

VIABILITY OF CASH WAQF MODELS UNDER THE NIGERIAN LAW: AN APPRAISAL

**ABDULLAHI SALIU ISHOLA^{*},
SHARIFAH ZUBAIDAH SYED ABDUL KADER^{**} AND
ABDUL HASEEB ANSARI^{***}**

Cash awqaf (plural of waqf) have been a well-recognised tool for social development of Muslims in various countries wherever they are being practiced. It is governed by set of Islamic principles pertaining to awqaf converted by some countries into legislation. In those countries, they have proven to be one of the tools for social welfare and alleviation and ultimate eradication of poverty, based on the will of the wageefs. In order to serve the purpose of their creation, it is better if the waqf money is allowed to be invested in the interest of the beneficiaries and growth of the awqaf. There are a number of legal issues pertaining to administration of cash waqf, which are yet to be addressed. The existing literatures on cash waqf also do not have definite answers to them. In Nigeria, cash waqf is not well in practice. Because of this reason, there is lack of a legal framework on it. The paper reviewed the existing literatures on cash waqf, but they are not dealing with it in the context of Nigeria. The paper presents an appraisal of the papers reviewed.

Introduction

This paper undergoes a survey study on the relevant literature that would expose the gap in undertaking research on the viability of cash waqf models within the legal framework of Nigeria. Waqf is a

^{*} PhD Candidate, Ahmad Kuliyah of Laws, International Islamic University Malaysia; Lecturer, Department of Law, College of Humanities, Management and Social Sciences, Kwara State University, Malete – Nigeria, *E-mail: asishola1@gmail.com or abdullahi.ishola@kwasu.edu.ng*

^{**} Associate Professor, Department of Civil Law, Ahmad Ibrahim Kuliyah of Laws, International Islamic University Malaysia, and Director, International Centre for Waqf Research (ICWR), International Islamic University Malaysia, *E-mail: sharifahz@iiu.edu.my*

^{***} Professor, Department of Civil Law and Deputy Dean, Postgraduate and Research, Ahmad Kuliyah of Laws, International Islamic University Malaysia, *E-mail: ahaseeb@iiu.edu.my* (Corresponding Author)

major Islamic tool of wealth redistribution with high potency for alleviation of poverty. With the vigorous increase in the religious reawakening among Muslims in Nigeria, both as individuals, organizations and governments, on the need for the use of waqf to address the scourge of poverty among them, the future of waqf institution in the country looks promising. It is therefore not surprising that there is a shift in the Waqf research focus towards modern Waqf approach by which cases are being made for implementation of profitable and income yielding waqf products to alleviate poverty and empower the poor. Like in many other countries where serious attention is being given to waqf such as Malaysia,¹ cash waqf is beginning to be advocated as a profitable scheme of waqf that will drive the growth of waqf institution in Nigeria. This is however being done without any clear understanding and examination on the nature of the legal environment for its application in the country.

The problems associated with the above include: lack of consideration of the prospects for cash waqf in Nigeria in the available research works from the existing legal reality; constitutional confusion on the legal basis for cash waqf; complexities in the jurisdiction for resolution of waqf disputes; lack of clear legal attraction for cash waqf within the existing laws; and, lack of clarity on the appropriate cash waqf models implementable within the existing laws. The problems are further elucidated for better appreciation.

Lack of Research Consideration of the Prospects for Cash Waqf in Nigeria within the Existing Legal Reality

It has been argued in various quarters that cash waqf can be invested, commercialized and practiced in Nigeria. However, such studies have either been carried out from the backgrounds of the pure Islamic jurisprudence² or economics³ without consideration of the reality and prospects for such implementation of cash waqf within the existing laws. As good as such research findings may therefore be; they remain inconclusive as the legal reality of the findings cannot be claimed to have been yet ascertained. The inconclusiveness of those research works to that extent therefore creates a problem of serious doubts about the legality of or existence of a favourable legal

environment for application of cash waqf in the country, a problem that needs to be addressed.

It therefore follows that, the existing works on cash waqf in the country are not strong and reliable enough in providing a clear cut position on the legality of cash waqf in the country. Prospective research studies would therefore be expected to shift focus towards researching on the relationship between the Nigerian law and waqf generally and cash waqf in particular.

Constitutional Confusions on Cash Waqf

Except for some States in the Northern part of the country where there are *Sharia Penal Laws* in operation,⁴ Islamic law, as applicable in Nigeria, is generally *fiqh*-based,⁵ it is not codified. This is substantially true of the principles of the Islamic Personal Law. Other than laws enacted to regulate the administration of justice in disputes arising from any subject of the Islamic personal law, there is no codified law on each of the subjects.⁶ The provisions in the Constitution do not equally assist beyond laying a foundation for administration of Islamic justice in personal law disputes. Again, some other confusion has further been created.

Thus, by a critical look at the wordings of the Nigerian 1999 Constitution⁷ on *wakf*⁸ stating clearly that for a waqf to be valid and enjoys the jurisdiction of the Sharia Court of Appeal in case of disputes, the endower must be a Muslim,⁹ it becomes complex whether cash waqf can be regarded as constitutionally valid if non-Muslims participate as donors.¹⁰ With this impression, even if a cash waqf that has non-Muslims as donors would be constitutionally valid, there is no doubt that the Sharia Court of Appeal would lack jurisdiction on appeals emanating from disputes on such endowment. This apparently leads to the consequential jurisdictional crisis in the adjudication of cash waqf disputes where donors are non-Muslims. Or could it be conclusively posited that the form of cash waqf that would be constitutionally healthy to be practiced must exclude non-Muslims as donors?

Further, by the same constitutional provisions, it can be inferred that two models of waqf can exist in the country: "Muslim Donor/

Endower Waqf (Muslim Endowed Waqf)” and “Non-Muslim Donor/Endower Waqf (Non-Muslim Endowed Waqf)”. This legal inference presents a challenging situation tempting enough in concluding that a cash waqf scheme can be designed for interested non-Muslim donors, notwithstanding the apparent jurisdictional crisis that may arise in disputes on or in it. But even at that, if the scheme would truly qualify as “waqf”, it must be permissible in Islamic law; either being a “Shari’ah Based Waqf” or “Shari’ah Compliant Waqf”.¹¹ Is the non-Muslim permitted to validly endow waqf in Islamic law? This is another issue begging for clarification in understanding the prospect for cash waqf under the existing laws in the country which has however not enjoyed research attentions so far. It would also appear that the Constitution merely recognises personal waqf since the donor is expected to be a Muslim. It is thus difficult to clearly state whether cash waqf endowed by artificial persons and public authorities would be constitutionally valid. This also deserves focus in the research works on waqf in the country.

Complexities in the Jurisdiction for Resolution of Cash Waqf Disputes

With the revival of Waqf practice and the consequential increase in the research on matters relating to it across the globe and emerging complex models for its finance and development, such as cash waqf, there is bound for recourse to resolution of disputes arising from the transactions to arise.¹² Like in any other country, the sustainable growth which cash waqf can witness in the nearest future in Nigeria may depend largely on how well the legal framework for resolution of its disputes is structured. As expected, there are many dispute resolution mechanisms¹³ as well as diverse dispute resolution institutions¹⁴ in the country and all of them cannot holistically be fitting for resolution of cash waqf disputes.¹⁵ Thus, there is need for clarification on the identified jurisdictional crisis envisaged in the resolution of cash waqf disputes. In doing this, one would need to understand clearly the dispute resolution or the ADR mechanism appropriate for it.¹⁶

As the present legal structure reflects, only an appellate court is expressly vested with jurisdiction in the Constitution to hear appeals

on waqf disputes, including cash waqf disputes coming from a lower court or even from a hierarchy of lower courts in the country.¹⁷ However, the lower court(s) from which such appeals could emanate were left to the discretion of each of the 36 States of the Federation.¹⁸ There is also the challenge of further absolute decision of any State to establish the appellate court with jurisdiction in waqf appeal cases only if it deems it fit that it requires it; although arguably, any State where there is a number of Muslim requires the court.¹⁹

Very significantly, with the confusing dimensions created by the Constitution on waqf through a dichotomy between the “Muslim Donor/Endower Waqf (Muslim Endowed Waqf)” and the “Non-Muslim Donor/Endower Waqf (Non-Muslim Endowed Waqf)”,²⁰ it is intriguing for one to be precise on which court or tribunal would have jurisdiction in cash waqf disputes. As earlier noted, even if courts with jurisdiction in Islamic law matters generally or Islamic personal law matters in particular assume jurisdiction in disputes arising from the Non-Muslim Endowed Waqf, appeals from the decisions of such courts cannot go to the Shari’ah Court of Appeal.²¹

On the other side of the coin, apart from being a major model now being widely proposed for financing waqf itself and many other projects²² and as an effective financial tool for income and revenue generations for individual waqf managers and government,²³ the fact that corporate cash waqf, as a form and the most formidable type of cash waqf, would require an incorporated entity for its effective implementation²⁴ also further complicates the issue of how cash waqf disputes that may arise in Nigeria would be resolved under the existing laws. By constitutional provisions, matters relating to operation of the *Companies and Allied Matters Act* (CAMA)²⁵ are within the jurisdiction of the Federal High Court²⁶ and the company subjects are listed under the Exclusive Legislative List.²⁷

Notably also, by the arrangement on the devolution of legislative powers under the Constitution, the subject of waqf as an Islamic Personal Law Matter is within the legislative power of the State,²⁸ at least as a residual legislative matter.²⁹ If there is no clear understanding on the legal structure for resolution of disputes arising from any

promising enterprise like cash waqf, it is difficult for a really good future to be projected for the scheme.

Again, although by its nature, Islamic law is presumed to regulate the affairs of any Muslim, including matters of cash Waqf, with the current judicial structure in Nigeria, some States of the Federation, especially in the Southern part of the country, may not have any appropriate judicial institution to resolve their cash waqf disputes and consequently Muslims in those parts of the country must be clear on how to manage this situation without allowing it to discourage them from implementing the cash waqf.

