

PDF - A STUDY INTO THE PRACTICE OF WASIYAH AMONG THE MUSLIMS IN ABEOKUTA -
researchcub.infoCHAPTER ONE
INTRODUCTION TO THE STUDY

The waves of Islam is felt in nook and cranny of the world as the result of its sound seed which is its creed planted on a fertile land of Arabian Peninsula in fourteen hundred years ago by the able Planter, the Prophet of Allah, Muhammad bn Abdillah bn Abdilmutalib. The growth of the seed was rapid and miraculous with the production of gigantic trees across the globe; Africa, Asia, Europe, Australia, North and South America. The companions of the Prophet like Abubakr, „Umar, „Uthman and a host of others contributed greatly to the spread of Islam into the aforementioned continents after the death of the Prophet. Africa felt the presence of Islam during the life of the Prophet in 6th century and this continued after his death. West African empires also were flourished with Islamic civilization through the effort of Islamic traders and clerics who travelled to Biladus-Sudan, Mali, Ghana, Songhai, Timbuktu etc. The unflinching interest of the Jihadists in spread of Islam made the incursion of Islam in the 7th and 8th century to Nigeria a reality before the creation of Nigeria as a country in 1900. Islam had spread to virtually all the northern territories between 10th and 14th centuries. Its incursion to Yorubaland was in the 16th century with the help of both traders and Islamic clerics who settled at Oyo Ile during the reign of AlafinAjiboyede.¹

Abeokuta which is the capital of Ogun State since 1976 had felt the impact of Islam before the creation of Ogun State. People of Abeokuta was known as Egbas who were people of civilization as at 1830 in all spheres of life before the advent of colonial master.²

Islam had been in Egba forest by 18th century when the Owus(the fourth kingdom in Egba) came as refugees seeking protection from Egba, a Fulaani Mallam accompanied the Owus to Abeokuta and he began the practice of Islam. ³

Itoko and Ijemo were known to be the originators of Egbaland after which people from Orile-Ake joined the two. There were some personalities in Itoko who strived for the spread of Islam in Abeokuta from Orile to Adagba in 1829, they were; Saliu, the Baale of Itoko, Muhammad Etu-Kosi, the Alari of Itoko and Ahmad Mogaji, the Oloko of Itoko land. The number was few then because of the activities of these people, Islam became a household name till date in the history of Egba which comprises of Ake, Oke-Ona, Gbagura and Owu kingdoms.⁴

Wasiyah had been made obligatory at the inception of Islam with the total amount of money, property and estate given as gift to the relative heirs, parents in particular.

Wasiyyah is an Arabic word which means bequest, will and legally it is the confirmation of a right of property to some person that takes effect after the death of the testator (Al-Musi).⁵

Before the advent of Islam, Arabs used to make unlimited bequest in favour of any person according to their own interest. Thus, a testator may bequeath a portion or whole of his property to any individual as he desired, relatives and non-relatives inclusive and a times animals or slaves are bequeathed to as witnessed in the western world.

Consequently, in the early days of Islam, the Holy Quran enjoined the Muslims to make Wasiyyah to the parents or other relatives. This is referred to in the Quran as follows:

It is prescribed for you, when death approaches any of you, if he leaves wealth, that he makes a bequest to parents and next of kin, according to reasonable manners. (This is) a duty upon Al-Muttaqin (the pious). Then whoever changes it after hearing it, the sin shall be on those who make the change. Truly, Allah is All-Hearer, All-Knower. But he who fears from a testator some unjust acts or wrongdoings, and thereupon he makes peace between the parties concerned, there shall be no sin on him. Certainly, Allah is Oft-Forgiving, Most Merciful (Q2:180). Also in another verse of the Holy Quran in Surah Al-Baqarah (Q2:240),

