MISAPPLICATION OF THE PRINCIPLE OF *MURUR AZ-ZAMAN* TO *AL-FARAA'ID* CASES IN NIGERIA: ASCERTAINING THE POSITION OF ISLAMIC COURTS

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Abstract

Principle of Murur Az-Zaman stipulates that the cause of action in Islamic civil actions caught up by long delay becomes extinguished because of larches and acquiescence. It is undoubtedly that the principle of Murur Az-Zaman applies to all Islamic civil matters in an Islamic court. In this vein, cases involving Al-Faraa'id (estate distribution) which have suffered undue delay are presumed by some litigants in Nigeria to have been extinguished in line with the principle of Murur Az-Zaman. Hence, majority of the people whose cases bother on the inheritance of their deceased have resorted to the fate that their rights can no longer be enforced in Islamic Court owing to the length of time that had lapsed in their circumstances. This continues to strengthen Fasaad (corruption) by unscrupulous people who derive pleasure and gains in withholding and eating up properties that are supposed to be shared by way of inheritance. The foregoing thus prompted this paper to examine the misapplication of the principle of Murur Az-Zaman to Al-Faraa'id cases to ascertain the position of Islamic courts in Nigeria. The paper adopts the doctrinal method of legal research by analyzing the decision of the Shari'ah Court of Appeal in the case of Iya Maiwana V. Mamman Captain vis-à-vis the position of Islamic jurisprudence. The paper finds that though the principle of Murur Az-Zaman applies to Islamic civil cases. However, Shari'ah considers Al-Faraa'id cases as exceptions to the application of Murur Az-Zaman because they are sui generis. This is thus the position of Islamic courts in Nigeria owing to the inherent HaqquLlah (right of Allah) in Al-Faraaid cases which cannot be waived no matter the delay before instituting such cases before Islamic courts. The paper suggests that Islamic courts in Nigeria should never deviate from their ascertained position that the Al-Faraa'id case cannot be affected by the principle of Murur Az-Zaman. Because lots of such cases are yet to be filed by litigants under the mistaken impression that long delay affects Al-Faraa'id cases. It is further suggested that Islamic courts in Nigeria should begin to organize seminars and workshops to sensitize the general public that despite the long delay concerning Al-Faraa'id cases, Islamic courts are ready to entertain their cases.

Keywords: Murur Az-Zaman, Al-Faraa'id, Misapplication, Nigeria, Islamic Courts

1. Introduction

In Islamic jurisprudence, a great deal of attention is given to property management during the life and after the demise of the holder. This is because man generally likes to amass properties and wealth.[1] While they fight profusely against one another because of properties in their lifetime, the scenario repeats itself even after the death of the owner of the properties. Little wonder Allah ordains for Al-Faraa'id after the demise of a deceased Muslim who left behind properties.[2]

In Nigeria, despite the clear Shari'ah legislation on Al-Faraa'id, the distribution of the estate of a deceased Muslim usually faces challenges, especially in a situation where the estate was not distributed immediately after the demise of the deceased Muslim but after some lapse of time. Of course, where such delay has occurred before sharing the estate of the deceased, at times, the properties/estate would have gotten into the wrong hands or in possession of family member(s) who are not ready to let go of the estate in which case resort to litigation in Islamic court becomes the only option. Even when such a case gets to the Islamic court, the challenges continue through misapplication of the principle of Murur Az- Zaman (expiration of time) to defeat the underlining purpose of Allah's ordinance for Al-Faraa'id (estate distribution).

The question is whether the long delay before the distribution of estate outrightly extinguishes the rights of those who have stakes in the properties subject matter of inheritance. Answering the question requires ascertaining the position of Islamic courts in Nigeria as per the application of the principle of Murur Az-Zaman in Al-Faraa'id cases.

2. Conceptual Analysis of Islamic Principles of MururAz-Zaman and Al-Faraa'id

Nigeria is a multi-legal system nation.[3] The country is blessed with a very rich Shari'ah legal system alongside the received English common law and customary law.[4] Noticeably, both Shari'ah and the received common law legal systems have several similarities with unique differences and applications. A case in point is the concept of a statute of limitation being

[1] Quran, Surah *At-Takathur* (102:1-8)
[2] Quran, Surah *An-Nisa* (4 :11, 12 and 176)
[3] Ahmed A. Muhammed-Mikaaeel, *Application of Corporate Personality Doctrine under the Nigerian Corporate Law and Shari'ah,* 8 (1) Lexigentia, 4-5 (2022)
[4] *Id.*

the focal point of this study. In Shari'ah legal parlance, it is referred to as the principle of MururAz-Zaman.

