

The Concept of Heirship and Status of Gifts from Decedent's Estate by Heirs in Islamic Law of Inheritance

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Abstract

Nigeria operates a pluralistic legal system and has Islamic Law as one of its legal sources. It is equally a country consisting of people of diverse religions such as Christianity, Islam and African Traditional Religions. Inheritance in accordance with Islamic Law is a common occurrence in Muslim communities all over the world as well as in Nigeria and constitutes a highly sophisticated piece of legislation from the ultimate law giver, Allah in the Islamic contemplation. The ability to grasp the workings of the law requires an understanding of its bases and core concepts. This paper, therefore critically examines one of such fundamental concepts, i.e. heirship in Islamic Law of Inheritance.

Key words: Gifts, Heirs, Estate, Heirship, Islamic Law.

Introduction

Two issues from the record of distribution of estate of one decedent within Ilorin, Late Alhaji (Barrister) Abdulmumeen Oladimeji Ayinla,¹ constitute the main inspiration for this paper. The first issue relates to the aspect of the record being referred to in paragraphs two and three of the letter authored by one Alhaji Ahmed Ayinla (brother of the decedent) dated 8th June, 2012 to the wife (Hajia Amudalat Nike Ayinla) of the decedent.² For ease of reference, the relevant portion is reproduced:

I am writing formally to reiterate the stand of myself, my siblings both paternal and maternal that we are not interest (sic) in the Estate left behind by Alhaji (Barrister) Abdulmumeen Oladimeji Ayinla. We entirely agreed that the Estate be apportioned to the immediate family of Abdulmumeen Ayinla i. e. his children and yourself based on Islamic Sharia Law to be administered strictly by Sharia Court Justice (sic) in Ilorin.

From a perusal of the record, it was observed that the decedent was survived by a wife, a daughter and two sons. However, the letter under reference suggests that the decedent has other relations who by Islamic Law of inheritance, are not qualified to inherit him as a result of existence of two sons amongst the surviving heirs.³ Were the author of the letter in question to be aware that under Islamic Law of inheritance, the existence of two sons in the estate under discussion has excluded him and his other siblings,⁴ he and his other siblings would have probably realized that the letter in question was needless. According to the rules of inheritance in Islam, the wife as a *Qur'anic* sharer takes 1/8 of the estate while the rest 7/8 of the estate is distributed amongst the two sons and the

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¹ Estate of Alhaji Abdulmumeen Oladimeji Ayinla (2013) KW State SCA Annual Report 268-280 at 269.

² Estate of Alhaji Abdulmumeen Oladimeji Ayinla, *ibid.* at 269.

³ "Give the shares to those who are entitled to them, and what remains goes to the nearest male heir." See Al-Asqalani, A. H. (1996/1416), *Bulugh Al-Maram Min Adillat Al-Ahkam*, (Pt. 2), Riyadh-Saudi Arabia, Dar-us-Salam Publications, (*Babu Al-Fara'id*), Hadith No. 805, 333-334. See also Khan, H. (2007), *The Islamic Law of Inheritance* (3rd Ed.), Karachi, Pakistan: Ameena Saiyid, Oxford University Press, 68-69.

⁴ By the principle of *ta'sib*, the two sons in this case, convert the daughter who is a *Qur'anic* sharer to a Residuary heir. See Khan, H. *op. cit.*, 69.

daughter in ratio two to the son and one to the daughter. This was upheld by the Chief Justice of the Federal High Court, Kogi, (Minister, Hon. Kadi A. L. Kamaldeen).

Who Is An Heir Under Islamic Law of Inheritance?

Terms and concepts are at times difficult to define or to be explained in Islamic Law due to a variety of reasons. One of such terms is "heirs" (*Wārith*) which is often misconstrued not-only by non-Muslims but also by Muslims. This is due to the fact that whenever it is mentioned, its literal meaning and not its technical meaning is usually perceived whenever a person dies. Whereas in Islamic Law, it is not every person that survives a decedent that qualifies to be an heir because there are other conditions or requirements provided by the law. It is when a person satisfies these requirements that he or she can be called an heir- a legal heir.

