

## ISLAMIC PERSPECTIVE ON LAND DISPUTE AND RESOLUTION

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### Abstract

*Land is recognized as a property under Islamic law. The means of its acquisition must be lawful in the eyes of the Sharia. Inheritance is one of the valid ways of acquisition of land. Islamic law has put in place comprehensive principles regulating inheritance and has allowed both males and females to inherit. Gift is equally considered a lawful means of acquisition of land. However, the giver or donor must possess certain qualities such as maturity, soundness of mind and ownership of the property in question before the gift can be valid. A person cannot give what he does not own. Sale is allowed by the Sharia and individuals can buy or sell land. Will of land is allowed under Islamic law but in addition to other conditions, the testator must not make a Will of a property beyond 1/3 of his estate. Where a person makes a Will of his land which*

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*consumes more than the 1/3 of his estate, such additional amount beyond the 1/3 shall be void at the instance of the heirs. Disputes relating to land are settled through established principles relating to proof under Islamic law. Proof is often established under the Sharia through witnesses or oath and in some cases both. The owner of land is entitled to the right of enjoyment of his land though his right must not encroach into the rights of others. This paper will therefore examine the concept of land. Means of acquisition, proof of ownership, rights of owners of landed property under Islamic law. The paper finds that most people are ignorant of their rights as owners of land and its means of acquisition. It suggests enlightenment of the general public on the lawful means of acquisition of land and training of judges and lawyers on means of proof of ownership of land.*

**Keywords:** Islamic law, land, acquisition, proof of acquisition of land

### **1. Introduction**

Islamic law has a broad and comprehensive rules pertaining ownership of land. Land must be acquired through lawful ways and utilized for lawful purposes. Sharia allows both individual and group ownership of land. This is in addition to the rights and a responsibility of the owners. It is however a cardinal principle of Sharia that Allah is the final and overall owner of everything that is on the earth and the heavens. No matter the duration of time spent in lawful ownership of a land, a day will

certainly come when mankind will surrender everything to the creator of the heaven and the earth. The Qur'an states:

"It is He who has made the earth manageable for you, so traverse through its tracts and enjoy of the sustenance which He furnishes but unto Him is the resurrection.<sup>1</sup>

## **2. Concept of Land Under the Sharia**

Land is anything that is on the surface of the earth. It includes sand, rock, water and grass. Land under Islamic law has satisfied the threshold of recognition as property. For anything to be recognized as a valid property under the sharia, it must satisfy certain requirements which include lawfulness, ability to possess, use and enjoy. Though, it is generally required that property must be an exhaustible thing, the question as to whether land is exhaustible or inexhaustible remains unanswered. Though a person can enjoy land but can he exhaust it? Going by the Qur'anic verse in Surah al-Rahman which says everything on the earth will cease to be except the Lord of the Universe.<sup>2</sup> One can safely say that land is also exhaustible hence satisfies all the requirement of a valid property that can be bought, sold, given and inherited.<sup>3</sup>

## **3. Means of Acquisition of Land**

There are several ways through which land can be lawfully acquired under the sharia. These means of acquisition are very

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<sup>1</sup> Al-Mulk:67:16

<sup>2</sup> Surah al-Rahman

<sup>3</sup> Nukhat Iqbal, *The Concept of Land Ownership in Islam and Poverty Alleviation in Pakistan* (2000) *The Pakistani Development Review*, 20 (4) Pg 649

important because to assist in ensuring that land is acquired lawfully.