Murur Az-Zaman is an applicable principle under Shari'ah.[5] It is an Arabic terminology that comprises two words 'Murur' and 'Az-Zaman.' The word 'Murur' refers to the passage of things while the word 'Az-Zaman' is a definite noun that refers to the time or the period. Contextually, Murur Az-Zaman can be referred to as the passage of time or the expiration of time.[6]

In Shari'ah legal parlance, Islamic jurists have preferred to adopt a legal terminology, limitation of action, for the principle of Murur Az-Zaman. Thus, Murur Az-Zaman is an Islamic law principle that stipulates the expected period after a cause of action has arisen within which to litigate an action expiration of which closes the door of litigation for the cause of action.[7]

Need to say that the principle of limitation of action is recognized under Islamic law practice through the Islamic law principle of Murur Az-Zaman. The rationale for the formulation of the principle is to ensure the quick disposition of actions at the earliest time possible and to put an end to litigation in the deserving situation.[8] The principle has certain conditions which if satisfied, could put an end to any cause of action caught up with Murur Az-Zaman.[9]

It is noteworthy that the principle of Murur Az-Zaman is derived from the general Prophetic Hadith which stipulates that anyone that possesses a thing for over a period of ten years is deemed to own it in compliance with the conditions laid down for the principle.[10] Thus, since the formulation of the principle in Islamic jurisprudence, it has become a litigation useful tool for defendants in appropriate situations in civil matters. Hence, the application of Murur Az-Zaman does not go beyond the territory of Islamic civil matters. Undoubtedly, Al-Faraa'id cases are parts of Islamic civil matters.

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[5] Abubakar T. Getso, *Introduction to the General Principles of Islamic Law of Tort*, 76-78, availableat:https://kubanni.abu.edu.ng/bitstreams/1f3f0a4c-6533-4189-a487-3857b923500/download (last visited on November 9, 2022).
[6] *Id.*
[7] *Id.*
[8] Fatmeh Arzhang & Ardvan Arzhang, *Statute of Limitation and its Meanings Development in Islamic Punishment Law*, 5(8) Journal of Applied Environmental and Biological Sciences 296-298 (2015).
[9] Getso, *supra* note 5, 76-77
[10] Abdulqadir Zubair, An Outline of Islamic Law of Tort 71, IIC Publications, Lagos, (1990).

Al-Faraa'id refers to the Shari'ah concept which deals with Muslims' inheritance after their demise.[11] It is divine legislation in the holy Qur'an which admits to no discretion.[12] As an Islamic concept, it finds solutions to salient inheritance problems of whom to inherit? Whom to inherit from? What to inherit? What quantum to inherit? In the cause of addressing the inherent questions, reliance is placed principally on Qur'an, Sunnah and Ijma'a.[13]

Al-Faraa'id is an aspect of Shari'ah that requires adequate attention and understanding.[14] It is an area that requires great expertise. Little wonder it is one of many spheres of Shari'ah that enjoy practical application among Muslim scholars who specialize in the field.[15]

Among the practitioners, Al-Faraa'id is used interchangeably with Miraath to refer to inheritance and succession.[16] The unique nature of Al-Faraa'id is that it takes care of the right of man i.e., the legal heirs over their deceased Muslims' estate without leaving out the right of Allah. The right of Allah is taken care of through the practical application of Al-Faraa'id amongst Muslims because it ensures obedience to the commandment of Allah.[17] It also establishes absolute ownership of Allah over the properties temporarily entrusted to mankind.[18]

However, due to the greedy nature of man, there usually arise litigations over the inheritance of deceased Muslims which brings to the fore the situation of inviting a Qadi (Judge) to determine the rights and liabilities of the legal heir.[19] In this circumstance, since Al-Faraa'id is a divine Allah commandment, such Al-Faraa'id cases are decided to uphold the right of Allah over the estate of the deceased.[20]

