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Inheritance Adjudications in Non-*Shari'Ah* Territories: An Assessment of the *Ijtihad* of the Independent *Shari'Ah* Panels of Lagos and Oyo States, Southwest Nigeria.

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ABSTRACT

For over a century, Yoruba Muslims of Southwest Nigeria have been agitating for the recognition and enforcement of *Shari'ah*, the Islamic law in both colonial and post-colonial Nigeria but to no avail. Though *Shari'ah* is recognized as a source of law under the Nigerian Constitution, its application has been elusive in the Southwest while conscious Yoruba Muslims have continued to devise peaceful and legal means for its statutory recognition. In the absence of this, some Yoruba scholars and legal practitioners for over two decades have used the platform of independent arbitration to settle cases of succession, marriage, divorce and others aiming at dowsing the tension of protracted lawsuits and non-compliance with the *Shari'ah* provisions often witnessed by Muslim litigants; hence, the birth of Independent *Shari'ah* Panels. These non-conventional courts of law are found in Lagos, Oyo and Osun States, Southwest Nigeria respectively. Thus, this paper examines the judicial expertise of these independent juries on inheritance cases according to Islamic law as extracted from two prominent arbitrated cases. It was revealed that the arbitrations made by these panels in Lagos and Oyo State align with the provisions of Islamic inheritance law. It was then suggested that to enthrone peace and justice as enshrined in Islam and the Nigerian Constitution, Muslims of the two states under review should intensify issue-based and non-violent agitations for the statutory application of *Shari'ah* in Southwest Nigeria.

INTRODUCTION

Nigeria is a multi-religious and multi-ethnic nation. As of today, there is over fifty percent Muslim population in Nigeria while the largest concentration of Muslims is found in the Northern region of the country. In the Southern part of the country, Muslims are densely found in the Southwestern States

(Lagos, Ogun, Ondo, Oyo, Osun and Ekiti) which are predominantly Yoruba-speaking people. Of the institutionalization and implantation of English common law in Nigeria for over a century due to colonialism, all existing customary and religious laws are subdued under the Nigeria legal System in which *Shari'ah*, the sacred Islamic law is

categorized as customary law (Busari, 2021, 25-44) The *Shari'ah* law is partially applied in the Northern Nigeria while the Southern Muslims are still agitating for its statutory application amidst its constitutionality. Therefore, in the absence of the application of *Shari'ah* in the Southern states of Nigeria, Muslims of Yorubaland are denied the implementation of Islamic law to govern their affairs.

Islam arrived in Nigeria in the 11th and 12th centuries through trade, migration, and the travels of the scholar-mystic-wayfarers along trade routes, through the regions of Kanem and Bornu, the country had been in contact with Muslim traders as early as the 9th century. (David B. Barrett et al, 2001, 549-555).

The religion and its law (*Shari'ah*) are two indivisible elements; hence, the application of *Shari'ah* becomes inevitable for all Yoruba Muslims. It has also been documented that *Shari'ah*, though, not wholesomely sustained was applied in some towns and settlements in Yorubaland such as in Iwo, Ede, Ikirun and other settlements (Oyeweso, 1999, 14-16; Folorunsho, 2012, 77-84). In both colonial and post-colonial eras, the received English law had gained ascendancy and prominence at the detriment of other existing religious and customary laws.

Therefore, *Shari'ah* implementation was restricted to some aspects of Muslim family law or Islamic personal law (*Aḥwāl Al-Shakhsīyyah*) such as succession, marriage, divorce, fosterage and others only in the Northern part of Nigeria (Yadudu, 1992, 103-139). However, in retrospect, Yoruba Muslims of Southwest Nigeria had been agitating for the statutory implementation of *Shari'ah* in the region without any success (Makinde, 2017, 84-95; Salisu, 2014, 53-59)

Thus, from the colonial era, according to Olatoye and Yekini (2019, 125), Yoruba Muslims became subjects of three different types of law, viz-a-viz English, customary and Islamic laws over a century ago which are run concurrently throughout the Southwest region. This, on many occasions, as they affirmed had created the complexity of law for Yoruba Muslims in both personal and civil cases as could be viewed from the case of

Asiata v. Goncallo (1900, 1 NLR 41) and *Tapa v. Kuka* (1945, 18 NLR. 5) in which the issue of marriage plurality and intestate succession raged fiercely among the litigants respectively (Olatoye and Yekini, 2019, 125-127).

