

CRITICAL APPRAISAL OF LEGAL STATUS OF CHILD ADOPTION AND SUCCESSION: COMMON AND ISLAMIC LAW PERSPECTIVES

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ABSTRACT

In the society today, especially in Nigeria, the rate at which people adopt children cannot be overemphasized. There are different rationales behind adoption of children in the society, which form basis for child adoption. Some couples adopt children because they are not medically and biologically fertile to give birth to a child. As a result, they may find it expedient to adopt a child or children as their own. Also, as a result of the fact that some parents are not financially buoyant to take care of their children, some financially stable people adopt these children for proper upbringing. In some cases, it is as a result of loss of parents making the child/children orphans, adoption of children is the apt solution. As for the adopted child, having been part of the member of a family, the legal status of the adopted child gives rise to controversy, especially when it comes to entitlement to some rights as a member of the family that adopted the child. Thus, this article examines the legal status of child adoption and succession under common and Islamic law legal system. By so doing, it provides both Nigerian law and Islamic law points of view as regards to the legal status of the adopted child and his/her entitlement to succession or inheritance.

KEYWORDS: Legal Status; Child Adoption; Succession; Common Law; and Islamic Law.

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1.0 INTRODUCTION

Adoption is a means through which a person assumes the parenting responsibilities of raising another person's biological child. Child adoption is not a phenomenon that is pertaining to one tribe or country; it cuts across different tribes, cultures and countries, including Nigeria. The origin of child adoption could be traced to ancient Rome.²³⁸ Child adoption started in 6th century in Ancient Rome through Roma Law, *Codex Justinianus*, when the family patriarch was poised to die without a male heir and a heir could be provided from another family through adoption. Ever since, families with many male children used to adopt their sons to other noble families with the purpose to forge a coveted family connection.²³⁹ Similarly, orphanages continued expanding rapidly beyond space capacity and financial ability of the church then, orphans were being moved to both private and public sectors. Thereafter, these sectors too were overwhelmed by children with no means of supporting and financing their needs. As a result, the circumstance brought up the idea of "foster-servitude" or "indentured servitude", as a method of moving the children from overcrowded orphanages into families, in order to ensure that the children learn a craft or skill to sustain them for their livelihood.²⁴⁰ Since then, child adoption has been a phenomenon known to countries across the world, which include Nigeria and Islamic Muslim countries, among others. Although child adoption is not a newly known concept, it has been used as means of child

²³⁸ Jones, J. S., 'What is the History of Adoption' (2019) <<https://www.google.com/amp/s/adoption.org/what-is-the-history-of-adoption/amp>> accessed 21st June, 2022

²³⁹ Jones, J. S., 'What is the History of Adoption'

²⁴⁰ Jones, J. S., 'What is the History of Adoption'

maltreatment and child trafficking, especially in Nigeria. As a result of that, there have been arguments as to whether child adoption is a legal or illegal practice. Thus, this article analyzes the legal status of child adoption in Nigeria under common and Islamic law legal system, being among the legal systems in force in Nigeria. Similarly, it will also look into the rights and entitlements of the adopted child, especially in respect of right to succession (inheritance) in Nigeria under common and Islamic laws.

2.0 REVIEW AND RECONSIDERING ADOPTION AND SUCCESSION UNDER COMMON LAW

Meaning of Adoption

The word ‘adoption’ is an offshoot of a word “adopt”, which means to take a child of another into one’s own family making them legal children.²⁴¹ In other words, adoption is the process whereby the legal relationship between a child and his biological parents is severed and retaken between the child and his adoptive parents. According to Black’s Law Dictionary, adoption is the act of one who takes another's child into his own family, treating him as his own, and giving him all the rights and duties of his own child.²⁴² David Watson perceived adoption as a legal procedure that permits a child born to a person, or people to become in legal terms the son or daughter of another, or others, the adopter.²⁴³

²⁴¹ Section 2, Cap. 4, Laws of Edo State of Nigeria 2008

²⁴² Henry Campbell B., *Black's Law Dictionary* 4th Ed. (ST. Paul, Minn. West Publishing Co., 1968), p. 1387