3. Constitutional Classification of Al-Faraa'id Cases in Nigeria

[11] Jamiu M. Busari, *Al-Fara'id (The Islamic Law of Inheritance): Introduction and Theories*,1-6,available at:https://www.academia.edu/42127461/The_Islamic_Law_of_Inheritance_Introduction-and_Theories (last visited on November 9, 2022).
[12] Quran, Surah *An-Nisa, supra* note 2, 11-14
[13] Saujan Iqbal *et al*, *Islamic Law of Inheritance and its Implication amongst Muslim Society: An Empirical Analysis*, 7 (1) Journal of Contemporary Islamic Law 35-51 (2022).
[14] *Id.*
[15] *Id.*
[16] Busari, *supra* note 13, 1-6
[17] Quran, Surah *An-Nisa, supra* note 2, 13-14
[18] *See generally*, Qur'an, Surah *Baqarah* (2:106-107) (where it is declared thus: "Allah is the Owner of the heavens and the earth; He can do whatever He likes with His properties. No one besides him owns anything; otherwise, that owner could interfere in the management of Allah or put restriction on His authority and control").
[19] *Iya Maiwana v. Mamman Captain* 1961-1989 1 SH L.R.N.P. 8, 10-11
[20] *Id.*

As stated earlier, the Islamic legal system enjoys operation in Nigeria but it is however not free of interference from the received English common law system.[21] The reason is that Al-Faraa'id cases being cases emanating from disputes arising from inheritance or succession of a Muslim's estates are adjudicated upon by Islamic courts. The so-called Islamic courts are the creation of the constitution with limited and modified jurisdictions.[22] The jurisdictions of Islamic courts under Shari'ah are wide and unlimited compared to the Nigerian constitutional provisions on Islamic law courts' jurisdiction which have been generally constricted to Islamic personal matters with permission given to each State of the federation to expand their jurisdictional powers.[23]

Generally, according to the constitution, Islamic law courts in Nigeria cannot decide cases outside the purview of the defined Islamic personal matters except and otherwise expanded by State laws. Thus, the constitution stipulates Islamic personal matters to include marriage solemnization, marriage dissolution, guardianship, custody of children, maintenance of children, endowment, gift, Will, and succession to mention but a few.[24]

From the foregoing, succession being listed under Islamic personal matters in the constitution indicates the constitutional classification of Al-Faraa'id cases in Nigeria. Hence, cases or disputes emanating from Al-Faraa'id (inheritance and succession) are classified under Islamic personal matters. By their very nature, Islamic personal matters are civil in nature and can as well be regarded as Islamic civil matters that are determinable by Islamic courts in Nigeria.

4. Application of the Principle of Murur Az-Zaman to Islamic Civil Cases in Nigeria

The principle of Murur Az-Zaman is derived from the source of Shari'ah which enjoys application in Islamic civil matters. It is a principle of law that ensures the speedy disposition of cases at the earliest time when the evidence is available and fresh in the minds of witnesses and other stakeholders.[25] Murur Az-Zaman is technically referred to as a limitation of action.[26] It is a principle that stipulates the time that within which an aggrieved plaintiff or claimant (as the case may be) should approach the court and institute an action against the defendant. The principle operates in such a way that larches and acquiescence are the end results should the

[21] Muhammed-Mikaaeel, *supra* note 3, 4-5
[22] The Constitution of the Federal Republic of Nigeria, 1991 (as amended), *s*. 275
[23] *Id*., *s*. 277 (1) and (2) (a)-(e)
[24] *Id.*
[25] Arzhang & Arzhang, *supra* note 8, 296-298
[26] Getso, *supra* note 5, 76-77

plaintiff or claimant fails to institute action until the expiration of the expected, limited or prescribed period. In this circumstance, such plaintiff or claimant would be said to have slept over his or her right. Even though the cause of action is still intact, it thus becomes unenforceable on the account of undue delay culminating into larches and acquiescence.