However, the agitations of Yoruba Muslims for the official application of Islamic law according to Akintola (2001, 95-96) is not unconstitutional nor illegal because, the official admissibility of *Shari'ah* in the Nigerian legal system is dated back to the proclamation of the Supreme Court Ordinance of 1900 where it was stated that "*The Court shall always apply them(that is, Shari'ah Customary Laws) in all matters relating to marriage and the family, land tenure, inheritance and succession.* Therefore, in the present democratic dispensation, the agitations for *Shari'ah* implementation in Southwest Nigeria were given impetus by the Zamfara State *Shari'ah* declaration of 1999 (Sanni,2007, 126; Yadudu, 2003, 5) and as expected, the move spurred Yoruba Muslims to peaceful protests in some cities in Yorubaland which according to Makinde were widely reported in some dailies such *The Punch*" and "*Nigerian Tribune*" respectively (Makinde, 2015, 71-101).

Therefore, Yoruba Muslims for decades have faced many difficulties in implementing *Shari'ah* at least under Islamic personal laws as guaranteed by the 1999 Nigerian Constitution. Analogous with the constitutional provision as stipulated in Section 275, subsection 3 of the 1999 Constitution as amended, efforts geared towards the enforcement of *Shari'ah* in Yorubaland have been largely thwarted even as such provisions had been previously affirmed in the 1979 Constitution in Sections 226 (a), 240, 241 and 242 respectively. (See Constitution of Federal Republic of Nigeria, 1979, 77-79).

Constitutionally, every Nigerian is guaranteed the right to freedom of thought, conscience and religion as enshrined in Section 38 (1) of the 1999 Constitution as amended and as such, implementation of religious law such as *Shari'ah* to be administered upon the adherents of any professed religion is expected not to be debatable; but, the intrigues that are involved are inexplicable. No section of the Nigerian 1999 Constitution as amended declared the country a "Secular

State” nor a “Theocratic State” but it tacitly asserts Godliness and existence of God in its preamble where it states that Nigeria is an “*indissoluble Sovereign Nation under God*” (See the 1999 Constitution, as amended in 2011, 19), hence, the country cannot be completely indifferent and close its administrative tentacles from religious issues and affairs of her citizenry and this wholesomely defeats the notion of secularism.

However, this freedom of religious rights is viewed unconstitutional by the *Shari'ah* antagonists and habitual secularists who often proclaim that the 1999 Constitution recognizes *Shari'ah* as a customary law, thus pronouncing it as a religious law according to them violates Section 10 of the same Constitution which stipulates that “*the government of the federation or a State shall not adopt any religion as state religion*” (1999 Constitution, 2011, 28). The *Shari'ah* antagonists were oblivious to the Constitution that allows the State Houses of Assembly in the Federation to “*enact, expand its sources of law and create other desirable Courts*” and pass it into law either for religious, environmental, educational, economic, security or otherwise which they deem necessary under the residual list for the peaceful, religious, economic, sociological and physical development of such a State (1999 Constitution, 2011, 69-70). This, as observed by the constitutional pragmatists is one of the reasons for the non-listing of the sources of the Nigerian laws in the content of the Constitution except the mentioning of the existing operational courts. (See Chapter VII of the 1999 Nigerian Constitution, 2011, 125-147; Ojielo, 2003, 139).

The *Shari'ah* antagonists are also unaware that the Yoruba long-term agitations for *Shari'ah* application for over a century are in tandem with the Muslim rights as contained in Section 38, Subsections 1, 2 and 3 and Section 39, Subsection 1 of the 1999 Nigerian Constitution as amended which stipulates that “*Every person shall be entitled to freedom of expression*”. (1999 Constitution, 2011, 44). This under the same Constitution does not contradict the provision of Section 45, Subsection 1 which validates the individual religious rights and freedom once such freedom becomes a threat to the “*National interest of defence, public safety, public order,*

public morality or public health” (1999 Constitution, 2011, 48) because for decades, these yearnings have been peaceful, democratic and issue-based and could be summed-up as Yoruba Muslims’ fundamental religious and human rights (Danladi, 2007, 134-145; Gurin, 2006, 53-63).

