

ISLAMIC CONCEPT OF WILL-MAKING: AN EXAMINATION OF SHAYKH ADAM ABDULLAH AL-ILORI'S WASIYYAH

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ABSTRACT

Shaykh Adam Abdullah Al-Ilori left a *Wasiyyah* which contents guide the disciples and relatives as to how the estate left behind would be Islamically handled. This paper intends to first reflect on the concept of *Wasiyyah* or Will-making in Islamic perspective and examine the *Wasiyyah* written by Shaykh Adam Abdullah Al-Ilori for the relatives and disciples. Attempts were made by the researcher to access the handwritten copy of the *Wasiyyah* with a view to perusing and examining the content. This paved the way for knowing the extent by which the *Wasiyyah* confirms with features of *wasiyyah* in Islamic Law. The paper draws attention to the imperative of writing *Wasiyyah* for a muslim who has one, two or more things to write *Wasiyyah* on and Islamic *Wasiyyah* is explained. The former affords unlimited freedom to dispose one's property while the latter draws attention to the Islamic ruling on the subject matter.

KEYWORDS: *Wasiyyah*, Clothing, Requien Prayer, Disciples, Estate, Legal Heirs

INTRODUCTION

Will making is not alien to Islam. So Islam legalizes and put a sort of restriction regulating the manner by which a will can be made Islamic. Contrary to this view, some people erroneously believe that will making is irrelevant to Islamic doctrine. Perhaps this wrong notion is caused by familiarity of people with unrestricted freedom granted by English law to individual estate owners.

Wasiyyah is the technical term for will in Islamic law. This term is preferred to will as the latter and the former are not all that synonymous to each other. Will making is optional in the law, whereby one may decide not to make it all. At the same time, when he wishes to make a will he may locate the whole property to just one hand. This approach is a replica of the primitiveness of pre-Islamic era, according to M.A Ambali:

Wasiyyah in pre-Islamic days was as contained in English will Act 1837 where all property could be disposed of by will.

In Islam, will making is not just optional but mandatory when the need arises. In the same vein, Islam gives maximum portion that can be give to a beneficiary, which is 1/3 of the whole estate. This contradicts unlimited freedom granted by English law; as indicated above. Furthermore, Islamic will does not allow distributing property to the heirs on the basis of one's personal wish. The testator would follow dictated fractions as contained in the Qur'an the first basic source of Islamic law.

Shaykh Adam Al-Ilori's status as a Muslim scholar presupposes that his *Wasiyyah* would be written in conformity with the Islamic provision for this aspect of law. This prompts an appraisal and evaluation of his *wasiyyah* with a view to confirming its legality, identifying any ambiguity therein and coming out with necessary justification and clarity.

The *Wasiyyah* covers among other things, funeral prayer, burial and mandate to implement all the dictates of the *Wasiyyah* accordingly. The evaluation made by this paper shows the extent by which *Shari'ah* that its course in the manner the *Wasiyyah* was made and left for those who survived Shaykh Adam Al-Ilori.

HIS BIOGRAPHY

Adam Abdullah Al-Ilori was born in 1917 at Wasa village near Zugu in the Republic of Benin (former Dahomey). His father, Abdul-Baqi was the son of Habibullah. He was a native of Ilorin while his mother Aisha was from Wasa village in the Republic of Benin. The father was an itinerant trader. But his decision to be a trader was vehemently opposed by his senior brother Iliyas who brought him (Abdul Baqi) up after the death of their father Habibullah. The father and mother of paternal grandfather of Shaykh Adam originally came from Oyo and Borno respectively. Despite the discouragement he experienced from his senior brother Iliyas, Abdul-Baqi persisted on his trade journeys and at first, settled at Oyo in the apartment of his grandfather Abdullah and stayed there for a while.

Oyo was the origin of the great grandfather of Shaykh Adam. It was from there that his grandfather migrated to Ilorin and settled initially at the resident of Imam Idiape. Later he moved to Omoda and was hosted by Balogun Omoda who assisted him in building a mosque at Omoda after their settlement there around (1890CE)

Shaykh Abdul Baqi left Oyo for Lagos and stayed there for a long time. He actively participated in the construction of railway between Lagos and Abeokuta (1896-1899 C.E). He later left Lagos and traveled to Iseyin, Shaki, Borgu, Nika, Busa and Wasa village in the Republic of Benin. He was whole heartedly welcome and embraced by the village head of Wasa who requested Shaykh Abdul-Baqi to stay with him. Having accepted to stay, the village head appointed him as the *Imam Jami* (Chief Imam) of the village. He later gave one of his daughters by name Aisha in marriage to Sheykh Abdul Baqi and later she became the mother of the first son of the man.

