

Islamic Succession Law and the Vulnerable Heirs: A Comparative Study and Contemporary Legal Frameworks

By

Abdullahi Liman Nuhu*

Ahmed Aliyu Zanwa**

Abdullahi Shuaibu Gayam***

Abstract

The Islamic law of inheritance system is a divine instruction by Allah (SAW) on how the property of a deceased Muslim is managed and distributed among the legal heirs. This study critically examined the rights of minors, unborn children, missing persons, and illegitimate child beneficiaries under the representative system of inheritance and non-Muslim minorities under the Muslim law of succession. The research interrogated the doctrinal foundation of these categories within classical Islamic jurisprudence and evaluated their contemporary application in the modern legal framework, particularly within legal systems. Classical jurists developed detailed rules to safely guide vulnerable heirs- such as reserving shares for the unborn child, suspending distribution in cases involving a missing person and protecting minors through guardianship leadership. At the same time, inheritance barriers relating to illegitimacy and differences in religion were strictly articulated, reflecting prevailing socio-legal contexts. The study adopted a doctrinal and comparative methodology, analysing primary sources of Islamic law alongside statutory reforms, judicial decisions and contemporary legislative interventions in selected Muslim jurisdictions. Particular attention was paid to the representative system of inheritance adopted in some modern statutes to address perceived inequities affecting grandchildren and other descendants who would otherwise be excluded under classical rules. The research found that classical jurisprudence demonstrated coherent internal logic aimed at preserving lineage, certainty and property rights, contemporary frameworks increasingly incorporated into welfare-oriented reforms to address social realities, minority protection, and child rights standards. This study research concluded that a principled reconciliation between classical doctrines and modern legal developments was both possible and necessary to ensure justice, equity, and social stability within Muslims succession law.

Keywords: Muslim Law, Minor, Next of Kin, Unborn Child, Illegitimate Child

*B.Sc, M.sc, LL.B BL, LL.M, Ph.D., AFCIN, ACI Arb abdullahilimannuhu@gmail.com 08035895650 Nigeria Police Force, FCT, Abuja

**LL.B, BL, LL.M (Ph.D. IN VIEW) Faculty of Law Nasarawa State University. 08038933344

***LL.B BL, LL.M (Ph.D. IN VIEW) Faculty of Law, Federal University Lafia.

1.0 INTRODUCTION

Islamic law of succession is based on the divine principles of estate planning, management, and distribution of the property of a deceased person. This is ordained by Allah (SWT) whereby each heir is apportioned with a specific share, be it small or big. The Muslim law of succession as a crucial component of family and property law serves not only to regulate the sharing of deceased estate management and distribution, but also reflects the moral, social, and religious values within Islamic jurisprudence. The Muslims law seeks to ensure just and equitable distribution of a deceased's estate among entitled heirs in accordance with Allah's directive.

Fiqh the framework governing inheritance, lucidly provides an elucidate explanations and teaching of how a Muslim deceased's property can be vividly secured, planned, managed and distributed among his legal heirs. The framework also provides answers to the question of illegitimate child, minor, missing person, minority, representative system, Awl and rad principles of inheritance.

Under the Muslims law, the right of each heir is clearly defined irrespective of whether such a nonage minor, missing person is present during the distribution of the estate or not, he must be given his deserved portion. The portion depends on each situation of the death and the number of heirs left by the deceased person.

A minor, missing person, illegitimate child, an unborn child and non- Muslim minority are pervasive issues that embedded in our contemporary world which have special treatment under the Muslim laws and have also been a subject of intrigues, complex and debate both within and outside Islam. This is why Islam lucidly explained and allowed any person who is in the custody of a minor's property (money) to run business and eat from the property without necessary allowing the money been squandered by the manager or wiped away by arms payment (zakat), the question of illegitimate child is still debatable, representative system introduce by some region within the Muslim world brough lots of conundrum.

The inheritance of illegitimate child, non- Muslim minority, an unborn and representative system on the other hand occupies a far more controversial position, often excluded from inheritance under the Sunni laws, raising

questions about Human Rights, Justice, Social Welfare and evolving interpretations based on sect, religious equality and inclusion.

This study seeks to examine and compare the rights of these classes of heirs across classical jurisdiction and the contemporary statutory framework. Myriad States within the Muslims nations adopt a new approach and enact laws allowing, the non- Muslim minority, children born out of wedlock and others representing demised parents to inherit alongside with the surviving children of the deceased which negates the well-known and established doctrine just for the purpose of responding to evolving societal norms, constitutional values and global legal standards.