In Islamic Law, the term or the word "heirs" is very broad in meaning. It is however simply defined as a person whose relation to the decedent Muslim legally qualifies him or her to inherit part of the estate of the decedent Muslim.⁶ This right to inherit is not absolute. It is subject to a number of factors such as the person's degree of relatedness to the decedent, presence of other heir(s),⁷ belonging to the same religion of Islam and a host of others.⁸ Therefore, "*legal heir(s)*" in Islamic Law, is a term which is properly applied only to those relatives upon whom property devolves, after the decease of its owner, by operation of Law."⁹ For easy identification, Muslim jurists have grouped heirs in Islamic Law in to either two or three classifications. Though there are many classifications of heirs but the most common and prominent among Muslim jurists are the ones to be examined below.

The Two-Fold Classification of Heirs

The two-fold classification of heirs is the broad division of heirs in Islamic Law in to Quranic Sharers (*Ashab al-fara'id*) and Residuaries (*Asabah*). This is a classification of Maliki, Shafi'i and Zahiri Schools of Law.¹⁰ They do not recognize the Distant Kindreds (*Dhawi al-Arham*). For those who have adopted the two-fold classification, their argument is premised on the fact that the Glorious *Qur'an* mentions only sharers (*Ashab al-fara'id*) and Residuaries (*Asabah*) and does not mention Distant Kindred (*Dhawi al-Arham*) because they are not regarded as heirs.¹¹ Apart from the *Qur'anic*

⁵ The decedent in the case under discussion, was survived by the following amongst others: Alhaja Amudalat Ayinla (wife), Muh'd Mukhtar Ayinla (son), Muh'd Mubarak Ayinla (son), Mulikat Abisola Ayinla (daughter), Alhaji Ahmed Ayinla (senior brother), Idris I. Ayinla (brother), Alhaja Jimoh R. O. (sister), Salimat Akinlaso (sister) and Musa Jimoh Ayinla (cousin).

⁶ Lakhvi, S. H. A. (2003/1424 A. H.), *Al-Mirath: Justice of Islam in the Rules of Inheritance*, Renala Khurd-Okara, Pakistan: Al-Makhtabah Al-Muhammedia Ghullah Mandi, 30.

⁷ This is because heirs are not equal in Islamic Law. The rule of nearer in degree excludes the more remote applies hence some heirs have priority over others. As an example, a son will exclude son's son where they co-exists because of the rule just mentioned, see Mahmud, A. B. (1982), "Succession under the Sharia in Nigeria," *Nigerian Current Law Review* (N. I. A. L. S.), 127 - 129.

⁸ Slavery, existence of marital bond in case of husband and wife, the heir(s) not having caused the death of the deceased, illegitimacy, see Jung, M. U. S. (1981), *The Muslim Law of Inheritance* (Compiled from original Arabic Authorities with Arabic Text of Sirajiyyah, Qur'anic Verses & Hadis And their English Translation), New Delhi: Nusrat Ali Nasri for Kitab Bhavan, 65.

⁹ Coulson, N. J. (1971), *Succession in the Muslim Family*, London: Cambridge University Press, 1.

¹⁰ See Gurin, A. M. (1998), *An Introduction To Islamic Law of Succession (Testate/Intestate)*, Zaria: Jodda Press Ltd., 33, see also Coulson, op. cit, 30, see further Zubair, A. (1998), "Legal Heirs Under the Shari'ah" in Zubair, A. (Ed.), *Discourse On Islamic Law of Inheritance And Waqf*, Kano: Depart. of Islamic Law, Bayero University, 29-31.

¹¹ *Qur'an* 4:11-12.

verses, the jurists of the proponent of the two-fold classification of heirs rely also on the *Hadith* of the Prophet (p.b.u.h.) that says:

”افسدوا الخار بين أهل الغريص على كتاب الله وما تركت لكم
يعطى لأقربى رجل ذكر.”

