

## Towards an Effective Investment in Waqf Properties in Nigeria

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### ABSTRACT

*The importance and the socio-economic benefits of waqf as a mechanism for ensuring social security for the citizens cannot be overemphasized. Nevertheless, its role as an effective tool for socio-economic development became neglected and often forgotten in many Muslim communities over the years, due to a variety of reasons. In Nigeria, There are many waqf properties lying fallow, particularly in the Northern part of the country where there is an overwhelming majority of Muslims. If such properties are well managed and invested, the hidden potentials of these properties will be unlocked; and poverty will be alleviated drastically. This paper examines the historical background of waqf as well as its current state in Nigeria. It also highlights some of the challenges affecting the proper management of Waqf properties in the country; and underlines some areas that need a fresh look for revitalization and utilization of awqaf. Meanwhile, some of the appropriate Islamic investment modes were also discussed for the efficient management and investment of Waqf properties in Nigeria. The paper will conclude with some suggestions and recommendations for effective legal regulation and proper management in the country.*

**Keywords:** Waqf, Endowment, Investment Shari'Ah Law, Nigeria.

## 1.0 Introduction

The word “*waqf*” originally derives from the Arabic root verb “*waqafa*” which means to hold, to keep or to detain. According to (Raissouni, 2001), the term “*Waqf*” Linguistically, refers to forbidding the movement, transport or exchange of something, while Legally, it refers to the detention of a specific thing by the owner or appropriator or instructing that all profits or gains be solely awarded to the charity foundation in order to cater for the poor.

The *waqf* Institution did not exist in *jahiliya* (pre-Islamic Arabia – before 610 CE), though there is no direct injunction from the Holy Qur'an regarding *Waqf*, it started during the life time of Prophet Muhammad (SAW) as '*sadaqato jariyeh* [continuous charity], where properties such as mosques, wells, land and horses were made *waqf* for charitable purposes. (Sahbeq, S. 1998)

It is narrated from the Prophet (SAW) that: “*When a person dies, they are survived by three things: sadaqato jariyeh [continuous charity], knowledge that benefits society, and their children of good character*” (Muslim, Abu Dawud, and Al-Nisai).

Abdullah Ibn Umar also narrated that: “*Umar bin al-Khattab (the second Caliph) had a piece of land in Khaybar, in the outskirts of Medina. He came to the Prophet stating that he had never obtained such a valuable property and sought advice of the Prophet Muhammad to deal with the highly valuable land. The Prophet said, “If you like, make the property inalienable and give the benefits for charity, though the land itself would not be sold, inherited or donated. He gave it away for the poor, the relatives, the slaves, the jihad, the travelers and the guests. And it will not be held against him who administers it if he consumes some of its yield in an appropriate manner or feeds a friend who does not enrich himself by means of it”*. (Bukhari and Muslim).

This institution flourished during the formative and blooming years of the first Islamic State established by the Prophet Muhammad (P.B.U.H.) in Madīnah, and rightly practiced by the succeeding generations in the Islamic empires throughout the history.

Over the centuries, *Waqf* has been playing a significant role for the nourishing & flourishing of various religious, educational, economic, social, and cultural dimensions of Islam. Contemporarily, it has been emerged as a vital institution in the Muslim society serving the purpose of maintaining various Islamic and social organizations as well as assisting poor individuals of the society leading to a significant reduction of poverty.

Similarly, In Nigeria, There are many *waqf* properties lying fallow, which were established for religious, educational and social welfare purposes, particularly in the Northern part of the country where there is an overwhelming majority of Muslims, but unfortunately these properties are neither properly managed nor profitably invested. Hence, this paper will highlight the current status of *Waqf* in Nigeria and provide some possible means of investing *waqf* properties in the country.

## 2.0 Basic Principles of *Waqf* in Islam

*Waqf* is a recommended act in Islam; therefore, Islam has put several conditions on the process of establishing it. These conditions are categorized based on the basic pillars of *Waqf*. According to the Hanafi school of jurisprudence, *Waqf* has a single Pillar, which is *Sighah* (Declaration), while the Maliki, Shafi'i and Hambali schools of jurisprudence are of the opinion that *waqf* has four pillars as follows:

### 2.1 Declaration of founding (al-Sighah):

This implies the offer of founding waqf by the endower (*wāqif*), this declaration is usually a written document, accompanied by a verbal declaration. In some cases even, a waqf can be founded by committing actions that imply the intention of establishing a waqf. For example, if someone builds a graveyard and allows others to bury their dead, then this action will be regarded tantamount to founding a waqf.

