A LEGAL ANALYSIS OF KWARA STATE SHARIAH COURT OF APPEAL'S DECISION IN THE CASE OF MOHAMMED V. MOHAMMED[1]

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ABSTRACT:

Historically, the advent of British colonialists served as a background for conflict of laws in Nigeria, where we have pluralism systems of law such as Customary, Islamic and English laws. However, to a certain extent, this conflict of laws had been settled, particularly the laws that govern the administration of estate of deceased in Nigeria. Shariah as an independent legal system has been, after some years, separated from customary law in Nigeria as interplay of pluralism created more controversy in the country. This study discussed the burning issues regarding the decision of Kwara State Shariah Court of Appeal, Ilorin division in the case of Mohammed v. Mohammed, which premised on the issue of law that govern the estate of a deceased Muslim whose one of his wives was married in conformance with Marriage Act.It also considered the independence of Islamic law amongst other legal systems, and the effects of marriage onsuccession or administration of Muslims' estate in Nigeria. The research adopted the doctrinal by in depth analysis on legal materials, judicial and statutory authorities, particularly the interpretation of relevant sections of laws govern the administration of deceased's estate in Kwara state. The finding of this study was the establishment of standalone system of Islamic law as regards the distribution of estate of a deceased Muslim, the need for repeal or amendment of some legislations to reflect the distinction between Islamic and Customary law, particularly those dealing with the individual's personal matters in Nigeria and the effect of statutory marriage on the administration of Muslims' estate.

KeyWords: Islamic Law, Customary Law, Statutory Marriage, Estate.

0.1 INTRODUCTION:

Just of recent, the decision of Kwara State Shariah Court of Appeal in a case of one Major Mohammad Adeniyih as erupted some reactions, arguments and opinion amongst legal practitioners and experts in Islamic knowledge. Islam as a religion has exhaustedly made provision for how estate of a person who professes Islam till his last breath will be distributed, and no room whatsoever is given to a Muslim to dictate as to the law that will govern his property before or after his death. Though, a Muslim has a right to make a bequest (Wasiyyah) which must not exceed one-third of his property to the beneficiary not to his legal heirs.

Due to lack of proper knowledge of Islam, some Muslims either advertently or inadvertently opts out of Islamic law and choose English law to govern the administration of their estate. This, to large extent, has led to conflict between Islamic and English law i.e.; Will Laws of various states and Will Act of the Federation.

The paper intends to analyze the facts of the case under review, discuss the correctness or otherwise of classifying Islamic law as Customary law, the validity of a subsequent marriage during a valid and subsisting marriage contracted under Marriage Act, the import of section 1 (1) and (2) of the

[1] Appeal No: KWS/SCA/CV/AP/IL/14/2022

Administration of Estate Law of Kwara State and legal issues in the case of Yinusa v. Adesubokan[2] and Ajibaiye v. Ajibaiye[3] as relate to the case under review. The paper ends with conclusion.

0.2 SUMMARY OF FACTS:

On 8th October, 2020, the respondents who were the plaintiffs in the court below (i.e., Upper Area Court, Ilorin) filed a case against the appellants claiming that, as the 1st born and the Next of Kin of late Major Mohammed Adeniyi who was a deceased and who, during his life time, married his 1st wife according to Marriage Act and subsequent ones in line with the dictates of Islam. The 1st appellant received from the Military Pension Board and Army Headquarters a sum of Twenty-three Million Naira (N23,000,000.00) only and another Thirteen Million Naira (N13,000,000.00), as benefits and entitlements of the deceased, without giving other beneficiaries of the deceased (the respondents) their shares therefrom.

The 2nd appellant who was the first wife of the deceased sought to be joined as a party in the suit and same was granted. The appellants challenged the jurisdiction of the court below on the grounds that the 2nd appellant and late Major Mohammed Adeniyi were married under the Marriage Act; as deceased died intestate,his estate is inheritable only by the 2ndappellant and her children; that the law that will govern his estate is the Administration of Estates Law of Kwara State, not Islamic law, among other grounds. The court below held that Islamic law should be the law to govern the succession of the deceased and that it has jurisdiction to determine the matter.