*Divide the wealth among the heirs with prescribed shares, according to Allah's Book.
Whatever remains after that, it is for the male person who is nearest (to the deceased)* ¹²

Also, in justifying two-fold classification of heirs, they place reliance on a Tradition (amongst others) that when the Prophet (p.b.u.h.) was asked about inheritance right of father's Sister and mother's sister, he replied that both have no rights.¹³

In the whole of Nigeria and in Ilorin in particular, the majority of Muslims (including the authors of this paper) belong to the Maliki School of Law hence they adopt and apply the Maliki School of Law interpretation. The adoption and application of the School in Ilorin and Nigeria results from how the religion of Islam was spread to these places. While spreading the religion of Islam and conducting trade simultaneously, the Berber Almoravids and itinerant Merchants from Western Sudan, Hausa land and the Borno Empire equally spread Malikism through the teaching of Maliki books of Jurisprudence which they carried along with them.¹⁴ Thus, unconsciously, the Muslims of Ilorin and indeed of Nigeria assimilated the Maliki School of the Islamic Law simultaneously with the teaching of the religion itself.

The adoption and application of Maliki School of Law in Ilorin and Nigeria has enjoyed judicial interpretation in the cases of *Ajarat Idowu v. Aliyu Mobolaji Akanbi*¹⁵ and *Abdulsalam v. Salawu*¹⁶ respectively. In the former, the Sharia Court of Appeal, Ilorin held that “where divergent opinions of schools occur in any particular matter before a court of Law in Kwara the popular one that is Mashhur opinion of Maliki School should be followed” while in the latter the Supreme Court held that in deciding matters that fall within the purview of Section 262 of the 1999 Constitution and Section 242 of the 1979 Constitution, the Islamic Personal Law of the Maliki School governs such matters. Therefore, since Maliki School of Law is the applicable law, the authors are also inclined to it and cannot hold otherwise in the case under discussion because the presence of sons converts the daughter to a residuary heir and thus excludes from the decedent's estate, his brothers and sisters from inheritance as observed earlier above.

The Three-Fold Classification of Heirs

The three-fold classification of heirs is the division of heirs in Islamic Law in to Quranic Sharers (*Ashab al-fara'id*), Residuaries (*Asabah*) and Distant Kindred (*Dhawi al-Arham*). This is a classification

¹² .Al-Jibaly, M. (2005), *Inheritance Regulations & Exhortations*, London: Al-Kitaab & Sunnah Publishing, 14-15.

¹³ .Rahimuddin, M. (Translator), (1985), *Muwatta Imam Malik* (Translated with Exhaustive notes), Chapter 466, *Hadith* Nos. 1465 and 1466), Turkman Gate, New Delhi: Taj Company 3151, 335.

¹⁴ .Mansour, M. H. (1981), *The Spread and the Domination of the Maliki School in North and West Africa, Eighth-Fourteenth Century*, Unpublished Ph.D Dissertation, University of Illinois at Chicago Circle, Chicago, Illinois, Chapter 4, see also Danmole, H. O. A., (1980), *The Frontier Emirate: A History of Islam in Ilorin*, Unpublished Ph. D. Thesis, Centre of West African Studies, University of Birmingham, Birmingham, 12.

¹⁵ . (2004) KW State SCA Annual Report 126 at 130-131, see also Ismael, S. I. and Rabi'u, S. O. (2016), “Islamic Law of Inheritance (*Mirath*) in Ilorin Emirate Prior to the Advent of Fulani Empire: Practice and Procedure,” *UNIMAIDJICOL*, Vol. 1, No. 1, 11 at 18.