²⁴³ Oluwatosin, O. O., 'Legal Perspective of Child Adoption under the Nigerian Law'[2018] (2)*AGORA International Journal of Juridical Sciences*, p. 57

Brief History of Child Adoption in Nigerian Law

Adoption was alien to common law and since most of the Nigerian laws are traceable to the common Law, especially received English law, there was no any statutory legislation to be manning adoption in Nigeria prior to 1965.²⁴⁴ Since there was no particular written law regulating adoption then, the people engaged in adoption based on the agreement having with natural parents of the adopted children, the orphans and destitute children, though the adoption was not regarded as legal adoption. In an attempt to provide a written law to be regulating adoption in Nigeria, Eastern part of Nigeria was the first that promulgated its adoption law in 1965. Lagos State enacted its adoption Law in 1968, and other states subsequently did the same.²⁴⁵ These laws of the different states have substantial similarities though the dictum of some provisions of these various laws are different.²⁴⁶

However, pursuant to the enactment of the Child's Right Act in 2004, the erstwhile statutes of the various states on adoption have been overtaken by the provisions of the said Act. By implication, the provisions of those legislations must be consistent with the provisions of the Child's Right Act, 2004.²⁴⁷ The Act mandates every state, including Federal Capital Territory, Abuja, to have its adoption law.²⁴⁸ The provisions of sections 125-148 of the Act regulate the adoption procedure and its principles.

²⁴⁴ I. P. Enemo, *Basic Principles of Family Law in Nigeria* (Spectrum Books Limited, Ibadan, 2008), p. 314

²⁴⁵ I. P. Enemo, *Basic Principles of Family Law in Nigeria*, p. 314

²⁴⁶ Family Law, 'Adoption' <<https://isochukwu.com/2017/12/31/family-law-2-9-adoption/>> accessed on the 10th of June, 2022

²⁴⁷ I. P. Enemo, *Basic Principles of Family Law in Nigeria*, p. 315

²⁴⁸ CRA 2004, s125

Nature of Child Adoption under the Nigerian Law

At first, it is necessary to look at who is eligible to adopt a child under Nigeria law. Not everyone who is deemed fit to adopt a child is legally eligible to do so. For a person to be qualified to adopt a child, the law requires that such person must be at least 21 years older than the child to be adopted. In a case where a couple seeks adoption of a child, one of the couples must have reached at least 25 years²⁴⁹ or 35 years in case of a single person and the person can only adopt a child of the same gender.²⁵⁰ That is to say, a single man cannot adopt a female unless in exceptional circumstance in the opinion of the court. Also, where a married person is the sole applicant for an adoption application, the court may refuse to grant the application, unless the consent of the other spouse has been obtained.²⁵¹ Over and above, the adopter must be physically, financially and morally upright. The adopter(s) and adoptee must be citizens of Nigeria resident in the same state.²⁵² Thus, foreigners cannot adopt except the court is satisfied that they are upright and fit after thorough investigation.

The law also pronounces the kind of person that can be adopted. The relevant adoption laws provide that the only person that can be adopted is a juvenile. What constitutes juvenile is defined in the adoption laws of the various including the Child's Right Act. While some states regard a juvenile as a person under the 17 years of age,²⁵³ some other states describe it as a person under 18

²⁴⁹ CRA 2004, s131(1)(a)

²⁵⁰ CRA 2004, s129(c)

²⁵¹ CRA 2004, s132(1)

²⁵² Generally; CRA 2004, s131

²⁵³ Former Anambra, Imo, Rivers States (E.R .Law, Section 2), Lagos Section .1), and Ogun (Section 2) States

years of age.²⁵⁴ The Child's Right Act interprets a child to be a person under the age of 18 years.²⁵⁵ Another condition that can warrant the adoption of a child is that the child must be either abandoned, neglected or persistently abused or ill-treated and that there are compelling reasons for the child to be adopted. The child can also be adopted in the absence of surviving parents, but the guardian of the child must give consent to such adoption.²⁵⁶

In furtherance, after the legal adoption of a child, there are some legal effects to the adoption. Thus, the following are the legal effects of the child adoption under the Nigeria law:

1. It dissolves and quenches all the parental rights, duties and obligations of the biological parents and passes everything to the adoptive parents. The adopted child should be treated as a legitimate child from the adoptive parents. In respect of custody, maintenance and education, the adopter must see and treat the adopted child as their real child. Where the juvenile is jointly adopted by husband and wife, they will be responsible for his/her custody, maintenance and education as the position of his natural parents.²⁵⁷
2. Under the Nigerian law on adoption, the adopted child can be named, bearing the surname of the adoptive parents, since the adopted child will be treated as the real child.²⁵⁸

²⁵⁴ Former Bendel (Section 2), Cross River (Section 20) and Oyo (Section 2) States

²⁵⁵ CRA 2004, s177

²⁵⁶ CRA 2004, s128

²⁵⁷ CRA 2004, s141(1) & (2)

²⁵⁸ Aduba & Ors. v. Aduba [2018] LPELR – 45756 (CA)

3. After the legal adoption has been granted by the relevant authority and adopter dies intestate subsequently, the adopted child is entitled to inherit in the property of the adoptive parents. However, if the natural parents of the adopted child die intestate, the adopted child cannot inherit the property of his real parents, since all legal connections between them has been severed and quenched by the adoption order.²⁵⁹
4. In child adoption, a relationship of consanguinity is formed. The law frowns at intermarriage between the adopter and the adopted child. Thus, marriage between adopter or his natural child and the adopted child is prohibited. For instance, an adopted son cannot have the hand of a daughter of his adopter in marriage, and the same thing between adopted daughter and his adoptive parents' son. This is because blood relationship is deemed to have created between them. The violation of this prohibited act attracts punishment with imprisonment for fourteen years.²⁶⁰
5. The law prohibits the adopter to receive any payment or reward in consideration of the adoption of a child or for the facilitation of the arrangement of the adoption of a child, except with intervention of court. Adoption against this rule attracts punishment which is to pay fine or be imprisoned for three years or both (fine and the imprisonment).²⁶¹
6. Lastly, the adoptive parents cannot put the child up for another adoption. All the adoption laws in Nigeria make it illegal to voluntarily permit the care and possession of an adopted child in the hand of another person.

²⁵⁹ CRA 2004, s141(3)

²⁶⁰ CRA 2004, s147

²⁶¹ CRA 2004, s143

The contravention of this rule is punishable with fine or one year imprisonment or both (the fine and the imprisonment).²⁶²

Procedure for Child Adoption under the Nigerian law

The Child's Right Act, 2004 provides for the procedure of adoption of a child in Nigeria. An application for adoption is made to the High (Family) Court accompanied with the following documents;²⁶³

- a) Where the applicants are married couple, their marriage certificate or a sworn declaration of marriage;²⁶⁴
- b) The birth certificate or sworn declaration of age of each applicant;²⁶⁵
- c) Two (2) passport photographs of each applicant;²⁶⁶
- d) A medical certificate of the fitness of the applicant from a Government hospital;²⁶⁷ and
- e) Such other documents, requirements and information as the Court may require for the purposes of the adoption.²⁶⁸

However, in practice, court prefers an applicant to have fulfilled some conditions precedent to be stated by the Child Welfare Department and adopter should obtain a report stating that the applicant is a proper person to adopt the child. Such report must appear along with the application for adoption. Upon receipt of an application for adoption, the Court shall order an investigation to

²⁶² CRA 2004, s144

²⁶³ CRA 2004, s126(1)

²⁶⁴ CRA 2004, s126(1)(a)

²⁶⁵ CRA 2004, s126(1)(b)

²⁶⁶ CRA 2004, s126(1)(c)

²⁶⁷ CRA 2004, s126(1)(d)

²⁶⁸ CRA 2004, s126(1)(e)

be conducted by Child Development Officers or a supervision officer or such other persons as the Court may determine, to enable the Court to assess the suitability of the applicant as an adopter and of the child to be adopted.²⁶⁹