According to Nolte, Danjibo and Abubakar (2009, 1-125), all these agitations and fierce antagonism have been undoubtedly linked with the interplay between religions as practised in Nigeria and political terrain especially after the independence. The agitations of Yoruba Muslims for decades were misconstrued and wrapped under the interplay between justice, politics and religion and as Egbewole and Etudaiye (n.d,1-7) rightly noted, the political, religious and ethnic cards that are usually played by Nigerians at the expense of social justice has plagued the country’s religious and sociological development for decades, and as they concluded, till the present period, the solutions are not in sight.

Therefore, given the above intrigues and politics that have characterized the application of *Shari'ah* in Yorubaland, this paper examines the *Ijtihad* (legal inferences) of the Independent *Shari'ah* Panels (ISPs) of Lagos and Oyo States on inheritance (*Al-Farā'id*) among Muslims in the absence of Statutory Islamic Courts in the last two decades. It enunciates the institutionalization of ISPs and, the legal meaning of *ijtihad* and examines some judicial pronouncements as arbitrated by the ISPs to ascertain its juridical conformities with Islamic law provision that governed the distribution of estates among the legal heirs as revealed in the Holy Qur’ān and exemplified in the *Sunnah* of the Holy Prophet Muhammad (Peace be upon him).

THE INSTITUTIONALIZATION OF INDEPENDENT SHARĪ'AH PANELS (ISPs) IN LAGOS AND OYO STATES.

The Muslims of Yorubaland, Southwest Nigeria had witnessed several political setbacks in their age-long quests for the actualisation of *Shari'ah* implementation and religious identity. Therefore, the institutionalisation of ISPs in Lagos, Osun, and Oyo States for over two decades now was a prayer answered. Though, the ISP has not

attained the status of a “statutory court”, the effects of its operations in ameliorating the unprecedented legal inadequacies encountered by Yoruba Muslims could not be underestimated. The efforts of Yoruba Muslims after Zamfara State *Shari'ah* declaration to legalize and apply *Shari'ah* in Lagos and Oyo States respectively either in their religious, civil or criminal matters under the provision of Sections 38(1) and 42(1) of Nigerian 1999 Constitution respectively were largely thwarted by *Shari'ah* antagonists.

For example, in Oyo State, during the administration of Alhaji Lam Adeshina (1999-2003), a private bill on *Shari'ah* titled “*Islamic Personal Law Bill*” was presented to the State House of Assembly (Makinde, 2017, 89) while in Lagos State, a similar private bill titled “*Bill for the Establishment of Shari'ah Court and Shari'ah Courts of Appeal in Lagos State*” sponsored by Muslims was submitted during the administration of Senator Ahmed Bola Tinubu (1999-2003) to the Lagos State House of Assembly (Opeloye, 2003, 40). All these efforts failed to sail through political and religious hurdles mounted by the *Shari'ah* antagonists who felt unsaved. Amidst all these unending agitations for *Shari'ah* implementation which were termed “political Islam” by some *Shari'ah* opponents in Nigeria (Opeloye, 2003, 24-33), Yoruba Muslims got relief with the establishment of ISPs which operate differently from the conventional courts of law or statutory “Alternative Dispute Resolution Centres (ADR) in some States which include Oyo, Osun and Lagos States respectively.

These ISPs, which are exclusively advisory bodies and Islamic alternative dispute resolution centres- *Marākiz al-Ṣulh* (Hamid *et al*, 2019, 25-33; Sulaiman, 2016, 289-302) have raised the hopes of common Yoruba Muslims who have hitherto believed that the adjudications under the institutionalised English courts are not in conformity with the provision of their religion. Philip Ostien in this regard observes that the agitators, conveners, judges and the generality of conscious Yoruba Muslims believed that the pagans and Christians have their courts while millions of Muslims in the region have none; hence, the establishment of non-legal binding and advisory ISPs by enlightened, versed and well-

educated Islamic scholars and legal practitioners to mediate in Muslim personal affairs such as divorce, succession and marriage disputes is long overdue (Ostien, 2006, 221-255; Yadudu, 1988,5).

Therefore, the inauguration of ISP was aimed at ameliorating the sufferings of teeming Muslims of Yorubaland at the conventional courts of law. Though, these ISPs are private, non-binding and non-conventional courts of law which could not pronounce nor enforce both civil and criminal judgement because of their non-recognition by the Lagos and Oyo States’ Laws and the Nigerian Constitution, the trend of its adjudication (based on Qur’ān, *Sunnah* and other *Shari'ah* sources) and the sense of relief attained by conscious Muslims (as plaintiffs, defendants and adjudicators) is unprecedented. (Adetona, 2010, 29-30).