Ihwa al-mawat:

"He who brings dead land back to life shall himself possess it and he who by force wants to make use of it has no right or title to it at all."<sup>4</sup>

Other hadith concerning mawat land are the following: "Whoso quickens a dead land, it is his, there is no right of expropriation against him."<sup>5</sup>

- i. Gift: Gift or hiba is a means of acquisition of property, it occurs when a lawful owner of a property gives his land to another without receiving anything in return.
- ii. Inheritance: Inheritance is also one of the means of acquisition of land under Islamic law. Land is cherished and inheritance can be established through marriage, relationship and slavery.
- iii. Abandoned land: Where a person establishes or clears a virgin land or an abandoned land, he becomes the rightful owner of the land.
- iv. State grant iqta: The Maliki school viewed that iqta' confers unquestionable ownership. They support the doctrine of full ownership through iqta' irrespective of the extent of work being carried out on the land, such as, the failure of the *ihya* grantee to revive and cultivate the land completely within the stipulated

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<sup>4</sup> Sahih Al-Bukhari, (translated by Dr. M.M.Khan), Kitab Al-Muzaraat, Vol. 3 Chapter 15, p. 306

<sup>5</sup> Sunan Abu Dawud, Kitab Al-Kharaj, (English trans. by Ahmad Hassan), Vol II, Ashraf Press, Lahore, (184) p. 874

period of three (3) years: Furthermore, the owner can deal with the land by way of sale or gift at any time.<sup>6</sup>

Waqf is one of the most important institutions of the community. A person of sound mind can create *waqf* provided that there is no fraud, undue influence or coercion.<sup>7</sup>

#### 4. Ownership of Land

Ownership under the sharia is referred to as *mulk*. Generally real ownership rests in Allah. Allah created lands for the enjoyment of mankind.

Allah S.W.t. has said that:

"All that is in the heavens and on the earth belong to Allah s.w.t."<sup>8</sup>

"To him belongs whatever is in the heavens and on earth."<sup>9</sup>

"His is the Kingdom of the heavens and the earth and all that lies between them."<sup>10</sup>

In Surah An-An'am it stated that:

"And He it is Who has made you vicegerents (to inherit the earth), and has raised some of you by degree above others, so that He might try you by means of what He has bestowed upon you. Verily your sustainer is swift in retribution; Yet, behold He is indeed much forgiving, a dispenser of grace."<sup>11</sup> In Surah Yunus, the role of man as a representative of Allah s.w.t. on earth is stipulated. It states that:

<sup>6</sup>Siti Mariam Malinumbay S. Salsal, The Concept of Land Ownership: Islamic Perspective,(1998), Jid. 2. No. 2 pg 300

<sup>7</sup> VP Bkartiya, Syed Khalid Rashid's Muslim Law, Fifth Edition (Lucknow: Eastern Book Company,2010) pg 237

<sup>8</sup> S-An-Nisa (4):126 & 134

<sup>9</sup> Surah An-Nahl (16): 52

<sup>10</sup> Surah al-Zukhruf(43): 85; Surah Al-Maidah (5) : 120).8

<sup>11</sup> Surah An-An'am (6): 165

"Then we made you vicegerents in the land after them to see how you would act."<sup>12</sup>

"And spend of that whereof He has made you His vicegerents."<sup>13</sup>

The *ayat* above categorically illustrate that absolute ownership of everything belongs to Allah S.W.T. alone and He has subjected it to men. He humbled it for men and men for that matter must strive to derive benefit from it. Man or the State Authority is not but a mere trustee and he must strive to fulfill the role reposed upon them in accordance to Allah's will. Delegation or trusteeship becomes the centre or focal point of ownership in Islam. Human beings have only the right of access to the property they own

Ownership connotes number of claims, liberty, immunities in relation to the things or property a person owns.<sup>14</sup> Ownership comes with rights and responsibilities. The owner accords the owner the right to use and enjoy his land in all lawful ways such as to build a house, shop etc. it equally accords him the power to allow another person enjoy the usufruct of the land such as renting the land for another person to use. The owner of a land has the power to sale, give and mortgage the property. Though sharia allows the owner of land to enjoy all these rights, his rights can be restricted by the government while his action runs contrary to an established principle of the sharia for example when he wants to use the land for immoral or unlawful purpose such as brothel. Similarly, on the basis of principle of Islamic jurisprudence (Qawaid al-Fiqhiyya) called Saddu al-Zariah (for closing the path of evil) even if his action is prima facie lawful,

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<sup>12</sup> Surah Yunus:12