In Islamic jurisprudence, the provision for the principle of Murur Az-Zaman is slightly different from what is obtainable under the received English common law which details or classifies actions and their respective periods of limitation.[27] Shari'ah thus adopts a careful approach as understood from the Hadith of Prophet Muhammad (PBUH) which provides to the effect that anyone who possesses a particular property for ten (10) years, therefore, owns it.[28]

The foregoing Hadith is the basis of the formulation of the principle of Murur Az-Zaman. On this note, Islamic scholars have propounded the principle of Murur Az-Zaman differently. For instance, according to the followers of Maliki Madhhab, relying on the Hadith of the prophet above, they stipulated Murur Az-Zaman to be ten (10) years except in a situation whereby the aggrieved parties are related by blood or affinity.[29] According to them, disputes between parties who are related by blood or affinity have a stipulated Murur Az-Zaman to be fifty (50) years.[30]

In the same token, Imam Maliki himself holds the view that Murur Az-Zaman has no fixed period but largely depends on the 'Urf (custom) and 'Adaat (usage) of a given locality. [31] The position of Imam Maliki subscribed to a reasonable time principle with 'Urf (custom) and 'Adaat (usage) as determinant factors. Whichever the case, the principle of Murur Az-Zaman is a known principle to Islamic jurisprudence and enjoys application in Islamic courts upon satisfaction of certain conditions which include:[32]

i. the plaintiff or the claimant at the time of the cause of action has capacity to institute the action;
ii. the plaintiff or the claimant has every opportunity to institute the action to seek redress but chose not to do so; and

[27] *See generally,* The Limitation Law of Lagos State, 2015 available at: https://laws.lawnigeria.com/2020/05/15/limitation-law-of-lagos-state/ (last visited on November 9, 2022). (This is clearly demonstrated by the various Limitation Laws of the different States of the Federation as per land matters, contract, and commercial transactions, actions against public officer, etc.)
[28] Zubair, *supra* note 10
[29] Getso, *supra* note 5, 76-78
[30] *Id.*
[31] *Id.*
[32] *Id*., 76-77

iii. the plaintiff or the claimant is aware of the usurpation over his or her right throughout the limited period.

Thus, proof of the above conditions cumulatively can only avail the defendant with the application of Murur Az-Zaman in a given case. The rationale for the formulation of the principle is to limit the number of disputes and cases among Muslim Ummah after the lapse of time and also to inculcate the culture of accepting one's fate in any ugly circumstance. The principle is generally applicable to all Islamic civil matters pending before any Islamic court concerning the prevalent right of man (Haqqunnas).[33]

The purport of the foregoing is to showcase that the principle of Murur Az-Zaman is an applicable principle in Islamic civil cases and can be validly raised by the defendant in deserving situations. In Islamic jurisprudence, the limitation of action (Murur Az-Zaman) is ten (10) years after which the case or the cause of action becomes statute-barred or unenforceable before Islamic courts. By the official position of Maliki Madhhab, credence is also given to blood or affinity such that any dispute between parties who are related by blood or affinity has an extended period of limitation of action of fifty (50) years.

Al-Faraa'id cases, being a branch of Islamic civil matters, have experienced several attempts at the application of the principle of Murur Az-Zaman in Islamic courts in Nigeria.[34] This is brought to the fore by some statements of prophet Muhammad (PBUH) discouraging delay in dealing with issues relating to succession or distribution estate of deceased Muslims.[35]

5. Al-Faraa'id Cases as Sui Generis under Shari'ah

As discussed earlier, Al-Faraa'id cases are cases brought to Islamic courts for adjudication on disputes arising from succession or distribution of inheritance or estate of deceased Muslims. In other words, Al-Faraa'id cases refer to litigations emanating from issues bothering the distribution of the estate of deceased Muslims. It can also be explained as litigations in Islamic courts the subject matters of which are the issues of deceased Muslims' estate distribution. The position of Islamic jurisprudence perceives Al-Fara'id cases as Sui Generis, especially concerning the application of Murur Az-Zaman.

[33] *Id.*
[34] *Iya Maiwana v. Mamman Captain* 1961-1989 1 SH L.R.N.P. 8, 10-11
[35] Muhammad S. Dabas & Jamal al-din M. Zarabozo, Fiqh us-Sunnah Volume A 18, Indiana, USA: American Trust Publications, (1991).

