

tendency and ignorance. However, considering the immense benefits of Charitable Trust in taking Nigerians out of poverty, it is hereby recommended that more work should be done by the government in Nigeria to ensure that a lot of public enlightenment and mass mobilization of people are made for overcoming the problems of ignorance, lack of philanthropic culture. selfish tendency is such a way that will enable more people to embrace the culture of public charity thereby promoting institution of Charitable Trust that will assist in alleviating poverty in Nigeria.

construction of roads or a maternity hospital which will be to the benefit of all members of his family living in that community. Consequently, there is a little room left for charities, because many of the functions of charities are performed by extended family system³⁰. Another factor is that the current level of economic depression and poor salary remuneration to workers in Nigeria have made it difficult for individuals to accumulate surplus funds which can be used to establish charities after all the demands of their family have been met. Further, it is observed that prevalence of poverty in Nigeria whereby many people do not have access to basic essentials of life like employment, good food, housing and financial empowerment has made it difficult for those who have interest in charity to be buoyant enough to institute charitable trust.

Absence of philanthropic culture is another hindrance to popular practice of charitable trust in Nigeria. This is because people are no longer philanthropic as they are supposed to be, people no longer give out much or donate for a course as expected of them. This view was attested to by Chief Afe Babalola, lamented about the lukeworm attitude of Nigerians to giving donations and embarking on all forms of charity. They attributed materialistic tendency of Nigerians as the cause of their poor culture for philanthropism.

Selfish tendency is another factor against popularity of Charitable Trust. This is based on the reason that giving alms in the mosques and churches to the less privileged people is not fashionable to a great extent in Nigeria because many people prefer to spend their money on social parties and other self-aggrandizing programmes that will fetch them personal popularity and recognition than social service like charitable trusts.³¹

Another problem of popular implementation of Charitable Trust is Ignorance. This is because a lot of people still do not know that you can leave behind your property after death for the benefit of nonhuman objects such as cats or for saying prayers for the dead people in the mosque or saying mass for the dead in the church for the repose of the testator's soul. Capitalism is another factor militating against popularity of Charitable Trust. This is based on the fact that the capitalist system of economy being practiced in Nigeria has made people to develop the tendency to accumulate money and pile up public wealth for personal use rather than for public use with resultant effect that few privileged people are rich while so many people languish in poverty. Therefore, the need to ensure the accumulated wealth is

³⁰ Kodilinye, G. *An Introduction to Equity in Nigeria*. (Evans Publications Ltd. Lagos, 1986) 97

³¹ Chief Afe Babalola, Interview with Nigerian Tribune, 30/12/2007

the rich to the poor.³⁵ Charitable trust will also continue to serve as a reliable means of remembrance for the testator who donated it. It has been observed that as at today, one of the most reliable means of remembering testators after death is through the implementation of charitable trust which he instituted while alive. Such foundations like Adisa Bakare Educational Foundation in Ilorin, Kwara State, Moshood Abiola Foundation in Accountancy, Dideolu Specialist Hospital/ Health Foundation in Ogun State, Oyawoye Foundation in science studies, the Lambo Foundation in Health Education³⁶ as well as Mustapha Akanbi Foundation Ilorin Kwara State among others, will serve as a reliable means of remembering the testators during and after they have died. It has been observed that Charitable Trust shall continue to serve as a means of getting spiritual accomplishment. The fact that that many rich and aged people in Nigeria believe and cherish the idea that doing good for the benefit of people brings about a more fulfilling spiritual reward than financial benefit will make more people to engage on creation of Charitable Trust like building churches, mosques, maintenance of church yard, mosques or giving stipend to the clergy because they believe this will bring them more spiritual rewards.³⁷ Another factor is that Charitable Trust has the prospect of certainty. Once established as an exclusive charitable trust, no matter the extent of the generality of its objectives, Charitable Trust will not be operated in a way that will make it run afoul of its objectives. It is this certainty factor that makes Charitable Trust appealing to testators. Special tax exemption privileges are perhaps one of the reasons why charitable Trust still has a good prospect in Nigerian society today. Ordinarily, charitable trust is exempted from income taxation. Also, there are tax inducements offered to testators to cover some benefits in charitable organizations. This is because under section 21 (5) (c) of the Companies Income Tax Act, donation made by a company for charitable purpose are deductible from the company's income, whereas, this special concession does not apply to other aspects of trust.³⁸

8.0 Conclusion

It is found from the study above that the level of implementation of Charitable Trust is generally low in Nigeria and the problems militating against its popular implementation include the prevalence of extended family system, the high level of economic depression, prevalence of poverty, lack of philanthropic culture, general custom in Nigeria, selfish

³⁵ Ibid

³⁶ Mofat, G., *Trust Law in Nigeria*, Text and Materials 4th edition, p. 7.