2.0 RIGHT OF INHERITANCE IN ISLAM

The right of each heir to inherit in Islam is divinely provided by Allah. This is all the more reason why when a friend, brother, relative, wife, sister or neighbor dies, what do we do with their property? Certainly, the property has to be shared with those who are entitled in accordance with Allah's instructions. Do we have the right to inherit from our neighbors? Or can a wife or mother handpick cloth, spectacle or a small tin and give to anyone who knocks at the door to condole them. I am optimistic and without being told, the wife, mother or a son lacks such powers to give out anything to anybody including the legal heirs without actual and proper sharing in accordance with Shariah.¹ Under Muslim law both men and women have the same right of inheritance. same right not equal right.

Islam has provided a comprehensive guide and procedure of what will happen to the property of deceased person before and after his death. While alive, he can give out as a gift to any person of his choice. He/she can equally make a will before his death. The burial engagement, settlement of debts and real distribution of the estate of a deceased person are done after the demise of the deceased. The Islamic inheritance system

¹ Q 4 v 11

deals with the process, and procedure of sharing the property of a deceased person whether the property is large or small.

Also, under the Islamic law of inheritance, both men and women have the right to inherit from their parent and close relations. This right to inherit is sometimes conditional depending on your closeness in relation to the deceased person. Allah SWT has given each heir what rightfully belong to him. Allah² stated that “For men there is a share in what their parents and close relatives leave, and for women there is a share in what their parents and close relatives leave—whether it is little or much. ‘These are’ obligatory shares.”

In Islam, there are about twenty-five (25) persons who inherit from one another as heirs under the Muslim law of succession, it is important to know that these numbers fifteen are male while ten are female heirs. These classes of heirs are 1. Father, 2. Son, 3. Husband, 4. Father’s Father, 5. Son’s son 6. Full brother, 7. Consanguine brother, 8. Full Uncle, 9. Consanguine Uncle 10. Son of full brother, 11, Son of consanguine brother, 12. Son of full uncle, 13. Son of consanguine uncle and 15. One who free a slave. while the female heirs are, as follows; 1. Mother, 2. Wife, 3. Daughter, 4. Mother’s mother 5. Son’s Daughter, 6. Full sister, 7. Consanguine sister, 8. Mother’s father, 9. Uterine sister. 10. One who frees a slave. It is imperative to know that there will be no time when all these heirs, will inherit at the same time. Perhaps absent of father, father’s father, also in the case of a mother, mother’s mother, likewise, the absent of a Son, Son’s will inherit. Each of the above-mentioned heirs are entitled to inherit a specific portion of either $\frac{1}{2}$, $\frac{1}{4}$, $\frac{1}{8}$, $\frac{1}{6}$, $\frac{2}{3}$, $\frac{1}{3}$, or the whole estate in the case of a man who dies and leaves behind only a son or father. The son if alone takes the whole estate likewise if it is only the father, then the father is entitled to inherit the entire estate. It is not about age or being the first son or last born, it is about Islamic principles and Shariah system. What matters significantly is the fairness in the allocation of the portion in accordance with the right of each heir. All heirs have the same rights and not equal portion. They have the right to make decision collectively, own property, the right to speak, the right to vote in making decision, and the right to be present or be represented in the

² Q 4 v 7

venue of the distribution of the estate except when he/she decided to waive it or say no to it. It is inconsequential to say that he/she is a minor by reason of age in partaking to decision making.³

3.0 RIGHT OF MINOR

The ubiquitous nature of Islamic law of inheritance is that, it is a universal, comprehensive and all-inclusive system that gives every heir what rightfully belongs to them, whether as a minor or adult. The right to inherit in Islam is divinely provided in such a way that custodians/ sharers, experts of the subject matter, relations or those responsible for managing the estate are expected to do nothing more than to give the heirs their due portion. Under the Islamic law of inheritance, a share is provided not just for an embryo, minor but above all to even an unborn child (If born alive). Under the classical jurisprudence, minors (sighar) are fully entitled to inherit provided their lineage and legal status are established at the time of the deceased's death. The lineage can always come based on of blood relations, marriage or slave dealing. Once the connection is established the minor will have the same right as all adults of the same degree.