The appellants, due to their dissatisfaction with the decision of trial court (Upper Area Court 1, Ilorin), filed an appeal in Sharia Court of Appeal, Ilorin division, and the court in considering the issues formulated by the both counsel allowed the appeal and set aside the ruling of the trial court for lack of jurisdiction and further held that the estate of the deceased who had a valid and subsisting marriage under the Marriage Act cannot be governed by Islamic law rather, the Administration of Estate Law of Kwara State.

A careful perusal of the facts of the case under review reveals the salient issues considered by the Honourable court bother on the following;

1. Islamic law as a Customary law;
2. The position or validity of subsequent marriages contracted in conformance with Islamic law during the continuance of marriage under Act; and
3. The import of section 1 (1) and (2) of the Administration of Estate Law of Kwara State and legal issues as relate to the case of Yinusa v. Adesubokan and Ajibaiye v. Ajibaiye.

0.3 ISLAMIC LAW AS CUSTOMARY LAW:

Without going back to the historical analysis of how Islamic law was once classified as customary law, the definition of Customary law given in the case of Oyewunmi v. Ogunesan[4] has detached Islamic law from Customary law; for clarity purpose, it was read thus;

[2] (1971) NNLR 77.
[3] (2007) All NWLR (Pt. 358) 132
[4] (1990) 3 NWLR (Pt. 137)137 @ 207

"Customary law is the organic or living law of the indigenous people of Nigeria regulating their lives and transactions. It is regulatory in that it controls the lives and transactions of the community subject to it.''

To prove in the contrary that Islamic law is not the same as Customary law, Islamic law is defined as -" a comprehensive body of Allah's commandments of universal application which laid down what is required of an individual as well as of the community; what is forbidden, what is recommended, what is disapproved and what is merely permitted."[5]

Considering the two definitions, Islamic law cannot be properly regarded as customary law because the feature of customary law unlike Islamic law include, lacks of any written form, differs from tribe to tribe (i.e no uniformity), flexibility, among others.[6]Whereas, Islamic law is of universal application irrespective of background, tribe, status and the likes, and it enjoys permanence and indivisibility. Therefore, it will not be appropriate to equate Islamic law with customary law.

The above position is quite inferable from the constitution of Federal Republic of Nigeria and other judicial authorities that declassify Islamic law from being a customary law. This is evident in different provisions of the Constitution. For instance, section 277 of the Constitution of Federal Republic of Nigeria, 1999 (as amended) gives the Shariah Court of Appeal power to exercise its appellate and supervisory jurisdiction in civil proceeding involving questions of Islamic personal law which include; marriage, validity or dissolution of it, guardianship of an infant, waqf, gift, will, amongst others.

Another constitutional provision that objectively put a clear distinction between Islamic law and customary law is where various states are given a power to legislate on the formation, annulment and dissolution of marriages under Islamic law and customary law.[7] This also testifies that Islamic law is a standal one law which quite different from any law, be it customary or English laws.

In the case of Agbebu v. Bawa[8] it was held that Islamic law is recognised as one of the three (3) legal systems in Nigeria, that is, common law, Islamic law and customary law.To further substantiate the above position, the Supreme Court in the case of Alkamawa v. Bello[9] held thus;

"Islamic law is not customary law as it does not belong to any particular tribe. It is a complete system of universal law, more certain, permanent and more universal than the English Common Law.''

It is therefore settled that Islamic law is no longer perceived as customary law. However, without necessary amendment of statutes classifying Islamic law as customary law, there will be a more and continuous controversy in Nigerian Legal Systems on the issue.

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[5]AbdulWahab T.A, 'Application of Shariah in Southern Nigeria: The Hoax, The Truth' (Al-Furqaan Publishers, Ibadan, 2006) 2

[6] Lewis v. Bankole (1909) 1 NLR

[7] Section 4(2) of CFRN, 1999 (as amended). Item 61 of the Exclusive Legislative list.