The Court shall, in reaching a decision relating to the adoption of a child, have regard to all the circumstances, first consideration being given to the need to safeguard and promote the welfare and the best interest of the child throughout the childhood of that child and ascertaining, as far as practicable, the wishes and feelings of the child regarding the decision and giving due consideration to those wishes and feelings, having regard to the age and understanding of the child.²⁷⁰

3.0 NATURE OF SUCCESSION UNDER NIGERIAN LAW

Succession can be defined to mean inheritance, the right to inherit, the order in which inheritance is bequeathed, and the condition precedent under which one can succeed another.²⁷¹ The laws governing succession in Nigeria is bifurcated into two categories; Testate and Intestate succession.²⁷² Whilst testate succession is mainly regulated by Wills and the applicable Wills Law, Intestate Succession is the situation where the deceased fails to compose his valid will.²⁷³

²⁶⁹ CRA 2004, s126(2)

²⁷⁰ CRA 2004, s126(3)

²⁷¹ Anita, O., 'Estate Planning and Succession in Nigeria' <<https://www.patrelipartners.com/estate-planning-and-succession-in-nigeria/>> accessed on the 10th of June, 2022

²⁷² Paul, O. I., 'Legitimacy, Legitimation and Succession in Nigeria: An Appraisal of Section 42 (2) of the Constitution of the Federal Republic of Nigeria 1999 as Amended on the Rights of Inheritance' [2012](4) (3) *Journal of Law and Conflict Resolution*, p. 34

²⁷³ Anita, O., 'Estate Planning and Succession in Nigeria' <<https://www.patrelipartners.com/estate-planning-and-succession-in-nigeria/>> accessed on the 10th of June, 2022

Testate Succession

This means that the deceased person leaves a will behind before his demise. For instance, before a man dies, he has prescribed the ways and manner in which his property or estate will be distributed among the beneficiaries. The will document will serve as a guideline while distributing the property or estate of the deceased either to his family members, relatives, or friends. Thus, the distribution of the property or estate will be executed in accordance with the will. However, there are distinct Wills Laws in Nigeria that influence the execution of the will. There is no uniformity of applicable laws relating to wills. Consequently, among the states that were created out of the former western region, the applicable law is the Wills Law. By virtue of the provisions of the Applicable Laws Edict of 1972, Lagos State adopted the Western Nigerian Law. On the other hand, the rest of the country consisting of the states from the Northern and the Eastern part, still applies the English Wills Act 1837 and the Wills Amendment Act 1852.²⁷⁴

Intestate Succession

Intestate succession on the other is when the deceased fails to leave a will before his demise. In the absence of any will, the applicable laws will determine the way and manner in which the property or estate of the deceased will be distributed. There are three systems of laws which are applicable while considering intestate property. These are the common law, the Administration of Estate Laws of the various States and Customary law. In most cases, the controversial issue that arises, is how does one determine the applicable laws to

²⁷⁴ Paul, O. I., 'Legitimacy, Legitimation and Succession in Nigeria: An Appraisal of Section 42 (2) of the Constitution of the Federal Republic of Nigeria 1999 as Amended on the Rights of Inheritance', p. 35

be applied in cases of intestates' succession non-customary? In the opinion of Prof. Itse Sagay (SAN), the factor which determines which system is to be applied in every case, is the type of marriage contracted by the intestate person. In the case of Muslims the religion practiced while alive by the deceased is also relevant. In furtherance, the learned Professor of law, Sagay, SAN opined thus:

*Thus, if a person contracts a Christian (monogamous) marriage outside Nigeria, the common law of England governs the distribution of his estate. If he contracts a statutory (Act) marriage in Nigeria, then if he dies domiciled In Lagos or any of the states comprising the old Western Region, then the Administration of Estate Law will govern. If he contracts a statutory marriage, but dies domiciled in any of the states comprising the former Northern or Eastern Regions, which are yet to enact their own law on non-customary succession, then the common law will also govern the distribution of his estate. Finally, if the intestate person was an indigenous Nigerian and he did not contract a Christian or Act marriage, or even if he did, and no issue or spouse of such a marriage survived him, his estate will be distributed in accordance with the relevant customary law. If the intestate was a Muslim, then Islamic law would govern.*²⁷⁵