<sup>13</sup> Surah Al Hadid (57) : 7).13

<sup>14</sup>Sidi Mariam Op. Cit pg 285

sharia can restrict him from doing it if that action can open the gate for unlawful acts eg cinema under certain circumstances.<sup>15</sup>

### **5. Right to Private Ownership of Land**

Islam does not prohibit private ownership of land. In fact, several authorities approve of such a natural phenomenon. Islam along with the security of life guarantees security of ownership of property to every human being. Such right is applicable only to property, which has been legally acquired. The above statement was emphasized on the occasion of the speech addressed to the Muslims by the Holy Prophet s.a.w. in his farewell haj when he said: "Your lives and properties are forbidden to one another till you meet your Lord on the Day of Resurrection.,, This includes the right of enjoyment and compensation, investment in business, transfer and occupation of property.

Therefore, it can be deduced that private ownership is regarded as social phenomenon as well as social necessity to which Islam has ordained its protection. The right of private ownership is not prohibited in Islam. Indeed, it is very much encouraged in Islam to own property. There is no provision in the Shari'ah law that prohibits an individual from owning a property. Individuals have defined rights and liabilities. A person has the right to benefit from the land provided he uses it properly. Islam does not condone pauperization and mendicancy. Being an ideal and rational religion, it acknowledges the sanctity of private ownership. Allah s.w.t. has affirmed in the following *ayats* and said:

"To men is allotted what they earn and to women what they earn."<sup>16</sup>

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<sup>15</sup><https://www.scribd.com/document/211772617/saddu-alzaarai> visited 10 September 2023

"Give to orphans their money and do not exchange the good for the evil."<sup>17</sup>

In Another ayat Allah said once again that:

"Your riches and your children may be but a trial."<sup>18</sup>

These ayats mentioned clearly that man could take benefit from all the resources created and provided by Allah S.W.t for their sustenance and likewise he can own what can be owned privately to the exclusion of others.

Another principle illustrated in this system is that of inheritance and succession to be attached to private ownership.

Private ownership or individual ownership of land therefore, is encouraged and allowed in Islam provided, it does not injure, impede or jeopardize the interests of the greater segment of the community. However, even though such form of ownership is predicated in Islam, the State nevertheless reserves the right to take it from him should the need arise or if it is for the benefit of the society (Maslahah). Thus, property in Islam has a social function apart from fulfilling the needs of the owner proprietor<sup>19</sup>

Responsibility is equally attached to ownership of land under the sharia. Every land owner must ensure that his actions or enjoyment of the land does not run contrary to the right of Allah, the Right of the State, the Right of Humans and the Rights of non Humans

Right of Allah: He must use the land for all lawful purposes such as farming, fishing, mosque etc. Generally use the sharia, the original state of things is lawfulness (Al-Aslu fii al Alshyaa al-Ibaha). Every action is lawful except what is expressly forbidden by the Sharia such as intoxicant, prostitution etc.

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<sup>16</sup> Surah An-Nisaa (4): 32

<sup>17</sup> S.An-Nisa(4):2).24

<sup>18</sup> Surah At-Taghabun (64) :11

<sup>19</sup> Sidi Op cit. pg. 289

today, it will be lawful to open a computer business centre despite the absence of express permission to do so from the original sources of the sharia or to open a law firm.

**Right of Humans:** The actions of the owner on his land must not infringe on the right of his neighbours.<sup>20</sup> The owner of a land must not partake in actions that can constitute nuisance to his neighbours even if it is recitation of the Qur'an. The English principle of duty of care is well entrenched under Islamic law as well. Where the action of the owner of property causes harm to another, he will be tortuous liable to pay compensation to the owner of the property.