Whatever the declaration, most scholars (those of the Hanafi, Shafi'i and some of the Hanbali) hold that it is not binding and irrevocable until actually delivered to the beneficiaries or put in their use. Once in their use, however, the waqf becomes an institution in its own right.

## **2.2 The Endower (wāqif):**

In any waqf contract, there must be a founder (*al-wāqif*); who must be of the capacity to enter into a contract. Therefore, the endower must:

- be an adult
- be sound of mind
- be capable of handling financial affairs
- not be under interdiction for bankruptcy
- not be fatally ill, but if done in such condition it will be treated as *wasiyya* (will), by executing it within one third of the property.

It should be noted that although waqf is an Islamic institution, but being a Muslim is not requirement for establishing it, hence, a non-Muslim can establish it, and Muslim may benefit from it.

## **2.3 The Beneficiaries (al-Mawqūf alaihim):**

The beneficiaries of the waqf can be persons or public utilities. The endower can specify who are eligible to benefit from his *waqf* (such as the founder's family, entire community, the poor, travellers, etc.). Similarly, there can also be multiple beneficiaries. For example, the founder may stipulate that half the proceeds go to his family, while the other half go to the poor. Hence, valid beneficiaries must fulfil the following conditions:

- They must be identifiable. At least some of the beneficiaries must also exist at the time of the founding of the waqf.
- The beneficiaries must not be at war with the Muslims.
- They must not use it for a purpose in contradiction of Islamic principles.
- They must not be the endowers.

## **2.4 The Property (al-Mawqūf):**

The property (*al-mawqūf*) that can be used to found a waqf must fulfil the following conditions:

- It must be an object of a valid contract.
- It must be benefitable
- It must be owned by the endower.
- It must be free from somebody's right
- It must be originally permissible (Halal)
- It should not already be in the public domain.

## **3.0 Development Of Waqf Institution In Nigeria:**

Islamic law was widely practiced in Nigeria particularly in the northern part of the country, under the two prominent Islamic Empires (Sokoto Caliphate and Kamen Bornu Empire), both in civil and criminal aspects. Umar, (1987), observed that:

*“Before 1900, almost two third of Nigeria or to be precise all the Northern part of Nigeria was governed by Shari’ah. But when the colonial rulers came, they imposed their own legal system on us relegating the Shari’ah to the background...”*

Despite this fact, the law and practice of waqf were not developed during those days, but there are evidences that prove the existence of Waqf properties during the flourishing period of the Sokoto Caliphate.

According to Murray, (1967), the elite slaves (mamlūk) were saddled with the responsibility of administering the waqf lands. This proves the existence of waqf lands in the Muslim-controlled territories in the pre-colonial Nigeria. Consequently, the intrusion of the colonial laws limited or totally excluded the law of waqf in the day-to-day affairs of the Muslims. Hence, a gradual decline was experienced in the regulation and practice of waqf in Nigeria.

Osieni, (2011), argued that there is no *waqf* legislation in Nigeria of today. This means that there is no existing law in Nigeria that provides for the management and administration of *waqf*; all what is available in the Constitution of the Federal Republic of Nigeria 1999, is the reference to issues pertaining to *waqf* which fall under the jurisdiction of the Shari’ah Court of Appeal, in Section 272 (2c), which provides:

*“For the purposes of subsection (1) of this section, the Sharia Court of Appeal shall be competent to decide -*

*(c) Any question of Islamic personal Law regarding a wakf<sup>(1)</sup>, gift, will or succession where the endower, donor, testator or deceased person is a Muslim”.*

Nevertheless, many states of northern Nigeria (such as, Bauchi, Zamfara, Niger and Sokoto States) enacted some Laws as regard to Zakkat and *waqf*, while some further established boards for Zakkat and waqf. But these laws concentrated more on Zakkat than waqf. For example, Zamfar State (which is considered as the pioneer state to establish such laws in the country) has neglected the issue of endowment in its Zakat and Endowment Board Law, (2000), but this was dully rectified in amended law of (2003), with only three sections out of about forty (40) sections.