¹⁶ .(2002) FWLR, Pt. 117, 1103 at 1113, see also *Alkamawa v. Bello* (1998) 6 SCNJ 127.

of Hanafi, Hanbali and Shiite Schools of Law.¹⁷ They place emphasis on the Distant Kindreds (*Dhawi al-Arham*) as a class of heirs. Like jurists in the Schools of Law that classify heirs in to two broad divisions, those who have adopted the three-fold classification have also relied on a number of authorities in doing so. Prominent among these authorities is *Qur'an* Chapter 8 verse 75, which provides that certain blood relationship have better rights over others in inheritance. On the strength of the verse in question, the inheritance right, which till then was based on kinship, was abolished when the *Qur'an* assigned specific shares to certain heirs and mentioned agnatic heirs as entitled to inheritance. From this, it is inferred that since distant kindreds (*Dhawi al-Arham*) which literally means all blood relations, out of whom not everyone came to be mentioned under the category of Sharers and Residuaries, those who have not been mentioned in these two categories should therefore be entitled to inheritance in the absence of *Qur'anic* sharers and Residuaries.

In justifying the classification, they argue further that entitlement to inheritance generally depends on blood relationship. However, the Glorious *Qur'an* mentions only two categories of blood relations who are entitled to inheritance which means that in the absence of these two, those blood relations who are not included in these two categories should be entitled to inheritance as ultimate Residuaries-that is, Distant Kindreds (*Dhawi al-Arham*).

Apart from relying on the Glorious *Qur'an* to justify the three-fold classification of heirs, they also place reliance on some *Ahadith* of the Prophet (p. b. u. h.). One of such Traditions is the one in which it was reported that someone by name Sufiyan ibn Amin was killed by arrow. He left no heir except his mother's brother. Abu Ubaydah ibn Jarrah asked Umar ibn Khattab whether mother's brother could inherit. Umar replied that the Prophet once said:

"الله ورسوله متولى من لا متولى له، وأخوال وأرث من لا وارث له."

"Allah and Rasul are the heirs of those who have no heir, and mother's brother is the heir of that who has no heir."¹⁸

The proponent of the three-fold classification of heirs also place reliance on another Tradition which says when Sabhi ibn Dajarah died, the Prophet asked Qasim ibn Qasim whether the deceased is known to have any relation. He replied that nobody knows any other relation except his sister's son-Abu Lubbab Ibn Abdullah bin Mamza in arriving at the three-fold classification because the Prophet (p. b. u. h.) gave the property of the deceased to Abu Lubbab.¹⁹ Abu Lubbab in this case is neither a *Qur'anic* Sharer nor a Residuary heir but a distant relation (nephew) of Sabhi Ibn Dajarah.

Other Classifications

The two major broad classifications examined above are neither exhaustive nor rigid and absolute. They are the most commonly adopted classification amongst Muslim jurists. There are other types of classifications which vary from one author to the other. There is the five-fold²⁰ classification which classifies heirs into *Qur'anic* heirs (*Ashab al-fara'd*), Residuaries (*Asbah*), Distant Kindred (*Dhawi al-Arham*), Emancipator and Islamic State Public Treasury (*Baytul-Mat*). There is also the eight-fold²¹ classification which classifies heirs in to *Qur'anic* sharers (*Ashab al-Furud*), *Al-'Asabat al-Nasabiyah*,

¹⁷. See Coulson, op. cit, 31; see also Hussain, A. (2005), *The Islamic Law of Succession*, Riyadh, Saudi Arabia: Maktaba Dar-us-Salam, 62-79.

¹⁸. Al-Asqalani, A. H. (1996/1416), *Bulugh Al-Maram Min Adillat Al-Ahkam*, (Pt. 2), Riyadh-Saudi Arabia, Dar-us-Salam Publications, *Hadith* Nos. 811 and 812, 335-336.

¹⁹. Bukhari, A. A. M. (1939), *Sahih Al-Bukhari*, Cairo, 215.

²⁰. Lakhvi, op. cit, 31-32.

²¹. Hussain, op. cit, 62, see also Zubair, op. cit, 29-23.

Institution of *Radd*, *Dhawi al-Arham*, *Radd*, Emancipator (marital Agnate), Legatee that has been bequeathed more than one-third of the estate and Islamic State Treasury (*Bayt al-Mal*). Whatever form of classification is adopted, a close analysis would reveal that all the various classifications can be subsumed under either the two-fold or three-fold classification as the case may be.