Sui Generis is a foreign Latin word that means suits or cases in the classes of their own.[36] Referring to a particular case as Sui Generis implies that such a case is not to be treated traditionally like other similar cases due to its peculiarity. In the context of this research, it is not gainsaid that Al-Faraa'id cases are parts of Islamic civil matters which are ordinarily or traditionally affected by the application of the principle of Murur Az-Zaman in appropriate situation. However, Shari'ah jurisprudence vis-à-vis the application of the principle of Murur Az-Zaman in Islamic civil matters places Al-Faraa'id cases as Sui Generis. The reason is that the application of the principle of Murur Az-Zaman enjoys exception when it comes to Islamic civil litigation bothering Al-Faraa'id.[37]

Notwithstanding the foregoing, Islamic courts in Nigeria have experienced cases in which defendants have raised the issue of limitation of action in Islamic civil matters bothering on Al-Faraa'id cases. The experience was caused as a result of the misapplication of the Prophetic Hadith which is to the effect that the distribution of the estate of deceased Muslims should not be delayed.[38] Little wonder some legal practitioners have wrongly argued that undue delay in the sharing of the estate of a deceased Muslim automatically calls for the application of the principle of Murur Az-Zaman.[39] The trite position however in Islamic jurisprudence is that the issue of distribution of the estate of deceased Muslims emanates from the binding commandment of Allah failure of which attracts unpleasant consequences.[40]

In the understanding of the theory of HaqquLlah (right of Allah) vis-à-vis Haqqunnas (right of mankind), the proponents of the application of Murur Az-Zaman in Al-Faraa'id cases believe that Haqqunnas in waivable. The reason is that they perceive the distribution of the estate of a deceased Muslim amongst his or her legal heirs as absolute rights of the inheritors which can be deemed waivable due to long and inordinate delay if not shared or attended to within reasonable time. The proponents of the application of Murur Az-Zaman in Al-Faraa'id cases however failed to advert their mind to the inherent absolute right of Allah embedded in the command to his servants towards the distribution of the deceased estate in compliance with the injunction contained in the Holy Qur'an.[41]

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[36] Lyria B. Moses *Sui Generis Rules*, available at <htpps://www.researchgate.net/publication/226946010_Sui_Generis_Rules> (last visited on November 29, 2022).
[37] *Mamman Captain, supra* note 34
[38] Dabas & M. Zarabozo, *supra* note 35
[39] *Mamman Captain, supra* note 34
[40] Quran, Surah *An-Nisa, supra* note 2, 13-14
[41] *Id.*

In fact, from the Islamic theory of property ownership, it is laid down or understood that there is no absolute ownership right for any mankind as permitted in other legal systems.[42] Shari'ah legal system thus subjects all ownership to the overriding right of Allah over all properties.[43] A practical example of the foregoing is showcased in Al-Faraa'id in which Allah determines what beholds the properties of Muslims after their demises.[44] This is to demonstrate the fact that even if the right of man (Haqqunnas) embedded in Al-Faraa'id can be said to be waivable, the overlapping right of Allah (HaqquLlah) in the same subject matter can never be waived under any guise or circumstance. Little wonder the right of Allah (HaqquLlah) inherent in Al-Faraa'id cases continues to serve as a clog to the application of Murur Az-Zaman in such cases.

6. Position of Islamic Courts in Nigeria

The tripartite nature of the Nigerian legal system paves way for the establishment of three main categories of courts such as English courts, Islamic courts, and customary courts with a recognized hierarchical system.[45] The fulcrum of this paper revolves around Islamic courts in Nigeria. It is imperative to make a certain point clear that Islamic courts are usually established in the Northern parts of the country with constitutional backing.[46] This is owing to the enormous population of Muslims in the northern part of the country as against what is obtainable in the Southern part in which Muslims of this region do not enjoy the constitutional benefit of having their cases (especially those pertaining to Islamic personal matters) determined Islamically.[47]

Famous categories of Islamic courts in Nigeria, therefore, include the Shari'ah Court of Appeal, Upper Area Court, Area Court, etc. regardless of the differences in the names called, the aforementioned courts are commonly referred to as Islamic courts clothed with vires and jurisdiction to