According to Nchi,⁴ A minor is a young person⁵ who has not yet reached full legal age; a person who is under the age of 18 or 21 years or puberty. Islam is concerned about attainment of puberty status. and this has nothing to do with age. In Islam, Puberty is the stage when a child⁶ becomes legally responsible for religious duties such as Prayer, Fasting, Zakat, and other obligations. When a male child starts see to see semen is a clear sign of attainment of his puberty age, or when a girl begins to mensurate in that manner, it is apt to say that the girl or child is in puberty age. There is no specific age set as a measure to determine puberty. Several scholars⁷ opined that the age of puberty for boys can be 15 lunar years (approximately 14 years 7 months solar) is the maximum and this is in situation where no sign appeared. For girls is 9 lunar years (approximately

³ *Maryam & 1 Or v Adanu & 1 Or ((2016)4 SQLR PT.IV*
.3420

⁴ S.I., Nchi, *Nigerian Law Dictionary* (Green World Publishing Company, 2022)

⁵ An Infant, Child or Juvenile.

⁶ Some good example of puberty and boys and girls are, thus; 1. For boys, Emission of semen (wet or otherwise), growth of coarse public hair 2. For Girls, beginning of menstruation, growth of hair,

⁷ In Maliki, Hanafi, Shafi, and Hambali school.

9 months solar) which is the maximum age if there is no sign. In Islam, signs are imperative when it comes to the determination and of the attainment of the puberty stage in girls. However, once the girl mensurated, age is inconsequential.

However, because of a minor's nonage state of mind, and legal incapacity (adam al-ahliyyah al-kamilah). He cannot keep his share to himself or to deposit money in bank, transact business, sign an affidavit, or legally sign any valid document. A question arises concerning guardianship, (waliyah), management of inherited property and protection against misappropriation. This would certainly require that someone must do that on behalf of the Minor. Who is such a person to do that for the minor? In Islam, maintenance and custody are two different things. Before a child attains a certain age, the mother take responsibility of his custody and socialisation. whereby his maintenance⁸. He is to be taken care of by his uncles and all those from his paternal side. The share or portion of a minor's inheritance is to be kept by the paternal parents whose responsibility is to also feed the minor not necessarily from his share of inheritance, except where such uncle or relative is poor person, then he is allowed to feed the minor, and pay fees of the minor from the share of inheritance of the orphan.

Unlike during the pre-Islamic time when minors,⁹ Women, and incapable persons had no share of inheritance. It is imperative to know that a minor has the same right of inheritance as all adults under the Muslims law of succession. A minor has the right to inherit alongside other adult siblings' relatives (as the case may be) and also take part in all decision-making process that has to do with the property in question that is meant for distribution. Sometimes a decision or position has to be taken on a particular item for example where a house is pointed or selected to be disposed of given away as a gift to poor people needy and all those present during the actual distribution, the amount of money to be pay to the consultant (Knowledgeable on Islamic Inheritance law distributing the said estate. In support of catering for the needy, relatives and orphans during distribution,

⁸ A. I Doi, *The Sources of the Shariah* (Published by Gaskiya Publication, Zaria, 1982)

⁹⁹ A. Gurin, *Islamic Law of Inheritance: Testate and Intestate* (Published by Malthouse Lagos) Pg. 2

Allah¹⁰ stated that “And when (other) relatives and orphans and the needy are present at the (time of) division, then provide for them (something) out of the estate and speak to the words of appropriate kindness”. The decision to give out a kobo to any of the above-mentioned categories of persons must be made with the consent of the minor. Where a minor cannot speak due to his nonage, let his guidance or Mother speak on his behalf.¹¹ Guardianship, maintenance of a minor, his schooling, feeding and welfare are always the responsibility of the parental relatives.¹² While the mother and her matrilineal side take control of the minor’s custody pending attainment of a certain age. Ambali¹³ pondered that Islamic law entrusted the custody of nonage children at their tender age to their mothers. Custody of children is given to women because they are considered and appropriate in all matters of guardianship¹⁴ upon meeting up with certain conditions. In *Danjuma v Umar*,¹⁵ The Court stated conditions to be satisfied and fulfilled under the Maliki school before custody is given to a mother as follows: “She must be sane, chaste and trustworthy, she should not be adulterous nor have a disease that may likely affect the health of the ward under her. Those conditions are imposed to safeguard the well-being of the child”. The mother (as custodia) is even to be paid an allowance for the custody of the child¹⁶. Custody is for mothers while maintenance is from the father. It is a Luculent position of the Islamic Shariah law that the responsibility of maintenance always remains with the father. The law is crystal clear that whoever is involved as a custodian shall be awarded.¹⁷ Therefore, it is apt to say that the mother is not in any way obliged to maintain the child from her wealth, unless and until she chooses to do that out of her goodwill. She should be compensated for breastfeeding.¹⁸

