

**ISLAMIC LAW OF INHERITANCE (*MIRATH*) IN ILORIN EMIRATE  
PRIOR TO THE ADVENT OF FULANI EMPIRE: PRACTICE AND  
PROCEDURE**

BY

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**ABSTRACT**

*This paper examines the state of Islamic Law of Inheritance prior to and immediately after the advent of Islam in Ilorin Emirate. The goal is to determine the degree of compliance with the rules and principles of Islamic Law of Inheritance within the period under reference. This is to elicit how distribution of estate was done prior to and immediately after the advent of Islam. The paper therefore provides a mental picture of how and what law or custom was used in the distribution of estate amongst the people before and immediately after the introduction and domination of Islam and Islamic culture in Ilorin.*

**INTRODUCTION**

The communities<sup>1</sup> that formed what is called “Ilorin” today are a conglomerate of different ethnic groups from different places speaking a variety of languages with diverse cultural attitudes. They are originally of different origins and backgrounds. Considering the historical origin of these people, they can be described as settlers. They are called settlers because historically, they all migrated from somewhere to settle there. Even the Yorubas of the community can not lay claim to the ownership of the city as the whole area known today as Ilorin used to be part of the defunct Old Oyo Empire and the Old Oyo Empire was founded on the *Ibariba* (Borgu) land. According to one of the Yoruba historical legend, one Oranyan, who was the progenitor of the Yoruba proper (or as they are better distinguished Oyos) found Oyo Ajaka after he consulted the King of *Ibariba* (Borgu) near whose territory he was then encamping as to where he should make his residence when he could not continue with his journey to Mecca on a revenge mission.<sup>2</sup> These settlers, though now indigenes, include the Yorubas, the Fulanis, the Hausas, the Nupes, the Barubas, the Kambaris, the Gobiris, the Kannikes and the Tuareg Arabs. There are no less than 15 tribes that formed what is today known as Ilorin community.<sup>3</sup>

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<sup>1</sup>. *Gaa Fulani, Gambari, Idi-Ape and Okesuna*, see Salihu, H. A. and Jawondo, I. A.; “Ilorin Emirate: Its People And Politics,” in Jimoh, S. A. (Ed.), *ILORIN: Centre of Learning*, (Ilorin: JIMSON Publishers, n. d.), p. 5..

<sup>2</sup>. Law, R. C. C., “Traditional History” in Biobaku, S. O. (Ed.), *Sources of Yoruba History*, (Oxford: Clarendon Press, 1923), p. 56.

<sup>3</sup>. Issa-Onilu, L. *Ilorin: Where Settlers Are Indigenes*,  
< Thisdayonline.com/archive/2004/06/2004/626cov02.html > accessed on 16th August, 2008,  
see also < <http://www.ilorin.org> > accessed on 15th August, 2008.

The quest for acquisition of Islamic knowledge, commercial activities and or security have contributed greatly in bringing these settlers to Ilorin and in the course of time, cultural compromises emerged amongst all these people. The Fulanis, the Hausas, the Nupes, the Barubas, the Beriberis, the Kambaris, the Gobiris, the Kannikes and the Tuareg Arabs lost their languages and certain characteristics of their races and original cultures. Racially, after generations of intermarriages, they are indistinguishable<sup>4</sup> as a result of being Yoruba-ized. They speak a special dialect of Yoruba<sup>5</sup> and the Fulani man earned the traditional stool while the Hausa modes of dressing emerged as the choice of the community. All within this period, this conglomerate of ethnic tribes had melted together through unfettered interactions, to form a new people called the Ilorins. The various baggages of cultures were dropped, allowing for the dominance of Islamic culture. “*The town is, today, predominantly Yoruba, but in politics and administration, it approximates to the northern (Islamic) tradition.*”<sup>6</sup>

Today, the Ilorin-man whose root is Yoruba, Fulani, Hausa, Nupe, Baruba, Kambari, Beriberi, Gobir, Kannike or the Tuareg Arab feels no nostalgia<sup>7</sup> about such root and bears no recriminations and rancor against another Ilorin on the basis of difference of root. Islam and its teachings is the common belief of the Ilorin man. Given the diverse nature of Ilorin as a settlement after its incorporation in to the Sokoto Caliphate and the homogeneous nature of their faith which is Islam, it became inevitable that the practices of the vast majority of Ilorin people will then have to be governed by Islamic Law. For this reason, it is important to consider the place of Islamic Law in Ilorin.

### ISLAMIC LAW IN ILORIN

Islamic Law, otherwise known as *Shari'ah* is derived from the religion of Islam which is derived from the Arabic root word SLM pronounced “*Salm*”. It denotes submission, surrender and obedience. As a religion, Islam stands for complete submission and obedience to Allah which is why it is called Islam.<sup>8</sup> Islam is therefore the bedrock upon which Islamic Law is built. Unlike other legal systems such as the English Law,<sup>9</sup> Islamic Law is a component part of Islam. Just as Islam without

<sup>4</sup>. Though, up to date, some Fulani, Kannike and Gobiri families are distinguishable in some ways, i. e. Special tribal marks among others that distinguish them from others.

<sup>5</sup>. The people of Ilorin, apart from bearing Muslim names they also bear Yoruba names such as Kolapo, Kolawole, Babatunde, Akanbi, Amasa, Ajadi, Adebayo, Aderonke, Asabi, Asake, Akanke, e.t.c. and *oriki* (praise-name, cognomen or nickname). *Oriki* describes the child's character or the circumstance of its birth or what he or she is hoped to become. See Ayorinde, J. A., “Oriki” in Biobaku, S. O. (Ed.), *Sources of Yoruba History*, (Oxford: Clarendon Press, 1973), p. 63.

<sup>6</sup>. Ajetunmobi, M. A., “Contribution of Ilorin Scholars to the Development of Islam and Islamic Scholarship in Yorubaland” in Jimoh, S. A. (Ed.), *ILORIN: Centre of Learning*, (Ilorin: JIMSON Publishers, n. d.), p. 76.

<sup>7</sup>. Ilorin as a cultural melting pot can be likened to the United States of America but differs from it in the sense that the Ilorin man or woman does not have any emotional attachment to his or her root whereas the Jewish-American, the Irish-American, the Greek-American and other Americans are still emotionally attached to their roots, see Issa-Onilu, op cit.