It should be noted that most of Nigerian States that enacted laws on endowment (such as Bauchi, 2001 and Niger, 2003) virtually copied word-for-word from Zamfara State Zakkat and Endowment Board Law, 2000.

Notwithstanding the above-mentioned situation, some of these States have recorded several successes in the utilization of waqf properties through establishment of these Boards. In Zamfara State for example, the waqf department has successfully accomplished many projects from the waqf Funds, which includes; building of seventeen 17 hospitals, building and renovating houses for the orphans and less privileged people in state, as well as providing quarterly capital grant to the poor and less privileged; so that they could be economically self reliant. (Sani, 2011).

#### **4.0 Major challenges of Waqf Institution in Nigeria:**

As it has been briefly discussed, *waqf* institution has no proper management and regulation through legislation at the federation level in Nigeria. However, despite the

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<sup>(1)</sup>“*Waqf*” is written as “*wakf*” in the Constitution.

existence of some laws on Waqf in some Nigerian states waqf properties are not properly managed the way supposed to be. Hence there are many factors militating against formidable *waqf* institutions in Nigeria:

#### **4.1 Lack of a Dedicated Legislation on Waqf**

It is clear that there is no legislation on *waqf* in Nigeria at the federation level; even what is available in some Northern states of the country is insufficient to this important social security institution. Hence, there is need for a dedicated legislation at all levels, which will establish a proper guidelines and the general framework for waqf management and investment in the country.

#### **4.2 Lackadaisical Attitude of the Muslim Leaders towards Waqf:**

Muslim leaders in Nigeria particularly those who have acquired political power have failed to initiate reforms in Waqf management. Some feel waqf is not so important in the administration of the state, while this has been proven wrong with the increasing economic benefits of waqf in many economies of the Muslim world, and its potentials in poverty alleviation. Therefore, Muslim leaders should be proactive in initiating appropriate legislations on waqf management.

#### **4.3 Unregistered Waqf Properties:**

As mentioned earlier, there are many waqf properties lying fallow In Nigeria, particularly in the Northern part of the country where there is an overwhelming majority of Muslims, but most of these properties were not officially recognized; even in the states that enacted laws on Waqf and Zakat. Hence there is need for proper registration of all waqf properties to ensure good management.

#### **4.4 The Influence of Maliki law of waqf**

Oseini, (2011), observed that one of the obstacles for the development of *waqf* institutions in Nigeria is the jurisprudential point of view of the Maliki School of jurisprudence, which is predominantly followed in Nigeria. According to Maliki, only beneficial interest of endowed property is vested in the *mawqūf 'alayhim*, while the legal ownership of the property is still vested in endower despite the *waqf* deed. Therefore, properties given out as *waqf* may be revoked at any time by the endower. There are cases where a person has given out a particular mosque or land as *waqf* and the succeeding generation takes over the property as an inherited estate. In this regard, a hybrid understanding of the law of *waqf* from the classical sources is necessary for a *waqf* management in Nigeria.

#### **4.5 Lack of Public Awareness on Importance of Waqf:**

Most Muslims in Nigeria do not have the basic knowledge on Waqf institution and its role in providing social security and poverty alleviation in the society. Hence, there is need for sensitization on waqf.

#### **5.0 Investment in Waqf Properties In Nigeria:**

According to many contemporary Muslim Scholars, investment in waqf properties is allowed; since it is meant to ensure maintenance and sustainability of the original waqf property, and fair returns as well. However, there is a difference between productive and unproductive awqaf: productive awqaf can generate enough revenue to support themselves, while unproductive awqaf need a second waqf that generates resources to support them. Hence, revenue generation of awqaf has become a key issue for the sustainability of many waqf projects in the world.

It is apparent that there is no any provision for investment in waqf properties in the Nigerian Constitution, since the only mention of waqf in it was to explain the jurisdiction of Sharia court of Appeal.