Where the minor’s share of inheritance is given to his guardian for safekeeping pending when the minor attaining adolescent age. Such a guardian should fear Allah and keep the said estate without squandering it

¹⁰ Q 4 v 8

¹¹ *Yange v Musa (2018) LPELR 45269 (CA)*

¹² Under the Muslims law, maintenance is a duty and responsibility of the father, in the absent of the father, father’s father, brothers, uncles ETC.

¹³ M.A Ambali, *The Practice of Muslim Family Law in Nigeria* (Published by Tamaza Company LTD 2003) at pp.257.

¹⁴ *ibid*

¹⁵ (2015) 3 SQLR (part 11) PP. 343

¹⁶ *ibid*

¹⁷ *Ibid*

¹⁸ Q 65 v 6

unjustly. Islam, encourages that such an estate (Money) should be used for businesses. If the custodian of such money is a poor person. Shariah Allowed guardian to eat from the business (profits) and to ensure that unnecessary waste and poor spending are not encourage in anyway. However, if the guardian, is rich or a well-to-do person he/she would be allowed to do business with the said money but cannot eat from the property. Allah clearly warned against this in the Qur'an.¹⁹

And test the orphans (in their abilities) until they reach marriageable age. Then if you perceive in them sound judgement, release their property to them. And do not consume it excessively and quickly (anticipating) that they will grow up. And whoever, (when acting as guardian) is self-sufficient should refrain (from taking a fee) and whoever is poor – let him take according to what is acceptable. Then when you release their property to them, bring witnesses upon them. And sufficient is Allah as account.

Allah has given mother and parents their share in the Quran²⁰ and no one has the right to unjustifiably eat or squander the share of an heir on the pretext of being a minor. Emphasis must be made here that a mother does not have such capacity or right to do so. There is this style mothers adopt when they are given a minor's property to keep for safekeeping. The mothers will claim that (she and her son) are one. I think they are not. Nobody is allowed to take any money from a minor item without justification Allah has given and allocated to each heir his due portion. Eat and go to hell-fire as decreed by Allah.²¹

From the hubris nature of good parents whether having a niche status or quixotic mind, mothers and fathers are expected to deal with the property of a minor in a just and fair way it is expected from every average good Muslim. The oblique position of most parents in our contemporary world, has raised many questions to the extent that some parents cannot be trusted with their minor's property again. Do they parent have this expressed right under the Muslim law to dispose of the property of their minor children without their consent.²² This question was rightfully answered In **Sani Jika & Anor v Sani**²³ where the court held that "a mother cannot force a child to dispose his property or to dispose the property of their children without their consent".

¹⁹ Q 4 v 6

²⁰ Q 4 11 and 12

²¹ 4 4 v 10

²² Q 4 v 2

²³ (2022) LPELR 57082 (CA)

Also Allah stated this in Q 4 v 6 “*Test the orphan until they reach marriageable age. If you perceive in them sound judgment, then deliver to their property*”

In the protection of the minor in case of a dispute where the manner of distribution becomes contestable, an arbitrator²⁴ needs to be appointed to share the property. The Supreme Court in *Jiddun v Abuna*²⁵ held that” Where a Muslim dies, his heirs are permitted by law to appoint a person learned in Islamic law to share his estate among them according to law, and if subsequently the matter is taken to the court of law, that court will enforce the sharing provided it conforms with law”. The rights of a minor must also be protected without forcing them or their Custodian to agree or accept on any decision that they do not agree with.²⁶

Finally, we must stress this point saying that mothers have no right to insist that the share of inheritance of their children being minor should be given to them to keep. It is not their right or business to demand such. Contemporary stories revealed that most mothers misused such money given to them in trust with the belief that it belongs to their son. For a mother to do so, goes contrary to Islam and Allah will punish her. And not only the mother, but any person who unjustly eats the property of an orphan (minor) eats nothing but fire into his belly and certainly Allah will punish him with hellfire tomorrow. All must be careful and fear Allah.²⁷