<sup>8</sup>. Khurshid A. & Salem, A. (Eds.), *ISLAM: Its Meaning And Message*, (Leicester: The Islamic Foundation Markfield Dawah Centre, 1976), p. 27.

<sup>9</sup>. It is often canvassed that it has nothing to do with the Christianity. That English Law is different from the religion of Christianity. To a certain extent, this might be true but to a large extent, it is not correct to say that the English Law is distinct and separate from the Christian religion. There are a lot of things in the English Law that show that there are lots of relationship between it and Christianity. For instance, the Barristers' robe is fashioned in line

Islamic Law is incomplete, so is Islamic Law incomplete without Islam.<sup>10</sup> Islamic Law and Islam are inseparable co-joined twins. As a complete and comprehensive legal system, Islamic Law can broadly be classified into Spiritual<sup>11</sup> and Temporal<sup>12</sup> Laws. The Spiritual Laws consist of creed<sup>13</sup> and cult<sup>14</sup> while Temporal Laws on the other hand are sub-divided into: Family Law,<sup>15</sup> Legal Transactions,<sup>16</sup> Criminal and Penal Laws,<sup>17</sup> Administration of Justice,<sup>18</sup> State Administration, and International Law.<sup>19</sup>

Being a divine law, it has sources which are divided into two broad classes. These are Primary and Secondary sources. The Primary sources are the *Qur'an*, *Hadith* or *Sunnah* of Prophet Muhammad (p. b. u. h.) while the Secondary sources are: *Ijma* (consensus of opinion of Muslim Scholars), *Qiyas* (analogical deduction), *Istihsan* (juristic equity or preference), *Istislah*<sup>20</sup> (considerations of public interest or extended analogy), *Istishab* (principle of presumption of continuity), *Urf* (customs) and *Sadd al-Dhara'i* (blocking the means).<sup>21</sup>

with the robes worn by Christian religious leaders worn in Churches while conducting services and Ceremonies. In fact at the back of Barristers' and Judges' Wig is a small cross woven to them. Above all, the dictum of Lord Sumner in *Bowman & Others v. Secular Society Ltd* (1917) A. C. 406 goes to buttress the fact that Christianity and English Law are in fact related to a great extent.

<sup>10</sup> . This is due to the fact that Islam is a comprehensive way of life which consists of Ethics, Religious teachings, Medicine, History, Law (both Civil and Criminal) and what have you. It is all embracing and lacking in nothing.

<sup>11</sup> . These are laws relating to the practice of the religion of Islam e.g. time for the five daily prayers, how these prayers are to be conducted (individually or in congregation), law relating to correction of mistakes committed during prayers, Law relating to performance of Pilgrimage (*Hajj*), Law relating to Fasting (*Sawm*), Law relating to *Zakat* e. t. c.

<sup>12</sup> . These are laws relating to the real physical world or worldly affairs such as laws dealing with how to relate with one another, laws relating to acquisition of wealth and so on.

<sup>13</sup> . Creed, in its general usage, is used to indicate "what the servant ties his heart to, truth or falsehood," but in its restricted usage with an attribute like the term "Islamic creed," it has been defined as "the Faith in Allah and what is obligated for Him regarding His Worship, Lordship, His Names and Attributes, faith in Angels, His Books, His Messengers, the Last Day, Divine Preordainment-its good and its evil (*Qadar*), all of what the authentic texts came with regarding the Fundamentals of the Religion, the matter of the unseen, absent, invisible (*Ghaib*) etc. Therefore, creed in Islam matches the Islamic Law, because the intent of Shari'ah is the practical commandments that Islam came with regarding acts of worship and mutual conduct whereas creed is the knowledge-related matters the Muslim is enjoined to believe in his heart because Allah informed him of them by way of His Revelation to His Messenger. For a more detailed discussion, see *The Correlative Relationship Between Creed and Way* < [www.ferkous.com/rep/M28en.php](http://www.ferkous.com/rep/M28en.php) > accessed on 29th June, 2009.

<sup>14</sup> . Cult literally means path or road which leads to water but when used from Islamic perspective, it is used to denote Islamic way of life or system of Islamic religious worship or path. See Ambali, M. A., *The Practice of Muslim Family Law in Nigeria* (3rd Ed.), (Lagos: Princeton & Associates Publishing Co. Ltd; 2014), p. 1.

<sup>15</sup> . Islamic Family Law consists of the following: Law of Marriage, Polygyny, Law of Divorce, *Iddah*, Law of Paternity, Custody of Children, Guardianship, Maintenance, Inheritance or Succession e.t.c.

<sup>16</sup> . This include Contracts, Sale of Goods, Contract of Hire, Agency, Suretyship, Pledge, Endowment, Gift, Trust, Partnership and Company Law.

<sup>17</sup> . This is a very important branch of Islamic Law because it deals with juristic basis of crimes and punishments in Islamic Law.

<sup>18</sup> . This branch of Islamic Law deals with the rules and regulations for the guidance and conduct of both the judges and the persons on whom the law is made applicable.

<sup>19</sup> . This branch of the law is equally known as Law of War and Peace.

<sup>20</sup> . It is sometimes referred to as *Maslahah Mursalah*.

<sup>21</sup> . Bambale, Y.Y., *An Outline of Islamic Jurisprudence*, (Lagos: Malthouse Press Ltd, 2007), p.71.

Having rightly stated the relationship between Islam and Islamic Law, to examine Islamic Law in Ilorin is somehow tantamount to examining Islam in Ilorin. This is because the history of Islamic Law in Ilorin can not be separated from the history of Islam in Ilorin. This is due to the fact that once a person embraces Islam, from that very moment he becomes a Muslim, Islamic Law applies<sup>22</sup> on him because consciously or unconsciously, he or she will find himself or herself applying Islamic Law in the course of practice of the religion. Therefore, informally, Islamic Law can be said to have been in operation in Ilorin as far back as the advent of Islam in Ilorin. It is a fact of Ilorin history that Islam was neither introduced nor brought to Ilorin by Sheikh Alimi. In fact, Islam had been in existence ever before the arrival of Sheikh Alimi to Ilorin. Though, it is not a contestable fact that the majority of the population then were not Muslims and the Islam in practice then may be diluted one just as it was the case in some other Northern parts (Kano and Borno to mention a few) of Nigeria before the Usmanu Danfodiyo Jihad. However, the precise time when Islam was introduced to Ilorin was not certain but what was fairly certain is that in the Seventeenth Century, mention was made of Muslims in Yoruba land and Ilorin was part of Yoruba land then. Therefore since Ilorin was part of Yoruba land then, it could be said that it was the first part of Yoruba land to have received Islam.

