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MUSLIM ESTATES AND PROBATE PRACTICE IN KWARA STATE: A REVIEW OF ADUA-HASSAN V. PROBATE REGISTRAR'S CASE

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Abstract

Previously, the Probate Registry of the High Court of Kwara State of Nigeria was involved in the issuance of letters of administration in respect of the Estates of deceased Muslims. Besides, for such letters of administration to be issued, either on Muslim Estates or others, the Applicant would be charged 10% of the worth-net of the property in question. These two acts of the Registry were challenged in a recent case leading to the declarations of both acts as illegal. The new legal regime in the probate practice in the State ushered in by the judicial declarations made on the issue forms the fulcrum of examination in this study. Thus, this paper undertakes a reportage review of the recent development in the issuance of letters of administration and involvement of the Probate Registry of the High Court of Kwara State of Nigeria in the Estates of deceased Muslims. The paper found out that the charges of 10% received by the Probate Registry for issuance of Letters of Administration is illegal. Also, the Probate Registry was not legally empowered to issue letters of administration and involve in the Estates of deceased Muslims in Kwara State. The paper concluded by recommending that it is high time that the legal knowledge of the systems of successions law in Nigeria being taught in various Nigerian universities and the Law School has to be reviewed.

Keywords: *Deceased Muslim Estates, Letter of Administration, Probate Registry*

1. INTRODUCTION

The High Court of Justice of Kwara State of Nigeria¹ is empowered to admit Wills into probate and grant Letters of Administration (with or without Will attached).² It is also authorized to receive fees for the services.³

¹ The High Court came into existence in 1955 as the High Court Law of the State has 3 November, 1955 as its first commencement date. But, the court was first created through constitutional legal instrument in its present form in 1979 through the 1979 Constitution of the Federal Republic of Nigeria.

² See Order 52, Kwara State High Court (Civil Procedure) Rules, 2005.

³ See Section 57 of the Administration of Estates Law, CAP.A1, Laws of Kwara State 2006 (hereinafter, "Estates Law")

The Probate Registry of the Court saddled with these services has however been carrying out its legal responsibilities with many elements of illegality introduced for more than five decades. Such acts of illegality were continued until a new legal regime on matters of administration of estates of deceased Muslims was introduced in Kwara State on 30 July, 2013 when the State High Court declared charges of 10% for issuance of Letters of Administration by the Probate Registry as illegal. The court also declared issuance of Letters of Administration in respect of estates of deceased Muslims as a whole as unconstitutional and illegal.

This paper therefore presents a review of *Hajia Tawakalt Tayo Adua-Hassan & Anor v. Probate Registrar of the High Court of Justice of Kwara State of Nigeria & 5 Ors*⁴ wherein charges of 10% as fees in Probate or grant of Letters of Administration is completely rooted in illegality and eventually declared as illegal by the court. Also included is the declaration that it is absolutely illegal for the Registry to be issuing Letters of Administration or admitting any Will in respect of the estates of deceased Muslims to Probate.

1.1 Facts of the Case under Review

The facts of this case are that, the 1st Claimant⁵ approached the 5th and 6th Defendants⁶ to retrieve the Terminal Benefits of her late husband standing in the deceased's Pension Account with the 5th and 6th Defendants. As a requirement for proper documentation that would enable her access to the fund, she was required, among others, to produce a Letters of Administration. There upon, she applied to the 1st and 2nd Defendants⁷ for the Letters of Administration and she was required to pay 10% of the amount standing to the Account of her deceased husband. It was that request that prompted her counsel to research into the law regulating probate matters in Kwara State and it was discovered that it is both illegal for the 1st and 2nd Defendants to charge 10% and or issue Letters of Administration in respect of estates of deceased Muslims and therefore equally illegal for the 5th and 6th Defendants to stipulate Letters of Administration as part of the required documents for processing the Benefits for the 1st Claimant. It was all these issues that were placed before the Kwara State High Court and the court accordingly declared as examined below.