4.0 NON-MUSLIM MINORITY

A non-Muslim is any person who does not profess or accept Islam as his/her religion. A non- Muslim²⁸ do not belief with the oneness of Allah cum article of faiths. The features and qualifications of a non-Muslim are persons who does not observe the five daily prayers, fast in the month of Ramadan, and paid (Zakat) Alms, or go for Hajj. Under the Muslim law of succession, a non- Muslim cannot inherit from a Muslim and a Muslim cannot inherit from a non- Muslim. This is why the right to inherit in Islam is not always automatic. It is not automatic because there are certain groups of heirs who are partially or permanently excluded from

²⁴ Ashaluk Madarik Fil Lrshadis Salik Vol. 3 Page 209

²⁵ (2000) LPELR 1612(SC)

²⁶ See *Sesseda v Sesseda* (2018) LPELR 45446(CA)

²⁷ Q 4 v 13

²⁸ Sunnah Ibn Majah 2730, Hadith 12 Vol 4 book 23

inheritance. There are several factors to be considered when it comes to rules of exclusion. The Court in *Enendu v Turaki & Ors* answered the question of whether a non-Muslim can inherit a Muslim where it was held that²⁹

Now from the record of the appeal and I said earlier, the appellant as a Christian. the first respondent counsel has submitted.... Appellant being a non-Muslim, cannot inherit the deceased who lived and died as a Muslim and whose estate is sought to be distributed in accordance with Islamic injunction. I quite agreed with the submission of the 1st Respondent's counsel as most Muslim jurists are unanimous on the principle that there shall be no inheritance where difference of religion exist between the heirs and the deceased person even if the parties are blood relatives as in the instant appeal between the deceased and the appellant....

The wife you marry, your children and parents who are non-Muslims, will not inherit from you and likewise you will not inherit from them. Differences in religion are a bar to inheritance under the Muslim law of succession. The religion of an individual as regards inheritance is his religion as at the time of death. This is why a wife or son who converts³⁰ from Islam to another religion, cannot inherit from a Muslim husband or relatives. A non-Muslim wife can only be mentioned in an Islamic Will (Wasiyyah) where you wish to give your non-Muslim wife or Husband any property you either give while alive by way of gift (Hibah) or mention in your Will, otherwise they will get nothing as of right. There is no gain saying some legislations in the country do not allow for barred inheritance among Muslims and non-Muslim in any way. In all matters dealing with Muslims inheritance (Management and distribution of Property) is to come under the Muslim personal law³¹.

If a Muslim become a non-Muslim after the death of the relative whom he can inherit from him, he is still entitled to inherit because when the relative died, he was still a Muslim³²

5.0 NEXT OF KIN

²⁹ (2022) LPELR 57527 (CA)

³⁰ I. Hussaini, *Islamic Law of Succession* (Darussalam Publication, 2005) PP.58

³¹ *Adebaiye v Adebaiye*

³² Ibid

The concept of next of kin is not known in Islam. Next of kin is alien to Islam and Muslims have nothing to do with it and have no any special recognition under the Muslim law of succession. It is important to clarify that in Islam, there is no technical concept called Next of Kin.

In today's world, we find ourselves doing things that have no place in Islam and are not in any way condemned by Islam. Next of kin is a contemporary related matter that has to do with official dealings. (formal or informal) Its concern Muslims working in an organizations, banks, schools, and governmental offices etc. that might require them, or such a staff to supply a name of a trusted and reliable person to stand for and on behalf of the that person who submitted such a person as his next of kin in case of death, incapacitated, inheritance and administration of estate, medical dictions and emergency contact person.

Next of kin is the person's closest living relative(s). Next of kin can also refer to the closest living blood relative or spouse, primarily serving as the immediate point of contact for medical or legal emergencies, such as incapacitation or death. While often assuming responsibility for decision- making, they are not automatically entitled to inherit assets, as this requires legal designation. By section 2 of the Anambra succession law, next of Kin of include a widow/ widower, spouse, children, Father, Mother, Brother, Sister. In *Joseph v Fajemilehin O. O & Anor*³³ The court defined Next of Kin is the person declared to be the nearest of kindred to the declarant. Black's law Dictionary defines next of kin as the person or persons most closely related to a decedent by blood or affinity. The Supreme Court in *Iranbar v Federal Mortgage Finance Ltd*³⁴ held that next of kin is an intestate's heirs that is the person or persons entitled to inherit personal property from a decedent who has not left a will.