“And those of you who die and leave behind wives should bequeath for their wives a years maintenance and residence without turning them out. But if they (the wives) leave, there is no sin on you for that which they do of themselves, provided it is in honourable (e.g lawful marriage). And Allah is All-Mighty, All-Wise”. This order concerning Wasiyyah continued until the verses 11 and 12 of Surah Al-Nisaa were revealed, where making of Wasiyyah in favour of parents, legal heirs and widows has been abrogated. As it is mentioned in the Hadith of Holy Prophet (SAW) „That Allah has given everybody having right, his right. So there should be no Wasiyyah for an heir. Abu Dawud and IbnMaja. Also it is reported by Ibn„Abbas, that Holy Prophet (SAW) said, „Wasiyyah is not lawful for an heir unless the other heirs given consent. Ibn Abu Hatim reported that Ibn „Abbas said about what Allah said as follows: The widow used to reside, and have her provisions provided for her for a year, in her deceased husband's house. Later, the Ayah that specified the inheritance (4:12) abrogated this Ayah (2:240), and thus the widow inherits one-fourth or one-eighth of what her (deceased) husband leaves behind⁷. Therefore, if any testator made a Wasiyyah in favour of his legal heir, it can be determined after his death, after the consent of other heirs, if they approved that Wasiyyah, it will be valid, and otherwise it will become invalid. Both ancient and early practices were abrogated with the law of inheritance and it remained for those who are not entitled to the right of inheritance as quoted in hadith of Sadbn Abi Waqas who was visited by the Prophet (SAW) on his sickbay, he said to the Prophet “my heirs may spoil my reward and render it useless after my death. Verily, you should live until some will benefit from you and others”.

He said “the Messenger of Allah, no body is my heir except my daughter and she has benefited a lot from my wealth, Can I Will out all my wealth” the Prophet said “ be calmed”. The Sad said, „can I will out two-third of my property? The Prophet replied “No” Can I make use of half? “He said no”. He then said “can I will one-third?” the prophet replied one-third, one-third, one-third is much. Indeed, your desire to leave your heirs wealthy is better that leaving them in poor condition.⁸

Generally, there are various definitions of Wasiyyah in the context of Islam and these definitions made it known that Wasiyah can be used in different versions of application. Al-Wasiyyah or Will in Islamic terminology is "all instruction a person leaves for tasks to be carried out after his death in relation to the times agreed on to the lawfulness of the will in Islam.⁹ In Islamic law, it is a great gift for mankind in cash or debt and what the person will to be benefited after the death of the owner¹⁰. This shows the differences between Hibah and Wasiyah, because Hibah is a gift of any items in quality and quantity determined and executed by the owner before his death while Wasiyah becomes executed after the demise of the possessor¹¹. The significance of the study is to establish the extent at which the Muslims in Abeokuta understand and practiced the will documentation from the Islamic point of view.

1.2 STATEMENT OF THE PROBLEM

Many Muslims lived and prepared their Wills with the sole aim of favouring their siblings as they desired in contrary to the tradition of the Prophet that says "" "there is no will for the heirs".¹²

The implication of this injunction is missing in the midst of Muslims rather; they take into the usage of what they want as bequest. Bequest is yet to be practiced under the context of Islamic law but done with preference to the common law.

In relation to many lectures and speeches delivered, Muslims have in mind to execute law of Allah but rarely utilize it in conformity with the divine dictates as embedded in Islam.

This study will therefore, evaluate the extent which Wasiyah is being practiced among Muslims especially in Abeokuta metropolitan. And also will investigate why some Muslims do not find it at ease to prepare and execute Will as laid down by the Law and take to the estate distribution of the divine law.

The advent of Islam was with an opportunity of making a Will that will be free of extremism as it will not affect the heirs negatively”

Wasiyah will bring a lot of benefits to those who take to its divine principles as laid down by the teaching of Islam.

It brings about new ways of sharing estates after the demise of the owner in line with the dictates of the Quran

Scholars have great influence on the populace when the correct knowledge is spread in a good manner with perfect method that will show the divine benefits embedded in the practice of Wasiyah in Islam

The research will access some official Wills prepared by Muslims with the Professional legal backing in the court of Federal high Court Isabo, Abeokuta.