However, it is noteworthy that the stated position of the law is subject to many conditions. For instance, in cases involving the distribution of immovable properties of intestate persons, the applicable law is the *lex situs*, in other words, the law of the place where the land is situated. Therefore, the above overview is only correct with respect to movable property or estate. Also, where a person

²⁷⁵ I. E. Sagay, *Nigerian Law of Succession Principles, Cases Statutes and Commentaries* (1st Edn, Malthouse Press Limited, Ibadan, 2006), p. 73

who is subject to customary law or Islamic law dies intestate, it is his personal law that will apply to the distribution of his immovable property and not the *lex situs*.²⁷⁶

4.0 UNDERSTANDING AND RECONSIDERING THE FIQH OF ADOPTION

Adoption is the legal creation of a parent-child relationship, with all the responsibilities and privileges thereof, between a child and adult(s) who are not his or her biological parents.²⁷⁷ It can also be defined as the creation of a legal and permanent parent-child relationship through a child's acquisition of new family ties which are equivalent to biological ties and extinguish a pre-existing biological parent-child relationship.²⁷⁸ It is emphatically posited thus:

*Adopting someone else's child, bringing it up, seeing to its education and training and being kind and good towards him/her is very virtuous and a commendable act. If the child is an orphan and has no support, then the reward is much more.*²⁷⁹

In one of the *Hadiths* recorded by Imam al-Bukhari in his Sahih, Prophet Muhammed (S.A.W.) said to the effect that the guardian of the orphan and he will be in the paradise together. This means that whoever nurtures, cares and

²⁷⁶ Zaidan v. Zaidan [1974] (4) *UILR*, p. 283; Section 13 of the Bendel State High Court Law

²⁷⁷ Muslim Women's Shura Council, 'Adoption and the Care of Orphan Children: Islam and the Best Interests of the Child' [2011] *American Society for Muslim Advancement*, p. 5

²⁷⁸ Salihu, O. M., 'Adoption, Guardianship and Fostering: Practice and Procedure - Islamic Law Perspective' [2019] being a paper presented at the National Workshop for Area/Sharia/Customary Court judges organized by the National Judicial Institute (NJI) Abuja, p. 4

²⁷⁹ Muhammad Ibn Adam, 'The Fiqh of Adopting a Child' <<https://central-mosque.com/index.php/Relationships/the-fiqh-of-adopting-a-child.html>> accessed on the 12th of June, 2022

looks after the orphan in this earth will be rewarded with paradise in the hereafter. The said statement of the Prophet encourages the Muslim to be kind to the orphan. However, it should be noted that according to the principle of Islamic law, the lineage of the adopted child should not be changed to the lineage of the adoptive parents. This is to say, the child should not be attributed to any other family except to the family of his natural parents, no matter what the circumstance might be. Treating the adopted child as the real and family child of those who adopted a child was the practice of Arabia people during *Jahiliyya* period. As one of the significant reforms brought by Islam, the Qur'an condemned the practice with thus verses:

And He has not made your adopted sons your [true] sons. That is [merely] your saying by your mouths, but Allah says the truth, and He guides to the [right] path. Call them by [the names of] their fathers; it is more just in the sight of Allah. But if you do not know their fathers – then they are [still] your brothers in religion and those entrusted to you. And there is no blame upon you for that in which you have erred but [only for] what your hearts intended. And ever is Allah Forgiving and Merciful.²⁸⁰

In giving practical corroboration to the principle asserted above, the Messenger of Allah (S.A.W.) adopted the Companion Zaid ibn Haritha and the people used to call him 'Zaid ibn Muhammad'. When the aforementioned Qur'anic verse was revealed, his name was adjusted to 'Zaid ibn Haritha'.²⁸¹ Thus, the Muslim jurists unanimously concurred that the pre-Islamic type of adoption is forbidden

²⁸⁰ Surah al-Ahzab, 33 v 4-5

²⁸¹ The Authoritative Biography of Zaid ibn Haritha in Sa'd, al-Tabaqat al-kubra (Beirut: Dar Sadir, 1998), 3:40-47

in Islam through Quran (33:4-5) and the incident of Zaid ibn Harith.²⁸² Therefore, the legal adoption of a child is not permissible in Islamic law. One cannot change the family or lineage of an adopted child and substitute his name of his real parents with adoptive parents. The child should always be addressed and attributed to the real parents in order to become common knowledge in the minds of the people who his real parents are.