LEGAL 'IJTIHĀD OF LAGOS AND OYO STATES' ISPs: A CONCISE ANALYSIS

In Islam, Muslims are enjoined to strive for the cause of their religious and mundane affairs as dictated by their Creator through revelations. Literarily, *Ijtihad* according to Abu Sadat Nurullah (Nurullah, 2006, 155-156) originates from the Arabic word **جُود** (*Juhd*) which means hard work, endeavour or ability in performing a certain activity, or from the word **اجْتِهَاد** (*Ijtahada*) which means to exert oneself while technically, *ijtihad* means the use of all powers to deduct some hypothetical judicial decisions from the clear sources-Qur’ān and *Sunnah*- of Islamic law (Saritoprak, 2005, 325-471; Mohammed, 1985,385).

In this regard, Ruud Peters (1995,369-373) believes that *Jihad* or *Ijtihad* carries a basic connotation of “an endeavour towards a praiseworthy aim” which may express a struggle against one’s evil inclination or an exertion for the sake of Islam and the *Ummah*. Therefore, as Shabbar (2018, 1-34) reiterated, *ijtihad* plays a positive revival or reform in the modern Muslim world non-violently. This exertion (*ijtihad*) as adopted for centuries in the Muslim world includes the use of *al-Ra’y* (subjective legal opinion), *al-Istidlāl* (inference), *al-Qiyās* (analogy) and *al-Instinbāt* (deduction or inference). Thus, the judicial exertion or independent reasoning employed by scholars in tackling legal and religious

problems has brought about relief and success in the Muslim world.

According to Ali (2011, 79-81), *'ijtihad* has been a tool used by scholars in tackling a series of events which are hitherto not experienced by Muslims either religiously, politically, economically and otherwise. Analogous to this, in all facets, Yoruba Islamic scholars are not left out in exercising this genre of Islamic law in ameliorating the judicial sufferings experienced by Muslims for decades especially in the area of Muslim family laws as dictated by *Shari'ah*. Hashim (2004, 377) further posited that *jihad* or *'ijtihad* is sometimes adopted in perseverance in the preaching of Islam, and in forbearance in the face of persecution by the Muslims' enemies as in Q25:52.

In essence, devising alternative means of solving religio-legal conundrum in the face of oppression is *'ijtihad*; and with all indications, this was the avenue utilized by Yoruba Islamic scholars, various organisations and legal practitioners in institutionalizing ISPs to solve incessant judicial imbalances meted against Yoruba Muslims, and this, in the opinion of Aznan (n.d, 26-49) is known as "*Ijtihad Jam'ah*-collective exertion". Non-violently, Yoruba Muslims have collectively explored the option of ISP, a non-conventional judicial body where Muslims without being under any pressure or influence subjected themselves to the dictates of Islamic law. Through this, Yoruba Islamic scholars and leaders of thought in ISPs have engaged in judicial, academic, and literary *'ijtihad* to emancipate Muslims from the shackle of the super-imposed English legal system and this could be termed "*Jihad* by tongue and pen". This exercise practically falls under necessity (*al-darurah*) and in essence, Muslims (especially those living under non-Islamic government) are legally permitted under *Shari'ah* to devise alternative legal means under the purview of Islamic law to settle their religious, family, and communal affairs and disputes.

The *'ijtihad* of the Lagos and Oyo States' ISPs in adjudicating cases of inheritance for over two decades is noteworthy. Also, the fact that litigations and adjudications on estate sharing, transfer and acquisition would never cease to exist due to the inevitable journey and transitions embarked upon by mankind from

time immemorial, the Lagos and Oyo States' ISPs would not cease receiving petitions and arbitration letters centred on Islamic adjudication on inheritance disputes as built on the precepts of the Qur'an, *Sunnah*, and other sources of Islamic law.

Therefore, contrary to the negative thoughts of anti-*Shari'ah* advocates, the dynamism and uniqueness of arbitration on Muslim estates and other legal matters as witnessed in both Lagos and Oyo States' ISPs could be deduced from the submission of Auwalu Yadudu, a Professor of Law in Nigeria in his celebrated forward written to the published selected judgements of the Lagos State ISP in 2005 when he says:

In conclusion, I may say that I have found these judgements to be soundly written by persons learned in laws applicable in Nigeria and immensely qualified to adjudicate disputes. The analyses of laws, consideration of social and political matters and the review of fact contained in these decisions and personnel who have rendered them have, without doubt, portrayed a breadth and depth of knowledge of *Shari'ah* principles, Nigerian law and procedure that can rival decisions of the higher bench in the Nigerian Court system; both in the *Shari'ah* and common law types. I can vouch that the judgements can stand judicial scrutiny at appellate levels. (Lagos State Chapter of Supreme Council for *Shariah* in Nigeria, Selected Judgement of Lagos ISP, 2005, ii).