Next- of is kin issues are pervasive phenomenon that is embedded in every family in our contemporary world. It is a major problem and a conundrum for many families in Nigeria, largely because of the nature of our legal

³³ (2012) LPELR 9849 (CA)

³⁴ (2024) LPELR 62185 (SC)

system, misunderstanding, misuse and conflicts with applicable inheritance law (customary law, statutory and Islamic law.

Undoubtedly, the dream of every person (s) is to have a successful and innocuous life for himself while alive and for his family while he is no more. This is why a person is expected to outline and structure a good working plan, projecting a better future for their family. This is all the more reason why when a man/woman thinks about death, certainly what he thinks more of is what might likely happen to his children and property when he is no more. No matter how insignificant your property may be, it would come under the custody of someone. Such a person in law under the Nigerian law may not necessarily be your relation, father, uncle, brother or son. Such a person can be anybody so named or appointed by you. It must just be someone capable and trusted with full capacity to carry out certain responsibilities on behalf of other legal heirs or personal representatives, when you are no more.

It is highly advised that we should open our eyes well and choose a good person as our next of kin who will be able to protect, guide, distribute, deliver and act on trust for and on behalf of the person who appointed to act in case of emergency or times of need when he is no more. Some people choose their first son, sisters or wife as their next of kin. Anybody can be appointed as next of kin provided; he/she will be able to carry the responsibility of the rationale behind their appointment. Next of kin is not an automatic right to inherit, take over the property or benefit out of the deceased for himself but, he is only expected to act as a keeper, a trustee, a leader or someone who only collect/receive something and delivers to those entitled. In **Mohammed v Tijjani**³⁵ The court held that:

With the clear position of law that the next of kinship simpliciter, will not guarantee a bequeathal of an intestate deceased's property upon the person who claims to be the next of kin to the said deceased, it follows that the appellant's father by being the next of kin to his late intestate brother, thereby inherited nothing of his said late brother.

Therefore, in Islam mere mentioning without being an heir to the deceased person does not qualify you to inherit anything from the property of the deceased person. The position of next though alien to Islam will

³⁵ (2021) *LPELR 54215 (CA)*

always remain to be a person declared to be the nearest of kindred to the declarant and any trusted person can be so declared without necessarily being related to the deceased by blood.

AN UNBORN CHILD

Can an unborn child who is not in existence have any right to be protected? Do we know whether the unborn child will be born alive?. What if peradventure we reserved a share of a male son, by Allah's will, twins are born alive? Many families ran into crises in trying to answer the question of what can be kept for an unborn child?

Under the Muslim law, an unborn child is recognised and protected in several important ways, especially in matters of inheritance, lineage and maintenance. Once a person dies and leaves behind a pregnant wife (s) or divorcee, it is an institutionalised framework and principles of the Islamic sharia system that the child will inherit once born alive³⁶. The gender of the child will determine the share of inheritance³⁷. It is important to know that an unborn child may exclude all existing heirs.³⁸ Where a man dies and leaves full brother, uncles, Full sisters and an unborn child. Once a male son is born,³⁹ all the above-mentioned categories of heirs are excluded by the son.

When it comes to the share or portion that should be reserved for an unborn child, the Maliki school of thought believes that there should be no distribution of the estate until the unborn child is born alive. This position is the same with other schools of thought. The Hanafi school projected that a share of four boys or four boys should be reserved.⁴⁰ The Shafi'i school advocated that a share of two boys or girls should be reserved, while Hanbali school stated that a share of two boys or girls or whichever that is greater should be reserved.

³⁶³⁶ M. A. Ambali, *The Practices of Muslim Family Law in Nigeria* (Tamaza Publishing Ltd, 2002) PP 209

³⁷ A male takes a share of two females as the case may be.

³⁸ I. Hussaini, *Islamic Law of Succession* (Darussalam Publishing Company)

³⁹ If it is a daughter some of them may inherit.