[8](1992) 6 NWLR (Pt. 245) 80 @ 87

[9](1998) 6 SC page 92 at 88102 Para 2.

0.4 VALIDITY OF A SUBSEQUENT MARRIAGE CONTRACTED UNDER ISLAMIC LAW WHILE MARRIAGE UNDER MARRIAGE ACT SUBSISTS:

The Marriage Act will be considered to know the validity of a marriage contracted under Islamic law during the pendency of a marriage under the Act. It is however settled, according to Islamic law, that a subsisting marriage under the Act does not invalidate or have any negative effect on a marriage contracted in conformance with Islamic law, provided that it falls within the limited number of wives, even though marriage under the Act is not recognised in Islam. In other words, according to Islamic law, marriage under the Act cannot serve as an impediment on a Muslim from contracting a subsequent one as it is not recognised.

It is therefore fundamental to analyse some provisions of the Marriage Act, in order to understand its position regarding a subsequent marriage under Islamic marriage.

Section 33 (1) of the Marriage Act provides thus:

> **"No marriage in Nigeria shall be valid where either of the parties thereto at the time of the celebration of such marriage is married under customary law to any person other than the person with whom such marriage is had."[10]**

Section 35 of the Act further provides thus:

> **"Any person who is married under this Act, or whose marriage is declared by this Act to be valid, shall be incapable, during the continuance of such marriage, of contracting a valid marriage under customary law, but, save as aforesaid, nothing in this Act contain shall affect the validity of any marriage contracted under or in accordance with any customary law, or in any manner apply to marriage so contracted."**

By virtue of section 33 (1) of the Act reproduced above, it is permissible for the parties in a subsisting customary marriage to contract the same marriage in conformance with Marriage Act, this type of marriage is called double Decker marriage.[11]Consequently, it is prohibited for any party in a subsisting customary marriage to contract another marriage under the Act with a different person entirely, the first and subsisting marriage will automatically invalidate the subsequent ones.

Section 35 of the Act also renders a party to a valid and subsisting marriage incapable of contracting a subsequent marriage conducted under customary law. Except and until the previous marriage has been dissolved as prescribed by law.

Although, the intention of this paper is not to re-echo the legal consequences in the above sections, rather, it attempts to call attention of readers to a fundamental omission in the two (2) sections, that is, failure of the Act to include Islamic law. In the light of the distinction between customary and Islamic law, the omission or failure to specifically mention Islamic law has created and will

[10]Cap. 218 Laws of the Federation of Nigeria, 2004

[11]Olokooba S.M, ' Analysis of Legal Issues Involved in the Termination of "Double Decker" Marriage Under Nigeria Law'https://www.nials-nigeria.org/pub/NCLR7 accessed 23rd August 2022

continue to create problems and controversy amongst legal practitioners and may result in an upsurge of conflicting decisions of the courts.

By the omission even though it was unwittingly done by the lawmaker, one can safely argue that subsequent marriage conducted under Islamic law is not affected by the provisions of the Act, and therefore, it cannot render a subsequent marriage as in the case under review invalid. This is because, it is settled law that Islamic law is not and cannot be regarded as the same as customary law.The constitution itself recognised three forms of marriage; i.e.; statutory marriage, customary marriage and Islamic marriage, which the Act failed to include.[12]

One should not close his eyes from the fact that, the Marriage Act was enacted by the National Assembly as the power to legislate on issue of marriage and other related matters are given to it,[13] which fall under the Exclusive Legislative List. Bearing in mind that Nigeria is not an Islamic state as the government of the federation or of a state cannot adopt any religion as state religion,[14] the lawmakers envisage the conflict that may arise between the laws of the state and that of the federation, and make a provision for how the conflict will be resolved. Section 4 (5) of the Constitution provides that;

"If any law enacted by the House of Assembly of a state is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other law shall to the extent of the inconsistency be void."[15]

The provision of the Marriage Act equally invalidates the marriage conducted under Islamic law during the continuance of the statutory marriage. However, nowhere is it mentioned in the Act that same also takes a Muslim out of Islam (change the factory setting of the person) or subjects estate of Muslims to the English Law. Considering the Administration of Estates Law of various states, which govern the estate of a person who dies intestate, there is a particular provision that talk in that line, i.e.; a person whose property is ordinarily governed by customary law but conducts a statutory marriage, his estate, if dies intestate, will be administered according to English Law. This position is not applicable to the case under review because; the Administration of Estate Law of Kwara State and some states wittingly exclude Muslims.