Lack of Clear Legal Attraction for Cash Waqf to Investors and Donors

It remains uncertain whether cash waqf can really be legally implemented within the existing laws in Nigeria, as the foregoing other identified problems would suggest. With this uncertainty in the legality of cash waqf in the nation, it would not be safely attractive to donors and investors and thereby making the scheme to lose its perceived booming future. Thus, there is the need for a research to clearly bring out the viability of cash waqf under the existing laws in Nigeria. To this end, a research that sets out to address this hanging problem and proffer a decisive clarity on the legal framework for cash waqf in the nation, identify and recommend the necessary legal reforms, would be highly worthwhile.

On the same footing, it is noted that various state laws in the northern part (Northern Nigeria) relating to waqf majorly on administration of waqf and how to collect and distribute fund raised through the scheme in the old fashioned way.³⁰ Premises and Promises for cash waqf under those laws have not yet been explored. Without such clarity, it would remain risky for cash waqf to just be introduced and implemented in those states.

Lack of Clarity on the Appropriate Cash Waqf Models for Implementation within the Existing Laws in Nigeria

Aside all other strict legalistic problems identified above with the implementation of cash waqf generally in any form in the country, it is also very challenging that even if cash waqf can be implemented,

its particular models that can be so accommodated still need to be clarified. It is appreciable that cash waqf applies in different models and the models that would be suitable in Nigeria must be capable of implementation within the existing laws. Which models of the cash waqf can be implemented within the existing laws in Nigeria? This is a question also begging for answer.

Lack of Clear Legal Framework for Administration of Waqf

There is no clear legal framework for administration of waqf in Nigeria. No official regulators or institutions are charged with proper regulation and monitoring of any waqf activity in the country. The administration of waqf is therefore left absolutely at the private arrangement of the endowers. Consequently, no official record exists on the existing waqf in the country. The situation would have a serious adverse effect on the implementation of cash waqf. This problem must therefore be addressed in mapping out possibilities for cash waqf within the existing laws in the country.

Conceptual Clarifications on Waqf

For proper survey of literature relevant to the study of viability of cash waqf under the existing laws in Nigeria, three areas of literature can be reviewed. By way of concept mapping, relevant in this regard is a review of scholarship on “Waqf in the General Context”; “Issues in Cash Waqf” (such as “cash waqf as the modern waqf approach” and “waqf law and regulation”); and “Waqf and Cash Waqf from the Perspectives of Nigeria”. The review of literature is therefore approached under each of these scholarship areas.

Connotation of Waqf in the General Context

Waqf can be understood in the general context when literature that discusses issues like the history of the institution of waqf; meaning and legal basis for waqf; and juristic differences on waqf is examined. Through review of these literatures, it would be manifest whether such literatures cover cash waqf in general and cash waqf as related to Nigeria in particular. The materials are therefore reviewed under these subtopics.

As waqf is an Islamic subject sanctioned since the eras of the Prophet and Companions, with antiquated antecedent, so also are the scholarly discussions on it. Scholarly discussions on waqf can therefore be found in both classical books on Islamic jurisprudence (*fiqh*), primarily in Arabic, and in modern articles, books and research reports, which are either in Arabic or English or any other language.³¹

While some of the materials elaborated on waqf as a portion in their books, some specific books particularly authored on the subject are equally notable.³² Their discussions variously centre on explanation of the meaning, principles, classifications and terminologies in waqf. An underlining nature of waqf is that it is “spiritually-oriented”³³ and this situates it within a religious matter like zakat except that “unlike zakat which is obligatory, waqf is voluntary”.³⁴ This has also been noted by Siraj and Hilary when they posited that “at its heart the Islamic endowment is connected firmly with the religious precept of charity”.³⁵ Materials that discuss waqf in this general context are therefore relevant to be reviewed in bringing out their contributions and limitations especially in relation to the subject of cash waqf.

The meaning of waqf has been differently provided at different time and space and from variant perspectives. There are therefore divergences among the Muslim jurists on the definition of waqf, with different schools proffering diverse views.³⁶ Another area of variations between the schools is on the basic principles of waqf.³⁷ However, despite their divergence on the definition and principles of waqf, all the schools agreed that “the essential components of a valid waqf include a founder/creator, a declaration, a beneficiary and specific property”.³⁸

Legal Basis for Waqf

Explanations have been provided to show that the legal basis for waqf has been hinged on the primary sources of the Shari’ah, i.e. the Qur’an and Sunnah,³⁹ supported by practical illustrations from the practices of the Companions of the Prophet. By a general consensus, it is believed that even though the word “*waqf*” is not specifically mentioned in the Quran or Sunnah, various provisions in both of

them on charity constitute legal bases for waqf.⁴⁰ Cizakca, referencing Quran 2:215, 264, 270, 280; 3:7; 11: 92; and 58: 12, 13; confirms this position when he noted that, “although *waqf* is not specifically mentioned therein, the concept of wealth redistribution is strongly emphasized in the Holy Qur’an”.⁴¹

Provisions in the Quran⁴² that repeatedly emphasised on the charity as a worthy and highly rewarding act of worship and devotion to Allah and by which Muslims are inspired to institute waqf are also relied upon as legal evidence for the institution.⁴³ Notably, it was in the second half of the second century that “the legal structure of *awqaf* funds was firmly established”.⁴⁴

Notwithstanding the clear proofs for legality of waqf as clarified above, three prominent Muslim jurists,⁴⁵ equally relying on the same Qur’an and Sunnah, have advanced two main objections to the legitimacy of waqf. Their objections are as follows:⁴⁶

- i) That since waqf essentially aims at confining property in perpetuity, such act contradicts the provisions of Q5: 103:

Allāh has not instituted things like Bahîrah (a she-camel whose milk was spared for the idols and nobody was allowed to milk it) or a Sā’ibah (a she-camel let loose for free pasture for their false gods, e.g. idols, etc., and nothing was allowed to be carried on it), or a Wasîlah (a she-camel set free for idols because it has given birth to a she-camel at its first delivery and Then again gives birth to a she-camel at its second delivery) or a Hām (a stallion-camel freed from work for their idols, after it had finished a number of copulations assigned for it, All These animals were liberated In honour of idols as practised by pagan Arabs In the pre-Islāmic period). but those who disbelieve invent lies against Allāh, and Most of them have no understanding.

- ii) That confinement of property which waqf encourages also goes against the hadith that states that: “There is no confinement after Surah an-Nisai”.

Responses of other pro-waqf jurists to the above objections by which they brought out the misconceptions of both the provisions of the Quran and Hadith above that informed the objections have been well spelt out by Mohsin. According to her, other jurists believe that the context in which that verse was revealed “related merely to

the ancient Arab society's custom of setting aside certain camels and sheep and tabooing their slaughter".⁴⁷ Similarly, she notes further that, "some Muslim jurists clarified that this *hadith* refers to the practice of the people of pre-Islam who used to confine the money and the wives of a person who had died and that the Prophet (s.a.w) prohibited such practice".⁴⁸

With the objections to the legitimacy of waqf itself, one should not be surprised that juristic differences can be identified in some issues in waqf. Thus, having a look at some literatures where such juristic differences have been examined is worthwhile, especially in a bid to see how much of such differences have been discussed in relation to cash waqf.

History of the Institution of and Authorship on Waqf

While there is no divergence on the fact that the history of waqf is traceable to the time of the Prophet Muhammad (s.a.w), both in the legal theories and practices, there are different accounts on the very first property to be so instituted as waqf. Writers like Bello,⁴⁹ Pitchay *et al*,⁵⁰ identify the Qubaa Mosque as the first instituted waqf while others like Rashid (r.a.),⁵¹ Ali (r.a.),⁵² Hussain (r.a.),⁵³ believe that the property endowed by Caliph Umar following the instructions given to him by the Prophet marked the beginning of institution of waqf. In a total departure from these two views, Adfer *et al*, relying on Quran 3 verse 96,⁵⁴ contends that the first waqf to be ever instituted is the House of Allah, Ka'abah in Makkah.⁵⁵

It is clear from the above analysis that an understanding of the history of the institution of waqf can be better gained if looked from different point-views. This approach will also be helpful in gaining an understanding of other issues in waqf such as its meaning and legal basis. How the institution of waqf developed can also be appreciated through an insight into when authorship on the subject began.

As related by Bājjy, the history of authorship on waqf (*At-tasneef fi al-waqf*) dates back to the 3rd Century of Hijrah while the first author on the subject was Hilaal Bin Yahya Al-Hanafy Al-Basary and the book to be first so authored by him was named *Ahkām Al-*

Waqf.⁵⁶ Within the same 3rd Century of Hijrah, after the Hilaal's authorship, Ahmad Bin 'Umar al-Khassāf authored his book also known by the same name of *Ahkām Al-Waqf*.⁵⁷

Again, in the 5th Century of Hijrah, the book called *Al-Awqāf* was authored by Abu Muhammad 'Abdullahi Bin Al-Husian An-Nāsihiy and this was followed, in the 10th Century of the Hijrah, by the book of Ibraheem Bin Musa Al-Tarābalisy Al-Hanafy known as *Al-Is'āf fi Ahkām Al-Awqāf* which he provided commentaries on the earlier works on waqf as mentioned above.⁵⁸ All these earlier works were authored by jurists of the Hanafi School of Law and, expectably, their reasoning and interpretations were based on the views of that School.⁵⁹ Thus, from the Maliki School of Law, the first book authored specifically on waqf, other than its discussion as a portion in some other Maliki books, was the book written by As-Sheikh Yahya Bin Muhammad Al-Hattāb Al-Māliky entitled *Ahkām-ul-Waqf*.⁶⁰

In providing a general insight into the early classical Arabic books in which the principles of waqf were conceived, conceptualised and espoused, Hussain noted as follows:

A study of the early doctrines relating to wakf throws light on the development of its theory. The main sources for the early doctrines are the Mudawwana of Salmon (d. 240) in which he has collected the opinions of Malik (d. 179), of Ibn Qasim (d. 191) and of other early authorities of Medina; the Kitab Ahkām-al-Wakf Hilal (d. 125), which contains authentic information on the doctrines of Abu Hanifa (d. 150), Abu Yusuf (d. 182) and other early Iraqi authorities: the Kitab-al-Siyar-el-Kabir of Shaibani (d. 189). The latter deals mainly with the law of war but it also deals with an important aspect of wakf.