³⁷ How to Establish Charitable Trust in Nigeria, <https://www.wikki.how.com> accessed on 21/03/2020

³⁸ S. 21(5) Companies and Allied Matters Act 1990.

more meaningful to people in Nigeria. Several studies have shown that implementation of Charitable trust in Nigeria has reduced sufferings of many lives and facilitated their access to enjoyment of essential social amenities.

4.0 Charitable Trust Creation under Nigerian Law

Charitable Trust can be created during the lifetime of the settlor or from part of the settlor's will after his death. Charitable Trust foundations are registered as incorporated trustees or association limited by guarantee under the Companies and Allied Matters Act (CAMA) Nigeria. However, the unincorporated Charitable Trust organizations previously registered under the common law in Nigeria are also recognized but may not be eligible for tax reliefs as VAT like those under CAMA. According to section 25(2) of CAMA,²⁴ "Charitable organization shall not register with share capital or allot shares to its members that create it or create ownership right on any member, although it stands as an artificial body which can sue and be sued by the fact of its registration". Relevant facts that are required to be stated in the form for registration of charitable trust organization according to section 674 of CAMA include: name of the Charitable trust body, the aims and objectives of the organization, the names and particulars of board of trustees as well as the rules that prohibit any trustee or member of the organization from diverting the fund.²⁵

5.0 Assessment of Implementation of Charitable Trust in Nigeria

Charitable Trust organizations are organized in Nigeria for various purposes. Such include foundation for relief of poverty advancement of education, advancement of good healthcare, advancement of religion and for other purposes. Assessment of the existing Charitable Trust Organizations and their specific objectives are hereby made. Among the Charitable Trust Organizations for relief of poverty in Nigeria is Akinola Foundation. Established in 2009 and it caters for the needs of the widows of journalist on official duty. It presented its first set of beneficiaries with cheques for various sum of money on 27/10/2010 as financial assistance at Ladi Lawal centre, Lagos state Chapter of Nigerian Union of Journalist. The Tony Elumelu Foundation for skill acquisition and Poverty alleviation among youth in the world is another strong charitable organization. This foundation has so far empowered thousands of youths on skills and entrepreneurial development across the globe. Others include Ndubizu Charitable

²⁴ S 25(2) Company and Allied Matters Act of Nigeria LFN 2004

²⁵ Ibid

also inherited and perpetrated in the family assets made it difficult for some wealthy people to give out charities.³²

7.0 Prospects of Charitable Trusts in Nigeria

Notwithstanding the above problems of Charitable Trust, it is observed that Charitable Trusts stand to bring about many benefits and thereby facilitates rapid socio-economic recovery for Nigeria if popularly practiced. It is also observed that popular practice of Charitable Trust will continue to serve as an important tool for complementing government efforts particularly in the area of provision of education, health services, provision of roads, portable water, religious advancement, relief of poverty and other public empowerment needs. Since the poor financial position of governments in Nigeria has constrained their capabilities to effectively finance public institutions, a number of public educational institutions therefore have to rely on endowment fund provided by private individuals and corporate bodies for meeting some of their official obligations. Some private individuals and organizations in the forefront of providing endowment support include the Lambo Foundation which tremendously financed community health and community health educational projects at the University of Ilorin. Also, Mallam Yusuf Olatolu Ali SAN, a prominent legal practitioner, SAN privately financed provision of computer equipment at the Faculty of Law Computer Centre and at Obafemi Awolowo University, Ile Ife, Faculty of Law Computer Centre.³³ Also, the same Yusuf Ali SAN built and donated 80 bed hostel accommodation each to University of Ilorin and Osun State University, Faculty of Law, Ifetedo Osun State, in 2011 and 2012 respectively.³⁴ Another prospect is that popular Charitable Trust will continue to serve as a vehicle for social and religious upliftment. This is because proliferation of churches and mosques and religious groups in Nigeria has made it necessary for such religious organizations to appeal for fund as charitable donation from members of the public. An important prospect of Charitable Trust is that it will continue to serve as a means for redistributing wealth between the rich and the poor in Nigeria. This idea is already reflected in one of the cardinal divisions of Charitable Trust as trust for relief of poverty. This is because the aspect of Charitable Trust which provides financial gifts for the relief of poor people including the widows, the orphans, the aged, poor emigrants and others will go a long way to achieve redistribution of wealth from

³² Kodinje, G., *An Introduction to Equity in Nigeria*, (Daybis Ltd, Ibadan, Nigeria 2001), p.97

³³ Bakibiriga D.J., *Law of Trust in Nigeria* (University of Ilorin Press 1989) p.29.