An heir described as *Qur'anic* Sharer (*Asbab al-Furud*), is one who has the right to inherit a specific or defined share, established by *Qur'an* and *Sunnat* in the estate of a deceased Muslim.²² There are a total number of twenty-six²³ heirs within the class of *Qur'anic* and Residuaries. Out of this number, fourteen²⁴ are males while eleven are female. From the perspective of *Qur'anic* Sharers, there are twelve²⁵ heirs. Out of this number, eight are females while the rest four are males. The eight females are: wife/wives, Daughter, Son's Daughter, Germane sister (full sister), consanguine sister (same father but different mother), Uterine sister (same mother but different father), Mother and True Grandmother/False Grandmother.²⁶ The four males are: Husband, Father, True Grandfather and Uterine brother.²⁷

Out of these *Qur'anic* Sharers, the following six: Father, True Grandfather, Daughter, Son's Daughter, Germane sister and consanguine sister, under certain circumstances²⁸ inherit as residuary heirs. From this category of heirs, only father and True Grandfather can inherit in dual capacity. That is both as Sharers and as Residuary.

The list of the fourteen male heirs are: Son, Son's son, father, father's father, germane brother, consanguine brother, uterine brother, son of a consanguine brother, germane paternal uncle, consanguine paternal uncle, son of a germane paternal uncle, son of a consanguine, husband, heir through patronage. While the list of the female consists of: Daughter, Son's daughter, mother, mother's mother, mother's father, germane sister, consanguine, sister, uterine sister, wife/wives and woman inheriting through patronage.²⁹

A residuary (*Asbah*) heir, as the name implies, is a male heir in line of relationship with deceased without female intervening who inherits the whole estate when he exists alone as the only heir or inherits after the *Qur'anic* Sharers have been given their shares when he co-exists with them. He has no fixed share and if the whole estate is exhausted by the *Qur'anic* Sharers, he gets nothing.³⁰

The residuary heir is of three types. These are residuary heir in his own right (*Al-Asbah Bil-Nafas*), residuary heir by another (*Al-Asbah Bil-ghair*), and residuary heir with another (*Al-Asbah ma'al-ghair*).³¹ Within the first class of residuary heir are: son, son's son, father, grandfather, full brother, half brother, son of full brother, son of half brother, full paternal uncle, half paternal uncle, son of full paternal uncle, and son of half paternal uncle.

²² Coulson, op. cit, 20, see also *Qur'an* 4: 11-12.

²³ Gurin, op. cit, 38, on the other Hand, some other writer put the number as twenty-five, see Lakhvi, op. cit, 30.

²⁴ Gurin, op. cit, 38, see also Aliyu, I. (N. D.), *Inheritance in Islamic Law*, Zaria: Zazzau Ventures, Printing and Publishing, 17, however, according to Lakhvi, there are fifteen male and ten female heirs, see Lakhvi, op. cit, 30.

²⁵ The number is stated to be thirteen because mother's mother is reckoned with. This makes a total of nine females and 4 males. See Lakhvi, op. cit, 32-33.

²⁶ Rashid, S. K. (1979), *Muslim Law*, Laibagh, Eastern Book Co., 50.

²⁷ Ibid, 54.

²⁸ These circumstances are: when father or Grandfather is the only (male) heir, when daughter co-exists with son, son's daughter co-exists with son's son, germane sister co-exists with germane brother and consanguine sister co-existing with consanguine brother.

²⁹ Gurin, op. cit, 3, see also Aliyu, op. cit, 17-18, see further Lakhvi, op. cit, 30-31.

³⁰ Lakhvi, op. cit, 33, see also Aliyu, op. cit, 29-30.

³¹ Gurin, op. cit, 36-38, see also Lakhvi, op. cit, 33-34.