*The fourth is Kitab-al-Umm of Shafi'i (d. 204). In the doctrine of Malik as expounded in the Madawwana, contributions to the holy war, and habs fi sabil Allah, take an important place and both movable and immovable property could be dedicated. Shaibani also deals at length with contributions to the holy war in his Kitab-al-Siyar-el-Kabir.*⁶¹

From the foregoing, it is deducible that while the earlier accounts related by Bājjy on the history of authorship on waqf appear to remain accurate, the earlier book known as *Mudawwana* written by Salman seems to be the first book where the subject of waqf was espoused

within the Maliki School of Law. Also, the first book of note in which waqf was explained within the Shafi' School was authored by the founder of the School himself, Imam Shafi', and it is known as *Kitab-al-Umm*. It must however be mentioned that no account was gotten on the history of authorship on the subject within the Hanbali School, which is the fourth Sunni School of Law.

Juristic Differences in Waqf Discourse

Areas of juristic differences on the subject of waqf among the Islamic Schools of Law have also been discussed in much literature. The juristic differences centre basically on the permissibility of endowing movable or perishable property like "cash" as waqf; legality of temporary waqf devoid of the element of perpetuity;⁶² and arguments also exist on the modes of investing cash waqf without falling into the trap of *riba*.⁶³ Also, with regard to the structure and judicial framework of the waqf, early jurists also exhibited substantial divergences in their opinions.⁶⁴

A very useful insight was provided by Al-Jahny into the juristic differences that also exist on whether the grand children of a wāqif through his daughters would be allowed to benefit from the waqf endowed by the wāqif for his children or children of his children and his descendants in that regard.⁶⁵

General Discourse on Cash Waqf

There are many studies on various issues in Cash Waqf. Specifically, it is relevant to have a clear picture of the research works projecting and advancing cash waqf as the focus of the contemporary waqf scheme. Closely related to this is the need to appreciate discussions and analyses on cash waqf products and the concerns being expressed from different quarters on the challenge of enabling legal framework and legal environment in optimising the potentials of cash waqf and its models in many countries, especially those with mixed-legal systems like Nigeria. This segment therefore reviews relevant literature in that regard in showing clearly the significance of the problem the researches should set out to address in Nigeria and the contribution to make to waqf and cash waqf research generally.

Cash Waqf as the Focus of the Contemporary Waqf Scheme

Aside the juristic differences, a major concern of some writers is on the problem of lack of development and good governance of waqf. In this regard, Rashid⁶⁶ identified problems confronting waqf globally to include "less than honest conduct of waqf administrators";⁶⁷ "lack of longer term planning of development of waqf properties";⁶⁸ "no systematic survey of awqaf and its consequences";⁶⁹ and "state intervention in waqf management".⁷⁰ The search for means to develop idle waqf properties in the modern world has therefore eventually led the prominence given to cash waqf.

Cash waqf has been assertively described as "a new financial product"⁷¹ not because it is new as a form of waqf but because it is now gaining wider recognition and usages in the contemporary Islamic Finance Institutions and in funding many projects.⁷² Ismail and Possumah see waqf as an economic matter which has not been properly explored as it is "being left out as Policy Tools".⁷³ While recognising both *Baitul Mal* and Islamic Microfinance as the current transmission tools of waqf, these two co-authors made it clear that "Cash Waqf can be source of fund for Islamic microfinance from potential donors who want to donate their money to help the poor to venture into income generating activities".⁷⁴

As a major measure to properly utilise cash waqf in developing movable waqf and in advancing the practice of waqf generally, Sabit Mohammad, has advocated for the establishment of an Islamic Social (Waqf) Bank.⁷⁵ A careful consideration of the role and operational modalities of such Waqf Bank would leave no further doubts that cash waqf will be a driving force of the bank. As argued by him,

*The immediate benefit of this bank would be to enable waqf institutions to create wealth and have access to adequate liquid funds for financing the development of waqf properties, and to finance and participate in major socioeconomic projects.*⁷⁶

Issuance of Waqf Certificate to contributor/participant donor as evidence of his Cash Waqf as a mark of recognition to boost the morale of the participants has also been advocated for.⁷⁷ Practically, following the application of the principle of transformation of waqf

(*istibdal*), otherwise called “principle of migration of waqf assets” by Abdul Kader,⁷⁸ cash waqf has been recognised in many countries leading to “the introduction of concepts such as share waqf, corporate waqf and waqf bonds”.⁷⁹

Looking critically at waqf in history, Cizakca demonstrates the implications of waqf for modern Islamic economics disclosing particularly that “as far as the modernisation of the system is concerned, historical evidence indicates that the real existing potential lies in the cash waqf”.⁸⁰ With its modern focus on cash waqf, it is contended that waqf can be used to solve the problems of under-supply of conventional microfinance;⁸¹ eliminate *riba* (interest);⁸² and, create employment.⁸³ Going down memory lane, he was able to trace the earliest origins of the cash waqf to the eighth century.⁸⁴ While he noted a wide gap of knowledge on the happenings to cash waqf between the eighth and fifteenth centuries, he was able to recognise its re-emergence by the fifteenth century as it “had been approved by the Ottoman courts as early as the 15th century”.⁸⁵ Cizakca also argues that combining cash waqf with the Islamic banks would go a long way to address the challenge of “mismatch of funds” confronting the banks.⁸⁶

Through their book,⁸⁷ Iman and Mohammad have been able to show that cash waqf constitutes a modern method of financing waqf properties in such a way that it provides “full financing” as different from other methods that provide “partial financing”.⁸⁸ Their clarifications on the differences between cash waqf and *Saham* waqf significantly projects the latter as having real estate as its focus while the former must be maintained as “a liquid waqf”. As explained by them, cash waqf is to be perceived as a liquid waqf “because the real estate will not be the capital of the waqf, rather a commodity intended for liquidation”.⁸⁹

With the emphasis on the need for both traditional and contemporary modes of financing waqf to be combined for effective development of dormant waqf properties, with clear identification of the suitable and the unsuitable models, Sadique⁹⁰ has significantly exposed the significant role for cash waqf in such endeavours. This is because all the various modes of financing he identified and

recommended cannot be applied effectively as expected except in the form where a cash waqf scheme is involved. This cannot be otherwise since all these modes of financing are usually employed to raise funds “where the waqf is not in possession of sufficient funds for its upkeep and maintenance as well as for renovation and refurbishment”.⁹¹

The Need for Appreciation of Cash Waqf Models

While cash waqf investment can be researched, discussed and analysed generally without specific focus on a particular cash waqf model,⁹² implementation of cash waqf cannot be so generally studied and recommended to any country. There must be clarity on the fitting models for the relevant country.⁹³ Doing this is necessary because the legal framework or legal environment in a country may not be favourable to certain cash waqf models as against others.⁹⁴ This is a global reality and the case for Nigeria cannot be different. An insight into the trends of research on the matter of cash waqf models and the challenge of legal framework for waqf generally and cash waqf particularly would therefore aid better appreciation of the essence any modern research on waqf. The starting point on this is a clear picture of discussions of cash waqf models in the available literature.

There are many cash waqf models that can be adopted to achieve the targeted purposes in any society. Khademalhossein identified five common cash waqf models namely; “Waqf Share Model”, “Corporate Cash Waqf Model”, “Deposit Product Model”, “Waqf Mutual Fund Model”, and “Wakalah with Waqf Fund Model”.⁹⁵ Based on the findings of the studies conducted on the practices in jurisdictions like Malaysia, Singapore, Kuwait, Pakistan, UAE, etc., Mohsin identified nine models.⁹⁶ While all these models may be generally adopted for different purposes, certain models are being recommended for specific purposes. For instance, to finance education, Ab. Aziz, Johari and Yusof have recommended the “Bank Waqf Model”.⁹⁷

Looking at the variations in the different models of cash waqf being adopted nowadays across jurisdictions,⁹⁸ Cizakca has noted that other than the pure cash waqf as understood in the classical sense,

other models that look like cash waqf which can rather be better regarded as “quasi cash waqfs or mixed cash-real estate waqfs” now exist.⁹⁹

By adopting clear models, any cash waqf established in any country can be clearly classified and properly managed. Again, the framework within which a particular cash waqf scheme is created greatly matters in the choice of the models. Thus, if the corporate cash waqf model would be adopted, one may consider establishing the cash waqf within the frameworks of an Islamic bank, *mudaraba* companies or direct endowment of incorporated joint stock company shares.¹⁰⁰ As waqf generally looks more closely similar to non-profit enterprises, it becomes necessary to clarify how establishing the corporate cash waqf model within frameworks like Islamic bank and other similar profit oriented companies can be allowed under the existing laws in Nigeria. This has not been addressed in any works on cash waqf models as this work sets out to accomplish.

Law and Regulation Issues

Both for waqf generally and cash waqf particularly, the challenge of integration of the waqf schemes into the legal framework of any country has been a major focus of some research works. This seemingly global impediment to waqf has prompted Daffterdar to propose a Model Waqf Law with possible adaptation to the specific needs of any country.¹⁰¹ He noted that for waqf to grow in any society, “the regulatory environment should be conducive to stimulate the sector”.¹⁰² His approach was however too general to be specifically relevant to Nigeria.