[42] Hayatullah Laluddin, et al, *Property and Ownership Right from an Islamic Perspective*, 6 (7) Advances in Natural and Applied Sciences 1125-1129 (2012).
[43] *Id.*
[44] Quran, Surah *An-Nisa, supra* note 2, 12, 176.
[45] Abdulmumini A. Oba, *Lawyers, Legal Education and the Shari'ah Courts in Nigeria*, 113-153, available at: https://commission-on-legal-pluralism.com/system/commission-on-legal-pluralism.com/system/commission//volumes/49/oba-art.pdf (last visited on November 10, 2022).
[46] The Constitution of the Federal Republic of Nigeria, 1991 (as amended), *s*. 275
[47] Kareem Olatoye & Abubakri Yekini, *Islamic Law in Southern Nigerian Courts: Constitutional and Conflict of Laws Perspectives*, 6 Benin Journal of Public Law 120-145 (2019).

adjudicate on Islamic civil matters of which the subject of this study is among.[48]

The position of Islamic courts concerning Al-Faraa'id cases does not deviate from the clear understanding of Islamic jurisprudence. Their position is informed by Maqasid Shari'ah (Objectives of Islamic law), especially on the subject matter of Al-Faraa'id.[49] Thus, Islamic courts have over time created an exception to the general application of the principle of Murur Az-Zaman in Al-Faraa'id cases.[50] The purpose of creating the exception is not to defeat the Maqasid Shari'ah (Objectives of Islamic law) in the circumstance.[51]

It must be noted first and foremost that the implication of delay in estate distribution among the legal heirs after the demise of a deceased Muslim is not palatable.[52] This is owing to the clear understanding of the prophetic admonition that a believer's soul remains in suspense until his debts are paid off.'[53] Technically, the non-distribution of the estate of a deceased Muslim after his or her demise is a kind of debt that affects him or her negatively until appropriately distributed as dictated by Shari'ah.

From the above, it is beyond doubt that Islamic jurisprudence places great emphasis on the quick and timeous distribution of a deceased estate among his or her legal heirs after the demise. The foregoing does not however close the door of estate distribution as a result of inordinate delay in doing so. The misconception that clouded the minds of those who advocate for the application of the principle of Murur Az-Zaman in Al-Faraa'id cases in Nigeria is as a result of the common law mentality, orientation, and background which are anathema to Maqasid Shari'ah as far as Al-Faraaid cases are concerned. Little wonder objections have been filed in Islamic courts for striking out of Al-Faraa'id matters on the ground of undue delay, the lapse of time as well as larches and acquiescence forgetting that distribution of the estate is within the right of Allah (HaqquLlah) that is not waivable no matter the circumstance and the delay.[54]

Therefore, to ascertain the position of Islamic courts in Nigeria regarding the application of Murur Az-Zaman in Al-Faraa'id cases, a review of the

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[48] Oba, *supra* note 45
[49] Adil K.A. Muhammad, *Maqasid Al-Shari'ah and Preservation of Basic Rights*, 4 Journal of Education and Social Sciences 276-285 (2016).
[50] *Mamman Captain, supra* note 34
[51] Muhammad, *supra* note 49
[52] Dabas & Zarabozo, *supra* note 35
[53] *Id.*
[54] Al-Sheha Abdul-Rahman, *Human Rights in Islam and Common Misconceptions*, 5-20, available at https://hrlibrary.umn.edu/research/Egypt/HumanRightsinI-slam.pdf (last visited on November 10, 2022).

case of *Iya Maiwana v. Mamman Captain*[55] becomes expedient. The facts of the case were that brothers and sisters dragged themselves to Islamic court after the demise of their father, Adamu Dahiru who died on the 9th of July, 1932. Their father left behind four (4) houses and five (5) farms as legacies to be shared among his heirs. The Appellant being a sister was away for almost thirty (30) years as a result of marriage. The aforementioned legacies were left in the possession of Respondent i.e., the Appellant's brother. The Appellant came back after the span of thirty (30) and requested her share from the estate of their deceased father from the Respondent which the Respondent refused. At the trial court, the Qadi (Judge) held that:

> *Because of the length of time that had elapsed i.e., 30 years from the date of the demise of the deceased father, the court could not review the matter….*[56]

By implication, the trial court thus applied the principle of Murur Az-Zaman to terminate the case. By the judgment of the trial court, the fate of the deceased father dependent on the distribution of his estate was further compounded and left in abeyance against the prophetic admonition that the soul of a deceased Muslim would continue to be in suspense until all his debts paid off including all matters relating to his estate distribution. The decision of the trial court thus runs afoul of Maqasid Shari'ah in the circumstance.