Islam and indeed Islamic Law were said to have been introduced into Yoruba land, Old Oyo Empire, of which Ilorin was its integral part at the time of *Alaafin* Ajagbo through one *Afaa Yigi*<sup>23</sup> who was described as an Arab. The same

*Afaa Yigi* was referred to as *Baba Yigi*, the son of a Nupe Muslim “priest,” who came to request an apology from *Alaafin* Ajiboyede after the *Alaafin* had unjustly put to death some nobles who had wanted to express their sympathies with the ruler upon his son’s death. According to Danmole,<sup>24</sup> it is most probable that the said *Afaa Yigi* was a Nupe Muslim rather than an Arab on account of the proximity of Nupe Land. He equally and rightly observed that Islam may have penetrated Yoruba land before the visit of *Afaa Yigi* or *Baba Yigi* who may have been the first learned Muslim to visit Oyo officially, rather than the first Muslim seen there. In the years before Seventeenth Century, Yoruba rulers were not Muslims but there were presence of Muslim jurists in Yorubaland.<sup>25</sup>

The spread or introduction of Islam in Ilorin is said to have come about through the activities of Berber Merchants from Western Sudan<sup>26</sup> and the network of

<sup>22</sup> . There is no half religion in Islam. A Muslim can not elect what aspects of Islam to apply and reject. He accepts whatever Islam makes acceptable to him or her and rejects whatever is forbidden to him or her. For instance, a Muslim can not say he or she accepts to fast, pray, pay *Zakkat* but rejects all or parts of the provisions of Islamic Law relating to say Marriage and Divorce or Inheritance, etc.

<sup>23</sup> . Danmole, H. O. A., “The Frontier Emirate: A History of Islam in Ilorin” (Unpublished Ph.D. Thesis), (Birmingham: Centre of West African Studies, University of Birmingham, 1980), p. 48, see also Gbadamosi, T. G. O., *The Growth of Islam Among the Yoruba 1841-1908*, (London: Longmans, 1978), p. 68.

<sup>24</sup> . Danmole, *ibid.*

<sup>25</sup> . See Al-Iluri, S. A., *Al-Islam Fi Naijiriyya*, (Cairo, Egypt: Abd al-Hamid Ahmad Hanafi Press, 1951), p. 134 where the learned Sheikh stated that one Muhammad b. Masanih (1667-8) is believed to have written a *Shifa ruba tahrir fuqaha Yoruba*, in which he dealt with the time of sunset, and which was a reply to inquiries by Muslim Jurists in Yorubaland to buttress the fact that Islam indeed had been in Yorubaland. See also Danmole, *op. cit.*, p. 13.

<sup>26</sup> . These Berber Merchants who were putatively said to have descended either from Malais or from Wangarawa lineages of Old Mali Empire were said to have settled in the “*Oke-Imale*” Area of Ilorin. In fact some Muslims at “*Oke-Imale*” Area of Ilorin claim that their ancestors

long distance trade with North Africa and the older Muslim Communities in the Sudan.<sup>27</sup> For Centuries, the Old Oyo Empire had maintained commercial relations with Hausa land and Borno who happened to be two regions in which Islam was well-established by the Sixteenth Century. The vintage location of Ilorin in the Yoruba land gave it advantage to benefit economically and religiously from trade with both North and South and it was said that before the fall of the Old Oyo Empire, a trans-saharan caravan route stretched to Oyo the area of Ilorin<sup>28</sup> contemporaneously, other routes also linked it with the Coast. This vintage position of Ilorin attracted Hausa, Fulani and Nupe immigrants as well as people from other parts of Yoruba land and by Eighteenth Century, a certain number of such immigrants were already in the region while slaves from outside the area also worked there.<sup>29</sup>

Prior to the advent of Islam in Ilorin i.e. before Nineteenth Century, though there is no evidence of the existence of important traditional Yoruba shrines in Ilorin however up to 1975 or thereabout, young Secondary School boys used to watch “*Egungun*” Masquerades perform in some parts of Ilorin and its environs. Today, there is nothing like that anymore in Ilorin but outside the State capital, Yoruba and other traditional religions to some extent continue to co-exist with Islam in secret. As a fact, in the Southern Districts of Ilorin Emirate, the Yoruba traditional festivals, e.g. “*Moremi*” festival, contrary to the preaching of Islam are still observed till now. The dominant population that gathered in Ilorin and its environs were Yorubas, immigrants, encamped soldiers or refugees incorporated by conquest, was mostly Yoruba who practiced Yoruba traditional religion. Up to the beginning of the nineteenth century, Ilorin was said to be largely populated by worshippers of African Traditional Religion who worshipped natural objects and spirits such as the Sobi Hill, *Asa* River, *Oro*, *Ogun* and a host of other things.<sup>30</sup> There were also people who belonged to *Egungun* and *Igunnu* masquerade cults. Some professionals like hunters and blacksmiths worshipped *Ogun* (god of iron) while farmers worshipped land and river (goddess of land and fertility). The growth of Islam in Ilorin, and more particularly after the consolidation of Ilorin as an Emirate, attempts to stop the practice of the traditional Yoruba religions but the influence of Yoruba cultural practices on some aspects of the life of Yoruba Muslims of Ilorin are yet to be completely wiped out. For example, when twins are born in some families, a mini cultural naming ceremony is conducted before the actual Islamic Naming Ceremony day. Likewise other non-Muslim rites and beliefs probably brought to Ilorin by Fulani Cattlemen, Hausa and Nupe settlers during the early period are still in existence. *Egungun* cult was said to have been brought by Nupe settlers, though it is now extinct and not practiced among the Muslims of Ilorin.