³⁴ Citation of Yusuf Ali SAN in (the Jurist, LawStudents Journal, Faculty of Law, University of Ilorin Nigeria 2012).

CHARITABLE TRUST AS MEANS OF POVERTY ALLEVIATION IN NIGERIA: PROBLEMS AND PROSPECTS

By

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Abstract

Nigeria is currently undergoing recovery from economic recession which affects the spending-power of government on delivery of social economic rights to its ever increasing population. The level of poverty is very high, Prices of goods and services are high while government finds it difficult to meet the basic needs of citizens such as water, electricity, road, housing, education, health. In a developing country like Nigeria, the functions of government go beyond maintaining law and order but also include provision of essential socio-economic needs. In line with the projection of the current administration of President Muhammadu Buhari to take Nigerians out of poverty by year 2030 and in realization of the fact that government alone cannot cater for all the needs of Nigerians, there is need for Government both at the Federal and state levels to put in place policies that will encourage private sector participation in social-economic intervention programme through institution of Charitable of trust which will assist in equitable wealth distribution. However, it is observed that despite its immense benefits, Charitable Trust is not popular practiced among Nigerians thereby denying many people of getting out of abject poverty. This paper examines the problems and prospects of Charitable Trust as a means of alleviating poverty in Nigerian. Relying on doctrinal research method, the study recommends a general change in attitude and culture of wealthy Nigerians from being self-centered to philanthropic disposition which will assist in equitable wealth distribution in Nigeria.

Keywords: Charitable Trust, Poverty Alleviation, Problems and Prospect.

Foundation, Honey Foundation, Erelu Adebayo foundation and a host of others have assisted Nigerians in the areas of financial assistance and community development services.²⁶

Some Charitable organizations established for advancement of education in Nigeria include: Rochas Okorochoa Foundation which has gone a great length in establishing many primary and secondary schools for orphans in Nigeria, trained and accommodated them free of charge. New Creation Education Foundation(NCEF), established in 2001. There is also Afe Babalola Foundation which has donated buildings and facilities to tertiary institutions in Nigeria. Edu Watch Foundation is another charitable organization in Nigeria. The above foundations have contributed immensely to sponsoring free education for many students in Nigeria.

The Charitable Organization for the advancement of religion in Nigeria include the World Bible College (WBC) Abuja, Edmundoga Inland Mission of Benue State which specializes in providing education and financial supports to foreign based indigenes of Edmundoga in the United Kingdom. Organizations established for advancement of good health include: Kanu Nwako Heart Foundation, registered 2005 in Lagos, it caters for various Nigerians who suffer from various heart defects.²⁷ Over 810 Nigerians have benefited from the foundation in 2008. There is Family Care Association established in Lagos and it embarked on Anti malaria Programme in 7 states of Nigeria. Also, there is Ladi Lawal Foundation established in Lagos to enlighten the public in knowing about their genotype. The Charitable Trust Organizations established for other purposes beneficial to the community or class of people in Nigeria include: The British-American Tobacco Nigeria Foundation (BATN) established 2002 to improve quality of life of people in the rural area. There is the Nigerian Conservation Foundation, (NCF) 1982. This foundation developed unique nature conservation strategies that are helpful to the people in Akwa Ibom State, Cross River, Edo, Lagos, Ogun, Plateau, Taraba and Jigawa States of Nigeria. The African Artist Foundation, established in Lagos and it caters for ageing and young artists. Abia State Association Incorporation is another foundation that caters for the need of Abia State people in diaspora. Adisa Bakare Foundation established in Ilorin and caters for the needs of indigent students and indigent people in Kwara State. There is also, Mustapha Akanbi Foundation also established in Ilorin, Kwara State and it caters a lot for indigent people and students in Kwara State. Others include Save a Child Foundation established by Tolulope Agboola, The Labadidi Foundation for leadership