⁴ Unreported judgement of the Kwara State High Court in Suit No. KWS/135/2012 delivered on 30 July, 2013 by Hon. Justice Halima Salecman. The other Claimant who joined by an order of the court is The Registered Trustees of the Muslim Lawyers' Association of Nigeria (MULAN). Other five defendants are: 1. Chief Judge of Kwara State; 2. Attorney-General of Kwara State; 3. Sharia Court of Appeal of Kwara State; 4. Stanbic IBTC Bank Plc; and 5. Stanbic IBTC Pension Managers Ltd.

⁵ Hajia Tawakalt Tayo Adua-Hassan

⁶ Stanbic IBTC Bank Plc and Stanbic IBTC Pension Managers Ltd

⁷ Kwara State Probate Registrar and Kwara State Chief Judge

2. DECLARATIONS OF THE COURT

a. Declaration on the Charge of 10% Probate Fee

One of the issues placed before the Court for determination is whether 10% charged by Kwara State High Court Registry is legal. Arguing this issue, Counsel to the Claimant contended that the Probate Registry of the Kwara State High Court is neither legally entitled nor empowered to charge 10% of the estimated value of the property or estate in respect of which they issued Letters of Administration. The Registry has however for long been making such charges on the estates in respect of which people applied for Letters of Administration. He further argued that there is a clarity on the amount the Registry can charge based on the estimated value of the estate for which Letters of Administration is issued. On this, he referred the court to Order 56 Rule 8(1) of the *High Court (Civil Procedure) Rules, 2005*⁸ which provides that 'the fees payable under these Rules shall be as set out in form 56'. The legal implication of the use of the word 'shall' in this Order 56 Rule 8(1) is that, what is stipulated to be charged is compulsory and no amount more than the limit can be charged. Also, since the wordings of Order 56 Rule 8(1) are clear and unambiguous, they must be given their ordinary meaning and be practically applied as such and this is to no extent other than that, 'the fees payable' under the High Court (Civil Procedure) Rules 2005, shall and must be as set out in form 56. As a matter of duty, the Registry was expected to limit its fee within what is set out in Form 56. He referred the court to the case of *Utuk v. The Liquidator (U.C.M. Co. Ltd)* (2011) All FWLR (Pt.554) 144 at 158 paras D-G.

The question that was also clarified by the Claimant's counsel to the Court was how Order 56 Rule 8 (1) applies to the amount chargeable by the 1st and 2nd Defendants upon grant of Letters of Administration. In doing this, the court was referred to section 57 of the *Administration of Estates Law*,⁹ on the one hand; and, section 116(g) of the *High Court Law*,¹⁰ on the other hand. Section 57 of the *Estates Law* permits Rules of Court to be made to regulate grant of Letters of Administration, among others and adopts Rules of Court made under the High Court Law on administration of estates to have effect as if it was made under its section 57. To this end, Section 57 provides as follows:

⁸ The High Court (Civil Procedure) Rules regulating the proceedings of the court in civil cases and probate matters.

⁹ CAP 114 Laws of Kwara State 2006 (hereinafter, "*Estates Law*")

¹⁰ CAP 111 Laws of Kwara State, 2006 (hereinafter "*High Court Law*")

57. Power to make rules

Rules of court may be made for giving effect to the provisions of this Law.