This first class of residuary heir, that is, residuary heir in his own right (*Al-Asabah Bil-Nafas*) is further divided into four sub-classes. These four sub-classes are the male descendant of the deceased which consists of son and son's son,³² the male ascendants of the deceased which consists of father and father's father, the male descendants of the deceased's father which include his full brother, consanguine brother and their sons; and the male descendants of the father's father which include the germane paternal uncle and consanguine paternal uncle and their sons.³³

The residuary heir by another (*Al-Asabah Bil-ghair*) is the four female heirs namely daughter, son's daughter, germane and consanguine sister who become residuary only when they co-exist with certain males. That is, when there happen to be males of the same degree, or who, though of a lower degree, would take as such.³⁴ These four females are *Qur'anic* Sharers of half or two-third but become residuary heirs in the presence of their brothers of same class, degree and blood. Daughter becomes a residuary heir in the presence of son, son's Daughter becomes residuary heir in the presence of son's son while germane sisters become residuary heir in the presence of germane brother, and consanguine sister also becomes a residuary heir when she co-exists with consanguine brother. In all these cases, the male takes twice the share of the female.³⁵

The third category of residuary heir is the residuary with another (*Asabah ma'a al-ghair*). These are two female *Qur'anic* Sharers who are entitled to half or two-third of the estate. They are the germane sister and consanguine sister. They become residuary heirs when they co-exist with daughter or Son's daughter as a result of which they inherit the residue after giving the Son's daughter and other *Qur'anic* Sharers their shares.³⁶ The legal basis of this rule is the *Hadith* of Prophet Muhammad (p.b.u.h.) narrated by Huzail Bin Shurahbil that:

Abu Musa was asked regarding the inheritance of a daughter, a son's daughter and a sister. He said: "The daughter will inherit one-half and the sister will take one-half. If you go to Ibn Mas'ud, he will tell you the same." Ibn Mas'ud was asked and was told of Abu Musa's verdict. Ibn Mas'ud then said: "If I give the same verdict I would stray and would not be of the rightly-guided. The verdict I will give in this case will be the same as the Prophet (p.b.u.h.) did, one-half is for daughter and one-sixth for the son's daughter, both shares make two-third of the total property, and the rest is for the sister". After wards, we come to Abu Musa and informed him of Ibn Mas'ud verdict, whereupon he said, "so, do not ask me for verdicts, as long as this learned man is among you."³⁷

The third major class of heirs is the distant Kindred (*Dhawi al-Arham*). This class of heirs has generated much legal controversy amongst Muslim jurists especially those of the four Sunni Schools of Law. The controversy stems from the rights of the distant kindred to inherit which dated back to the period of the Companions and their early successors. Some interpreted the law sources allowing these relative to inherit while others give preference to *Baytul Mal* rather than to the distant kindreds. The Hanafis adopted the latter position while the Malikis and other Schools adopt the former position and hold that whatever is left of the estate after the shares, goes to the Islamic State Public Treasury.³⁸ These are those relations of the deceased who are neither *Qur'anic* Sharers nor agnatic

³² How low so ever and the closer son excludes the remoter son's son.

³³ The germane uncle excludes the consanguine uncle and consanguine uncle excludes the son of germane uncle and son of germane uncle excludes the son of consanguine uncle, see Lakhvi, op. cit, 35.

³⁴ Gurin, op. cit, 37, see also Aliyu, op. cit, 38.

³⁵ See *Qur'an* 4 : 11 where "Allah (thus) directs you as regards your children's inheritance. To the male a portion equal to that of two females," see also *Qur'an* 4 : 176 which provides that "if there are brothers and sisters, (they share) the male having twice the share of the female"

³⁶ Aliyu, op. cit, 38.

³⁷ Shaukani, M. A. M. (1978), *Nail al-Awtar*, Vol. 6, Cairo, 62.

³⁸ See Gurin, op. cit, 39.

heirs. They are the cognates or the uterine. They become legal heirs when both the *Qur'anic* and agnatic heirs are non-existent. The distant kindred, like other previously examined class of heirs, is of four divisions.³⁹ These four divisions are: Descendants of the deceased, Ascendants of the deceased, Descendants of parents, and Descendants of immediate grandparents.