He eventually came to Nigeria along with other members of his family including his first son young Adam. On his return to Nigeria, Shaykh Abdul-Baqi, settled at Iseyin where spent two years before moving to Ilorin in (1929 C.E). At the age of seven, Shaykh Adam studied the whole Qur'an and memorized some parts of it. He therefore started to learn Arabic poems and poetry in praise of the apostle of Allah (*madhun-nabiy*) and *tafsir* of the Qur'an from Shaykh Malik Alahusa and Shaykh Ahmad Ashimiy Arikewuyo respectively. His education at the rudimentary level included Arabic grammar and Islamic theological studies. He later learnt more advanced books on related disciplines such as astronomy and philosophy. Among his teacher were his father sheikh AbdulBaqi, Shaykdh Saliu Esin-nio biwa, Shaykh Umar Agbaji and Shaykh Adam Namaji. He died in May 3rd 1992 and was survived by four wives and twenty- three children.

POSITION OF WASIYYAH IN ISLAM

Definition of *Wasiyyah*

The literal meaning of Arabic word of *wasiyyah* is gift. Technically means dictates and wishes of the deceased made available to the members of his family, relatives or friends. M. A. Ambali defines *wasiyyah* as follows:

Wasiyyah is a gift which may be in form of cash, claim of debt nor any other benefit in which the transfer of the item or beneficiary becomes effective only after the death of the Benefactor.

Wasiyyah covers any instruction by a person that certain obligation in respect of certain outstanding duties against him which he did not carry out till he died be fulfilled. It may be an order that a debt is paid to his creditor or *zakah* outstanding against his wealth be deducted from his estate. It may be a property entrusted to him be handed over to the rightful owner or a portion of the property he left behind be utilized for charitable deeds in favor of an individual or organization.

Making a will therefore, is not alien to Islamic doctrine. Yet the dictates therein should not in anyway contradict Qur'anic injunctions, and where they do, such a 'will' becomes null and void, in fact, Quran urges man to write a Will when the needs arises. It says;

It is decreed that when death approaches those of you that leave wealth shall bequeath it equitably to parent and kindred. This is a duty incumbent on the righteous. He that alters that, (the will) after leaving it shall be accountable for it crime. Allah is Hearing and knowing.

Another verse of the Quran sheds light on the legality of *wasiyyah*, thus

O you who believe, when death approaches any of you (take) witness among yourselves when making bequest two just men of your own brotherhood

The above two verses from the basis of *wasiyyah* in the Quran which is the basic source of Islamic law. Affirming its legality, the *sunnah* of the Prophet as reported by Bukhari and Muslim says:

A Muslim who is due for writing a will has no legal right to have one or two night sleep unless the will is documented and kept with him. Umar said: after I have heard this no night passed without having my kept by my side.

As evident in the above quotations, Will is mandatory in Islam and not optional. From Islamic family legal system, however, Will can be obligatory recommendatory or forbidden, depending on the intention and uprightness of the deceased. It is compulsory for a Muslim who is obliged by a legal responsibility which he fears might not be executed should he fail to get such bequested. An example can be cited of a person who is indebted to *zakat* or hajj, by making a vow to that effect. Such obligation can be actualized by surviving children who are aware of such a vow. Another example can be cited of a person who kept a trust in his life time and intended to return it to the rightful owner. The only way by which he can safely return the trust, for the benefit doubt and in case of sudden death, is to get it documented for later implementation after death. 'Will' also solve a problem of a debt which nobody has knowledge expect the deceased. Under the above circumstances Will writing is very compulsory.