Another implicative aspect of Fiqh of adoption is the issue of breastfeeding. If it happens that the child is adopted at early stage and the adoptive mother breastfeeds the adopted child, then the child becomes the foster child of the adoptive parents. The implication is that, the child cannot marry his foster parent and neither any of the foster parents' children. This Islamic ruling in line with the Qur'anic verse that says:

*Forbidden unto you are your mothers, and your daughters, and your sisters, and your father's sisters and your mother's sisters, and your brother's daughters and your sister's daughters, and your foster-mothers, and your foster-sisters.....*²⁸³

According Imam As-Sa'adi's commenting on this verse, the Qur'anic verse is to the effect that the men cannot marry the women mentioned in the verse owing to breast-feeding, related by marriage, and intercourse.²⁸⁴ Apart from the Qur'anic dictum, the Prophet (SAW) also said:

²⁸² Muslim Women's Shura Council, 'Adoption and the Care of Orphan Children: Islam and the Best Interests of the Child', p. 8

²⁸³ Surah an-Nisa', 4 v 23

²⁸⁴ Murtadha G., 'The Women Prohibited for Men to Marry in Islam' [2017] <<https://opinion.premiumtimesng.com/2017/08/04/the-women-prohibited-for-men-to-marry-in-islam-by-murtadha-gusau/>> accessed on the 12th of June, 2022

*'What becomes unlawful (for marriage) through breast-feeding is that which becomes unlawful through lineage.'*²⁸⁵

However, the amounts of suckling that make the prohibition effective are five times. This position is evident from the *Hadith* where Aisha (may Allah pleased with her) made discussion on fosterage and she said to the effect that five clear sucklings make it effectively prohibited.²⁸⁶ In contrast, if the adoptive mother does not breastfeed the adopted child, then the relationship of fosterage will not hold water. By implication, the adopted child can marry the adoptive parents and their children.²⁸⁷

In furtherance, another aspect of *fiqh* of adoption is premised on inheritance. Having been settled on the fact that an adopted child could not be regarded as a real child, the adopted child has no legal basis or status to inherit from his adoptive parents' property. A painstaking perusal of *Surah an-Nisa'*, verses 11 – 12, it reveals that an adopted child has no portion out of his adoptive parents, neither the adoptive parents nor their children can inherit from the adopted child. However, in case the adoptive parents wish to award some portions out of their property to the adopted child, it is permissible to make a bequest in his favour in their life time. Notwithstanding, Islamic law of inheritance provides limit to the number or quantity of portions to be given out as a bequest. The bequest or will for the adopted child must not exceed one - third of the wealth or property.²⁸⁸

²⁸⁵ Sunan an-Nasa'I, 3302

²⁸⁶ Sahih Muslim, 1452

²⁸⁷ Muhammad Ibn Adam, 'The Fiqh of Adopting a Child' <<https://central-mosque.com/index.php/Relationships/the-fiqh-of-adopting-a-child.html>> accessed on the 12th of June, 2022

²⁸⁸ Surah an-Nisa', 4 v 11 - 12

Over and above, the property of the adopted child, who has not attained puberty stage, should be safely maintained. It is permissible to spend the money on the child, especially for his education, but one should not use the advantage of that to spend the money for himself. Even if the money will be spent for the child's sake, it should be utilized with extreme care rather extravagantly. At the same, loan should not be taken out of the child's money, nor can it be given for the purpose of charity. Allah says in the glorious that:

And do not consume one another's wealth unjustly or send it [in bribery] to the rulers in order that [they might aid] you [to] consume a portion of the wealth of the people in sin, while you know [it is unlawful].²⁸⁹

It is also reported in the dictum of the Holy Prophet (SAW) that it is *haram* for the Muslim to take (so much as a stick) without the consent of its owner.²⁹⁰