Within the first division are the daughter's children and their descendants and children of Son's daughters and their descendants (how low so ever). The second division consists of false grandfather i. e. mother's father (how high so ever) and false grandmother i.e. mother's mother (how high so ever).

The third division equally consists of germane brother's daughters and their descendants, consanguine brother's daughters and their descendants, uterine brother's children and their descendants, daughters of germane brother's sons and their descendants and germane, consanguine and uterine sisters' children and their descendants.

In the fourth division is found germane paternal uncle's daughters and their descendants, consanguine paternal uncle's daughters and their descendants, uterine paternal uncle's daughters and their descendants, daughters of germane paternal uncle's sons and their descendants, Daughters of consanguine paternal uncle's sons and their descendants, paternal aunts (germane, consanguine and uterine) and their descendants; and maternal uncles and aunts and their descendants.

In this class (Distant Kindred), the general order of inheritance is according to their division. The first division takes precedence over the second; while the second division enjoys priority over the third while the third enjoys priority over the fourth. And within a division, the nearer in degree excludes the more remote while children of *Qur'anic* Sharers and Residuary enjoys preference over those of distant kindred.⁴⁰

Having discussed the first issue arising from the record of distribution of the late Alhaji Abdulmumeen Oladimeji Ayinla, it is imperative at this juncture to point out the second issue. The second issue culminates from the directive of the officiating Minister/Panel to the heirs when the heirs were directed / ordered that: "...gift **must** be given to the relatives of the deceased...as contained in *Qur'an* 4 verse 8."⁴¹ For ease of reference, the verse under reference states that:

but if at the time of division other relatives, or orphans or poor, are present, feed them out of the (property), and speak to them words of kindness and justice.

There is no doubt that Islam and indeed this particular verse enjoin generosity to the relatives, the poor and or the orphans in our day to day activities as Muslims in general and particularly when estate is being distributed in their presence. The contention of the authors is neither to discourage generosity nor to encourage flagrant disobedience of provision of the *Qur'an*. Rather, it is about espousing the proper interpretation and intendment of the law.

Nature of Gift (*Hibah*) in Islamic Law

Gift (*hibah*) is gratuitous transfer of property i. e. the giving of something to somebody without consideration in return from the donee to the donor. It could be made to relations, non-relations, the poor, the orphans, Muslims and non-Muslims alike as long as one owns the subject matter of the gift. There are four ingredients of gift in Islamic Law. These are: legal capacity of donor to make gift,

³⁹. Jung, M. U. S. (1981), *The Muslim Law of Inheritance* (Compiled from original Arabic Authorities with Arabic Text of Sirajiyah, *Qur'anic* Verses & Hadis And their English Translation), New Delhi: Nusrat Ali Nasri for Kitab Bhavan, 60, see also Hussain, op. cit, 45.

⁴⁰. Gurin, op. cit, 39.

⁴¹. Estate of Alhaji Abdulmumeen Oladimeji Ayinla, op. cit. at 276.

subject matter of gift must be owned by the donor, donor must be of legal capacity to receive gift; and the formula.⁴²

Giving gifts on behalf of a decedent is legitimate and the agreed whether the gift is monetary, in kind or in supplication.⁴³ Such gifts may be made by the children, close or distant relation of a decedent and the reward of such gifts reaches him. Abu Hurairah reported that the Prophet (p.b.u.h.) said: "When a person dies, his deeds are cut off except for three: Continuing charity, knowledge that others benefited from, and a righteous son who supplicates for him."⁴⁴

Status of Qur'an 4 Verse 8 in Relation to Distribution of Estate

There is no doubt that Islam enjoins Muslims to make gift (*hibah*). To make a gift is not compulsory but it is enjoined because it creates healthy and cordial relationship. It is on record that the Prophet said: "Give present to one another, for a present gently extracts grudge."⁴⁵

