

AN APPRAISAL OF THE LAW AND PRACTICE ON WAQF IN KANO STATE; LESSONS FROM EGYPT

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ABSTRACT

Islam is a comprehensive way of life and a civilization. It Spans over fourteen centuries of human history. The major Islamic institution that plays an important economic and social role is that of al-waqf, an Islamic endowment. Waqf is a means of infaq which is a religious endowment for provision of public good, infrastructure, rural development and social welfare of people. Waqf may be religious (for establishment of mosques and Islamic schools) or philanthropic (for education, health, welfare, founding employment and infrastructure). Philanthropic waqf has the potential to fill the gap in the development of Muslim communities in different areas for the benefit of the community. In Kano State where there is a population of 9.383682 million, waqf are still mainly religious and few philanthropic awqaf in the state are either left to fallow underutilized. This paper takes a way look at legal framework and implementation of waqf in Kano State. It further highlights the challenges affecting the implementation and proper management of waqf properties in Kano State. The paper proffers on ways to revive and utilize waqf in Kano State.

Keywords: *Waqf, laws, Kano State.*

INTRODUCTION

Islam is a complete way of life based on submission to Allah as revealed in the holy Quran and practices of Prophet Muhammad (PBUH). It is concerned with welfare of human beings in the world and their solutions in the hereafter.

Besides Zakkat and Sadaqah, waqf is another means of redistributing wealth and alleviating poverty in a society. Waqf, Zakkat and Sadaqah are forms of infaq (charity) which is equivalent to give loan or making a trade with Allah (SWT) which will be paid back in many folds. Waqf is a religion endowment for the provision of public goods, infrastructural development and social welfare of the people.¹ Its main aim is to secure religion, economic and educational development.

Though waqf is commonly translated as "Islamic trust", it is important to point out that the institution waqf in Islamic goes beyond ordinary understanding of the western concept of trust. Although there may be some similarities between the two concepts, waqf is more spiritually oriented than trust.²

Waqf has played a major role in the economies of many developing countries across the world. Since its inception during the time of the Prophet Muhammad (SAW), it has contributed immensely in the alleviation of poverty, promotion of education and provision of general welfare in Muslim societies. It stands as one of the mechanisms for ensuring social security for the citizens of a state whether Muslim or Non- Muslims. In most cases, awqaf are created for both charitable and religious purposes which had catered for educational and economic development in many communities where they are properly managed and regulated.

However, in Kano State, despite a law regulating the institution, there is yet to be any considerable development in the waqf practices. Kano State still has the record of high unemployment, high poverty and low literacy level. It is based on the background that the paper compares the law and practices of waqf in Kano State against that of Egypt; Egypt is a country that has one of the best practices on waqf.

¹ Khaf M. "The Role of Waqf in Improving the Umma Welfare" A paper presented at the international Seminar on waqf as a private legal body organized by the Islamic University of North Sumatra, Mulan, Indonesia January, 2003.

² Badamas J et al. "waqf administration and funding education in Northern Nigerian" Appraising the legal framework through the lens of the Pakistani Model". A paper presented at the First Kano waqf international conference 2016. Against some of the world's best practices on waqf. This paper reviews the laws and practices of waqf in Kano State and highlight the major challenges faced by the waqf institution.

MEANING AND LEGAL BASIC OF WAQF IN ISLAMIC LAW

The word "waqf" originally derives from the Arabic word "waqafa" which means to hold, to keep or to detain. Linguistically, waqf refers to forbidding the movement, transport or exchange of something. Technically it refers to the detention of a specific thing by the owner or appropriator or instructor that all profits or gain be solely awarded to that thing as charity foundations in order to cater for the poor. The definition and concept of waqf indicates the donor intend to give out as a gift a portion from his/her property as permanent empowerment for the portion of charity and as a financial and collection and distribution accordingly. It is believed that the endowment and charity will enrich and significantly enhance the financial status of the needy if it is managed properly. Waqf can be made in writing or orally or a sign that clearly indicates the free will of the donor to donate his/her property to the waqf institution. Waqf is an absolute religious bequest in Islam.