After demonstrating the inadequacies in the waqf legal framework in Malaysia, Tahir Sabit proposes a new comprehensive waqf law for the country. By such new law, legal personality is to be accorded to waqf while the management activities are vested in the relevant waqf Corporation.

For Nigeria, the challenge of the appropriate legal framework for waqf has not been featuring in many research works on waqf. This is not because the problem is not there in the country, but rather because much of the studies have not been approached from the

legal perspectives. Oseni however broke the ice when he explored possibilities for achieving effective legal regulation of waqf in the country.¹⁰³ His line of arguments did not however tailor towards the desired legal framework for cash waqf models.

In some other works where a particular model of cash waqf has even been analysed and demonstrated as viable, the feasibility of such scheme within the particular legal framework of a country always stands difficult to assert. Thus, after advancing an impressive argument for the establishment of Waqf Bank, Sabit Haji Mohammad was merely able to suggest various legal possibilities for the Bank to operate in various countries. On a general note, he assumes that “a waqf bank can be established and then be operated under the current legal framework, if any, of a given country, provided that it has standard companies and banking laws for its registration and licensing”.¹⁰⁴ However, on a more closed observation, he goes ahead to rather further presume that the scheme for such bank is meant to be designed for could also be achieved as a Cooperative Society, depending on the permissions under the relevant legal framework. This also shows the significance of this study.

Scholarship on Waqf and Cash Waqf in Nigeria

As the proposed research specifically focuses on Nigeria, it is appropriate for the relevant literature on waqf and cash waqf in the country to be reviewed in justifying that this research is worthwhile. This is the focus of this segment of the literature review.

History of Waqf in Nigeria

A number of research works have been authored and published in relation to Nigeria on the subject of waqf generally¹⁰⁵ and on cash waqf in particular.¹⁰⁶ Research findings have revealed that the origin of the waqf institution in the country dates back to the pre-colonial era when such institutions like mosques had been well established and managed.¹⁰⁷ A rational justification to accept this account as correct is the simple fact that Islam also dates back to the pre-colonial era and waqf culture could be said to have been received along side with the Islamic law and practices.¹⁰⁸

While the first waqf to be instituted in some other parts of the world may be particularly identifiable with clearly traceable dates for their inaugurations,¹⁰⁹ the situation in Nigeria may be difficult to be accounted for with specificity. This may however not make the claim made by Olasupo to be correct in his belief that “in the whole of black Africa, South Africa is the only country known to be practicing Awqāf institution”.¹¹⁰ Absence of standardised regulatory framework for waqf in Nigeria cannot in all senses justify ruling out the practice of Awqāf institutions at any time in the country until 2007 as claimed by Olasupo. It can rather only be agreeable that there is need for better legal regulation for the administration and management of waqf in the country.¹¹¹

Yusuff *et al*¹¹² have noted that the approach to the development of waqf in the country was initially basically individualistic, private and personal until 1990s when revival of Shari’ah gained prominence with some northern states declaring Islamic law as the official source of their laws.¹¹³ This therefore makes Volume 6 of a book edited by Ostien¹¹⁴ to be relevant as a useful material which provides some significant insight into the documentary materials on “Zakat and Endowments Boards and Committees” in some states in the Northern Nigeria where scheme of “cash waqf” is being explored, but implemented as “endowments”, to raise fund to provide basic needs for the masses.¹¹⁵ However, by its contents and findings, the book, in all its volumes, merely “collected the historical and contemporary documents relating to the administration of Islamic law in northern Nigeria”¹¹⁶ and gives easy access to some relevant laws on endowment administration in those northern states. It does not however present any research study or finding on cash waqf. At best, the material is “a very rich and useful sourcebook for official documents”¹¹⁷ on zakat and endowments boards and committees.

Lessons for Nigeria from Other Jurisdictions on Waqf Practices

In search for best practices that could be adapted to bring about improved legal and regulatory framework for waqf administration in Nigeria, Mahadi *et al* advocated for lessons to be drawn from the system in Kuwait.¹¹⁸ However, even though their paper tries to analyse

the system in Kuwait in some details, it fails to critically demonstrate why and how similar arrangements could be suitably made in Nigeria. More significantly, the paper did not make any finding on cash waqf and this makes it unhelpful in addressing the issues of focus in this research. A more astonishing lacunae of the paper, which this study will fill up, is that the waqf administration system in Kuwait which it tended to recommend for Nigeria is the cash waqf model and no discussion is made on how such model can be accommodated within the existing legal regime in Nigeria.

Waqf Studies in the Nigerian Educational Curriculum

Interestingly, the preference being given to the Maliki School of Islamic Law in the administration of Islamic justice in Nigeria¹¹⁹ may turn out to eventually be a blessing in disguise in finding a strong Islamic legal basis for implementation of cash waqf in the country. The curriculum being used for the study of waqf in some institutions do not however properly project this position of the Maliki on waqf of moveable property. This may hamper necessary support for cash waqf as founded in the applicable Islamic law school in the country.

Consequently, for instance, students of the National Open University of Nigeria (NOUN)¹²⁰ are being taught to believe that “it is not permissible to use perishable items as waqf items: thus money, dirhams, food, drinks, cannot be use as waqf”.¹²¹ With this line of education, products of such training may constitute negative voices, though erroneously unknown to themselves, against advancement of cash waqf. Therefore, this research would provide the necessary clarification on the legality of cash waqf under the Shari’ah and the conventional law in Nigeria¹²² and thereby correct this wrong knowledge and prevent its further propagation in any quarters.

Cash Waqf through Cash Contributions

Attempts at implementing waqf through “cash contributions” can be noted with some Muslim organisations and individuals and the practice seems to be on increase,¹²³ even though what they do does not so clearly seem to be “cash waqf” while the scheme is also not so

termed as “cash waqf”. Again, even though such schemes involve cash in promoting certain schemes that appear to be waqf,¹²⁴ the approach and method of utilising the funds raised would make it difficult for such schemes to properly qualify as “cash waqf”. Even where they invest the cash at all, there is also a serious question on their proper investment in the various products juristically recognised by the Muslim jurists for cash waqf investment.¹²⁵ Through this study therefore, the legal status of waqf schemes involving cash donation or contribution in practice in the country would be clarified.

A typical account on a waqf through a cash scheme was given by Olasupo in respect of Awqāf scheme at the Obafemi Awolowo University Ile-Ife (OAU)¹²⁶ among its Muslim Community.¹²⁷ With its specific focus on the OAU Muslim community, the limitation of Olasupo’s research however becomes manifest. Again, the paper did not concern itself with the legality and validity of the sort of “waqf cash”/“cash waqf” being institutionalised by the Muslim Community.

Therefore, the legal implication of the cash being collected as waqf by the OAU Muslim community can be easily appraised through the expected findings in this research. This may drive this study into arriving at the findings that “whereas every cash waqf involves cash contributions/donations, every waqf that involves cash contributions/donations is not cash waqf”.¹²⁸ Along this thought, a jurisprudential proposition may arise in further advocating for the possibility of “waqf cash” as different from “cash waqf”.¹²⁹

Case Studies on Specific Waqf Schemes

Some literatures can be noted with specific appraisal studies on some waqf case studies or other similar poverty alleviation schemes in particular communities, organisations or cities in the country. Such other studies also examine the potentials of waqf or cash waqf to community development. To start with, in their paper, Adepoju and Oyesanya, undertakes “a critical analysis of poverty alleviation strategies of *Al-Hayat* Relief Foundation in Nigeria”.¹³⁰ This Relief Foundation was formed in 1997 as an NGO with objectives that include activities “to carry out welfare services on members”.¹³¹ Although the Foundation also has a form of Zakat and Sadaqah

strategy, it is not yet involved in cash waqf towards realising its objectives. It is therefore not surprising that the authors recommended that;

*The Zakat and Sadaqah Committee should research into the feasibility of incorporating Waqf (Endowment) into its objectives and programmes as Zakat, Sadaqah and Waqf have almost become powerful financial instrument in the Islamic Financial practice globally.*¹³²

Similarly, Nuruddeen specifically studies the use of waqf in raising funds for community development projects in Kano City.¹³³ From the findings of his study, it became manifest that “Islamic philanthropic endowments, especially for the provision of socio-economic facilities, are scarce in Kano metropolis”. After expressing some worries about the unexpected revelation from his research finding on the scarcity of waqf for community development in the City, he concluded that “awareness-creation campaigns and education, through collaborative endeavours, are essential in promoting the setting up of *Awqāf*”.¹³⁴

In the same trend, Abdul Yekeen *et al*, looking at the factors of attraction for the establishment of Waqf in Ilorin Emirate Economy, they identified and explained rented resources that can be employed; rational for the establishment of waqf in the emirate; riddles to establishment of waqf in that city and the remedies to the riddles; rewards for establishing the waqf and the residuum of the waqf. They refer to all these factors as the “Six-Rs of establishing a waqf in Ilorin emirate economy”.¹³⁵

Waqf from Legal and Human Rights Perspectives

From the human rights perspectives, but still with specific focus on a particular case study, Abdulraheem *et al*, have advocated for exploration of zakat and waqf for protection of the right of children to basic education and health in Northern Nigeria through institutionalization of the two schemes.¹³⁶

As a major material that approached its discussions on waqf in Nigeria from the legal purview with efforts to proffer some legal recommendation, Oseni,¹³⁷ in his paper¹³⁸ provides some useful information on the legal challenges confronting administration and

management of waqf in the country. However, as informative as the paper is, the legal issues in the implementation of cash waqf models were neither raised nor addressed in it.