Concisely, the dynamism of these ISPs in the face of all impediments was wholesomely summed up by Adetona (2010, 29-30) when he said:

The judgement given by ISP besides being adhered to, without any agent of enforcement, has neither attracted any opposition from known authorities of law-Islamic or civil- in Nigeria nor any litigation in any government court".

EXAMINATION OF THE ISPs ARBITRATED INHERITANCE CASES IN LAGOS AND OYO STATES

In Islam, Muslim estates are enjoined to be devolved according to *Shari'ah* as codified

under the law of *al-mirāth* (succession) or *al-farā'id* (inheritance). The law was revealed after the emigration of Prophet Muhammad (Peace and blessing of Allah be upon him) to Madinah to replace the old practice of estate devolution and acquisition. According to Powers (n.d, 11) and Jafari (2016, 928) in their separate analysis, the pre-Islamic Arabia mode of inheritance was patrilineal in structures and patriarchal in ethos in which the tribe's patrimony is consolidated and preserved by limiting inheritance right to only male agnate relatives (*aṣabah*) of the deceased, and that the Arabs inherit through blood ties (*al-Nasab*), adoption (*al-Tabbanny*), oath (*al-Ḥilf*), marriage (*al-Nikkāḥ*) and defence path (*al-Ḥalaf*).

Also, in Madinah, a provisional system of inheritance based on kinship and religious brotherhood (*al-Mu'akkah*) was institutionalized by the Prophet between the emigrants (*al-Muhājirūn*) and the helpers (*al-Anṣār*). In this pact, the *muhājirūn* and the *anṣār* mutually inherit one another either with or without the availability of legal heirs. The process was later abrogated by the revelation of Q33:6 where Allah says: "*Blood relations among each other have closer personal ties in the decree of Allah (regarding inheritance) than the brotherhood of the believers and muhājirūn*".

However, the revelation of *āyāt al-Mawāriṭh* (inheritance verses) of the Holy Qur'ān ushered in new divine precepts of inheritance among the blood-related persons as sanctioned by Allah and enunciated by the Prophet. There are distinct *āyāt al-mawāriṭh* through which the main themes and theories of the Islamic inheritance law in *Sūrah al-Nisā'* were derived. Examples of these verses are Q4:7:

لِلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ
وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ
الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ
نَصِيبًا مَّفْرُوضًا

Meaning: "For men is a share of what the parents and close relatives leave, and for women is a share of what the parents and close relative leave, be it little or much, an ordained share (by Allah)." (Q4:7).

Thus, the application of the Islamic law of inheritance on estates of a deceased Muslim is obligatory upon the relatives while its failure as emphasized by Allah in Q4:14 amounts to *kufr* (disbelief) and warrants Allah's wrath. It could then be concluded that the panels and the litigants at the Lagos and Oyo States' ISP are well-informed of the obligation of *al-farā'id* upon them according to *Shari'ah*; hence, the adjudication on Muslim estate in the non-statutory Islamic court of law.

According to Doi (1984, 271), *al-farā'id* is the science that gives rules which guide as to who inherits and who is to be inherited, and what shares go to the heirs. This law as emphasized by Sultan Alam Chowdhury (1964,375), has without any doubt for the last fourteen centuries decided and settled all questions regarding succession and inheritance of testate and intestate Muslims, and has been regarded by Muslim jurists as immutable and final. In fulfilling this obligation in a *Shari'ah* territory such as Yorubaland, Southwest Nigeria, the Lagos and Oyo States' ISPs among others adjudicated on several inheritance impasses according to Islamic law in the absence of statutory Islamic court.

Sequel to this, the Lagos ISP has adjudicated hundreds of cases on marriage, divorce, custody of children, debts, inheritance and succession, disputes among Muslims and Islamic societies and so on. Comparatively, only 10% of all these arbitrations are cases of inheritance and as documented, the panel has recorded over 98% compliance with the rulings delivered on *mirāth* or *farā'id* through the feedback mechanisms put in place by the panel (Tirmidhi Dairo, Interview 2020).