Wasiyyah is however, recommendable in respect of one who left behind poor relatives and good people without legal right to inherit. Nevertheless, in a situation where by will making could result to confusion, it is regarded forbidden. Most especially, if the benefactor violate the rules governing will making from Islamic view point. Writing of will is considered hated if it is felt that the surviving children are extremely needy, but the content of such will favors a person or group of persons who are not legal heirs. And at the same time, the money left behind by the deceased is too meager. It is

also hated to bequest to an evil person who is expected to be in position to use the wealth to promote evils. Writing of Italicize is desirable if the testator is sure that the bequeathed property will be used to avoid virtues. However, the dictates should not favor the beneficiary beyond 1/3 of the whole property. The Prophet is reported as saying; 'keep on with 1/3 as 1/3 is enough'

HIGHLIGHT OF HIS WASIYYAH

Section I

- *Surat – Yasin* and *Suratu'l Mulk* to be recited by those who witness him dying
- Ritual bath and clothing (in preparation for the journey' to Allah) should be done within thirty six hours and to be witnessed by his people; 'my brother', one of my children and one of my students. Five or seven garments be used (to cover the corpse)
- Requiem prayer and burial to be in the morning hours or evening before magrib prayer
- Three sets of people are to perform the funeral prayer in successions and each imam is required to recite all supplication aloud.
- Planks will be used to protect the remain from wet soil
- The whole of the Quran will be read after burial (congregationally)
- Participants shall be served with soft drinks
- Member of the household shall assembled in Markaz to receive the mourners while prayers and feeding of sympathizers should continue for seven days

Section II

- All properties shall be divided into three main parts
 - Part to be inherited
 - Part not inheritable
 - Debts and trust, precisely, Rabitat's property and promise to build a house for the most junior wife.
- Identification of people to take care of Markaz through two main bodies
 - Supreme governing council of Markaz made up of fourteen members
 - A thirty members general consultative committee
- The independent and administration of the clinic (as well as) Markaz printing press to be overseen accordingly.

ASSESSMENT OF THE WASIYYAH

In the section I sub-section of will the late Shaykh requested from the disciples, reading of both *Suratul Yasin* and *Mulk*. This is in order. Section I sub section II of the will demands that the funeral arrangement should be hastened within thirty six hours.

This is also in line with the *Shari'ah* but it was unfortunate that the demand could not be met due to unforeseen circumstances. According to National Concord:

Since Shaykh Adam died at Princess Grace Hospital London on May 3rd, 1992 his remain could not be made available for burial in Nigeria immediately as requested by his will. He was brought on the 6th May, 1992.

Anything that is forbidden can be made lawful under certain abnormal condition or unavoidable necessity, in Islamic law. In view of this those that were charged with responsibility are not blamable since the circumstances that led to the delay in burial action, were beyond their control.

Section 1 sub-section iii of Shaykh's *Wasiyyah* directed the disciples to fix the burial activities for either morning or evening time. It is presumed with this Will that the writer intends to care for the health of the participants and this is not contradictory to *Shari'ah*.

The sub-section IV of the same section revealed the wish of Shaykh Adam that three sets of people should perform funeral prayer in succession, which was done. In *Shari'ah*, repeating this kind of prayer is allowed, even such prayers can be observed in absinthial. The requiem prayer performed in absinthial is known as *Salat al Ghaib*, in which as many people as possible can be involved at different times and different places. As for the idea that each Imam should supplicate loudly throughout the prayer, this too can be regarded as an advantage to the Imams concerned and to ensure that competent Imams perform the obligation. The implication being that each Imam would be obliged to memorize the supplications so perfectly to meet this challenge and would continue to serve similar purposes in future.

Sub-section V advises the participants during the burial arrangement to protect the remains from wet soil by the use of planks which might not be ordinarily allowed in Islam. This is to give consideration to condition of Markaz environment during the raining season. Reading of the whole Quran as requested in subsection VI is also in order. Serving of soft drinks as in sub section seven is also acceptable to *Shari'ah* since it is meant to make the participants comfortable. The last sub-section in section I directed all the members of late Shaykh's house hold to assemble in Markaz to receive the mourners. This is not only allowed in Islam but encouraged as well. Choosing Markaz as meeting point was to make it easier for the mourners to locate the surviving children and disciples of *Ta'ziyah*. As for feeding mourners for seven days, we need to reflect this carefully as there seems to be a controversy surrounding the issue. Islamically, it appears prudent that the mourners are in the better position to feed the bereaved ones, and not vis-versa. Evidence to prove this can be traced to the case of a companion by name Ja'far, when he died the prophet urged people who mourned his family to entertain them as well. At the same time, there is a contrary opinion that ceremony apart, Islam allows *Sadaqah* to be given in seeking forgiveness for a deceased. Furthermore, *Sadaqah* can take any form. Therefore, entertainment made purposefully for *Sadaqah* may be considered as such. It is an opinion held that entertainment is necessary for those who are from long distance in order to make them comfortable and not to create an avenue for merry making.