By the time Ilorin had transformed politically and religiously in to an Islamic State after several years, traditional cults continued to be numerous in spite of the rulers being Muslims. However, these traditional cults began to give way to Islam and

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came from Old Mali to settle in the town. This is not impossible. In fact “the core families in Agbaji namely: Ile Saura, Ile Aburo, Ile Baba Sa’are, Ile Agoro and Ile Imam Abgaji were originally Sudanese Arabs from a town called Ar-Baji on the Blue Nile...” Likewise are members of Ile Ibrahim Bature at “Oke-Apomu” in Ilorin. They are said to be Arabs by origin. They migrated to Ilorin from Agades in the present day Niger Republic, see Jimoh, L. A. K., *ILORIN: The Journey So Far*, (Ilorin: Atoto Press Ltd., 1994), pp. 9-12.

<sup>27</sup> . Danmole, op. cit, p. 12.

<sup>28</sup> . Ojo, G. J. A., *Yoruba Culture: A Geographical Analysis*, (London: University of London Press, 1966), p. 122.

<sup>29</sup> . Johnson, S., *The History of the Yorubas*, (Britain: Lowe and Brydone, 1973), p. 10.

<sup>30</sup> . Salihu and Jawondo, op. cit, pp. 5-6.

by 1893, Mosques and praying sites were estimated to be around three thousand while as at today, by Allah's grace, Mosques and praying sites are close to half a million or thereabout in Ilorin.<sup>31</sup> Thus, as soon as Islam became well established in Ilorin and its environs, formal application of Islamic Law started to manifest not without some problems such as few number of Muslims in comparison with the rest population. This is because Islamic Law had no tradition in the area which was part of the Old Oyo Empire within which the Yoruba traditional system of justice prevailed. Available record<sup>32</sup> shows that during the first half of the reign of Emir Aliyu who reigned from 1868 to 1891,<sup>33</sup> severe punishment were administered on offenders found guilty of offences such as robbery, arson and murder. In some of the *Alkali* Courts, the Glorious *Qur'an* was said to be the only book used in adjudication. The legal system in Ilorin and its environs then was a blend of Islamic Law and Yoruba Custom. This was why the Northern districts of the Emirate and Ilorin town itself were regarded by the Emirs of Ilorin as *Dar al-Islam* i.e. Abode of Islam, because of the comparative strength of Islam there while the Southern districts were referred to as *Dar al-harb* because *dhimmi* and people who were not *Ahl al-Kitab* but pagans reside there.<sup>34</sup>

At the early stage of application of Islamic Law in Ilorin, for political reason rather than due to dearth of people learned in Islamic Law, reference was made to the Emir of Gwandu for legal opinion on matters. Though, there is no existing evidence that Ilorin continued to rely on Gwandu for Islamic legal advice from Nineteenth Century to date. Thanks to the Emirs of Ilorin, especially Emir Abd al-Salam, who acting on the advice of the then Emir of Gwandu, Muhammad Abdullahi, encouraged indigenes of Ilorin to pursue acquisition of knowledge. Indeed, this encouragement to learning offered by the Emirs of Ilorin turned Ilorin into a citadel of Islamic learning in Yoruba land in the Nineteenth Century. Today, Ilorin is not only prominent in the area of Arabic, Islamic Education and Culture but also in the fields of learning, especially Law. Ilorin lacks nothing in both Islamic religious and mundane knowledge. As a fact, in the field of Law (both Common and Islamic), Ilorin has produced giants in the field. For instance, it has produced a Chief Justice of Nigeria (CJN), a President of the Court of Appeal (PCA), and a Chief Judge of the Federal High Court, and several Senior Advocates of Nigeria (SANs). All these have earned Ilorin the accolade of a town in love with Wig and Gown on the internet.

<sup>31</sup>. There is no official statistical data to back this assertion.

<sup>32</sup>. The 1967 case of *Olokoba Agbegende v. Ilorin Native Authority* (1968-1969) S. C. O. P. E. 27 provides an insight to what the Emir's Court used to be. In this case, the Appellant was found to have failed to attend the Court of the Emir of Ilorin in answer to a Summons without reasonable cause. When brought to the Court his replies were insulting. He was tried and convicted by the Emir's Court for offences under Sections 136 and 155 of the Penal Code, and was cautioned and discharged. According to the record of this case, one member of the Court said to the appellant: "*Remember as a Moslem like you, it is repugnant to law for any one to disrespect a Moslem ruler, all that you are saying was very bad even if you get no any punishment from man, the God who made Rulers to rule will not allow a person go freely if such person acted in this ways and manners as you had done now before the Court.*" The Chiefs of the districts who were traditional rulers in their areas before the Jihad and Compound heads dispensed justice without reference to Islamic Law. Though, they dealt with cases of limited importance such as local thefts, debts and divorces. Litigants who were not satisfied with their Chief's decision could go to the Alkali who might settle the case without any reference to the Emir's Court.

<sup>33</sup>. Jimoh, op. cit, pp. 140 & 151.

<sup>34</sup>. Whitaker, C. S., *The Politics of Tradition: Continuity and Change in Northern Nigeria 1946-1966*, (Princeton, N. J.: Princeton University Press, 1970), p. 124.

An example of such legal opinions sought from Gwandu Emirate was whether or not it was permissible for a Muslim to castrate a human being and its legality, in accordance with Islamic Law and whether accepting material compensation in cases of adultery was permissible when a sentence of death had been imposed. The then Emir of Gwandu's reply was:

*...know then that it is not permitted for a Muslim to castrate a human being. That is a major sin. He on whom be peace, said: "There are no gelders of men among us, nor those who castrate themselves." But there is nothing wrong with employing a eunuch. That is the answer to the first question. As for the second, know that it is not permitted to take material compensation in this instance, on the contrary, the legality is not conditional on wealth, unless there is fear of civil strife resulting from the execution of the adulterer and the adulteress. In such a case the material compensation should be taken and devoted to the welfare of the Muslims. The Master of the adulterer has no right to any of it. This is the judgment given by one Sheikh my father before his death.*<sup>35</sup>

One is however inclined to belief that the reference letter from Emir Abd al-Salam to the then Emir of Gwandu on the above Islamic legal questions was for political and or administrative reasons because there were learned Islamic Scholars in both Ilorin (in particular) and Yoruba land (in general) even before the arrival of Sheikh Alimi. One of such Muslim jurists was Muhammad b. Masanih who had been in Yoruba land since sometime around 1667.<sup>36</sup> Further, there is no doubt that among the early judges (*alkalai*) in Ilorin, Imams Tejidini, Matashe and Bature were well versed in Islamic Law, even prior to the advent of Sheikh Alimi.<sup>37</sup> Equally on record is the fact that apart from these erudite Islamic Scholars, Sheikh Adam Abdullahi al-Ilori, in one of his books on Islamic scholars of Ilorin of the period 1800-1980, listed Sheikh Abubakar popularly called Bubay, Sheikh Abduyllah Rufughu Na Karatu, Sheikh Ibrahim, Sheikh Abubakr Isale Koto and Sheikh Mahmud b. Shitu amongst others as eminent Islamic Scholars of Ilorin and described them to be contemporaries of Sheikh Alimi.<sup>38</sup>