It is obvious from the *Hadith* above that generally gift is enjoined and not obligatory in Islamic Law. Now, can the same view be held in respect of gift by heirs from the estate of a decedent Muslim in view of the provision of Qur'an Chapter 4 verse 8? First and foremost, it is necessary to point out that the verse in question has been held to be abrogated⁴⁶ by Qur'an Chapter 4 verses 11-12 amongst others. Though, some other Muslim jurists do not agree that the verse has been abrogated.⁴⁷

However, notwithstanding the divergent view of Muslim jurists on whether the verse has been abrogated or not, does the verse connote that the heirs of a decedent **must** give out gift from the estate of the decedent to (the orphans and the poor) relatives present at the time of distribution as directed by the panel in the estate distribution of late Alhaji Abdulmumeen Oladimeji Ayinla? This paper differs from the perspective of the panel that what was done was not in accordance with the purport of the verse as has been interpreted by exegetes to mean:

The heirs of the deceased have been **enjoined** to be generous towards distant and near relative and the indigent members of the family...They should give them something and speak gently to them and avoid using harsh and unkind words as the narrow minded people generally use on such occasions.⁴⁸

In view of the above, the proper directive that ought to have been given by the panel to the heirs should have read: "Hence, the panel directed that whenever, another rent is collected, you are **enjoined** to make gift to the relatives of the deceased in view of Qur'an 4 verse 8..." This would have properly conveyed the true intent of the verse and the position of gift from a decedent's estate prior to distribution in

⁴². Orire, Abdulkadir (2007), *Shari'a: A Misunderstood Legal System*, Sankore Educational Publishers, 126-127.

⁴³. Bin Baz, A. A. A. et. al (2001), *Fatawa Islamiyah* (Islamic Verdicts), Vol. 1, Riyadh: Darussalam Global Leader in Islamic Books, 65-66.

⁴⁴. Ibn 'Eisa, Imam H. A. 'E. M. (2007), *At-Tirmidhi English Translation of Jami' At-Tirmidhi*, Vol. 3, Riyadh: Darussalam Global Leader in Islamic Books, *Hadith* No. 1376, 167-168.

⁴⁵. Al-Asqalani, op. cit, *Hadith* No. 796, 330, see also *Hadith* No. 795, 330.

⁴⁶. Jalal al-Din al-Mahalli & Jalal al-Din al-Suyuti, (2007), *Tafsir al-Jalalayn*, Jordan: Royal Aal al-Bayt Institute for Islamic Thought Amman, 85 <http://www.altafsir.com/Books/Al-Jalalain_Eng.pdf> accessed on 15 October, 2016., see also Ibn Kathir, Hafiz *Tafsir ibn Kathir* https://www.islam-universe.com/tafsir_ibn_kathir/4.html > pdf accessed on 18 October, 2016.

⁴⁷. Ibn Abbas, Ibn Sirin, Sa'id bin Jubayr and others are of the view that the verse was not abrogated but "people were all too readily neglecting it, since it was encouraged but not prescribed." See Jalalayn, op. cit, 85.

⁴⁸. Ibn Kathir, op. cit.

Islamic Law of inheritance. After all, the Prophet was reported to have instructed that it is better to leave your heirs rich than leave them poor and begging from people.⁴⁹

Conclusion

This paper has used the estate of late Alhaji Abdulmumeen Oladimeji Ayinla to depict who is actually an heir and discussed the various broad divisions of heirs in Islamic Law of inheritance. It has been shown that it is not every person that survives a decedent that qualifies to be an heir. Rather, only persons who eventually qualify to inherit a decedent qualifies to be referred to as a legal heir as shown in the estate. The Qur'anic and some *Ahadeeth* Muslim jurists relied upon in carrying out these classifications have been provided to aid comprehension. The paper has also demonstrated that the provision of Qur'an Chapter 4 verse 8 which was interpreted by the Honourable Kadi (Officiating Minister) as a mandatory command as portrayed in the record of distribution of the estate in question should have been interpreted to convey persuasion and not as a mandatory order.

⁴⁹. Al-Asqalani, op. cit, *Hadith* No. 818, 339.