3.0 THE IMPORT OF SECTION 1 (2) OF THE ADMINISTRATION OF ESTATE LAW OF KWARA STATE

The judiciary is of the legal duty to interpret statutes as they are without …and same will be applied to the case before the court.[16] However, if care is not taken, a slight mistake in interpretation of a statute may lead the court to erroneous decision which may by implication affects any of the parties. In view of this, the section interpreted by the Shariah Court of Appeal calls for a serious legal analysis as explained below.

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[12] Section 4 (2) and (3) of CFRN, 1999 under item 61 of the Exclusive Legislative list, see also, Obusez v. Obusez (2007) 10 NWLR (Pt. 1043) 430

[13] Section 4(2) of CFRN, 1999 (as amended). Item 61 of the Exclusive Legislative list.

[14] Section 10

[15] A-G., Abia&Ors. v. A-G., Federation (2002) 3 SC 106

[16] Section 6 of the Constitution of Federal Republic of Nigeria, 1999

Section 1 (1) and (2) of the Administration of Estate Law of Kwara State on applicability of the law read thus;

1. Application
(1) This Law shall not apply-
   (a) to deaths occurring before its commencement unless otherwise provided; or
   (b) to the estates of deceased persons, the administration of which is governed by Islamic law.
(2) The provisions of this Law relating to the administration of the estate of a person who died **intestate** or **the undisposed part of the estate of a testator** shall apply only to persons who contract a valid monogamous marriage and are survived by a spouse or issue of such marriage:

Provided that any property the succession of which cannot according to Customary Law be affected by testamentary disposition shall descend in accordance with such Customary Law anything herein to the contrary notwithstanding.

Subject to contrary understanding of the above section, the section has limited the application of the law (the Administration of Estates Law) to specific persons and it is apparently shown in section 1 of the said law. To analyse this further, this paper will like to conduct an analytical surgery of the said section as follows;

(1) This law must not apply to three persons,
   (a) a person who has died and distributed his property before this law was enacted,
   (b) a Muslim whose administration of his estate is strictly governed by Islamic Law with the condition that he professed Islam till his last breath, and
   (c) a person who is not a Muslim, but contracts a valid statutory marriage and is survived by a spouse or issue of such marriage. Where such person dies intestate or partially intestate, i.e.; where his Will fails to cover some of his property. This law however expressly excludes this deceased person from the application of this law where a customary law is already applicable to the distribution of the undistributed part of the deceased's estate, which the application of the provision of this law would offend. For instance; where his customary law provides that certain property should be used for different purpose contrary to what the Administration of Estate Law provides such as inalienable property.It must be noted that this law will apply to the administration of estate of such person to a certain extent, it will not apply to his estate only where it provides contrary to the dictates of customary law.

Therefore, it is safe to conclude that any other situation of person outside the three persons mentioned above, will be bound by the Administration of Estate Law of Kwara State. It is clear that the Shariah Court of Appeal failed to read the proviso, which was deliberately inserted by the lawmaker. There no gainsaying that the essence of proviso is to limit the application of the law by excluding some possible grounds of misinterpretation of its extent, or to modify the main part of a section of a statute to which it relates or to restrain its absoluteness.[17] I have been unable to find in the section any words that later includes a Muslim after being excluded.

[17] N.D.I.C v. Okem Ent. Ltd. (2004) 10 NWLR (Pt.880) 107

Let assume, without necessarily conceding, that Islamic Law is referred to as customary law in the proviso, the Act will still not apply to a Muslim, to the extent of its being contrary to the dictates of Islamic Law.