However, even some states of northern part of the country that enacted some laws in regard to waqf neglected the investment part of waqf properties. For example, Zamfara state Zakat and Endowment Board Law, (2003 as amended), stated that among the powers of the board:

*“To invest zakat and endowment funds or the surplus of zakat and endowment funds in ways that will meet the objectives of the Board and serve the purposes of zakat and endowment.”* {Section:5(f)}

Despite this provision for investment of Zakat and endowment funds, there is no clear explanation concerning how to invest these funds and the means of investments. Meanwhile, there is no record of the said investment in Waqf funds.

Contemporarily, many channels of investment can generate returns for *waqf* property, and increase value to it, with safety assurance of the original property. This includes the following Islamic funding instruments, which can be used for various waqf projects:

### **5.1 Ijarah (Lease)**

Ijarah is an Islamic lease where the investor purchases an asset and leases it to a client for fixed monthly payments. But in this context, the Build-lease-transfer mode (*ijarah muntahia bittamleek*) would be applied. This implies that the financier would build the buildings on the waqf lands. After completion, the waqf institutions would lease these buildings for a period of time, in which by the end of the tenure, the financier would have recovered its funding and the desired profits. At the end of the lease period, the ownership of the buildings will be transferred to waqf either through sale, gift, or mere disposal by way of abandonment.

### **5.2 Musharakah (Equity Partnership)**

Musharakah involves partners providing funds for a venture, with profits shared according to an agreed ratio, and the loss is borne by them in accordance with their capital contributions. In this context, *waqf* institution brings in the asset, while the other partner builds on the land. A decreasing partnership model (*musharaka mutanaqisa*) would be applied, in which the *waqf* institution and another partners undertake a profit making venture, with an agreement on the returns, where subsequently the *waqf* institution purchases other partners' share, in order to have total ownership of the venture.

### **5.3 Murabahah (Cost-Plus Sale Contract)**

A Murabahah transaction is a sale at a stated profit. In a Murabahah transaction, the Investor purchases an asset from a third party and sell it to the client at a stated profit on a spot or deferred payment basis. This instrument is relevant to cash Waqf, the waqf institution will stand as the investor so as to buy the asset from the third party and sell it to the client based on agreed upon profit.

### **5.4 Mudarabah (Silent Partnership)**

A Mudarabah transaction is an investment partnership which implies contract between an investor (or financier) and an entrepreneur or investment manager known as the Mudarib. In this contract, risk and rewards are shared. In the case of a profit, both parties receive their agreed-upon share of the profit. In the case of a loss, the investor bears any loss of capital while the Mudarib loses his time and effort. In this context, asset-based *mudarabah* mode would be used. Under this mode, the waqf institution lets the financier construct a building on waqf land,

while the developer exclusively manages the project. Upon completion, the building would be rented to a third party. The rental is shared between the institution and the developer. Then the waqf institution uses the revenue from the rental of the building to increase its share in the building and to distribute it among the beneficiaries.

### **5.5 Istisna' (Partnership in Manufacturing)**

This is a mode of financing where the commodity involved is manufactured to the specifications of the purchaser. It is widely used in the housing finance sector, in this context, the Waqf institution seeks finance for the construction of a house. The financier may undertake to construct the house on a specified land either belonging to the client or purchased by the financier, based on Istisna', with payment fixed in whatever manner the parties may agree upon.

These are some of the proposed Islamic funding instruments, which can be used for various waqf projects.

### **Conclusion:**

Waqf, similar to *zakat*, is an integral part of the Islamic socio-economic system. Hence, it is crucial that if managed and administered effectively and efficiently, its benefits can be used to increase wealth and reduce poverty in the Muslim societies.

However, there is need for proper legislation on *waqf* management and investment in Nigeria, which should not be based on the Maliki School alone but a hybrid of best practices in the four major schools of jurisprudence, with the consideration of copying best practices from countries like India, Pakistan, Bangladesh, Malaysia, Indonesia, among others. Hence, the academics, religious scholars, the awqaf authorities, the practitioners, the developers, and financial institutions would work together to bring forth creative ideas, methods and initiatives for the development of waqf in the country.

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