The Court of the Emir of Ilorin was the highest judicial authority in the Emirate. His Court was constituted by all the members of his council with the *Qadi al-Qudat*,<sup>39</sup> that is, the Chief *Alkali* (the Chief Judge) as Legal Adviser. It was the final Court of Appeal and dealt with major cases especially those of political importance. Such cases included land and boundary disputes, arson and murder. The power and piety of the incumbent Emir determined the degree of adherence to Islamic Law as a strong and pious Emir would adhere strictly to the Islamic Law while a weak one could be manipulated by the *Baloguns*<sup>40</sup> who were equally members of the Emir's Court.

<sup>35</sup>. Danmole, op cit, p. 86, see also Jimoh, op. cit, p. 133.

<sup>36</sup>. See Ilori, op. cit, p. 134.

<sup>37</sup>. Ajetunmobi, op. cit, p. 78.

<sup>38</sup>. Ibid, p. 79.

<sup>39</sup>. The list of *Qadi al-Qudat* in Ilorin from the foundation of the Emirate to 1912 was given as Abu Jalalayn, Jalalayn, Abu Mustafa, Uthman Oja Dodioro, Ahmad Ombudu, Mahmud and Yusuf. See Ikokoro, A. A., *A History of Ilorin ( Ta'lif akhbar alqurum Min 'Umora bilad Ilurun )*, (1911/1912) see also Ajetunmobi, op. cit.

<sup>40</sup>. The *Baloguns* were members of the Emir's Court not by virtue of their knowledge of the Islamic Law but by virtue of their military and political position. See Danmole, op. cit.

It is pertinent at this juncture, to state here, that from the time the seed of the religion of Islam was sowed in Ilorin, the people unconsciously assimilated the Maliki School of the Islamic Law simultaneously with the teachings of the religion itself hence everything pertaining to their Islamic ways of life were done in accordance with the Maliki School of Law. This was the position of things up to when the application of this School was formally and officially made the applicable School of Law in all matters involving application of Islamic Law in the whole Northern States of Nigeria. The definition of “*Moslem personal law*” in Area Courts Edict <sup>41</sup> read together with the definition of the same law in the Sharia Court of Appeal Law <sup>42</sup> and Section 14 of the same Law <sup>43</sup> form the basis upon which the application of Maliki School of Law became formally applicable in Northern Nigeria - Ilorin, Kwara State inclusive.

Section 2(1) of the said Area Courts Edict defines “*Moslem personal law*” as: “*Moslem personal law has the same meaning as it has in Cap. 122-Sharia Court of Appeal Law*” while in Section 11 of the Sharia Court of Appeal Law Cap. 122 referred to above, “*Moslem Law*” has been ascribed the following definition: “*Means Moslem Law of the Maliki School governing the matters set out in paragraphs (a) (b), (c) and (d)*”. By the same Sharia Court of Appeal Law, Section 14(a) of the Law provides thus:

(14) The Court in the exercise of the jurisdiction vested in it by this Law as regards both substantive law and practice and procedure, Shall administer, observe and enforce the observance of, the Principles and provisions of-

(a) Moslem law of the Maliki School as customarily interpreted at the place where the trial at first instance took place. <sup>44</sup>

In Ilorin (Kwara State) in particular and Nigeria in general, this principle of interpretation of Islamic Law has become so notorious that on the basis of notoriety, this law has gained acceptance and recognition by both the inferior and superior courts in Nigeria that judicial notice of it has been taken. In *Alkamawa v. Bello* <sup>45</sup> the Supreme Court held amongst others that:

...the applicable Islamic Law of Maliki School, from the time of establishments of these courts (both before and after the colonization of the area today is being referred to as Northern States of Nigeria and up to today) has been the applicable law in the courts. So on the principle of notoriety the law has gained acceptance and recognition by both the inferior and superior courts in this country that judicial notice of it can be taken.

Upon the creation of Kwara State in 1967, the provisions of the Area Courts Edicts (No. 2), 1967 and the Sharia Court of Appeal Law of the Laws of Northern

<sup>41</sup> . Section 2(1), The Area Courts Edict of 1967, Edict No. 2 of 1967, Annual Vols. of the Laws of Kwara State of Nigeria, 1967 & 1968.

<sup>42</sup> . Sections 1(2) and 14(a) of Sharia Court of Appeal Law, Cap. 122, Vol. 3, Laws of Northern Nigeria, 1963. See also Section 13 (a), Sharia Court of Appeal Law, Cap. S4, (Vol. 4) Revised Edition (Laws of Kwara State of Nigeria) Law, 2006.

<sup>43</sup> . Sections 11 and 13 (a), Sharia Court of Appeal Law, Cap. S4, (Vol. 4 ) Revised Edition (Laws of Kwara State of Nigeria) Law, 2006.

<sup>44</sup> . This provision is now found in Section 13 (a), Sharia Court of Appeal Law, Cap. S4, (Vol. 4 ) Revised Edition (Laws of Kwara State of Nigeria) Law, 2006.

<sup>45</sup> . (1998) 6 S. C. N. J., p. 127 at 136.



Nigeria, 1963 were made applicable in Kwara State and incorporated into the Laws of Kwara State and today they are contained in both Laws of Kwara State 1967 revised in 1995 and 2008 respectively.<sup>46</sup> In applying the Maliki School of Law in the courts in Kwara State, the Sharia Court of Appeal, Ilorin in *Ajarat Idowu v. Aliyu Mobolaji Akanbi*<sup>47</sup> held that:

It is our stand 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. This is not only because it is the school of the vast majority of the Muslims in the State, but it is also the Law: Section 14 (a) Cap 122 Sharia Court of Appeal Law of Laws of Northern Nigeria 1963 as applicable to Kwara State: Muslim Law of Maliki School as customarily interpreted at the place where the trial at first instance took place.