To build more strength on the above position, it is very important to also make reference to Kwara State Wills Law[18], particularly section 4 of the Law.

Section 4: Power to dispose property by Will.

(1) It shall be lawful for every person to bequeath or dispose of, by his Will executed in accordance with the provisions of this Law, all property to which he is entitled, either in law or in equity, at the time of his death:

Provided that the provisions of this Law shall not apply-

(a) to a property which the testator had no power to dispose of by Will or otherwise under Customary Law to which he was subject; or

(b) to the Will of a person who immediately before his death was subject to Islamic Law.

This section further explains category of persons to which the Administration of Estate Law of Kwara State and Kwara State Wills Law will not apply to, as both laws excludes a Muslim and a person who, according to his customary law, has no power to dispose of his property by Will.

The court has interpreted section 4 of Kwara State Wills Law in the case of Ajibaiye v. Ajibaiye[19]to settle the controversy on whether or not Wills Law takes precedence over Islamic law whenever there is a conflict of laws between the two on matters that are personal to Muslims, such as will, gift, waqf, amongst others.

It could be recalled that in the past, application of Islamic law faced different challenges in Nigeria, most especially in matters that are personal to a Muslim.[20] For example; in the Estate of Alayo[21] where estate of a deceased Muslim was not allowed to be distributed in accordance with Islamic law despite the fact that she, during her life, practiced Islam and died as a Muslim. But only because she was an indigene of Ijebu, where there was no particular law that provides that the estate of Muslims should be subjected to Islamic law. The same thing happened in Yinusa v. Adesubokan[22] and other cases. The absence of a provision that subjects a Muslim to Islamic Law in distributing the property he left behind has given Statutory laws a prevalence over Islamic Law.[23] Inclusion of this provision by the State House of Assembly that has power to legislate on both customary and Islamic marriage, has therefore changed the position of law in aforementioned cases as it was reflected in Ajibaiye v. Ajibaiye (Supra).

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[18]Wills Law Cap. 168 Laws of Kwara State, 1994

[19] (Supra)

[20]Sodiq Y., 'A History of the Application of Islamic Law in Nigeria' (Palgrave Macmillan, USA, 2017) p. 28

[21] (1946) 18 NLR 885

[22] (1971) NNLR 77.

[23]Babaji B., 'Administration of Estate Under Islamic Law: Practice and Procedure in Nigeria' Being a Paper presented at the Annual Refresher Course For Judges and KadisOrganised by the National Judicial Institute (NJI), Abuja, 2022https://nji.gov.ng/wp-content accessed 18th November, 2022

0.5 DECISION OF COURT IN MOHAMMED V. MOHAMMED: A CRITIQUE

After the analysis of the legal issues as relate to the case under review, it is paramount to relate them with decision of Shariah Court of Appeal which erupted arguments.

Ordinarily, the Shariah Court of Appeal in its decision has appellate jurisdiction to hear an appeal from the Upper Area Court sitting on Islamic matters which includes succession, with condition that the affected parties are Muslims.[24] However, where there is an issue on whether or not the deceased dies as a Muslim, the burden of proof is on the legal heirs to determine the religion a deceased practiced before his demise.

From the facts of the case, it seems that the issue as to the religion of the deceased is settled, what left unsettled is the issue of whether a Muslim, according to law, subjects himself and his property to be governed by Will Law/ Act by contracting a marriage under the Marriage Act.

According to Marriage Act or Matrimonial Causes Act, nowhere it is provided that a person who contracts a marriage under the Act has automatically changed his religion or subject his property to be governed by a particular law, but such a person, by implication, cannot contract another marriage during the subsisting statutory marriage except and until the subsisting marriage is validly dissolved. Failure to comply with the provision of the Act attracts punishment, which is five (5)years imprisonment.[25] The deceased who contracted another marriage under Islamic law, even though the Act does not specifically mention Islamic law, died unpunished, for committing bigamy, due to the failure of the wife to take a legal action in that respect.