Rules of Court made under the High Court Law, with respect to the grant of probate or administration of estates, shall, in so far as they are not inconsistent with this law, have effect as if made under this section and may be amended or revoked accordingly.¹¹

Reference to *section 116(g)* of the *High Court Law* revealed that 'the Chief Judge with the approval of the Governor may make rules of Court for carrying this Law into effect, and in particular for all or any of the following matters: i.e. '(g) fixing the fees payable on the grant of Probate or letters of administration and on all matters incidental to the administration of an estate until the passing of the final accounts and the discharge of the administrator.' Clarification was then made on the fees which the Chief Judge, i.e. the 2nd Defendant, had fixed under the Rules as payable on the grant of Letters of Administration. It was enquired whether it was the 10% being charged by the 1st and 2nd Defendants or whether it was more or less. For clarity on this, the court was referred to Item 28 on Form 56 annexed to the Rules of the Court. Under that item, the Claimant's counsel referred the court to the fees payable upon grant of probate or letters of administration has been stated in clear terms thus:

28. On probate or letters of or order for administration: where the value of the property affected by the grant of order:

	N:	K
a. Does not exceed N500, 000	500.	00
b. Exceeds N500, 000 but not 1, 000, 000	700.	00
c. Exceeds N1, 000, 000 for each additional	200.	00

N500, 000 or part thereof.

The counsel thus contended that the 10% being charged by the 1st and 2nd Defendants upon grant of Letters of Administration is illegal, invalid, unreasonable and completely *ultra vires* the powers of the 1st and 2nd Defendants. He particularly posited that, rather than the whopping sum of N100, 000 (*One Hundred Thousand Naira*) which the 1st and 2nd Defendants required the 1st Claimant to pay before the Letters of Administration could be issued to her, the maximum amount, based on the stipulation in *Item 28* of Form 56, which the 1st Claimant is legally bound to pay is N900: 00 (*Nine Hundred Naira*). In furtherance of arguing this issue, he drew the attention

¹¹ It is instructive to note that reference to the word "administration" in any provision of the *Estates Law*, such as mentioned in section 57 above, connotes "Letters of Administration". See section 58 of the *Estates Law* for the interpretation of the word "administration".

of the court to *Order 52 Rule 43* of the Rules of the Court as the only provision of the Rules that says anything about deduction of 10% from the value of the estates, the subject of administration. However, that benefit is not to the Defendants, but to the Administrator as his remuneration. The said *Order 52 Rule 43* unambiguously states thus:

The court may direct that any administrator (with or without the will annexed) shall receive out of the personal and real estate of the deceased such reasonable remuneration as the Court shall deem when not exceeding 10% on the amount of the realized property, or, when not converted into money, on the value of the property duly administered and accounted for by him:

Provided that where the court shall be satisfied that by reason of exceptional circumstances, the administration of the property has required an extraordinary amount of labour to be bestowed on it, the court may allow in respect of such property a higher rate of remuneration.

In consideration of the above issue, the court held in the first place that, 'on the basis of section 116 (a), (e), (g) and (i) and the provision of Order 56 Rule 8 (1), the 1st and 2nd Defendants have no extant power to request for the fee payable on issuance of letter of administration other than as stipulated under item 28 of FORM 56 of the Kwara State High Court (Civil Procedure) Rules, 2005.'¹² In declaring the charge of 10% by the 1st and 2nd Defendants as illegal, the court held thus: 'The demand by the 1st and 2nd Defendants for 10% or any other percentage charge as fee payable on the value of property to issuing letter of administration is inconsistent with the stipulation of item 28 of FORM 56 and to that extent illegal'.¹³

In view of this, it thus remains standing that unlike the old practice whereby an applicant would have to pay 10% of the value of the property involved before Letters of Administration is issued in Kwara State, the fee payable is as stipulated in item 28 Form 56 of the Rules of the State High Court as spelt out above. The practice in other States on the fee payable for grant of the Letters of Administration also deserves some scrutiny.¹⁴

b. Declaration on Issuance of Letters of Administration in Muslim Estates

¹² See pages 15 – 16 of the Unreported Judgment.

¹³ See page 16 of the Unreported Judgment.

¹⁴ Similar fees payable in Kano State are also spelt under item 29 of the First Schedule to the Kano State High Court (Civil Procedure) Rules, 1988 (which is still the applicable Rules to the best knowledge of the writers as at the time of this research). See similar provisions in item 7 First Schedule to the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2004. It would therefore appear that most Rules of Courts do not stipulate the charge of 10%, where such practice is in vogue, it deserves similar challenge in court as done in Kwara State.