On further appeal to the appellate court i.e., the Shari'ah court of appeal, the decision was therefore upturned by the justices of the Shari'ah Court of Appeal when they succinctly held that:

> *When property connected with inheritance has been held by some of the heirs, the complaint of a woman or other heirs will always be heard. The length of time elapsed notwithstanding.*[57]

The Shari'ah Court of Appeal, therefore, set out the position and attitude of Islamic courts towards the application of the principle of Murur Az-Zaman in Al-Faraa'id cases. The position is that Al-Faraa'id cases are exceptional cases to the general application of the principle of Murur Az-Zaman. Invariably, Murur Az-Zaman which is sometimes referred to as the statute of limitation or expiration of time does not apply to Al-Faraaid cases.[58]

[55] *Mamman Captain, supra* note 34
[56] *Id.*
[57] *Id.*
[58] *Id.*

It is important to note that Islamic courts in Nigeria follow the position of Maliki Madhhab as guidance for most of their rulings[59] and according to the principle of Murur Az-Zaman as laid down by the Maliki Madhhab, the expiration of the time for cases between parties who are not related by blood or affinity is 10 (ten) years while for the parties that are related by blood or affinity, it is 50 (fifty) years.[60] A critical look at the case of *Iya Maiwana v. Mamman Captain* cited above vis-à-vis the disputing parties in the case reveals that the parties, in that case, are of blood relation to which the fifty (50) years expiration of time rule would have ordinarily been applicable. But the Shari'ah Court of Appeal while determining the case never referred to the fact that the delay in bringing the action was still within fifty (50) years to affirm the position of the Appellant. The court simply held that the principle of Murur Az-Zaman does not apply to Al-Faraa'id cases. This thus makes the position of the Islamic courts in Nigeria clear. This is because the case could as well have been positively determined in favour of the aggrieved Appellant having been brought within 50 (fifty) years of rule of parties with blood or affinity relationship in line with Maliki Madhhab.

7. Conclusion and Recommendation

The principle of MururAz-Zaman which prevents a plaintiff from pursuing his cause of action as a result of undue and inordinate delay because of larches and acquiescence is validly applicable in Islamic civil cases. It is not disputed that the Al-Faraa'id case falls within the purview of Islamic civil matters to which the principle of Murur Az-Zaman is ordinarily applicable. However, Shari'ah jurisprudence distinguishes Al-Faraa'id cases as Sui Generis because they involved the inherent rights of Allah which can never be waived. The misapplication of the principle of Murur Az-Zaman to Al-Faraa'id cases is borne out of the misunderstanding of the Hadith of the Prophet which is to the effect that the distribution of the estate of a deceased Muslim should not be delayed. This is without having recourse to the Hadith that proclaims that the soul of a believer would continue to be in abeyance until issues surrounding his estate distribution are finally settled.

It is discovered that the Al-Faraa'id case encapsulates both rights of Allah and the right of mankind. However, the embedded right of Allah which is not waivable accounts for the status of Al-Faraa'id cases as Sui Generis which also shapes the position of Islamic courts in Nigeria regarding the applicability of the principle of Murur Az-Zaman in Al-Faraa'id cases. Hence, with the final decision of the court in *Iya Maiwana v. Mamman*

[59] Ikenga K.E. Oraegbunam, *Maliki Jurisprudence and Boko Haram Ideology versus Nigerian Nation Building: Need for Pluralism in Islamic Praxis*, 12 Ogirisi: A New Journal of African Studies 25-42 (2016).
[60] Getso, *supra* note 5, 76-78.

Captain by the Shari'ah court of appeal, the position of Islamic courts in Nigeria is ascertained that Al-Faraa'id cases constitute an exception to the application Murur Az-Zaman. Thus, it is suggested that Islamic court should continue to maintain their ascertained position. In the same vein, those whose cases/claims have suffered undue delay by one reason or the other should henceforth be bold enough to litigate such cases/claims in Islamic courts to get/reclaim their inheritance unjustly held by wicked-hearted people and at the same time, assisting the fate of their beloved deceased that might have being in suspense as a result of the non-settlement/non-distribution of the inheritance. It is high time Islamic courts began to sensitize the general public that despite any long delay concerning Al-Faraa'id cases, Islamic courts are ready to entertain their cases.