As far back as 1944, the Nigerian courts have been involved in the resolution of disputes relating to waqf in one way or the other. Notably is resolution of disputes on administration of Mosque such as disputes over appointment of the Imam. In this respect, reference must be made to the case of *Odebode v. Ashaka*¹³⁹ which appears to be the first notable case on the issue. This case laid down the principle that, “the election into the post of a Chief Imam depended upon the vote of a Moslem community taken unanimously or by a majority”.¹⁴⁰

Soon after the rule was thus laid down, the principle was applied in the case of *Asani v. Adeosun*,¹⁴¹ where the Supreme Court held that, since either of the contestants for the post of a Chief Imam had a majority in his favour, none of them was entitled to act as Chief Imam in the absence of a unanimous or majority vote in his favour.¹⁴² This principle has therefore remained the law up till today.¹⁴³ It must be noted that these cases were decided by the High Court at the trial level. The implication of this for cash waqf is that it also has a lot of judicial issues to grapple with in the area of resolution of disputes that may arise in the course of transactions involving it.

To appreciate the challenge of judicial crisis which cash waqf disputes would need to grapple with if it is not timely addressed as proposed to be done in this research, one would need to realise the continuing search for the appropriate courts with jurisdiction for resolution of Islamic banking and finance disputes in the country undertaken by some researchers.

In his recent dissertation submitted for the degree of Masters in Law (LLM), Orisankoko did an extensive appraisal study on the “Courts with Jurisdiction in Islamic Banking and Finance Cases in Nigeria”.¹⁴⁴ Through his study, he has been able to show that even though some courts may appear to have jurisdiction in Islamic banking and finance cases, “it appears that these courts may not be able to effectively do justice to the causes of Islamic banking and finance”.¹⁴⁵ This finding is also true of the cash waqf disputes. Thus, since his work did not give any consideration to the jurisdictional

situations on cash waqf disputes, there still exists a very notable lacuna to fill in that regard and a significant contribution to make to knowledge on administration of justice in Islamic law cases in Nigeria.

By the extant constitutional provisions,¹⁴⁶ waqf in any form or mode, including cash waqf, is a subject of the Islamic personal law¹⁴⁷ and as such the Shari’ah Court of Appeal is vested with jurisdiction to adjudicate on appeals on any case relating to it as a subject matter of its jurisdiction.¹⁴⁸ Through the constitutional history, recognition of “wakf” in a constitutional document in the country is traceable to the provisions of the *Constitution of the Northern Nigeria* wherein it is listed as a “question relating to Moslem matters”.¹⁴⁹ Waqf has therefore continued to be recognised in the subsequent Nigerian Constitutions as a subject of Islamic personal law upon which the Shari’ah Court of Appeal has jurisdiction.¹⁵⁰

Many studies certainly abound on the issue of administration of Islamic law and justice in Nigeria, a subject that also covers cash waqf disputes. However, none of them has examined the issues from the purview of waqf disputes generally and cash waqf in particular. Notably, Oba has severally analysed issues of the continuing crisis of jurisdiction faced by the Shari’ah Court of Appeal;¹⁵¹ provided “An Ideological Discourse and Literature Review on Islamic Law in the Nigerian Legal System”;¹⁵² critically appraised “Lawyers, Legal Education and Shari’a Courts in Nigeria”;¹⁵³ and as well specifically examined “The Judicial Machinery for Administration of Islamic Law in Northern Nigeria with Particular Reference to Kwara and Sokoto States”.¹⁵⁴

It is needless to note that as intensive as these works are on the subject of administration of Islamic law and justice, they do not address any issue of cash waqf. This therefore makes further study necessary on cash waqf and administration of justice in the country.

In assessing the extent to which Alternative Dispute Resolution mechanisms (ADR) can be accommodated in the practice and procedure of the Shari’ah Court of Appeal in Nigeria, given the existing legal framework and comparatively studied with what operate in Malaysia and Singapore, Oseni,¹⁵⁵ made “a humble effort to

introduce major reforms to the *modus operandi* of the resolution of dispute in the Shari'ah Courts in the three countries".¹⁵⁶ Even though the reforms he proposed on the *modus operandi* of the Shari'ah Courts in Nigeria may in a way relate to waqf/cash waqf disputes as a subject matter of the Islamic personal law, the scope and findings of his research did not extend to jurisdictional crisis in the resolution of cash waqf disputes. This also creates a lacuna in that area.

A significant notable focus of the majority of the research works on waqf and cash waqf in relation to Nigeria as reviewed above is that, the works have been targeted at bringing out how the schemes can be employed in addressing the challenge of poverty in the country. They mostly did not concern themselves with the state of the legal environment for its implementation in the country as this research undertakes. None of the past research works demonstrated the cash waqf model that is viable for implementation under the existing laws. This is the lacuna to be filled.

From the literature reviewed above, it is clear that there is a big lacuna on the viability of cash waqf under the existing laws in Nigeria. Not only has the problem of lack of clarity on this issue not been identified and addressed in any of the available waqf scholarship, none of the identified literature discusses anything on the position of cash waqf under the Nigerian law. It therefore follows that, there are needs for findings to be made on this issue in contributing to the field of knowledge on waqf generally both within and outside Nigeria and particularly to the legal environment for cash waqf in the country.

CONCLUSION

There are plenty of literatures on creation and administration of cash waqf; but they are scarce in the context of Nigeria. However, they can be beneficial in developing a legal framework within the constitution of Nigeria, so that along with other poverty alleviation tools, cash waqf could also play its positive role. In order to develop a viable legal and institution framework, the literature on cash waqf, especially of Malaysia and Kuwait can be helpful.

Notes

1. Magda Ismail Abdel Mohsin, "Giving Back: Cash Waqf in Malaysia", *www.islamica-net.com* (accessed January 10, 2016); Amirul Faiz Osman, "Determinants of Cash Waqf Giving in Malaysia: Survey of Selected Works", (nd).
2. Abdul Kabeer Ballo Adelani, *Al-Waqf Naqdy Wa Istithmaruhu Fi Malaysia: Khutot Mukhtarihab Li-Tetibiqihi Fi Nigeria (Cash Waqf and Its Investment in Malaysia: A Proposal for Its Implementation in Nigeria)*, PhD Thesis, Ahmad Ibrahim Kuliyah of Laws, International Islamic University Malaysia, 2014.
3. See for instance, Yusuff Jelili Amuda and Ahmad Hidayat Bin Buang, "Mixed Methods on the Commercialization of Cash Waqf in Nigeria: An Analysis of Its Implementation", *IOSR Journal of Economic and Finance (IOSR-JEF)*, Volume 6, Issue 3, Ver. II (May-June, 2015) pp. 90-97.
4. For example, see Sharia Penal Code of Zamfara State.
5. This implies that the law and its principles are applied with references to the *fiqh* books with preference for those based on the Maliki School of law.
6. The subjects of the Islamic Personal Law in Nigeria are: questions relating to, i) marriage concluded in accordance with Islamic law; ii) validity or resolution of such marriage; iii) questions depending on such marriage and family relationship or the foundling or guardianship of an infant; iv) a wakf, gift, will or succession where the endower, donor, testator or deceased person is a Muslim; v) regarding an infant, prodigal or person of unsound mind who is a Muslim or the maintenance or the guardianship of a Muslim who is physically or mentally infirm.
7. Its full title is *1999 Constitution of the Federal Republic of Nigeria, CAP C, Laws of the Federation (LFN) of Nigeria, 2004*.
8. There are variations in the transliteration, writing and pronunciation of waqf in different jurisdictions. This is the format used in the Nigerian 1999 Constitution. However, the standard transliteration is to write it as "waqf (w-a-q-f)".
9. See sections 262 (2) (c); and 277 (2) (c) of the 1999 Constitution.
10. The reason for this is that since the court is not granted jurisdiction in the waqf made by Non-Muslims, it may imply that no legal recognition

is given to the Non-Muslim Endowed waqf. In the specific sense of the Nigerian Constitution, a waqif (waqf proprietor) is referred to “endower” and not “donor”. See sections 262 (2) (c) and 276 (2) (c) of the 1999 Constitution.

11. Cengiz Toraman, Bedriye Tuncsiper, and Sinan Yilmaz, “Cash Awqaf in the Ottomans as Philanthropic Foundations and Their Accounting Practices,” in *5th Accounting History International Conference, Banff, Canada*, 2007, 9–11.
12. Umar A Oseni, “Awqaf Arbitration: Towards a Sustainable Dispute Resolution Mechanism for Waqf Disputes in OIC Countries” (Kualar Lumpur: ICWR, 2015).
13. See Chapter IV of the Research for details.
14. See Chapter IV of this study for details.
15. Different disputes have different dispute resolution mechanisms and dispute resolution institutions relevant to them. This is where the questions of jurisdiction of courts and tribunals as well as arbitrability of certain matters do arise.
16. Umar A Oseni, “The Legal Framework for Alternative Dispute Resolution in Courts with Shariah Jurisdiction in Nigeria, Malaysia and Singapore,” *Unpublished Doctoral Dissertation, International Islamic University Malaysia, Kuala Lumpur* 2011.
17. Section 275 of the *Constitution of the Federal Republic of Nigeria 1999* (Nigeria: Federal Government Press, 1999).
18. Nigeria is a Federation of 36 States and a Federal Capital Territory.
19. Abdullahi Saliu Ishola, “Interpreting the Phrase “any State That Desires It (i.e. Sharia Court of Appeal) in Section 275 of the Nigerian Constitution: Human Rights Issues for Reflection and Reform,” in *Presentation Made at the Conference Organised during Biennial Law Week of the Nigeria Bar Association, Ilorin Branch* (Kwara State Sharia Court of Appeal, Ilorin - Nigeria, 2014).
20. Sections 262 (2) (c) and 276 (2) (c) of the 1999 Constitutions.
21. The Sharia Court of Appeal only has jurisdiction in waqf disputes where the endower is a Muslim. Sections 262 (2) (c) and 276 (2) (c) of the 1999 Constitution.
22. On this, see Mohd Tahir Sabit, “Contemporary Proposed Modes of Financing for the Development of Waqf Properties” (Presentation made

at the Monthly Talk Series of the International Centre for Waqf Research, Ahmad Ibrahim Kuliyah of Laws, International Islamic University Malaysia, 30th January, 2015).