Today, both superior and inferior courts in Ilorin and in the whole of Kwara State formally apply the Maliki School of Islamic Law in all matters involving interpretation and application of Islamic Law.

### DISTRIBUTION OF ESTATE IN ILORIN IN PRE-ISLAMIC ERA

Prior to the advent of Islam and before Ilorin became an Emirate<sup>48</sup> incorporated in to the Sokoto Caliphate under the leadership of the Fulanis, the Yoruba people dominated<sup>49</sup> the area. By the fact of their domination, the Yoruba culture/custom and religious<sup>50</sup> beliefs were the operative and visible culture, custom and religion then. Historically, there were a handful of Muslims in the Yoruba land even though Ilorin was said to be the most probable first part of Yoruba land to have received the religion of Islam. However, the number was so negligible that they could not have influenced the population then. It was reported that Sheikh Alimi could not remain in Ilorin on his first visit because it was a land full of idolators.<sup>51</sup> The Yorubas of that time were practically pagans who worshipped deities and practiced Yoruba culture. Just as Islam is believed to be religion and a way of life, so also is traditional belief

<sup>46</sup> . The provisions of the relevant Sections of the Law being discussed are in *pari material* save that it is referred to as Cap. 145 and Section 13(a) respectively.

<sup>47</sup> . (2004) Annual Report of Kwara State Sharia Court of Appeal, Ilorin, p. 126 at 130-131, see also *Mrs Muibat Aderibigbe v. Dr Yekeen Adeniran Aderibigbe* (2000) Annual Report of Kwara State Sharia Court of Appeal, Ilorin, p. 38 at 43 where the Sharia Court of Appeal stated that: “We go by the view of Imam Maliki in the interest of consistency which is a feature of justice. Also in compliance with the Laws of the Kwara State of Nigeria Cap 145, Sharia Court of Appeal Law Section 513 which says that we should apply **Islamic law of Maliki School as customarily interpreted at the place where the trial at first instance took place.**”

<sup>48</sup> . Ilorin became an Emirate some time around the reign of Oba Abdulsalami or thereabout after its incorporation in to the administration of Sokoto Fulani Caliphate of Usman Danfodio.

<sup>49</sup> . This was not un-connected with the fact that Ilorin then was part and parcel of the defunct Old Oyo Empire.

<sup>50</sup> . The Yorubas of that time were Sango, *Oya* or *Obatala* deities worshippers. It was the advent of Islam that wiped out all these traditional religious beliefs and culture. In Ilorin today, no Yoruba traditional religious worshipper exists and if he does, he dears not profess it in the open because of the predominant Muslim population. See Oso, S. O., *Lectures On West African Traditional Religion*, (Ado Ekiti, Ondo State: Bamgboye & Co. Press (Nig.) Ltd, n. d.), pp. 79-82. For a more detailed discussion, see McClelland, E. M. , *The Cult of Ifa Among the Yoruba* (Vol. 1), (London: Ethnographica Ltd; 1982), pp. 11-26 and Ayodele, O., “Esu Elegbara, The Yoruba God of Chance and Uncertainty: A Study in Yoruba Mythology,” (Unpublished Ph. D. Dissertation), (Indiana: Indiana University, 1978), pp. 58-62.

<sup>51</sup> . Salihu and Jawondo, op. cit, p. 5.

because they have ways of settling disputes, ways of adjudication (legal system), rites such as naming ceremonies, Marriage, Divorce, system of inheritance, concept of justice to mention but a few. The numerous deities believed and worshipped by the Yorubas of that time <sup>52</sup> are not and should not look alien to any student of West African history. This is because legends, myths and oral tradition historically linked the Yoruba people in particular and some other tribes (Hausa) of Nigeria to Saudi Arabia. Notwithstanding the authenticity or otherwise of these claims, there are some semblance in the deities worshipped by the Arabs of the *Jahiliyyah* period with those worshipped by the Yorubas of the Pre and Post Islamic Eras. The Arabs of this period were said to have worshipped variety of deities to the extent that they had about over three hundred and sixty-five deities. This translated to an average of a deity being worshipped every day of the year.<sup>53</sup>

Distribution of estate in Ilorin in pre-Islamic era can therefore be likened or compared to distribution of estate in Arabia in particular and the World in general during the *Jahiliyyah* <sup>54</sup> period. During this period, obnoxious rules of inheritance were adopted in the course of distribution of estate. Under these obnoxious rules, females, the feeble minded, the infirmed, the too young and old and weak males were out rightly excluded because they can not fight wars by virtue of their conditions in life while the slaves were denied power of disposition. The worse of all was that females were treated as inheritable property of movable kind.<sup>55</sup>

In Ilorin, the situation was not very far from the above because the practice and rules that regulated distribution of estate then were products of the prevailing religion and culture /custom of the people. The prevailing culture/custom and religion then was Yoruba culture/custom and traditional religion.<sup>56</sup> Therefore, by the prevailing religion and culture/custom, the distribution of estate was done in accordance with Yoruba customary rule of inheritance known as *Idi-igi* <sup>57</sup> or *Ori-*

<sup>52</sup> . For emphasis, I repeat that the Yorubas of Ilorin who are indigenes have long time ago forgotten about all these Yoruba traditional deities and religions but among the Yorubas of other States of Western Nigeria e. g. Osogbo in Osun State (readily comes to mind), there are remnants who still profess these religions. For instance, the worshippers and believers in the deity of *Osun* of Osogbo still practice the religion and belief openly up till today. The annual worshipping of *Osun* deity of Osogbo has received national and international status. People from all walks of life all over the World converge in Osogbo for the annual festival. It is not improbable that those who attend are worshippers or followers of *Osun* deity.

<sup>53</sup> . Hitti, P. K., *History of the Arabs*, (London: The Macmillan Press Ltd; 1970), p. 3.

<sup>54</sup> . *Jahiliyyah* period is the period of ignorance in Arabia in particular and the whole World in general. Arabia and in fact the World was steeped in pagan practices and customs, and the impact of these practices manifested in all facets of human life. It was a period before light overshadowed darkness as a result of the teachings and doctrines of Islam spread from Arabia through Prophet Muhammad (P .B. U. H.) to the whole World.