The second issue placed before the Court for determination is, that whether the 1st and 2nd Defendants have legal power to be issuing Letters of Administration in respect of estates of deceased Muslims such as the estates of the late husband of the Claimant. The counsel contended on behalf of the Claimant that, it is the 4th Defendant¹⁵ that is both legally and constitutionally empowered to respond to any question regarding succession, including administration of estate, where the deceased person is a Muslim. It was submitted that Section 1(1) (b) of the *Estates Law* made it illegal for the 1st and 2nd Defendants to be issuing Letters of Administration in respect of the estates of a person whose estate's administration is subject to Islamic Law. The provision of Section 1(1) (b) of the *Estates Law* provides as follows:

"1. Application:

(1) This Law shall not apply:-

a. To the estates of deceased persons, the administration of which is governed by Islamic Law".

Similarly, the counsel referred the court to the case of *Shittu v. Shittu*¹⁶ where per Oredola (Kadi),¹⁷ the Kwara State Sharia Court of Appeal, who has the last say on matters of Islamic law such as whether a Muslim is different from a person whose administration of estates is subject to Islamic law in, as far as Kwara State is concerned (though subject to right of further appeal), also clarified the issue in the following terms:

The point to be made is that, a Muslim and as long as he or she professes Islam, has no option or choice regarding the application of Islamic law - personal or otherwise onto his person. Having voluntarily assumed the status of a Muslim, he is disentitled from accepting or rejecting according to his or her whims and caprices. He cannot back out there from and he must not allow any body to either encourage or discourage him there from. There cannot be a superimposition or juxtaposition of customary law over Islamic law. It cannot be done. It is never done.¹⁸

Further still, he referred to the case of *Ajibaiye v. Ajibaiye*,¹⁹ where per Sankey JCA, the Court of Appeal, while equally emphasizing that Muslims are the persons subject to Islamic Law, held thus:

¹⁵ i.e. the Sharia Court of Appeal

¹⁶ (1998) *Annual Report Sharia Court of Appeal (Kwara State)* 93 at 98

¹⁷ As he then was, now JCA

¹⁸ (1998) *Annual Report Sharia Court of Appeal (Kwara State)*, 98.

¹⁹ [2007] *All FWLR (Pt. 359)* 1321

It is notorious fact, for which I take judicial notice under Section 74 (1) of the Evidence Act, that it is Muslims, (as opposed to adherents of other religions), who are subject to Islamic Law.²⁰

The counsel similarly made reference to the case of *Alhaji Agbehu v. Shehu Bawa*²¹ where the point was equally made as follows:

...once a person is born into Islam or converted into same when he merely has to believe *LAILAHA ILLA ALLAH MUHAMMED RASULULAH* (meaning 'I accept the oneness of Allah and the prophet hood of Muhammed SAW), he is a Muslim and Islamic Law becomes the personal law of the person.²²

The counsel, therefore, submitted that there is no need for begging the issue: the person exempted from the application of the Estates Law is any Muslim. Thus, from whatever angle it may be looked at, it is clear that the 1st and 2nd Defendants were actually acting *ultra vires* their powers and most illegally in contravention of the *Estates Law* when they had been granting Letters of Administration in respect of the estates of deceased Muslims. Without much ado therefore, it is clear that, on the strength of the provision of *Section 1 (1) (b) of the Estates Law*, the 1st and 2nd Defendants ought not to have been granting Letters of Administration in respect of estates or property of deceased Muslims.