23. Toraman, Tuncsiper, and Yilmaz, “Cash Awqaf in the Ottomans as Philanthropic Foundations and Their Accounting Practices.”; Magda Ismail Abdel Mohsin, “Financing Through Cash-Waqf: A Revitalization to Finance Different Needs”, *International Journal of Islamic and Middle Eastern Finance and Management* Vol. 6 No. 4, 2013, pp. 304-321
24. Magda Ismail Abdel Mohsin, “Corporate Waqf as a Vehicle for Waqf Development” June, 2015.
25. CAP C14, Laws of the Federation of Nigeria (LFN), 2004.
26. Section 251 (e) of the 1999 Constitution.
27. See Item 30 of the Exclusive Legislative List in Part I, Second Schedule to the 1999 Constitution: “Incorporation, regulation and winding up of bodies corporate, other than co-operative societies, local government councils and bodies corporate established directly by any Law enacted by a House of Assembly of a State”.
28. See Second Schedule to the 1999 Constitution.
29. Legislative powers in Nigeria are divided into three namely; Exclusive, Concurrent and Residual Legislative Powers. Exclusive Legislative Power is exercised by the Federal Legislature called the National Assembly (section 4 (1) of the 1999 Constitution) and as such items under the Exclusive Legislative List in Part I, Second Schedule to the Constitution can only be legislated upon by the National Assembly (section). However, both the National Assembly and the State Legislature (the State House of Assembly) share legislative powers on items under the Concurrent Legislative List in Part II, Second Schedule with some limitations to the aspect of each item assigned to either of the Legislatures: [Section 318 of the Constitution: “Concurrent Legislative List” means the list of matters set out in the first column in Part 11 of the second schedule to this constitution with respect to which the National Assembly and a House of Assembly may make laws to the extent prescribed, respectively, opposite thereto in the second column thereof]. For detailed analysis on these, see J.O. Arowosegbe, “Techniques for Division of Legislative Powers under Federal Constitutions” *Journal of Law, Policy and Globalization* Vol.29,

- 2014, pp. 127-134; available at www.iiste.org; ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online).
30. IRTI, "Islamic Social Finance Reports", 15 June, 2015.
 31. The relevant materials consulted and used in this research are however restricted to those in Arabic or English.
 32. Abdulkādir Bājy, *Abkām-Ul-Waqfi – Al-Imam Yahya Bin Muhammad Bin Myhammad Al-Hattāb Al-Māleeky* (Beirut: Dār Ibn Hazm, 2009), 26.
 33. Umar A. Oseni, "Towards the Effective Legal Regulation of Waqf in Nigeria: Problems and Prospects," in *Waqf Law & Management with Special Reference to Malaysia*, ed. Syed Khalid Rashid and Arif Hassan, First (New Delhi: Institute of Objective Studies, 2013), 340.
 34. Sharifah Zubaidah Syed Abdul Kader, "Trust, Foundation and Waqf Development: Emerging of Established Traditions" (Moscow: International Conference on Waqf, Trust and Endowment, 2015), 8.
 35. Siraj Sait and Hilary Lim, *Land, Law Islam – Property & Human Rights in the Muslim World* (London and New York: UN-HABITAT, Zed Books, 2006).
 36. Waleed Ramadan Abdultawāb, *Al-Waqf Shar'ā Waqānuun*, Third Edition (Cairo: Dār Shād, 2011) Volume 1, p. 18.
 37. Siraj Sait and Hilary Lim, *Land, Law Islam – Property & Human Rights in the Muslim World* (London and New York: UN-HABITAT, Zed Books, 2006) p. 151.
 38. Siraj and Hilary, *ibid*, p. 151;
 39. For a study on the sources of the Shari'ah, see 'Abdur Rahmani. Doi, *Shari'ah: The Islamic Law* (Kuala Lumpur: A.S. Noordeen, 2007) pp. 21-85.
 40. Athar Husain, *Muslim Personal Law: An Exposition*, "Wakf" available at <http://muslimcanada.org/muspersonallaw13.html> (accessed on 16-1-2016); Siraj and Hilary, *Land, Law and Islam*, p. 148.
 41. Murat Cizakca, "Waqf in History and Its Implications for Modern Islamic Economies", in Monzer Kahf and Siti Mashitoh Mahamood (ed.), *Essential Readings in Contemporary Waqf Issues* (Kuala Lumpur, Malaysia: CERT Publications Sdn. Bhd., 2011) pp. 3-44 at p. 11.

42. These include Q51:19; 2: 215; 3: 92; and 2: 177.
43. Siraj and Hilary, *Land, Law and Islam*, p.148; Amy Singer, *Charity in Islamic Societies* (Cambridge: Cambridge University Press, 2008) p. 95.
44. Murat Cizakca, "Waqf in History and Its Implications for Modern Islamic Economies", p. 12.
45. These are Abdull b. Mas'ud, Abdullah b. 'Abbas and qadi Shurai. See For the general differences in this regard, see Magda Abdel Mohsin, *Cash Waqf: A New Financial Product* (Kuala Lumpur: Prentice Hall, Pearson Malaysia Sdn. Bhd., 2009), p. 9.
46. Magda Abdel Mohsin, *Cash Waqf: A New Financial Product* (Kuala Lumpur: Prentice Hall, Pearson Malaysia Sdn. Bhd., 2009), pp. 9-10.
47. Mohsin, *Cash Waqf: A New Financial Product*, 10.
48. *Ibid*.
49. Dogarawa Ahmad Bello, "Poverty Alleviation Through Zakah and Waqf Institutions: A Case for the Muslim Ummah in Ghana" (Munich Personal RePEc Archive, 2009) available at https://mpra.ub.uni-muenchen.de/23191/1/Poverty_Alleviation_through_Zakah_and_Waqf_Institutions-A_Case_for_the_Muslim_Ummah_in_Ghana.pdf (accessed on 16-1-2016) p. 10: "In the history of Islam, the first known Waqf is the mosque of Qubaa in Madinah, which was built upon the arrival of the Prophet (Peace and blessing of Allah be upon him) followed by the purchase of the land and construction of the mosque, known today as the Prophet's mosque".
50. Anwar Allah Pitchay, Ahamed Kameel Mydin Meera and Muhammad Yusuf Saleem, "Priority of Waqf Development among Malaysian Cash Waqf Donors: An AHP Approach", (2014) *Journal of Islamic Finance*, Vol. 3 No. 1, pp. 013-022 at p.
51. Syed Khalid Rashid, "Measures for the Better Management of *Awqaf*" (2012) *IIUMLJ*, pp. 103-137 at p.105.
52. Ariffhidayat Ali, "Waqf Continued Relevance as the Third Sector in Terms of Mobilizing Resources for Productive Use in an Islamic Economic System" (INCEIF, the Global University in Islamic Finance, 2009) p. 9.
53. Athar Husain, *Muslim Personal Law: An Exposition*, "Wakf".

54. *Surah Aal-Imran* (Q3): 96.
55. Adfer Rashid Sha and Mohammed Basheer, "Understanding the Efficacy of Waqf Education in India: A Sociological Perspective" in Kanishka Badi *et al* (ed.), *Promoting Peace, Harmony & Development through Education in Indian Ocean Region - Indian Ocean Comparative Education Society 4th Conference* (Begalore, Kamataka, India: St. Joseph's College, 2015) pp.24- 35 at p. 25: "Muslim jurists argue that the first waqf ever is the sacred building of Ka'bah in Makkah since the Qur'an mention that it is the first house of worship set for people (3:96)".
56. Abdulqādir Bāji, *Ahkām-ul-waqfi – Al-Imam Yahya Bin Muhammad Bin Myhammad Al-Hattāb Al-Māleeki*, pp. 26-27.
57. Abdulqādir Bāji, *Ahkām-ul-waqfi – Al-Imam Yahya Bin Muhammad Bin Myhammad Al-Hattāb Al-Māleeki*, p. 27.
58. Abdulqādir Bāji, *Ahkām-ul-waqfi – Al-Imam Yahya Bin Muhammad Bin Myhammad Al-Hattāb Al-Māleeki*, p. 27.
59. Abdulqādir Bāji, *Ahkām-ul-waqfi – Al-Imam Yahya Bin Muhammad Bin Myhammad Al-Hattāb Al-Māleeki*, p. 27.
60. Abdulqādir Bāji, *Ahkām-ul-waqfi – Al-Imam Yahya Bin Muhammad Bin Myhammad Al-Hattāb Al-Māleeki*, p. 27.
61. Athar Husain, *Muslim Personal Law: An Exposition*, "Wakf" available at <http://muslimcanada.org/muspersonallaw13.html> (accessed on 16-1-2016).
62. For the general differences in this regard, see Magda Abdel Mohsin, *Cash Waqf: A New Financial Product* (Kuala Lumpur: Prentice Hall, Pearson Malaysia Sdn. Bhd., 2009), pp. 7-9.
63. For the potentials of waqf in elimination of *riba*, see Murat Cizakca, "Waqf in History and Its Implications for Modern Islamic Economies", in Monzer Kahf and Siti Mashitoh Mahamood (ed.), *Essential Readings in Contemporary Waqf Issues* (Kuala Lumpur, Malaysia: CERT Publications Sdn. Bhd., 2011) pp. 3-44 at pp. 5-6.
64. Murat Cizakca, "Waqf in History and Its Implications for Modern Islamic Economies", p. 12.
65. Ahmad Bin Muhammad Ar-Rufā'iy Al-Jahny, *Al-Ikhtiyārāt Al-Fiqhiyyah Li-Ibn Hāmid* (Madinah: 1427H) pp. 807-817.