**Right of the state:** the state has powers to make rules on the enjoyment of land by land owners. Under the sharia, laws are divided into thus:

- i. **Qanun al-Wadiyyah:** These are areas Allah alone has right to make laws on them such as prohibited degrees of marriage, legitimacy etc. This is born out of the verse in surah-Mujadalah which says these are the limits of Allah.<sup>21</sup>
- ii. **Qanun Al-Siyasiyyah:** These are areas where Allah allows man to make laws on them eg rules or court, laws on documentation of land etc. BOGIS for example as a lawfully established agency in Borno can declare certain parts of the city of Maiduguri permissible on for residential purpose and not business or farming.

When the government or its agency makes rules of land, these rules must be respected and adhered to by every land owner in Borno state. If any landowner neglects his duty, his land would

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<sup>20</sup> Hadith from Muslim indicates neighbours are 40 houses from all directions (Right, left, front and back). Several traditions and verses of the Qur'an have emphasized the right of neighbor.

<sup>21</sup> Qur'an 58:4

revert or be repossessed by the State Authority. The State Authority reserves the right to take or repossess land or anybody's land for that matter and alienate it to another who would use it better and bring benefit to the community at large.<sup>22</sup>

Right of Non-Humans: These includes environment, animals etc. every land owner must use it in such a way as to not to cause deliberate and avoidable harm or damage to the environment. Allah has clearly prohibited *fasad fii ard* (destruction on earth).<sup>23</sup>

## 6. Land Disputes and Resolution

Dispute is a natural phenomenon in every human society. When Muslims find themselves in a state of disagreement, they are expected to first resort to sulhu and fear Allah in whatever they are doing. Whether sulhu or litigation, a party who deliberately takes another person's land has earned the wrath of Allah unto himself. Allah says in the Qur'an "Do not devour each others wealth by false and illegal means except by trading through mutual consent"<sup>24</sup> The Quran warns further against eating another person wealth by bribing judges or people in authority.<sup>25</sup> The Prophet (PBUH) said "That I am a human being like you and judge between you on the basis of evidence you place before me. Any one of you who falsely acquires his brothers property before him has earned fire unto himself."<sup>26</sup> In another hadith, the Prophet stated that whoever illegal devours another

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<sup>22</sup> Sidi M. *Op. Cit.* pg 287

<sup>23</sup> Glorious Qur'an surah al-Maidah

<sup>24</sup> Glorious Qur'an surah al-Nisa

<sup>25</sup> Glorious Qur'an surah al-Baqarah

<sup>26</sup> Hadith

person land even if it is the size of a span, Allah will tie that up to seven earths on his neck on the day of judgment.<sup>27</sup>

The Prophet (PBUH) further says "What belongs to a Muslim is forbidden to others except by virtue of his consent.,<sup>28</sup>

"Surely no man's property is lawful for you, save only with the goodwill of the owner.<sup>29</sup>

In another Hadith it is says that:

"Everything which belongs to a Muslim is forbidden to his follow Muslims, his property, his life and his honour.<sup>30</sup>

### 7. Proof of Ownership of Land

Just like what is obtainable under common law, Islamic law has equally defined in clear terms the means of settlement of disputes. In an authentic hadith, the Prophet PHUB stated that he who asserts must prove and he who denies shall take oath.<sup>31</sup>

The position of the sharia therefore is that a plaintiff is generally expected to bring evidence to establish his claim and where he fails, then the defendant will take the oath of denial.<sup>32</sup> The Court of Appeal stated in the case of *Ummaru v Bakoshi*<sup>33</sup> that under

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<sup>27</sup> Hadith narrated by Said bn Zaid bn. Amr bn. Nufail; Sahih Muslim, Kitab al-Buyu, p. 847; See also Miskat Al-Masabih, (English translation by James Robson) Vol. I & II, p. 629

<sup>28</sup> See Abu Bakr Ahmad Al-Bayhaqi, Sunnah Al-Kubra, Vol. 10, (Eeirut Dar Al Fikr) (n.d.) III, 10).