In arguing this issue further, the counsel referred the court to the case of **Hajia Bilikisu Tinuola Sulu Gambari v. Alhaji Sa'adu Olaofe & 2 Ors.**²³ where the Sharia Court of Appeal had declared Letters of Administration as irrelevant to the administration of the estates of deceased Muslims. In the words of the court, per Idris, *Kadi*: "We hold that the letter of Administration is Western Concept different from *Wakaala*, which is known as manager of any Endowment or Estate. This is not admissible for an estate of a deceased Muslim, because of the foregoing reasons."²⁴

Similarly, the claimant's counsel commended the court to views of Khan²⁵ on the place of Letters of Administration in Islamic law, when he stated the position thus:

Administration, as understood in Modern law, was unknown to Islamic jurisprudence. In Islam, there is mere distribution of property of deceased, by the state if not by the heirs themselves. Unlike other modern systems, to

²⁰ *Ibid* at 135-1354, paras H-A. Section 74 (1) referred to above is now Section 122 (1) under the Evidence Act, 2011.

²¹ (1992) 6 NWLR (Pt. 245), 80.

²² *Ibid*, 90.

²³ Reported in *Sharia Court of Appeal, Horin 2010 Annual Report*, 4 -22

²⁴ 2010 *Sharia Court of Appeal Annual Report*, 17.

²⁵ Khan, M.M.A. *Islamic Law of Inheritance (A New Approach)* (Kitab Bhavan, New Delhi, 110002, 2000)

dispose of the estate of the deceased Muslim, neither there is need of executor or/and administrator nor probate or/and letters of Administration. In the absence of an executor appointed by the will of the deceased, heirs of a Muslim have the right and capacity to dispose of the estate of the *prepositus* according to law. In case they fail or refuse to do so, the Qazi (magistrate) may appoint the executor. Unlike other legal systems, the estate immediately on death vests in the heir. Under other systems, based on English common law, the estate vests in the executor. Nothing like probate or Letters of Administration are required to dispose of the estate under Sharia.²⁶

After reviewing the submission placed before the court, the presiding Judge declared as follows:

The cumulative effect of section 1 (1) (b) of the Administration of states Law which totally extricate the administration of the estates of any deceased which is governed (sic) by Islamic law, section 6 (6) (a) of the Constitution and section 17 of the Area Court Law, Cap. 9 Laws of Kwara State, 2006, the case law authority which is persuasive and the opinion of the renown authors is that the estate of any deceased person whose administration is governed by Islamic law is not subject to the jurisdiction of the 1st and 2nd defendants, and that being so, the 1st and 2nd defendants are not competent to issue letters of administration in respect of a deceased person's estate which administration is governed by Islamic personal law as in the case of the deceased Muslim husband of the claimant and I so hold.²⁷

An inquisitive mind will no doubt agitate to know what will be the substitute for Letters of Administration if properties of deceased of Muslims are not to be exposed to the risk of fraud and fraudulent take-over. This was very much envisaged by the counsel to the Claimant and it was for this reason that they contend that the 4th Defendant is in the best position to issue an Instrument of Authority to the rightful heir for presentation to the Authority having the property of the deceased in its custody. The trial court however rejected this contention on the ground that the jurisdiction of the 4th Defendant is merely appellate on matters of estates of deceased Muslims. The court rather declared that: 'it will be lawful for the 5th and 6th defendants or any other corporate organization or body to recognize and accept a sealed order of the class of Area Court vested with jurisdiction for the release of a deceased Muslim property which administration is govern (sic) by Islamic law.'

Besides, the question which must be now asked is: 'can a Muslim die intestate in which situation warrants the issuance of letter of

²⁶ Khan, M.M.A. (note no 32) 22 – 23.