The term waqf is not specifically mentioned in the holy Quran. But there are several verses that refer to its legality and objectives. Allah (SWT) says in Quran: "Those who spend their wealth (in Allah's case) by night and day, in secret and in public, they shall have their reward with their lord. On them, shall be no fear, nor shall they grieve".

Allah the Almighty make it clear in the verse that the people involve themselves in charity for sake of Almighty Allah their reward rest with Almighty himself.

Similarly in Quran: "Verily those who gave Sadaqat (i.e Zakat and alus) to men and women lend a good loan, it shall be increased manifold (to their credit) and there shall be an honorable good reward (i.e Paradise).

This verse clearly encourages us to give Sadaqat (charity) the form of Zakat and alus. In addition, Almighty Allah also asked for the good loan to him i.e helping people in this world, will promise to reward the lenders manifold and respect in this world as well.

In the hadith, Muslim scholars relied on the following hadith of the Prophet (SAW) as authority for waqf;

The prophet (PBUH) mentioned as reported from Aba Hurairah that "when a child of Adam dies, his/her deeds come to an end except for three things; running and continues Sadaqat, knowledge that benefit and a righteous child who pray for him or her".

In another hadith, Umar Bin al-Kattab, as reported by Ibn Umar, went to the prophet (PBUH) and said: "O messenger of Allah! I got a land in Khaibr. I never got a property more precious to me than this what do you advise me? The prophet (PBUH) said: "if you want you can make bequest on it or give it as Sadaqat (charity) provided that it should not be sold, bought, giving as gift or inherited. "The Umar gave it as charity for the poor, relation, slaves and guests.

Finally, all the prophet's companion proclaimed some of their lands as waqf. This has been evidenced through narrations and reports by Thabit bin Anas, Jahir Bin Abdullah and Ibn Hazim.

WAQF UNDER THE LAWS OF KANO STATE

In Nigeria, there is no Federal Legislation regulating waqf. However, the constitution of Nigeria 1999 (as amended) empowers states to enact laws regarding Islamic personal status. Furthermore, the constitution empowers states to establish Sharia Court of Appeal that will decide on question regarding Islamic personal law on waqf, gift, will or succession where the endower, donor, testator or deceased person is a Muslim.³ The Shari'a Court of Appeal is supposedly an Islamic law court, administering Islamic law but as a court within the Nigerian legal system which is based on common law, the court is patterned after the English court, most importantly jurisdiction of the court which the constitution limits to matters of Islamic personal status comprising of waqf and issues pertaining to it as provided by sections 262(2) and 277(2)(c) of the constitution. The effect of this provision is to take care of Muslim's long established tradition and religious practices of waqf or endowment as a matter of personal status.

It is on these premises that the Kano State Zakkah and Hubsu Commission Law 2003 was established to regulate all matters relating to Zakkah and Hubsu.

Section 3 of the Law establishes the Kano State Zakkat and Hubsu Commission which is a body conferred with perpetual succession and a common seal. The commission has the capacity to sue and be sued in its own corporate name. The commission can hold, own and dispose of property movable and immovable and shall operate a bank account.⁴ "The commission has the mandate to regulate all matters relating to Hubsu, to collect endowment from individual and organizations and distribute same to deserving members of the public in accordance with the dictates of Shari'ah⁵.

Taking a look at other jurisdiction, Egypt is one of the countries that have over the years instituted the concept waqf. The first administration of waqf was established under the supervision of the judge of that time. Waqf institution in Egypt gradually developed over the country and it took various forms since 1832 when Muhammad Ali Bashah, the ruler of Egypt established the first governing body of waqf administration.⁶

Over the time, several attempts were made to develop waqf law in Egypt. The first attempt was initiated by the scholars and members of legislative assembly in earlier 20th century. The second attempt was in 1926 which resulted in the approval of memorandum the ministry of justice as recommended by the committee of senior scholars and jurists. In 1946, the Egyptian law on waqf (No: 46 of 1946) was issued to regulate waqf institution in Egypt.⁷ Subsequently, some other laws were established to regulate the institution. They are Law No: 247 of 1953 and Law

³ Section 277 of the constitution of Nigeria 1999 (As Amended)

⁴ Section 3, Kano State Zakkah and Hubsu Commission Law 2003.