<sup>29</sup> Miskat Al-Masabih, Vol. I & II, p. 630 reported by Abu Hurrah Ar-Raqashi and Baihaqi transmitted it in Shu'ab Al-Imn & Daraqutni in Mujtaba

<sup>30</sup> Ibn Majah, Sunnah Al Fitn, B. Hurmat Al Mu'min Wa'lma'l Hadith no. 3933, Vol II, p. 1297;

<sup>31</sup> Imam Nawayiy, Arbauna hadith

<sup>32</sup> Abbas Abdullahi Machika, Guide to Advocates An English Translation and Commentary on Tuhfatul Hukkam (Kaduna: Zusalat Company, 2020)

pg 16

<sup>33</sup> (2006) 3 SLR (part I) pg 80 at pg 87

Islamic law he who asserts must proof and the requirement of proof are as follows

- i. Evidence of two male unimpeachable witnesses
- ii. Evidence of one male and two or more female unimpeachable witnesses
- iii. Evidence of one male or two female witnesses with the claimant's oath in either case.

Generally in disputes relating to land where non of the parties is having possession (hauzi) of the subject matter, both parties become claimants hence need to establish ownership by calling witnesses to prove their cases.<sup>34</sup>

### **7.1 The Principles of Prescription (Hauzi)**

With respect to land disputes, hauzi /possession is an additional evidence in favour of the person in possession. Several important rules applies to the concept of hauzi under Islamic Land

- i. Ten years Hauzi: A person that remains in possession for 10 years acquires title to the property. This principle of the sharia requires that a person who enjoys uninterrupted possession of a land for a period of 10 years automatically becomes the owner against any person who claims to be the original owner of the property. Put more clearly, the law is that a person who sees somebody using his property and claiming it as his own property without objection from the real owner, acquires ownership of the property.<sup>35</sup> It is however important to note that certain exception applies to this rule such as

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<sup>34</sup> Muhammad Yusuf Al-Kafy, *Ihkam al-Ahkam alaa Tuhfa al-hukkaam* (Lebanon: Dar al-Fikr, 2000) pg 16.

<sup>35</sup> *Hada v Malumfashi* (1993) 7 NWLR pt 303 1 at 20

- a. blood relationship, marriage, fear of prosecution,
- b. claimant is a minor
- c. The person entered with the consent of the owner for free or as tenant
- d. The person in possession entered as a trustee
- e. The claimant is a partner or co-proprietor to the person in possession
- f. The claimant has traveled or not in town, has no information or cannot communicate his rejection of the possession
- g. Where the claimant is a female and her husband will not allow her pursue her right even through a guardian or representative until the time she raised the objection due to termination of the marriage or for some other reasons.<sup>36</sup>

It is however important to mention that hauzi not grant lawful ownership does where the person in possession knows that he is not the original owner of the land. Any person who claims another person land via hauzi illegally does that and Allah wrath awaits him.

## **7.2 Where Both Parties having Hauzi**

Hauzi is takes the place of one witnesses. Where a claimant is already in possession, the court will request him to take a complimentary oath to have judgement in his favour. Where he refused to take oath, the defendant will then take oath to have enjoyment entered in his favour. However, where both parties reused to take oath, then the land shall be shared between the parties equally.<sup>37</sup>

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<sup>36</sup> (2006) 3 SLR (part I) pg 80 at pg 85

<sup>37</sup> *Ibid*

### **8. Unlawful Acquisition of Land**

Islam protects the property of people and prohibits the act of unlawfully acquiring the property of others. "As to thief, male or female, cut off his or her hands: A punishment by way of example, from Allah for their crime."<sup>38</sup>

The stem punishment in Islam for theft is an indication and sign of the sanctity of the right of individual ownership or property; also a way in which it is guarded and prevented from being infringed. To afford further protection and abuse from any quarter of the community the Qur'an again said in Surah an-Nisa to the effect:

"O you who believe! Eat not up your property among yourselves in vanities; but let there be amongst you traffic and trade by mutual goodwill."<sup>39</sup>

"And withhold not the goods of the people, and do not cause mischief on earth."<sup>40</sup>

The above ayat supplemented and supported by another Surah which says that:

"And do not eat up your property among yourselves for vanities, nor use it as bait for the judges, with intent that you may eat up wrongfully and knowingly a little of (other) people's property."<sup>41</sup>

Evidence that deals with the protection of private property or ownership is the hadith of the Prophet, which says that:

"No person's property is lawful to be taken except by his consent. A party who unlawfully acquires the land of another

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<sup>38</sup> Surah Al-Maidah (5): 38

<sup>39</sup> Surah An-Nisaa (4): 21

<sup>40</sup> Surah As-Shu'ara (26) : 183

<sup>41</sup> Surah AlBaqarah (2): 118).26

has in addition to the sin associated to his action equally under an obligation to pay to the real owner any loss that results as a result of his action.<sup>42</sup> A person who builds unlawfully builds on the land of another is under an obligation to vacate the land and remove all the structures he constructed on the land in addition to payment of compensation for any loss that results on the land. However, where a person is an innocent purchaser of title without notice, the real owner is expected to pay the innocent purchaser for the expenses.<sup>43</sup> Where the owner is unable or not ready to pay the innocent purchaser, the court can give him from the land equivalent to the expenses of the building or construction on the land.<sup>44</sup>

### **8.1 Displacement and Land Related Conflicts**

As a result of the insurgency, over a million people have been displaced and some have left their houses and farms for over ten years.<sup>45</sup> After return, severally issues are likely to arise leading to litigations the issues borders on thus:

- a. After return, do parties retain their lands? Since the owners were displaced and left their lands not due to their choices but save their lives, the owners of the land retain their lands except where the land owner make gift, sale etc of the land before leaving. However, due to fear and pressing needs, some land owners sold the properties in outrageously low price, some scholars have reservation for the validity of such type of sale. It is therefore an issue for the court to determine when a

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<sup>42</sup> Imam Alkafy Al-Maliky, *Tuhfa Al-Hukkam*

<sup>43</sup> *Ibid*

<sup>44</sup> *Ibid*

<sup>45</sup> <https://punchng.com/orno-lost-6-8bn-to-bharam-insurgency-says-shettima/>

person sales his land at a low price for example a House worth Five million sold at One Million naira due to pressure or undue advantage.

- b. Houses belonging to people that have not returned: the fact that after return of the people in a village or town, others have not returned does not entitle people from the town to take over or own the land of others. Presently, a case is before the court where some people took possession of the house of a neighbor in Gwange ward Maiduguri after the reopening of the ward because the real owner refused to return when others returned. This case will be an interesting one and the courts decision will be a huge guide and a locus classicus one. It will equally be point to note that in some towns, certain fertile farms owners may not return after resettlement of their communities, can some members of these communities temporarily use the farms pending the return of the original owner, especially that after resettlement of communities, security operatives will not allow the locals to go far into the bushes duties security threats. May people have lost their lives due to attack by insurgents when they went to their farms or fetch wire wood in the bushes.<sup>46</sup>
- c. Persons whose where about unknown: Now that the insurgency is subsiding, several towns and villages have been resettled but some people have died and others where about still unknown. These category of persons are called Mafqud (missing persons). Sharia has prescribed several means of handling these kinds of

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<sup>46</sup> Several villages from Yawuri and its neighboring villages died in 2020 and 2021 due to attack by Boko Haram

cases. Generally scholars categorized mafqud into four categories thus:

- i. Missing person during conflict between Muslims (fitnah)
- ii. Missing person in the land of Islam
- iii. Missing person in dar alharb (land of the enemy)
- iv. missing person as a result of natural disaster

Generally taamir (life span) is used to determine the way to deal with the case. The life span is fixed at 70. Therefore where a person is declared mafqud at the age of 20, additional 50 years must be added before he can be declared dead and his estate distributed.<sup>47</sup>

However, where it is a result of conflict between Muslims just as is the case with Boko Haram, scholars opined that until after the end of the fitnah and return of people to the homes while the individual in question has not returned. The question as to whether for the purpose of our situation today in Borno whether normalcy has returned and people that have not returned can be declared dead will be left for courts to decide. It is however a truism that the Nigerian army has from time to time released people that were found not to be members of Boko Haram or have repented, after their families without resorting to court declared them dead and distributed their estates. In some cases their wives remarrying.