66. Syed Khalid Rashid, "Factors Affecting the Development and Good Governance of Awqaf", (2014) *International Conference on Waqf Management: Turkish Experience, 18-20 June, 2014, Istanbul*
67. Syed Khalid Rashid, "Factors Affecting the Development and Good Governance of Awqaf", pp. 2-4.
68. Syed Khalid Rashid, "Factors Affecting the Development and Good Governance of Awqaf", pp. 4-6.
69. Syed Khalid Rashid, "Factors Affecting the Development and Good Governance of Awqaf", pp. 6-8.
70. Syed Khalid Rashid, "Factors Affecting the Development and Good Governance of Awqaf", pp. 8-10.
71. Mohsin, *Cash Waqf: A New Financial Product*.
72. For instance, on how waqf can be explored in proper planning for estate upon retirement, see Amir Bahari, *Islamic Estate, Retirement and Waqf Planning*, First Edit (Kuala Lumpur, Malaysia: IBFIM, 2014).
73. Abdul Gafar Ismail and Bayu Taufiq Possumah, "Waqf as Economic Matters but Being Left Out as Policy Tools", *IRTI Working Paper Series, December, 2014*.
74. Ismail and Possumah, "Waqf as Economic Matters but Being Left Out as Policy Tools", p. 8.
75. Mohammad Tahir Sabit Haji Mohammad, "Theoretical and Trustees' Perspectives on the Establishment of An Islamic Social (WAQF) Bank" (2015) *Humanomics*, Vol. 31 Iss 1 pp. 40.
76. Mohammad, "Theoretical and Trustees' Perspectives on the Establishment of An Islamic Social (WAQF) Bank", *ibid*, p. 1.
77. Details would be provided on this in subsequent chapters.
78. Kader, "Trust, Foundation and Waqf Development: Emerging of Established Traditions," 8.
79. Syed Khalid Rashid, "Factors Affecting the Development and Good Governance of Awqaf", p. 8.
80. Murat Cizakca, "Waqf in History and Its Implications for Modern Islamic Economies", 'Abstract' p. 3.
81. Murat Cizakca, "Waqf in History and Its Implications for Modern Islamic Economies", p. 6.

82. Murat Cizakca, "Waqf in History and Its Implications for Modern Islamic Economies", pp. 5-6.
83. Murat Cizakca, "Waqf in History and Its Implications for Modern Islamic Economies", p. 9.
84. Murat Cizakca, "Waqf in History and Its Implications for Modern Islamic Economies", p. 18.
85. Murat Cizakca, "Waqf in History and Its Implications for Modern Islamic Economies", p. 19.
86. Murat Cizakca, "Waqf in History and Its Implications for Modern Islamic Economies", p. 29.
87. Abdul Hamid Mar Iman and Mohammad Tahir Sabit Mohammad, *Waqf Property: Concept, Management, Development and Financing* (Malaysia: UTM Press, 2014).
88. Iman and Mohammad, *Waqf Property: Concept, Management, Development and Financing*, p. 224.
89. Iman and Mohammad, *Waqf Property: Concept, Management, Development and Financing*, p. 225.
90. Muhammad Abdurrahman Sadique, "Development of Dormant Waqf Properties: Application of Traditional and Contemporary Modes of Financing", (2010) *18 IIULJ*, pp. 75-102.
91. Sadique, "Development of Dormant Waqf Properties: Application of Traditional and Contemporary Modes of Financing", p. 78.
92. This general approach was adopted by Adelani in his recent PhD research thesis submitted to International Islamic University Malaysia in 2014: 'Abdul Kabeer Ballo Adelani, "Al-Waqf N-Naqdy Wa-Istithmaruhu Fi Malaysia: Khutot Muqtarhah Li Tatbeeqihi Fi Nigeria" (International Islamic University Malaysia, 2014).
93. Looking at the Nigerian environment critically, one is tempted to even propose a new cash waqf model or a hybrid of ordinary waqf and cash waqf to be known as "waqf cash". Analysis of the conception of this would be done at the appropriate stage of the research.
94. In this regard Cizackca was wondering whether to call the cash waqf practice in Malaysia as a "modern cash waqf" when compared with the practice in Turkey: Cizakca, *A History of Philanthropic Foundations: The Islamic World from the Seventh Century to the Present*, 66-67.

95. Majid Khademolhoseini, "Cash-Waqf A New Financial Instrument For Financing Issues: An Analysis of Structure and Islamic Justification of Its Commercialization," *Imam Sadiq University*, 2008.
96. Mohsin, *Cash Waqf: A New Financial Product*, 47.
97. Two different models of the Bank Waqf Model have also been recommended for this purpose. See, Aziz, Johari, and Yusof, "Cash Waqf Models for Financing in Education."
98. These include Turkey, Iran, Egypt, Sudan, India, Pakistan, Bangladesh, Malaysia and Singapore: Murat Cizakca, "Incorporated Cash Waqfs and Mudaraba, Islamic Non-Bank Financial Instruments from the Past to the Future," 2004, 3.
99. *Ibid.*, 2-3.
100. *Ibid.*, 9.
101. Hisham Dafterdar, "Towards Effective Legal Regulation and Enabling Environment for *Awqaf*" in Syed Khalid Rashid and Arif Hassan, *Waqf Laws & Management (With Special Reference to Malaysia)*, (New Delhi: Institute of Objective Studies, First Edition, 2013) pp. 29-46.
102. *Ibid* p. 35
103. Oseni, "Towards the Effective Legal Regulation of Waqf in Nigeria: Problems and Prospects."
104. Mohammad Tahir Sabit Haji Mohammad, "Theoretical and Trustees' Perspectives on the Establishment of an Islamic Social (WAQF) Bank", (2015) *Humanomics*, Vol. 3 Iss 1 pp. 1-40, p. 13.
105. Such works include: Adam Muhammad Abubakar, "Towards an Effective Investment in Waqf Properties in Nigeria", *Proceedings of the International Conference on Masjid, Zakat and Waqf (IMAF 2014)*, 1-2 December, 2014, Kuala Lumpur, Malaysia, pp. 115-122; Yusuff Jelili Amuda, "Empowerment of Nigerian Muslim Households through Waqf, Zakat, Sadaqat and Public Funding", *International Journal of Trade, Economic and Finance*, Vol. 4, No. 6, December 2013, pp. 419-424; T. A. Abdurraheem, H. F. Ahmad and M. K. Imam-Tamim, "Protecting the Children's Right to Basic Education and Health in Northern Nigeria: Exploring Institutionalization of Zakat and Waqf as a Viable Option", *Al-Hikmah Journal of Education*, Volume 2 No. 1 June, 2015, pp. 249-258;

106. These include:; Yusuff Jelili Amuda and Ahmad Hidayat Bin Buang, "Mixed Methods on the Commercialization of Cash Waqf in Nigeria: An Analysis of Its Implementation", (May-Jun. 2015) *IOSR Journal of Economics and Finance (IOSR-JEF)*, Volume 6, Issue 3, Ver. II, pp. 90-97; Yusuff J. Amuda, Azizan C. Embi and Oladapo H. Babatunde, "Agricultural Approach to Commercialization of Cash Waqf between Malaysia and Nigeria", (December 2014) *Journal of Advanced Management Science*, Vol. 2 No. 4, pp. 344-348 available at <http://www.joams.com/uploadfile/2014/0328/20140328110715323.pdf> (accessed on 31-12-2015).
107. This development can be understood through a study of the history of Islam and Shari'ah in Nigeria. Readings on this can be done in Abdulrahman I. Doi, *Islam in Nigeria* (Zaria: Gaskiya Corporation Limited, 1984); Ahmad O. Belgore, "History of Shari'a in Nigeria", *Al-Maslaha – Journal of Law and Religion*, Vol. 2, 1999-2003, 1-30.
108. Syed H. A. Malik, "Shari'ah: A Legal System and A Way of Life" in M. Oloyede Abdul-Rahmon (ed.), *Perspectives in Islamic Law and Jurisprudence – Essays in Honour of Justice (Dr.) Muritala Aremu Ounola (JCA)* (Ibadan: NAMLAS, 2001) pp. 25-41 at pp. 31-36.
109. For instance, Bakar reports that "the first waqf in South Africa was a mosque established in 1974 by a Muslim property owner: foundation of early Muslim education (see Moulana Ihsan Hendricks & Sheikh Megawatt Ihsan Talien)": Oman Bakar, "The Role of *Awqaf* (Endowments) in the Development of Islamic Knowledge Culture: An Overview" available at http://www.iais.org.my/attach/3rd_ICIHE/Session1/OSMAN_BAKAR.pdf (accessed on 31-12-2015). Similarly, the first waqf institution in Kenya has been traced to 1832 since the Sultanate of Zanzibar was established. Not only that, the establishment of an official waqf institution was traced to 1904. On this see, Abdulkadir Hasim, "Administration of Waqf Institutions in the Kenyan Coast: Problems and Prospects", (2010), *AWQAF*, Tenth Year Jamada I 1431H May, 2010 pp. 57-66 at p. 57. Also, waqf institution in Kuwait has been traced to 1695: Ariff Hidayat Ali, "Waqf Continued Relevance as the Third Sector in Terms of Mobilizing Resources for Productive Use in an Islamic Economic System" (INCEIF, the Global University in Islamic Finance, 2009) p. 17.
110. Abdul-Fatai Olasupo, "The Development of AWQAF Institutions in Nigeria for Sustainable Community Development and Poverty Eradication", (2013) *Global Journal of Human Social Science Linguistics & Education*, Volume 13 Issue 1 version 1.0, pp. 9-20 at p. 9 (Abstract)
111. Mahadi Ahmad, Syed Khalid Rashid, Uzaima Ibrahim and Umar A. Oseni, "The Legal and Regulatory Framework for *Zakah* and *Waqf* in Kuwait: Lessons for Nigerian *Zakah* and *Waqf* Institutions", (Aug 2015) *International Journal of Business, Economics and Law*, Vol. 7 Issue 4, pp. 9-21; Umar A. Oseni, "Towards Effective Legal Regulation of Waqf in Nigeria: Problems and Prospects", p. 2; available at <http://waqfacademy.org/wp-content/uploads/2013/03/Umar-A.-Oseni-UAO.-Date.-Effective-legal-regulation-of-waqf-in-Nigeria.-Nigeria.-UAO.pdf> (accessed on 29-12-2015).
112. Yusuff J. Amuda, Azizan C. Embi and Oladapo H. Babatunde, "Agricultural Approach to Commercialization of Cash Waqf between Malaysia and Nigeria", (December 2014) *Journal of Advanced Management Science*, Vol. 2 No. 4, pp. 344-348.
113. Ibid at p. 345.
114. The general title of the book is *Shari'ah Implementation in Northern Nigeria 1999-2006: A Sourcebook*.
115. Philip Ostien, *Shari'ah Implementation in Northern Nigeria 1999-2006: A Sourcebook*, Volume VI: Ulama Institutions, Chapter 9: Zakat and Endowments Boards and Committees, Part II: Documentary Materials, (Spectrum Books Ltd, 2007).
116. Oba, "The Judicial Machinery for Administration of Islamic Law in Northern Nigeria with Particular Reference to Kwara and Kaduna States," 8.
117. Ibid.
118. Mahadi Ahmad, Syed Khalid Rashid, Uzaima Ibrahim and Umar A. Oseni, "The Legal and Regulatory Framework for *Zakah* and *Waqf* in Kuwait: Lessons for Nigerian *Zakah* and *Waqf* Institutions", (Aug 2015) *International Journal of Business, Economics and Law*, Vol. 7 Issue 4, pp. 9-21.
119. The basis of this preference is examined in details in Chapter 3.
120. A brief on NOUN is given on its websites as follows: "The National Open University of Nigeria is an Open and Distance Learning (ODL) institution, the first of its kind in the West African sub-region. The university has an exciting platform where learning is not only easily