Furthermore, Oyo State ISP sits at the Oja-Oba Central, Mosque, Ibadan every Thursday between the hours of 10 am and 2 pm adjudicating on civil matters that concern Muslims. The panel activities are supported by the Oyo State chapter of the Supreme Council for *Shari'ah* in Nigeria (SCSN), the Nigerian Supreme Council for Islamic Affairs (NSCIA) and other Islamic organisations in Oyo State. According to Kunle Sanni (2008, 45-46), the chairman of the Oyo State Muslim community, the establishment of ISP in Oyo State has among others enlivens the tenets of Islam and *Shari'ah* among Oyo Muslims and also shown that, within Nigerian legal pluralism, *Shari'ah*

adjudication can be accommodated in the Southwest without any hassle because its existence enriches the Nigerian legal system. Accordingly, the panel registrar, Oyeniran Saheed Olayinka (Interview, 2019) admits that several inheritance cases have been adjudicated upon by the *Shari'ah* panel which has safeguarded several Muslim homes from conflicts and protracted court cases among others.

In examining the *ijtihad* of the Lagos and Oyo States' ISPs on inheritance cases, this study analyses two arbitrated cases in both Lagos and Oyo ISPs.

CASE 1

The document for our assessment is the arbitration on the estate of late Mrs. Mulikat who died intestate as arbitrated upon by the Lagos ISP at Abesan Central Mosque in 2018.

Case Number: SUIT NO.ISP/AECM/..../.....

Purpose of Litigation: Sharing of Mrs Mulikat's estates according to *Shari'ah*.

Court Room: Abesan Estate Central Mosque, Abesan, Lagos

Commencement Date: 2nd of May 2018

Termination Date: 22nd June 2018

The Complainant: Mr. Musbau & 3 ORS.

The Heirs: Husband, mother, children (2 males and a female) and four siblings.

The Deceased's Properties:

- i. Gratuity (N9, 155,221.00K)
- ii. Landed Properties (N3, 900,000.00K)

The Jury: Barrister Tirmidhi Dairo and *Ustādh* Shakirullah Obale.

Analysis

The case was brought before the panel by the deceased's husband (Mr Musbau) and three others as complainants through an application sent in on the 2nd of May 2018. The deceased had died over five (5) years earlier before the ISP was approached for adjudication. The deceased's properties to be devolved included her gratuity paid by her employers (N9, 155,221:00K) and some landed properties at an area in Ibadan, Oyo State, a plot of land at another area of Ibadan, a lock-up shop and one

half of two-bedroom flat at a Housing Estate in Lagos all valued at (N3, 900,000:00K). Therefore, the deceased properties are due for devolution totalling thirteen million, fifty-five thousand and two hundred and twenty-one naira only (N13, 055,221.00K).

The Arbitration

The panel was informed that the deceased left behind her husband, 3 children (2 male and a female), her mother four siblings and a bequest (*wasīyyah*) in which she has bequeathed N50,000.00 K each for her siblings. The panel in its wisdom monetized all the landed properties and added it to the deceased's gratuity for easy devolutions among the beneficiaries. As inherent under *Shari'ah*, the panel executed the *wasīyyah* of the deceased and pronounced that the deceased's siblings be given N200,000.00 K as bequeathed by the deceased to be shared N50,000.00 K each.

The estate residue of N12, 855,221.00K was then shared among the deceased's heirs who according to the panel's pronouncement derived their rights from Q4:11 and 12. As they pronounced, the mother was entitled to *sudus* (sixth which is N2,142,536.83K), the husband was also entitled to *rub'* (one-fourth which amounts to N3,213,805.25K) while the remainder would be inherited by the deceased's children on ratio 2: 1 according to Q4:12 in which the male children were given a double (N2,999,551.56K each) of what was given to a female child (N1,499,775.78K).

Assessment of the Arbitration

- i. The legal appropriateness employed by the panel from the commencement to the end of this arbitration (which spanned less than two months) is awesome.
- ii. The panel adopted both Islamic and secular legal methodology in documenting the case and in pronouncing the judgement.
- iii. The monetization method employed is commendable as a reasonable way of eschewing estate devolution from ambiguities, especially in this so-called modern world.
- iv. Proper investigation of both cash at hand (that is, the deceased's gratuity) and all landed properties in both Lagos and Oyo

States as contained in the complainants' document is commendable.