Now, to consider section 1 (1) of Administration of Estate Law of Kwara State where the deceased lived, which is the applicable law to the issue at hand. The section, explicitly and without any ambiguity excludes a deceased Muslim from whom the law will affect, as the correct interpretation has been provided in above discussion.

Bearing in mind the essence or the intent of the lawmakers by excluding Muslims, there is no doubt that Muslims, particularly in distribution or administration of their estates, are not subjected to any law other than Islamic Law.[26] It is therefore, by implication of law, Muslims cannot die intestate as their estate has been distributed according to the prescribed mode under Islamic Law, and they have no right to elect any other laws.[27]

The above fact is evident from another law of Kwara State as early stated; Kwara State Wills Law, which also allows estate of deceased Muslims to be governed by Islamic Law.

Furthermore, the decision of the Shariah Court of Appeal in the case under review suggests that the law on one breath excludes Muslims whose administration of his estate is strictly governed by Islamic Law, and on another breath includes deceased Muslims with undistributed estate. This conclusion will inevitably amount to approbating and reprobating, notwithstanding the fact that it is impossible for any Muslim to die intestate.

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[24] Section 277 of the Constitution

[25] Section 47 of Marriage ActCap. 218 Laws of the Federation of Nigeria, 2004

[26]Babaji B., op. cit,

[27] Surat An-Nisa' verse 11

Apart from misinterpretation of the sections of the Administration of Kwara State Law, the Shariah Court of Appeal, in its decision, made reference to judicial authorities, all of which based on conflicting provisions of Customary Law and Wills Act/Law.

It must be noted in the decision of Supreme Court under reference that, the Administration of Estate Law upon which the decision was premised is the Administration of Estate Laws of Lagos State which is not of the same provisions with the Administration of Estate Laws of Kwara State, particularly, the section that excludes the estate of Muslims that is governed by Islamic Law. For clarity purpose, the decision in Obusez v. Obusez.[28]

> "The deceased by contracting marriage under the Act opted out of the system of customary law of succession in case of intestacy.''
>
> The Supreme Court further emphasised in its decision thus; 'it is also very clear that the above provision deals with succession to intestate property of a person married under the Marriage Act who died intestate while residing within Lagos state.''
>
> This above apparently shows that, case under reference is not applicable to the case at hand for the following reasons;
>
> (i) The decision of court in Obusez v. Obusez is in respect of a conflict between customary law and statutory law;
> (ii) The section interpreted to arrive at the said decision is the provision of the Administration of Estate Law of Lagos State not Kwara State that explicitly excludes the estate of Muslims.
> (iii) It is clearly emphasised in the said decision that the provision of the Administration of Estate Law of Lagos State only deals with succession to intestate property of a person married under the Marriage Act who died intestate **while residing within Lagos state**;
> (iv) The Administration of Estate Law of Lagos State strictly governs the estate of a person who dies intestate, and Muslims die not intestate.

It is therefore wrong and inappropriate for the Shariah Court of Appeal to determine a matter relying on the decision of Superior Court reached through the law that is not applicable to the parties before it. A court, while determining a case and before being bound by the previous cases, is of the duty to consider the fact of the case and the applicable law to the fact in the earlier case.[29]On the other hands, the principle of judicial precedent is not known in Islamic legal system as a binding but a guiding principle in Islamic courts.[30]

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[28] (2007) 10 NWLR (Pt. 1043)

[29]Idahosa C. O., 'The Doctrine of Stare Decisis and Judicial Precedent: The Need for Lower Courts to be Bound by Decisions of the Superior Courts of Record' being a paper delivered at the Conference of All Nigeria Judges of the Lower Courts held Between 21st – 25th November, 2016https://edojudiciary.gov.ng/wp-content accessed 18th November, 2022

[30]Munir M., 'Precedent in Islamic Law with Special Reference to Federal Shariat Court and the Legal System in Pakistan'https://www.researchgate.net/publication/ accessed 17th November, 2022

To do justice to whatever submission from this angle, the following facts must be placed on record;

(1) The case under review has disclosed a gap left uncovered by the Laws of the State and Federation.
(2) There are certain laws that need to be amended to include new developments or changes introduced to the law, for example, Islamic law in some statutory and judicial authorities was classified as customary law. This position has changed but same has not been incorporated in our statutes to separate Islamic law from customary law.
(3) Ambiguity in statutes usually contributes to misinterpretation or different interpretations, which may take the court from the lane intended by the lawmakers.
(4) A mere fact that a Muslim contracts a marriage in accordance with the Marriage Act does not change his status of being a Muslim as there is no authority in that respect.