<sup>55</sup> . Ahmad, A., *Islamic Law in Theory and Practice*, (Lahore: The All-Pakistan Legal Decision, 1956), p. 507.

<sup>56</sup> . Some of the people worshipped objects of nature like Asa River, Sobi Hill and other mountains and rocks, Baobab trees, land and forest and other such physical phenomena. There were also *Egunun* and *Igunnu* masquerades and some professionals worshipped gods that were spiritually conceived as having connection with their occupations such as *Ogun*, *Oro* e.t.c. see Salihu and Jawondo, op. cit, pp. 5-6.

<sup>57</sup> . This is the Yoruba general custom where by the estate of a deceased Yoruba man with more than one wife is distributed among the children per stripes equally into the number of the wives first and thereafter the share attributable to each wife being divided equally among her children. The wives are however excluded from the distribution because by Yoruba custom/culture, they can neither inherit their husbands' property nor take a share in the estate. The wives are not only excluded from the distribution, they are equally subject to being inherited (as a wife) by a younger brother of the deceased husband in accordance with levirate

*ojori*<sup>58</sup> systems. Though, there is no record of decided case(s) where either of the above rules had been applied in Ilorin, the rules, by virtue of their notoriety, have received judicial recognition in *Dawodu v. Danmole*<sup>59</sup> and the position in Ilorin follows Yoruba pattern except that *Idi-Igi* or *Igikankan*<sup>60</sup> is now sparsely used as an inheritance formula today because of the predominant Islamic religion.

By the same Yoruba custom/culture, on the death of the father, the deceased eldest son becomes the head<sup>61</sup> of the family taking charge and management of the deceased's estate for himself and other children. In Ilorin, up to date, there is remnant of this custom/culture or tradition where the eldest son occupies not only the room and parlour of the deceased father but becomes the owner in addition to what he may have to inherit from the estate. The parlour is a room that serves the same purpose as the modern day sitting room. It is usually the first part of a building in a typical Ilorin traditional residential architectural design. It is called "*sasa*" in Ilorin dialect. The typical Ilorin traditional residential architectural design is not different from the typical Yoruba homes which are usually arranged in clusters of rambling mud-walled, rectangular buildings that opened into a common courtyard. These homes are built in patrilineage clusters that house the head of the family, his wives, his children, and his children's wives. These settlement clusters are known as compounds. Upon his death too, his own eldest son takes over.<sup>62</sup>

However, it is pertinent to state here that even though female children of a deceased father now<sup>63</sup> have equal right of inheritance with the male children, the tradition is that in Ilorin, then and even now, female children do not seem to bother much about inheriting real property<sup>64</sup> of their deceased fathers because they believed

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custom. See *Suberu v. Sunmonu* (1957) 2 F. S. C. 33 where the Court held that "*a wife could not inherit her husband's property since she herself is, like a chattel to be inherited by a relative of her husband*". This was indeed the Arab practice during the *Jahiliyyah* period. See also Ajisafe, A. K., *The Laws and Customs of the Yoruba People*, (London: George Routledge and Sons Ltd., 1964), pp. 9-17, see further Sodi, Y., "An Analysis of Yoruba and Islamic Laws of Inheritance," Vol. 86, April, 2007, *Muslim World* (Hartford, Conn.), p. 324.

<sup>58</sup> . On the other hand, *Ori-Ojori* is the exception to the general Yoruba customary rule of distribution of estate which involves sharing the estate on per capita basis among the male children of the deceased. By the pristine Yoruba custom, women were deprived of any rights in family property. This used to be the position when *Marina Lopez v. Domingo Lopez* (1924) 5 N. L. R. 50 was decided by Combe, C. J. who confirmed that originally, "*the rights of the daughters in Yoruba land were not the same as those of the sons with regard to their father's property. However this position today had since changed as both male and female children have equal right of inheritance in the property of their father as epitomized in Salami v. Salami* (1957) W. R. N. L. R. 10 where it was held that Plaintiff's right to inherit her father's estate along with her two brothers was not diminished by the fact that she was a girl".

<sup>59</sup> . (1958) 3 F. S. C. 46. See also *In Re: Abike & Ors.* (1962) 2 ALL N. L. R. 122.

<sup>60</sup> . *Adenike Taiwo v. Yekini Lawani & Anor* (1961) ALL N. L. R. (Pt. 4) 703.

<sup>61</sup> . *Olowu v. Olowu* (1985) 3 N. W. L. R. (Pt. 13), 372 at p. 387.

<sup>62</sup> . This is not a rule of Islamic distribution of estate, but a carry over from the yet to be dead Yoruba custom of inheritance in Ilorin. This can equally not be referred to as the exercise of principle of *Shuf'a* in Islamic Law. *Shuf'a* (Pre-emption) is the right by which a co-owner of immovable property may redeem from a stranger in consideration of compensating him, that part of the property which has been sold to him by another of the co-owners, see *Alkamawa v. Bello*, op. cit, p. 127 at 133. For a detailed discussion see Jung, M. U. S., *The Muslim Law of Pre-Emption*, (Lahore: Pakistan Law Publishing Company, N. D.), p. 4 -7.

<sup>63</sup> . This is due to the influence of Islam/Islamic Law because Islamic Law does not discriminate against a female child. The Glorious *Qur'an* in Chapter 4 : 7 provides thus : "*There is a share for men and a share for women from what is left by parents and those nearest related, whether, the property be small or large-a legal share*".

<sup>64</sup> . This none challant attitude of this class of Ilorin females is a hang over of the pristine Yoruba

they are not expected to live forever in their father's houses. All these being the major features of distribution of estate in Ilorin prior to the advent of Islam, one can rightly and with authority state that the rules of Yoruba native law and custom which derived their root from Yoruba traditional beliefs form the basis and rules of estate distribution in Ilorin of that time.