- v. Also, fulfilling the deceased's *was'iyyah* without any iota of change or prejudice by the panel under Allāh's injunction in Q4 verses 11 and 12 on *was'iyyah* execution shows the Islamic legal prowess possessed by the panel.
- vi. The devolution of the residual estate among the deceased's children as proportioned on the predetermined shares allotted to each of them by Allah is of great accuracy in summation.
- vii. The pronouncement was delivered by the leading judge, Barrister Tirmidhi Dairo and was legally crosschecked, consented and assented to by another judge, *Ustādh* Shakirullah Obale. This among others shows that all the judges of Lagos ISP sitting at Abesan Estate Central Mosque are working in unison to cleanse their pronouncements from human errors and miss-pronouncement of Islamic injunctions while the tenets of *Shari'ah* in which Qur'anic verses, Prophetic traditions and the views of scholars of Islamic schools of thought are the *prima facie* on which their rulings are pronounced.
- viii. However, it must be pointed out that in the panel's analyses and pronouncements on the case under review, mention was not made of the deceased's personal belongings (chattel) which under Islamic law formed part of the estate to be devolved. The Muslims' personal, real, and jointly owned properties formed the nucleus of the deceased's estate that must be devolved among his or her beneficiaries, either meagre or enormous (See Q4:7).

CASE 2

In analysing the efforts of Oyo ISP on the inheritance impasse, we are assessing the case brought before it by one Mr Ambali as regards the estate distribution of his deceased father.

Case Number: No 21/.....

Purpose of Litigation: Sharing the estates of Alhaji Sule according to *Shari'ah*

Court Room: Oja-Oba Central Mosque, Oja-Oba Ibadan

Commencement Date: 19th of December 2002

Termination Date: 3rd of April 2003

The Complainant: Mr. Ambali

The Heirs: Wife and the 15 Children (9 male and 6 female)

The Deceased's Properties: Land, motor car and three buildings

The Jury: Alhaji Abdul-Wahab, Alhaji Ahmad Tiamiyu and others

Analysis

The case was brought by Mr Ambali on the 19th of December 2002 as regards the properties of his late father, Alhaji Sule. The deceased had died for over seven (7) years. The deceased properties to be devolved included a piece of land, a motor car and three buildings. The deceased's children including the complainant (Mr Ambali) who happened to be the family head were made to sign a consent document affirming their resolve and willingness to adopt *Shari'ah* in devolving their father's estate among them. In total, ten (10) children signed the consent letter while they all vouched for the absentees.

The panel was informed that the deceased's motor car and land were sold to obtain a letter of administration from the State High Courts. The panel also learnt that the deceased married nine (9) wives but had divorced eight (8) before his death. Only the first wife remained with him till his death. She was also the only one who did '*Iddah al-Wafāt* (period of waiting) as stipulated by *Shari'ah*.

The Arbitration

From the inception of the arbitration, the panel adjourned the hearing on this case four times to allow a proper assessment of the case at hand. The panel then informed the children that all the deceased's divorced wives had nothing to inherit from him as the marriage contract that could validate inheritance between them, and their husbands had been invalidated by *Talāq* (divorce). However, the panel affirmed that the children of these divorced wives are entitled to inherit their father as legal heirs. The children were also informed that in concomitant with the

Qur'anic provision in Q4:11, each male child would be given double what a female child inherits.

The panel was also briefed through interrogation that one of the deceased's children had predeceased him. On this, the panel informed the children that any predeceased child has nothing to inherit from his or her father; in fact, it is the father that has a portion to inherit from him or her except in a situation where the child died after the demise of the father and before the devolution of property. Such a child would be given his or her shares from the father's properties to be inherited by his heirs (children, wives, and other legal heirs).

Through interrogation, the panel was also informed that the three buildings have been leased out till December 2003, hence; the verdict of the panel would not take effect until January 2004. The complainant and other children agreed to proceed with the *Shari'ah* process and unanimously agreed to implement the *Shari'ah* verdict from January 2004. The panel also painstakingly took time to visit and valued the deceased's three buildings as submitted by the complainant. The buildings were found to be populated with rooms, shops, and some bedroom flats. One of the deceased's children also informed the panel about the rifts that exist among the deceased's children as a result of their father's properties. Consequently, the panel took time to sermonize and admonished the children to be united and live in harmony for the sake of Allah, His Prophet, Islam, and their family name. The panel also inquired from the deceased's children about any possible *wasyyah* either written or verbal that might have been bequeathed by their late father. One of the deceased's children, Abubakr responded in the affirmative that nothing of such exists.