Where after distribution of the estate of a mafqud as prescribed by the sharia and he resurfaces, he is entitled to return of all his available property eg land, houses etc.

A major act of ignorance that is associated with this issue is that people do not refer to the courts in declaring a mafqud dead. It should be the court that can make such a declaration. It is

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<sup>47</sup> See the case of *Maana Maraya and Another* (SCA Borno state)

therefore suggested that awareness should be created in insurgency affected communities on the ruling of sharia on mafqud.

- d. Government allots peoples land to others: While the land use Act empowers the state Governor revoke land for use of the certain reasons such as public use, breach of term in the grant, public interest etc. it does not generally admit of revocation of private land and reallocation of same to private individuals. Situations could arise where after rebuilding homes, a government official mistakenly hands over to house to another person, it will therefore be advised for such individual to take all lawful step towards addressing this mistake and litigation should be the last resort.
- e. Land belonging to insurgents: Where the government revokes the land belong to them, then there will be no much problem as the government is empowered by the Land Use Act 1978.<sup>48</sup> However, individuals cannot take over the land of other without following the due process of the law. The rule under the sharia is that Muslims are not permitted to take over the property of another Muslim as booty even when there is war between Muslims.<sup>49</sup> The rule on booty requires that a Muslim cannot take the property of another Muslim as booty even if there is war like that of book haram. Based on this principle, a people in community cannot take over property belonging to Boko Haram. More so that the rehabilitation and resettlement efforts of the government

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<sup>48</sup> S. 28 Land Use Act

<sup>49</sup> [https://www.iium.edu.my/deed/hadith/muslim/019\\_smt.html](https://www.iium.edu.my/deed/hadith/muslim/019_smt.html) Accessed 10 September 2023

is still ongoing and is expected to greatly help in bring an end to the over a decade long insurgency.

- f. Principle of shufaa (Pre-emption) where co-owner has not returned: the rule of shufua under the sharia is a right given to a co-owner to be offered to buy an immovable property before it can be offered to others. The prophet PBUH said a co owner has the right of shufua over immovable land. But when the land is demarcated and paths clearly marked, the right to shufua does not exist.<sup>50</sup> The right as held in the case of *Alkamawa v Bello* exists only to co-owners and not neighbors.<sup>51</sup> A major issue after resettlement is not a co-owner may not return but the rule requires the seller to wait until the co-owner returns or reaches out to him. If he fails to do that the co-owner is entitled to call for revocation of the sale.<sup>52</sup>
- g. New settlements on land due to displacement: Some communities settle in new lands either voluntarily or by the government and that becomes their new villages or towns. The sharia principle discussed above on 10 years, settlement on virgin land etc will apply. It is the government that gave them the land then it validly becomes a new home for them. But if it is 10 years settlement and the original owner comes before the reaching 10 years, then the original owner has better titled but if they have reached 10 years without challenge then they become more entitled.<sup>53</sup>

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<sup>50</sup>Hafiz Al-Askalany, *Bulugh al-Maram*

<sup>51</sup> 1998 6 SCNJ

<sup>52</sup> Imam Al-Kafy Al-Maliki Op. Cit.

<sup>53</sup> Ibid

## **9. Conclusion**

Disputes relating to land are naturally an indispensable part of human existence. People have over the years encountered several challenges in the way to manage the conflicts associated with land. Under the sharia, certain principles are accepted as means of acquisition of land such as inheritance, gift, sale, first settlement etc. where parties are in conflict as to ownership the sharia principles on he who asserts must proof will apply. Hauzi is a vital issue that determines how conflicts relating to land are resolved. The insurgency has resulted in several conflicts especially after settlement. Pubic enlightenment on sharia principle is suggested and training of judges, lawyer and traditional rulers will equally help resolve many cases as required by sharia and will equally help resolve many conflicts.