²⁶ How to Establish Charitable Trust in Nigeria< <https://www.wikihow.com/establish>> accessed on Jan. 23, 2020

²⁷ Ibid

1.0 Introduction

Nigeria as a leading economy in Africa is currently recovering from economic recession and the government has been complaining of inadequate fund to provide social services and amenities for the wellbeing of its citizenry. Within the period of almost sixty years of independence, Nigeria has witnessed various governments with usual unfulfilled promise of revamping the economy of the country and creating a better life for all the citizenry through provision of jobs, water, good roads and infrastructure. Currently, the rate of unemployment has increased in Nigeria with a corresponding increase in the level of poverty. In 2016, it is observed that the population of Nigeria stands at 168 million with 60 % rate of poverty.¹ As at 2017, Nigerian population is 182 million with over 50% rate of poverty.² In 2019, many workers complained of nonpayment of salary for up to ten months in their respective states which leads to lack of income to meet their daily basic needs like food, cloth and shelter. Other people complained of lack of access to good road, water, housing, health care and education. The worst hit among the under privileged Nigerians are the sick but poor Nigerians and in particular, thousands of Internally Displaced Nigerians who are affected by internal conflicts and kept in the IDP Camps in many states like Benue, Nasarawa, Adamawa, Bornu, Cross Rivers and others.³ Since it has been realized that all the needs of citizens cannot be singularly met by the governments in Nigeria due to paucity of fund, governments have since recognized the important role of private participation in poverty alleviation assistance and donations from public spirited individuals and organizations. In line with the promise of the current administration of President Muhammadu Buhari to carry over 200million Nigerians out of poverty by the year 2023⁴ the Federal Government of Nigeria has recognized the need for inclusiveness of the private sector as an option for achieving success in poverty alleviation drive and this involves institution of charitable trust by private individuals and private organizations. Charitable Trust when instituted by well-meaning Nigerians shall complement effort of the Government in providing free health care,

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¹ National Bureau of Statistics, Abuja, (unemployed population data, Nigeria 2018). <http://www42017.q32018unememployment_report-pdf-adobe-acrobatreaderDe> accessed May 23, 2020.

² Nigerian Vision 2020, Economic Transformation Blue Print National Planning Commission, (Nigeria May2019), p8.

³ Ibid

⁴ President Muhammadu Buhari's Administration's 7Point Agenda under Action People's Congress APC (2019-2023), Nigeria as reported on Channels News Report May 15,2019.

development of Nigerian youth was established by Daniel Ogechi Akujobi Memorial Foundation established for poverty alleviation among Nigerians and the host of others.²⁸

However, it is observed that despite the laudable contributions of the above Charitable Trust Organizations to poverty alleviation in Nigeria, the level of implementation of charitable trust is still low. Also in term of number and popularity, the existing prominent charitable institutions which include; Afe Babalola Foundation, Rochas Okorocho Educational Foundation, Tony Emulemu foundation, Mustapha Akanbi Foundation, Adisa Bakare Foundation and the host of others are known to be very few compared to the over 180 million population of Nigerians. Therefore, activities of the existing charitable foundations in Nigeria are extremely inadequate and relatively incommensurate with the demands of Nigerians for massive poverty alleviation. In order to improve on the low level of popularity of Charitable trust among Nigerians, the following identified problems need to be addressed.

6.0 Problems of Charitable Trust in Nigeria

The fact that Charitable trust and other related nonprofit organizations are mandated to pay Value Added Tax (VAT) as provided under the Value Added Tax Act 1993 and the VAT Amendment Act 2007 as well as Federal Revenue Service Establishment Act 2007 is capable of discouraging people from creating Charitable trust as such interested people will find it difficult to understand the rationale behind payment of VAT since tax exemption had already been granted to creators of Charitable Trust under Nigerian Law.²⁹

It is observed that prevalence of extended family system with a well developed social welfare system which duplicates many of the beneficial effects of charities is responsible for lack of popularity of charitable trusts. This is because in Nigerian society, the social needs such as relief for poverty and advancement of education are in most cases taken care of by wealthy members of the family and not by operation of a welfare state or by charity system as would be found in very advanced western countries, but by all embracing extended family system. Under this system, any individual who has become averagely wealthy in the society is required to maintain and support many of the less privileged members of his extended family. This practice is done directly e.g. by paying school fees of his relatives or by erecting at his expense, a building to house his relatives, giving monthly stipend for food or indirectly by making a cash donation to some local community project such as donation for

²⁸ Ibid.