Finally, it should be noted importantly that good behaviour and kindness should be displayed towards the adopted children, particularly the orphans. They should not be maltreated and make life difficult for them to the extent that they may be regretting of being alive. If one knows or cannot look after the adopted child in a proper manner, he should not be bother or intend to adopt any child, otherwise such person will be penalized in the hereafter. Besides, it is necessary to permit the adopted child to meet his real parents whenever he wishes or his parents

²⁸⁹ Surah Al-Baqarah, 2 v 188

²⁹⁰ Y. Al-Qaradawi, *The Lawful and the Prohibited in Islam (I.I.F.S.O., Kuwait, 1984)*, p. 329

wish. Preventing or causing impediment for him, not having access to his parents will be considered as oppression and it is punishable.²⁹¹

5.0 CRITICAL ANALYSIS OF CHILD ADOPTION AND SUCCESSION RIGHT UNDER THE ISLAMIC LAW VIS-À-VIS COMMON LAW

Having been legally affirmed that an adopted child could not be regarded as a real child, the adopted child has no legal basis or status to inherit from his adoptive parents' property. Under Islamic law, the adopted child cannot inherit the property or estate of his adoptive parents. A painstaking perusal of *Surah an-Nisa'*, verses 11 – 12, it reveals that an adopted child has no portion out of his adoptive parents' property, neither the adoptive parents nor their children can inherit from the adopted child. However, in case the adoptive parents wish to award some portions out of their property to the adopted child, it is permissible to make a bequest/will in his favour in their life time. Notwithstanding, Islamic law of inheritance provides limit to the number or quantity of portions to be given out as a bequest. The bequest or will for the adopted child must not exceed one third of the wealth or property.²⁹² On the other hand, if the natural parents of the adopted child leave estate behind, the adopted child is legally permitted to inherit property, notwithstanding that the child has been adopted into another

²⁹¹ Muhammad Ibn Adam, 'The Fiqh of Adopting a Child' <<https://central-mosque.com/index.php/Relationships/the-fiqh-of-adopting-a-child.html>> accessed on the 12th of June, 2022

²⁹² *Surah an-Nisa'*, 4 v 11 - 12

family. In case the child adopted has not attained the stage of puberty, Allah commends the guardian to do justice to the child property.²⁹³

However, common law recognizes the adopted child as one of the beneficiaries of his adoptive parents' property. After the legal adoption has been granted by the relevant authority and adopter dies intestate subsequently, the adopted child is entitled to inherit in the property of the adoptive parents.²⁹⁴ However, if the natural parents of the adopted child die intestate, the adopted child cannot inherit out of the property of his real parents, since all legal connections between them has been severed and quenched by the adoption order.²⁹⁵

Therefore, Islamic law does not accord the adopted child a right to inherit his adoptive parents' property except the one gives out as a will, which must not exceed one-third of the property. But at common law, especially under the Nigerian law, the adopted child can inherit the adoptive parents' property, especially in the case of intestate succession.

6.0 CONCLUSION AND RECOMMENDATIONS

Successfully, the writing work has examined the legal status of child adoption and succession under common and Islamic laws. The nature, implications and effects of child adoption in the duo systems were shed light on, in relations with the succession right of the adopted child in the perspectives of the two systems. It was argued and buttressed with relevant and legal authorities that the two systems are divergent on the nature, scope and effects of child adoption and

²⁹³ Surah Al-Baqarah, 2 v 220, Surah an-Nisa', 4 v 2, Surah an-Nisa', 4 v 5-6 & Surah an-Nisa', 4 v 10

²⁹⁴ Aduba & Ors. v. Aduba [supra]

²⁹⁵ CRA 2004, s141(3)

succession. As the common law ultimately permits legal adoption of child, the Islamic law condemns legal adoption of child except in the absence of the child's parents. Therefore, the Islamic law and common law are swimming in the different pools regarding adoption of child and succession right. The significance of this article is to appraise the fact that though common law and Islamic law (particularly Islamic personal law) are part and parcel of the Nigerian legal system, the stance of the duo laws in respect to the legal status of child adoption and entitlement of the adopted child to inheritance are in antithesis.