Certainly, for every inclusion of provision of law, there is a reason. Thus, section 1(1) (a) & (b) and (2) of the Administration of Estates Law of Kwara State had a legal historical antecedent which must also be considered while interpreting the sections of the law. On the other hand, I am also in agreement with the Shariah Court of Appeal, if not in totality, to use the case of Major Muhammad as a deterrence for Muslims who voluntarily and wittingly opt out of Islamic law in contracting marriage and intend the same law to govern the distribution of their estate. The Quranic verse says: "…Do you then believe in a part of the Book and disbelieve in the other? What then is the reward of such among you as do this but disgrace in the life of this world, and on the day of resurrection they shall be sent back to the most grievous chastisement, and Allah is not at all heedless of what you do."[31]

0.6 CONCLUSION:

No matter how a judge strives to reach a sound decision or do justice to a case, his decision would still be subjected to critics.The court, while giving its opinion, should bear in mind that there are legal constraints which guides it in deciding the case one way or the other, as its conclusion or decision would be discerned in the public domain.

Conflict of laws remains unsettled in a country like Nigeria where there are different systems of law which are simultaneously in operation, as the practice and procedures are not the same. The standalone system of Islamic law even though has been recently supported by both statutory and judicial authorities, the legislature still has obligations to incorporate those changes in the Statutes that preceded the event, in order to totally lay at rest,the issue of classifying Islamic Law as Customary Law.

To this end, the administration of estate of deceased Muslims, in some states particularly northern states of Nigeria, has been settled to be governed by Islamic Law as this can be seen in the Administration of Estate Law of Kwara State and the Will Law of Kwara State that exclude Muslims. Therefore, it is baseless in law and untrue in fact, to subject a Muslim to the English Law to govern his estate only because he marries one of his wives in conformance with English Law (Marriage Act).

BIBLIOGRAPHY:

[31] Quran 2 verse 85

1. AbdulWahab T.A, 'Application of Shariah in Southern Nigeria: The Hoax, The Truth' (Al-Furqaan Publishers, Ibadan, 2006)

2. Constitution of Federal Republic of Nigeria, 1999 (as amended).

3. Olokooba S.M, ' Analysis of Legal Issues Involved in the Termination of "Double Decker" Marriage Under Nigeria Law'<'https://www.nials-nigeria.org/pub/NCLR7 accessed 23rd August 2022

4. Idahosa C. O., 'The Doctrine of Stare Decisis and Judicial Precedent: The Need for Lower Courts to be Bound by Decisions of the Superior Courts of Record' being a paper delivered at the Conference of All Nigeria Judges of the Lower Courts held Between 21st – 25th November, 2016<https://edojudiciary.gov.ng/wp-content accessed 18th November, 2022

5. Babaji B., 'Administration of Estate Under Islamic Law: Practice and Procedure in Nigeria' Being a Paper presented at the Annual Refresher Course For Judges and KadisOrganized by the National Judicial Institute (NJI), Abuja, 2022https://nji.gov.ng/wp-content accessed 18th November, 2022

6. Munir M., 'Precedent in Islamic Law with Special Reference to Federal Shariat Court and the Legal System in Pakistan'https://www.researchgate.net/publication/ accessed 17th November, 2022

7. The Administration of Estates Law of Kwara State Cap. A1, 1991
8. Wills Law Cap. 168 Laws of Kwara State, 1994
9. Marriage Act Cap. 218 Laws of the Federation of Nigeria, 2004