²⁷ See the Unreported Judgment (note no 7), 27.

administration.’ What these writers find curious is that, from the human rights perspective, every Muslim, whether married under the Act or not, whether lived in a customary/traditional manner or not, is subject to Islamic law and by the provisions of Islamic law, Muslims can never die intestate. Justice Orire²⁸ made the point clear enough as follows:

A Muslim can never die intestate; Almighty has laid down the portion each of his or her heirs shall get. The Prophet (SAW) has also interpreted the portion of a person’s estate that can be used for a Will and to whom such Will can be made.²⁹

Similarly, Justice Ambali³⁰ has equally made the same Islamic legal position clear thus:

The concluding part of Qur’an 4:11 describe succession as God’s ordinance. It goes then without saying that compliance with this ordinance is an attribute of submission and contravention indicates rejection of the ordinance of God. It is on the bases of these *quranic* injunctions that we do say that Muslims never die intestate. Ever before they die, those who qualify to have shares in the estates are determined. What each heir is to have has also been determined.³¹

On another occasion, the learned Grand Kadi, Ambali has also repeated this view as follows:

A Nigerian Muslim, therefore, unlike his Christian Counterpart, does not die intestate because his Islamic personal law has taken care of his estate over before his birth.³²

It was posited that any Muslim, whether committed or otherwise, so far he professed the religion of Islam till his death, is a person, the administration of which is governed by Islamic Law. It would no doubt amount to chasing a wild goose and drawing distinction without any difference, for any line to be drawn between who a Muslim is and who the person, administration of which is governed by Islamic Law can be. The learned prolific writer, Oba,³³ cleared the air when, he stated the correct position of the law as follows: ‘The law in Nigeria today is that a Muslim is subject to Islamic

²⁸ He is the retired first Grand Kadi of the Kwara State Sharia Court of Appeal

²⁹Orire, A. *Shari’a: A Misunderstood Legal System* (Sankare Educational Publishers Limited, Zaria, 2007) .251.

³⁰ He is the successor in office to Justice Orire as the second Grand Kadi of the Kwara State Sharia Court of Appeal

³¹2003 *All Judges Conference Proceedings* (Spectrum Books, Ibadan, 2005) .134

³² Ambali, A.M.A. “Shari’ah and its Relevance in the Contemporary Nigeria” in M. Oloyede Abdul-Rahman (ed.), *Perspectives in Islamic Law and Jurisprudence-Essays in Honour of Justice (Dr.) Muritala Aremu Okanola JCA (now of blessed memory)* 73.

³³ His full name is Prof Abdulmumini Adebayo Oba and he is a Professor in the Faculty of Law, University of Ilorin

personal law so long he or she professes Islamic even if he or she is not diligent in following some of the injunctions of the religion.³⁴

He also correctly presented the position of Islamic Law as follows: Under Islamic Law, inheritance (*Mirath*) and wills (*Wasiyyah*) are two different legal matters which unlike under the common law do not mean or imply the same thing. A Muslim cannot properly speaking die intestate because there is a law relating to inheritance (and a law that he cannot vary) which becomes automatically applicable to his estate when he dies. This law of inheritance as identified in each circumstance, the heirs and their portions but gives the testator a limited power to dispose of some of his property by will.³⁵

The writers of this paper are further of the view that the use of Will under the English Law which led to delineation of death of a person into testate and intestate is not a legal concept relevant to the Islamic law of succession. This is a necessary understanding that must be appreciated by members of the corporate world that have dealings with estates of deceased Muslims in Nigeria. As put by Oniye,

In the western legal parlance, the person who dies leaving behind a Will is said to have died testate. While a person who dies without a Will is said to have died intestate... under Islamic law, a Muslim does not die intestate because the manner in which his properties shall be administered after death is regulated by the principle of Islamic Estate distribution (*Miraath*). He is only given limited power to the tune of not more than one-third (1/3) to interfere with the devolution of his properties after death.³⁶

In view of the above, the misconception embedded in the consideration of Muslims by corporate bodies among those who could die intestate which has eventually led them into requiring Letters of Administration from the relatives of deceased Muslims to claim the deceased's Terminal Benefits, needs an urgent clarification. It is beyond arguments that a Muslim does not and cannot die intestate. Certainly, the import of testacy and what it safeguards in English law are so intrinsically embedded in the legal corpus of the Shari'ah legal system that the death of a Muslim will not occasion what may happen under English law if a non-Muslim die without his personal Will. It therefore amounts to a grave legal misconception, lexical