⁴⁰ Or whichever that is greater

6.0 ILLEGITIMATE CHILD

An illegitimate child will forever remain an illegitimate child so long he is illegitimate. What determines the legitimacy of a child or whether such a child can inherit is marriage. Basically, marriage is the foundation of upon which family relations are built. Thus, if a child is born out of wedlock, such a child is regarded as illegitimate and the Islamic legal system does not recognise the man who had affairs with the child's mother as the father.⁴¹ The legitimacy of a child is proved by the proof of the existence of lawful and valid marriage between the parents at the time of the child's conception.⁴² Modern science has yet to have any significant impact on determining the legitimacy of a child considered to be a product out of wedlock. There are lots of debates and inputs on why Islam will not allow a scientifically proven child to inherit from his supposed father. Unanimously, all Sunni schools think that any child who is a product of out of wedlock will remain illegitimate and will not inherit.⁴³

Therefore, the position of Islamic law is that an illegitimate child will not bear the name of the illegitimate father nor inherit from him, nor will the illegitimate father inherit from the illegitimate child. Therefore, a child can only inherit from the mother or her relatives.⁴⁴

7.0 A MISSING PERSON

Under the Muslims law a missing person (Al-Mafqud) is someone who has disappeared and there is no confirmed news about him. It is unknown whether he is dead or alive. A missing person is someone whose location or whereabouts is not known, and it will be difficult to ascertain whether they are dead or alive.⁴⁵ The person who got missed may be the owner of the property or an ordinary heir. The beauty of the Islamic inheritance system is that everybody who deserves to have anything as share, whether present or in absentia,

⁴¹ *Ustaz v Abdullahi (2015) LPELR 40740 (CA)*

⁴² *Rabiu v Amadu (2002) LPELR 9161 (CA)*

⁴³ , Hussaini, *Islamic Law of Succession* (Darussalam publication)

⁴⁴ I, Hussaini, *Islamic Law of Succession* (Darussalam publication, 200) PP.124

⁴⁵ A.N. Liman, *Islamic Law Inheritance: a comparative Perspectives* (Malthouse Lagos. 2018) PP.124

adequate provisions are provided for all who have legal right to benefit. This is what is not in other systems of inheritance.

An Islamic jurist classifies the missing person in two ways. Firstly, one which is missing in normal circumstances for examples traveler who disappears or a person who leaves home and never returns. Secondly on who is missing in dangerous circumstances for example in War, Shipwreck, Building collapse and Armed conflict. A missing person is entitled to inherit the property of his parents or close relative⁴⁶ so long as the missing person is not declared dead or seen. It does not matter how long the missing person is not seen. The Islamic law of inheritance has clearly defined what will happen in situation where a missing person has not been seen. If he is an heir, the Shariah principle on a missing person is that the share of such a missing person will be kept aside pending his returns, confirmed death or declared death by a Court. The share or portion of the missing person can also be kept pending when by assumption all his supposed age mates are no more, then the Sharia allows the property to be distributed among his heirs. There is divergence of views among the schools of thought on the best time to share the missing person's property.⁴⁷

8.0 CONCLUSION

This study examined the rights of minor heirs, non-Muslim minorities, illegitimate children, missing persons and unborn children under the Muslims law of succession, with particular reference to both classical juristic doctrines and contemporary legal frameworks. The analysis demonstrated that Islamic inheritance law is neither arbitrary nor discriminatory in its structure rather, it is a carefully regulated system of estate distribution and management ordained by Allah.⁴⁸

The Islamic sharia system makes adequate provisions for the weak and equally protects the right of a minor, unborn child, missing person and nearest of kin. The law unequivocally safeguards their proprietary interest

⁴⁶ Q 4 v 7

⁴⁷ According to Hanafi jurist, he must reach the age where death is presumed (like 90 years), by Maliki school, Judges might decide or while Hanbali and Shafi'i are of the opinion that four years in risky situation.

⁴⁸ Q 4 v 13

by recognising their entitlement to fixed or residuary shares. This is all the more reason why Islamic law detests mismanagement of deceased property and equally warns all Muslims not to unjustly eat the property of an orphan. No guidance or next of kin is allowed to tamper with the property of an orphan, the result is hellfire.

There are classes of heirs that do not inherit in Islam. The non- Muslim minorities do not inherit due to differences in religion except where they are mentioned in a Will and regarding the unborn child, Islamic law adopts a precautionary and rights- protective approach. Where pregnancy is legally established at the time of death, distribution may be suspended or a portion may be reserved. The position of next of kin is nothing more than a trusted someone who can as well be a personal representative without special powers or rights more than any other heir. As for non- Muslim minorities, classical jurisdiction generally barred them from inheriting. There are several reforms put in place by many Arab states allowing inheritance by representation. The idea of collecting and hiding deceased property negates Islamic teaching.

Finally, the Islamic inheritance system is structured around justice, fairness and balanced distribution in accordance with responsibility. The system is complete, comprehensive and universal.