²⁹ Atolabi Eiebi, et al "Charitable Objects and Regulatory Issues in Nigeria's Not For Profit Sector" <http://eina.vjlegal.com/2020/04/3/charitable-trust/aiml_source> accessed May 25, 2020.

purpose. Baker, S.P.J held that as the room was intended by the testator to be used as a private family

mosque in a private house, there was no charitable purpose in the devise and the trust relating to it being void, the room fell into the residue. "Religious purposes are charitable only when religious services tend directly or indirectly towards the instruction or edification of the public."¹⁵ A gift for advancement of religion in general term is charitable as well as a gift for specific religious purposes. Accordingly, a gift for the stipend of the clergy, a gift for maintenance of a church yard, including tombs, and a gift for the improvement or upkeep of the fabric of the church has been held charitable.

2.3 Trust for Advancement of Education

Trust for the establishment and support of professorship and lectureship are obviously educational in character. Trust for purposes such as increasing the stipends of university teachers and fellows of colleges have been held to be charitable. The same principles applied to learned societies and institutions, colleges and universities. In *Incorporated Council of Law reporting for England and Wales v. A.G.*¹⁶ the court held that the council was a charitable organization since the preparation of law reports was for the advancement of education. However, while it must be known that the element of public benefit must be reflected in a gift of charitable trust and the gift must be for the advancement or furtherance of some educational purpose, a gift for the advancement of political education in association with a political party and in furtherance of its aims is not charitable¹⁷.

2.4 Trust for Relief of Poverty

The following trusts have been held charitable for relief of poverty; a gift for relief of poor relations of the donor; gifts for benefit of the widows and children of deceased ex-employees of a firm; a gift for encouragement of poor emigrants; a gift for poor employees of a firm; and a gift for ladies of limited means¹⁸. From the above, what is required is for an individual to be in difficult circumstances as to be unable to maintain a modest standard of living. Therefore, for a trust for relief of poverty to be valid, it is essential that all the objects should fall within designation "poor". Thus, in *Re-Sam's Will Trusts*¹⁹, a gift for the working classes is held not

¹⁵ Edward Stockwell, *Trust and Equity* (Person Education Ltd, England, 1992), 13.

¹⁶ *Up cit*. See also *Royal College of Surgeons v. National Provincial Bank Ltd*, [1952] A.C 631

¹⁷ Maitland G., *Trust Law, Text and Material 4th Edition* (Cambridge University Press, 2008), 7.

¹⁸ *Fabunmi I.O., Equity and Trust in Nigeria*, (The University Press 1986) p.166

¹⁹ (1954) Ch. 265.

bequest for education of children and grandchildren of testator was held not charitable. Similarly, a bequest to a member of a particular company is not charitable.²²

However, there are exceptional instances where element of public benefit is either relaxed or not required. Such instances include trust for relief of poverty, even though the beneficiaries are defined by a test of relationship to an individual or body, or a trust for a company's employee. All these have been held to be charitable. Similarly, a gift in which a charitable purpose is implied has been held charitable, provided the terms of such gifts do not negate charitable purpose.²³

Also, a gift is charitable if it is made to a person whose office is charitable. Thus, a gift to a vicar or other religious body without indicating the purpose to which the gift is to be applied creates a charitable trust because it will be implied that the property must be applied to public and not for religious purpose. The person is irrelevant if the purpose is indicated and the purpose must be exclusively charitable. From the above, it must be noted that a trust is not charitable unless the objects are exclusively charitable.

3.1 The Concept of Taking People out of Poverty (Poverty Alleviation)

Poverty can be explained as deprivation of access to opportunities or from obtaining other essential elements of life such as food, water, electricity, health care, education, good roads, jobs, financial assistance necessary for having a decent and comfortable life. Poverty affects men and women in the society in different ways but generally the power to grow and enjoy a good life. The policy of taking the people out of poverty in Nigeria is therefore predicated upon the need to combat poverty among Nigerians by embarking on various poverty reduction programmes which Charitable Trust is considered as one of such anti-poverty programmes being operated by non-governmental bodies.