### DISTRIBUTION OF ESTATE IN ILORIN IN THE EARLY ISLAMIC ERA

After the advent of Islam in Ilorin, the religion began to witness expansion<sup>65</sup> both within and outside. As the religion expanded, the people gradually began to discard<sup>66</sup> their previous Yoruba traditional religious beliefs, culture and custom. Muslims were encouraged to settle well after the Fulani Jihad had triumphed there. As one of the efforts to promote Islam and Islamic Law in Ilorin, Emir Shitta<sup>67</sup> was said to have approved the settlement in Ilorin of people of Hausa and Nupe origins returning from Brazil.<sup>68</sup> The deliberate policy of increasing the population of Ilorin with immigrant Muslims tilted the demographic balance towards the Muslims thereby making them to outnumber the Yoruba pagans and paganism.<sup>69</sup>

By the time Islam became well established in Ilorin and became the religion of the majority, it became natural that Islamic religious ways of life will triumph over Yoruba traditional religion, culture and custom. Hence, Islamic Law and culture, overtly manifested in all the spheres of life of the Ilorin man. Therefore, like in Saudi Arabia where Islam and Islamic Law originated and later dominated and suppressed the barbaric Arab culture and custom, in Ilorin, the same situation applied. The influence of Yoruba traditional religion and custom became reduced<sup>70</sup> and distribution of estate of a deceased Muslim is done in accordance with the laid down principles and procedure as provided for by Islamic Law to a great extent.<sup>71</sup> The Islamic Law rules and procedure applied then and even now in Ilorin are those entrenched in the *Qur'an* which provides amongst others that:

*"There is a share for men and a share for women from what is left by parents and those nearest related, whether, the property be small or large-a legal share."*<sup>72</sup>

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custom which did not accord them right to inherit real property of their deceased fathers. However, the position is rapidly changing now due to education, exposure, proper understanding of Islam and Islamic Law, and the zeal to exercise one's right as provided by Islamic Law, see The Nation Newspaper of 13th September, 2007, p. 8 where one Princess Bilikisu Zulukanaini Gambari was demanding for the distribution of estate of their late father, His Royal Highness, Emir Ibrahim Sulu Gambari of blessed memory.

<sup>65</sup> . The spread and expansion of Islam was slow and gradual because paganism was already some how rooted in Ilorin and the entire Yoruba land.

<sup>66</sup> . Discarding a particular traditional belief, custom and culture was not easy among the people because belief and culture are like habits and it is popular adage that habits die hard.

<sup>67</sup> . Emir Zubeir who ruled from 1860-1868 was said to have greatly contributed to the spread of Islam in Ilorin. He was "the first" to order the systematic public destruction of traditional shrines in Ilorin, see Jimoh, op. cit, p. 139

<sup>68</sup> . Danmole, op. cit, p. 125.

<sup>69</sup> . During the month of Ramadan, Islamic activities such as open air lectures took place with people being converted to the fold of Islam because efforts were concentrated on making new converts through the teaching of the Glorious *Qur'an*.

<sup>70</sup> . Except that, as earlier pointed out, certain culture/custom and traditional practices of the people continued to influence the application of certain pristine Islamic Laws and culture.

<sup>71</sup> . By the use of the phrase "to a great extent", it is meant that distribution of estate was no more totally done in accordance with Yoruba custom/culture but in accordance with Islamic Law even though some how custom/culture at times impact on the distribution exercise. See *Alhaja Senabu Abebi Masingba v. Alhaji Alabi Opobiyi* (1982) C. A. 11, p. 206 at pp. 211-212.

<sup>72</sup> . *Qur'an* 4 : 7.

The *Qur'an* further provides that:

Allah commands you as regards your children's (inheritance); to the male, a portion equal to that of two females; if (there are) only daughters, two or more, their share is two thirds of the inheritance; if only one, her share is half. For parents, a sixth share of inheritance to each if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers or (sisters), the mother has a sixth. (The distribution in all cases is) after the payment of legacies he may have bequeathed or debts. You know not which of them, whether your parents or your children, are nearest to you in benefit, (these fixed shares) are ordained by Allah. And Allah is Ever All-Knower, All-Wise.<sup>73</sup>

Still on the Islamic rules of inheritance, the *Qur'an* provides that:

In that which your wives leave, your share is half if they have no child; but if they leave a child, you get a fourth of that which they leave after payment of legacies that they may have bequeathed or debts. In that which you leave, their (your wives) share is a fourth if you leave no child; but if you leave a child, they get an eighth of that which you leave after payment of legacies that you may have bequeathed or debts. If the man or woman whose inheritance is in question has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third; after payment of legacies he (or she) may have bequeathed or debts, so that no loss is caused (to anyone). This is a Commandment from Allah; and Allah is Ever All-Knowing, Most-Forbearing.<sup>74</sup>

The verses above provide the major legal frame work of the Islamic Law of Inheritance and from them are derived the detail Islamic rules and procedures of inheritance.

Today, it can therefore be said that the era of Islam in Ilorin Emirate heralded a regime of application of Islamic culture, Islamic education and Islamic Law. To date, this is what applies in Ilorin Emirate but the influence of Yoruba culture on the application of pristine Islamic Law is yet to be eradicated completely especially in the area of estate distribution.

## CONCLUSION

This paper has shown that before the fusion of the four semi-autonomous settlements that formed what is today called Ilorin, Yoruba non-Muslims were in the majority while Muslims were in the minority. Inheritance during this period was governed by Yoruba customary rules of inheritance (*Idi-Igi* or *Igikankan*). These rules continued to apply until the Muslims formed the majority by deliberate policy of

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<sup>73</sup> . *Qur'an* 4 : 11.

<sup>74</sup> . *Qur'an* 4 : 12, See also *Qur'an* 4 : 176 (on *Kalalah*) which provides that: "...Allah directs (thus) about *Al-Kalalah* (those who leave neither descendants nor ascendants as heirs). If it is a man that dies, leaving a sister, but no child, she shall have the inheritance. If (such a deceased was) a woman, who left no child, her brother takes her inheritance. If there are two sisters, they shall have two-thirds of the inheritance; if there are brothers and sisters, the male will have twice the share of the female. (Thus) does Allah make clear to you (His Law) lest you go astray. And Allah is the All-Knower of everything."

populating it with immigrant people of Hausa and Nupe origins returning from Brazil. During this period, rules of Islamic Law of Inheritance applied though not without some influence or interference of the Yoruba custom. In essence, the paper has saliently shown the degree of compliance with the rules and principles of Islamic Law of Inheritance in Ilorin Emirate before and immediately after its islamization and incorporation in to the Sokoto Caliphate. Since this paper is a subtle assessment of the practice and procedure of Islamic Law of Inheritance in the early phase of Ilorin Emirate, in order to have a complete assessment, it is recommended that a further work need be done to cover the era of post incorporation in to the Fulani Caliphate to date.