⁵ Section 4, Kano State Zakkah and Hubsu Commission Law 2005.

⁶ Khalosi, M, Problems facing Contemporary waqf institution (experiences of Egyptian Awqaf authorities) presented by the chairman Egyptian alwqaf authority in a panel discussion on emerging issues Alwqaf, Sheikh Saleh Kamel Center For Islamic Economics, Cairo 2002

⁷ Omar A (2002) "the experience of the management of Awqaf in Egypt". paper presented in a symposium on contemporary Application of waqf 14-17/6/2004

No: 44 of 1962. Lastly, the Egyptian Government promulgated Act No: 80 of 1971 for the establishment of waqf Authority in Egypt. The Act provided for the establishment of the Egyptian waqf authority as an independent legal body under the ministry of Awqaf to be governed by a Board of Directors.⁸

The Egyptian waqf authority is saddled with the responsibility of regulating the institution of Awqaf in Egypt. It invested waqf fund in various sectors in order to achieve the purpose for which it was established.

INVESTMENT AND DISTRIBUTION OF WAQF PROPERTIES

Revenue generated from awqaf property has become key issue for the sustainability of many waqf projects in the world.

However, some awqaf are unproductive, hence the need for another service of income to support them.

The Egyptian waqf authority, for instance, has invested its waqf funds extensively in industrial sector in the giving of shares and stocks of the major industries in Egypt. As such, the Egyptian waqf authority contributed extensively in industrial development and thus enhanced the general welfare of the Egyptian people.⁹

The same Egyptian waqf authority also invests significantly in the development of agricultural sector. It leases out 100,000 acres of agricultural lands and invests in land rehabilitation and renovation projects.¹⁰ The Awqaf Authority also indicated that it is actively engaged in agricultural investment to provide healthy competition in the agricultural sector and enhanced supply of locally produced crops to the local market. The waqf authority channeled its resources in collaboration with Province Government for the reclamation of agricultural lands which further developed the agricultural sector in Egypt.¹¹

The Egyptian Awqaf Authority is a separate legal entity to own movable and immovable properties that assists its engagement in financial investment. In addition, the authority invests in various financial institutions such as Faisal Islamic Bank and Escan Insurance Company.¹²

In Kano State, the Zakkah and Hubsu Commission has the power to invest in accordance with Islamic jurisprudence, such resources at its disposal not immediately required for its purpose in

⁸ BakhaimD,"Awqaf Properties Maintenance and Management: Urban Re-generation for historic Cairo. The World Heritage Center Cairo 15th March - 15May2014.

⁹ KhaleelI. Aetal, "Waqf Fund Management in Kuwait and Egypt: can Malaysia learn from their experiences "proceeding at the international conference on Masjid, Zakkah and Waqf (IMAF 2014)1-2 December Kuala Lumpur, Malaysia.

¹⁰ Ibid

¹¹ Ibid

¹² Ibid

securities as may be approved by the Governor.¹³ Despite the provision of investment funds in Kano, there is no clear explanation concerning law to invest the funds and the means of investments. Meanwhile, there is no record of the said investment in waqf funds.

The Zakkah and Hubsu Commission in Kano State generates its revenue from the grant given by the state government. All the waqf properties in Kano are landed properties, 90% of which comes from the public and 10% comes from the government.¹⁴

With regards to distribution of waqf funds, article No: 7 of Waqf Act,¹⁵ in Egypt provides for procedure of the distribution of waqf funds among the various beneficiaries. 70% of the funds go to people and other aspect of righteousness and goodness such as health care, education, dissemination and the revival of Islamic civilization landmarks. 15% goes to the waqf authority for maintenance of waqf assets, 10% of it is recorded for the investment and development of waqf resources and 5% is for technical matters as may be determined by the board of directions.