3.2 Charitable Trust and Poverty Reduction in Nigeria

Charitable Trust is a means of poverty reduction and empowerment of people by nongovernmental individuals, associations and foundations with the ultimate goal of enhancing socio-economic growth of the people. It overcomes poverty through provision of social supports and services like scholarship, health-care, financial support, jobs and entrepreneur promotion, portable water, access roads, education training centers, religious centres and other needs which many people are deprived of, thereby making life decent and

²² In Re Obabumi Pedro [1961] L.R 127

²³ Jegede M.I, *Law of Trust, Bankruptcy and Administration of Estate*, (M.I Professional Publishers Ltd, Lagos) p.7.

charitable, its purpose must fall within the spirit and intendment of the preamble to the statute of Elizabeth 43 Elizabeth 1 C4, 1601 commonly called the Charitable Uses Acts 1601.¹¹ Charitable Trust, includes provision for the relief of the aged, impotent and poor people, the maintenance of sick and maimed soldiers, and mariners, school of learning, free schools and scholars in universities, the repair of bridges, ports, havens, causeway, churches, sea banks, highways, the education and preferment of orphans, the marriage of poor maids, aid and help of young tradesman, handicraftsmen, relief of poor infants, concerning payment for setting out of soldiers and taxes, etc. The trust, which fall within the above Preambles in the Statutes of Charitable uses 1601 are charitable. However, it has been held that this list is outdated and was not even intended to be a complete list of charities. It has been held that a more legal and general definition of charitable trust is that of Lord Macnaghten in *Commissioner of Income Tax v. Pemsel*.¹² trust for relief of poverty; trust for advancement of education; trust for advancement of religion; and trust for other purposes beneficiary to the society. The question whether a trust is charitable or not is a question of law to be decided by the judge in the light of circumstances in which the institution of trust came into existence. In the case of *Incorporated Council of Law Reporting for England and Wales v. Attorney General* (1972)¹³ it was held in reaching a decision whether a trust is charitable or not, the judge is not affected by:

- a. testator's opinion as to whether the purpose he has indicated is charitable or not;
- b. testator's motive, as this will not prevent a gift from being charitable if the purpose is

One that is charitable in the eye of law.

In order words opinion and motive cannot be the yardstick for determining whether a trust is charitable or not. What is essential is the intention and purpose more so, when such is charitable in the eyes of the Law.

2.2 Trust for Advancement of Religion

For a gift to be charitable under the above, it must be for the advancement of religion. Thus, in the case of *Hynd and Others v. Ajike & Ors*,¹⁴ the court was to determine whether the bequest of a room to be used as a private family mosque in a private house was for charitable

¹¹ Statute of Charitable uses Act 1601

¹² [1891] AC (531) 583

¹³ (1972) Ch. 73

¹⁴ [1894] 19 NLR 11

mankind and other charitable objects. Above all, it will serve as a means of economic empowerment to the less privileged Nigerians thereby relieving them of poverty.

2.0 Meaning of Charitable Trust

The word Trust has been defined in various ways by several authors, but because of the utility of the concept, it has become difficult to give an accurate and sufficient meaning. Charitable Trust is defined as a property interest held by one person (the trustee) at the request of another (the settlor) for the benefit of another person (the beneficiary).⁸ Sir Arthur Underhill, defined trust as an equitable obligation binding the trustee to deal or control a property for the benefit of the beneficiaries.⁹ In essence, Trust is explained as a relationship existing between two or more parties whereby a party known as trustee based on the obligation imposed by equity keeps a property and the title to it in trust for the benefit of another party known as the beneficiary. A trust can be majorly divided into private and public trust. Private trusts are those instituted for exclusive benefit of some private individuals, while Public trusts are those instituted for the benefit of the public. It is in the category of public trust that we have Charitable Trust. The word Charitable Trust includes those trusts which are made for charitable purpose or for the benefit of the public. Such include trust for the advancement of religion, trust for advancement of education, trust for relief of poverty and trust for other purposes beneficial to the public at large.

A charitable trust is a trust whose object is the promotion of public welfare even if it confers benefit on individual or class. As already stated, the purpose of charitable trust is to benefit the general society or at least, a significant proportion of it. Because of this, charitable trusts are treated very favourably and they attract rules not found in other categories of trust.¹⁰

2.1 Classification of Charitable Trust

It is difficult to give a general definition of charitable trust which connotes a gift for public benefit as people always confuse charitable trust to alms giving. Therefore, for a trust to be

⁸ Bryan A. Garner, *Black Law Dictionary*, 7th edition, (Western Group, St. Paul, 1989) p. 204.