Interview will be conducted among selected Muslims in Abeokuta.

The belief is that Wasiyah can contribute meaningfully if used in a good way for the human and capital development in the society.

1.3 PURPOSE OF STUDY

The purpose of is to x-ray the practice of Wasiyah among the Muslims in the area of coverage. The following are specific objectives:

1. Evaluates the extent to which Wasiyah is being practiced by Muslims
2. Determine the benefits of Wasiyah to the deceased and the heirs
3. Prepare a constructive critique of the common law method of will preparation
4. Ascertain the constraints associated with the practice of Wasiyah
5. X-ray the method with which Muslims should practice Wasiyah
6. Ascertain the extent of Muslim awareness on the usefulness of some Islamic materials scholars as regard getting adequate information on the subject matter
7. Prepare a roadmap to the proper implementation of Allahs Will.

1.4 SCOPE OF THE STUDY

The research work is designed to focus on the practice of Wasiyah among Muslims specifically Abeokuta. And also it will focus on the extent to which Wasiyah is applied with preference to Islamic tenets.

1.5 RESEARCH HYPOTHESIS

This is stated as thus:

There is no significant difference between the Wasiyah practiced by Muslims and what contained in common law among Muslims in Abeokuta.

1.6 RESEARCH QUESTIONS

To attain the objectives set above, the following questions were generated:

1. What are the wisdom behind the legislation of Wasiyyah?
2. How has common law affected the practice of Wasiyyah?
3. What is the level of understanding of Muslims as regard Wasiyah?
4. What are the benefits of Wasiyah?
5. What are the constraints associated with the effective application of Wasiyah?
6. What is the extent to which Islamic materials and scholars are available to enlighten the public on the concept of Wasiyyah?
7. What are the possible solutions that could be proffered to enhance the practice of Wasiyah?

1.7 SIGNIFICANCE OF THE STUDY

This work is aimed that the study will provide knowledge -based-information on the extent to which Wasiyah is practiced among Muslims in Abeokuta. It will serve as document that could be consulted by those who want to practice Wasiyah as expected of a good Muslim within the purview of Islamic teachings. It will also stimulate research and discussion on issues relating to Mirath and its execution under the Islamic Civil Law. It will also show the constructive criticism of both the Common Law and Yoruba Context.

1.8 LIMITATION OF THE STUDY

The Research work at hand is limited to some important personalities who were Muslims, whose documents on will are released for the Study under the auspices of Federal High Court, Isabo, Abeokuta, Ogun State.

1.9 End notes

Shariah is defined as Islamic ordinances ordained by Allah as guiding principles for the entire mankind

Mirath is described as the distribution of shares among the rightful heirs

Wasiyah means the will document prepared by the testator to a beneficiary.

Musi is the testator

Musilahu is the beneficiary

Musifihior Musibihi is the object/item of the will or gift

Wakil is the executor or trustee

Sigatuwasiyah is the statement of the will

1.10 PROBLEMS ENCOUNTERED

The problems prepared to be encountered in carrying out the research work may include: irregularities and inadequacies in responses, insufficient time available compounded by financial difficulties in implementing certain tasks in the research work. Also inability of the court probate/registry to release executed will which has become public document as stated in legal profession.

End Notes

1. Gbadamosi in saitama project
2. Ogunwolu, 1995, History of Egba, 10
3. Sitama
4. Ogunwolu, 1995, History of Egba, 10
5. Online
6. Muhsin, K. 2008, Noble Quran,

7. Ibn Kahtir, tafsirul Quran,
8. Fathul bahri,
9. Ibd.
10. Wahbar, A. 2008, Fiqhul Islami wa adilatuhu, 3
11. Uthaymin, S. 2012, Sharul Mumti, 185
12. Abdurahman, N. 2008, fthulbahri fi sharhi Sahihu Bukhari,456

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