Having ascertained and considered the consent of the plaintiff and other deceased children, the panel devolved the properties (the three buildings) among the legal heirs as stipulated under Islamic law of inheritance. Thus, the panel decided as follows:

- i. The legal heirs are the surviving wife and the children.

- ii. In the absence deceased's incurred debt bequest or legacies, the properties must be devolved without further delay.
- iii. The wife share is $\frac{1}{8}$ of the whole properties (Q4:12)
- iv. The children are entitled to the residue after the wife's share in the absence of other Qur'anic sharers (*Ashāb al-Furūd*) such as the deceased's parents who would have shared the properties with the wife and the children.
- v. The whole deceased's properties were monetized because of the complexity of its structures and different market values due to location. However, the children agreed not to sell off the buildings but acquire their shares through monetization since the whole buildings are full of rooms, shops, a mosque, and bedroom flats. Some of the properties were also declared as "Asset Jointly Owned- A.J.O" because of their indivisibility. These AJO properties were equally divided according to the children's initial fractional shares. Also, for the sustainability of the structure, they were advised by the panel to let go of certain percentages from the apportioned shares for the maintenance of the buildings. They all agreed to the arrangement.
- vi. In all, the whole buildings were valued at N883,318.000 K (Eight hundred and eighty-three thousand naira, three hundred and eighteen kobo) to be divided among the wife and the children.
- vii. After an evaluation (through leasing price) and sharing through monetization, the wife is entitled to *thumn* (one-eight which is N110,400: K), all the male children are entitled to N64,377: K each while the female children are entitled to each to N32,250: K.

Assessment of the Arbitration

- i. All the Islamic judicial procedures adopted by the Oyo ISP on the case under review are noteworthy. The arbitration process is commendable and the strict adherence to Islamic judicial provision as stipulated in

Shari'ah in devolving the deceased's property is apt and accurate.

- ii. Also, the panel is commended for its determination of ascertaining the deceased's property and not relying solely on the document submitted by the complainant.
- iii. Furthermore, requesting the complainants and the respondents to sign a consent form and verbal interrogations shows the spirit of Islamic arbitrariness, dispute resolution and non-compulsion status of Islam as enshrined in Q2:256.
- iv. The ISP's processes also emancipated the entire members of the deceased family from protracted litigation at non-Islamic courts of law. The family was also saved from continuous administrative expenses from the courts and the legal practitioners. An example of such was the huge amount paid to obtain a "Letter of Administration" from the State High Court before the arbitration at the ISP.
- v. The monetization formulae adopted in sharing the properties and the adoption of "assets jointly owned" to eschew enmity and bigotry among the heirs is also commendable.

CONCLUSION

Islam enjoins Muslims to be submissive to Allah and His Prophet, loving and law-abiding as citizens of any territory where they reside (Q4:59). Though, the British colonization of Nigeria and the unprecedented supremacy of the English law have recorded great effect on both religious and customary laws which have been in existence for centuries, Yoruba Muslims especially the residents of Lagos and Oyo States have been practising Islam peacefully amidst incessant agitations for *Shari'ah* implementation in Southwest Nigeria.

However, in the absence of statutory *Shari'ah* courts, the Muslims have institutionalized non-binding Independent *Shari'ah* Panels (ISP) to oversee the adjudications on Muslim family matters such as divorce and inheritance. This study briefly unearthed the *raison d'etre* behind the formation of ISPs in Yorubaland and examined the adjudication of Lagos and Oyo States' ISPs

on inheritance cases against the laid down rules of estate devolution in Islam from two famous cases.

The study discovered that the objectives of the ISPs to enthrone peace in a hostile environment where *Shari'ah* is unconstitutionally maligned are noteworthy. The expertise of the juries of the ISPs in both *Shari'ah* and common law jurisdictions was also appraised as evidence of Muslim professionalism, peace advocacy and submission to Allah's injunction. The study then suggests that Yoruba Muslims should continue their peaceful and issue-based agitation for statutory recognition and application of *Shari'ah* in the Southwestern region of Nigeria as applicable in the Northern part of the country under their constitutional and religious rights. This, in no time if actualized, would enhance the total implementation of Islamic law on all matters that affect Muslims either in religion or in mundane affairs.

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