³⁴ Oba A. A., "Can a Person Subject to Islamic Law Make a Will in Nigeria?: *Ajibaiye v. Ajibaiye* and *Mr. Dadem's Wild Goose Chase*", *Review of Nigeria Law and Practice*, Vol. 2(2) 2008, 131-145 at 136

³⁵ *Ibid*, 140.

³⁶ Mas'ud Adebayo Oniye, *Wills Under Islamic Law* (Private Publication, September, 2010) 85-86

perversion in the use of language and a serious erroneous misdirection for the argument to be proffered that a Muslim can die intestate.³⁷

Since strong Islamic legal authority exists in support of the fact that Letters of Administration is an un-Islamic instrument of administration of estates of the deceased, it is therefore imperative for its issuance in respect of estates of deceased Muslims to be checked in various States of the Federation where the practice continues.

3. CONCLUSION

It is therefore evident from the recent judicial declarations of the charge of 10% Probate Fee and issuance of Letters of Administration as illegal in Kwara State have a far reaching soothing effect to the relatives of deceased Muslims and as well to non-Muslims who may genuinely and legally have the need for Letters of Administration. The development shows clearly that for Muslims to enjoy the fruits of their human rights regarding freedom of religion, administration of their estates upon death and matters incidental thereto should be allowed to be governed strictly and solely by Islamic law. To do otherwise may be counterproductive.

It also becomes glaring that, for Probate Registries of other State High Courts to conduct their activities strictly within the confine of the law, they must desist from issuing Letters of Administration on Muslim Estates.³⁸ The alternative to that is well spelt out while the necessary signal is also sent to the corporate bodies like banks, insurance companies that do demand for the Letters.

Corporate organizations like Banks, Insurance Companies and the likes have also been faced with the challenge of desisting from requesting for Letters of Administration before releasing the entitlement of deceased Muslims to their rightful heirs. This paper has presented a report on that development for the benefit of all and sundry.

It should be mentioned that any policy or corporate practice that is contrary to the Islamic legal systems will amount to a serious infringement on the Right to Freedom of Religion of Muslims as spelt out in section 38

³⁷ Abdullahi Saliu Ishola, *Muslim Citizens and the Practice of Will-making in Nigeria: The Interface Between Shari'ah and English Law*, *The Jurist*, Vol.15, 2010, 116-118

³⁸ In some States of the federation, no distinction is drawn between customary law and Islamic law, rather Islamic law is still regarded as customary law. In such States, exemption of estates governed by customary law from the provisions of the *Administration of Estates Law* should apply to Islamic law in respect of deceased Muslims. For instance, Section 1 (3) of the *Administration of Estates Law, CAP 2, Laws of Bendel State of Nigeria, 1976, Vol. 1, (applicable in Edo State)* provides: "Nothing in this Law affects the administration of the estates of deceased persons by or under the authority of any customary court nor unless otherwise expressly provided the distribution, inheritance or succession of any estate where such distribution, inheritance or succession is governed by customary law whether such estate is administered under this Law or by under the authority of a customary court".

of the 1999 Constitution of the Federal Republic of Nigeria. The recent judicial declaration in Kwara State as reported in this paper, therefore, has some human rights implications. Non-compliance with what is declared in the judgment will therefore not only breed court contempt, but serious human rights violation for its flouters.

Time is no doubt ripe for the legal knowledge of the systems of succession law in Nigeria being impacted in various Nigerian universities and the Law School to be reviewed. The question of testacy and intestacy should no longer be taught as a general legal consequence, but should rather be clarified as a legal phenomenon under the English Law of Succession as applicable to Christians and non-Muslims who married under the Act.