accessible, but also affordable. The vibrant university, at present, has 63 study centres spread across the nation. It has a student population of over 120, 000. The university is also recording landmark achievements. It was recently rated 7th position among universities in Nigeria and 86th position out of the 100 universities in Africa by Webometric International. In addition, NOUN was given the European Quality Award in Education 2011 at Oxford, UK, among others". See <http://www.nou.edu.ng/page/the-university> (accessed on 13-1-2016).

121. I. O. Oloyede and A. F. Ahmed, *ISL 436 – Islamic Law of Wasiyyah and Waqf* (Lagos: National Open University of Nigeria, 2013) p. 22; available at http://www.nou.edu.ng/uploads/NOUN_OCL/pdf/SASS/ISL%20436.pdf (accessed on 1-1-2016).
122. This is why the first objective of this research is “to examine the legality of cash waqf in Nigeria under Shari’ah and conventional legal principles”.
123. Recently through a face book post made by one facebook name called Abu Abdissamad Isma-il Adedokun on Jan 9, 2016, it was announced that a body known as “Al-Maqbarah Foundation is established to acquire and manage befitting cemetery exclusively for Muslims”. There was therefore a “call for donations to acquire 3.7 acres of land at a cost of FIVE MILLION NAIRA (N5, 000, 000.00) for that purpose”. Link to the facebook post is at https://m.facebook.com/story.php?story_fbid=1205304352831311&id=100000552730628 (accessed on 12-1-2016).
124. This may include schemes like acquisition and management of land for Muslim cemetery as noted above with the Al-Maqbarah Foundation.
125. In respect of the scheme by Al-Maqbarah Foundation noted above, Assoc. Pro. Dr. Umar Oseni of the Ahmad Ibrahim Kulliyah of Laws, International Islamic University through a *whatsapp* group discussion argued that: “This is actually not cash Waqf considering the underlying principles of the original concept of cash Waqf. As u said, it is sadaqah or at best Waqf. Cash Waqf involves some elements of investment with returns”.
126. This is one of the foremost public universities in Nigeria. According to the description on its website, it is “a comprehensive public institution established in 1962 as The University of Ife. The University

is situated on a vast expanse of land totaling 11,861 hectares in Ile-Ife, Osun State, southwest of Nigeria”. Other information about the University can be accessed on its website at www.oauife.edu.ng (last visited on 1-1-2016).

127. Abdul-Fatai Olasupo, “The Development of AWQAF Institutions in Nigeria for Sustainable Community Development and Poverty Eradication”, (2013) *Global Journal of Human Social Science Linguistics & Education*, Volume 13 Issue 1 version 1.0, pp. 9-20.
128. This is a thought which will be conceptualized and analyzed in this study.
129. This may be an addition to concepts in the waqf jurisprudence that come in interchangeable formats such as we also have “share waqf” and “waqf share” or “saham waqf” and “waqf saham”.
130. Razaq Idowu Adepoju and Oyekolade Sodiq Oyesanya, “A Critical Analysis of Poverty Alleviation Strategies of *Al-Hayat* Relief Foundation in Nigeria”, (2014) *Journal of Islamic Finance*, Vol. 3 No. 2, pp. 049-059.
131. Razaq Idowu Adepoju and Oyekolade Sodiq Oyesanya, “A Critical Analysis of Poverty Alleviation Strategies of *Al-Hayat* Relief Foundation in Nigeria”, p. 53.
132. Razaq Idowu Adepoju and Oyekolade Sodiq Oyesanya, “A Critical Analysis of Poverty Alleviation Strategies of *Al-Hayat* Relief Foundation in Nigeria”, p. 58.
133. Muhammad Ibrahim Nuruddeen, “Utilization of Endowments (*awqaf*) in Financing Community Development Programmes in Kano Metropolis”, *M.Ed Dissertation, Bayero University Kano, Nigeria, 2010*.
134. Muhammad Ibrahim Nuruddeen, “Utilization of Endowments (*awqaf*) in Financing Community Development Programmes in Kano Metropolis”, *ibid*, “Abstract” p. vi
135. Mufutau Ayinla Abdul-Yakeen, *et al*, “Six-Rs of establishing a waqf in Ilorin emirate economy”, (2014) *International Journal of Development and Sustainability*, Volume 3 Number 7, pp. 1438-1454.
136. T. A. Abdulraheem, *et al*, “Protecting the Children’s Right to Basic Education and Health in Northern Nigeria: Exploring Institutionalization of Zakat and Waqf as a Viable Option”, *op cit*

137. He is an Associate Professor at the Ahmad Ibrahim Kuliyah of Laws, International Islamic University, Malaysia. More information about him can be obtained from *www.umaroseni.com* (last visited on.....).
138. Umar A. Oseni, "Towards Effective Legal Regulation of Waqf in Nigeria: Problems and Prospects", p. 2; available at *http://waqfacademy.org/wp-content/uploads/2013/03/Umar-A.-Oseni-UAO.-Date.-Effective-legal-regulation-of-waqf-in-Nigeria.-Nigeria.-UAO.pdf* (accessed on 29-12-2015).
139. (1944) 17 N. L. R. 84.
140. Umoh, P. U, *Precedent in Nigerian Courts* (Fourth Dimension Publishers, 1984) p. 102.
141. (1966) N. M. L. R. 268.
142. Umoh, P. U, *Precedent in Nigerian Courts* p. 102.
143. See for example, *Opebiyi & Ors v. Noibi & Ors* (1977) LPELR, 2728; *Abdul Salami v. Salawu* (2002) 6. S. C. (Pt. II) p. 196; *Sanni & Ors v. Hamzat & Anor* (2012) LPELR, 8010.
144. Abubakar Solihu Orisankoko, "An Appraisal of Courts with Jurisdiction in Islamic Banking and Finance Cases in Nigeria", *Unpublished LLM Research Project, University of Ibadan, Ibadan, Nigeria, 2015*.
145. Abubakar Solihu Orisankoko, "An Appraisal of Courts with Jurisdiction in Islamic Banking and Finance Cases in Nigeria", *ibid*, p. 15.
146. The extant Constitution is the *1999 Constitution of the Federal Republic of Nigeria (as altered)*; hereinafter called "the 1999 Constitution".
147. See Section 277 of the 1999 Constitution; Section 11, *Shari'ah Court of Appeal Law*, CAP S.4, Laws of Kwara State, 2006.
148. Abdulmumini Adebayo Oba, "The Shari'ah Court of Appeal in Northern Nigeria: The Continuing Crisis of Jurisdiction", (2004) *The American Journal of Comparative Law*, Volume LII (52), Fall, Number 4, pp. 859-900 at pp. 867-869.
149. Section 53 (5), *Constitution of Northern Nigeria, 1963* (This Constitution is the Schedule to the *Constitution of Northern Nigeria Law, 1963*).
- 150 Subsequent Constitutions after the 1963 Constitution are *1979 Constitution of the Federal Republic of Nigeria; 1989 Constitution of*

the Federal Republic of Nigeria; 1995 Constitution of the Federal Republic of Nigeria; and 1999 Constitution of the Federal Republic of Nigeria (as altered).

151. Abdulmumini Adebayo Oba, "The Shari'ah Court of Appeal in Northern Nigeria: The Continuing Crisis of Jurisdiction", *ibid*.
152. A. A. Oba, "An Ideological Discourse and Literature Review on Islamic Law in the Nigerian Legal System", (2004) 12 *IIUMLJ* pp. 163- 196.
153. Abdulmumini A. Oba, "Lawyers, Legal Education and Shari'a Courts in Nigeria", *Journal of Legal Pluralism and Unofficial Law*, Number 49, pp. 113-161.
154. Abdulmumini Adebayo Oba, "The Judicial Machinery for Administration of Islamic Law in Northern Nigeria with Particular Reference to Kwara and Sokoto States", *op cit*.
155. Umar Aimhanosi Oseni, "The Legal Framework for Alternative Dispute Resolution in Courts with Shari'ah Jurisdiction in Nigeria, Malaysia and Singapore", *op cit*.
156. Oseni, "The Legal Framework for Alternative Dispute Resolution in Courts with Shari'ah Jurisdiction in Nigeria, Malaysia and Singapore" *ibid*, p. 376.