to enmity. It is important that Islamic scholars should seek for the knowledge of inheritance in Islam because the Prophet described having knowledge of inheritance as a half of faith.
- d) **Over Reliance on Cultural Value:** Cultural value is a factor to be reckoned with but when it brings discomfort, alternative should be sought for elsewhere for the smooth conduct of activities and comfort purpose. Also, when the cultural value negates the injunction of Allah, the law of Allah is to be upheld. Hence, Lagos Muslims need to adopt the Islamic law of inheritance to promote peace and tranquillity in matters of inheritance among Muslim family members. This cannot be extended to non-Muslims in Lagos State who have their rules to follow.

- e) **Trust:** Some deceased's properties are still awaiting distribution to the heirs after several decades of demise of the owner. This majorly occurs in monogamy family where another wife and children appeared during sharing of the property or while Will capturing strange names is read. The constitutionally married wife may therefore seek redress in court. This will easily be addressed by adopting the Islamic law of inheritance which has made provisions for all cases.

### **Problem arising from Inheritance among Muslims in Lagos State**

Report has shown that, the problem arising from Inheritance among Muslims in Lagos State is of no small measure as several means are deployed by some heirs either to seek redress or to ensure the property become theirs at all cost. Some of the problems include among others:

- i. **Physical Confrontation:** several cases have been witnessed where two or more related blood confronted each other or one another because of inheritance. Several lives have been lost while some are laying awaiting their death.
- ii. **Seeking Hoodlums Help:** this in most cases occur in landed property where hoodlums popularly called land fighters (land grabbers) are invited to chase others out of their land to acquire possession of such land forcefully.
- iii. **Character Assassination:** brothers and sisters have destroyed reputation of one another because of property and many have lost prestigious opportunity that could have brought entire family into luxury life.

### **Islamic Solution to Inheritance related Problems**

There are several indices that will make Muslims in Lagos State as well as other people have hitch-free distribution of inheritance if adopted. Among which are:

- i. Islamic law of inheritance should be adopted by all Muslims in Lagos State and should be strictly followed. This law falls under penal code which does not require any government involvement to implement. Hence, Muslims in Lagos State and elsewhere in Nigeria have the prerogative and constitutional right to make use of the Islamic law of inheritance without hindrance from any quarter.
- ii. Islam has recommend bequest of up to one-third to non-heirs among members of the family. With this system, both the heirs and non-heirs can comfortably enjoy their share without any iota of rancour.
- iii. There is allotted percentage in Islam for each heir. This is not negotiable as each heir having known the value of the estate can decide to calculate his/her share after deduction of funeral expenses and debts.
- iv. Islam allows polygamy. So, the likely problem from monogamy mentality has already been addressed. Hence, problem from that angle is averted.
- v. Islam frowns seriously on either short-changing or denying people their rights for whatever reason whatsoever and sees it as injustice. This has been addressed in the sharing formula prescribed by Allah which should not be tampered with by anybody.
- vi. Islam believes in culture that does not bring about polytheism and not built on injustice. So, cultural value that has undue influence should be jettisoned while solution should to same should be sought from Islamic point of view,



## Conclusion

The rate at which inheritance causes havoc among the heirs especially Muslims in Lagos State is worrisome, alarming and call for immediate attention because, it serves as bane through which progress is debarred. This paper has identified ignorance, disenfranchisement of heir, over reliance of culture, over affection and over trust as some of the factors militating against smooth administration of inheritance while mentioning physical confrontation, spiritual confrontation, character assassination and seeking hoodlums help as some of the problems that arise from inheritance cases. The paper therefore advocates that scriptural injunctions contained in Qur'an 4:11-12 should be explored to address all associated problems with inheritance among Muslims in Lagos State.

## Recommendations

This paper recommended the following to overcome inheritance problems among Muslims in Lagos State:

- i. Muslims should enter into the fold of Islam in totality and whole heartedly by subjecting their whims and caprices to the dictates of Islam particularly in matters of inheritance considering the injustice in customary practice of inheritance.
- ii. Imams and Alfas in Lagos State should use the pulpits and their public lectures as an avenue for educating Muslims in the area of negative implications of customary and constitutional regulations on inheritance and benefits embedded in following the dictates of Shari'ah on matters of inheritance.
- iii. Islamic organisations in Lagos State should organize periodic lectures, seminars, and symposia on the benefits of practising the Islamic law of inheritance for Muslims and the larger society is they so wish.
- iv. Muslims in Lagos State should enjoin their wards in becoming experts in the field of inheritance. This will necessitate better understanding as the dialect of the community will be of great advantage in discussing issues like this.

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