In the case of seven days duration to entertain mourners, it is not stipulated in the *Sunnah* of the prophet that mourners should stay with bereaved people for that long. However different people might come to mourn them till any length of time.

But to maintain seven or eight days as mourning period is nothing but innovation (*bid'a*). Shaykh Adam al-Ilori would have foreseen that so many people most especially his students from various part of the world would be coming in

succession to sympathize with his household and disciple for more than a week. As such there was need for him to restrict entertainment to seven days, to avoid excesses.

Section II sub-section I of the Will guides the people concerned on how to share the property left behind. This could not be misconstrued to mean that the deceased took law into his hand, sharing the estate on his own. The section concerns itself with making distinct, the part to be inherited and the part not inheritable. In the same section and sub section, the heirs are advised to settle debts and trusts precisely Rabitat's documents entrusted to the late Shaykh as the General Secretary of the Association in his life time. The implementation of this ought not to generate much controversy. As for the youngest wife of the late Shaykh who was promised two bedroom- flat at her home town Sakete, it is clearly understood in *Shari'ah* that a legal heir is not qualified to be a beneficiary of *Wasiyyah* Alhaja Nura Sekete relationship with Shaykh Adam is that of a wife. A wife has a specific share in the provision made by Islamic law. Therefore one wonders what becomes of a woman as regards her special favour by Shaykh's *Wasiyyah*. The Prophet is reported as saying "There should be no (favour of) will for a legal heir.

It is now left to any critical mind to determine which dimension one can look at the issue. Do we regard this aspect of the will to be favoritism or fulfillment of promise. In our own approach to this issue we notice that the writer of the will used the word "promise" which is impliedly considered as a debt. among what he considered to be debt on him was the promise to his youngest wife which is unable to fulfill in his life time. The late Shaykh made the following declaration in his will:

I have promised my youngest wife Nura a two Bedroom flat in her native town Sakete. Thank to Allah if I am able to fulfill it. Supposing I am unable to fulfill it, then it becomes a debt on me.

That is to say that the promised two bedroom flat as in the above declaration is counted among the debts from Islamic view point which should be settled quickly. One of the late Shaykh has emphasized that the flat ordered to be built for his youngest wife in her home town, was a debt, then, any bequest in that regard would no longer be considered as favouritism. In the same vein, such bequest is justified by a number of *ahadith* of the Prophet. One of such is the following:

A Muslim who is due to writing a 'will *Wasiyyah* has no legal right to have one or two nights' sleep unless the 'will' is documented and kept with him Umar said: from the moment I heard this, no night passed without having my will kept with me.

The above quotation is relevant to any case of debt which is actually unknown to anyone except the writer and the person concerned. In view of the above the case of Shaykh's wife is justified.

CONCLUSIONS

Writing of will is relevant to Muslims as reflected in Islamic family law. There are however certain restrictions as to the percentage of the whole property to be given to the beneficiary of certain *Wasiyyah*. This is different from civil law's attitude to will making. The recognition of Islam in respect of this law paves the way for its writing by late Shaykh Adam al-Ilori. Its position in Islam has a background in the Quran and the prophetic tradition as well.

Highlights of Shaykh's 'Will' draw us nearer to the text of the *Wasiyyah* thereby making it easy to evaluate and appraise accordingly. The most controversial issues therein being the issue of seven days reception for the mourners and building of two bedroom flat for the youngest wife of the shaykh who was already one of the legal heirs.

The idea of reception for the mourners in the *Wasiyyah* is meant to make those from far away comfortable. In the same vein, the issue of building requested by the *Wasiyyah* for one of the heirs, is justified in order to settle the debt which is to be removed from one's property before sharing the rest estate among the legal heirs. All other dictates of the *Wasiyyah* has their justifications as provided in the Islamic law principles.

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