⁹ Arthur Underhill, *Law of Trust and Trustees*, 12 Edition (London Butterint, 1970) p.39

¹⁰ Muiz Ba nire, *The Nigerian Law of Trust* (Excel publications, Lagos, 2002), p.189.

scholarship, free education entrepreneurs, good roads, cheap housing and other related services to the people. For example, the efforts of Rochas Okorochoas Foundation on provision of free education to less privileged children, the Tony Elumelu Foundation for providing youth all over Africa and the rest of the world with entrepreneurial skills, training and fund are a few of the testimonies to the significance of instituting Charitable Trust as a veritable means of poverty alleviation among the people.⁵

However, it is observed that despite the importance of Charitable Trust as a means for alleviation of poverty, Charitable Trust remains very unpopular among Nigerians. Buttressing the above position, Chief Afe Babalola SAN submitted in his interview granted to the Nigerian Tribune that people are no longer philanthropic as they are supposed to be. He said that Nigerians are no longer giving out donations and charity as much as it is expected of them.⁶

This same view was expressed by the Ewi of Ado-Ekiti Oba Aromolaran during the celebration of his 50th anniversary. The Ewi referred to traditional rulers, as the replica of God on earth and lamented that the subjects who are supposed to give them things they live on, no longer do so. He also complained that people no longer give social supports to the less privileged. He said that while the white men and the missionaries have continued to give donations for establishment and improvement of great universities all over Europe, he could not understand the reason why Nigerians do not. He however attributed the reason to the fact that Nigerians are too self-centered and suggested that people's selfish attitude must change. He noted that he has started to give charity and his donation of a building to the University Teaching Hospital (UCH) Ibadan during the 50th anniversary celebration in 2007 was a good example for other people to follow.⁷

This paper therefore, examines the problems and prospects of Charitable Trust as a tool for achieving poverty alleviation in Nigeria. The significance of this study is based on the fact that philanthropism or the act of giving out charity is a catalyst to rapid socioeconomic development of the society. Therefore, a study of this respect will assist to educate the people on the need for creating charitable trust and this will further boost socioeconomic development of Nigeria. Further, this study will help to change the minds of Nigerians to be less self-control and learn to give out charity. It will also serve to enlighten Nigerians that one can entrust his property after death, for charitable purpose which will be beneficial to

⁵ How to Establish Charitable Trust in Nigeria < <https://www.wikihow.com/establish> > accessed on Jan. 23, 2020.

⁶ Nigerian Tribune, Monday 31 December, 2007, p.8.

⁷ Ibid

to be a gift for the relief of poverty because the phrase “working class” does not necessarily mean poor persons but if the gift had been made to members of the working class who are aged or widows, trust for relief of poverty might be implied.

2.5 Trust for other Charitable Purposes Beneficial to the Community

This type of trust covers all other instances in which a trust is charitable and an element of public trust is evolved. In *Incorporated Council of Law Reporting for England and Wales v. A.G.*, Jessel L.J. said that the courts generally accept that if a purpose is shown to be beneficial to the community, it is *prima facie* charitable in law.²⁰

In *Re Jones* deceased, the testator directed his trustee to build a hall which shall remain absolutely for use of his countrymen of Lagos community forever. The testator further directed that the first floor of the building was to be used for public meetings and the top floor to be used for a library. The Privy Council held that notwithstanding that the will contained no express devise to the trustees, the property has by the terms the will to be affected with a permanent trust is beneficial to the community of Lagos weighed very much with the court in arriving at its decision. However, it is not every purpose of public benefit which is charitable but such purposes that come within the preamble to the statute of Uses 1601 are charitable; most of the trusts under this heading are not based on logic, but upon precedent. Such include a gift for the welfare of cats and kittens, a trust for protection and benefit of animals, a trust for establishment of a hospital in which animals which are useful to mankind should be properly treated and cured with a view to public advantage and similarly, a trust for promotion of sports as an end in itself.

3.0 Requirement of Public Benefit

It is a general assumption that for a trust to be charitable it must benefit the community as a whole and public benefit means one that can be established by the evidence in a law court. Therefore, a trust is not charitable if it benefits only the inhabitants of a particular area. In *Iyanda and Others v. Ajike & Ors*²¹, a bequest of a room to be used as a private family mosque in a private house was held not charitable as it did not benefit the public. Further, a bequest that benefits only a section of the whole community is not charitable, nor is a bequest to persons who are defined by a test of relationship or a particular individual or body. A

²⁰ Supra, p.578

²¹ [1894] 19 NLR 11