In Kano State, there is no systematic and spelt out procedure of distributing waqf funds. What is provided in the law is that Zakkah and Hubsu Commission is to distribute the funds to the deserving members of the public.¹⁶

CHALLENGES FACING THE WAQF INSTITUTION IN KANO STATE

There are many challenges facing waqf institution in Kano State which are responsible for its current situation, some of which are;

1. Lack of clearly spelt out power of Istibdal: Istibdal is power given to a manager of waqf to identify unproductive waqf assets and to change it into a more productive form. It may entail changing its form, that is, from land to cash or land to land or land to building and so on. It may also include changing its usage to achieve maximum utility and productivity. Section 4(d) only empowers the commission to invest such resources at its disposal not immediately required for its purpose in securities as may be approved by the Governor. This power is somewhat limited because investment only covers resources not immediately required. Therefore, the Commission does not have the mandate to change the form of a particular waqf or re-direct such investment which is either underutilized or dysfunctional to a more functional one.
2. Inadequate Waqf legislations: there are a number of inadequacies in the law that undermines the implementation of waqf in the state. Section 2 interprets Hubusi to mean endowment or a voluntary gift of wealth more especially property. The phrase "more especially property" does not give much cognizance to cash waqf. Also section 14 clearly indicates that the Commission shall generate its funds largely from the government;

¹³ Section 4 of the Kano State Zakkah and Hubsu Commission Law, 2003

¹⁴ Comprehensive list of Hubsu located in Kano State prepared by Kano State Zakkah and Hubsu Commission available at the Commission on 20/08/2015.

¹⁵ Act No: 80 of 1971.

¹⁶ Section 4(c) of the Kano State Zakkah and Hubsu Commission Law, 2000

however this is yet to be achieved because the law doesn't stipulate what percentage of the State's annual budget shall be allocated to the Commission.

3. Poor registration of awqaf: although there are quite a number of awqaf and it does not have cash waqf to convert or develop existing waqf into other revenue generating waqf.
4. From the data collected at the Zakkah and Hubsu Commission, 90% of registered waqf are religious of which 55% are mosques while 35% are for the establishment of Islamic schools. It is evidently clear that Kano State is in dire need of abundant philanthropic awqaf to curb the menace of unemployment, illiteracy and poverty among the people of the state.

RECOMMENDATIONS

1. There is a need to enact a Federal Legislation on waqf in Nigerian like it is obtained in Egypt. This will go a long way in revitalizing the institution of waqf.
2. Cash Waqf which differs from the real estate waqf in the form of cash should be created because it has become very popular in many Muslim countries and has contributed immensely to the socio-economic development of those countries. It is recognized subject to a condition that the cash capital of the waqf should be invested in mudaraba partnership and returns be spent for the purposes of the waqf.
3. The law should provide for a detailed and systematic way of distribution of waqf funds to the deserving members of the public. This will help in realizing the objectives of waqf institution.
4. The powers given to the Commission should be widened to incorporate power of Istibdal in order to enhance and develop waqf properties.
5. There is need to move away from the perception of waqf as a religious concept only. This can be achieved through sensitizing the public towards realization and development of philanthropic waqf in Kano State.
6. Government should give adequate funding and support for the smooth running of the Commission. It is therefore suggested that Kano State government should include in its annual grant a percentage to be dedicated to health care and education awqaf.
7. The Commission should also be made a beneficiary to the income generated from waqf resources.

CONCLUSION

Poverty alleviation strategies and policies in Islamic are multi-dimensional, one of them is waqf. The institution of waqf is designed to reach out to all areas of social welfare and socio-economic development of the Muslim society. In Kano State, waqf is faced with so many challenges both in its legislation and practical implementation.

This may not be unconnected with the traditional perception of the concept which is why it

has failed to achieve the desired objective in terms of efficient administration, management of resources and increased inflow of revenue to support the high demand for waqf social services.

This paper has analysed the law regulating waqf in Kano State and compared it with what is obtainable in other jurisdictions. Suggestions were made of techniques of improving the administration of waqf institution in Kano.

The administration of waqf funds and waqf projects in Egypt is worthy of being copied by Kano State as it has been proven and testified by the Muslim world as a good system of waqf administration.

Therefore, the Kano State Zakkah and Hubsu Commission needs to borrow leaf from the system of administration and management of awqaf in Egyptian jurisdiction.